Setting up your Business in Ireland
Issues to consider

Ireland is a small, open, trade-dependent economy. Its openness is reflected both in the international mobility of its labour and capital reflected by strong migration flows and high levels of foreign direct investment.

It is strategically located on major air and sea routes between North America and Northern Europe. Over 40% of the population resides within 100 km of Dublin, the Capital City. Ireland is also a member of the Euro single currency.

There are a number of issues which you must consider when you are looking to set up your business in Ireland. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is set out below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Irish operations
- If there is a permanent establishment (PE) in Ireland then profits from this PE are liable to Irish Corporation tax (12.5% trading rate, otherwise a 25% rate applies).
- The disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State are set out in Part 21 of the Irish Companies Act 2014. There are some differences between the requirements imposed on a company from a Member State of the European Economic Area and companies from other countries.

Limited Company (LTD) and Designated Activity Company (DAC):

- Both LTD and DAC provide limited liability to Irish operations
- A DAC must have at least two directors and must have a clause in it's Constitution stating it's objects
- A LTD can operate with a single director.
- Corporation tax payable on company profits (12.5% trading rate, otherwise a 25% rate applies).
- A company may elect to dispense with an annual audit if two or more of the following criteria in respect of their financial statements are met:
    - Annual turnover does not exceed €8.8m
    - The balance sheet total assets does not exceed €4.4m
    - Less than 50 employees
- A company must evidence it is managed and controlled in Ireland in order to claim

Irish tax rates.

Public Limited Company

Public limited companies have the same essential characteristics as private limited companies but the key differences are:

- Must have at least two directors
- Must have a clause in it's Constitution stating it's objects
- Shares in a public limited company are freely transferable
- There is no restriction on the number of members but the minimum number is one
- Shares may be issued to the public and may be listed on a stock exchange
- Additional reporting and capital requirements apply to such companies

How much Corporation Tax (CT) will the business pay?

Ireland has traditionally directed its tax incentives towards active business income – notably, the standard 12.5% rate of corporation tax on trading income, which is exceptionally low in an EU context. Corporation Tax is charged at 12.5% on all Irish corporate trading profits, with the exception of mining, petroleum activities and dealings in land. All other corporate income (including passive/unearned income) is taxed at 25%. Capital gains on disposals made by a relevant company are taxed at a general rate of 33% of the chargeable gain.

What if we use Ireland to set up our holding company?

In addition to an attractive standard corporate tax rate of 12.5%, Ireland also offers a number of additional tax incentives for Irish businesses including:

- Holding Company Regime;
- Research and Development (R&D) Tax Credit;
- Knowledge Development Box (from 1st Jan 2016 potential for a reduced effective CT rate of 6.25%);
- Allowances and Stamp Duty reliefs for Intellectual Property;
- Film Relief;
- Start-Up Companies Relief;
- Special Assignee Relief Programme ('SARP');
- Tax regime for Real Estate Investment Trust ('REIT') companies;
- No thin capitalisation or controlled foreign corporation ('CFC') rules; and
- Double Taxation Agreements signed with 72 countries of which 70 are in effect (http://www.revenue.ie/en/practitioner/law/tax-treaties.html).

Ireland does not impose any withholding taxes on the repatriation of branch profits to head office (as the branch and head office are a single legal entity).

It has a dividend withholding tax regime. Subject to certain exemptions, Irish resident companies (with the exception of certain fund vehicles) are required to withhold tax at the standard rate of income tax in respect of all dividends paid. The standard rate is currently

20%. The obligation to withhold tax is placed on the company paying the dividend or in certain circumstances on a withholding agent acting for the company. Certain exemptions are available from Irish withholding tax, in particular, where the recipient of the dividends is in, or is controlled from, an EU Member State (other than Ireland) or in a country with which Ireland has a double taxation treaty.

Irish tax legislation allows for members of a 75% group to surrender excess trading losses, trading charges, management expenses and Irish rental capital allowances between them.

What if we make cross-border transactions between group companies?

Ireland follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties. The transactions that fall under Irish transfer pricing rules are those which are between connected parties carried out at arms length that

- Involve the supply and acquisition of goods, services, money or intangible assets, and
- Form part of the trading activities of either party.

Where under an arrangement to which these provisions apply an amount receivable in respect of a sale is understated or the amount payable in respect of an expense is overstated then the arms-length amount will be substituted in each case.

SME's are generally exempt from Ireland's transfer pricing ("TP") regime, so only "large" entities need to undertake detailed TP analysis. A "large entity" for TP purposes is one with greater than 250 employees, or less than 250 employees but with Revenues greater than €50M **and** Gross Assets greater than €43M. Irish legislation requires that documentation be available that would be sufficient to show that the pricing of transactions with connected persons complies with the arm's length principle. The documentation must be prepared on a timely basis, in written form in an official language of the State or by means of any electronic, photographic or other process as permitted for accounting records and be made available to Revenue on request within 21 days.

However even if an entity is exempt from Ireland's transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

A business will need to prepare a Transfer Pricing Report proving the arm's length basis of transactions. The report should include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis.

What Employment Taxes and Social Security will need to be paid?

Income Tax in Ireland is generally charged at two rates. A rate of 20% applies in respect of an individual's first €33,800 of taxable income. This threshold may be higher where the taxpayer is married. Income above these limits is taxed at the rate of 40%. PRSI contributions are levied at a rate of 4% with some exemptions for low paid workers and other special categories. Employees also pay a further Universal Social Charge (USC) ranging from 1% to 8% of their gross salary.

We would advise any new entrant to Ireland or person who spends time working in Ireland to take professional advice to determine whether they are classified as Irish tax resident.

Current Personal Income Tax Rates in Ireland are:

Income Tax Rates – 2016		20%	40%
Single/Widowed	(no children)	€33,800	Balance
Single/Widowed	(Qualifying for child carer credit)	€37,800	Balance
Married Couple	(one income)	€42,800	Balance
Married Couple	(Two Incomes) Max*	€67,600	Balance

*Max Spouse additional €24,800

(NB: rates are for the tax year to 31/12/2016)

Employers and employees also have to pay social insurance, which is called PRSI [pay related social insurance]:

Current PRSI rates are:

Band of Income p.a. (€)	Per Wk.	Employee (%)	Employer (%)
€1,976 to €18,304	(€352)	Nil	8.50
€18,305 to €19,552	(€376)	4	8.50
€19,553 to €22,048	(€424)	4	10.75
Over €22,048		4	10.75

NB: (rates are for the tax year to 31/12/2016)

Employees also have to pay a Universal Social Charge [USC]:

Current USC Rates are:

Band of Income P/A	Employee PAYE Income	Self-Employed Non-PAYE Income
€0 to €12,012	1.0%	1.0%
€12,013 to €18,668	3.0%	3.0%
€18,669 to €70,044	5.5%	5.5%
€70,045 to €100,000	8.0%	8.0%
Over €100,000	8.0%	11%

NB: (rates are for the tax year to 31/12/2016)

It is the employers' legal responsibility to pay over PRSI/USC and Income Tax deductions to the Irish Revenue authorities.

What is Value Added Tax (VAT) and should the business be registered?

VAT is an indirect tax on the supply of "goods and services", the rates of VAT range from 0% to 23%. The general turnover threshold for the supply of services within a 12 month period is €37,500 and €70,000 for the supply of goods. For persons supplying both goods and services where 90% or more of the turnover is derived from supplies of goods (other than of the kind referred to in the above paragraph) then the threshold for the supply of goods applies.

There are three types of supply;

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Irish VAT system

The supply of most types of goods and services in Ireland would be classed as Taxable supplies. However when these supplies are made to companies which are outside of Ireland advice needs to be sought as to what rate of VAT, if any, to use.

If an Irish entity sells goods or provides services to its non EU parent then there is no VAT chargeable on this overseas supply, however on the basis that the supply would be VAT payable if made in Ireland then the entity will be able to reclaim all its input VAT.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Ireland has a number of "approved" share option plans which give tax benefits to employees and employers alike and it may be possible to adapt an overseas stock option plan to fit into one of these "approved" plans.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in [Ireland.

How else can we compensate our employees?

Ireland has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Irish businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to "spend" their benefits allowance; which can range from "purchasing" additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

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