

# LEX MUNDI INTERNATIONAL TAX DESKBOOK

## IRELAND

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Please note that this is a non-exhaustive summary which does not constitute tax or legal advice. This summary is of a general nature only and is based on law and practices in force in Ireland on 5<sup>th</sup> June 2007 and should be treated with appropriate caution.

### 1. Introduction

Ireland has a common law legal system. The Constitution of Ireland 1937 provides the foundation for legislation, government and the administration of justice. Ireland has been a member of the EU since 1973.

The main sources of tax legislation in Ireland are the Taxes Consolidation Act 1997 (updated annually by the Finance Acts), the Value Added Tax Act 1972, the Stamp Duties Consolidation Act 1999 and the Capital Acquisitions Tax Consolidation Act 2003. VAT and income tax are the largest sources of revenue for the government whilst other significant contributors are corporation tax and excise duties.

Tax returns are made to the Revenue Commissioners, generally on a self-assessment basis. However an inspector of the Revenue Commissioners may make an estimated assessment if there is a failure to make a return or if he is not satisfied with the return. This assessment may be appealed by the taxpayer.

### 2. Corporation Tax and Income Tax

#### 2.1 Corporations

##### (a) Filing of Returns and Payment

Corporation tax operates on a self-assessment basis. Preliminary corporation tax (which must be equal to or greater than 90% of a company's final liability for the accounting period) is payable not later than the 21<sup>st</sup> day of the month preceding the end of the accounting period. A company must submit its corporation tax return in Form CT1 to the Revenue Commissioners within nine months of the end of the accounting period to which the return relates. If this date is after the 21<sup>st</sup> of the ninth month the filing date is brought forward to the 21<sup>st</sup> of the ninth month. Any balance of tax due must also be paid at this time. Form CT1 incorporates Extracts from Accounts' pages in place of a requirement to submit full audited accounts although a full set of

accounts must be submitted where the turnover exceeds a limit set out in the relevant Form CT1. A Form 46G (Company) will also have to be submitted if third party payments exceed certain thresholds.

Failure to file by the due date will result in a surcharge penalty of up to 10% and may also result in restriction of losses. A notice of assessment is issued by the Revenue Commissioners shortly after the filing of the tax return. Failure to pay the appropriate tax by the due date will result in interest penalties. An overpayment of tax is generally repaid with interest.

Special provisions exist for small companies and new or start-up companies with corporation tax liabilities not exceeding €150,000.

(b) **Calculation of Income/Profits**

Irish trading profits are computed in accordance with Irish Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) subject to any adjustment required by law. In calculating taxable profits a company may deduct revenue expenses incurred wholly and exclusively for the purposes of the trade. Business entertainment expenses and capital expenditure may not, however, be deducted, although a company may be entitled to capital allowances in respect of certain capital expenditure such as plant and machinery and industrial buildings. It should be noted that depreciation of capital assets as computed for audited accounts purposes is not an allowable expense against the company's income for the purpose of corporation tax.

Company capital gains are generally not subject to capital gains tax but rather are chargeable to corporation tax on gains realised during an accounting period. Therefore these gains form part of the company's profits, and as a result trading losses, as outlined below, can be offset against them. In certain limited circumstances, for example in relation to development land gains, capital gains tax itself applies to companies.

Ireland has a holding company regime which exempts most disposals by a company of substantial shareholdings. Gains arising to an Irish resident company on the disposal of shares in certain subsidiary undertakings will be exempt from corporation tax provided the following conditions are met:

- a) the subsidiaries in whom the shares are being sold must be resident in Ireland, another EU Member State or a country with which Ireland has a double tax treaty in place, and
- b) the company making the disposal must have held at least 5% of the share capital of the subsidiary for a period of at least twelve months ending in the previous twenty-four months, and

c) at the date of disposal of the shares in the subsidiary, either (a) the subsidiary must carry on a trade; or (b) the business of the holding company, its 5% subsidiaries, the subsidiary company and its 5% subsidiary taken as a whole consists wholly or mainly of trading.

Trading losses can be used to shelter trading profits earned in an accounting period and in the previous accounting period of the same length. Trading losses can also be offset on a “value basis” against tax payable on both current and prior year non-trading profits. Any unutilised trading losses can be carried forward indefinitely to offset future trading income from the same trade. Trading losses may also in certain circumstances be surrendered to offset against the profits of any other company within the same Irish tax group in the same accounting period. (See paragraph 2.1(e) for further detail).

(c) **Applicable rates**

The standard rate of corporation tax on trading profits in Ireland is 12.5%. A rate of 25% applies to non-trading (e.g. rental income, royalty income) and foreign source income. The 25% rate also applies to certain land dealing activities and income derived from working minerals and petroleum activities.

In order to avail of the 12.5% rate of corporation tax which applies to trading income, a company would have to derive income from a trade which is actively carried on in Ireland. It is essential therefore that the profit making apparatus of the trade is located in Ireland and that the activity is controlled in Ireland.

A surcharge of 20% is levied on closely held companies that do not distribute investment and estate income within 18 months of the end of the accounting period in which it was accrued. A closely held company is generally one that is under the control of five or fewer participants, or any number of participants who are directors. A participant includes any person having a share or interest in the capital or income of the company. There is no surcharge on accumulated trading income.

Whilst company capital gains are generally subject to corporation tax, the gains are re-worked to ensure that the tax is charged at an effective 20% rate. The chargeable gain is calculated by subtracting the indexed base cost of the asset along with incidental acquisition and selling expenses from the proceeds of the sale of the asset. Indexation is allowed for periods of ownership up to 31<sup>st</sup> December 2002 only.

(d) **Territorial Rules**

Companies resident in Ireland are charged corporation tax on worldwide profits and capital gains (subject to double taxation treaty relief). All companies incorporated in Ireland since 11<sup>th</sup> February 1999 are automatically considered resident in Ireland, subject to certain

exceptions. The determination of residence by reference to incorporation will not apply in the following circumstances where instead the test of residence is determined by virtue of whether or not the company has located its central management and control in Ireland:

- where the company carries on a trade in Ireland and the company is controlled by persons resident in an EU Member State or in a country with which Ireland has a double taxation treaty;
- the company or a related company's shares are substantially and regularly traded on a recognised stock exchange in an EU Member State or in a country with which Ireland has a double taxation treaty; or
- the company is not regarded as resident in Ireland under the terms of a double taxation treaty.

Non-resident companies are liable to corporation tax on income arising directly or indirectly through an Irish branch or agency. Income received by a non-resident company which is not attributable to a branch or agency but which arises from an Irish source (e.g. rental income or deposit interest) may be liable to Irish income tax subject to the provisions of any relevant double tax treaty. Non-resident companies are only liable to tax on gains arising on the disposal of assets situated in Ireland that are held for the purposes of the trade or agency or on the disposal of certain specified assets (e.g. land, mineral/exploration rights situated in Ireland, unquoted shares deriving the greater part of their value from land/buildings or certain mineral rights situated in Ireland – for a complete list of the specified assets see paragraph 3.2).

(e) **Group Taxation**

Trading losses (as well as certain excess capital allowances, management expenses and charges on income) of a company may be offset against the taxable profits of the corresponding accounting period of another group company provided that both companies: (i) are tax resident in Ireland or in another Member State of the European Union or the European Economic Area and have an Irish branch subject to Irish corporation tax; (ii) satisfy a 75% common shareholding and entitlement to profits and assets on winding up test; and (iii) meet certain other conditions. It is not necessary for the company using the losses to make a claim for the full amount of trading losses available. Therefore, two or more group or consortium companies can make a claim in respect of the same surrendering company for the same accounting period.

Group relief is also available to members of a consortium where the loss-making company is owned by a consortium. A consortium is one where five or fewer companies own between them all the ordinary

share capital of a trading company or a holding company whose business consists wholly or mainly of the holding of shares in trading companies that are its 90% subsidiaries. The loss-making company cannot be more than a 75% subsidiary of any member of the consortium.

Claims for group relief must be made by the company using the losses within two years from the end of the surrendering company's accounting period to which the claim relates. The surrendering company must also notify the Inspector of Taxes of its consent to surrender the relief. Group relief can only be utilised against the profits of the corresponding accounting period. Therefore, losses carried forward or back may not be surrendered.

There are two ways of claiming relief for group losses: firstly, as an allowance as described above, and secondly, as a credit on the value basis. Trading losses are first grouped against trading income (ignoring excepted trades such as mining, land dealing, etc) and any excess may be grouped against the corporation tax payable on passive income and/or gains by way of a credit.

The existence of a 51% group relationship allows royalties and other annual payments which are normally subject to withholding tax to be paid gross.

Relief from corporation tax on chargeable gains is available where a capital asset is transferred from one company to another within a 75% group. For the purposes of capital gains tax relief two companies will generally be in a group if one company is a 75% subsidiary of the other or both are 75% subsidiaries of a third company and provided certain other conditions are met. The parent company must not only hold 75% of the ordinary shares of the subsidiary but must also be entitled to 75% of any distributions and to 75% of the surplus assets in the event of a winding up. Both companies must generally be tax resident in Ireland or else the asset transferred must remain within the charge to Irish capital gains tax.

Subsequent to an intra-group transfer, a charge to corporation tax on chargeable gains will arise when either:

- the asset is sold out of the group in which case tax is calculated by reference to the original cost and acquisition date of the asset when first acquired within the group, or
- the company owning the asset leaves the group within 10 years of the time of acquisition of the asset, in which case the gain which would otherwise have arisen on the intra-group transfer is triggered and the company leaving the group is treated as if immediately after its acquisition of the asset it had sold and immediately reacquired the asset at market value at that time.

## 2.2 Partnerships

### (a) Filing of Returns and Payment

The tax return for the partnership should be made on Form 1 (Firms) – Partnership Tax Return (available from the Revenue Commissioners) and should be made by the partner who is resident in Ireland and:

- (i) is first named in the partnership agreement,
- (ii) if there is no agreement, is named singly or with precedence over the other partners in the usual name of the firm, or
- (iii) is the precedent acting partner, if the person named with precedence is not an acting partner.

This partner is a chargeable person for the purposes of self-assessment. If no partner is resident in Ireland, the return should be made by the firm's agent, manager or factor resident in Ireland.

The return should include:

- all sources of income of the partnership for the accounting period ending in the year of assessment and the amount of income from each source;
- capital gains which accrued to and chargeable assets acquired by the partnership in the year of assessment;
- certain other information which normally includes the basis of distribution of profits and the basis of apportionment of joint allowances.

The return should be filed with the Revenue Commissioners on or before the 31<sup>st</sup> October of the year following the year of assessment. A three week extension is available if all partners use the Revenue online service to meet their pay and file obligations.

Each partner must also make his own tax return which must include details of his share of the firm's taxable profits, capital allowances/charges, charges on income and chargeable capital gains. Filing and payment requirements are the same as those for any other individual (see 2.5 (a) below).

### (b) Calculation of Income/Profits

Although the partnership is required to make an annual return, it is the partners rather than the firm itself who are subject to tax. The firm does not have any legal status apart from that of its partners. Each partner is taxed on his share of the taxable profits as if that share arose from a separate trade carried on by him. He may similarly claim his share of any available loss relief or of capital allowances.

Taxable profits/losses are calculated in accordance with income tax rules for sole traders and are then apportioned among the partners in accordance with the partnership agreement. In the absence of a partnership agreement, the profits/losses are apportioned equally among the partners. Once the partnership return has been made, and the taxable profits/losses and allocation thereof agreed with the Revenue Commissioners, each partner may deal separately with the Revenue as an individual. Capital allowances are also divided between the partners in accordance with the terms of the partnership. Any excess capital allowances are carried forward to following periods for the partnership as a whole.

Anti-avoidance legislation exists to prevent the use of limited partnerships as a tax avoidance device. The legislation restricts the right of partners with limited liability and certain general partners, who are not active partners, to offset losses, interest and capital allowances of the partnership against non-partnership income.

### **2.3 Joint Ventures**

The degree of association between the participants to a joint venture largely determines how they should be taxed. The nature of their joint activities and the treatment of the product of the joint venture are factors taken into account in assessing this degree of association.

If the joint venture is conducted through an incorporated company, then the joint venture will be taxed as an ordinary company (see paragraph 2.1). If the joint venture participants do not incorporate a company, but carry on a business as partners or receive income jointly, then the joint venture may be taxed as a partnership. It will be necessary to determine the exact nature of the joint venture to ascertain the treatment that will apply to the joint venture participants.

### **2.4 Trusts**

Trustees must file tax returns (Form 1 – Trusts) on a self-assessment basis by 31<sup>st</sup> October in the year following the year of assessment. They must also pay preliminary tax by 31<sup>st</sup> October in the year of assessment which must amount to:

- (a) 90% of the ultimate tax payable for the relevant tax year, or
- (b) 100% of the tax payable for the preceding tax year, or
- (c) 105% of the tax payable for the pre-preceding year (but only if paying in instalments by direct debit).

If under the terms of a trust a beneficiary is entitled to the trust income as it arises, the trust income will be regarded as that of the beneficiary, irrespective of whether or not the trustees actually distribute the income to him. A beneficiary will normally be regarded as being entitled to the income where he

has an immediate and unconditional right to it. Therefore where he has a contingent interest in the income, it will not accrue to him for tax purposes. Similarly in the case of a discretionary trust, tax does not arise to a beneficiary until the trustees exercise their discretion in his favour.

Any person who receives income as a trustee or otherwise in a fiduciary capacity is chargeable to income tax on that income, although only at the standard rate (currently 20%), but because trustees are not regarded as individuals they are not subject to the higher rates of taxation. However if income of a trust has not been distributed within 18 months of the end of the year of assessment in which it arises it will be subject to a surcharge of 20%. Generally, no deductions for any personal allowances or for any other reliefs that are granted to individuals only are given in taxing the income of a trustee.

A company may be the trustee of a settlement or may otherwise act in a fiduciary capacity. If so, the company is assessable to income tax on any trust income received by it in exactly the same manner as a non-corporate trustee. A company is not chargeable to corporation tax on any income that accrues to it in a fiduciary or representative capacity, except only if and to the extent that it has a beneficial interest in the income.

In computing income tax, trustees are not entitled to a tax deduction in respect of expenses of administration of the trust (although they are permitted to deduct these before the surcharge of 20% is imposed). However they may claim the deductions that are available for the category of income in question. They may also claim loss relief, capital allowances and a deduction for eligible loan interest paid where appropriate.

It is the residence of the trustees (and occasionally the residence of certain beneficiaries where income is paid directly to them) which determines the extent of their liability to income tax. If all of the trustees are resident in Ireland, then they will be assessed on the worldwide trust income from all sources. Equally if none of the trustees of a settlement is resident in Ireland, they may only be taxed on Irish source income. If only some trustees are resident in Ireland it is probable that the trust will not be regarded as Irish resident and will be liable to tax on Irish source income only.

Where a beneficiary receives a distribution out of trust income which was already assessed to income tax on the trustees, this net amount received is grossed up at the standard rate and the beneficiary is then given a credit for the income tax already paid by the trustees against his final income tax liability.

## 2.5 **Individuals**

### (a) **Filing of Returns and Payment**

Any person having income or profits for the tax year in respect of which income tax is chargeable is required to make a return and payment to the Revenue Commissioners on a self-assessment basis. However employees who derive all of their income from employment

are generally not subject to this requirement as income tax is deducted by the employer at source under the Pay-As-You-Earn (PAYE) system.

Self-assessment taxpayers must pay preliminary tax for the current tax year on or before the 31<sup>st</sup> October each year (with the exception of the taxpayer's first year in the self-assessment system). Preliminary tax must amount to:

- (i) 90% of the ultimate tax payable for the current tax year, or
- (ii) 100% of the tax payable for the preceding tax year, or
- (iii) 105% of the tax payable for the pre-preceding year (but only if paying in instalments by direct debit).

Preliminary tax includes not only income tax but also Pay Related Social Insurance (PRSI) and Health Contribution. It can be paid online through the Revenue Online Service (ROS), by direct debit, bank giro or by completing a single debit authority.

Self-assessment taxpayers must then make a tax return (on Form 11 or shorter Form 11E available from the Revenue Commissioners) after the end of the tax year (1<sup>st</sup> January – 31<sup>st</sup> December) but not later than 31<sup>st</sup> October in the year following the year of assessment. Any balance of tax due must also be paid by this date. Self-employed business accounts (where relevant) need not be submitted although an extract of the relevant information from these accounts must be included in the return.

Where tax is charged under the PAYE system the taxpayer effectively pays tax each week or month as he receives his wages or salary. At the beginning of the tax year every employee usually receives a Form P2 or Form P2N, outlining tax credits, the standard rate cut-off point and the amounts allocated to different employments. The tax credits and reliefs are estimates which are generally based on the most recent tax return submitted by the individual. If the employee becomes entitled to any additional tax credits etc. at any stage during the tax year he can supply details to the Revenue Commissioners who will issue a revised P2 certificate.

Each employer who pays remuneration exceeding certain limits is obliged to register with the Revenue Commissioners and operate PAYE on all emoluments paid to employees. At the start of each year the Inspector of Taxes issues a tax deduction card in respect of each employee allowing the employer to calculate the correct tax to be deducted. This tax must be remitted to the Collector General in addition to a completed Form P30 within fourteen days of the end of each month. Registered employers are also required to file an end of year return (P35) on or before the 15<sup>th</sup> February in the year following the relevant tax year. The employer should also provide a form P60 to

the employee at this time, outlining details of pay received, tax deducted under PAYE and PRSI deductions made.

(b) **Calculation of Income Tax**

An individual's aggregate income for the year from all sources must firstly be ascertained, this total income figure will be net of any deductions specific to the various classes of income in question.

Individuals are liable to income tax on their annual taxable income at the standard rate of 20% on the first €34,000 (assuming that the employee is single – this rate is higher if the employee is married) of their income and at the higher rate of 41% on the remainder. Each individual has a number of tax credits which vary depending on their circumstances which are available for set-off against their income tax liability.

(c) **Territorial Rules**

The extent of an individual's liability to Irish income tax depends on:

- whether he is resident in Ireland (present in Ireland for a total of 183 days or more in year of assessment or present for a total of 280 days or more in the year of assessment and the preceding year, although not resident for any year in which he is present in Ireland for 30 days or less);
- whether he is ordinarily resident in Ireland (resident for each of the three years preceding year of assessment);
- whether he is domiciled in Ireland (generally his father (or mother in certain cases) is Irish domiciled or he has acquired Irish domicile by choice through a combination of residence and intention to reside in Ireland indefinitely).

An individual who is resident and domiciled in Ireland is liable to Irish income tax on his worldwide income (unless he is an Irish citizen who is not ordinarily resident in Ireland in which case the remittance basis outlined below applies).

An individual who is resident but not domiciled in Ireland is liable to Irish income tax in full on his income arising in Ireland and the UK but on foreign income only to the extent that it is remitted to Ireland. However this remittance basis does not apply to employment income attributable to the performance of duties of that employment in Ireland.

An individual who is not resident but who is ordinarily resident is taxable on the same basis as a resident (i.e. worldwide income) with some exceptions, for example income from a trade or profession no part of which is carried on in Ireland is not taxable here.

An individual who is not resident and not ordinarily resident in Ireland is, in general, liable to Irish income tax only on income arising in Ireland. In addition a non-resident individual is generally not entitled to personal tax credits and reliefs.

If an individual is regarded as being resident under the domestic laws of two countries then the terms of the Irish double taxation treaty with the other country in question will need to be considered to ascertain the tax position of the individual.

### **3. Other Taxes and Duties**

#### **3.1 Withholding Taxes**

##### **(a) Dividends**

Dividends paid by a resident company are generally subject to dividend withholding tax at the standard rate of income tax (currently 20%) unless the paying company has received all of the requisite documentation before payment of the dividend and the shareholder falls within one of the following categories of exempt shareholders:

- Irish resident companies, pension schemes, charities, certain sporting bodies, collective investment undertakings, employee share ownership trusts, designated brokers in relation to Special Portfolio Investment Accounts, and qualifying fund managers in relation to Approved Retirement Funds;
- Individuals who are residents of an EU Member State or of a country with which Ireland has a double taxation treaty provided that the individual is neither resident nor ordinarily resident in Ireland. (A declaration of entitlement to the exemption sworn by the individual is also required.);
- Companies which are resident in an EU Member State or in a country with which Ireland has a double taxation treaty and which are not ultimately under the control of Irish residents;
- Non-resident companies which are ultimately controlled by persons who are resident for tax purposes in an EU Member State or in a country with which Ireland has a double tax treaty;
- Non-resident companies which are quoted and traded on a recognised stock exchange (of an EU Member State or of a country with which Ireland has a double tax treaty) or on such other approved stock exchange (or whose 75% parent, or, if owned by 2 or more companies, each of its 100% parents, are so quoted and traded).

(b) **Interest**

Interest paid by an Irish resident company may be subject to withholding tax and/or may be liable to income tax. In general, unless the circumstances falls within one of the many domestic exemptions from withholding tax, an Irish resident company must deduct withholding tax at 20% on making payments of interest. Numerous domestic exemptions from the requirement to withhold tax on interest payments exist. For example if the recipient is resident in a jurisdiction that has concluded a double tax treaty with Ireland that provides that payment of interest may be paid without deduction or withholding in respect of taxes then the recipient is entitled to the benefit of that exemption from withholding tax so long as it has made all the requisite filings with the appropriate authorities to obtain relief under that treaty in advance of any interest payment.

Withholding tax will also not apply to interest payments made by a company to the extent that either:-

- The interest is paid in the ordinary course of business of the payer and the recipient is an “excluded company”. An “excluded company” for these purposes is a company that:-
  - is tax resident in an EU Member State (other than Ireland), or in a territory with which Ireland has a double tax treaty;
  - does not have an Irish branch or agency, with which the interest is connected.
- The interest is paid on securities that are quoted on a recognised stock exchange (“quoted eurobond”) and the interest payments are made:-
  - by a non-Irish paying agent; or
  - by, or through, an Irish paying agent; and
  - an appropriate form of declaration of non-residence is provided to the paying agent by, or on behalf, of the person who is the beneficial owner of the notes or bonds and entitled to the interest (or where the provisions of tax legislation deem the interest to be that of some other person, by that person); or
  - the notes are held in a recognised clearing system (such as Euroclear or, Clearstream, Luxembourg, or DTC).

(c) **Patent royalties**

Patent royalties are subject to a withholding obligation of 20% although relief is available under various tax treaties, which in most cases reduces the withholding to nil. Residual liability would under most treaties also be reduced to nil. The requirement to deduct tax at source does not apply to a payment to a corporate shareholder where:-

- the Irish company is a 51% subsidiary of the recipient provided that the recipient is resident in an EU Member State;
- the provisions of Council Directive 2003/49/EC (Directive on Interest and Royalties) apply.

(d) **Deposit Interest Retention Tax (DIRT)**

DIRT is charged on the payment of certain interest by specified institutions. DIRT is deducted at the standard rate of income tax, currently 20%, from interest paid either annually or at more frequent intervals or from the gross amount of interest paid or credited on Special Savings Accounts and Special Term Accounts. Any other interest paid or credited is liable to DIRT at the standard rate of income tax plus 3 percentage points, (currently 23%). DIRT paid on a relevant deposit account will be deemed to be in full settlement of the income tax liability on that income, even if the individual is liable to tax at the higher rate.

(e) **Payments for professional services**

Payments for such professional services (such as accounting, legal, finance, engineering and medical services) rendered to or on behalf of specified State and semi-State bodies suffer a withholding tax equal to the standard rate of income tax (currently 20%).

(f) **Capital Gains Withholding Tax**

On the sale of certain assets the person by or through whom payment is made is obliged to withhold 15% of the sale proceeds and pay it over to the Revenue Commissioners. The requirement to deduct tax from the sale proceeds only applies where the consideration for the disposal exceeds €500,000, and relates to the sale of certain specified assets:

- (i) land in Ireland;
- (ii) minerals in Ireland or any rights, interests or other assets in relation to mining, or minerals or the searching for minerals;
- (iii) exploration or exploitation rights in a designated area;
- (iv) shares in a company deriving their value or the greater part of their value, directly or indirectly from assets specified in

paragraph (i), (ii) or (iii), other than shares quoted on a stock exchange;

- (v) unquoted shares acquired following a reorganisation of share capital, such shares being similar in nature to those described in (iv) above;
- (vi) goodwill of a trade carried on in the Ireland. [**Note:** This only applies to a direct sale of goodwill and not to the sale of shares the value of which may be derived wholly or partly from goodwill.]

Tax does not have to be withheld by the purchaser of an asset where the vendor has obtained a clearance certificate (CG50) authorising the payments to be made in full. An Irish resident taxpayer making a disposal is entitled to such a clearance certificate as of right. A non-resident person will receive such a certificate only where he has satisfied the Revenue Commissioners that he has no liability to capital gains tax on the disposal, or satisfies the Revenue as to the amount of the liability and that tax will be paid by him.

(g) **Other Withholding Taxes**

Income tax at 20% must also be deducted from certain other payments including inter alia:

- Annuities and certain other annual payments;
- Rents on Irish property payable to non-residents (unless Irish resident agent appointed).

3.2 **Capital Gains Tax (CGT)**

An Irish resident or ordinarily resident and Irish domiciled person is subject to CGT on worldwide disposals of property. Irish resident or ordinarily resident but non-Irish domiciled persons are subject to CGT on disposals of Irish and UK assets and “foreign” assets, but only where the proceeds of the “foreign” disposals are remitted to Ireland. Non-Irish resident or ordinarily resident persons are subject to CGT on the disposal of specified Irish assets, consisting essentially of:

- Irish land and buildings;
- Irish mineral exploitation or exploration rights;
- unquoted shares deriving the greater part of their value from such assets; and
- assets used in a trade carried on in an Irish branch or agency.

CGT is calculated by comparing the disposal price with the acquisition cost (the acquisition cost or disposal proceeds may be deemed in certain circumstances). After providing for allowances for inflation, enhancement, expenditure, incidental costs of acquisition and disposal, capital, losses forward and other expenses, the tax is applied at 20%.

As previously mentioned, Irish resident companies are subject to corporation tax on their chargeable gains as well as on their income. The gains are re-worked to ensure that the tax is charged at an effective 20% rate. The chargeable gain is calculated after allowance for inflation up to 31<sup>st</sup> December 2002 only.

As with individuals, resident companies are liable to capital gains tax on their worldwide gains, but non-resident companies are only liable to the tax on the disposal of certain specified assets as outlined above. However gains arising to an Irish company on the disposal of shares in certain subsidiary undertakings are exempt from CGT provided certain conditions are met. (See paragraph 2.1(b) for further information.)

### **3.3 Value added tax (VAT)**

VAT is charged on certain imports and on goods and services supplied in the course of business. Credit is given for VAT to registered traders and so generally it is ultimately borne by the final consumer. Exports are zero-rated for VAT, except those exported to unregistered persons in the EU. The place of supply of certain services is subject to the “reverse charge” mechanism. VAT rates range from 0% to 21% depending on the product or service.

### **3.4 Stamp duty**

Stamp duty is charged on certain documents executed in Ireland. The tax payable is either a fixed duty or a percentage of the value of the transaction (for example 1% on share transfers and between 1% to 9% on real property).

### **3.5 Customs and Excise Duties**

Customs and excise duties are generally levied on imports from outside the EU. The rate of duty depends on the precise nature and circumstances of the import

### **3.6 Pay Related Social Insurance (PRSI) and Health Levy**

Both employers and employees are liable for PRSI contributions which are calculated as a percentage of an employee’s earnings. The employee’s overall contribution is generally 6%, which is made up of employee PRSI of 4% and a health levy of 2%. Employees earning in excess of €1,925 per week pay an additional 0.5% health levy. The first €127 per week of an employee’s income is usually exempt from employee PRSI as are any annual earnings over €48,800. The health levy is payable by an employee on all of his reckonable earnings. The employer PRSI contribution is 10.75% on all of an

employee's reckonable earnings from that employer and is not subject to any cap.

### 3.7 **Relevant Contracts Tax (RCT)**

In the construction, forestry and meat processing industries a principal contractor must deduct tax at 35% from payments in relation to relevant contracts made to any sub-contractors, and must remit this tax to the Revenue Commissioners, unless the sub-contractor has a certificate from the Revenue Commissioners stating that tax need not be deducted (C2 clearance cert) and the principal contractor obtains a relevant payments card. The principal contractor must maintain a record of all payments to sub-contractors regardless of whether or not the sub-contractor holds a certificate. The gross amount receivable under the contract is included in the computation of the profit of the sub-contractor and he is entitled to a credit for the 35% tax already deducted. Revenue have advised that RCT does not apply where relevant construction, forestry or meat processing operations are performed wholly abroad. RCT will be regarded as applying where the relevant operations are performed or partly performed in Ireland. If the performance of relevant operations abroad is merely incidental to the performance in Ireland, RCT will be regarded as applying to the full contract. In all other cases, RCT need only be applied to the part of the contract that is performed in Ireland.

## 4. **Inheritance and Gift Taxes**

Capital Acquisitions Tax (CAT) is a tax on both gifts and inheritances. Gifts or inheritances of all property situated in Ireland are taxable regardless of the domicile/residence/ordinary residence of the disponent or beneficiary. Gifts or inheritances of non-Irish situated property, taken on or after 1st December 1999, are generally liable to tax where either the disponent or the beneficiary is resident or ordinarily resident in Ireland. Non-domiciled individuals are deemed to be outside these charging provisions (except in the case of property situated in Ireland) unless they have been resident in Ireland for five consecutive tax years preceding the year in which the benefit is taken, and are also resident in the year in which the benefit arises.

In order to calculate the CAT payable the taxable value of the benefit must first be ascertained. The taxable value of the benefit is its market value less any liabilities, costs and expenses properly payable out of the benefit and less the value of any consideration paid for the benefit. If the benefit is a gift then an annual Small Gift Exemption (currently €3,000) may be deducted from gifts from each different disponent.

The CAT payable depends on the relationship between the disponent and the beneficiary. It also depends on any prior benefits taken from any disponents in relation to whom the beneficiary bears the same relationship he does to the current disponent.

These classes of relationship are known as "groups":

- Group A applies to benefits transferred from a parent to a child (or minor child of a pre-deceased child) or from a child to a parent (on death);

- Group B applies to benefits transferred to brothers, sisters, nieces, nephews, parents (not on death), grandparents, grandchildren and other lineal ancestors/descendants;
- Group C applies to benefits transferred to anyone else including uncles, aunts and cousins.

The taxable values of prior gifts or inheritances received by the same beneficiary under the same group threshold since 5 December 1991 are aggregated and added to the taxable value of the current benefit – if this figure exceeds the group threshold in question then CAT is payable at 20% on the excess of the taxable value of the current benefit above the threshold. The threshold amount for each Group is indexed each calendar year on 1<sup>st</sup> January according to the Consumer Price Index for the year immediately preceding the year in which the benefit is taken. The group thresholds for 2007 are as follows:

| <b>Group</b> | <b>Exempt Threshold</b> |
|--------------|-------------------------|
| A            | €96,824                 |
| B            | €9,682                  |
| C            | €4,841                  |

Benefits transferred between spouses are exempt from CAT. Various reliefs which reduce the amount of CAT payable are available, for example reliefs on agricultural and business property.

The self-assessment system also applies to CAT. A return (Form IT38) must generally be delivered to the Revenue Commissioners within four months of the date on which the beneficiary becomes beneficially entitled in possession to the benefit where the aggregate of all taxable benefits exceeds 80% of the group threshold or where a relief is claimed.

## 5. Other Matters

### 5.1 Tax Incentives

#### (a) Research and Development

Under Irish tax legislation there are two major incentives granted to companies that engage in expenditure on research and development within the country and within the European Economic Area generally (subject to certain conditions and limitations).

Firstly, a company that incurs expenditure on research and development may avail of a tax credit of 20% of incremental expenditure in that area set against its Irish corporation tax liability. The tax credit is in addition to the corporation tax deduction available at 12.5% for a qualifying expenditure. Therefore relief is available at

the effective rate of 32.5% for incremental expenditure on research and development, for example a company with an incremental research and development spend of €20 million will therefore reduce its corporation tax liability by an additional €4 million. The tax credit is available for offset against the current year Irish corporation tax liability and any unused credit can be carried forward indefinitely to future periods.

Secondly, Irish tax legislation allows for a tax credit for capital expenditure on buildings or structures used for the purpose of carrying on research and development activity. Expenditure in this context extends to spending on the construction or refurbishment of a building or structure to be used to facilitate research and development. The tax credit amounts to 20% of the cost of the construction or refurbishment. The credit may be set against the company's Irish corporation tax liability over a period of four years.

**(b) Transfer Pricing**

Ireland has only limited transfer-pricing legislation. Section 1036 of the Taxes Consolidation Act, 1997 seeks to prevent transfer pricing between a resident and a non-resident person where the non-resident person controls the resident and the profits of the resident are either nil or less than the ordinary profits which might be expected to arise from that business. This is not a provision that is often invoked in practice.

**(c) Controlled Foreign Companies Legislation**

Ireland has no Controlled Foreign Companies (CFC) legislation and therefore an Irish company would not be subject to Irish corporation tax on the profits of any subsidiaries. In addition, the lack of CFC legislation reduces the burdens and costs of compliance which are associated with countries which operate CFC rules.

**5.2 Exchange Controls**

Exchange controls were phased out in Ireland between 1988 and 1993. There are no restrictions on the amount of currency which may be traded.

**5.3 Tax Treaties**

The table below lists countries with which Ireland has agreed a double taxation treaty and sets out the source country limits applicable to dividends, interest and royalties.

| Country   | Year | Maximum Source Country Tax Rates (% of gross payment)<br>(for split rates, please consult the relevant article in the treaty) |          |           |
|-----------|------|---|----------|-----------|
|           |      | Dividends   | Interest | Royalties |
| AUSTRALIA | 1984 | 15  | 10       | 10        |
| AUSTRIA   | 1964 | 10  | 0        | 0/10      |
| BELGIUM   | 1973 | 15  | 15       | 0         |

|              |              |             |          |        |
|--------------|--------------|-------------|----------|--------|
| BULGARIA     | 2002         | 5/10        | 0/5      | 10     |
| CANADA       | 2006         | 5/15        | 0/10     | 0/10   |
| CHILE        | Not in force | 5/15        | 5/15     | 5/10   |
| CHINA        | 2001         | 5/10        | 0/10     | 6/10   |
| CROATIA      | 2004         | 5/10        | 0        | 10     |
| CYPRUS       | 1952         | 0           | 0        | 0/5    |
| CZECH REP.   | 1997         | 5/15        | 0        | 10     |
| DENMARK      | 1994         | 0/15        | 0        | 0      |
| ESTONIA      | 1999         | 5/15        | 0/10     | 5/10   |
| FINLAND      | 1990         | 0/15        | 0        | 0      |
| FRANCE       | 1966         | 10/15       | 0        | 0      |
| GERMANY      | 1959         | 15          | 0        | 0      |
| GREECE       | 2005         | 5/15        | 5        | 5      |
| HUNGARY      | 1997         | 5/15        | 0        | 0      |
| ICELAND      | 2005         | 5/15        | 0        | 0/10   |
| INDIA        | 2002         | 10          | 0/10     | 10     |
| ISRAEL       | 1996         | 10          | 5/10     | 10     |
| ITALY        | 1967         | 15          | 10       | 0      |
| JAPAN        | 1974         | 10/15       | 10       | 10     |
| KOREA REP.   | 1992         | 10/15       | 0        | 0      |
| LATVIA       | 1999         | 5/15        | 0/10     | 5/10   |
| LITHUANIA    | 1999         | 5/15        | 0/10     | 5/10   |
| LUXEMBOURG   | 1968         | 5/15        | 0        | 0      |
| MALAYSIA     | 2000         | 10          | 0/10     | 8      |
| MEXICO       | 1999         | 5/10        | 0/5/10   | 10     |
| NETHERLANDS  | 1965         | 0/15        | 0        | 0      |
| NEW ZEALAND  | 1989         | 15          | 10       | 10     |
| NORWAY       | 2002         | 0/5/15      | 0        | 0      |
| PAKISTAN     | 1968         | 10/no limit | no limit | 0      |
| POLAND       | 1996         | 0/15        | 0/10     | 10     |
| PORTUGAL     | 1995         | 15          | 0/15     | 10     |
| ROMANIA      | 2001         | 3           | 0/3      | 0/3    |
| RUSSIA       | 1996         | 10          | 0        | 0      |
| SLOVAK REP.  | 2000         | 0/10        | 0        | 0/10   |
| SLOVENIA     | 2003         | 5/15        | 0/5      | 5      |
| SOUTH AFRICA | 1998         | 0           | 0        | 0      |
| SPAIN        | 1995         | 0/15        | 0        | 5/8/10 |
| SWEDEN       | 1988         | 5/15        | 0        | 0      |

|               |      |       |   |   |
|---------------|------|-------|---|---|
| SWITZERLAND   | 1965 | 10/15 | 0 | 0 |
| UK            | 1976 | 5/15  | 0 | 0 |
| UNITED STATES | 1998 | 5/15  | 0 | 0 |
| ZAMBIA        | 1967 | 0     | 0 | 0 |

New treaties are currently being negotiated with Argentina, Egypt, Kuwait, Malta, Macedonia, Moldova, Morocco, Singapore, Thailand, Tunisia, Turkey, Ukraine and Vietnam.