MERRYMULLEN

Doing Business in the Republic of Ireland

For more than 50 years, Irish government policy has encouraged inward investment into Ireland, and successive governments have implemented corporate tax measures to incentivise and support companies doing business in Ireland. This focused and unwavering commitment to implement fiscal policies aimed at "supporting an attractive, open and competitive jurisdiction that can provide both foreign and domestically-grown businesses with a gateway to the EU and global marketplaces", makes Ireland one of the best countries in, and from, which to do business in Europe.

This has led to Ireland becoming the destination of choice for Foreign Direct Investment (FDI), being ranked 1st in Europe and 2nd in the world when it comes to FDI. There is a reason why 16 of the top 25 global tech giants have their European headquarters here!

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Advantages

Global connectivity

Ireland is well connected and easily accessible, with three stated-owned international airports and 4 regional airports. In addition, we have three tier-1 ports and two tier-2 ports. The geographical proximity of the tier-2 ports to mainland Europe has seen a large increase in traffic following Brexit.

From transport links, to utilities and networks, Ireland offers easy access to the EU market and international supply chains.

Increasingly, its location in terms of time zones – five hours ahead of the US and seven hours behind mainland China - makes it easy for Irish workers to do business with their international counterparts across the world.

Competitive tax regime

The Irish Government has continued to demonstrate its commitment to FDI and understands taxation is the cornerstone for investment decisions. As well as a favourable participation regime, and double tax treaty network, an attractive intellectual property regime, generous research & development tax credits, Ireland's 12.5% corporate tax rate on trading profits is a major factor in attracting businesses to locate in Ireland.

Our track record

Ireland's attractive tax, regulatory and legal regimes, combined with an open and accommodating business environment has established itself as a world class location for the headquarters of many international companies.

Due to the success and profitability of their Irish operations, many multinational companies are continuing to expand their facilities in Ireland.

Member of the European Union

Ireland's position as the gateway to the European market is unparalleled. Ireland is the only native English-speaking member of the European Union and has a pro-EU government and population.

As a committed member of the European community, we are located within an open market of 500 million consumers. Companies operating in Ireland can enjoy all the benefits of EU membership, including free movement of goods, people and capital and customs free trade within the EU area.

Ireland is one of the 12 countries who were founding members of the Eurozone.

The workforce

In Ireland, we have a highly skilled and well-educated workforce. The workforce is productive, capable and highly adaptable. With the youngest population in Europe, one third of which is under 25 years old, it is one of the most educated workforces in the world. According to OECD, 50% of Irish 25–74-year-olds have a third level qualification, compared to 30% on average across OECD countries.

Ireland's education system is among the best in the world. According to IDA Ireland, it ranks in the top 10 globally as an education system that meets the needs of a competitive economy. Ireland also has the highest level of science, technology, engineering and maths (STEM) graduates per capita in EU among 20-29-year- olds.

Ireland also succeeds in attracting multinational talent with inward migration and employment by the multinational sector.

Headline tax advantages

There are some very compelling reasons to establish a company in Ireland. These include:

- **12.5% Corporation Tax Rate** for trading activities
- **Capital Gains Tax (CGT)** exemption on disposals of subsidiaries of Irish holding companies
- **Tax Relief** for foreign dividends and expenditure on research and development (R&D)
- **Reduced Tax** on income arising from certain patents and other intellectual property
- **Reduced CGT** rates on disposals by entrepreneurs
- **Relief from Corporation Tax** for certain startup companies
- **Stamp Duty exemption** on intellectual property
- **Extensive Double-Tax Treaty Network**
- **Industry Standard Transfer Pricing Rules** with SME exemption
- **Full or Partial Exemption from Withholding Tax on Interest Payments** to EU/treaty countries
- **Full or Partial Exemption from Withholding Tax on Dividend Payments** to EU/treaty countries
- **Moderate and Progressive Income Tax Rates**
- **Tax Reliefs for Workers** assigned from abroad to take up a position in Ireland

What business structures are available in Ireland?

The starting point for any commercial investment decision is the choice of investment vehicle. The choice of which structure to adopt is of particular importance for filing and auditing requirements. There are a number of different business structures available in the Republic of Ireland and the principal forms are outlined below, starting with a company.

A company is a legal entity separate and distinct from those who run and invest in it. Company Law in the Republic of Ireland has been modernised and consolidated by the Companies Act 2014 ("the Companies Act"), and more recently by the Company (Accounting) Act 2017. The Companies Act and related statutory instruments regulate the formation, stewardship, management and dissolution of companies in the Republic of Ireland.

There are a number of different types of company structure provided for under the Companies Act, and they can be broadly classified as either private companies or public companies with limited or unlimited liability. These are as follows: Private Company Limited by Shares (LTD); Designated Activity Company (DAC); Company Limited by Guarantee (CLG); Public Limited Company (PLC); Public Unlimited Company (either a PUC or a PULC); Private Unlimited Company (ULC); and an External Company.

Generally one or more persons are permitted to form a company for any lawful purpose. The process of incorporation and registration of a company commences with the delivery of a constitution together with the relevant form, including a statement of consent and declaration in accordance with the Companies Act, to the Companies Registration Office (CRO).

The signed declaration includes a statement to the effect that the purpose, or one of the purposes, for which the company is being formed is to carry on an activity in the State. Every company must have a constitution, in the format required. Once the Constitution is registered, the company will be issued with a certificate of incorporation.

All public statutory information on Irish companies is held by the CRO. For further information please refer to the CRO website at **www.cro.ie**. The different types of business structures available are outlined below.

Limited companies

All companies are fully liable for the debts they incur. In a limited liability company, the liability of the owners (members or shareholders) of the company for debts incurred by the company is limited to the amount that they have agreed to contribute to the company.

The **Private Company Limited by Shares (LTD)** is the most common form of business entity used in Ireland. This form of company has a single document constitution which sets out details of the company's share capital and how it is regulated in accordance with the Companies Act. Such a company does not have a principal objects clause and will have no restriction on the type of trade or transaction it can enter into. It will also have similar legal capacity as a natural person.

A **Designated Activity Company (DAC)** is a company which is formed for a particular purpose or to carry on a specific activity. A DAC can be limited by shares or guarantee. It must have a minimum of two directors but can have a single member. A DAC's constitution will contain a Memorandum and Articles of Association. The Memorandum of Association will contain an objects clause that sets out the principal activity of the company, together with ancillary objects outlining in general style the transactions the company can undertake. It is common for such objects to contain clauses around borrowing, providing security and such like.

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

While most limited companies are limited by shares, some are limited by guarantee. A **Company Limited by Guarantee (CLG)** is commonly used for non-profit organisations that require legal personality, such as charities. They typically have a low commercial risk and may be formed with or without share capital. This type of company has one or more members, who in effect, are the guarantors. A guarantor agrees to contribute a nominal amount that typically is quite small upon the winding up of the company, in the event of a shortfall of assets at that time.

Public and private companies

One of the main differences between a public and a private company is how they raise capital. A Public Limited Company (PLC) may seek subscriptions from the public and apply to have its shares quoted on a stock exchange. Companies can raise funds on the Irish stock exchange provided they meet the criteria required prior to making a public offer. Listed companies are also required to comply with the listing rules.

A private company, on the other hand is prohibited from inviting the public to subscribe for shares in the company. As noted earlier, the majority of Irish companies are private companies limited by shares (LTD).

Unlimited companies

In an unlimited company there is no limit on the liability of the owners for the company's debts. With such companies, recourse may be had by creditors to the company owner's personal assets, in respect of any liabilities which the company had failed to pay. It is for this reason, that such companies are not generally used as trading companies.

Unlimited companies can be in the form of a Private Unlimited Companies (ULC), a Public Unlimited Company (PUC) or a Public Unlimited Company without Capital (PULC).

One of the main advantages of choosing an unlimited company is the reduction in the filing requirements for such companies in the CRO (see below).

External companies

An external or foreign company (a limited company incorporated outside of Ireland, either in an EEA (European Economic Area) state or a non-EEA state) may establish a branch in Ireland. Such companies must be registered with the CRO within 30 days of establishment of the branch. An external company setting up a branch in Ireland is required to submit basic information to the CRO, including the name and legal form of the company; the name, address and activities of the branch; and details regarding persons authorised to represent the company in dealings with third parties and legal proceedings. A certified copy of the company's constitution, a copy of the company's certificate of incorporation, and a copy of the latest accounting documents must also be filed.

Partnership

A partnership is an association of persons wishing to carry on business in common. They normally share both the management and profits of the business, in accordance with a written agreement. A partnership consists of at least 2 persons and a usual maximum of 20 (subject to some exceptions). It is not a separate legal entity, but it is possible to create a partnership in which some members have limited liability for the debts of the Partnership. Such a limited partnership must be registered with the CRO.

Sole trader

A sole trade is a person who operates on their own account in their own name.

Other

Authorised investment funds in Ireland are established as either UCITS (undertakings for collective investment in transferable securities) or non-UCITS (AIFs – Alternative Investment Funds). There are a number of factors to consider when deciding on the fund structure including the location of target investors and the investment policy of the fund. This industry is supported by a sophisticated network of financial advisors such as lawyers, accountants, fund administration and regulatory specialists. For the most part, these financial institutions are licensed and regulated by the Central Bank of Ireland.

Minimum capital requirement

One added advantage of Irish companies and incorporation is the fact that there are no minimum authorised share capital requirements for private limited companies.

What are the filing requirements for my company?

Most types of Irish companies, as well as external companies operating within the Republic of Ireland are required to file a return annually to the CRO. Depending on the type of company incorporated, financial statements may also be required to be filed with this annual return, as outlined below.

Irish companies

Annual returns are required to be filed with the CRO at least once every year for all Irish companies. The annual return contains details relating to the company including the company's directors, secretary, registered office, shareholders and share capital. Normally, the annual return must be filed within 56 days of the statutory annual return date (ARD), which can be checked on the CRO website. (**www.cro.ie**)

As outlined below, certain different types of companies are subject to individual filing requirements. Unless availing of audit exemption, in most cases (e.g. a LTD & a DAC) audited financial statements, and the directors' report and statutory auditor's report must be filed with the annual return (See section 'Does my company require an audit?').

As for particular issues to note in this area, a ULC incorporated in Ireland must file its financial statements with the CRO, if it is deemed to be a designated type under the Act. Non-designated ULCs are however not obliged to file financial statements with the CRO. It is important to note that the Company (Accounting) Act 2017 however increases significantly the number of designated types of ULC and therefore makes it much more difficult for a ULC to avoid the filing obligation.

Limited Partnerships where all the general partners are limited companies are obliged to file accounting documents for public record to the CRO.

Unlimited Partnerships that are not subject to the accounting requirements of the Companies Act are not required to file accounts.

Certain Small and Micro sized companies (as defined in the 'Financial Reporting' Section) are permitted to abridge financial statements for filing purposes that provide less information than the annual financial statements prepared for the shareholders/ members. It should be noted, that the ability to file abridged financial statements does not grant a company any exemption from the requirement to prepare statutory financial statements (unabridged) that give a true and fair view and to provide these financial statements to the members.

External or Foreign companies have separate filing requirements depending on whether the branch established in Ireland is that of an EEA company or non-EEA company.

- Where an EEA company has set up a branch in Ireland, accounting documents for the financial year that the company prepared and made public in the relevant EEA state in which it is incorporated must, within 30 days of it so doing, be filed with the CRO, on an annual basis.

- Where a non-EEA company has set up a branch in Ireland, accounting documents are also required to be delivered to the CRO annually and the form and timing of submission of these will depend on whether there is a requirement in the non-EEA state for accounting documents to be prepared by the company. It may also be necessary to provide the CRO with details of the company's share If It may also be necessary to provide the CRO with details of the company's share capital at the same time.

If the company is a holding company, group accounts are also required, unless entitled to exemption from the requirement to do so.

Initial and annual information submitted to the CRO should be accompanied by the relevant filing form, available on the CRO website.

References above are to general requirements of Irish Company Law. Regulated entities may have additional requirements laid down in industry specific regulations as applicable and reference should be made by readers to these as required.

Additionally, all Irish incorporated companies have an obligation to make a filing of their beneficial owners to the **Central Register of Beneficial Ownership** of Companies and Industrial and Provident Societies (RBO). The RBO is the central repository of statutory information required to be held by relevant entities (corporate or legal entity incorporated in the State) in respect of the natural persons who are their beneficial owners/controllers, including details of the beneficial interests held by them.

This requirement follows Article 30(1) of the EU's Fourth Anti-Money Laundering Directive (4AMLD) which requires all EU Member States to put into national law provisions requiring corporate and legal entities to obtain and hold adequate, accurate and current information on their beneficial owner(s) in their own internal beneficial ownership register. Article 30(3) of 4AMLD requires that the information referred to above be held in a central register in each Member State.

Does my company require an audit?

The requirement in company law for company financial statements to be audited is determined primarily by their size and nature. Audit exemption is available to certain categories of Irish companies, as discussed below, and others will require an audit by a statutory auditor. The statutory auditor will obtain evidence about the amounts and disclosures in the financial statements, sufficient to give an opinion on matters including as to whether the statutory financial statements give a true and fair view of the assets, liabilities and financial position of the company at the financial year end date and of its profit or loss for the financial year; and whether they have been properly prepared in accordance with the relevant financial reporting framework and the requirements of the Companies Act.

Statutory financial statements of all Irish companies must be audited by a statutory auditor, unless the company is entitled to, and avails of audit exemption. Unaudited financial statements must include a statement on the balance sheet, in the format laid down in the Companies Act, that an audit exemption has been availed of. Certain companies are excluded from availing of audit exemption, irrespective of their size, for example credit institutions and insurance undertakings. Companies that are not excluded from doing so will need to meet the conditions laid down in the Companies Act in order to avail of audit exemption. As an example, generally an LTD that is not a parent or subsidiary may avail of audit exemption if:

- it qualifies as a small or micro company under the Companies Act for the financial year; (Applicable Threshold Criteria are noted in the 'Financial Reporting' Section)
- the company's annual returns for the financial year and the preceding financial year are filed on time with the CRO;
- members with voting rights great than 10% have not served a notice on the company requiring an audit; and
- the company is not a company that is excluded from availing of audit exemption (e.g. PLC or engaged in Financial Services)

Thresholds to qualify for different company sizes:

	Micro FRS 105	Small FRS 102 Section 1A	Medium FRS 102
Net turnover	€900,000	€15,000,000	€50,000,000
Balance sheet total	€450,000	€7,500,000	€25,000,000
Employees	10	50	250

These are revised criteria with effect from 1 July 2024.

Notes

- To qualify, a company must not exceed 2 of the 3 thresholds outlined above (broadly speaking in the current and previous year)
- It is also important to note that a PLC or PUC cannot qualify as a small or micro company
- Large companies are those that exceed 2 of the 3 categories outlined above for medium companies

It is important to note that the audit exemption does not grant a company any exemption from the requirement to prepare statutory financial statements that give a true and fair view and to provide these financial statements to the members, nor does it grant a company any exemption from the requirement to annex financial statements in the format laid down by the Companies Act to its annual return that is filed with the CRO (as outlined in 'What are the filing requirements for my company?') – the only exemption granted is from having these financial statements audited.

As a matter of law, no public company is eligible to avail of audit exemption.

It is also important to note that the statutory auditor of a company is required to report to the Director of Corporate Enforcement instances where he/she has reasonable grounds for believing that the company, or an officer of it, has committed certain offences under the Companies Act. This is in addition to the responsibility of accountants in practice to report any suspicions of theft, fraud or money laundering to the authorities.

Corporate taxes

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.

Under Irish legislation a company is tax resident in Ireland if either:

- it is incorporated in Ireland (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
- it is managed and controlled in Ireland 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.

Rates

Ireland's standard corporate tax rate is 12.5% imposed on trading profits. A rate of 25% applies to non-trading (passive) income and a 33% capital gains tax is also applied on any capital gains made through the disposal of assets.

There is no actual definition of what constitutes trading to be found in Irish tax statute although dealing in or developing land, working minerals and petroleum activities are expressly excluded.

Guidance published by the Irish Revenue Commissioners expressly includes development and exploitation of intellectual property, investment management activities, activities relating to R&D and corporate treasury functions as constituting trading.

A participation exemption for foreign dividends will apply for dividends received on or after 1st January 2015. The exemption applies to dividends received from companies resident for tax purposes in the EU/EEA and/or tax treaty countries. Otherwise a rate of 12.5%/25% applies with a foreign tax credit available.

Ireland will apply the new minimum effective corporation tax rate of 15% for accounting periods commencing on or after 1 January 2024 (BEPS Pillar 2). The 12.5% per cent rate will continue for businesses with revenues less than €750m.

The 25% rate also applies to trading income from dealing in and developing land other than fully developed land. Trading losses and charges subject to the lower rate of tax may be offset against income taxed at a higher rate on a "value and credit basis"

Filing

Tax accounting periods for corporation tax generally follow accounting periods, but cannot exceed 12 months. The tax return must be filed by the 21st day of the ninth month following the tax accounting period to avoid penalties.

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.

While 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.

Losses

Trading losses incurred by a company can be offset against other profits of the same or the preceding accounting period. Trading losses can be carried forward indefinitely to be offset against future trading profits that a company may earn provided that within a three-year period there has not been a change in ownership of the company and a major change in the nature or conduct of the trade. Where a company has other profits, which may include investment and rental income and certain capital gains, there is provision for the losses from trading activities to be offset on an after-tax basis.

Where a company has related companies that are tax resident in Ireland, and where certain criteria are met, a loss that is incurred by one company can be offset against profits of the other company. The recipient company can use these surrendered losses to reduce its own taxable income for the period.

Losses may be surrendered within a group or consortium subject to certain restrictions, which apply to losses in general. This applies to both Ireland and EU/EEA resident participants and to non-EU residents in certain circumstances.

Transfer pricing

Ireland’s transfer pricing legislation is based on the arms-length principle and follows OECD Guidelines and applies to Irish taxpayers whose profits, losses or gains are within the charge to Irish tax, this includes Irish branches of overseas companies.

Transfer Pricing rules do not currently apply to small and medium enterprises (SMEs) and to be considered an SME, the enterprise (including group companies) must have less than 50 employees and either a turnover or balance sheet of less than €10 million (assessed annually on a group wide basis).

Companies that do not fall within the SME exemption are required to prepare and retain supporting documentation to show that the transfer prices are in line with the arm's length principle.

Close companies

A close company is an Irish resident company that is controlled by five or fewer participators.

A participator is somebody who has a share or interest in the capital or income of a company and includes a person who:

- has share capital, voting rights or loan capital in the company
- has rights to any company distributions
- can use company assets or income directly or indirectly for their benefit (This applies to present or future income and assets).

A surcharge of 20% is payable on the undistributed investment and rental income of a close company. Professional service companies are liable to a surcharge of 15% on 50% of their undistributed trading income and a surcharge of 20% on the undistributed rental and investment income. There is a de minimis threshold of €2,000 below which the surcharge will not apply.

The close company surcharge does not apply in situations where a company is the recipient of a dividend from a foreign subsidiary, and the company would be exempt from CGT on the disposal of the shares in that subsidiary provided it is located in an EU or DTA country.

A close company that pays a dividend to another close company may jointly elect for the dividend not to be treated as a distribution. In effect this provides relief where a trading company pays a dividend to an investment/holding company as the income will not be treated as investment income in the holding company, which could eliminate the close company surcharge.

Withholding taxes

Dividend Withholding Tax (DWT), currently at 25%, applies to dividends and other profit distributions made by Irish resident companies. Certain resident and non-resident companies/persons may be entitled to a DWT exemption, subject to certain conditions being met.

Income tax must be deducted at the standard rate, currently at 20%, on certain payments, to include interest and patent royalties. An exemption may be available under domestic legislation from Irish withholding tax where interest is paid by a company in the ordinary course of its trade or business to non-resident companies who are EU residents or residents of double tax treaty countries and that country imposes a tax that generally applies to interest received from outside that territory.

Under the Interest and Royalties Directive, interest and royalty payments by an Irish resident company to associated companies may be paid without the obligation to withholding tax subject to the conditions set out in the Directive.

Intellectual Property

Ireland's tax regime has several favourable and competitive reliefs in relation to investment in research and development activities and the development/ commercialisation of the IP that comes from that investment.

Reliefs available:

- **Research & Development (R&D) Credit**

  In addition to allowing a tax deduction for R&D expenditure in computing trading income, Ireland also provides a tax credit of 25% (30% from 1 January 2024) of capital and revenue expenditure (including, to a certain extent, sub-contracted R&D spend) on qualifying research and development expenditure. The credit may be used to reward key employees by effectively giving them the benefit of credit and /or to reduce their corporation tax liability or claimed as a refund.

  R&D tax credit claims must be made within 12 months of the end of the accounting period in which the expenditure is incurred.

- **Capital allowances**

  Tax depreciation is available on a broad range of IP assets. Companies carrying on a trade can claim this tax depreciation on the capital cost of acquiring qualifying intellectual assets over the qualifying life of the asset or 15 years at an annual rate of 7% and 2% in the final year.

  Companies can effectively write capital expenditure off against the income streams that the expenditure generates.

  There is no claw back of the relief granted if the intangible asset is retained for at least five years.

- **Knowledge Development Box (KDB)**

  The KDB is extended to 1 January 2027 for qualifying companies. The effective tax rate will increase to 10% to come into effect from a date to be set by commencement order.

  The corporation tax relief has been introduced with effect since 1 January 2016.

  It provides that profits from patented inventions and copyrighted software (qualifying assets) earned by an Irish company can, to the extent it relates to R&D undertaken by that company, be effectively taxed at a rate of 6.25%.

  The amount of the profits arising from the qualifying assets that can avail of the relief will be determined by the proportion that the Irish company's R&D costs (qualifying expenditure) bear to the total R&D costs (overall expenditure) incurred on the qualifying assets. The overall expenditure could also include expenditure on R&D performed by other group companies (related parties), or amounts paid to acquire intellectual property.

  The qualifying expenditure includes the cost of R&D that is outsourced to unrelated parties but excludes expenditure on R&D performed by related parties and the cost of acquired intellectual property. To take account of this excluded expenditure, an additional "uplift" provides that qualifying expenditure may be increased by the lower of either 30% of qualifying expenditure, or the aggregate of amounts paid to related parties and to acquire intellectual property.

New company start-ups

An exemption from CT for the first five years of trading applies to certain new start-up companies. Where a company is incorporated after 14 October 2008 and commences to trade, it is exempt from CT and from CGT on the disposal of assets used for the purposes of the new trade. The exemption is subject to a liability threshold, and no relief will be available where profits exceed €480,000.

This relief was due to expire at the end of 2021 but has been extended to companies commencing a qualifying trade up to 31 December 2026. The period for which the relief may be claimed is also being extended from three to five years.

The relief is restricted to new trades and does not apply where the trade was previously carried on by another person, or where the trade, or part thereof, was carried on by an associated company.

Any unused relief in the first three years of trading may be carried forward to subsequent periods.

The relief is limited to the amount of employer PRSI that is paid, or the amount that would have been payable if relief under the Employer Job Incentive Scheme did not apply. There is a cap applied to the amount of employer PRSI per person which is €5,000 per person, **(plus up to €1,000 self employed PRSI per person)**, with an overall limit of €40,000.

The relief does not apply to companies carrying on professional services, nor does it apply to companies which carry on a trade of:

- land dealing,
- petroleum and mineral activities,
- aquaculture or agriculture,
- coal,
- road freight operations,
- export related activities,
- undertakings in difficulty

In addition, in order to comply with EU requirements it should be noted that Revenue may disclose details of relief granted under the scheme.

Digital games relief

Following approval by the European Commission, the regulations have been formally signed to give full effect to the legislation.

The relief will take the form of a refundable corporation tax credit available to digital games development companies for qualifying expenditure incurred on the design, production and testing of a digital game. It will be available at a rate of 32% of eligible expenditure up to a maximum limit of €25 million per project. There will also be a per project minimum spend requirement of €100,000.

The tax credit will be available for digital games development companies that are resident in Ireland or the EEA and carry on a business in Ireland that involves investment on the design, production and testing of a digital game.

This is a new relief and consultation with your adviser is recommended.

Paying Corporation Tax (CT)

- **Large Companies:**

  A large company is one with a CT liability of €200,000 or more in the preceding year and it must pay its CT liability as follows:

  Six months before the end of the accounting period (day 21 of the 6th month)

  - 50% of the previous year's final liability, or
  - 45% of the current year's final liability

  One month before the end of the accounting period (day 21 of the 11th month)

  - 90% of the final liability (after taking into account the payment five months earlier)

  Filing date (21st day of the 9th month following the accounting period end)

  - Balance of any tax due

  A company's preliminary tax liability includes the CT, close company surcharge and IT liabilities for the accounting period, as well as CT on chargeable gains, except for CGT arising on disposals of development land. To ensure interest charges are avoided, the preliminary tax payment (the aggregate of the first and second instalments) must represent at least 90% of the final tax liability for the accounting period.

  Special arrangements exist to take account of chargeable gains arising in ~the last month of an accounting period and for accounting periods of one month's duration.

- **Small Companies:**

  A small company (i.e., where last year's CT liability was less than €200,000), may base its first instalment on 100% of the previous year's liability.

- **New Companies**

  Where a company is a new company with a CT liability of less than €200,000, it is not required to pay preliminary tax for the first accounting period. A new company may pay CT for the first year when filing its tax return.

- **Group Companies**

  For companies that are large companies and members of the same group, where one company has satisfied its preliminary tax obligations and paid in excess of 90% of the final CT liability, and another company has not paid sufficient preliminary tax, then the excess paid by one company may be transferred to the other company to limit any exposure to interest.

Corporation tax returns

The corporation tax return (Form CT1) must be filed within eight months and 21 days of the accounting period end, 23 days if filed on the Revenue Online Service ('ROS') portal, otherwise a surcharge will arise.

Information included in CT1

A company is required to disclose information in relation to certain incentives/reliefs on its Form CT1; the reliefs to be detailed are highlighted on the CT1.

Failure to provide the relevant information may result in a penalty of €950, as well as a surcharge of 5% of the CT due subject to a maximum of €12,695.

Country by country reporting

A new law requires an Irish resident parent company of large Multinational (MNE) groups to provide annually, and for each tax jurisdiction in which they do business, a country-by-country report to the Revenue Commissioners.

Exemption for disposal of shareholdings

An exemption from CGT may be available for Irish based companies on the disposal of shares in a subsidiary company. To qualify for the exemption, a 5% holding of ordinary shares in a company located in an EU or treaty country must have been held within a two-year period of disposing of the shares for a period of at least twelve months.

The company being disposed of must be a trading company, or the holding company of a trading group (i.e. the holding company together with all other companies in which it has a 10% interest must consist wholly or mainly of trading activities).

Payment dates for Capital Gains Tax

Payment of CGT on a disposal of development land is treated in the same way as a disposal by an individual.

Income Taxes

Residence

Tax residence in Ireland for income tax purposes is solely based on the number of days an individual is present in Ireland in a tax year. A person will be deemed to be tax resident in Ireland if they spend:

- a total of 183 days (any part of a day) in Ireland in any tax year or
- a combined total of 280 days (any part of a day) over two consecutive tax years (assuming a minimum of 30 days in each tax year)

If a person is resident in Ireland for three consecutive years, they will become ordinarily resident for tax purposes.

A person's domicile is, initially at least, their domicile of origin but you can prove you have abandoned your domicile of origin and acquired a new domicile known as a domicile of choice.

Individuals' resident, ordinarily resident and domiciled in Ireland are liable to Irish income tax on their worldwide income.

An Irish resident and domiciled but not ordinarily resident individual is also liable to Irish income tax on their worldwide income.

Non-Irish domiciled individuals who are resident in Ireland are liable to Irish income tax on Irish source income, foreign employment income to the extent that the duties are exercised in Ireland and foreign income to the extent it is remitted to Ireland. There are tax planning opportunities around Non-Irish domiciled individuals planning to become resident in Ireland for tax purposes.

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.

Income tax is payable on Irish-source income and on income for services performed in Ireland. The most common form of income tax is PAYE (pay as you earn), which is a salary withholding tax deducted by the employer from the employee's pay. Income tax is operated under a progressive tax system that applies tax at rates of 20% and 40% depending on income levels.

In addition to income tax, employees are also obliged to pay PRSI and USC.

These taxes are either deducted by employers under the PAYE system or collected via a self-assessment System.

Social Security (PRSI) and Universal Social Charge (USC)

Employed persons are compulsorily insured under a State administered scheme of pay-related social insurance (PRSI). Contributions are made by both the employee and the employer on all employment income, including benefits in kind. The PRSI contribution for employers is a maximum of 11.15% of the salary payments and is deductible in the calculation of taxable profits.

Employees pay PRSI but at lower rates to that payable by employers. Many foreign assignees are exempt from PRSI if they hold a valid A1 Certificate or a Certificate of Coverage retaining them under the social security system in their home country.

The USC is also payable by all employees who pay Irish income tax, and is applied at progressive rates of up to 8%.

Taxation of foreign workers in Ireland

A foreign executive coming to work in Ireland will be tax resident in Ireland if he/she spends 183 days in Ireland in a tax year or 280 days over two tax years (ignoring a tax year where he spends less than 30 days in the State). The Irish tax year is aligned with the calendar year.

A foreign executive is subject to tax in Ireland on the income that is attributable to the duties performed in Ireland (unless an exemption is available) and the income attributable to duties performed outside of Ireland, only if that income is remitted to Ireland. Relief is available on income from foreign contracts of employment under the Special Assignee Relief Programme (SARP).

SARP applies to an employee who:

1. takes up residence in Ireland in a tax year having not been tax resident in Ireland for five years preceding the date of arrival;
2. carries out employment duties for his foreign employer, who must be tax resident in a double tax-treaty state, or an associated company including an Irish-resident company;
3. was employed by his employer for 6 months before arriving in the State;
4. performs substantially all of his duties in Ireland for 12 consecutive months.

Relief operates by providing an exemption from income tax on 30% of salary over €75,000 for the first five years of an individual's residency in Ireland. It should be noted that the income which is exempt from income tax is not exempt from the USC or PRSI.

Capital Gains Tax

Irish resident individuals are liable to capital gains tax of 33% on their worldwide gains.

There are a number of notable exceptions and reliefs available including an individual's principal private residence, tangible moveable assets with a life of less than 50 years and retirement relief.

Persons who are not resident in Ireland are liable to Irish capital gains tax on the disposal of certain specified assets such as Irish land or buildings, Irish mineral or exploration rights, assets used for a branch activity conducted in Ireland, or unquoted shares which derive their value or a greater part of their value from Irish land or buildings or exploration/exploitation rights.

In general, capital losses can be offset against capital gains arising in the same year or carried forward.

Stamp duty

Stamp duty is payable on the transfer of most forms of property where such a transfer is executed under a legal document. The transfer of:

- residential property is subject to stamp duty at 1% on the first million, 2% over €1 million and up to €1.5 million, and 6% on excess over €1.5 million.
- commercial and other property are subject to stamp duty at 7.5%.
- stocks and shares are subject to stamp duty at 1%.

Relief from stamp duty is available on transfers between associated companies (90% common shareholding) and on transfers of shares and assets under reconstructions and amalgamations where certain conditions are fulfilled.

An exemption exists for stamp duty on any instrument for the sale, transfer or disposition of intellectual property. The term intellectual property includes patents, trademarks, registered designs, design rights and inventions or domain names.

Written transfers of other types of property such as goodwill, book debts, cash on deposit and benefits of contracts attract stamp duty at the rate of 2%. Gifts are chargeable on their market value at the same rates as for other conveyances.

Capital Acquisitions Tax

Capital acquisitions tax (CAT) is a tax payable by the recipient of gifts and inheritances at a rate of 33% of the value of the benefit received. Tax-free thresholds are available to reduce the tax payable and these depend on the relationship between the donor and the recipient.

Local Property Tax

An annual self-assessed Local Property Tax (LPT) is charged on the market value of all residential properties in Ireland. LPT is payable by "liable persons" which broadly covers owners of Irish residential property, regardless of whether they live in Ireland or not.

Value-added Tax

Value-added tax (VAT) is a tax on consumer spending. It is collected by VAT registered traders on their supplies of goods and services within the State to their customers. Generally, each trader in the chain of supply, from manufacturer to retailer, charges VAT on his or her sales. The trader is then entitled to deduct from this amount the VAT paid on his or her purchases. For the final consumer, VAT simply forms part of the purchase price. The Irish VAT system follows EU VAT directives.

The standard rate of VAT is 23% (this rate applies to most professional services) but lower rates of 13.5% (e.g. for the supply of electricity and heating), 0% (e.g. goods exported), and the exempt rate (e.g. for financial services) also apply.

How we can help!

Our Services

Merry Mullen is a firm of Chartered Accountants, business advisors and tax consultants offering the full suite of services across the accountancy and taxation spectrum. We have been in business for over 75 years and therefore understand the Irish business landscape and how to navigate it seamlessly.

We offer unrivalled expertise, experience, service and enthusiasm in everything we do both nationally and internationally. Our partners and management team have extensive experience in top 10 accountancy firms and combine that with the tradition of personal, reliable, quality service that is the hallmark of the practice. We are proud to say that we build strong relationships with our clients and seek to be trusted advisors to their business and assist their growth.

As we are an active member of an international association, GMNI, as its sole member in Ireland, we are perfectly placed to assist overseas companies and individuals looking to move or invest in Ireland, and to help any business manage both legal and regulatory obligations.

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

For further information or to discuss anything in this publication, please contact **info@merrymullen.ie**

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CHARTERED ACCOUNTANTS & CHARTERED TAX ADVISERS

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