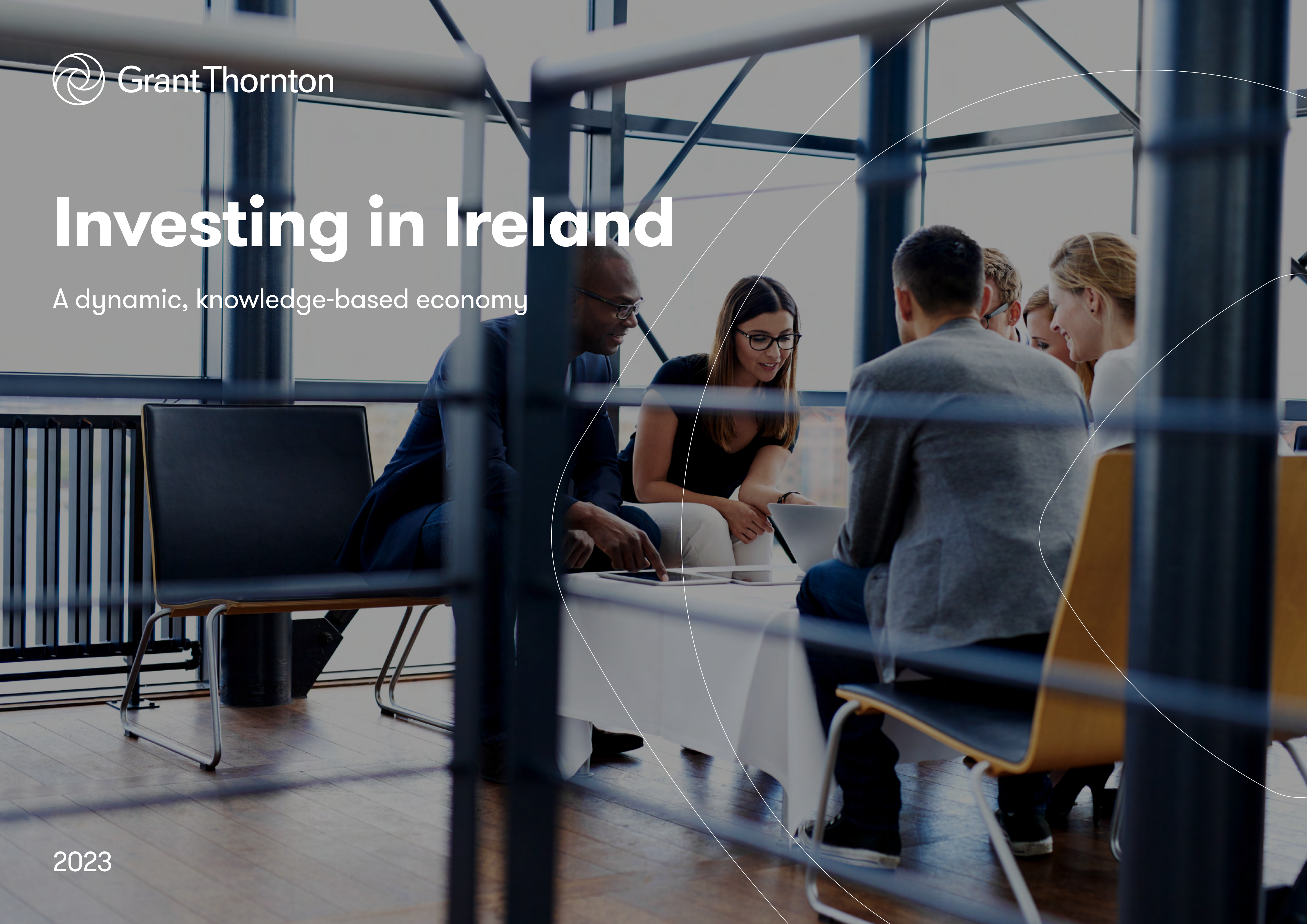


Grant Thornton

Investing in Ireland

A dynamic, knowledge-based economy

2023


Grant Thornton

Contents

Foreword

Ireland represents a strategic European base because of our pro-business, low corporate tax environment and skilled workforce. As a result of these and other factors, more than 1,600 multinational companies have chosen Ireland as their investment platform.

Ireland's low corporate tax rate, holding company regime, Research and Development (R&D) tax credit, Knowledge Development Box (KDB), Digital Games tax credit and Intellectual Property (IP) relief make it a very popular choice for inward investment. Companies based in Ireland view it as a uniquely attractive location in which to do business.

Ireland remains committed to its corporation tax rate of 12.5%. Under the OECD Pillar Two rules, Ireland will adopt the 15% minimum effective tax rate; however, this minimum rate will only apply to multinational enterprises (MNEs) with consolidated revenues of €750m or more. Therefore, the 12.5% rate will continue to apply to companies below this threshold. Ireland's domestic legislation to implement the 15% minimum effective tax rate will follow the EU Directive with effective date of **1 January 2024**.

The global tax landscape continues to evolve with many countries introducing new digital taxes broadly aimed at raising tax revenues in market jurisdictions. Despite these changes, and perhaps even as a result of them, Ireland retains a remarkable position as a compelling location in which to do business.

Grant Thornton prepared this guide to lay out the tax advantages of Ireland as an investment platform and a jurisdiction that facilitates FDI.

This guide has been prepared to assist those interested in doing business in Ireland and includes legislation in force as of 1 January 2023. It does not cover the subject exhaustively, but answers some of the important and broad ranging questions that arise when considering FDI locations. When specific issues occur in practice, it will often be necessary to refer to the laws and regulations of Ireland and to obtain appropriate accounting, tax and legal advice.

Peter Vale
Partner - Head of International Tax

Expanding your business in Ireland

Ireland represents a strategic European base due to our pro-business approach, competitive corporate tax regime and skilled workforce.

Ireland's reputation as a destination of choice for Foreign Direct Investment (FDI) is unrivalled and identifies Ireland as one of the best countries in the world to do business. Ireland earned this reputation due to its strong, competitive and open economy.

Our talent pool, consistent tax regime and established track-record of working with global businesses are the keys draws. The fact that Ireland is now the only native English-speaking EU member state and a committed member of the EU, increases its attractiveness as an EMEA base for your business.

Grant Thornton can provide your business with a wide range of services and assistance in establishing your business for the first time in Ireland. Our firm comprises a multinational workforce with a wide range of language capabilities.

Our services include

Company set up
- determining the appropriate corporate structure;
- company registration; and
- Intellectual Property (IP) advice.

Financing your business
- experienced advice on debt and equity funding alongside a dedicated Mergers and Acquisitions (M&A) team.

Taxation services
- getting the corporate tax structure right;
- considering key tax issues;
- dealing with personal tax issues;
- considering tax efficient remuneration such as share schemes;
- minimising any VAT leakage; and
- optimising your overall tax strategy.

Outsourcing accounting services
- management accounting;
- book-keeping; and
- payroll solutions.

Advisory services
- corporate finance;
- management consulting;
- risk advisory;
- regulatory consulting; and
- sustainability.

Audit and assurance
- statutory and non-statutory audits;
- FRS102;
- financial reporting advisory;
- International Financial Reporting Standards (IFRS) advisory;
- royalty/contract revenue assurance; and
- cyber/risk management assurance.

All Ireland service
- we provide a full service offering in our ten offices across Ireland, so no matter where you choose to set up, we can assist you.

Business growth support
- expert, tailored support to help you grow your business;
- market assessment and competitor analysis;
- market entry strategy; and
- introductions to key business communities.

Employment issues
- employer solutions;
- help with work permits and visas;
- pensions and benefits; and
- global mobility.

Global resources at the ready

Grant Thornton is a different kind of network, ready to meet the very different demands of today's business. Delivering fresh perspective, practical solutions and consistent high quality through a more personal, agile, proactive approach. With Grant Thornton, you can expect to benefit from the skills, reputation, and reach of a much larger organisation, while tapping into the accessibility and personalised attention that is unique to our firm.

We are more than Audit, Tax and Advisory. We are at the root of your industry, creating opportunities for your business to grow and develop. We balance a desire to do what's best for you in the future with an experienced sense of what's going to help you now. Our distinctive client experience can lead to more meaningful advice and a better working relationship for your business and industry. Some people talk about tomorrow. We shape it. We get practical about making business sustainable and futureproof. We build solutions today that will enable your organisation to prosper tomorrow.

Americas

43
markets

18,500+
people

$2.9bn
revenue (USD)

Africa

22
markets

3,500+
people

$120mn
revenue (USD)

Europe

45
markets

17,700+
people

$2.3bn
revenue (USD)

Middle East

9
markets

100+
people

$70mn
revenue (USD)

CIS

11
markets

1,200+
people

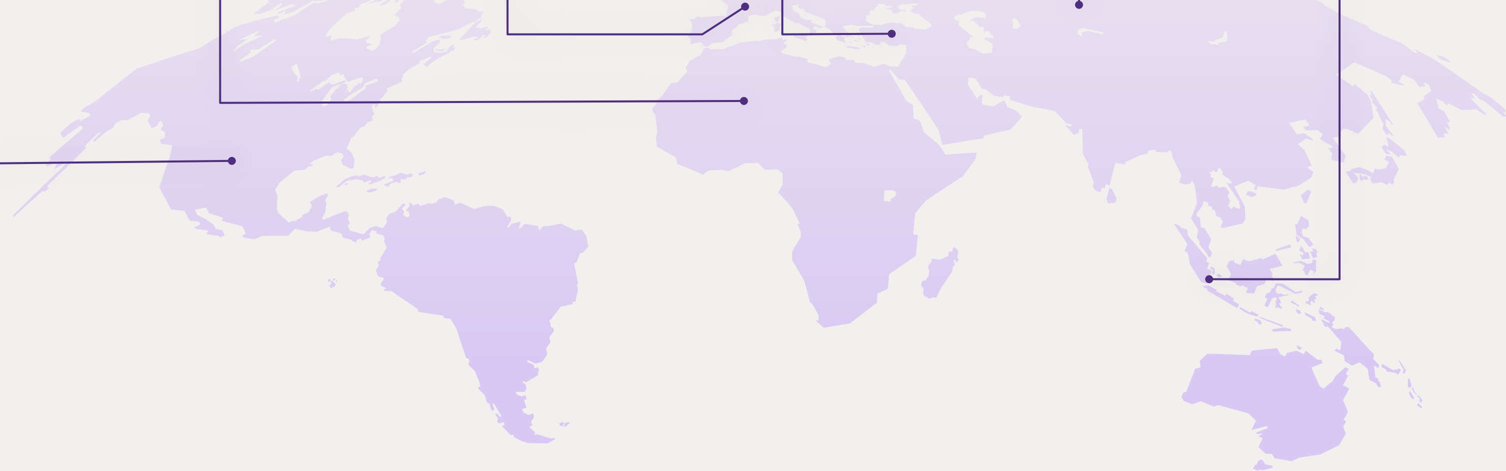
$40mn
revenue (USD)

Asia Pacific

19
markets

20,200+
people

$1.2bn
revenue (USD)



7.2bn
revenue (USD)

68,000+
people

750+
offices

145+
markets

An Evolved Landscape

The last ten years has seen significant upheaval in the global tax environment, and more changes are expected. Ireland has fully embraced this new landscape.

Attractive Onshoring Location

Despite initial concerns, changes in the global landscape have broadly been positive for Ireland, with the closer alignment of taxable profits and real substance acting in our favour.

In response to the OECD Base Erosion Profit Shifting (BEPS) project, many groups fundamentally altered their tax structure, with valuable intellectual property moving from traditional offshore locations to onshore jurisdictions such as Ireland.

More tax changes have been introduced at the local, EU and OECD/global level, broadly aimed at reducing the opportunity for tax avoidance.

The New Tax Environment

The changes include some notable provisions, such as:

- A multilateral instrument (MLI) fundamentally altering numerous global tax treaties, and
- New EU tax directives (e.g. ATAD), tackling issues such as hybrid mismatches, exit taxes, shell companies and interest limitation rules, the latter being particularly important for Ireland.

OECD Solution to Globalisation & Digitalisation

The OECD first agreed its two pillar solution to address the tax challenges from the digitisation of the economy in 2021. Pillar One aims to reallocate a portion of the profits of very large groups to market jurisdictions. Pillar Two proposes the introduction of a new global minimum tax rate.

The EU Directive implementing the Pillar Two proposals was formally adopted on 15 December 2022. The final text was published in the Official Journal of the European Union on 22 December 2022 and entered into force on 23 December 2022.

Pillar One

The key elements of Pillar One include:

- Taxing rights over 25% of the residual profit of the largest and most profitable MNEs will be re-allocated to the jurisdictions where the customers and users of those MNEs are located;
- Tax certainty through mandatory and binding dispute resolution, with an elective regime to accommodate certain low-capacity countries;
- Removal of Digital Services Taxes and other similar measures; and
- The establishment of a simplified and streamlined approach to the application of the arm's length principle in specific circumstances, with a particular focus on the needs of low capacity countries.

Pillar Two

The key elements of Pillar Two include:

- A global minimum effective corporate tax rate of 15% on all MNEs with consolidated annual revenue of €750 million or more;
- A separate Subject to Tax Rule (STTR) will be introduced for certain intra-group cross-border payments, such as interest and royalties, that are subject to taxation on receipt below the 9% STTR minimum rate. If tax on the payment is below the 9% STTR minimum rate, a taxing right (or additional taxing right, as the case may be) will be granted to the source jurisdiction; and
- Carve-outs to accommodate tax incentives for substantial business activities.

Business In Europe Framework for Income Taxation
In September 2022, the EU Commission announced proposals to introduce a single set of rules for EU companies to calculate their taxable base and ensure a more effective allocation of profits between the member states.

The Business in Europe: Framework for Income Taxation (BEFIT) proposal replaces the proposal for a Common Consolidated Corporate Tax Base (CCCTB) and is intended to be based on a formulary apportionment and a common tax base. The EU Commission's indicative timetable for a legislative proposal on BEFIT is the third quarter of 2023. It is worth noting that any proposed directive would require unanimous approval in the European Council.

International Outlook
Even with the imminent introduction of an effective tax rate of 15% for larger businesses, Ireland's tax regime remains competitive, especially considering the significantly higher corporation tax rates in both the US and UK.

Why Invest in Ireland?

The combination of an attractive tax, regulatory and legal regime with an open business environment and dynamic knowledge-based economy culminates in Ireland being regarded as a world-class location for international business.

Ireland represents a strategic European base because of our pro-business corporate tax regime and skilled workforce. As a result, more than 1,600 multinational companies have chosen Ireland as their investment platform according to the Department of Enterprise, Trade and Employment (DETE). More than a third of multinationals have had operations here for more than 20 years, demonstrating both commitment to Ireland and the value offered in return.

As a committed member of the Eurozone and the EU single market, Ireland's reputation as a destination of choice for FDI is unrivaled. Irish output grew more than expected in 2022, making it the fastest growing economy in the EU in 2022 according to Eurostat reports. Indications from the EU Commission's economic forecasts for Ireland are that the Irish economy will be the fastest growing in the EU at 4.9% in 2023 and that overall GDP will grow 0.8%.*

Ireland has a highly skilled, educated, young and multicultural population. The Irish workforce is one of the most educated in the world. The share of 25-34 year olds in Ireland with a third level qualification is 62.9%, compared to an OECD average of 47.1% according to OECD data.* Irish employment reached a record high, standing at 2.55 million at the end of 2022 per the CSO Labour Force Survey.

Ireland has a very favourable holding company regime, and a number of high-profile groups have their European and global headquarters in Ireland, including Apple, Twitter, LinkedIn, Facebook, Vodafone, Microsoft, Amazon and Pfizer.

Ireland provides a favourable tax environment to encourage business development and sustain rewarding investment.

Multinational companies (MNCs) tend to consolidate their financing, regional head office and R&D activities in one location. Ireland is well equipped to cater for all these requirements.

In the final quarter of 2022, the Irish Government introduced targeted measures to tackle inflation and the increasing cost of living, with further targeted enhancements in February 2023 to support businesses.

We continue to live in an ever-changing global tax environment. Our view is that while that new environment offers more opportunity than threat, we will need to be responsive to any changes to remain competitive.

*OECD (2022), Population with tertiary education (indicator).

* https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/ireland/economic-forecast-ireland_en

The Irish advantage

12.5%

corporation tax and extensive treaty network

Stable

political environment and respected regulatory regime

Highly skilled

knowledge - based economy

Flexibility

responsiveness and innovation

Experience

delivering global business services

300+

medtech companies

Experienced

and innovative leaders

Excellent

research facilities and capabilities

Irish

government partnering

Attractive IP

tax regime including KDB

1,400+

home to 1,400+ overseas companies

16/20

top global software companies

Conducting Business in Ireland

Taxation of Companies

Liability to Tax
A company that is tax resident in Ireland is liable to Irish corporation tax on its total profits wherever arising.

Companies not tax resident in Ireland are only liable to corporation tax on profits generated by an Irish branch or agency.

Corporate ResidenceSince 1 January 2015, all Irish incorporated companies are considered tax resident in Ireland unless they are considered tax resident in another location by virtue of a tax treaty between Ireland and that other territory.

In addition, any company which is considered to be managed and controlled in Ireland will be considered an Irish tax resident.

Finance Act 2014 introduced the changes to the tax residence rules, and the changes took effect from 1 January 2015 for companies incorporated on or after 1 January 2015. For companies incorporated before that date, the provisions apply from 1 January 2021 (or earlier in specific circumstances, e.g. where the company makes changes to the nature or conduct of the business).

Tax Rates
In 2023, the standard rate of corporation tax in Ireland is 12.5% on trading income. A rate of 25% applies to non-trading income and certain trades. The lower rate represents one of the lowest 'onshore' statutory corporate tax rates in the world. The Irish government is committed to retaining this rate.

Ireland's 12.5% tax rate, along with a number of other incentives and tax reliefs, result in Ireland being regarded as an extremely attractive location in which to do business.

Under the OECD Pillar Two rules, Ireland will adopt the 15% minimum effective tax rate; however, this minimum rate will only apply to MNEs with consolidated revenues of €750m or more. Therefore, the 12.5% rate will continue to apply to companies below this threshold.

Trading Income – Active Business
The statutory definition of a trade for Irish tax purposes is vague: a trade "includes every trade, manufacture, adventure or concern in the nature of a trade". Thus, the question of whether a trade exists should be reviewed in light of the six badges of trade (as drawn up by the UK HMRC on the taxation of profits and income), along with Ireland's Office of the Revenue Comissioner's (Revenue's) precedents and relevant case law.

Broadly, the higher the level of activity and number of transactions, the more support there is to assert that a trade exists.

Revenue has also indicated that the following factors would be important when considering whether or not a trade exists:

- commercial rationale;
- real value added in Ireland; and
- level of employees in Ireland.

If requested, Revenue will issue advance opinions as to whether proposed operations will constitute a trade for Irish tax purposes. It is critical that this is requested in advance of any activity commencing.

Irish Resident Trade
If a company is considered tax resident another jurisdiction, it may be subject to taxation in that jurisdiction at higher rates than those prevailing in Ireland. While the question of whether a company is tax resident solely in Ireland can be complex, there are a couple of key points to note.

A company is deemed to be tax resident in Ireland if it was incorporated in Ireland on or after 1 January 2015. For companies not incorporated in Ireland, the location of all board meetings of the company and where the key strategic decisions are made is important. Also, the residency status of the directors is important. The level of substance in Ireland is also an important factor. In this regard, the presence of employees actively engaged in the business of the company is a key determinant of trading status.

Corporate Vehicles

In considering business entities in Ireland, a distinction needs to be made between unincorporated and incorporated bodies. A significant feature of an incorporated body is that it has a legal status separate from its owners and is capable of suing and being sued in its own name.

Incorporated and Unincorporated Entities

Incorporated bodies include private limited companies, public limited companies and unlimited companies. An unincorporated body may be a sole proprietorship or a partnership.

Companies operating in Ireland are governed by the Companies Acts 2014 and related statutory instruments.

Formation
The following is a brief summary of the main requirements when incorporating a company in Ireland.

- A company must have the intention of carrying on an activity in Ireland;
- A company must provide details of the place or places in Ireland where it is proposed that the company will carry on its activity and the place where the central administration of the company will normally be carried on (full business postal address).
- At least one of the directors must be resident within the EEA or the company must obtain an insurance bond.

It takes approximately five working days to incorporate a company and the Registrar of Companies will then issue a certificate of incorporation.

Types of Entities

Private Limited Companies (Ltd)

Private Limited Companies (Ltd) are the most common form of business entity used in Ireland. The essential feature of an Ltd is that the liability of members is limited to the amount, if any, remaining unpaid on the shares they hold. A company is regarded as a separate legal entity; therefore, it is separate and distinct from those who run it. Ltds have no minimum capital rules.

To qualify as a Ltd the company must:
- limit the maximum number of members to 149;
- have a minimum of one director;
- have a company secretary, which can be an individual or body corporate (where there is a single director, they cannot also act as the company secretary);
- not list debt securities;
- restrict the members' right to transfer shares;
- prohibit any invitation to the public to subscribe for shares;
- show the word 'Limited' (which may be abbreviated to "Ltd") in its name; and
- have a single document constitution that sets out details of the company's share capital and how it is regulated in accordance with the Companies Act 2014.

A Ltd does not have a principal objects clause and will have no restriction on the type of trade or transaction it can enter into. It will have the same legal capacity as a natural person.

Designated Activity Companies (DAC)

A Designated Activity Company (DAC) is a company which is formed for a particular purpose or to carry on a specific activity.

A DAC can be limited by shares or guarantee. It must have a minimum of two directors but can have a single member.

A DAC's constitution will contain a Memorandum and Articles of Association. The Memorandum of Association will contain an objects clause that sets out the principle activity of the company, together with ancillary objects outlining in general style transactions that the company can undertake. It is common for such objects to contain clauses around borrowing, providing security and similar.

A company may seek to register as a DAC for both legal and commercial reasons. For example, a company that wishes to raise finance by the issuance of debt or is a credit institution or insurance undertaking will be legally required to register as a DAC. Another reason that a company may seek to register as a DAC is where a company is set up, and there is a commercial requirement to set out the purpose or the objective of the company (e.g. joint venture or SPV).

A DAC is required to show the words Designated Activity Company, which may be abbreviated to DAC, in its name.

Public Limited Company (PLC)

Public Limited Companies (PLC) have the same essential characteristics as private limited companies, i.e. the liability of members is limited to the amount of nominal capital subscribed. They key differences are:

- shares in a public limited company are freely transferable;
- there is no restriction on the maximum number of members;
- a minimum of €25,000 of share capital must be issued and maintained;
- shares may be issued to the public and may be listed on a stock exchange; and
- certain additional reporting and capital requirements apply to such companies.

The word public refers not to the listing of the company's shares on a stock exchange but rather to the facility to issue shares under a general public offering.

The constitution sets out the objects and rules of the company. There is no upper limit on the level of the issued share capital, but a minimum of €25,000 of share capital must be issued, of which 25% must be paid up.

The name of a public limited company must include the letters "PLC". In all other respects, public limited companies are similar in nature and form to private limited companies.

In practice, PLCs are seldom used by inward investors since the facility to issue shares to the public is often not of interest to such investors while the minimum requirements in relation to the number of members and issued share capital can prove unnecessarily burdensome.

Unlimited Company

This is a form of business entity where there is no limit on the member's liability if the company's assets are insufficient

to discharge the creditors. As a result of the risk of unlimited liability, inward investors do not often use these companies. An unlimited company must include Unlimited Company or the letters "UC" at the end of its name. Unlimited companies must have a minimum of two directors.

In all other respects, unlimited companies are similar in form to private limited companies. Some unlimited companies can avoid the filing of their financial information on public record.

In practice, the use of unlimited companies is confined to particular situations where the members may wish to avoid the public disclosure associated with filing of accounts with the Registrar of Companies or where a limit on members' liability is not required.

Disclosure of Beneficial Owners

It is a requirement under Irish law that a company must disclose their beneficial owners within five months of incorporation on public record. This is a separate filing to their filing with the Companies Registration Office. In simple

terms, a beneficial owner is any natural person that owns and/ or controls in excess of 25% of the company, either directly or via a group structure.

Where a corporate entity is listed as the shareholder, it is necessary to look through the group structure of the companies to identify the natural persons who own and control the shares.

Any changes to beneficial owners must also be notified as they occur. Where no such natural person can be identified, we can provide further advices on what must be disclosed. This information is available for public searching at a nominal fee.

Companies Incorporated in Other Countries and Trading in Ireland

Foreign companies (companies incorporated outside Ireland) may conduct business in Ireland through a branch. There is a distinction between trading into Ireland (i.e. distance selling) and trading in Ireland where one may have established a presence, thereby creating a permanent establishment.

Branch

For Irish law purposes, a branch is a division of a foreign company trading in Ireland that has the appearance of permanency, a separate management structure, the ability to negotiate contracts with third parties and a reasonable degree of financial independence. EU regulations have been implemented that impose a similar registration regime to that imposed on local companies on branches.

Foreign companies setting up a branch in Ireland are required to file basic information with the Registrar of Companies.

This information includes: the date of incorporation of the company, the country of incorporation, the address of the company's registered office, details regarding the directors of the company, the name and address of the person responsible for the branch's operation within the state and the name of a person resident in the state who is authorised to accept service of documents on behalf of the branch. The foreign company's constitution (duly certified and legalised as required), certificate of incorporation and audited accounts must also be filed with the Registrar of Companies.

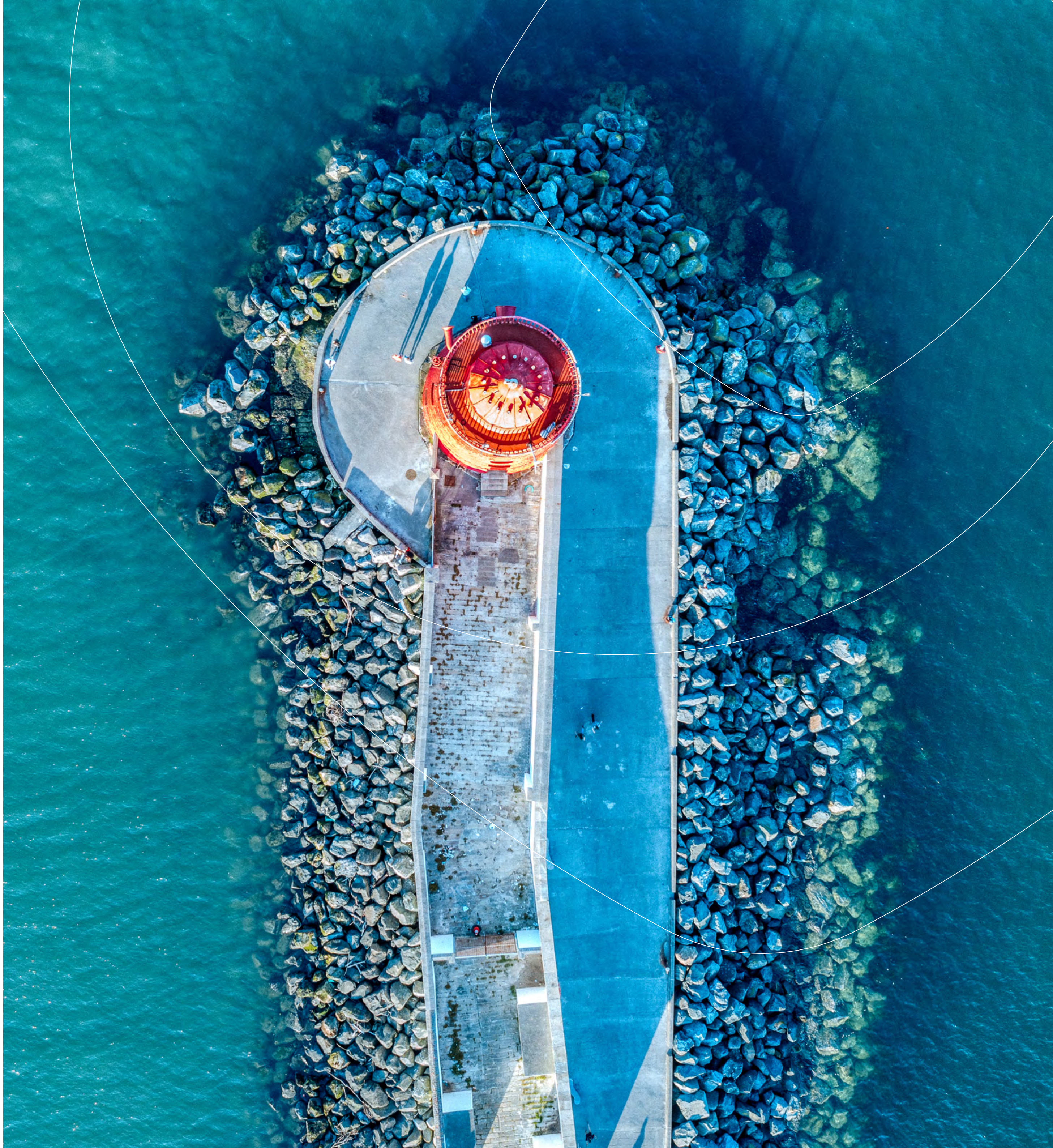
A foreign company trading in Ireland through a branch is also required to annually file its financial statements with the Registrar of Companies. This requirement may be a disadvantage for some foreign companies that are not required to make their financial information public. Separate branch financial statements are not required for such filing although they are required for tax return preparation purposes. As with Irish incorporated entities, changes in previously notified information must be reported to the Registrar of Companies.

The Authorised OECD Approach

Irish tax legislation provides for the ‘authorised OECD approach’ (AOA) for the attribution of income to a branch of a non-resident company operating in the State. The AOA provides greater clarity and certainty on the basis for allocating income and expenses to branches.

Generally, the ‘relevant branch income’ is computed hypothetically as if the branch is an unrelated and independent company. This calculation involves taking a separate entity approach which differentiates the branch and other parts of the company as two separate and distinct entities for tax purposes. Specific guidance applies to help attribute assets, risks and “free” capital to the branch.

The AOA provisions apply to accounting periods from the 1 January 2022 onwards. As respects small- or medium-sized enterprises, AOA provisions are subject to Commencement Order.



Foreign Branch Profits

Trading profits earned by an Irish resident company in a foreign branch or agency are taxable in Ireland at 12.5%, with a credit available for any foreign tax paid on the branch profits.

An Irish resident company can reduce its Irish corporation tax liability by the foreign tax suffered on the profits of the branch or agency. Where the foreign tax on branch profits in one country exceeds the Irish tax on those profits and no credit can be given for the balance of the foreign tax, it may be possible to rely on pooling provisions.

The pooling provisions allow such surplus foreign tax to be credited against tax on branch profits in other countries in the year concerned. Also, any foreign tax not credited in the period in which it is paid can be carried forward for credit in subsequent periods. There is also unilateral credit relief for foreign tax paid by a company that has a branch or agency in a country with which Ireland does not have a Double Tax Treaty. Unilateral relief operates similarly to the relief available under the terms of a Double Tax Treaty.

Other Foreign Income, Including Royalties

Foreign taxes borne by an Irish resident company (or EU branch), whether imposed directly or by way of withholding, may be available for credit relief in Ireland. The calculation of the credit depends on the nature of the income, but in all cases, the credit is limited to the Irish tax referable to the particular income source.

Holding Company Regime

Ireland has a favourable holding company regime, and a number of high-profile groups have their headquarters here. The following features highlight the appeal of locating a holding company in Ireland from a tax perspective.

Participation Exemption

When a number of conditions are met, a company resident in Ireland can avail of an exemption from Capital Gains Tax (CGT) on a disposal of shares held by it. The shares being disposed of must be in a company which is resident in an EU or treaty country. See the section on CGT Exemption on Share Disposals for further details.

Foreign Dividends

There is an effective exemption from Irish tax for foreign dividends. Qualifying dividends are taxable at the 12.5% tax rate, and a flexible foreign tax credit system permits a tax credit and / or deduction in respect of taxes paid on foreign profits and other foreign withholding taxes. Other non-qualifying dividends may be taxable at 25% with the credit system also applying to such dividends.

In addition to the above, the amount of double taxation relief for certain dividends from EU and EEA sources is increased. The credit for foreign tax can be calculated by reference to the nominal rate of tax in the source country, where this gives a higher double tax credit than would otherwise be applicable. The additional tax credit is not eligible for pooling of credits for foreign tax or for carry forward of relief for excess foreign tax credits.

There is also a system of onshore pooling of tax credits to deal with situations where foreign tax on some dividends exceeds the Irish tax payable while on other dividends the foreign tax is below the Irish tax liability. The pooling provisions allow excess credits to be offset against Irish tax on the other foreign dividends received. Unused credits may also be carried forward indefinitely for future use, subject to the exceptions noted above.

Foreign Branches

Double tax relief is available for tax suffered by foreign branches, and the pooling provisions apply for unused foreign tax credits relating to foreign branches. Where there is an Irish trade also, profits on foreign branches are taxed at a rate of 12.5%.

Intellectual Property (IP) Relief

Under Ireland's IP regime, amortisation of specified intangible assets is tax deductible in line with the accounting treatment, against the income derived from such IP. Alternatively, an election can be made to write off the expenditure over a 15-year period in the form of an allowance.

In addition, a stamp duty exemption is available on the sale, transfer or other disposition of qualifying IP.

The Knowledge Development Box (KDB) allows companies to avail of a 6.25% tax rate on profits arising on certain IP assets. This rate is to change to 10% subject to Commencement Order.

See the sections on IP and KDB for further details.

Withholding Taxes

There are exemptions available in respect of withholding tax on dividend repatriations and interest payments made to EU or treaty countries. Also, patent royalty payments to EU or treaty countries may be exempt from withholding tax subject to satisfying certain conditions.

Access to Treaties and EU Directives

Ireland has an extensive treaty network with 76 different countries, 74 of which are in effect. Where a double tax agreement does not exist with a particular jurisdiction, unilateral provisions within domestic Irish tax legislation may result in credit relief against Irish tax for any foreign taxes paid. Furthermore, Irish companies may access the EU directives, which can be beneficial from a tax perspective.

Asset Management in Ireland

Ireland has long been noted as the domicile of choice for managers who are seeking to establish and service regulated funds which may be distributed globally.

Why Ireland for Asset Management?
Ireland stands out as the European domicile of choice for funds. It offers unrivalled expertise in the areas of fund administration, transfer agency, custody, tax, legal and audit services. Ireland offers a comprehensive suite of structured legal forms for both Undertakings for Collective Investment in Transferable Securities (UCITS) funds and non-UCITS Alternative Investment Funds (AIFs). Irish funds may take the form of:

- variable capital investment companies;
- Irish Corporate Alternative Vehicles (ICAVs);
- unit trusts;
- investment limited partnerships; or
- Common Contractual Funds (CCFs).

Ireland is the fastest growing major European domicile for funds and accounts for 18.5% of all European fund assets. Furthermore, Ireland is the domicile for 5.9% of world-wide investment fund assets, making it the third largest global centre and the second largest in Europe. Net assets in Irish domiciled funds reached €4.1 trillion in 2021, with €310 billion in net sales.

Ireland has a favourable tax environment for investment funds as:

- investment funds are generally not subject to any fund tax;
- no annual subscription tax is applied to Irish funds;
- no stamp duty is levied on fund units;
- no withholding taxes are deducted on payments from the fund to overseas investors, except in the case of some funds that hold Irish real estate assets and are deemed to be an Irish Real Estate Fund (IREF);
- no wealth tax exists for funds or their investors;
- for QIAIFs a withholding tax at 20% may apply on distributions from the fund and other taxable events where the investments are in Irish real estate or are linked to same;
- Ireland's corporate tax rate of 12.5% is one of the lowest in Europe and positions Ireland well with respect to UCITS pan-European management companies; and
- Irish funds are entitled to reduced rates of withholding taxes on dividends and interests under double taxation agreements (in certain instances), which can have a positive impact on the investment performance of Irish funds.

Irish Collective Asset Management Vehicle (ICAV)
ICAV is a bespoke corporate vehicle designed for Irish investment funds, offering an increased level of choice for fund promoters. It modernises the corporate fund structure through its own facilitative legislation and is incorporated with the Central Bank of Ireland, providing a robust regulatory framework. Existing funds may convert or re-domicile to an ICAV. Umbrella structures may be established with a number of sub-funds each with segregated assets and liabilities and flexibility in terms of the accounting standards to be applied. Conceived specifically with the needs of investment funds in mind, it has proven particularly attractive to US investors as it is an 'eligible entity' for US tax purposes.

In recent years Ireland has been the fastest growing international fund administration centre. In 2021, Irish administrators serviced 14,400+ Irish and non-Irish funds, with €5.4 trillion in assets under administration.

Real Estate Investment Trusts (REIT)

In 2013, as part of an effort to attract investment into the Irish commercial and residential property sectors and to enhance Ireland as a location for property investments, Ireland introduced a REIT investment vehicle. A REIT vehicle is an internationally recognised vehicle aimed to facilitate investment from non-resident institutional private equity and pension groups in Irish commercial property. A REIT takes the form of a listed company, which is used to hold rental investment properties, and it must have a diverse shareholder base.

A REIT lessens the risk as the investment can have a diverse asset base. Liquidity is also increased because of the REIT structure. The investor receives an after tax return similar to that of a direct investment in a property.

The debt limits within the REIT reduce exposure to negative equity. The entry cost for a REIT investment is the price of a single share; thus, small investors can gain access to the property market without mortgage borrowing or property transfer costs.

To eliminate the double layer of tax, a REIT is exempt from corporation tax on qualifying profits from rental property. Instead, the REIT is required to distribute the vast majority of profits annually, which is treated as income or a capital gain in the hands of the investor depending on the personal situation.

One primary objective is for REITs to complement the existing Irish funds industry offerings and to provide growth opportunities for the Irish financial services sector. In addition, they may assist in the unwinding of National Asset Management Agency (NAMA) at the best possible return for the taxpayer. Several REIT investments have now been launched in Ireland.

Securitisation Regime

Ireland has a very favourable tax regime for securitisation. Irish SPVs ensure that securitisation of loans and other assets are tax neutral. Financial institutions and mainstream corporate groups commonly use Irish SPVs for tax structuring purposes. The benefits of an Irish SPV include:

- generally tax neutral from an Irish perspective;
- can hold a wide range of assets (including aircraft);
- can be formed as a public or private companies;
- profit participating interest payments should be tax deductible (subject to anti-avoidance considerations); and
- no withholding tax on interest payments made to persons resident in an EU/treaty country.

With regard to securitisation companies, there is a restriction on the deductibility of finance expenses in some instances where the assets of the company were secured on Irish real estate and related assets. There are also restrictions on profits derived from shares in companies which derive the greater part of their value from Irish real estate.

The deductibility restrictions do not apply to CMBS/RMBS transactions or to loan origination business carried on by the SPV.

Investment Limited Partnership (ILP)

An ILP can now be structured to suit all major investment strategies, suitable for private equity, private credit, real asset, loan origination and other private fund strategies. It brings it in line with comparable partnership vehicles in other leading jurisdictions. An ILP is an alternative investment fund ("AIF") and the establishment of an ILP is subject to the approval of the Central Bank of Ireland. An ILP is typically established as a Qualified Investor AIF (a "QIAIF") but may also be established as a Retail Investor AIF (a "RIAIF") and the new act allows an ILP to be established as an umbrella fund, with segregated liability between sub-funds.

An ILP does not have separate legal personality. The General Partner is responsible for managing the ILP's business and has personal liability for its debts and obligations ad contracts (directly or through its delegates) on its behalf.

A Limited Partner has limited liability up to the contributed capital (or up to the capital which it has undertaken to contribute) and can participate in a number of activities without forfeiting that liability. ILPs are recognised as tax transparent as a matter of Irish law. As such, the relevant income, gains and losses are treated as accruing directly to the partners in the proportions set out in the partnership agreement, and no Irish withholding taxes applies to distributions made by the ILP.

Employee Tax Incentives

Special Assignee Relief Programme (SARP)

The SARP aims to improve the quality of human capital and provide incentives for employees to settle in Ireland since income tax rates have been recognised as a stumbling block for senior members of multinational corporations in moving to Ireland. The SARP offers a significant tax reduction and could lead to a greater number of employee transfers to conduct new ventures and operations in Ireland.

There are various conditions that need to be satisfied to avail of relief under the SARP. Broadly, these are as follows:

- the employee must arrive between 2012 and the end of 2025;
- it applies to employees of companies incorporated and tax resident in double tax treaty countries, tax
- information exchange agreement countries or associated Irish companies;
- the employees must not have been tax resident in Ireland for the five tax years immediately preceding the tax year in which the relief is claimed. The relief is then available for five consecutive tax years;
- the employee must have a minimum base salary of
- €100,000 per annum from 1 January 2023, prior to this a lower base salary of €75,000 applied;
- remuneration such as Benefits-In-Kind (BIK), bonuses and stock options are excluded when calculating the minimum salary base of €100,000 (previously €75,000);
- the employer must deliver an annual return to Revenue and certify that the person complies with SARP; conditions within 30 days of the employee's arrival in the state to perform their duties;
- the employee must be hired by the relevant employer six months prior to moving to Ireland; and
- relief cannot be sought if the Foreign Earnings Deduction (FED), cross border relief or R&D relief are already applicable.

Relief under the SARP is available through the payroll.

Foreign Earnings Deduction (FED)

The FED applies to any tax resident who is working temporarily in certain qualifying countries, such as Brazil, Russia, India, China, South Africa, Singapore, Chile and Mexico, for the tax years up to 2025.

The FED results in a deduction against an individual's income tax liability and the maximum deduction permitted is €35,000 . For an employee to qualify they must spend at least 30 days abroad during a continuous 12-month period, and trips must be at least three days in length (to include travel days) to be considered part of the 30 days required. The relief is calculated in the following manner:

number of qualifying days abroad multiplied by net employment income divided by the number of days in the tax year in which employment was held.

State and semi-state employees may not avail of the FED, along with those involved in other tax relief programmes, such as SARP, trans-border relief and split-year relief. Claims are filed in the yearly income tax return.

Key Employee Engagement Programme (KEEP)

KEEP is a tax efficient share-based remuneration incentive to assist SMEs in attracting and retaining key employees or directors. Any gains realised on the exercise of qualifying share options granted by a qualifying company are fully exempt from income tax, USC and PRSI. Tax only arises when the shares are sold. The sale is subject to CGT.

Certain conditions must be satisfied for the company and the employee/director to be considered "qualifying" for the purposes of the KEEP.

The shares acquired by exercise of the option must be new ordinary fully paid up shares in the company. The share option price must not be less than the market value of the same class of shares at the date of grant and must not be exercised within 12 months from the date of grant and more than 10 years from the date of grant.

Finance Act 2022 provides for an increase in the company limit for KEEP shares, from €3 million to €6 million, and extends the scheme to certain companies operating within group structures. The Act also provides for CGT treatment to apply to the buyback of shares by the company from the employee subject to certain conditions. The scheme extends until the end of 2025.

Start-up Relief for Companies

Start-up Companies

New companies or start-ups, which are incorporated on or after 14 October 2008 and which commence trading between 1 January 2009 and 31 December 2026, are exempt from corporation tax on their trading income and certain gains if they meet certain conditions. This relief applies for five years where the company commenced to trade on or after 1 January 2018. Prior to 2018, the relief was available for three years.

To encourage employment, the relief is linked to employer's PRSI, subject to a maximum of €5,000 per employee (including directors) and an overall limit of €40,000. The relief also allows any unused relief (arising from a shortage of profits) to be carried forward for use in future years.

Research and Development (R&D) Tax Credit

The R&D tax credit provides a very significant tax break given that it represents a potential 25% refund of costs incurred regardless of whether any corporation tax has been paid.

Combined with the standard corporate tax deduction for R&D expenditure (valued at 12.5%), companies incurring qualifying R&D can claim a tax benefit of €37.50 for every €100 expenditure. The purpose of the R&D tax credit is to encourage both foreign and indigenous companies to undertake new or additional R&D activity in Ireland. This relief is a very valuable for qualifying entities.

The R&D tax credit claim must be filed within 12 months of the company's year-end; thus, there is an incentive to consider whether any immediate action is required. Having the appropriate documentation in place is critical.

The Claim

In our experience, while many companies are carrying out qualifying R&D work, only a limited amount are actively claiming the credit. The main reason for companies not claiming the credit is the persisting misconception that it relates solely to laboratory work.

Many companies across all sectors are involved in some form of innovation or process improvement and look to achieve or resolve a scientific or technological advancement or uncertainty. In many cases, the related costs will qualify for the R&D tax credit.

The range of activities to which the R&D tax credit can apply is extremely wide. Scientific or technological improvements to plant performance, production output and existing processes are examples of activities carried out by many companies, which can qualify for the R&D tax credit.

Qualifying Expenditure

The R&D tax credit is available on expenditure in respect of qualifying activities in Ireland or European Economic Area (EEA), such as:

- Salaries;
- consumables used in the R&D process; and
- plant and machinery used wholly or partly for R&D purposes.

The credit is also available in respect of buildings used wholly or partly for R&D purposes, subject to certain conditions.

Subcontracting R&D

Expenditure incurred on R&D activities subcontracted to certain third parties, such as another person or universities/ institutes of higher education, can be included in an R&D tax credit claim.

The company must notify the third-party provider in writing that it cannot also claim the R&D tax credit for the relevant R&D expenditure.

Companies can claim the greater of 15% of the company's in-house expenditure on qualifying R&D activities or €100,000. The total amount claimed must not exceed the qualifying expenditure incurred by the company itself in the period.

Certain terms and conditions apply.

The New Regime

Two new sections were introduced into the Taxes Consolidation Act 1997 (TCA 1997), section 766C (relating to R&D expenditure other than on a building or structure) and section 766D (relating to qualifying R&D expenditure on a building or structure) to apply for **accounting periods beginning on or after 1 January 2022.** These sections introduce the new regime of payment or offset of the R&D corporation tax credit.

The previous regime, under which R&D tax credits were first used to offset against corporation tax liabilities in the current accounting period and the preceding year followed by three payable instalments, is transitioning to a new three-year fixed payment schedule,

In the new scheme, the first payable instalment in year one shall equal the greater of:

- €25,000, (or if lower, the amount of the R&D corporation tax credit); or
- 50 percent of the amount of the R&D corporation tax credit.

The second payable instalment in year two shall be three-fifths of the remaining balance of the R&D corporation tax credit.

The last payment in year three shall be the remaining balance of the R&D corporation tax credit in respect of the accounting period, less the sum of the first and second instalment amounts.

A company will have the option to specify whether the R&D corporation tax credit is to be offset against the company's tax liabilities or is to be paid to the company. The ability to offset against tax liabilities differs to the previous regime, which confined that offset to corporation tax liability only. Under the new regime, the option is there to offset against any tax liability, such as PAYE employer liabilities or VAT liabilities.

Pre-trading expenditure incurred on qualifying R&D activities can be claimed as a payable R&D credit over a three-year period from the year that the company commences to trade. The limits on the payable element of the credit do not feature in the new regime.

Transitional Measures

Transitional measures will be in place for 2022 to smooth the transition to the new regime for companies already engaged in R&D activities. These measures permit companies to make a claim under the old regime for accounting periods beginning on or after 1 January 2022 but no later than 31 December 2022.

The transitional rules also permit payable R&D tax credit instalments that are carried forward from accounting periods that commenced before 1 January 2022 (i.e. payable instalments two and three) to be claimed in the accounting period commencing on or after 1 January 2022. This allows instalments carried forward under the old regime to be dealt with in 2022 tax returns.

Intellectual Property (IP) Regime

This regime provides tax relief for expenditure incurred by companies on “specified intangible assets”. These provisions further support Ireland’s attractiveness as a knowledge-based economy.

To claim the tax relief, companies must actively ‘trade’ with their newly acquired intangible assets, thereby ensuring that there is an active involvement with the assets and presumably a resultant increase in learning/knowledge in Ireland.

What Types of Intangible Assets Are Covered?

The definition of specified intangible assets is quite broad and includes:

- patents,
- patent rights,
- design rights,
- trademarks,
- brand names,
- licences,
- copyright,
- computer software,
- know-how and associated goodwill associated This definition was extended in Finance Act 2014, and the relief also applies to customer lists (except where acquired in connection with the transfer of a business as a going concern) from 1 January 2015.

What is the Relief?

The allowances available for tax purposes will generally follow the standard accounting treatment applicable to the amortisation of intangible assets; however, an election can be made to spread the expenditure over a 15-year period (7% in years one to 14 and 2% in year 15) where shorter.

For IP additions before 12 October 2020, no balancing allowance/charge event will occur once the intangible assets are sold five years after acquisition, provided that the intangibles are not acquired by a connected company, itself entitled to a deduction for the intangibles under this section.

Is There a Cap on the Allowances Available?

There is a restriction on the amount of allowances available, together with a restriction on interest incurred to acquire the intangibles used in the trade.

The aggregate of the allowances and any related interest incurred on acquisition of the intangibles cannot exceed 80% of the trading income from the ‘intangibles’ trade (which in certain cases is treated as a separate trade).

Where either allowances or interest are restricted, the excess can be carried forward and treated as incurred in the following period, with any excess in that period carried forward to the next period and so on for each succeeding accounting period.

Restriction on Interest for Investing Companies

There is a restriction in respect of interest incurred on borrowings used by a company to invest (by way of loan or equity) in another company, which itself uses the funds to acquire specified intangible assets. The restriction is calculated by reference to the interest that would have been allowed if the company acquiring the intangible assets had itself taken out the loan.

Can the Intangibles Be Acquired from an Existing Group Company?

Expenditure on specified intangible assets acquired from a group company will qualify for the allowances. It is worth noting that intangible assets acquired from another Irish group company will only qualify for the allowances if the companies jointly elect to dis-apply the CGT group relief provisions, thereby triggering a potential CGT event for the

transferor. However, if there are losses available in the group, it could be possible to mitigate the CGT exposure.

Anti-avoidance

The acquisition of the intangible assets must be for an arm's length amount and must be done for bona fide commercial reasons. The acquisition of the intangible asset(s) must not have the avoidance of tax as its main purpose or one of its main purposes.

Some Observations on the Rules

Where it fulfils commercial objectives, both companies and individuals holding specified intangible assets should consider the merits of transferring the intangible assets to an appropriate trading company in order to access the benefits of the regime. If there are tax losses available, there may be little or no tax cost associated with such a transfer while there will be on-going tax deductions in the transferee company.

We are seeing an increasing amount of IP move from traditional off-shore tax havens to on-shore locations, such as Ireland.

Knowledge Development Box (KDB)

The broad objective of the KDB is to promote innovation and provide an incentive whereby profits arising from patented inventions, copyrighted software and certain other specific asset classes can effectively be taxed at a reduced rate.

Any royalty or other sum in respect of the use of a qualifying asset or income reasonably attributable to a qualifying asset can benefit from the reduced rate. Broadly, the relief is linked to the qualifying R&D expenditure incurred by the Irish company as a proportion of its overall global R&D expenditure. This makes the KDB very attractive to companies that carry on a significant element of their R&D activities in Ireland.

Finance Act 2022 provides that the KDB regime will be extended for four years until 2027. Additionally, the KDB will have a new effective tax rate of 10% (increased from 6.25%), to come into effect from a date to be set by Commencement Order. This will be linked to international progress on implementation of the OECD's Pillar Two Subject to Tax Rule.

The KDB will be attractive to large groups that are capable of isolating individual qualifying assets, the R&D for which is carried on in Ireland.

What Is a Qualifying Asset?

For the purposes of the KDB, qualifying assets are:

- copyrighted software,
- certain patented inventions,
- plant breeders' rights,
- protection certificates for medicinal products,
- plant protection certificates, and
- computer programs within the meaning of the Copyright and Related Rights Act 2000.

To ensure the KDB includes patents granted by the Irish Patent Office, legislation was enacted to ensure Irish patents include a substantive examination for novelty and inventive steps. Unexamined patents which are certified before 1 January 2017 may also be included.

Expanded Regime for SMEs

Small and Medium-sized Enterprises (SMEs) benefit from an enhanced definition of IP to include inventions that are certified by the Controller of Patents, Designs and Trademarks as being novel, non-obvious and useful. This provision aims to increase access to the relief for SMEs.

For the purposes of the KDB relief, SMEs are companies with annual income from IP not exceeding €7.5 million and group turnover not exceeding €50 million.

What Income Qualifies for the Relief?

The following income generated from the qualifying assets qualifies for the relief:

- royalty income;
- licence fee income; and
- where a sales price includes an amount which is attributable to a qualifying asset, a portion of the income from those sales calculated on a just and reasonable basis.

Any marketing related IP such as trademarks, brands, image rights and other IP used to market goods or services cannot be a qualifying asset.

How Does the Relief Work?

The mechanics of the KDB relief are to allow a tax deduction of 50% of the qualifying profits from the R&D activities, thereby resulting in an effective tax rate of 6.25% (to increase to an effective tax rate of 10% pending Commencement Order).

Calculation of Qualifying Profits

The formula can be summarised as follows:

$$\frac{QE+UE}{OE} \times QA$$

QE = Qualifying Expenditure on qualifying asset
UE = Uplift Expenditure
OE = Overall Expenditure on qualifying asset
QA = profit from relevant Qualifying Asset

How Is Qualifying Expenditure Defined?
Qualifying expenditure is expenditure incurred by the company, wholly and exclusively in the carrying on of R&D activities in an EU member state, the consequences of which lead to the development, improvement or creation of the qualifying asset.

Outsourcing Costs
Outsourcing costs incurred in relation to a person who is not a member of the group/company, wherever the location of that R&D activity, and is engaged to carry on R&D activities on behalf of that company will be treated as if it were expenditure incurred by the company. However, any group outsourcing costs are specifically excluded as qualifying expenditure.

How Is Overall Expenditure Defined?

Overall expenditure refers to the company's overall expenditure on R&D in respect of the qualifying asset, including all outsourced costs (including to group companies) together with any acquisition costs incurred by the company in relation to the qualifying asset (either from a group company or a third party).

It should be noted that in establishing the amount of tax relief each year under the KDB, the expenditure figures, both qualifying and overall, will include amounts of historic expenditure. The rules in relation to this key aspect are set out at the end of this page.

The exclusion of group outsourcing costs and acquisition costs will dilute the benefit of the KDB for many multinational corporations. To partially mitigate this, there is a provision for an uplift in the amount of qualifying expenditure.

(UE) How is uplift expenditure defined?

An additional "uplift expenditure" is allowed to increase the qualifying expenditure on the qualifying asset. The uplift expenditure is the lower of:

- 30% of the qualifying expenditure; or
- the aggregate of the acquisition costs and group outsourcing costs.

How does this calculation appear in my corporation tax return?

The KDB qualifying activities are treated as a separate specified trade. The profits of this specified trade should be calculated separately from the other activities of the company. The relief is obtained in the form of an additional trading expense against the profits of the specified trade, (12.5% x 50% = 6.25%/12.5% x 80% = 10%).

What Happens If I Have a Number of Qualifying Assets, but It Is Not Possible for Me to Identify the Overall Income and Expenditure on Each Qualifying Asset?

Owing to the interlinked nature of many qualifying assets, it is not always possible to identify the breakdown of income and expenditure on each asset. This scenario is overcome using the "family of assets" approach. A family of assets permits the smallest grouping of identifiable qualifying assets for which income and expenditure is reasonably identifiable to utilise the KDB as if the "family of assets" was one qualifying asset.

What Happens If I Have Not Started Trading, but I Have Incurred Expenses Relating to Qualified Assets?

Any pre-trading expenditure which is qualifying expenditure shall be deemed to have been incurred in the first accounting period of the company, therefore allowing the expenditure.

When Is It Effective?

The relief is available to companies for accounting periods beginning on or after 1 January 2016 and before 1 January 2027.

Historic Costs

For accounting periods beginning on or after 1 January 2020:

- acquisition costs shall include costs incurred prior to 1 January 2016;
- group outsourcing costs include costs incurred prior to
- 1 January 2016 and where such costs relate to more than one qualifying asset, those costs shall be apportioned on a just and reasonable basis; and
- qualifying expenditure shall generally not include any amount incurred prior to 1 January 2016. However, where there is sufficient documentation to show the expenditure was incurred pre-2016, expenditure can be included.

What Documentation Must I Have?

A company must have records available that track:

- overall income from the qualifying asset;
- qualifying expenditure on qualifying assets; and
- overall expenditure on the qualifying asset.

The company must also show how such expenditures and income are linked to the qualifying asset.

Interaction with Other Provisions

The KDB provisions should have no impact on claiming capital allowances on IP;

The KDB may impact on cash refund claims made under the R&D tax credit regime. Broadly, the R&D tax credit is calculated as if the KDB regime was not in place. This should only present a cashflow timing issue;

Should there be a trading loss in respect of a qualifying asset in an accounting period, 80% of the loss will be available for offset in the normal manner.

If a company is subject to transfer pricing rules, the apportionment and application of all qualifying income and qualifying expenditure must be in line with transfer pricing rules. For smaller companies, income and expenses should be apportioned on a just and reasonable basis.

Digital Games Tax Credit

A new tax credit for the digital gaming sector will provide a refundable corporation tax credit for qualifying expenditure incurred from 22 November 2022 on the design, production and testing of an eligible digital game.

The relief is available at a rate of 32% on eligible expenditure of up to a maximum limit of €25 million per project.

Why Introduce a Digital Games Tax Credit?

The tax credit for the digital gaming sector should allow Ireland to catch up with other jurisdictions (France, Germany, Canada etc.), many of which have already had a Digital Games Tax Credit in place since as far back as 1998.

The credit is designed to offer incentives to gaming studios and developers to invest in Ireland and grow the industry in a similar way to the success of the tax incentives for the film and television industries.

The Digital Games Tax Credit Will Support a Rapidly Growing Industry

The credit can result in a refund of up to €8 million per qualifying "digital game".

Over the years, video games have steadily risen in popularity. With people looking for new ways to socialise and stay entertained, the trend has only accelerated. Gaming is now a bigger industry than movies and sports combined.

How the Relief Works

The relief will take the form of a refundable corporation tax credit and will be available to companies that are resident in the EEA and carry on a business in Ireland developing digital games.

Relief will be available on expenditure incurred in the design, production and testing stages of the development of qualifying digital games, provided certain conditions are met. The credit will be 32% of the lowest of:

- Eligible expenditure incurred in Ireland or the EEA;
- 80% of total qualifying expenditure; and
- €25m.

There is a minimum spend requirement per project of €100,000.

Relief will not be available for games primarily produced for the purposes of advertising or gambling.

What Type of Game Qualifies?

The first thing that should be considered is whether the company is developing a qualifying 'digital game'. This is defined as a game that integrates digital technology, is capable of being published on an electronic medium and contains not less than three of the following classes of information in digital form:

- Text
- Sound
- Still images
- Animated images

Development Effort Must Be Certified

The digital games corporation tax credit is subject to a cultural test, which will be administered by the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media.

Irish Tax Treaty Network

Tax treaties reduce taxes of one treaty country for residents of the other treaty country in order to reduce double taxation on the same income. The Irish tax treaty network continues to be expanded and updated.

Ireland has signed Double Tax Treaties with 76 countries, of which 74 are in effect. The treaties cover direct taxes. Work is ongoing to develop new tax treaties and update existing treaties.

The treaties are generally based on the OECD model treaty. See Appendix 1for a listing of the 74 jurisdictions with which Ireland has a double tax treaty in force.

Unilateral Relief

Where a double taxation agreement does not exist, there are provisions within the Taxes Consolidation Act 1997 which allow unilateral credit relief against Irish tax for tax paid in the other country in respect of certain types of income (e.g. dividends and interest). There are additional reliefs under the EU Parent-Subsidaries Directive, EU Interest and Royalties Directive amd EU Mergers Directive.

Multilateral Agreements

In June 2017, government representatives from 68 jurisdictions signed up to the Multilateral Instrument (MLI), which is designed to efficiently update the worldwide tax treaty network in line with certain of the OECD's BEPS recommendations.

The MLI resulted in amendments to more than 2,000 treaties worldwide and is likely to have a significant impact on existing and future international tax planning.

Ireland is a signatory to the MLI, and it entered into force for Ireland on 1 May 2019. As a general rule, the MLI has effect for Ireland's tax treaties with respect to taxes at source, from 1 January 2020, and with respect to all other taxes for taxable periods beginning on or after 1 November 2019.

Foreign Dividends

Taxation of Foreign Dividends in Ireland

Foreign dividends received from a trading company, resident in an EU member state or a country with which Ireland has a tax treaty or a country with which Ireland has ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters, are taxed at 12.5% provided the dividend has been received out of trading profits.

A credit may be available for foreign tax paid on the dividend. The credit for foreign tax can be calculated by reference to the nominal rate of tax in the source country, where this gives a larger double tax credit than would otherwise be applicable. The additional tax credit under these provisions is not eligible for pooling of credits for foreign tax or for carry forward of relief for excess foreign tax credits.

The 12.5% rate extends to foreign dividends paid from non-treaty countries where the company is owned directly or indirectly by a publicly quoted company. This treatment also applies to non-EU, non-treaty partner states that have ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Where foreign dividends are sourced from non-trading profits or are from a company not resident in an EU member state, tax treaty country or OECD country that has ratified the convention referred to above, such dividends are generally taxed at 25%.

Where part of a dividend is paid from non-trading profits with the balance being paid from trading profits, the non-trading balance will generally be taxed at 25%. However, there is a de minimis rule such that where more than 75% of the dividend is paid from trading profits, the entire dividend may be taxed at 12.5%.

Double Taxation Relief

Ireland operates a system whereby credit relief is available in respect of foreign tax paid on underlying profits out of which dividends are paid. Broadly, if foreign profits are taxable at a higher rate of tax than the Irish tax rate applicable to the foreign dividends, no further Irish tax should arise upon receipt of the foreign dividends in Ireland.

Tax Credit Pooling

Onshore pooling allows withholding taxes and underlying taxes to be pooled together, and they may then be offset against any Irish tax arising on foreign dividends.

However, excess tax on foreign dividends taxable at 12.5% may not be offset against foreign dividends taxable at 25%. The excess tax credits may be carried forward indefinitely against Irish tax arising on future foreign dividends.

Potential Move towards a Territorial Tax System

In December 2021, the Department of Finance launched a public consultation on the possible introduction of a territorial regime of double taxation relief. Such a regime would simplify how double taxation relief would be available for certain foreign sourced dividends and bring Ireland in line with most other OECD and EU member states. There has been no formal announcement by the department of a proposed introduction of a territorial system in 2023; however, it is expected that there will be further consultation during the year and a possible introduction in the near future.

EU Parent Subsidiary Directive

The 2003 EU Parent Subsidiary Directive deals with parent companies with subsidiaries in other EU member states. Effectively, it seeks to eliminate withholding tax and reduce double taxation of the profits out of which the dividends arose. The Directive applies to parent companies and their 5% subsidiaries.

Where dividends are paid from a subsidiary to a qualifying parent company, the following reliefs should apply:

- no withholding tax is to be deducted from the distributions by the subsidiary's country of residence;
- no withholding tax is to be deducted by the parent company's country of residence; and
- the parent company's country of residence is to exempt the parent company from corporation tax or allow a credit for the underlying corporation tax or foreign tax suffered by the subsidiary. The credit method is used in Ireland.

Withholding Taxes

Dividend Withholding Tax

A withholding tax of 25% applies to dividends and other profit distributions made by an Irish resident company. However, there are extensive exemptions available to include dividend payments to:

- Irish resident companies;
- companies resident in an EU or tax treaty country;
- pension funds;
- individuals resident in an EU or tax treaty country; and
- companies controlled by tax treaty residents.

There is a self-assessment basis for withholding tax exemption in respect of dividend payments to corporates, and this has alleviated administrative obligations (subject to certain declaration forms being in place prior to the dividend payment). The EU parent subsidiary directive may also eliminate dividend withholding tax obligations.

Royalties

Withholding tax at 20% may apply to patent royalty payments, but where the recipient is resident in an EU or treaty country, such withholding taxes may be eliminated. Even in cases where the recipient is resident in a non-treaty country, the withholding tax is generally exempt subject to obtaining advance clearance from Revenue.

Interest

A 20% withholding tax may apply to interest payments made on loans and advances capable of lasting 12 months or more. However, if such interest is paid in the course of a trade or business to a company resident in the EU or a treaty country in which that income is normally taxed, no withholding tax should apply. Even where the interest is not taxed in the recipient country, relief for withholding tax may still be available. In this case, certain disclosures may be required.

To summarise, there are a number of domestic exemptions, treaty provisions and provisions of EU directives which provide for an exemption from withholding taxes in Ireland. In practice, withholding tax of any description is rarely an issue in Ireland.

Capital Gains Tax (CGT) Exemption on Share Disposals

Capital Gains Tax (CGT)

CGT is payable at 33% on chargeable gains made by individuals, trusts, unincorporated bodies and companies. Capital gains are determined by the difference between the proceeds of disposal and the original cost of the asset. A disposal takes place whenever the beneficial ownership of an asset transfers. Assets include all forms of property, whether in the state or not.

Participation Exemption

There is an exemption from tax on capital gains for Irish-based holding companies on disposals of shareholdings in EU/ double tax treaty resident (DTA) companies. The exemption will apply where the following conditions are satisfied:

- the parent company must hold a minimum of 5% of the subsidiary's ordinary share capital for a period of over 12 months over the preceding 24 months;
- the investee company must be resident in an EU state (including Ireland) or treaty country; and
- at the time of disposal, the investee must exist wholly or mainly for the purposes of carrying on a trade (or the group and investee taken together must satisfy the trading test).

The exemption doesn't apply to the disposal of shares in a subsidiary where that subsidiary derives the greater part of its value from relevant assets. Broadly, relevant assets are Irish land, Irish minerals or mineral rights and certain exploration or exploration rights.

Entrepreneur's Relief

A CGT rate of 10% (rather than the standard rate of 33%) applies to the net chargeable gain arising on the disposal by an individual of certain chargeable business assets subject to certain conditions.

The relief is subject to a lifetime limit of €1 million.

Interest Limitation Rules (ILR)

ILR are in effect from 1 January 2022, affecting all accounting periods on or after this date.

The ILR will impact all Irish companies and groups that have debt as part of their capital structure. However, there are also reliefs and exemptions available to companies that will alleviate the impact of ILR subject to certain conditions being met.

What Is the Aim of Interest Limitation Rules?

The aim of the ILR is to limit base erosion attempts by multinational enterprises and other companies through the use of excessive interest deductions and similar financing costs. The ILR does so by limiting the maximum tax deduction for net borrowing costs to 30% of a corporate taxpayer's EBITDA (as defined under tax principles).

Strategic Exclusions from the Interest Limitation Rules

The Government has used the ILR to promote certain areas of infrastructure and development that are needed in its long-term plan to develop Ireland. The Government has put a specific emphasis on "large-scale assets", which include transport infrastructure, large-scale housing developments and energy infrastructure projects.

Operation of the Rule

The measure aims to cap "exceeding borrowing costs" at 30% of EBITDA.

Exemption from the ILR

The key exceptions from ILR include:

- where the relevant entity's net borrowing costs are less than €3 million (the de minimis threshold). If this threshold is breached, the ILR applies to the entire amount of the exceeding borrowing costs;
- where a relevant entity is a standalone entity - broadly meaning a company that has no associated enterprises or permanent establishments;
- long-term public infrastructure projects; and
- interest on legacy debt, being debt the terms of which were agreed before the terms of the EU ILR were agreed on 17 June 2016 (this can be lost if there have been modifications to the loan following this date).

International Comparisons

A positive to be taken away from these new rules is that the €3 million limit is per company and not the entire group. This is quite a favorable condition compared to other local tax jurisdictions that impose the €3 million limit across the entire group.

Controlled Foreign Company (CFC) Regime in Ireland

CFC rules are an anti-abuse measure designed to prevent the diversion of profits to low/no tax jurisdictions, with the principal objective being to change behaviour as opposed to being a revenue generating measure.

Irish CFC rules apply for accounting periods of controlling companies commencing on or after 1 January 2019.

These rules are complex, containing many definitions and targeted anti-avoidance rules. We would recommend specific tax advice be sought in relation to structures/arrangements currently in place. However, we have set out the main principles within this update.

What is a CFC?

A CFC is a company that is not resident in Ireland but is **controlled** by a company or companies resident in Ireland. The legislation has adopted a wide definition of control, which extends beyond the minimum requirement set out in the ATAD.

How Does a CFC Charge Arise?

A charge arises where a CFC has undistributed income **and** a chargeable company performs relevant Irish activities in relation to the CFC group. A chargeable company is an Irish company which performs, either itself or through a branch or agency, relevant Irish activities on behalf of a CFC group.

Relevant Irish activities are significant people functions or key entrepreneurial risk-taking functions performed in Ireland on behalf of the CFC. Broadly, these functions are relevant to legal/beneficial ownership of assets or the assumption and management of risks.

Undistributed income is calculated as distributable profits for a period less any relevant distributions made in respect of that period. It is worth noting that capital gains are excluded from the CFC charge.

In terms of the rate that would be applied to the undistributed income, the CFC charge will be computed at 12.5% where the income arises from the conduct of a trade while in other scenarios it would be 25%.

Exclusions and Exemptions

There are a number of exclusions and exemptions from the CFC charge, which have been outlined below.

Essential Purpose Exemption

If the CFC did not hold assets or bear risks under an arrangement where the essential purpose was to secure a tax advantage, no CFC charge should apply in the period.

Non-genuine Arrangements Tests

CFC legislation only applies to non-genuine arrangements. Therefore, a CFC charge only arises where:

- the CFC would not own the assets or would not have borne the risks which generate all/part of its undistributed income but for the significant people functions performed 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.

Effective Tax Rate Exemption

If the tax paid by a CFC is more than 50% of the tax that would have been **paid** if the CFC was Irish tax resident, then no CFC charge should apply. These calculations should be computed by reference to Irish tax rules, incorporating chargeable and capital gains and applying the relevant Irish tax rate to the undistributed income. In practice, they may be complex to work through.

Transfer Pricing Exemption

A CFC charge should not apply to transactions subject to Irish transfer pricing rules or priced on an arm's length basis. Consequently, transfer pricing is expected to become of increasing importance, and we would stress the importance of having robust transfer pricing documentation in place.

Other Exemptions Include:

- low margin profit exemption (where the margin on operating costs is less than 10%); and
- low accounting profit exemption (where profits are less than €75,000).

Grace Period for Newly Acquired Subsidiaries

No CFC charge arises for the first 12 months from the acquisition of a CFC. This grace period provides corporations with time to restructure the operations. However, where that CFC continue to be a CFC for the second period, the CFC charge from that initial 12 month period will fall due in the later period. Conversely, if a restructuring takes place whereby it ceases to be a CFC in the second period, the initial CFC charge is permanently negated.

CFC Rules to Restrict Exemptions

Controlled foreign company ("CFC") anti-avoidance provisions provide that the following exemptions will not apply to the extent the CFC is resident in a country listed on the EU list of non-co-operative jurisdictions for tax purposes:

- low margin profit exemption (where the margin on operating costs is less than 10%);
- effective tax rate exemption; and
- low accounting profit exemption (where profits are less than €75,000).

The above anti-avoidance provisions are in effect for accounting periods commencing on or after 1 January 2021.

There are a number of technical changes to the anti-hybrid legislation, such as ensuring that there is no economic mismatch as a result of a CFC charge to tax.

Financial Reporting and Audit

All Irish companies are required to follow a number of financial reporting and audit requirements as imposed by Irish company law and EU directives.

In summary, the requirements are as follows:
- financial statements must be prepared in accordance with Irish Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS);
- Irish incorporated companies are required to have their financial statements audited by a registered auditor each year (certain exemptions are available); and
- companies with subsidiaries must generally prepare group accounts. (There is an exemption based on the size of the group provided that the financial statements are not prepared under IFRS.)

Accounting Standards

In Ireland, IFRS are currently only mandatory for consolidated group accounts of listed companies. All other companies have a choice of following IFRS or Irish GAAP. Irish GAAP takes the form of Financial Reporting Standards (FRS) 101, 102 or 105 and is governed by guidelines issued by the Financial Reporting Council as promulgated by the Chartered Accountants Ireland (CAI). There are certain differences between these principles and international principles; however, a significant amount of work has been carried out to align FRS with IFRS (the convergence project), and several Irish standards have been amended to mirror IFRS principles.

Filing/Publication \requirements

Irish companies are required to keep proper accounting records, which give a true and fair view of the state of the assets, liabilities and financial position of the company. The directors are also required to prepare financial statements at least once in every calendar year.

Companies are also required to disclose details of their accounts at the Annual General Meeting (AGM) and to attach a copy of those accounts to the annual return filed with the CRO. These accounts are available for public inspection.

Audit Requirements

All Irish incorporated companies are required to have their financial statements audited by a registered auditor, subject to the exemptions listed below. The audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements.

It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed. If the auditor is satisfied with the above, a formal (unqualified) audit report will be issued.

Certain private limited companies and 'small groups' are exempt from having their financial statements audited, as well as companies that meet the definition of 'dormant' within the Companies Act. To qualify for the exemption, the company or small group (with respect to the parent company, together with all of its subsidiaries) must meet two of the three following criteria for both the current and previous accounting year:
- turnover less than €12 million;
- balance sheet total less than €6 million; and
- average number of employees below 50.

This exemption does not apply to the following entities:
- parent or subsidiary companies where the combined group exceeds the audit exemption thresholds;
- public limited companies;
- banks and financial institutions;
- insurance companies; and
- financial intermediaries.

This is an exemption from an audit only. It does not obviate the need to prepare and file financial statements. In both the previous year and the year concerned, the annual return and accounts must be filed at the CRO within the time limit specified in the Companies Acts.

Small companies may claim a size/abridgement exemption such that they only need to file:
- the balance sheet;
- the auditors report; and
- note to the financial statements.

The company must continue to make all annual returns on time as well as meet the exemption criteria to ensure the entitlement to exemption is not lost.

Branches of foreign companies operating in Ireland are not required to have accounts audited independent of the company accounts to which they relate; however, it should be noted that a copy of the company (not the branch) accounts must be filed with the Registrar of Companies within 11 months of the year end.

Group Accounts
In addition to preparing their own accounts, parent undertakings are required to prepare consolidated group accounts and to lay them before the AGM at the same time as their own annual accounts.

Exemption from Requirement To Prepare Group Accounts
An exemption from the requirement to prepare group accounts shall apply to a parent company that is a private company in any financial year if, at the balance sheet date of the parent undertaking in that financial year and in the financial year of that undertaking immediately preceding that year, the parent undertaking and all of its subsidiary undertakings together, on the basis of their annual accounts, satisfy two of the following three conditions limits:

- the balance sheet total of the parent undertaking and its subsidiary undertakings together does not exceed €6 million;
- the amount of the turnover of the parent undertaking and its subsidiary undertakings together does not exceed €12 million; and
- the average number of persons employed by the parent undertaking and its subsidiary undertakings together does not exceed 50.

However, a PLC cannot avail of the exemption as it is expressed to apply only to parent undertakings that are private limited companies. Additional exemptions may be claimed where the parent undertaking is itself a subsidiary of another undertaking and certain conditions are met.

IFRS 15 (Revenue Recognition)
IFRS 15 is a recent accounting standard being implemented internationally which specifies how and when Revenue should be recognised in financial statements. IFRS 15 is expected to have a particular impact on companies who hold contracts with customers, e.g. telecommunication operators. IFRS 15 will now mandate these companies to recognise the Revenue when the transaction occurs and based on the performance of the contract rather than when the customer will pay their cash obligations.

FATCA , CRS and DAC 6, 7 & 8

Foreign Account Tax Compliance Act (FACTA)

FATCA is an Inter-Governmental Agreement (IGA) between Ireland and the US. Both Ireland and the US exchange financial account information supplied by financial institutions in Ireland and the US. The information covers details of accounts held by tax residents, Irish financial institutions report details of accounts held by US tax residents and US financial institutions report details of accounts held by Irish tax residents.

Common Reporting Standard (CRS)

CRS is the global standard for automatic exchange of information approved by the OECD. CRS creates a multi-lateral reporting regime which mandates that financial institutions must report information to Revenue relating to account holders who are tax resident in any of the jurisdictions which have adopted CRS.

The key difference between FATCA and CRS is that where FATCA is primarily focused on identifying US tax residents, the CRS requires due diligence of nearly all of a financial institution's account holders.

More than 100 jurisdictions (including all jurisdictions in the EU and nearly all other major jurisdictions) have implemented CRS into domestic legislation.

Irish financial institutions must report the details of these accounts to Revenue by 30 June of the year following the year for which a return is required.

Irish domestic legislation will allow Revenue to charge significant penalties for non-compliance.

DAC 6, 7 & 8

Directive 2011/16/EU (Directive on Administrative Cooperation - DAC) establishes a system for secure administrative cooperation between the national tax authorities of EU member states and lays down the rules and procedures for exchanging information for tax purposes.

These rules are complex, containing many definitions and targeted anti-avoidance rules.

DAC 6

The EU Mandatory Disclosure Reporting Directive applies to all reportable cross-border arrangement. The Directive became effective on 1 July 2020; however, Ireland deferred the first reporting requirements until 2021. The Directive sets out various Hallmarks defining different types of cross-border arrangements which are reportable by intermediaries and taxpayers to the tax authorities.

DAC 7

DAC 7 introduced new reporting obligations for platform operators in the EU to report certain information with respect to certain sellers to the relevant tax authorities each year. The reporting obligations apply from 1 January 2023 with the required information for 2023 to be reported to the Irish Revenue by 31 January 2024.

DAC 8

The European Commission has proposed DAC8 to enhance tax compliance in the digital economy and to assist tax authorities identify circumstances where tax may be due from persons deriving income and gains from crypto assets and e-money. The proposed Directive is to be transposed into law by EU member states by the end of 2023. However, the effective date is, per the current proposal, from 1 January 2026.

Transfer Pricing

The Irish transfer pricing regime provides for the arm's length pricing to apply to intra-group transactions. The OECD principles are to be followed in this respect.

What Transactions Are Affected?

- Inter-company trading transactions such as the provision of management services, intra-group transfers of trading stock and certain IP licensing; and
- Treasury and finance operations such as cash pooling performed centrally for a group, are all affected by the transfer pricing rules.

Non-trading and certain capital transactions are also within Ireland's transfer pricing regime. Non-trading transactions between Irish companies will generally be outside the scope of Irish transfer pricing, but the position needs to be reviewed on a case-by-case basis.

Are There Any Exemptions?

There is an exemption for SMEs. To fall within the exemption, the enterprise (including group companies) must have fewer than 250 employees and either group turnover of less than €50 million or gross assets of the group must be less than €43 million worldwide.

While SMEs are currently outside the scope of Irish transfer pricing, Finance Act 2019 provides for the extension of transfer pricing to SMEs, subject to Ministerial Commencement Order. This is a future policy decision with no immediate places for commencement.

What If Profits Are Understated?

If profits are understated, there will be an adjustment made to substitute the arm's length consideration for the actual consideration. The standard interest and penalties regime is likely to apply to any such adjustments.

There are provisions for counterparty adjustments to allow a reduction in taxable profits to the affected counterparty. However, this may not always provide for a zero-sum tax impact as the transaction may be treated differently in the books of the counterparty.

Key Changes and Developments

The Irish transfer pricing regime has been brought in line with the 2022 OECD Guidelines, providing additional clarity on the appropriate profit split method and also giving guidance to tax authorities in relation to hard to value intangibles. Broadly, this means that OECD concepts such as DEMPE (Development, Enhancement, Maintenance, Protection, and Exploitation of Intangibles) are on a legislative footing in Ireland, with a focus on value creation as a driver of profit allocation, not simply contractual entitlements. This focus on substance will require a review of existing arrangements.

Ireland to Ireland

Revised provisions relating to "Ireland-to-Ireland" transactions provide for a streamlined principles-based approach which provides greater clarity when compared to its predecessor. The revised provisions apply to chargeable periods beginning on or after 1 January 2022.

Documentation

Companies are obliged to retain such records as may reasonably be required to demonstrate that the income has been computed at arm's length.

In cases where a taxpayer is required to prepare a local file and/or master file, such documentation must be in place no later than the date on which the tax return for the chargeable period is due to be filed. Furthermore, the documentation must be provided to Revenue within 30 days of a written request and there are significant penalties for non-compliance.

BEPS

Transfer pricing is a key strand of the BEPS project currently being undertaken by the OECD. As part of this, standardised documentation will be required from a transfer pricing perspective. There will be a global standard for documentation requirements with a common template for country-by-country (CbC) reporting, blueprints for a global master file and local transfer pricing documentation.

Country-by-Country (CbC) Reporting

In order to enhance transparency in our tax system, Ireland has implemented the CbC reporting regime as outlined

in the BEPS project. This applies for accounting periods commencing on or after 1 January 2016. A notification is required to be filed with Revenue on or before the final date of the accounting period to which the CbC report relates.

Any group with consolidated turnover in excess of €750 million is required to file a CbC report in their chosen jurisdiction and make a notification in every country in which they have a presence.

Dispute Resolution

Ireland's tax system keeps in step with international best practice, ensuring an efficient and effective system. In this regard Ireland has introduced the following mechanisms to facilitate dispute resolution.

Mutual Agreement Procedure (MAP)

The MAP is a means through which competent authorities consult to resolve disputes regarding the application of double taxation conventions.

The MAP article in double taxation conventions allows competent authorities to interact with the intent to resolve international tax disputes. These disputes involve cases of double taxation where the same profits have been taxed in two jurisdictions.

Advanced Pricing Agreements (APA)

The APA is a binding agreement between two tax administrations and the taxpayers concerned. Essentially, the APA makes the tax treatment of relevant transactions (or series of transactions) clear for both the tax administrations and the taxpayers for the period covered.

Authorised OECD Approach (AOA)

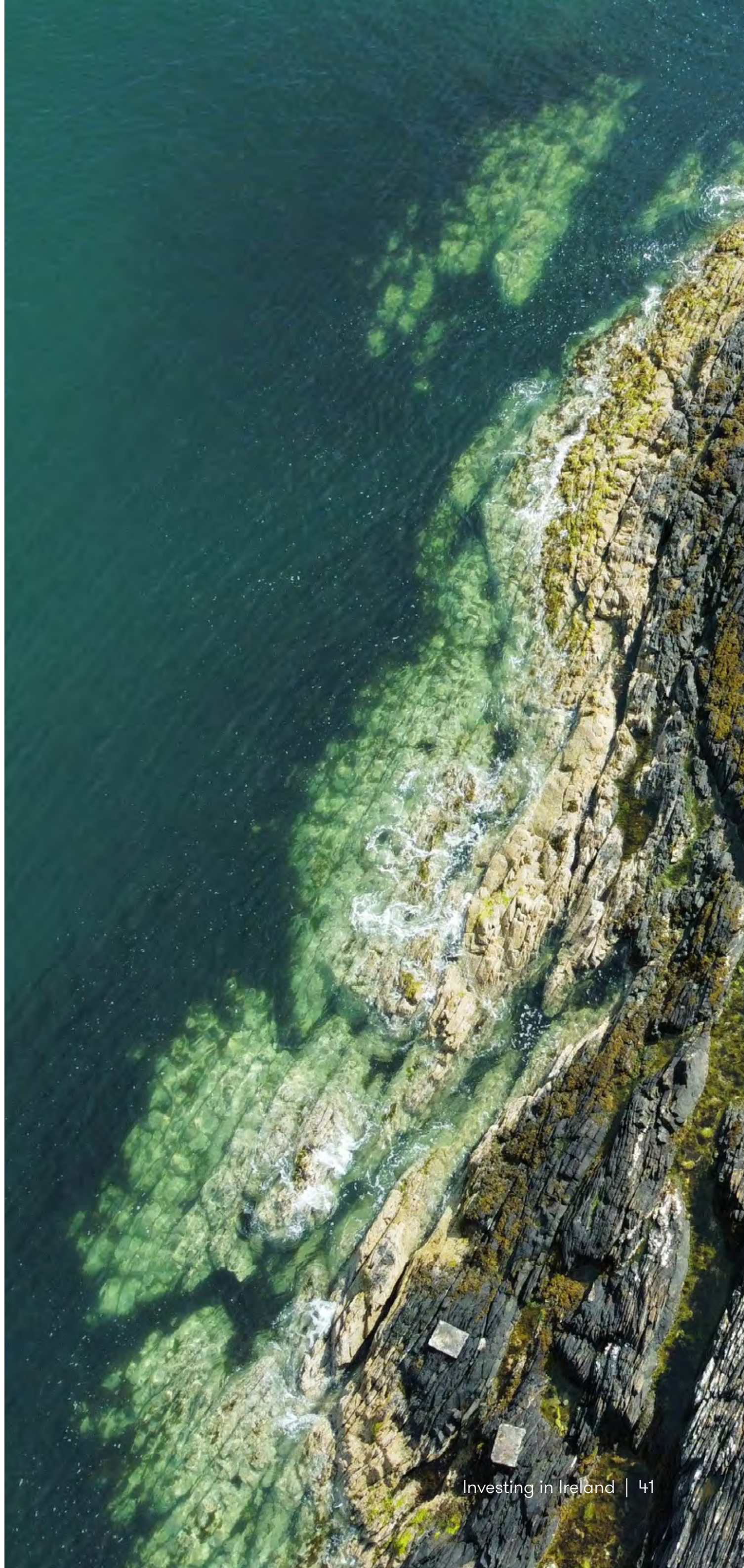
The OECD AOA is a mechanism to attribute the same profits to an Irish branch of a foreign company in a manner that it would have earned at arm's length if it had been an independent legal enterprise performing the same or similar functions under the same or similar conditions. The new legislation also means that Irish branches now have to maintain additional specific documentation.

Summary

Companies are obliged to retain documentation to support relevant intergroup transactions.

It is a requirement that this documentation is in place when a company files its corporation tax return.

Therefore we would encourage companies to consider their intra-group transactions and assess the requirement to prepare, implement or review agreements to ensure that they are considered arm's length for transfer pricing purposes. Furthermore, groups should ascertain whether they have any CbC filing or notification requirements.



VAT

The EU broadly sets the VAT rules for all EU member states through directives and guidelines. However, member states, including Ireland, have some prerogative in the implementation of VAT policy.

VAT Compliance
All Irish VAT returns are filed electronically through Revenue's Online System (ROS). The ROS system in operation in Ireland is viewed as efficient and relatively straightforward when compared with those in operation in other European countries.

VAT Groups
Ireland operates an extensive VAT grouping system, which can be very useful where entities that are closely bound by financial, economic and organisational links make supplies to each other (for example, group charges or management fees).

The use of VAT groups generally allows charges to be made between the various members of the VAT group without an obligation for VAT to be charged. This can be very important where holding companies are involved or where special purpose vehicles (SPVs) exist which hold IP or other intangible assets.

Cash Flow Incentives for Exports
Cash flow incentives exist for entities located in Ireland that supply goods in excess of 75% of their turnover to other EU locations or export to jurisdictions outside the EU. These entities may qualify for authorisation to purchase most goods and services at the 0% rate of VAT. This can provide a significant cash flow advantage for companies establishing their Europe, the Middle East and Africa (EMEA) region operations in Ireland.

Financial Services
Ireland has a well-developed financial services sector. Many funds and similar investment vehicles are domiciled in Ireland. Ireland provides for an exemption from VAT for a wide variety of management services received by such entities. This is important as most of these entities would not be in a position to recover any VAT paid to a supplier, and this would therefore represent an absolute cost to the entity.

Section 110 Companies
From 1 March 2023, the VAT exemption for fund management will exclude qualifying companies under section 110, which hold qualifying assets that consist of plant and machinery.

Agency Services
Agency services in respect of the management of Undertakings for Collective Investment in Transferable Securities (UCITS) and other qualifying funds are exempt from VAT.

Finance Act 2022 has removed the VAT exemption from agency services relating to the management of certain investment funds which aligns Irish VAT legislation with the EU VAT Directive.

Management of Special Investment Funds
The management of special investment funds which are subject to the UCITS Directive and the Alternative Investment Funds Managers Directive and which are registered in other EU member states are exempt from VAT.

Share Transactions
The recovery of VAT in respect of share transactions is a complex area. However, VAT incurred by a holding company raising capital from a third party, which is used to fund the acquisition of shareholdings in subsidiaries and the management of those subsidiaries, may be recoverable, provided the transaction is structured appropriately.

There is also a "VAT-friendly" regime in Ireland in respect of aircraft leasing companies. There are a significant number of such companies located in Ireland.

Supply of Electronic Services within the EU
Ireland is the preferred choice of location for a range of companies which provide electronic services within the EU. Irish VAT rules provide that such services are subject to VAT at the local rates where the consumer is located. Instead of registering for VAT in multiple jurisdictions, businesses register in one country, i.e. Ireland, under a scheme called the Mini One Stop Shop (MOSS) and pay the appropriate liability to each country through an online portal.

VAT Rate Changes
The Irish Government announced that the temporary 9% VAT rate for the tourism and hospitality sector will be extended until 31 August 2023.

The temporary 9% VAT rate on domestic electricity and gas supplies will also be extended until the later date of 31 October 2023.

Appendices

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year of entry into effect	Dividends (%)	Interest (%)	Royalties (%)
Albania	2012	0/5/10	0/7	7
Armenia	2013	0/5/15	0/5/15	5
Australia	1984	0/15	10	10
Austria	1964	10	0	0/10
Bahrain	2010	0	0	0
Belarus	2010	0/5/10	0/5	5
Belgium	1973	15	15	0
Bosnia and Herzegovina	2012	0	0	0
Botswana	2017	0/5	0/7.5	5/7.5
Bulgaria	2002	5/10	0/5	10
Canada	2006	5/15	0/10	0/10
Chile	2009	5/15	4/5/15	2/10
China	2001	5/10	0/10	6/10
Croatia	2004	5/10	0	10
Cyprus	1952	0	0	0/5
Czech Republic	1997	5/15	0	10
Denmark	1994	0/15	0	0
Egypt	2014	5/10	0/10	10
Estonia	1999	5/15	0/10	0/5/10
Ethiopia	2017	5	0/5	5
Finland	1990	0/15	0	0
France	1966	10/15	0	0
Georgia	2011	0/5/10	0	0
Germany	2013	5/15	0	0
Greece	2005	5/15	5	5

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	**Year of entry into effect**	**Dividends (%)**	**Interest (%)**	**Royalties (%)**
Hong Kong	2012	0	10	3
Hungary	1997	5/15	0	0
Iceland	2005	5/15	0	0/10
India	2002	10	0/10	10
Israel	1996	10	5/10	10
Italy	1967	15	10	0
Japan	1974	10/15	10	10
Korea Republic	1992	10/15	0	0
Kosovo	2021	5/10	0/5	10
Kuwait	2013	0	0	5
Kazakhstan	2018	0/5/15	0/10	10
Latvia	1999	5/15	0/10	0
Lithuania	1999	5/15	0/10	0
Luxembourg	1968	5/15	0	0
Macedonia	2010	0/5/10	0	0
Malaysia	2000	10	0/10	8
Malta	2010	5/15	0	5
Mexico	1999	5/10	0/5/10	10
Moldova	2011	5/10	0/5	5
Montenegro	2012	0/5/10	0/10	5/10
Morocco	2012	6/10	0/10	10
Netherlands	2021	0/15	0	0
New Zealand	1989	15	10	10
Norway	2002	0/5/15	0	0
Pakistan	1968	10/no limit	No limit	0

Appendix 1 – Irish tax treaties

Source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year of entry into effect	Dividends (%)	Interest (%)	Royalties (%)
Panama	2013	5	0/5	5
Poland	1996	0/15	0/10	10
Portugal	1995	15	0/15	10
Qatar	2014	0	0	5
Romania	2001	3	0/3	0/3
Russia	1996	10	0	0
Saudi Arabia	2013	0/5	0	5/8
Serbia	2011	5/10	0/10	5/10
Singapore	2011	0	0/5	5
Slovak Republic	2000	0/10	0	0/10
Slovenia	2003	5/15	0/5	5
South Africa	1998	5/10	0	0
Spain	1995	0/15	0	5/8/10
Sweden	1988	5/15	0	0
Switzerland	1965	0/15	0	0
Thailand	2016	10	0/10/15	5/10/15
Turkey	2011	5/10/15	10/15	10
UK	1976	0/5/15	0	0
Ukraine	2016	5/15	0/5/10	5/10
United Arab Emirates	2011	0	0	0
United States	1998	5/15	0	0
Uzbekistan	2014	5/10	5	5
Vietnam	2009	5/10	0/10	5/10/15
Zambia	2016	7.5	0/10	8/10

Appendix 2 – sample of companies located in Ireland

Companies involved in a wide range of activities in sectors as diverse as engineering, information communications technologies, pharmaceutical and R&D view Ireland as a uniquely attractive location in which to do business. These companies include the following.

ICT	R&D	Pharmaceutical/medical	Group treasury/cash pooling
Analog Devices	Dow Corning	Abbott Ireland	IBM Ireland
Apple	Xilinx	Allergan	Bristol Myers Squibb
Dell	IBM	Eli Lilly	Proctor and Gamble
Google	Intel	Merck Pharmaceutical	Newell Rubbermaid
Hewlett Packard	CRH	Johnson and Johnson	Pitney Bowes
Microsoft	Kerry Group	Tyco Healthcare	Alcatel-Lucent
Yahoo!	Pfizer	Boston Scientific	
Intel	Huawei	Medtronic Ireland	
Meta		Smith and Nephew	
LinkedIn		Shire	
Dropbox		Alkermes plc	
SAP		Pfizer	
TikTok		AstraZeneca	
Ebay		Bausch and Lombe	
Amazon			

Appendix 2 – sample of companies located in Ireland

Engineering	Captive insurance	Financial services	Shared service centres
Allied Signal	Coca Cola	Citibank Europe	Citibank
Pratt and Whitney	Hertz	Paypal	Dell
Jaguar Land Rover	Volkswagen	JP Morgan	Xerox
Arup		Citco Fund Services Ltd	Yahoo!
Intel		PNC Global Investment Servicing Ltd	EMC Ireland
		ABN AMRO	CRH
		Bank of America	Kellogg's
		Northern Trust	
		Deutsche bank	
		Western Union	

Jargon Buster

ATAD - Anti Tax Avoidance Directives - these requires all member states of the EU to enact laws that largely implement OECD BEPS outcomes on a number of measures

BEPS - Base Erosion and Profit Shifting project - being run by the OECD. It aims to tackle instances where companies use tax structures to erode tax bases, increase a focus on linking taxable income to substance and improve transparency.

CFC - Controlled Foreign Companies - corporate entity that is registered and conducts business in a different jurisdiction or country than the country of tax residence of the controlling owners.

CGT - Capital Gains Tax - a tax chargeable on gains arising on the disposal of assets. Most forms of property to include an interest in property, e.g. a lease is an asset for CGT purposes.

DTA - Double Tax Agreement – an arrangement between two jurisdictions that mitigates the problem of double taxation, which can occur when tax laws consider an individual or company to be a resident of more than one jurisdiction.

EU - European Union - a group of European countries that participates in the world economy as one economic unit and operates under an official currency, the Euro. The EU's goal is to create a barrier-free trade zone and to enhance economic wealth by creating more efficiency within its marketplace.

FDI - Foreign Direct Investment - an investment abroad whereby the company being invested in is controlled by the foreign corporation. There is usually a lasting interest by the direct investor in the direct investment entity, which is resident in an economy other than that of the investor.

IDA Ireland - Industrial Development Authority - Ireland's inward investment promotion agency, which is responsible for the attraction and development of foreign investment in Ireland.

IP - Intellectual Property - broad categorical description for the set of intangibles owned and legally protected by a company from outside use or implementation without consent. IP can consist of patents, trade secrets, brands, copyrights and trademarks or simply ideas.

KDB - Knowledge Development Box - the broad objective of the KDB is to promote innovation and provide an incentive whereby profits arising from patented inventions, copyrighted software and certain other specific asset classes can be effectively taxed at a reduced rate of 6.25%.

MNCs - Multinational Corporations - corporations that have facilities and other assets in at least one country other than their home country. Such companies have offices and/or factories in different countries and usually have a centralised head office where they co-ordinate global management.

NAMA - National Asset Management Agency - a body created by the government of Ireland in late 2009 in response to the Irish financial crisis and to facilitate the availability of credit in Ireland.

OECD - Organisation for Economic Co-operation and Development – an organisation designed to promote policies that will improve the economic and social wellbeing of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems.

PAYE - Pay As You Earn - an Irish payroll tax system and this system of tax deduction applies to all income from offices or employments (including directorships and occupational pensions).

PRSI - Pay Related Social Insurance - a form of social insurance payable by contributions from employers in respect of full-time employees and part-time employees. It is also payable by full-time employees and part-time employees themselves (as there is both employer's PRSI and employees' PRSI).

R&D - Research and Development – an innovation or process improvement. It requires a systematic, investigative or experimental approach to be taken in a field of science or technology.

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