

Opportunities for Locating Business in Ireland

Introduction

The purpose of this note is to highlight some of the strategic international tax advantages contained within the Irish tax code for businesses and entrepreneurs.

From an international tax perspective, the use of Ireland is a key element in managing both multi-national and internationally mobile entrepreneurs' tax affairs and ensuring effective tax rates are as low as possible.

Key highlights of the Irish tax regime are as follows:

- 12.5% corporation tax rate,
- Ability to claim a tax deduction for intellectual property,
- R&D credits,
- Participation exemption,
- Double tax relief pooling,
- Network of double tax treaties,
- No tax charge on exit,
- Tax exemption for non-domiciliaries.

How can Warren & Partners assist you?

The IDA reported that in 2010, almost 80 foreign multi-national companies set up new operations in Ireland.

Over the past 12-18 months, we have assisted a number of foreign businesses set up their European hub operations in Ireland. We have worked with businesses as diverse as global corporate finance and medical device manufacturing.

We bring to the table not alone our tax and business advisory skills, but also additional skills, depending on the needs of the client.

We have outlined overleaf some of the key benefits of setting up operations in Ireland.

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1. Ireland's Corporation Tax Regime

A company incorporated in Ireland is *prima facie* regarded as Irish tax resident. Where its activities constitute a trade, profits from the trade are liable to tax at 12.5%. Non-trading income is subject to corporation tax at 25%.

An Irish branch of a foreign company only has a liability to tax if it carries on a trade in the State. Such a trade is taxable at 12.5%. If there is no trade in the State, then there is no liability for corporation tax.

Where a branch trade is carried on in Ireland, corporation tax applies to trading income and income from property or rights associated with the branch. The rate of tax depends on the source of the income. Tax on capital gains applies only to gains on assets used in, or for, the purposes of the trade.

1.1 Intellectual Property

With effect from May 2009 intangible assets, including goodwill, trade names, know-how, patents, medical authorisations and other assets that are purchased by an entity which uses such assets in a trade in Ireland will get a corporation tax deduction. This deduction will follow accounting amortisation or a write down period of 15 years.

Where intellectual property developed in Ireland is owned offshore, in certain circumstances a corporate will get a tax deduction at 12.5% for licence payments made offshore.

1.2 R&D Credits

Certain research and development spend qualifies for a tax credit of 25% of the value of the incremental spend. The R&D credit applies to activities that seek to achieve scientific or technological advancement, and involve the resolution of scientific or technological uncertainty. In addition to any allowable deduction for R&D expenditure in the accounts of the company, companies claiming the R&D tax credit are not required to hold the intellectual property rights resulting from the R&D work.

A tax credit is available to all companies within the charge to Irish tax who undertake research and development activities within the European Economic Area. In certain circumstances, it may be possible to claim for R&D expenditure incurred by an Irish branch of a non-resident company and claim a tax deduction for the expenditure in another country.

In certain circumstances, the tax credit can be used to reduce the company's corporation tax liability, or be repaid to the entity that conducted the research and development. This benefit can mean that a company's effective Irish corporation tax rate is lower than 12.5%.

1.3 Participation Exemption

Ireland provides a tax exemption on capital gains realised by an Irish resident company on the disposal of qualifying shares in another company (the investee company). The investee company should be resident in an EU Member State or a State with which Ireland has a Double Taxation Agreement, and carry on a trade or be part of a trading group. Dividends from foreign companies will be subject to tax in Ireland at 12.5% or 25%. Tax may be relieved through the use of foreign tax credits. Foreign tax credits may also be pooled to enable maximum set-off and excess credits carried forward.

Various reliefs granted under the EU Parent Subsidiaries Directive, the EU Interest and Royalties Directive, the EU Mergers Directive and the EU Arbitration Convention enable tax-free payments to, or by, an Irish company.

1.4 Double Tax Arrangements

Ireland's EU membership and treaty network tend to relieve the incidence of withholding tax at 20% on dividends, interest and royalty payments made to non-residents.

Ireland has signed comprehensive Double Taxation Agreements with 62 countries, of which 54 are in effect. Currently, Ireland has double tax treaties with the following countries:

Australia, Austria, Bahrain, Belarus, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Israel,

Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Netherlands, New Zealand, Norway, Pakistan, Poland Portugal, Portugal Protocol, Romania, Russia, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, The Republic of Turkey, United Kingdom, United Kingdom Protocol, United States, United States Protocol, United States Competent Authority Agreement, Vietnam, Zambia.

In the main, these agreements cover direct taxes, which in the case of Ireland are income tax, corporation and capital gains tax. Where a Double Taxation Agreement does not exist with a particular country, there are provisions in Irish tax law which allow unilateral relief against double taxation in respect of detailed foreign tax on dividends, interest and branch profits. These provisions extend to a pooling system of foreign tax credits.

New treaties have been signed, but have yet to come into effect for Albania, Austria (Protocol), Bosnia & Herzegovina, Germany (Protocol), Hong Kong, Kuwait, Malaysia (Protocol), Montenegro, Morocco, Singapore, South Africa (Protocol), and the United Arab Emirates.

Negotiations are at various stages for new Agreements with Argentina, Armenia, Azerbaijan, Egypt, Panama, Saudi Arabia, Thailand, Tunisia and Ukraine. A replacement treaty with Germany has also been negotiated and is awaiting ratification.

1.5 Financing

Irish tax law grants a deduction from total income for interest paid on debts incurred to acquire shares in certain subsidiary companies. Interest incurred on borrowings used for the purposes of the company's trading activities is also generally deductible for corporation tax purposes.

1.6 Transfer Pricing

Ireland introduced transfer pricing rules in 2010. The rules do not apply to small and medium sized businesses, as defined under the EU Commission Recommendation of 6 May 2003 .

1.7 Group Loss Relieving Provisions

Group relieving provisions from Irish corporation tax are provided for within Irish tax law. This allows certain losses and deficiencies incurred by a member of the group to be surrendered to another member of the same group, thus reducing the Group's tax and cashflow burden. There are also provisions which provide relief to Irish parent companies in respect of certain losses and deficiencies incurred by non-Irish resident subsidiary companies which are resident in the EU, or jurisdictions which have a double tax treaty with Ireland.

2. Exit Arrangements

Where multi-nationals establish Irish operations and wish to exit Ireland, the Irish tax code facilitates an opportunity to exit Ireland free of tax. For example, in certain circumstances a company resident in Ireland may wish to transfer its residence abroad. Relieving provisions in the Irish tax code enable such transfers to occur without giving rise to an immediate tax charge on the market value of the Irish company's assets.

3. VAT

Ireland is a member of the European Union and, as such, has implemented much of EU VAT law within its domestic legislation. Ireland allows VAT group registration to take place for Irish member companies where the Irish Revenue Authorities are satisfied that it is in the interest of efficient administration and that no loss of VAT will arise.

4. Stamp Duty

Stamp duty on transfers of Irish shares is at 1%.

Stamp duty on transfers of other Irish commercial property is at various rates up to 6%. Some transactions can be structured to be outside the scope of Irish stamp.

The Irish tax code also contains favourable reliefs and exemptions relating to transfers of intra-group assets and *bona fide* reconstructions and amalgamations. Stamp duty can be avoided on certain *bona fide* share-for-share and share-for-undertaking transactions.

Irish tax law also provides for an exemption from stamp duty on the sale, transfer or disposition of intellectual property. Intellectual property includes any patent, trademark, copyright, registered design, design right, invention, domain name, supplementary protection certificate or plant breeders' rights or goodwill to the extent that it is directly attributable to the aforementioned.

Capital duty was abolished by Ireland in December 2005 and therefore no stamp duty arises on the issuance of shares by Irish companies.

6. Conclusion

For any international tax planning initiative, the use of Ireland is a key component. Ireland has consistently and continually let it be known on the international stage that it will steadfastly maintain low tax rates for foreigners. This has attracted some of the largest US multi-nationals to establish operations in Ireland and such moves continue to happen.

Over the past 12 months, a number of major UK corporate entities have shifted their parent company to Ireland.

At Warren & Partners, Tom Mahon and Kevin Warren use their experience to provide partner-led services from a specialist tax firm that can identify unique opportunities for using Ireland in international tax planning.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation

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