Taxation

%

Ireland has for many years used tax incentives as a powerful tool to attract inward investment, and has been extremely successful in this regard, particularly in terms of US investment. Key to that success is the 12.5% rate of corporation tax on trading profits.

To complement the 12.5% rate, Ireland has introduced tax legislation intended to make Ireland an attractive location for holding companies and as regional headquarters, particularly for EMEA jurisdictions (e.g. no capital gains tax on gains from the sale of certain shares and reduced tax on foreign dividends). Other key tax benefits of investing in Ireland include:

- tax relief on the acquisition cost of Intellectual Property (**IP**) and other intangibles;
- a general R&D tax credit system giving an effective tax deduction of 37.5% for qualifying expenditure;
- the first OECD compliant patent box regime (the Knowledge Development Box (**KDB**)) with 6.25% effective tax rate on profits arising from certain types of IP;
- extensive domestic exemptions from withholding tax on interest and dividend payments;
- no withholding on royalties paid to EU/Treaty countries and potentially on payments to non-EU/non-Treaty countries;
- no thin capitalisation rules;
- no controlled foreign corporation tax rules currently;
- no capital duty;
- benign transfer pricing rules; and
- a wide, and growing, treaty network.

Taxation rates overview

Corporate tax	12.5%	Applies to trading income (including qualifying foreign dividends paid out of trading profits)
	25%	Applies to all other income (including non-trading income and non-qualifying foreign dividends)
Capital gains tax	0%	Participation exemption on qualifying share sales
	33%	Standard rate for gains (subject to various reliefs/exemptions)
Customs duty	Various	No duty on Irish goods moving intra-EU. Various rates apply to goods being imported from outside the EU
Stamp duty	1-2%	Payable on certain documents relating to, e.g. transfers of property and share sales (subject to various reliefs/exemptions)
Tax treaties	72	72 treaties signed and in effect with many major business jurisdictions
Value added tax	23%	Standard rate
	13.5%	Heating fuel, electricity, building services etc.
	9%	Hotels, restaurants, catering services, entertainment etc.

Corporate taxation

Residence

A company incorporated in Ireland on or after 1 January 2015 is tax resident in Ireland unless, under the terms of a double tax treaty, it is considered to be tax resident elsewhere. As regards companies incorporated prior to 1 January 2015, there is a transitional period until 31 December 2020 where, subject to certain exceptions, tax residence is broadly based on where the central management and control of the company (i.e. the strategic decision-making) is maintained.

A non-Irish incorporated company may still be resident in Ireland for tax purposes if it satisfies the central management and control test. Factors important to satisfying the test include – the location at which the meetings of the board of directors take place and the tax residence of the directors of the company.

Principles and rates

Corporation tax is charged at 12.5% on profits of a trade carried on at least partly in Ireland subject to certain exceptions while non-trading income (e.g. investment income) is taxed at 25%.

There is no statutory definition in Irish tax law as to what constitutes a "trade" although the UK courts have set down a number of general principles which are broadly followed. The primary characteristics of a trade are operational substance, profit motive, the taking of risk to generate a profit, dealing with a number of ideally third party customers, etc.

The concept of "trading" pre-supposes a certain level of activity by the company - it must be actively engaging in its business and deriving profits from its business, rather than simply passively receiving investment income. However, the "trading" analysis is not industry or function specific – any revenue-generating activities can potentially qualify as "trading" activities benefitting from the 12.5% rate. In addition to traditional activities such as manufacturing, many multinationals with decentralised models locate activities ranging from back office to marketing / customer support functions in Ireland, availing of the 12.5% rate. Examples of such activities include:

- treasury / cash management functions (including insurance, hedging and risk management);
- IT / technical support and data management;
- supply chain management;
- IP management and exploitation;
- marketing / customer support activities;
- back office functions (such as legal, finance and HR); and
- R&D activities.

Any gain made on the disposal of a capital asset of a company is taxed at 33%.

Taxation of non-resident companies

Subject to applicable double tax treaty provisions, a non-resident company carrying on business in Ireland through, for example, a branch will be liable to corporation tax on its branch profits. If the company has no taxable presence in Ireland (e.g. no branch) it will be subject to income tax on any Irish source income it has. A non-resident company is generally outside the scope of Irish capital gains tax except for example on disposal of Irish real estate.

Taxation of dividends paid to foreign corporate shareholders

As a general rule, dividends and other distributions paid by Irish resident companies are subject to 20% dividend withholding tax (DWT). However there are wide domestic exemptions applying e.g. there is no DWT on dividends paid to a non-Irish tax resident company (i) which is resident in an EU Member State or a country with which Ireland has a double tax treaty, provided that company is not controlled by any person or persons resident in Ireland or (ii) which is ultimately controlled by a person or persons resident in an EU Member State or a country with which Ireland has a double tax agreement.

Taxation of foreign dividends received by Irish companies

Ireland does not give a participation exemption for dividends from foreign companies but instead operates a foreign tax credit system. In taxing foreign sourced dividends, credit is generally available for any foreign withholding taxes suffered and for underlying taxes on profits out of which the dividend is paid.

Broadly, the following is the position:

- Foreign dividends paid by companies resident in the EU or in tax treaty countries out of trading profits are taxed at 12.5%.
- Dividends paid out of trading profits by a company resident in a non-treaty country are taxed at 12.5% where the company paying the dividend is a 75% subsidiary of a quoted company.
- The 12.5% rate also applies to "portfolio" dividends (where there is a holding of not more than 5%) from EU / treaty partner country regardless of whether paid out of trading profits.
- Otherwise, foreign dividends paid by companies resident in the EU or in tax treaty countries out of non-trading profits are normally taxed at 25%.

Taxation of interest paid to foreign corporate shareholders

Interest paid by an Irish company to a non-Irish resident is subject to interest withholding tax, currently at the rate of 20%. However there are wide domestic exemptions from this withholding tax, including for example where the interest is paid by an Irish company in the ordinary course of its trade to a company which is tax resident in an EU Member State (other than Ireland) or a country with which Ireland has signed a double tax treaty and that country imposes a tax that generally applies to foreign source interest provided such interest is not paid in connection with an Irish branch trade or business.

Taxation of royalties paid to foreign corporate shareholders

Patent royalties are eligible for a domestic withholding exemption where the payments are made by a company in the course of a trade or business to a company resident in an EU Member State (other than Ireland) or in a tax treaty country. The payments must be made for bona fide commercial reasons to a company in a territory that generally imposes a tax on royalty payments receivable from outside that territory. The exemption does not apply where the royalties are paid in connection with a trade carried out in Ireland through a branch or agency by the receiving company.

In addition to the statutory exemptions from withholding on patent royalties, a further category of exemption can be obtained under an administrative statement of practice issued by the Revenue Commissioners (the Irish tax authority). Permission for payment of patent royalties without deduction of tax can be applied for where the recipient is not resident in the EU or in a tax treaty country once a number of conditions are satisfied. The royalty must be paid in respect of a non-Irish patent by a company in the course of its trade, and under a licence agreement executed and subject to law outside Ireland. There are restrictions on the recipient company, which must be the beneficial owner of the payment, and must be neither resident in Ireland nor carrying on a trade in Ireland through a branch or agency (even if that branch or agency is unconnected with the royalty payment).

Withholding is not imposed on other forms of royalties (e.g. copyright), nor on payments such as aircraft lease rentals unless exceptionally the payments could be regarded as "annual payments" - payments in the nature of pure income profit.

Thin capitalisation rules

Ireland does not have thin capitalisation rules, so that a company can be primarily debt-financed. However, there are certain restrictions on interest deductibility – e.g. where the interest is "connected with" shares in the company, is "excessive" or is paid to a 75%+ non-EU parent company.

CFC rules

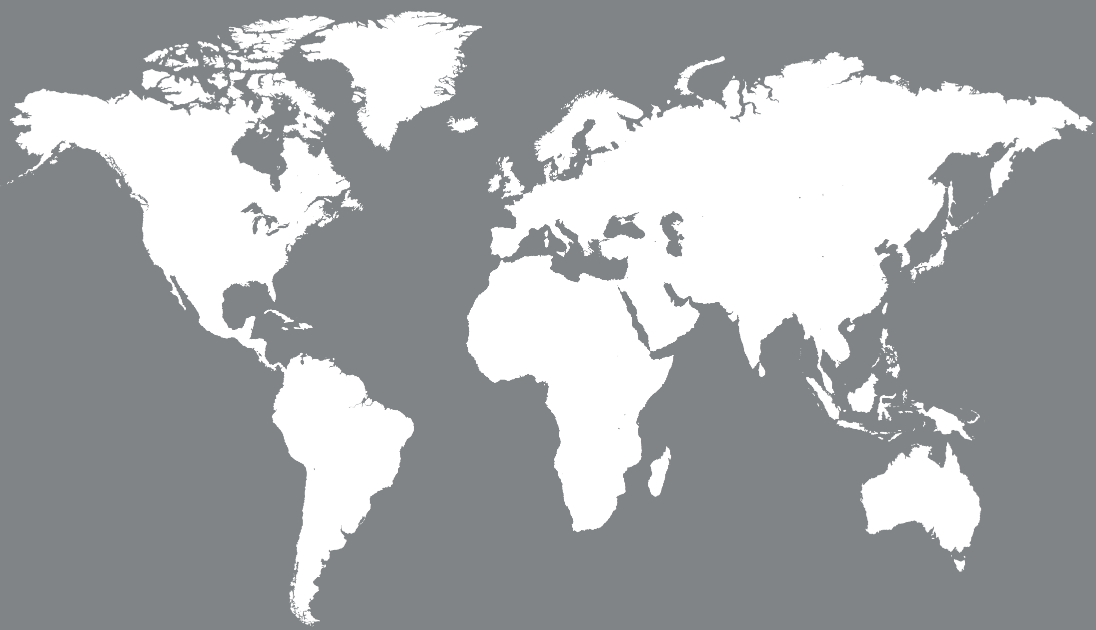
Currently, Ireland does not have general controlled foreign company rules. However, it does have certain "close company" rules which in certain cases can attribute a gain of a foreign subsidiary to the Irish company.

Transfer pricing rules

In 2010, Ireland introduced relatively benign transfer pricing rules which apply only to trading transactions between associated persons in relatively large trading

List of 72 countries with which Ireland has signed a Double Taxation Agreement as at 30 March 2017

(of which 70 are currently in force)



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Bosnia & Herzegovina
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Serbia
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sweden
Switzerland
Thailand
Turkey
United Arab Emirates
Ukraine
United Kingdom
United States
Uzbekistan
Vietnam
Zambia

groups and only where the result of the pricing might be to reduce the Irish tax base (e.g. by increasing a deductible cost for, or reducing the taxable income of, an Irish taxpayer).

Wide treaty network

Ireland has a wide network of treaty partners - comprehensive double taxation agreements have been signed with 72 countries (see list), all of which are in effect. The agreements generally cover direct taxes, which in the case of Ireland are income tax, corporation tax and capital gains tax.

Personal tax implications of residence and domicile

Resident	Ordinarily resident	Domiciled	Liable to Irish income tax on
Yes	Yes/No	Yes	Worldwide income
Yes	Yes/No	No	Irish source income; foreign employment income to the extent duties of the employment are performed in Ireland; and other foreign income to the extent that it is remitted into Ireland.
No	Yes	Yes	Worldwide income with the exception of: income from a trade or profession no part of which is carried on in Ireland; Income from an office or employment, all the duties of which are carried on outside Ireland (apart from incidental duties); and other foreign income, provided that it does not exceed €3,810.
No	Yes	No	Irish source income and foreign income to the extent it is remitted to Ireland. Income from the following sources is not liable to Irish income tax, even if remitted to Ireland: income from a trade or profession no part of which is carried on in Ireland; income from an office or employment, all the duties of which are carried on outside Ireland (apart from incidental duties); and other foreign income, provided that it does not exceed €3,810.
No	No	Yes/No	Irish source income and income from a trade, profession or employment exercised in Ireland.

Personal taxation

The tax treatment of an individual depends on whether the individual is considered resident, ordinary resident and/ or domiciled in Ireland. Broadly an individual is "resident" in Ireland if he/she spends 183 days in a year. A "day" refers to presence at any time during the day. An individual is ordinarily resident in Ireland where he has been resident in Ireland for each of the three preceding years. Domicile is broadly speaking the individual's natural home unless a new domicile is acquired.

Taxation of employees – operating payroll taxes

Employment income is subject to a system known as Pay As You Earn (**PAYE**) which provides for the deduction at source by the employer of employee taxes (i.e. income tax and the Universal Social Charge (**USC**) and Pay Related Social Insurance (**PRSI**)) on that income.

Income tax is charged at two rates. For the tax year 2017, the standard rate is 20% and the higher rate is 40%. The amounts (in Euros) beyond which the higher rate is relevant are as follows:

	€
Single Person	33,800
Married Couple (one earner)	42,800
Married couple (two earners)	67,600

USC is payable on gross income of individuals in addition to income tax. For the year 2017 the following rates apply:

€	%
First 12,012	0.5
Next 6,760	2.5
Next 51,272	5
Remainder	8

PRSI contributions in respect of employed individuals are paid partly by the employer and partly by the employee as follows:

PRSI	%
Employer	10.75
Employee	4

Taxation of employees - special assignment relief programme

An employee assigned to work in Ireland by their existing employer for a period of at least one year may be entitled, subject to certain conditions being satisfied, to claim a deduction from their employment income tax liability under the Special Assignee Relief Programme (**SARP**). The purpose of SARP is to attract mobile talent by reducing the equalisation cost to companies of assigning skilled individuals and key decision makers from abroad to take up positions in Ireland. This is achieved through reducing the individual's tax burden by excluding 30% of their employment earnings above €75,000 per annum from the charge to Irish tax.

Other taxes

Stamp duty and capital duty

Stamp duty apples to documents implementing certain transactions and is payable within 30 days of signing. Transfers of non-resident property are charged at 2% while transfers of Irish shares are charged at 1%. There are exemptions from stamp duty in the case of IP and certain financial instruments while various reliefs apply in the case of company reconstructions and intra-group transfers.

There is no capital duty on the issue of shares by an Irish company.

Capital gains tax (CGT)

Irish tax resident companies are subject to tax on their chargeable gains while non-Irish tax resident companies are outside the scope of CGT except on the disposal of certain specified assets (e.g. Irish real estate). The CGT rate is 33% and broadly applies to the difference between the sale proceeds and acquisition costs. There are various reliefs from CGT on the transfer of assets intra-group and in the context of company reconstructions and mergers.

Value added tax (VAT)

VAT applies to the supply of goods and services by businesses and to the importation of goods into Ireland. The standard rate is currently 23% but a broad range of goods and services benefit from lower rates (currently 13.5% and 9%), zero rating and exemption. There is a relatively broad application of exemption to outsourced services in the financial services industry which is particularly important. VAT group registration is also available and widely used in the financial services industry in particular.

Capital acquisition tax (CAT)

CAT arises in instances where individuals become beneficially entitled to property, either by way of a gift or inheritance. The charge generally arises where (i) the donor (giver) is resident or ordinarily resident in Ireland, (ii) the donee (recipient) is resident or ordinarily resident in Ireland or (iii) the subject matter of the gift or inheritance is situated in Ireland. Special rules apply to non-domiciled donors and donees. The CAT rate is 33% and is applied above certain tax free thresholds.

Customs duty

Intra-EU transfers of goods are free of customs duties. Goods imported from outside the EU may be subject to customs duty, the rate of which can depend on various factors including the tariff classification of the goods and their origin.