RBK

Doing Business in Ireland

2022 Edition

Contents

Introduction

Ireland remains one of the most attractive European locations for Foreign Direct Investment.

Welcome to the 2022 edition of "Doing Business in Ireland" which outlines the tax and business incentives for those planning on doing business in Ireland.

Over 1,000 overseas companies have chosen Ireland as their base from which to do business. These companies are involved in a wide range of activities in sectors as diverse as Engineering, Information and communications, Technologies, Pharmaceuticals, Healthcare, Financial and internationally traded services.

The following are some of the reasons why Ireland is a prime location for many of the world's leading businesses.

Workforce

- Ireland has the most highly skilled, educated, young and multi lingual workforce in Europe
- Excellent third level graduate skills availability
- Reputation for flexibility and responsiveness, the Irish 'can do' attitude
- Commitment to team work and high productivity.

Tax

- A very competitive corporate tax rate of 12.5% (see section 2.2 below).

Other

- Ireland offers a stable, competitive, pro-business environment
- A robust legal system that makes Ireland one of the best places in the world to protect intellectual property
- Ease of global communication(language and time differences and communications structure).

These are some of the reasons why Ireland has been able to remain in the top 10 most attractive European locations for foreign direct investment.

As the largest independently branded Accountancy and Business Advisory Firm in Ireland, RBK we are here to help you do business in Ireland.

Ronan McGivern
International Tax &
Business Advisory
Partner

A prime location...

5 of the top **5** global software companies

10 of the top **10** global pharmaceutical corporations

8 of the top **10** industrial automation companies

18 of the top **25** leading financial services firms

14 of the top **15** global medical technology

.... are all based in Ireland

1 Business Organisation

Government policy is to welcome and encourage investment by non-residents; accordingly almost no restrictions apply to direct inward investment or to the repatriation of profits, dividends or liquidation proceeds.

Business entities that exist in Ireland include unincorporated bodies such as a sole proprietorship or partnership and incorporated bodies (i.e. that exist independently of their members) such as private limited companies, designated activity companies, limited partnerships, public limited companies and unlimited liability companies.

In practice, a non-resident setting up business in Ireland will choose between a branch of an existing non-resident company or an Irish incorporated company. Filing requirements for financial statements and domestic and home country taxation will influence this decision.

Branch

A foreign company setting up a branch in Ireland is required to file basic information with the Registrar of Companies, including name and legal form of the company, company number, place of incorporation, name, address and activities of branch, company directors and secretary, persons resident in the State responsible for ensuring compliance and persons resident in the State authorised to accept service of process.

A certified and apostilled copy of the company's constitutional documents, a copy of the certificate of incorporation including any change of company name and a copy of the latest accounting documents must also be filed.

In Ireland, separate branch financial statements are not required to be filed.

Irish Incorporated Company

Private limited companies are the most common form of business entity used in Ireland. RBK can assist you in the formation of an Irish incorporated company, a process which typically takes up to 10 days.

The company must demonstrate that it will carry on a business activity in Ireland and have at least one EEA resident director (or alternatively secure a bond to the value of €25,000).

Annual accounts and an accompanying directors' report (where abridgement thresholds are not met) must be submitted to the Registrar of Companies and are then available for inspection by the public. Depending on the size of the company, these accounts may need to be audited (see thresholds below for guidance).

Corporate update – Latest Company Law Changes

A fundamental review of Irish company law has been undertaken by the Government over the last number of years. Set out below is a high level overview of the recent company law changes introduced by (i) ***'Companies Act 2014'***; and (ii) ***'Companies (Accounting) Act 2017 in Ireland'***:

1.1 Companies Act 2014

The Companies Act 2014 consolidated the existing 17 Companies Acts from 1963 to 2013, into one Act and it introduced a number of reforms which are designed to simplify company law in Ireland.

These reforms included, inter-alia:-

- The introduction of two new types of private companies, a private company limited by shares 'LTD' and a designated activity company DAC'.
  - A LTD is a very simplified type of company and the key characteristics include unlimited legal capacity, a simple one document constitution and the ability to have only one director however that director cannot also act as company secretary.
  - A DAC is similar to private companies before the 2014 Act came into effect and the key

characteristics include capacity is limited by objects clause, a memorandum and articles of association is required and there must be a minimum of 2 directors.

- The codification of Directors statutory and fiduciary duties
- The introduction of a summary approval procedure to streamline various types of restricted transactions. The restricted activities are:
  - financial assistance for the acquisition of shares (Section 82);
  - the financial assistance for the acquisition of shares (section 82);
  - reduction in company capital (section 84);
  - variation of company capital on re-organisations (section 91);
  - prohibition on pre-acquisition profits or losses being treated in holding company's financial statements as profits available for distribution (section 118);
  - prohibition of loans to directors and connected persons (section 239);
  - domestic merger (section 464); and
  - members voluntary winding up (section 579).
  - An exemption from disclosing directors' residential address on public record.

1.2 Filing of Financial Statements

Unlimited Companies

Effective from 1 January 2022, an unlimited company that has been a holding company of an undertaking which at any time during the relevant financial year had limited liability subsidiaries will have to file financial statements with the CRO (which will include comparative figures where applicable).

In the event that an Irish unlimited company does not have any limited liability protection, then the unlimited company can still avail of the exemption from filing financial statements.

Other Key Changes

The CAA 2017 has amended the definition of a Credit Institution to 'a company or undertaking engaged in the business of accepting deposits or other repayable funds from the public and granting credit for its own account'. This is a welcome clarification for companies and removes the uncertainty under the previous 2014 Act. Any company that meets the above definition is required to register as a Designated Activity Company and directors should carefully consider the filing and preparation of financial statement requirements with the CRO.

1.3 Companies (Accounting) Act 2017

The Companies (Accounting) Act 2017 (CAA 2017) transposes the EU Accounting Directive 2013/34/EU into Irish law, amending the Companies Act 2014 to give effect to the provisions in the Accounting Directive relating to the statutory financial statements and related reports of companies.

Essentially, the purpose of this Accounting Directive is to simplify and reduce the administrative burdens associated with the preparation of financial statements for enterprises, in particular SMEs.

Key changes under this Act include, inter-alia:

- Increase in size thresholds for qualification of a company as 'small' or 'medium' and the introduction of a new 'micro' category (see table 1.3.1 below for thresholds);
- Simplified financial statement preparation and filing for micro companies;
- Broader definition of 'designated ULC' such that the scope for unlimited companies to avoid filing publicly available financial statements has been significantly reduced; and
- Narrowing the definition of a 'credit institution'.

Accounting thresholds under the Companies (Accounting) Act 2017

Table 1.3.1 'Thresholds to qualify as (i) a micro / small / medium company; and (ii) a small group

	Micro Company *	Small Company *	Medium Company**	Small Group ***
Turnover	</=€700,000	</= €12m	</= €40m	</= €12m net </= €14.4m gross
Balance Sheet Total	</=€350,000	</= 6m	</= €20m	</= 6m </= 7.2m gross
Average Number of Employees	</=10	</= 50	</= 250	</= 50

* In order to qualify as small and avail of the audit exemption, the company must meet 2 or more of the above criteria for a micro/small company in respect of the financial year concerned and the preceding year. In addition to availing of an audit exemption, the company will also be eligible for certain reduced disclosure exemptions under FRS 105/ Section 1A of Financial Reporting Standard 102 (Irish GAAP).

** A company that is part of a medium/ large size group cannot avail of the audit exemption. Additionally, the CAA 2017 removes the exemption available to medium sized companies of filing abridged financial statements.

*** Separately a group that qualifies as a small group is exempt from the requirement to prepare consolidated financial statements.

1.4 Loans to Directors

The general rule in accordance with S. 239 of the CA 2014 Act provides a company shall not:

> Make a loan or quasi-loan to a director of the company or its holding company to a person connected with such director;
> Enter into a credit transaction as creditor for such a director or a person so connected;
> Enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such director or persons connected.

The 6 exceptions to the general rule (outlined above) are as follows:

1. **10% Rule** – total amount outstanding under all arrangements is less than 10% Net Relevant Assets ("NRA" determined by latest accounts laid before AGM); or
2. **Reduction in the amount of the company's NRA** – breaches 10% because of value of the assets have fallen – directors must amend the terms to fall under the 10% but must be done within 2 months when they become aware; or
3. The arrangement is with a **group company** (e.g. holding company, subsidiary); or
4. The arrangement is a **reimbursement of the directors expenses** (i.e. expenses properly incurred for the discharge of their duties as officers of the company); or
5. **Business transaction** – if transaction in ordinary course of business and value is no more favourable than would be offered to a normal person (e.g. market rate); or
6. **Summary Approval Procedure** (SAP).

2 Company Taxation

We can assist you in determining whether and to what extent your proposed business activities would be regarded as active business income, thereby qualifying for the 12.5% rate of corporation tax.

2.1 Liability to Irish Corporation Tax

Ireland operates a self-assessment basis of taxation which means that it is up to a company to determine whether it is liable to Irish taxation. An Irish resident company is liable to Irish corporation tax on its worldwide profits (income and gains). A non-resident company carrying on business in Ireland through a branch is liable to Irish corporation tax on profits attributable to that branch (see section 2.5 below).

With effect from 1 January 2022, a non-resident company in receipt of Irish rental income is subject to Irish corporation tax on Irish rental profits (previously they were subject to income tax) at the 25% rate. Capital gains tax applies on gains arising from the disposal of certain Irish property (principally land) subject to any treaty relief that may be available.

The Irish legislative provisions in relation to corporate tax residence were amended in Finance Act 2014. The legislation was amended due to the negative international publicity of the so called "double Irish" tax structure that was facilitated by Irish tax legislation by virtue of which an Irish incorporated company could in certain circumstances be regarded as tax resident nowhere. Under the current legislation a company is tax resident in Ireland if either:

7. it is incorporated here (place of incorporation test). The place of incorporation test does not apply however if the company is regarded as a resident of another country and not a resident of Ireland for the purposes of a tax treaty or

8. it is managed and controlled here regardless of where it is incorporated. This is a question of fact to be determined in each case but the following factors are indicative of management and control being in Ireland:
   > A clear majority of Irish resident directors on the board
   > Major policy decisions being taken in Ireland
   > All board meetings being held in Ireland.

2.2 Rates of Corporation Tax

Low corporation tax rates form the cornerstone of Ireland's tax regime Currently, the rate of corporation tax on active trading profits is 12.5% in almost all sectors. However, the Minister for Finance announced a change to Ireland's corporation tax rate for certain companies in his Budget 2022 speech. If the change is implemented the rate of corporation tax on trading profits will increase to 15%, which will apply largely to foreign multinationals operating in Ireland, as well as some Irish multinationals.

Importantly, the 12.5% rate will continue to apply to those companies whose annual turnover will not exceed €750 million. Non-active (i.e. passive) income such as interest and rental income are taxed at 25%. Certain land dealing activities are taxed at a special rate of 25%.

Certain new companies that set up and commence a trade between 1 January 2009 and 31 December 2026 can avail of a relief for the first five years of trading, subject to certain conditions. The relief granted is linked to job creation in Ireland and the maximum relief available to claim in a given year is €40,000 but the company must have paid a corresponding amount of Employer's PRSI (social insurance) capped at €5,000 per employee. If the PRSI paid exceeds the company's corporation tax in the start-up phase (not unusual) the excess unutilised relief may be carried forward for offset against future corporation tax liabilities of the qualifying trade.

Essentially, this incentive means that a company can earn up to €320,000 of trading income in each of the first five years of trading without paying any corporation tax. If profits are between €320,000 and €480,000 a tax rate of between 0%-12.5% applies.

12.5%

Rate of Corporation Tax

2.3 Computation of Taxable Profits

The starting point is accounting profit determined in accordance with Irish GAAP (Generally Accepted Accounting Principles) or IFRS. This profit must then be adjusted in accordance with tax law. In general, expenses are deductible if they are non-capital in nature and are incurred wholly and exclusively for the purposes of the trade. Certain expenses are not tax deductible however, such as book depreciation, non-staff entertainment, general provisions, dividends and distributions.

Non-capital pre-trading expenditure incurred in the 3 years prior to the commencement of trading is deductible for tax purposes. Interest on money borrowed for trading purposes is deductible on an accruals basis, subject to certain limited exceptions.

Whilst book depreciation is not deductible, tax depreciation allowances are available in respect of certain capital expenditure such as:

- Plant and machinery - 12.5% per annum (includes computer software)
- Certain specified intangible assets - in line with accounting policy for depreciation or over 15 years
- Industrial buildings (i.e. factories) - 4% per annum
- Accelerated allowances (100% upfront) are available for expenditure on certain energy efficient items of plant and machinery.

2.4 Transfer Pricing

Ireland has had formal transfer pricing legislation since 2011. In Finance Act 2019 Ireland's transfer pricing rules were overhauled quite significantly, whereby the 2017 OECD transfer pricing guidelines were effectively brought into Irish domestic tax legislation. The new changes came into force on 1 January 2020 and apply to companies with accounting periods beginning on or after 1 January 2020. As part of the measure the "grandfathering" provision which permitted an exemption from the application of the new transfer pricing rules for pre-July 2010 arrangements has been removed with effect from 1 January 2020.

One of the most material changes to our transfer pricing legislation is the extension of transfer pricing to non-trading transactions. Previously Irish transfer pricing legislation only applied to trading transactions. This legislation will impact on group structures where interest free funding loans may have been granted by Irish companies to other group companies.

Note, however, that the extension of the legislation to non-trading transactions does not apply where both parties to the transaction are within the charge to Irish tax. The notional interest arising will be treated as passive income subject to the 25% rate of corporation tax.

At present there is a specific exclusion for small and medium size enterprises. To fall within this exemption, the enterprise (including group companies) must have less than 250 employees and either turnover of less than €50m or assets of less than €43m. However, it is proposed that transfer pricing legislation will be extended to SMEs. The date of implementation is subject to a Ministerial Order.

In the main the transfer pricing rules require an additional layer of compliance with a greater need for documentary evidence to be created and retained. Specific advice on transfer pricing should always be obtained.

12.5%

Tax depreciation allowance
Plant & Machinery

4%

Tax depreciation allowance
Industrial Buildings

2.5 Taxation of Branch Profits

Ireland recently introduced the Authorised OECD Approach (AOA) to the attribution of profits to branches of non-resident companies into law with effect from 1 January 2022. The AOA seeks to attribute to a permanent establishment or branch the profits that it would have earned at arm's length if it were a legally distinct and separate enterprise performing the same or similar functions under the same or similar conditions. Therefore, it incorporates separate entity and arm's-length principles.

There are also documentation requirements ("relevant branch records") as may reasonably be required for determining whether the relevant branch income has been computed. However, documentation is not required for either (a) a small enterprise; or (b) a medium enterprise where relevant branch income attributable to the branch for the accounting period is less than €250k.

2.6 Losses

Losses are computed in the same way as taxable business profits. Trading losses may be used to shelter trading income in the current year or previous accounting period of corresponding length. The amount of loss required depends on the tax rate applicable to the income being sheltered. Any unused trading losses may be carried forward indefinitely for offset against profits from the same trade.

2.7 Group Relief

Ireland does not have a concept of "fiscal unity" or consolidated group tax. However, trading losses may be offset against taxable trading profits of another group company on a current year basis. A group consists of a parent company and all of its direct or indirect 75% subsidiaries, all companies being resident either in Ireland, in another member state of the EEA or a DTA country.

Following the European Court of Justice's decision in the Marks and Spencer case, Irish legislation now provides that losses of a foreign subsidiary resident for tax purposes in the EU may be offset against profits of the Irish resident parent company, in certain circumstances. The main conditions for relief are that the losses must not be otherwise available for relief and would be available for relief under Irish rules if the surrendering company was Irish resident.

2.8 Administration – Filing and Payment deadlines

When a company first comes within the charge to Irish tax it is obliged to file a TR2 form to register for corporation tax. This form can also be used to register for PAYE/PRSI (Social Insurance) and VAT if required (see further Section 6).

A tax return must be filed within 9 months of the accounting year end. Revenue generally has a 5-year period in which to audit a tax return.

A payment on account of tax (known as preliminary tax) must in general be paid on the 21st day (23rd day for electronic payments) of the sixth month of the accounting period. The payment must amount to 45% of the corporation tax liability for the current year, or 50% of the prior year's final corporation tax payable. One month before the year-end a top up payment must be made to bring the total payment up to 90% of the final liability for the current year. The balance of the tax is paid when the tax return is filed i.e. 9 months after the year end.

Different rules apply to small companies. A "small company" is defined as a company whose corresponding corporation tax liability for the preceding accounting period does not exceed €200,000. A start-up company can be regarded as a "small company" if its estimated tax liability for the first year of trading will not exceed €200,000. A small company can base its preliminary tax payment on 100% of the prior year's liability. The payment must be made one month before the end of its accounting period with the balance of the tax payable when the tax return is filed i.e. 9 months after the year end.

2.9 Capital Gains

Chargeable gains are taxed at a rate of 33%. An allowance for inflation up to 31 December 2002 only is given in computing the gain. An Irish resident company is taxable on its worldwide gains.

A non-resident is liable to Irish taxation in respect of certain specified Irish assets (mainly land, mineral / exploration rights and shares in unquoted companies deriving their value from Irish land and mineral / exploration rights) and assets used for the purposes of an Irish branch trade.

Ireland has a participation exemption in respect of disposals of certain shareholdings – see further Section 4.1.

It is possible to transfer assets between group companies without triggering a capital gains tax liability. A group for this purpose is defined as a parent company and all of its direct or indirect 75% subsidiaries, all companies being resident either in Ireland, in another member state of the EEA with whom Ireland has a tax treaty. A clawback of the relief can apply in certain circumstances.

Non-capital pre-trading expenditure incurred in the 3 years prior to the commencement of trading is deductible for tax purposes.

3 International Issues

3.1 Double Taxation Treaties

Ireland has an extensive double taxation treaty network and has signed treaties with 76 countries, of which 73 are in effect– see further Appendix iv.

An Irish resident company can avail of Ireland's tax treaties which can be used in many instances to reduce withholding taxes on inbound or outbound dividend, royalty or interest payments to NIL.

3.2 Outbound Payments

The Irish Government's approach in dealing with outbound payments has been to reduce where possible the withholding tax obligation on cross border payments by companies. There are therefore numerous domestic withholding tax exemptions as well as provisions of EU legislation and double taxation agreements.

A. DIVIDENDS

A common method of repatriating profits from Ireland is payment of dividends. Under domestic law withholding tax of 25% must be deducted from dividend payments made subject to certain exemptions.

The domestic exemptions are very generous and obviate the requirement for most inward investors to withhold tax on dividend payments. Exemption is granted in respect of dividends paid to the following:

- Companies entitled to benefit from the EU parent subsidiary directive
- Individuals resident in a tax treaty country or EU member state
- Companies resident of tax treaty countries that are not under the control of Irish residents
- Companies which are ultimately controlled by residents of tax treaty countries or EU Member States
- Companies the principal class of shares of which are substantially and regularly traded on a recognized stock exchange in a DTA country or EU Member State
- Companies that are 75% subsidiaries of another company the principal class of shares of which are substantially and regularly traded on a recognized stock exchange in a DTA country or EU Member State
- Companies that are wholly owned by two or more companies the principal class of shares of which are substantially and regularly traded on a recognized stock exchange in DTA countries or EU Member States.

Depending on the applicable exemption a declaration in the Revenue prescribed form may be required to be provided to the Irish paying company to enable the dividend be paid gross. This is a procedural matter. Self-certification applies to foreign corporate shareholders thereby reducing administration.

If the domestic exemption does not apply it may be possible to rely on the applicable tax treaty to avail of a reduced or NIL withholding tax rate – see Appendix iv.

B. INTEREST

A 20% withholding tax also applies to interest payments on loans lasting more than one year. However, where the interest is paid in the course of a trade to a company resident in the EU or tax treaty jurisdiction no withholding tax applies under domestic law. This relief is now subject to the additional requirement that the country in question imposes a tax that generally applies to interest income receivable by companies from sources outside that country. Alternatively, the EU Interest and Royalties Directive or applicable tax treaty may provide an exemption from withholding tax – see Appendix iii.

There is no withholding tax on the remittance of branch profits to the foreign head office.

C. ROYALTIES

A patent royalty or royalty which is regarded as an "annual payment" (i.e. pure income profit earned by the recipient without incurring any expense) is subject to 20% withholding tax under domestic law. This is subject to a number of important exemptions that have the effect of reducing the withholding tax to nil in many scenarios, including:

- A payment of royalties by a company in the course of its trade or business, may be made without the deduction of withholding tax if the recipient company is resident in an EU member state (other than Ireland) or in a country with which Ireland has a double tax treaty and which imposes a tax that generally applies to royalties receivable in that country by companies from sources outside that country. This relief is subject to the condition that the royalty is paid for bona fide commercial reasons and is not paid to the recipient company in connection with a trade or business carried on by it in Ireland through a branch or agency
- A royalty payment to a connected company may be exempt under the EU Interest and Royalties directive
- Alternatively, if the recipient is resident in a treaty jurisdiction, the applicable treaty may reduce or eliminate the withholding tax.

D. IRISH BRANCH PROFITS OF A NON-RESIDENT

There is no withholding tax on remittance of branch profits to foreign head office.

E. PROFESSIONAL FEES / SERVICES

Ireland does not levy withholding tax on professional fees being paid across border.

3.3 Inbound Payments

A. DIVIDENDS

Ireland operates a credit rather than an exemption system for relieving foreign taxes. Dividends received by an Irish parent from trading profits of a foreign subsidiary resident in an EU country or Treaty state are taxed at 12.5% with credit for tax paid by the subsidiary on the profits from which the dividend was paid (underlying tax) and withholding tax.

Recent amendments to tax law ensure similar treatment for dividends received from non EU Treaty locations provided the company paying the dividend is quoted on a recognised stock exchange (in an EU or Treaty state) or is owned directly or indirectly by such a company.

Portfolio dividends (shareholding of 5% or less) are taxed at 12.5%. Portfolio dividends are exempt from Irish tax if they are trading income of the recipient company. Other foreign dividends are taxed at 25%, again with credit for withholding tax and underlying tax subject to certain conditions.

Irish legislation was amended in 2013 due to a decision of the European Court of Justice. The amendment effectively provides an additional foreign tax credit (AFTC) against Irish corporation tax on dividend income from EU/EEA subsidiaries up to the amount of the nominal (statutory) rate of corporation tax in that jurisdiction rather than the foreign effective tax rate applicable to the dividend. As Ireland's 12.5% rate of corporation tax is one of the lowest in the EU/ EEA, this effectively provides for an exemption from Irish corporation tax in many instances in respect of dividends from EU/EEA subsidiaries.

Ireland permits pooling of tax credits domestically and offshore which often serves to eliminate residual Irish tax on profits remitted here – see further Section 4.

Most dividends received from Irish resident companies are exempt from Irish tax. However, dividends received from a connected company which has moved tax residence to Ireland in the 10 year period prior to the date the dividend is paid, may no longer qualify for the exemption to the extent that the dividend is paid out of profits earned before the company became Irish tax resident.

B. INTEREST & ROYALTY PAYMENTS

Interest and royalties are taxed at 25% (unless received in the course of an active trade). Foreign withholding tax may apply depending on the domestic tax legislation in the paying company's jurisdiction. However the EU Interest and Royalties Directive may reduce the withholding to NIL or the domestic rate may be eliminated / mitigated under the terms of any applicable double taxation agreement. Double tax relief is available for any tax withheld at source.

Unilateral credit relief in respect of foreign withholding taxes on royalty income from non-treaty countries is available to all trading companies in respect of royalties which are taxable as trading income and received on or after 1 January 2010.

C. FOREIGN BRANCH PROFITS OF AN IRISH RESIDENT COMPANY

See Section 4 below.

3.4 Transfer Pricing

Ireland introduced transfer pricing legislation – refer to Section 2.4 above. In addition, payments that are excessive may be disallowed under the "wholly and exclusively" rule that determines entitlement to tax deductibility.

3.5 Controlled Foreign Companies (CFC) Rules and Thin Capitalisation

Ireland recently introduced as part of Finance Act 2018 CFC rules as required under the Anti-Tax Avoidance Directive (ATAD) adopted by the EU. The CFC rules have been designed with the intention of preventing the shifting of profits to offshore entities based in low tax regimes.

Under Irish legislation a CFC is defined as:

- an entity that is not resident in Ireland, and
- is under the control of an Irish company / companies.

However, even if an entity meets these conditions it still may not fall to be charged under the CFC rules. A CFC charge under the legislation will only arise to a chargeable company (being a controlling company or a company connected with it which performs activities in Ireland on behalf of the CFC group) where in an accounting period:

- the company in question has undistributed income, and
- the Irish activities in relation to the CFC group are performed by a chargeable company.

There are also a number of exemptions from the CFC charge which are outlined in brief below:

- Effective tax rate exemption – this exemption applies where the tax paid by the CFC in its place of residence is more than half of the tax that would have been paid in Ireland had the CFC been Irish tax resident
- Low profit margin exemption – where in an accounting period of a CFC the accounting profits are less than 10% of its operating costs, subject to certain restrictions, this exemption should be available to claim
- Low accounting profit exemption – this exemption applies if in an accounting period the accounting profits of a CFC are less than €750,000 and the amount of the profits representing non trade income is less than €75,000. Also, if the accounting profits are less than €75,000 there is an exemption
- Exempt period exemption – this exemptions applies to CFC's and grants a 12 month period whereby newly acquired companies that qualify as a CFC are exempt from the CFC rules.

Please note that with effect from 1 January 2021 these exemptions will not be available for an accounting period of a CFC where the CFC is resident in a jurisdiction that is listed in the "EU list of non-cooperative jurisdiction for tax purposes".

If after considering all the circumstances and exemptions from CFC a charge arises then it should be computed based on the undistributed income of the CFC. The tax rate applicable depends on how the income subject to the charge is earned, if it is earned through trading tax at a rate of 12.5% will apply and in all other cases a rate of 25% will apply. RBK can assist with the computation.

Under current legislation where it can be shown that the CFC relies on Irish activities to generate its income, no CFC charge will be due if it can be shown to the satisfaction of Revenue that, in summary, the arrangement was entered into on arm's length terms and not part of an arrangement to avoid tax.

3.6 Exit Charge on Migration

Finance Act 2018 has transposed into Irish law new rules regarding an exit charge as required under the EU's Anti- Tax Avoidance Directive. The new rules fully replace exit charge rules that existed prior to its introduction.

In summary the new legislation imposes a tax charge on companies that transfer assets to another jurisdiction or transfer the entire business to a foreign jurisdiction.

The rules will apply in the following circumstances:

- Where a company resident in the EU transfers assets from a permanent establishment in Ireland to its head office or to another permanent establishment in another country
- Where a company resident in the EU transfers its business from a permanent establishment in Ireland to its head office or to another permanent establishment in another country
- Where a company transfers its residence from Ireland to another country, excluding any asses that remain in Ireland.

Should the company fall under the exit tax charge then the company is deemed to have disposed and immediately reacquired its assets/business at market value. Any gain arising as a result will be taxable at 12.5% and, if so chosen, can be paid over a five year period.

In certain circumstances a company is permitted to pay the exit tax in equal annual instalments over a five year period, although interest will apply over the period of the deferral.

3.7 Interest Limitation

Finance Act 2021 introduced new Interest Limitation Rules (ILR) in accordance with the EU's Anti-Tax Avoidance Directive (ATAD). These new rules may impact any company with debt funding that is liable to corporation tax in Ireland and are effective for accounting periods commencing 1 January 2022.

The purpose of the ILR is to limit base erosion by utilising excessive interest deductions. ILR acts to limit the amount of tax relief on net borrowing costs to 30% of the taxpayer (company or group) EBITDA (subject to increased % in the case of a group ratio).

Net borrowing costs is the net amount arrived at by netting taxable interest income against deductible interest expense.

There are a number of exceptions provided for under the legislation. The exceptions are designed to address circumstances where there is a limited risk of base erosion or profit shifting.

These exceptions are:

> where the Irish taxpayer's net borrowing costs are less than €3 million;
> where a company is a standalone company, being a company that has no associated enterprises or permanent establishments;
> Long-Term Public Infrastructure Projects, being a project to provide, upgrade, operate or maintain a large-scale asset in the general public interest; and
> interest on legacy debt, being debt the terms of which were agreed prior to 17 June 2016 (can be lost if there are modifications to the loan).

3.8 Country by country reporting

The legislation requires large multinationals enterprises to file what is known as a country by country report to provide a breakdown of revenue, profit, taxes etc. for each jurisdiction in which the group operates. It only applies to groups with annual consolidated group revenue in excess of €750 million in the preceding fiscal year. While the principal reporting obligation may fall on the ultimate parent company of the Group in their home jurisdiction, there is also a "notification" obligation on subsidiary companies to notify Revenue in their home jurisdiction.

3.9 Anti hybrid rules

This piece of legislation was introduced into Irish legislation in order to comply with the EU's anti-tax avoidance directive (specifically ATAD 2). The purpose of the rules was to prevent companies from benefitting from differences in the tax treatment of payments on hybrid financial instruments and on payments by or to hybrid entities. The implication is likely to be most visible when it comes to US shareholders and the structures they employ whereby, given certain elections, an entity may be treated as opaque or transparent for US tax purposes. The legislation governing hybrid entities is quite complex but our team would be happy to assist you in this regard.

3.10 DAC 6

DAC 6 imposes an obligation on intermediaries (and taxpayers in some circumstances) to notify the Revenue Authorities of cross border transactions that have certain hallmarks. Ireland has implemented the reporting obligation of DAC 6 into its domestic legislation.

4 Tax Incentives

Ireland is a well established location for holding companies. In addition, due to legislative changes, Ireland has become a popular location for the holding and exploitation of intellectual property.

4.1 Tax Incentives for Holding Companies / Headquarters

Ireland is very popular as a holding company location. The key features of the regime are as follows:

- Participation exemption i.e. an exemption from capital gains tax in respect of the disposal by a company of shares in its subsidiaries in certain circumstances
- Effective exemption for dividends received from trading profits of EU/ Treaty subsidiaries in most cases
- Onshore pooling of tax credits on foreign dividends which, with appropriate planning, can result in the tax free repatriation of profits to Ireland.

A. PARTICIPATION EXEMPTION

There is no Irish capital gains tax on the disposal of substantial shareholdings. A substantial shareholding is a holding of at least 5% in an investee company, resident in an EU (including Ireland) or double tax treaty jurisdiction. There is a minimum 12 month holding period required and the investee company itself must be a trading company or be a member of what is primarily a trading group.

The exemption does not apply to individuals and does not apply to any disposal of shares in a company which derives the greater part of its value from Irish land and buildings.

B. TAXATION OF FOREIGN DIVIDENDS

As set out at Section 3.3. above key features are as follows:

- Dividends received by an Irish parent, paid out of trading profits of a foreign subsidiary resident in an EU country or Treaty state are taxed at 12.5% with credit for tax paid by the subsidiary on the profits from which the dividend was paid (underlying tax) and withholding tax
- Recent amendments to tax law ensure similar treatment for dividends received from non EU Treaty locations provided the company paying the dividend is quoted on a recognised stock exchange (in an EU or Treaty state) or is owned directly or indirectly by such a company
- Additional foreign tax credit (AFTC) against Irish corporation tax on dividend income received from EU/EEA subsidiaries, resulting in an effective exemption in many instances
- Portfolio dividends (shareholding of 5% or less) are taxed at 12.5%
- Other foreign dividends are taxed at 25%, again with credit for withholding tax and underlying tax subject to certain conditions
- Dividends from both treaty and non-treaty jurisdictions can be pooled in a single dividend basket so that excess credits attaching to dividends from high taxed jurisdictions may be used to credit Irish tax on dividends from low tax jurisdictions. However, any surplus foreign tax credits arising on dividends taxable at 12.5% will not be available for offset against tax on dividends taxable at 25%. Any surplus foreign tax credits arising on dividends taxable at 25% will still be available for offset against tax on dividends at 12.5%. Total excess credits in any year can be carried forward to the following year. Note that the AFTC is not available for pooling.

Given Ireland's extensive treaty network, the above provisions can effectively result in little or no tax in Ireland on foreign dividends.

C. FOREIGN BRANCH PROFITS

An Irish resident company is taxed on its worldwide profits, including those of foreign branches. Finance Act 2007 provides for unilateral relief for foreign tax in respect of a company that has a branch in a country with which Ireland has no tax treaty (where there is a treaty in place the treaty will provide for credit for foreign tax paid on branch profits). The Act also provides for pooling in the case of foreign branch profits such that surplus foreign tax (i.e. to the extent that it exceeds Irish tax on the same profits) from a high tax jurisdiction can be used to shelter Irish tax on branch profits from other low tax jurisdictions. Any remaining unutilized tax credits can be carried forward for offset against foreign branch profits in subsequent periods.

D. TAX DEDUCTION FOR INTEREST

Interest on borrowings used to acquire shares in or lend money to a trading company, an Irish rental company or a holding company of a trading or Irish rental income company is tax deductible on a paid basis, subject to certain conditions. The company paying the interest must have material interest (shareholding of greater than 5%) in, and at least one of its directors must be a director of, the acquired/ borrowing company.

Interest on connected party borrowings used to finance an intra group share transfer is only deductible in certain circumstances.

4.2 Tax Incentives – Intellectual Property

Government policy is to attract research and development activity to Ireland and in addition to the tax incentives below there is also financial assistance in the form of cash grants to incentivise foreign investors to locate R&D activities here – see further Appendices i, ii and iii.

A. TAX DEDUCTION FOR ACQUIRED OR DEVELOPED IP

Expenditure incurred after 7 May 2009 on specified intangible assets qualifies for tax depreciation over the life of the asset (as reflected in the financial statements) or 15 years, provided the company uses the assets acquired actively in its trade. The definition of specified intangibles is very broad and includes, amongst others, patents, copyright, computer software acquired for commercial exploitation and goodwill (only to the extent that it is attributable to other qualifying intangibles). Finance Act 2014 extended the definition to include customer lists (subject to certain conditions). Finance Act 2020 introduces a clawback of the capital allowances where the IP is disposed of by the taxpayer. Under the change, companies who move their intellectual property outside of Ireland or sell it on after holding it here for five years will face clawback on any capital allowances they have claimed. Prior to this change, the clawback only affected companies who decided to move their intellectual property within five years.

B. R & D TAX CREDIT

In addition to the normal corporate tax deduction (at 12.5%) for expenditure on R&D an additional tax credit of 25% is available for qualifying expenditure on R&D i.e. total value of tax breaks is 37.5%. Subject to certain restrictions, sub-contracted R&D expenditure may also qualify. Finance Act 2019, increased the limit on which relief can be claimed on payments for R&D made to third parties (e.g. Universities) from 5% to 15% of the entity's own internal qualifying R&D expenditure.

Finance Act 2019 also introduced a number of other measures specifically for small and micro companies, being companies that employ fewer than 50 persons and whose annual turnover and/or balance sheet total does not exceed €10 million, including those set out below. These are subject to a commencement order by the Minister for Finance.

In addition to tax incentives, there is also financial assistance available to investors looking to locate R&D activities here.

- Increased the credit available on qualifying expenditure for small and micro companies from 25% to 30%
- An increase in the amount of cash that can be refunded to two times the company's payroll liability for the relevant accounting period
- The introduction of a provision permitting the claim for a R&D credit prior to the relevant company beginning to trade.

The credit can be used to reduce the corporation tax liability in the current period and carried back to the prior year. Unused credits can be carried forward to offset against corporation tax in subsequent periods. If the company does not have a sufficient corporation tax liability to use the credit, it is possible for that company to obtain a cash refund of the tax credit over three years, subject to certain conditions.

This "cash refund mechanism" was subsequently enhanced to increase the limit of cash refunds for certain companies. Companies also have enhanced flexibility regarding accounting for the credit above the line. It is also possible in certain circumstances for companies to surrender the R&D credit to key employees engaged in R&D activities thereby reducing their Irish income tax liabilities.

R&D is extensively defined for the purposes of the credit but certain activities do not qualify – RBK can assist you in determining if your proposed activities would be eligible for relief. Where the expenditure is on buildings used in the R&D function then 25% of this expenditure can also be claimed as a tax credit or cash refund, depending on the circumstances. The tax credit is in addition to any capital allowances which may be available.

C. INTELLECTUAL PROPERTY TRANSERS

There is an exemption from stamp duty (a form of transfer tax at rates up to 7.5%) on the transfer of specified intellectual property.

D. KNOWLEDGE DEVELOPMENT BOX

As part of Finance Act 2015, the Irish government introduced the Knowledge Development Box as another means of attracting companies with intellectual property to exploit it within Ireland. The types of intellectual property that qualify for the relief include computer programs, inventions protected by a qualifying patent and intellectual property for small companies.

A number of conditions need to be met before qualifying for the relief. Assuming the company does qualify the profits earned by the Irish company through the exploitation of the R&D undertaken are effectively taxed at a rate of 6.25%.

However, the profits taxable at this lower rate are restricted by the proportion of the Irish based company's R&D costs to the total R&D costs incurred on the qualifying asset.

As a result of Finance Act 2020 the availability of this relief is to be extended for a further 2 years until 31 December 2022.

E. DIGITAL GAMING TAX CREDIT

As part of Finance Act 2021, the government introduced the Digital Gaming Tax Credit. The Digital Gaming Tax Credit offers companies developing digital games a tax credit of up to 32% per qualifying game. This credit can be claimed by the company on an annual basis or at the conclusion of the game development effort. This credit is available to Irish resident companies and to companies resident in another EEA state who operate in Ireland through a branch to agency.

A qualifying digital game is one that integrates digital technology, can be published on an electronic medium, is interactive/built on an interactive software and incorporates at least three of the following:

a. Text
b. Sound
c. Still images
d. Animated images.

Before a company can avail of this new tax credit, there is a requirement to attain certification from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

4.3 Start Up Exemption

As noted at 2.2 above, certain start ups are exempt from corporation tax for their first five years, provided their annual corporation tax liability does not exceed €40,000 per annum (e.g. €320,000 of tax adjusted trading profits). Marginal relief applies where the liability is between €40,000 and €60,000 per annum.

Given Ireland's extensive treaty network, and the availability of unilateral credit relief, it can effectively result in little or no tax in Ireland on foreign dividends.

5 Individual Taxation

Tax residence in Ireland is based purely on the number of days in Ireland. There are no subjective tests of residence.

5.1 Residence

Unlike other jurisdictions, tax residence in Ireland is based purely on the number of days in Ireland. There are no subjective tests of residence.

Under Irish tax legislation an individual is regarded as tax resident if either:

1. He/she spends 183 days or more in Ireland in a tax year, or
2. He/she spends 280 days or more over two consecutive tax years provided he/she is here for more than 30 days in each year.

A tax year for Irish tax purposes is akin to a calendar year. A day is counted if the individual is present in Ireland for any part of a day.

An individual is regarded as ordinarily resident in Ireland for a tax year if he has been Irish resident for each of the three preceding tax years. Once ordinarily resident you will not cease to be ordinarily resident for a tax year until you have been non-resident in Ireland for each of the preceding three tax years.

5.2 Liability to Irish income tax

An individual that is not resident in Ireland is only liable to Irish income tax in respect of Irish source income and employment income, to the extent the duties are carried on in Ireland.

An individual that is Irish resident but not Irish domiciled is liable to Irish income tax on the following sources of income:

> Irish source income,
> Employment income, to the extent the duties are carried on in Ireland and
> Foreign (non-Irish) source income only to the extent that such income is remitted to Ireland.

This is commonly referred to as the remittance basis of taxation. This provides that income from the foreign securities and possessions will be subject to income tax on the full amount of actual funds received in the State in the relevant tax year rather than the income arising in that year.

5.3 Special Assignee Relief Programme (SARP)

SARP relief provides for income tax relief on a portion of income earned by employees who are assigned by the relevant employer to work in Ireland for that employer (or for an associated company of that relevant employer) up to 31 December 2022. The individual must have previously worked for that relevant employer for a minimum of 6 months in a country with which Ireland has a double taxation agreement immediately prior to arriving in Ireland.

Where certain conditions are satisfied, an employee can make a claim to have 30% of his or her income between €75,000 (lower threshold) and €1 million (upper threshold) disregarded for Irish income tax purposes. However, such disregarded income for income tax purposes is not exempt from the Universal Social Charge (USC). The relief is available for a maximum period of five years. In addition, employees who qualify for relief under this section may also receive free of tax certain expenses of travel and certain costs associated with the education of their children.

5.4 Liability to capital gains tax

Chargeable gains are taxed at a rate of 33%.

A non-resident is liable to Irish taxation in respect of certain specified Irish assets (mainly land, mineral/ exploration rights and shares in unquoted companies deriving their value from Irish land and mineral/ exploration rights) and assets used for the purposes of an Irish branch trade.

In the case of an individual who is resident or ordinarily resident but not domiciled in the State, they are liable to Irish CGT in respect of gains arising from the disposal of specified assets, as set out above. In addition gains realised on disposals of assets situated outside the State are liable to tax only to the extent that they are remitted to the State. Such gains are not chargeable to tax until so remitted.

5.5 Capital Acquisitions Tax (CAT)

CAT is a tax on the recipient of a gift/ inheritance. Gifts or inheritances of Irish situate property remain within the charge to CAT regardless of the domicile or residence of the disponer or the beneficiary. However, a charge to CAT only arises on gifts/inheritances of foreign located assets if either the disponer or the beneficiary is resident or ordinarily resident in Ireland in the tax year in which the date of the gift/ inheritance falls. There is an exception to this rule which provides that a non-Irish domiciled disponer or beneficiary will not be treated for CAT purposes as being resident or ordinarily resident in the State unless:

1. The person has been resident in the State for the 5 consecutive years of assessment preceding the year of assessment in which the gift/ inheritance falls; and
2. The person is either resident or ordinarily resident in the State on the date of the gift or inheritance.

Tax advice should be obtained and RBK can assist in this regard.

33%

Rate of taxation on chargeable gains

6 Other Issues

A posting to Ireland can result in tax savings for many seconded expatriate employees provided the assignment is properly structured from the outset.

6.1 Employer Issues

Below is a brief summary of employer tax obligations. A posting to Ireland can result in tax savings for many seconded expatriate employees provided the assignment is properly structured from the outset.

The earnings of employees of an Irish company are subject to tax at source known as PAYE (Pay As You Earn). This is deducted by the employer and paid over to the tax authorities directly.

Ireland's social security system is known as PRSI (Social Insurance). Contributions are made by both employers and employees as a percentage of earnings (with no cap in respect of employer contributions) and are obligatory for all employees aged 16 or over. Employer's top rate of contribution is 11.05% and employees are subject to PRSI of 4%. It may be possible to obtain an exemption for Irish social security if the employee is seconded to Ireland from an EU state or country with which Ireland has a reciprocal agreement in respect of Social Insurance (e.g. the US) for a temporary period provided certain administrative requirements are met.

The Universal Social Charge (USC) came into effect on 1st January 2011. Employers are responsible for deducting the charge from employees' salaries. The Irish Revenue regard the USC as an income tax for the purpose of Ireland's double taxation agreements.

Non-domiciled foreign executives working for overseas companies in Ireland will be liable to tax under the PAYE regime regardless of their residency position in respect of their remuneration for duties performed in Ireland. If the employee spends less than 60 work days here, the employee may be exempt from Irish tax and the employer is not obliged to deduct PAYE.

In some circumstances, and subject to satisfying certain administrative requirements, PAYE need not be operated if the employee is here for more than 60 but less than 183 days and if they also suffer withholding taxes in the "home" country on the income attributable to the performance of duties in Ireland. If the above concession cannot be availed of, the employer is still obliged to deduct tax under PAYE and the employee must subsequently file a tax return to reclaim the tax deducted (if relieved under the Treaty). Advice should be obtained and RBK can assist employers in understanding and managing their obligations.

As set out in Section 5, the expatriate will not be liable to Irish tax in respect of income from duties performed outside Ireland and other sources of foreign income unless it is remitted here. The structuring of employment contracts and designation and operation of foreign bank accounts is critical to minimise the Irish tax liability of the seconded employee. RBK can assist with the provision of Outsourced HR Services.

One important change that occurred to the payroll system in Ireland was a complete overhaul of how the PAYE system operates. Under the moniker "PAYE Modernisation" a system of real-time reporting was introduced whereby both employers and employees have access to the most up-to-date information. This means that it is more important than ever that information provided to Revenue is accurate as any corrections, while facilitated, will draw unwanted attention to the employer. RBK can assist with the provision of Outsourced Payroll Services.

11.05%

Employer's top rate of contribution

6.2 Visas / Work Permits

Generally EU/EEA Nationals and Swiss Nationals do not require work permits or visas when doing business in Ireland. However, non-EU/EEA Nationals coming to Ireland will require visas and/or work permits.

RBK have a dedicated team who work with international and domestic businesses and individuals in securing many different types of permits, visas and corporate permissions such as:

> **Contract for Services Employment Permit** - designed for situations where a foreign-based company has won a contract to provide services to an Irish entity on a contract for services basis and to facilitate the transfer of non-EEA employees to work on the Irish contract in Ireland

> **Intra-company Transfer Permits** - Facilitates the transfer of key personnel who are Non-EU/ EEA Nationals from an overseas branch of a multinational corporation to its Irish branch

> **Critical Skills Employment Permit** - Available to highly skilled workers who are in significant short supply in the Irish labour market

> **General Employment Permits** - A Non-EU/EEA national can be employed under a General Employment permit where a skills shortage has been identified by an Irish employer after having carried out a labour market needs test

> **Visas** – Some non-EEA nationals will require a visa to enter Ireland. The list of countries whose citizens do not require a visa to enter Ireland is defined in the Immigration Act 2004 (Visas).
> - Individuals should apply for a visa in the Irish embassy or consulate in their own country of residence.
> - A short stay 'C' visa is applicable for either a single entry of multiple entries up to a maximum stay of 90 days (i.e business meeting).
> - A long stay 'D' visa is applicable for periods of entry over 3 months (for example work).
> - Individuals who stay in Ireland for more than 3 months, and who are not a citizen of the European Union (EU), the European Economic Area (EEA) or Switzerland, must register with The Garda National Immigration Bureau (GNIB)

> Please note that in order to be eligible for one of the work permits listed above, an individual must meet certain criteria around length of service and remuneration.

The government announced to the Employment Permit System in October 2021, including expanding quota limits and eligibility for specific employment permits to address skills and labour shortages in Ireland:

> Construction
> Logistics
> Hospitality
> Agri-food sectors
> Social workers will also be eligible for Critical Skills Employment Permits

6.3 Irish Employment Rights & Contracts of Employment

All employers in Ireland are required to be compliant with Employment Legislation. Non-EU/EEA nationals who are approved to work legally in Ireland must enjoy the same employment and contractual entitlements as Irish workers. RBK has a dedicated HR Solutions Team that can assist companies setting up in Ireland to understand their Irish employment obligations.

Some key legislation includes:

- **Terms of Employment (Information) Acts 1994-2014** – Employers are legally required to provide a written statement of terms of employment (i.e. contract of employment) to all employees within two months of their start date. Under the **Employment (Miscellaneous Provisions) Act 2018** an employer is required to provide employees with a written statement of five (5) core terms of their employment within five (5) days of commencing employment, if the full Contract of Employment is not finalised. The Five Core Terms of Employment are:
  - Full names of the employer and employee
  - The address of employer
  - In the case of a temporary contract of employment, the expected duration of that contract, or in the case of a fixed-term contract, the date on which the contract expires
  - The rate or method of calculation of the employee's remuneration together with the pay reference period for the purposes of the National Minimum Wage Act 2000
  - The number of hours which the employer reasonably expects the employee to work per normal working day, and per normal working week

Employers will still need to issue the remaining terms of employment within 2 months as per the existing **Terms of Employment (Information) Acts 1994-2014.**

- **Payment of Wages Act 1991** - Employers are required to provide employees with a written statement of wages (payslip), detailing gross wages and all deductions
- **The National Minimum Wage Act, 2000** – From 1st January 2022, the national minimum wage is €10.50 per hour
- **Organisation of Working Time Act 1997** - Provides for basic paid leave entitlement of up to 4 weeks/20 days holidays per annum plus 10 public holiday entitlements from March 2022. Provides for a maximum average working week of 48 hours, breaks and rest periods.
- **Pensions Amendment Act 2002** – There is no legislation requirement for an employer to provide an occupational pension scheme. However, there is an obligation for all employers to offer access to a Personal Retirement Savings Account (PRSA). There is no obligation on an employer to contribute to a PRSA on behalf of an employee.

Taxable businesses can recover VAT charged to them on purchases of most goods and services.

Protective Leaves

Employers are obliged to allow employees (who meet relevant qualifying criteria, if any) to avail of certain statutory protective leaves, such as maternity, adoptive, parents, paternity, parental, health and safety leave, and carer's leave. There is specific legislation setting down the rules for each entitlement and RBK have a dedicated HR Solutions Team who can advise international and domestic businesses and individuals in this area.

6.4 VAT

Ireland, as a member of the EU operates a form of consumption tax known as VAT (Value Added Tax) on the supply of most goods and services. In practice VAT is not a cost for most businesses as it is ultimately passed on to customers. Furthermore, taxable businesses can recover VAT charged to them on purchases of most goods and services. VAT exempt businesses (such as banking and insurance) are not required to charge VAT but equally cannot recover VAT on purchases.

Sales of goods from Ireland which are dispatched to business customers in other EU member states or exports to persons outside the EU may be zero rated. A special regime applies to businesses where 75% of revenues are derived from sale of goods to VAT registered customers in the EU or customers outside the EU whereby such companies can obtain a special authorization to purchase most goods and services free of VAT. This is valuable from a cashflow perspective as such companies would be predominately in a refund position as their supplies would be zero rated.

On 1 July 2021 the "VAT e-commerce package" came into effect. This brought with it a number of simplification measures to ease the administrative burden on e-commerce vendors when it comes to accounting for and remitting VAT within the EU.

6.5 Real Estate Investment Trusts (REIT)

Ireland has recently introduced legislation facilitating the establishment of REITs. REITS are common vehicles for property investment in many other jurisdictions. A REIT must be incorporated in Ireland and must be quoted on a recognised stock exchange. It must distribute at least 85% of its net income annually.

Under Irish legislation REITS will be exempt from corporation tax on income and chargeable gains. Distributions out of the REIT will be liable to Irish dividend withholding tax at a rate of 25%. For non-residents shareholder it may be possible to mitigate the withholding tax with treaty relief. Non-resident investors will not be liable to Irish capital gains tax on disposal of shares in the REIT. Finance Act 2019 introduced a range of anti avoidance measures to ensure the appropriate level of tax is being paid.

6.6 Currency / Exchange Controls

Ireland is a member of the EU and since January 2002 has adopted the Euro as the national currency. There are no exchange controls restricting the movement of funds to or from Ireland.

7 How Can RBK Help?

If you have already done business outside your home country you will appreciate that expert local advice is essential and can make a huge difference both in terms of the time involved in getting your business up and running and maximizing the after tax return on your investment.

We offer a 'one stop shop' for all services a business expanding into Ireland requires. We will work closely with you to assist you in determining the most appropriate structure for your venture with a view to maximising tax incentives in Ireland and deferring / minimizing home country taxation, bearing in mind your expected profit profile and long term objectives with respect to utilization or repatriation of profits.

From a tax perspective we can also advise on some or all of the following, depending on your needs:

> Location of a suitable holding company
> Advice on repatration of profits in a tax efficient manner
> Appropriate financing structures
> R&D tax credit claims
> Tax efficient remuneration of expatriate employees (using the remittance basis, pension planning and stock option schemes, as appropriate).

We also offer company formation and business registration services, accounts preparation and annual audit and tax compliance services. Other services that inward investors find useful include:

> Commercial assistance in securing the best deals from banks and with grant applications
> Payroll Bureau services
> Recruitment of staff
> Executive Search and Selection
> HR Consultancy
> I T – development of internal control procedures
> VAT administration.

International Alliance

LEA Global

Our membership of the LEA Global enables us to effectively operate as a world wide firm who can also advise on dividend repatriation, transfer pricing and controlled foreign company legislation in your home state and how they would interact with your investment in Ireland.

LEA Global, www.leaglobal.com, is an international professional association of independently owned accounting and consulting firms. LEA Global enables member firms such as RBK to access the resources of global professional services in accounting and consulting firms around the world to assist deliver professional and advisory services.

RBK chartered accountants and business advisers is one of Ireland's leading business advisory and accountancy firms, with over 60 years of experience providing professional services.

About RBK

RBK chartered accountants and business advisers is one of Ireland's leading business advisory and accountancy firms, with over 60 years of experience providing professional services.

Established in 1958, the firm offers a comprehensive nationwide service, and has grown rapidly over the last decade by placing particular emphasis on relationships, quality audit and tax advice combined with a range of advisory services and strong business support for its many successful clients.

Our team of experienced advisers are available to discuss how your business can gain competitive advantage by structuring their operations in Ireland.

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Trusted Advisers, We're by your side.

Appendices

Appendix I - State Support for Inward Investment

IDA Ireland

www.idaireland.com

IDA may provide financial assistance to companies wishing to locate in Ireland or expand their existing operations in Ireland.

A range of services and incentives, including funding and grants, are available to those considering foreign direct investment in Ireland. These are offered by IDA Ireland, Ireland's inward investment promotion agency, to both new and existing clients.

The IDA are focused on securing investment from new and existing clients in the areas of High End Manufacturing, Global Services (including Financial Services) and Research, Development and Innovation.

Key sectors within these areas for investment are Life Sciences (Pharmaceutical, Biopharmaceutical and Medical Technologies), Information Communications Technology (ICT), Engineering, Professional Services, Digital Media, Consumer Brands and International Services.

IDA may provide financial assistance to companies wishing to locate in Ireland or expand their existing operations in Ireland. The unique characteristics of any proposed project will determine the incentive package available, in particular its location.

IDA evaluates potential projects and funding is negotiated on a case by case basis in compliance with EU and Irish legislation.

The main criteria applied to determine the availability of incentives include:

- The quality of employment created
- Location chosen within Ireland
- The types of grants that are available include:
  - Employment Grants Research and Development (R&D) Grants
  - Training Grants
  - Capital Grants

Table A1 IDA Grant Funding in relation to R&D

Grant Type	Summary	Value
Innovation Vouchers	SMEs to explore a business opportunity	Up to €5,000
RDI Feasibility Study Grant	Investigate the feasibility of developing a new product, process, technology or service	50% of eligible expenditure; capped at max grant of €250k
RDI Grant Aid	For companies that are planing an expansion of their existing R&D activity in Ireland	% of the overall eligible costs on a case by case basis

IDA Ireland also offers non-financial assistance to help companies assess Ireland's suitability as a location for a new investment or expansion project.

For further information visit: www.idaireland.com.

Appendix II - State Support for Inward Investment

Enterprise Ireland

www.enterprise-ireland.com

Enterprise Ireland is the Irish government agency responsible for the development and promotion of the indigenous business sector. Enterprise Ireland has an extensive network of 30 international offices. The agency's key focus for Irish companies is covered under the following five areas of activity:

- Achieving export sales
- Investing in research and innovation
- Competing through productivity
- Starting up & scaling up
- Driving regional enterprise

A key component of Enterprise Ireland's offering is to provide assistance to international entrepreneurs seeking to set up a new business in Ireland. Enterprise Ireland offers a comprehensive range of supports to high potential, export focused entrepreneurs and companies to make it as easy as possible to start a business in Ireland and to grow into global markets.

The available supports include:

- Pre Investment Support – including an Accelerator Programme for projects that aren't yet investor ready. Some participants can receive a grant to cover living costs and/or an equity investment
- Funding Business – For investor ready projects, a ring-fenced €10m fund has been made available to attract entrepreneurs to relocate to Ireland and establish their start-ups
- Advice, mentoring and introductions
- Practical help to enter overseas markets – Enterprise Ireland has 30 offices worldwide with 150 professionals available to provide a comprehensive range of export supports, designed to help plan and implement an international marketing strategy and in securing the first key reference customers.

With Ireland as a world leader in key innovative sectors (including ICT, Life Sciences, Gaming, Financial Services and Food & Beverages), Enterprise Ireland can help international companies who want to set up operations in these sectors in Ireland.

Enterprise Ireland also provides assistance to international companies who are searching for world-class Irish suppliers.

Table A2 Enterprise Ireland Grant Funding in relation to R&D

Grant Type	Summary	Value
Innovation Vouchers	SMEs to explore a business opportunity	Up to €5,000
Exploring Innovation Grant	Determine feasibility of a project	50% of eligible expenditure; capped at max grant of €35k
Agile Innovation Fund	Development of a new / improved processes, products, services	Up to 50% funding; grant request <€150k (total project cost <€300k)
R&D Fund	Development of a new / improved processes, products, services	Up to 50% funding; grant request <€150k (total project cost <€300k)

Appendix II

Horizon 2020

Horizon 2020 is the biggest EU research and innovation programme yet, one of the biggest publicly funded worldwide and has a budget of nearly €80 billion over seven years. Enterprise Ireland is the direct point of contact for applications in Ireland. Funding is geared towards existing SME's (< 250 employees and turnover < €50m) with innovative ideas bearing export potential to the EU.

The fund, seen as a means to drive economic growth and create jobs, has a primary objective to provide innovation to promote the following three areas; Excellent Science, Competitive Industry and Better Society. Qualifying SME's with eligible projects will have access to the following phases of funding;

- Phase 1: Concept and Feasibility (up to €50k)
- Phase 2: Innovation project (in the region of €500k to €2.5m)
- Phase 3: Commercialisation (no direct funding but range of support services and access to private finance).

For further information visit: www.horizon2020.ie.

Appendix III - Brexit Loan Scheme

Strategic Banking Corporate of Ireland (SBCI)

https://sbci.gov.ie/brexit-loan-scheme

The SBCI Brexit Loan Scheme is offered in partnership with the Department of Business Enterprise and Innovation, the Department of Agriculture, Food and the Marine and is supported by the InnovFin SME Guarantee Facility, with the financial backing of the European Union under Horizon 2020 Financial Instruments.

The loans are available through AIB, Bank of Ireland and Ulster Bank. Approval of loans are subject to the banks own credit policies and procedures.

Key loan features:

- Loan amounts between €25K to €1.5M
- Max interest rate of 4%
- Loan terms ranging for 1 to 3 years
- Unsecured loans up to €500K
- Optional interest only repayments may be available at the start of loans
- Loan amount and term is dependent on loan purpose.

Loans can be used for:

- Future working capital requirements
- Fund innovation, change or adapting the business to mitigate impact of Brexit.

Who can apply:

SMEs defined as enterprises that:

- Fewer than 250 employees
- Turnover of €50M or less
- Not part of a wider group of enterprises
- Established and operating in ROI.

Appendix IV - Double Taxation Agreements

Withholding Tax on Payments from Ireland

Please note that consideration should be given to the impact of the Multilateral Instrument (MLI), which Ireland has ratified and whether it has modified any of the treaties listed below.

For the most up to date list of Treaties see www.revenue.ie

Country	Dividends	Dividends	Interest	Royalties
	Individual Companies	Qualifying Companies	%	%
Albania	10	5	0/7	7
Armenia	15	0/5	0/5/10	5
Australia	0/15	0/15	10	10
Austria	0/10	0/10	0	0/10
Bahrain	0	0	0	0
Belarus	10	5	0/5	5
Belgium	0/15[3]	0/15[3]	0/15	0[4]
Bosnia & Herzegovina	0	0	0	0
Botswana	5	5	7.5	5/7.5
Bulgaria	10	5	0/5	10
Canada	15	5	0/10[5]	0/10[6]
Chile	15	5	5/15[7]	5/10[8]
China (Peoples Rep)	10	5	0/10	6/10
Croatia	10	5	0	10
Cyprus	0	0	0	0/5
Czech Rep	15	5	0	10
Denmark	0/15	0	0	0
Egypt	10	5	10	10
Estonia	15	5	10	5/10[8]
Ethiopia	5	5	5	5
Finland	0	0	0	0
France	0/15[3]	0/10[3]	0	0
Georgia	10	0/5	0	0
Germany	0/15[3]	0/5[3]	0	0
Ghana	0/7	0/7	0/7	8
Greece	15	5	5	5
Hong Kong	0	0	10	3
Hungary	15	5	0	0
Iceland	15	5	0	0/10[9]
India	10	10	0/10	10
Israel	0/10	0	5/ 10[10]	10
Italy	15	15	10	0
Japan	0/15[3]	0/10[3]	10	10
Korea	0/15	0/10	0	0
Kazakhstan	0/15	0/5	0/10	10
Kuwait	0	0	0	5
Latvia	15	5	0/10	5/10[8]

Lithuania	15	5	0/10	5/10[8]
Luxembourg	0/15[3]	0/15[3]	0	0
Macedonia	10	0/5	0	0
Malaysia	10	10	0/10	8
Malta	15	5	0	5
Mexico	10	5	0/5/10[13]	10
Moldova	10	5	0/5	5
Montenegro	10	0/5	0/10	5/10
Morocco	10	6	0/10	10
Netherlands	15	0	0	0
New Zealand	0/15	0	10	10
Norway	15	0/5	0	0
Pakistan	10[3]	5	10	10
Panama	5	5	0/5	5
Poland	15	0/5	0/10[10]	0/10[13]
Portugal	15	15	0/15[16]	10
Qatar	0	0	0	5
Romania	3	3	0/3	0/3[17]
Russia	10	10	0	0
Saudi Arabia	5	0	0	5/8[7]
Serbia	10	5	0/10	5/10
Singapore	0	0	0/5	5
Slovak Rep	10	0	0	0/10
Slovenia	15	5	0/5	5
South Africa	10	5	0	0
Spain	0/15	0	0	5/8/10[18]
Sweden	0/15	0/5	0	0
Switzerland	0/15	0/10	0	0
Thailand	10	10	10/15	5/10/15
The Rep of Turkey	0/15	5	10/15	10
United Arab Emirates	0	0	0	0
Ukraine	15	5	5/10[20]	5/10[21]
United Kingdom	15	5	0	0
United States	15	5	0	0
Uzbekistan	10	5	5	5
Vietnam	10	5	0/10	5/10/15[18]
Zambia	7.5	0	10	10

NOTES 1. Under domestic law, there is generally no withholding tax on dividends paid to residents of treaty countries. **2.** Under domestic law, withholding tax is imposed on royalties only if they relate to the use of domestic patents. **3.** The domestic rate applies; there is no reduction under the treaty. **4.** The lower rate applies to interest payments between banks on current accounts and nominal advances and to interest on bank deposits not represented by bearer bonds. **5.** The lower rate applies if the payer is the government or a local authority. **6.** The lower rate applies to copyright royalties (excluding films), computer software, patents and know-how. **7.** The lower rate applies to royalties for industrial, commercial or scientific equipment. **8.** The lower rate applies to royalties for computer software, patents and know-how. **9.** The lower rate applies to interest in connection with the sale on credit of industrial, commercial or scientific equipment merchandised or any loan granted by a bank. **10.** The treaty does not apply to exempt Luxembourg holding companies. **11.** The lower rate applies if the beneficial owner is a bank. **12.** The domestic rate applies to interest paid, guaranteed or approved by the government of Ireland. **13.** The lower rate applies to royalties for technical services. **14.** The lower rate applies to copyright royalties. **15.** The 5% rate applies to royalties for copyrights of literary, dramatic, musical or artistic work, the 8% rate applies to copyright royalties on films, etc. and to royalties for industrial, commercial or scientific equipment. **16.** The lower rate applies if the payer is the government or a local authority. **17.** The lower rate applies to copyright royalties. **18.** The 5% rate applies to royalties for copyrights of literary, dramatic, musical or artistic work; the 8% rate applies to copyright royalties on films, etc. and to royalties for industrial, commercial or scientific equipment. **19.** The 5% rate applies to royalties for any patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience; the 10% rate applies to royalties for trade marks or for information concerning commercial experience. **20.** The lower rate applies in connection with sale on credit of industrial, commercial or scientific equipment or any loan granted by a bank. **21.** The lower rate applies to copyright of scientific work, any patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific equipment.

Appendix V

Summary of Irish Taxation System

Corporate tax	
5 year exemption for certain start ups re trading income extended to 31/12/26	0% (conditions re amount of employer PRSI and limited to corporation tax of €40k p.a. [€320k trading profit p.a.])
Corporate tax rate - Trading	12.5%
Corporate tax rate - Non-trading (including interest, rental)	25%
Foreign dividends	12.5%/25% with credit for foreign tax (both direct and underlying tax). In many cases possible to obtain effective exemption
CGT	
Standard	33%
Disposal of qualifying share holdings (by corporates)	0% (conditions to satisfy)
R&D	
Tax credit	25% of R&D spend (30% for small companies)
IP Regime	
Stamp duty	Exempt (for "specified intangible assets")
Tax amortisation (excludes goodwill)	Accounting basis/15 years
TF pricing	
Formal regime only applies to "large" companies at present	
Documentation required	
CFC	
A CFC is a company that is not resident in Ireland and is under the control of an Irish company/companies	Exemptions available include – Effective tax rate exemption, low profit margin exemption, low accounting profit exemption, exempt period exemption
Thin capitalisation rules	
None (but conditions to satisfy re non-trade borrowings)	

Income tax	
Income tax – Standard	20%
Income tax – Higher	40%
USC (income tax for DTA purposes)	Varies- 0.5%/2%/4.5%/8%
Employer PRSI (Social Insurance)	11.05%
Employee PRSI (Social Insurance)	4%
Special Assignment Relief Program (SARP)	Relief for Irish income tax; 30% of earnings over €75k removed from Irish tax (conditions to satisfy) with ceiling of €1 million
Remittance basis of taxation	Available to non-domiciled individuals in relation to non-Irish source income and foreign employment income
Double taxation agreements	
Agreements in place	76 (73 currently in effect)
Withholding tax	
Standard rate on interest and royalties	20% (subject to below)
Rate on Dividends	25% (subject to below)
Dividends - domestic exemption for payments to treaty countries	0% (declaration required)
Interest- domestic exemption for payment of trading interest to qualifying companies	0% (conditions to satisfy)
Interest – EU Interest and royalty directive	0% (conditions to satisfy)
Interest – Double taxation agreement (DTA)	Reductions possible (0% in ROI/US treaty)
Royalties – EU Interest and royalty directive	0% (conditions to satisfy)
Royalties - DTA	Reductions possible (0% in ROI/US treaty)
VAT	
VAT – Standard rate	23%
VAT – lower rate	13.5%
Exporting/cross border	Zero rate (subject to conditions)

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