International Comparative Legal Guides

Practical cross-border insights into corporate tax law

Corporate Tax 2023

19th Edition

Contributing Editor:
William Watson
Slaughter and May

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

As at October 2022, 76 treaties have been signed, 73 of which are in force.

1.2 Do they generally follow the OECD Model Convention or another model?

Generally, they follow the OECD Model.

1.3 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

Ireland deposited its instrument of ratification and final list of reservations and notifications with the OECD on 29 January 2019.

The MLI entered into force for Ireland on 1 May 2019. As a general rule, it began to have effect for Ireland's tax treaties:

- with respect to taxes withheld at source, from 1 January 2020; and
- with respect to all other taxes levied by Ireland, for taxes levied with respect to taxable periods beginning on or after 1 November 2019.

The date on which the MLI modifies each treaty depends on when Ireland's treaty partners deposit their own instruments of ratification.

1.4 Do they generally incorporate anti-abuse rules?

Irish double tax treaties ("**DTTs**") generally incorporate anti-abuse rules.

With respect to Ireland's implementation of the MLI, Ireland has chosen to adopt the Principal Purpose Test ("**PPT**") in order to implement Article 7 of the MLI, which is aimed at prevention of treaty abuse. This will introduce this general anti-avoidance clause into any Irish DTT where the treaty partner also chooses the PPT option.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

No, Irish DTTs prevail over domestic law. Certain domestic exemptions from withholding tax mirror the treaty relief, and indeed may be more favourable, and apply once a treaty is signed.

1.6 What is the test in domestic law for determining the residence of a company? Has the application of the test been modified in response to COVID-19?

A company is resident in Ireland if it is incorporated in Ireland or, if not Irish-incorporated, is centrally managed and controlled in Ireland. This latter test is based on case law and focuses on board control, but it is ultimately a question of fact based on how decisions of the company are made in practice.

If a company incorporated in Ireland is managed and controlled in a treaty state, it may be regarded as resident in that other state under the "tiebreaker" clause of Ireland's DTT with that state.

In response to COVID-19, the Irish Revenue Commissioners ("**Revenue**") published concessionary measures that modified the application of the corporate residence test. For example, if a director of a company would have been present in Ireland but for COVID-19 travel restrictions, Revenue disregarded their presence outside Ireland for corporation tax purposes. The director and the company were required to maintain a record of the facts and circumstances of the *bona fide* relevant presence outside Ireland. This treatment remained valid until 31 January 2022, at which time it was withdrawn.

1.7 Is your jurisdiction's tax authority expected to revisit the status of dual resident companies in cases where the MLI changes the treaty "tiebreaker"?

Ireland has adopted the best practice rule in Article 4 of the MLI on determining tax residence for dual-resident entities. This approach allows the competent authorities of the Contracting Jurisdictions to determine by mutual agreement the state of residence for tax treaty purposes having regard to various features comprising the entity's place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.

Although Revenue has issued guidance with respect to the interpretation of Ireland's tax treaties that will be affected by the changes to the treaty tiebreaker, the guidance does not indicate whether Revenue will revisit the status of potentially affected dual-resident companies.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Generally, a document is chargeable to stamp duty, unless exempt, where the document is both:

- listed in Schedule 1 to the Irish Stamp Duties Consolidation Act 1999 (the principal head of charge is a transfer of any Irish property); and
- executed in Ireland or, if executed outside Ireland, relates to property situated in Ireland or to any matter or thing done or to be done in Ireland.

The transferee is liable to pay stamp duty and a return must be filed, and stamp duty paid, within 44 days of the execution of the instrument.

Stamp duty on the transfer of assets is charged on the higher of the consideration paid for, or the market value of, the relevant asset at the following rates:

- Shares or marketable securities: 1%.
- Non-residential property: 7.5%. The 7.5% rate applies for shares in certain companies deriving their value from Irish non-residential property where certain conditions are satisfied.
- Residential property: 1% on consideration up to €1 million and 2% on the excess. However, there is an increased stamp duty rate of 10%, where 10 or more residential houses or duplexes are purchased at a time, or cumulatively in a year.

The higher stamp duty rates can apply to shares and partnership interests deriving their value from Irish land.

Ireland operates a "Residential Development Stamp Duty Refund Scheme", which will be extended to the end of 2025. This is a scheme whereby a portion of the stamp duty paid on the acquisition of non-residential land is refunded where that land is subsequently developed for residential purposes. The net minimum stamp duty payable after a refund is 2%, whereas the normal rate for non-residential property is 7.5%.

There are numerous other reliefs and exemptions, including:

- Associated companies relief on transfers between companies where the transferor and transferee are 90% associated at the time of execution and for two years afterwards.
- Reconstruction relief on a share-for-share exchange or share-for-undertaking transaction, subject to meeting certain conditions.
- Exemptions for transfers of intellectual property, non-Irish shares and land, loan capital issued by companies, aircraft and ships.

2.2 Do you have Value-Added Tax (VAT), or a similar tax? If so, at what rate or rates? Please note any rate reduction in response to COVID-19.

VAT is a transaction tax based on EU directives as implemented into Irish law. It is chargeable on the supply of goods and services in Ireland and on goods imported into Ireland from outside the EU.

Persons in business in Ireland generally charge VAT on their supplies, depending on the nature of the supply.

The standard VAT rate is 23%. Lower rates apply to certain supplies of goods and services, such as, e.g. 13.5% on supplies of land and property, 0% on certain food and drink, books and children's clothing, and 9% on certain tourism- and hospitality-related supplies. This 9% rate, introduced in response to COVID-19, will apply until 28 February 2023. No further extension to this measure is envisaged and therefore, the 13.5% rate will apply from 1 March 2023. The rate of VAT on newspapers (both print and digital) will be reduced to 0% from 1 January 2023.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

The application of VAT to a supply of goods or services depends on the place of supply of those goods or services. For example, business-to-business supplies of services take place where the recipient is established.

The supply of the following goods and services is exempt from VAT: most banking, insurance and financial services; medical services; education and training services; and passenger transport.

The transfer of certain assets of a business between accountable persons is not subject to VAT where the assets constitute an undertaking capable of being carried on independently.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

VAT incurred will generally be recoverable as long as it is incurred by a taxable person (a person who is, or is required to be, VAT-registered) for the purpose of making taxable supplies of goods and services. VAT incurred by a person who makes exempt supplies is not recoverable. Where a taxable person makes exempt, non-exempt or non-business supplies, VAT recovery will be allowed in respect of the non-exempt supplies only. However, if the VAT incurred cannot be attributed to either (for example, general overheads), the VAT must be apportioned between the taxable and exempt supplies.

2.5 Does your jurisdiction permit VAT grouping? If so, how does this apply where a company in one jurisdiction has an establishment in another?

Yes, Ireland does permit VAT grouping. Where a VAT group has been established, all transactions carried out by the individual group members are considered to have been carried out by the VAT group as a single accountable person. Each member of a VAT group is jointly and severally liable for the VAT liabilities of the group.

In order to become a member of a VAT group, a person must be established in Ireland. A person may have either a business or a fixed establishment within Ireland.

Under the Finance Act 2021, to form a VAT group, at least one of the persons seeking to form a group must be an "accountable" person. Previously, it was sufficient that this person (or another person seeking to form the group) was a "taxable" person. "Taxable" means that person is involved in economic activity but not necessarily registered for Irish VAT, whereas "accountable" refers to someone who is, or should be, registered for Irish VAT.

Not every member of the group has to be an accountable person; however, inclusion within a VAT group is on an all-or-nothing basis for a legal entity, and once a branch is included within an Irish VAT group registration, the entire legal entity is included.

2.6 Are there any other noteworthy transaction taxes or indirect taxes that are payable by companies?

Certain taxes, including interest withholding tax, dividend withholding tax, professional services withholding tax, and relevant contract tax, may be payable depending on the nature of the transaction and the type of business carried on by the parties to the transaction.

2.7 Are there any other indirect taxes of which we should be aware?

Customs duties are payable on goods imported from outside the EU (including Great Britain).

Excise duty applies at varying rates to mineral oils, alcohol and alcoholic beverages, tobacco products and electricity, and also applies to certain premises and activities (e.g. betting and licences for retailing of liquor).

There is an insurance levy on the gross amount received by an insurer in respect of certain insurance premiums. The rate is 3% for non-life insurance where the risk is located in Ireland as defined in the legislation. There are exceptions for reinsurance, voluntary health insurance, marine insurance, aviation and transit insurance, export credit insurance and certain dental insurance contracts. There is a levy of 1% on life assurance premiums.

Section 126AA of the Stamp Duties Consolidation Act 1999 provides for a levy on certain financial institutions (known as the bank levy). This has been extended to the end of 2023.

There are a number of land-related indirect taxes, including:

- a vacant site levy, which applies to sites listed on the vacant site register;
- a residential zoned land tax ("**RZLT**") on land that has been and is zoned as being suitable for residential development; and
- a vacant homes tax ("**VHT**"), which will apply to residential properties that are occupied for less than 30 days in a 12-month period.

From 3 April 2023, a concrete products levy will apply to concrete blocks, pouring concrete and certain other concrete products at a rate of 10%.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Dividend withholding tax at 25% applies to dividends paid to non-resident persons. However, a number of exemptions apply in that case, including where payments are made to:

- persons resident in an EU Member State (other than Ireland) or a country with which Ireland has concluded a DTT ("**EU/treaty state**");
- companies ultimately controlled by persons who are resident in an EU/treaty state; and
- companies whose shares are substantially and regularly traded on a recognised stock exchange in an EU/treaty state, or where the recipient company is a 75% subsidiary of such a company or is wholly owned by two or more of such companies.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties are not generally subject to withholding tax unless paid in respect of an Irish patent.

No withholding tax will apply to royalties paid in the course of a trade or business to a company resident in an EU/treaty state or paid between "associated companies" in the EU.

It is Revenue's administrative practice, since 2010, not to charge withholding tax on royalties payable in respect of a foreign patent under a licence agreement executed in a foreign territory, which is subject to the law and jurisdiction of a foreign territory (subject to the Irish company obtaining advance approval from Revenue).

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Payments of "yearly" interest by an Irish corporation to a non-resident are normally subject to withholding tax at 20%. There are wide exemptions from this requirement, the most notable of which include payments:

- between "associated companies" under the EU Interest and Royalties Directive;
- by a company in the ordinary course of its trade or business to a company resident in an EU/treaty state (provided the payments do not relate to an Irish branch or agency of the lender), where that state imposes a tax that generally applies to interest receivable in that state by companies from sources outside that state;
- on quoted Eurobonds, provided that (i) the Eurobonds are cleared through a recognised clearing system, (ii) the interest is paid by a non-Irish paying agent, or (iii) the beneficial owner has provided a declaration of non-residence; or
- by an Irish "section 110 company" to a person resident in an EU/treaty state, other than where it relates to an Irish branch or agency.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Other than the interest limitation rules discussed below, there are no "thin capitalisation" rules applicable in Ireland.

It is nonetheless possible in certain limited cases that the interest may be reclassified as a distribution, preventing such interest from being tax-deductible.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

Interest that would ordinarily be reclassified as a distribution may nevertheless be deductible for an Irish "section 110 company" if one of four safe harbours applies, including where the recipient is resident and subject to tax in an EU/treaty state or where interest is paid on a quoted Eurobond to a company that does not "control" the section 110 company.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

No, they would not.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

Interest is generally deductible if provided for as an expense in the statutory accounts of the company, and it is incurred wholly and exclusively for the purposes of its trade.

Subject to meeting certain conditions, interest incurred in lending money to a trading or property rental company or in acquiring shares in a trading or property rental company, or a holding company of such a company, should also be deductible on a paid basis.

Tax relief for interest is restricted where it is paid for acquiring shares in or lending money to a connected company, or for the purposes of acquiring a trade or business of that or another connected company (irrespective of the payee's country of residence).

The EU Anti-Tax Avoidance Directive ("**EU ATAD**") contains a fixed ratio interest limitation rule ("**ILR**"), which applies to accounting periods beginning on or after 1 January 2022. ILR potentially applies if a taxpayer's interest expense exceeds its interest equivalent income. The ability to claim a tax deduction for the excess interest is restricted to 30% of EBITDA (earnings before tax and before deductions for net interest expense, depreciation and amortisation). Ireland's ILR legislation has applied since 1 January 2022. The legislation incorporates a number of important exemptions and exclusions in line with EU ATAD, including an exemption for "standalone entities" and entities whose net interest expense is less than €3 million *per annum*.

Companies can elect to operate ILR on a single entity or local Irish group basis (an "interest group"). Moreover, where the taxpayer is part of a consolidated worldwide group for accounting purposes ("worldwide group") or a single company worldwide group ("**SCWG**"), the indebtedness of the overall group at worldwide level may be considered for the purposes of providing additional relief under one of two grouping rules. The SCWG is a company that is not a member of a worldwide group or an interest group and is not a standalone entity. In order to obtain relief, it will compare its position as a single entity to its position as a member of a group, based on related party transactions for the purpose of the comparison.

In May 2022, the European Commission published the first draft of the "debt-equity bias reduction allowance" directive ("**DEBRA**"), which has interest limitation measures and is expected to apply alongside and in addition to the existing ILR introduced as part of EU ATAD. The draft directive provides that EU Member States shall implement the provisions into national law if agreed by 31 December 2023, to be effective from 1 January 2024.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Withholding tax applies at a rate of 20% on rent paid directly to a non-resident landlord in respect of Irish-situated property (payable to Revenue by the tenant).

The appointment of an Irish tax-resident agent by the non-resident landlord to collect rental payments on his behalf excludes the application of withholding tax on the rent altogether.

3.9 Does your jurisdiction have transfer pricing rules?

Yes, Ireland's transfer pricing rules apply to arrangements entered into between associated companies. If an arrangement is not made at arm's length, an adjustment will be made to the trading profits to reflect an arm's-length amount. The Irish tax legislation refers to the OECD Transfer Pricing Guidelines for the interpretation of the arm's-length principle. There is an exemption for small and medium-sized enterprises.

In addition, companies within scope must prepare transfer pricing documentation in accordance with Annexes I and II of the 2017 OECD Transfer Pricing Guidelines.

3.10 Can companies in your jurisdiction obtain unilateral, bilateral or multilateral advance pricing agreements?

Effective from 1 July 2016, Revenue introduced a formal bilateral advanced pricing agreement ("**APA**") programme.

The bilateral APA programme only applies to transfer pricing issues (including the attribution of profits to a permanent establishment. It is conducted within the legal framework of the DTT that Ireland has entered into with the other jurisdiction concerned, i.e. there must be a DTT in place in order for a bilateral APA application to be considered. APAs are conducted under the Mutual Agreement Procedure ("**MAP**") article of the relevant treaty where the relevant enabling provision is present in the treaty.

Where the transfer pricing issues involve more than two tax jurisdictions, of which Ireland is one, Revenue will consider entering into a series of bilateral APAs as a way of dealing with such multilateral situations. If requested by the taxpayer, Revenue is also willing, in such cases, to consider conducting multilateral meetings with the other tax administrations – subject to the terms of the relevant DTTs and the agreement of the other tax administrations.

Revenue will not enter into unilateral APAs, i.e. an agreement solely between the taxpayer and Revenue and not involving another competent authority.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

Ireland currently has two rates of corporation tax: a 12.5% rate; and a 25% rate.

The 12.5% rate applies to the trading profits of a company that carries on a trade in Ireland. There is no precise definition of what constitutes a trade for this purpose. As a general rule, it would require people on the ground in Ireland carrying out real economic activity on a regular or habitual basis, and normally with a view to realising a profit.

The 25% rate applies in respect of passive income, profits arising from a possession outside of Ireland (i.e. foreign trade carried on wholly outside of Ireland) and profits of certain trades, such as dealing in or developing land and mineral exploration activities.

Ireland has signed up to the OECD deal, which will implement a global minimum tax of 15% when delivered. This new rate of tax on corporate profits will apply to multinational companies with global revenues in excess of €750 million *per annum*. The rate of 12.5% will still apply to the trading profits of a company that carries on a trade in Ireland where its global revenues are less than €750 million *per annum*.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

A company's profits for tax purposes will follow its accounts, provided that they are prepared in accordance with generally accepted accounting principles, subject to specific adjustments required by Irish tax legislation.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

Revenue expenses that are not incurred wholly and exclusively for the purposes of the trade are not deductible from the company's taxable profits.

While accounting-based depreciation of assets is not generally deductible, tax-based depreciation can be taken into account for "plant and machinery" and "industrial buildings", subject to meeting certain conditions.

It is possible to carry forward trading profits arising from the same trade and surrender losses from group companies to reduce taxable profits.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Yes. Companies can be grouped for different tax purposes (but are not taxed on the basis of consolidated accounts).

For loss relief and capital gains tax ("**CGT**") purposes, a group consists of a principal company and all its effective 75% subsidiaries.

An Irish company may be allowed relief for losses in an Irish subsidiary and for losses in an overseas subsidiary provided that the loss is not available for use by the overseas subsidiary. Capital losses cannot be surrendered between members of a CGT group.

Capital assets may be transferred between group members on a no gain/no loss basis. This has the effect of postponing liability until the asset is transferred outside the group or until the company holding the asset is transferred outside the group.

Payments between members of a 51% group can be made without withholding.

Transfers between associated companies are exempt from stamp duty where certain conditions are met.

It is possible to apply for a VAT grouping of companies established in Ireland that are under common control. Transactions between these companies are disregarded for VAT purposes.

4.5 Do tax losses survive a change of ownership?

Tax losses may survive a change in ownership but there are rules denying the use of carry-forward losses where there is a major change in the nature or conduct of the trade either before or after the change in ownership.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

A surcharge of 20% applies in respect of "estate and investment" income retained by "close" companies. In general terms, close companies are those controlled by five or fewer people. A surcharge of 15% will also be applicable in respect of retained professional income in cases of close "professional" service companies.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Local property tax ("**LPT**") rates may apply to the occupation of commercial property where they are not fully subject to commercial rates.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Yes, there is a separate set of rules for computing capital gains. Those rules are broadly as follows:

- costs of acquisition and disposal are deducted from disposal proceeds;
- enhancement expenditure is generally deductible where such expenditure is reflected in the value of the asset;
- the application of capital losses carried forward may reduce the amount of gain; and
- the purchase price and enhancement expenditure may be adjusted for inflation (indexation relief).

The rate of tax imposed upon capital gains is currently 33% and therefore differs from the rate imposed on business profits (12.5% for trading income and 25% for investment income).

5.2 Is there a participation exemption for capital gains?

Where an Irish company disposes of shares in a company resident in Ireland or an EU/treaty state, in which it has held at least 5% of the ordinary shares for more than 12 months, any gain should be exempt from CGT. The subsidiary must carry on a trade, or the activities of the disposing company and all of its 5% subsidiaries taken together must amount to trading activities.

5.3 Is there any special relief for reinvestment?

No, there is no special relief for reinvestment.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Where a company disposes of Irish real estate, or shares deriving more than 50% of their value from Irish real estate, for a consideration exceeding €500,000, or in the case of residential property exceeding €1 million, the purchaser is obliged to withhold 15% of the sales proceeds unless the purchaser obtains a CG50 clearance certificate from Revenue. Such certificate will be issued where the vendor is resident in Ireland, the CGT has been paid or no CGT arises.

Revenue view loans secured on land in Ireland as interests in land and as securities for the purposes of section 980 of the Taxes Consolidation Act 1997 ("**TCA**"). Therefore, where a company disposes of such loan, this treatment will also apply.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

No taxes would be imposed upon the formation of a subsidiary.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

Yes. An Irish-resident subsidiary would pay corporation tax on its worldwide income and gains, whereas a branch would be liable to corporation tax only on the items listed in question 6.3. The charge to Irish corporation tax only applies where the non-resident company is carrying on a trade in Ireland through the branch. A branch set up for investment purposes only, and not carrying on a trade, is not subject to Irish corporation tax, though certain Irish source income (mainly rent and interest) may be subject to income tax either through withholding or by way of income tax charge, subject to any available exemptions. A branch would not be subject to a branch profits tax.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

A non-resident company carrying on a trade through an Irish branch is subject to Irish tax on the following items:

- the trading income arising directly or indirectly through or from the branch;
- income from property or rights used by, held by or for the branch; and
- such gains as, but for the corporation tax rules, would be chargeable to CGT in the case of a company not resident in Ireland.

The profits subject to tax may arise from within Ireland and from abroad.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

Irish domestic legislation does not give treaty relief against Irish tax unless the person claiming credit is resident in Ireland for the accounting period in question. This means that the Irish branch of a non-resident company cannot claim treaty relief.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

No such tax would be imposed.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Profits in overseas branches are, as a general rule, taxed in Ireland because an Irish-resident company is subject to corporation tax on its worldwide profits. It is, nonetheless, generally possible to claim a tax credit for the foreign tax paid.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Dividends received from a non-resident company are generally taxed at 25% but the lower rate of 12.5% applies in many cases, including where dividends are paid out of the "trading profits" of a company resident in an EU/treaty state or in a country that is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters. In any event, tax credits can be claimed, up to the Irish corporation tax due, for:

- withholding tax suffered on the dividend; and
- underlying tax suffered on the trading profits out of which the dividend was paid.

It is possible to pool and carry forward excess foreign tax credits and offset these against Irish corporation tax on other foreign dividends.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Ireland enacted "controlled foreign company" ("**CFC**") rules to implement the relevant provisions of EU ATAD.

The rules operate by attributing undistributed income of the CFC, arising from non-genuine arrangements put in place for the essential purpose of avoiding tax, to the controlling company, or a connected company in Ireland, where the controlling company, or a connected company, carry out relevant Irish activities (i.e. significant people functions ("**SPFs**") or key entrepreneurial risk-taking functions ("**KERTs**") in Ireland).

The rules require an analysis as to the extent to which the CFC would hold assets or bear risks were it not for the controlling company, or a connected company, undertaking the SPFs in relation to those assets and risks. A company is considered to have control of a subsidiary where (in broad terms) it has direct or indirect ownership of, or entitlement to, more than 50% of the CFC's issued share capital, voting power or distribution amount.

A number of exemptions are provided for, including exemptions for CFCs with low accounting profits or a low profit margin or where the CFC pays a comparatively higher amount of tax in its territory than it would have paid in Ireland.

The CFC rules will not apply where the arrangements, under which SPFs are performed, have been entered into on an arm's-length basis or are subject to the transfer pricing regime under Part 35A TCA.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

CGT arises on the disposal of commercial Irish real estate by non-residents.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

CGT arises on the disposal of shares or securities (other than shares or securities quoted on a stock exchange) deriving their value, or the greater part of their value, directly or indirectly from Irish commercial real estate.

Stamp duty is also imposed on sales of controlling interest in entities that hold certain types of Irish land, including residential land and development land.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Ireland introduced a REIT regime in 2013. A REIT is exempt from tax on income and chargeable gains of its property rental

business, provided it meets certain conditions as to Irish residence and listing of shares (on an EU stock exchange), derives 75% of its assets and profits from its property rental business, and distributes 85% of its property income by dividends to shareholders in each accounting period. Income tax can apply where a dividend is paid to a shareholder who holds at least 10% of the share capital or voting rights in the REIT.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Ireland has a general anti-avoidance provision, section 811C TCA, the applicability of which was considered by the Irish Supreme Court in *O'Flynn Construction Limited & Others v The Revenue Commissioners*.

Section 811C applies where Revenue forms an opinion that a transaction gives rise to a tax advantage for the taxpayer, was not undertaken for any other purpose but obtaining that advantage, and would be a misuse or abuse of any relief sought by the taxpayer.

Article 6 of EU ATAD also introduces a broad general anti-avoidance provision. However, the existing Irish general anti-avoidance provision in section 811 is regarded as being broader than that contained in Article 6 and, accordingly, it is considered that no further amendment to section 811C is envisaged at this time.

9.2 Is there a requirement to make special disclosure of avoidance schemes or transactions that meet hallmarks associated with cross-border tax planning?

Yes, Ireland has a mandatory disclosure regime for tax avoidance transactions, similar to the regime in the UK. There is an obligation on promoters, marketers and users of "disclosable transactions" to notify Revenue about such transactions. A transaction is disclosable if it may give rise to a tax advantage and matches any one of the specified descriptions set out in the legislation.

The mandatory disclosure regime places an obligation on promoters, marketers and users of "disclosable transactions" to notify Revenue about the transaction. A transaction is disclosable if it may give rise to a tax advantage and matches any one of the specified descriptions set out in the legislation.

Mandatory disclosures are usually made by the promoter of a scheme. However, if there is no promoter or the promoter is outside Ireland or cannot make a disclosure due to legal professional privilege, the user of the scheme must make the disclosure. A promoter includes a person involved in designing, managing or marketing the transaction.

Failure to comply can result in penalties determined by the court in amounts ranging up to a maximum of €4,000, plus €500 per day for each day the scheme remains unnotified after the due date for notification.

Ireland has also introduced DAC6, as explained in question 9.3 below.

9.3 Does your jurisdiction have rules that target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

In addition to the Irish mandatory disclosure regime discussed in question 9.2 above, Ireland has also implemented the EU directive on mandatory disclosure ("**DAC6**"). DAC6 requires intermediaries or taxpayers to report information on certain cross-border arrangements to relevant tax authorities in the EU.

Disclosure of information under DAC6 must be made by persons who act as intermediaries in relation to a reportable transaction, which may include tax advisors, financial advisors, accountants, banks, corporate service providers and lawyers. If an intermediary is located outside the EU or is bound by legal professional privilege, the obligation to report may pass to the taxpayer.

DAC6 was transposed into Irish legislation and has been effective since 31 December 2019. For transactions occurring since 1 January 2021, the reporting deadline is 30 days from implementation of the reportable cross-border arrangement.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

Yes; in January 2017, Revenue relaunched its co-operative compliance framework ("**CCF**") for large cases division ("**LCD**") taxpayers.

The CCF is designed to promote open communication between Revenue and larger taxpayers, reflecting the mutual interest in being certain about tax liabilities and ensuring that there are no surprises in later reviews. It is entirely voluntary and does not result in a reduction of tax.

9.5 Are there rules requiring special disclosure where a company is taking a position on a tax issue that is uncertain (open to dispute from a technical perspective)?

Where taxpayers have a genuine doubt as to the application of the law in relation to any matter in an income tax, CGT or corporation tax return, they may make an "Expression of Doubt". The purpose of an Expression of Doubt is to indicate to Revenue a genuine doubt about the application of law or the treatment for tax purposes, of any matter contained in the return. To submit a valid Expression of Doubt, taxpayers must provide the following information:

- full details of the facts and circumstances of the matter in doubt;
- the doubt, the basis for the doubt and the law giving rise to the doubt;
- the amount of tax in doubt;
- a list of the supporting documentation that is being supplied; and
- details of any published Revenue guidelines that have been consulted regarding the application of the law in similar circumstances.

Where a taxpayer makes a genuine Expression of Doubt and it is subsequently found that the view taken by the taxpayer was incorrect, the taxpayer will nevertheless be regarded as having made a full and true disclosure. This means that any additional tax due because of the correction of the error will be due and payable within one month of the date on which the assessment is amended. The Expression of Doubt accordingly affords protection from interest on late payment of tax.

10 BEPS, Tax Competition and the Digital Economy

10.1 Has your jurisdiction implemented the OECD's recommendations that came out of the BEPS project?

In response to certain themes emerging from the BEPS consultation, Ireland amended its corporate tax residence rules in

order to phase out the so-called "double Irish" structure used by certain multinational groups. Grandfathering provisions were put in place for existing companies to continue to base their tax residence on previous rules until the end of 2020. Accordingly, since 1 January 2021, all Irish-incorporated companies follow the same rules in determining Irish tax residence.

Ireland has also introduced country-by-country reporting and updated its transfer pricing legislation as recommended in the BEPS reports.

Furthermore, Ireland has implemented EU ATAD, which is itself a response to BEPS:

- the anti-hybrid rules apply to all payments made after 1 January 2020;
- the reverse hybrid mismatch rules apply to tax periods commencing on or after 1 January 2022; and
- the ILR applies to accounting periods commencing on or after 1 January 2022.

The reverse hybrid rules will be relevant, in particular, to investment funds structured as partnerships, such as the Irish Investment Limited Partnership ("**ILP**"). In the case of an ILP, the reverse hybrid mismatch rules will apply if income of the ILP is untaxed because the ILP is regarded as tax transparent in Ireland but tax opaque in a territory of a relevant investor. The legislation provides an exemption for "collective investment schemes", such as ILPs, which are widely held and hold a diversified portfolio of assets. If an exemption is not available, the partnership could be subject to Irish corporation tax if a reverse hybrid mismatch arises. Under Irish law, the partnership is entitled to appropriate or cancel interests of an investor who gives rise to the hybrid mismatch.

On 22 December 2021, the European Commission published a proposal for a directive to tackle the supposed misuse of "shell" entities for tax purposes that deny the "shell" entity the benefit of certain DTTs and EU withholding tax directives ("**EU UNSHELL**"). At the time of writing, its implementation is scheduled to take place by 30 June 2023, to apply from 1 January 2024 in all EU Member States, including Ireland.

10.2 Has your jurisdiction adopted any legislation to tackle BEPS that goes beyond the OECD's recommendations?

Ireland's objective is to adopt the best international practice. Preceding BEPS, Ireland already operated certain anti-avoidance measures not existing in other OECD countries, such as a legislative general anti-avoidance rule ("**GAAR**") and rules denying a tax deduction in Ireland for payments that are not subject to tax in an EU/DTT country.

10.3 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

CBCR Regulations have been implemented since 1 January 2016. CBCR requires groups with an Irish presence and turnover exceeding €750 million (the "relevant groups") to file a country-by-country report ("**CBC Report**"), which provides a breakdown of the amount of revenue, profits, taxes and other indicators of economic activities for each tax jurisdiction in which the relevant group does business.

Section 851A TCA provides that all taxpayer information is confidential and may only be disclosed in accordance with the law. Pursuant to this section, the information contained in the CBC Reports/equivalent CBC Reports has, to date, been treated in the same manner as all other taxpayer information provided to/received by Revenue. However, Directive (EU) 2021/2101 as regards disclosure of income tax information by certain undertakings and branches changes this position.

Under the new Directive, multinational groups, and where relevant, certain standalone undertakings, will be required to provide the public with a report on income tax information where they exceed a certain size. All EU Member States are required to transpose the CBCR Directive into national law by 22 June 2023 and these reporting requirements will take effect from the commencement date of the first financial year starting on or after 22 June 2024.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

Ireland operates a Knowledge Development Box ("**KDB**"), which provides for corporation tax relief on income from qualifying assets. A company qualifying for the KDB may be entitled to a deduction equal to 50% of its qualifying profits. This means its qualifying profits may be taxed at an effective rate of 6.25%. To qualify, a company must earn income from a usable qualifying asset and must have created the asset from qualifying Research and Development ("**R&D**") activities. A qualifying asset is one that is created from qualifying R&D activities, such as a computer program or an invention protected by a qualifying patent.

In Budget 2023, it was announced that the KDB would be extended to 1 January 2027 and that there will be an increase to the effective rate from 6.25% to 10%. This is due to take effect, subject to a ministerial order, once agreement is reached at the OECD/G20 level on the implementation of the BEPS Pillar 2 rules.

Ireland operates a general scheme for R&D tax credits under sections 766, 766A and 766B TCA. Credit is given at 25% of allowable expenditure. In a move welcomed by the Irish technology and start-up section, it was announced in Budget 2023 that this R&D tax credit will be aligned with the definition of a "qualified refundable tax credit" for BEPS Pillar 2 purposes. This will ensure that the R&D tax credit regime is not treated as reducing corporation tax for the purpose of the minimum effective tax rate.

In 2021, Ireland introduced a new tax credit for the digital gaming sector, subject to EU approvals. This credit will operate as a refundable corporation tax credit for qualifying expenditure incurred in the design and development of digital games. The tax credit will be available at a rate of 32% of qualifying expenditure with a maximum limit of €25 million per project. A per project minimum spend requirement of €100,000 will also apply. The relief will be available only for projects in the digital gaming sector that have been issued with a cultural certificate from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

10.5 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

No, it has not.

Andrew Quinn is head of the Tax team at Maples and Calder (Ireland) LLP, the Maples Group's Dublin office. He is an acknowledged leader in Irish and international tax and advises companies, investment funds, banks and family offices on Ireland's international tax offerings. Andrew is a founder and is Chair of the Irish Debt Securitisation Association, the industry group representing the Irish securitisation industry. He is also incoming Chair of the Irish Law Society Tax Committee. Prior to joining the Maples Group, Andrew was a senior partner with a large Irish law firm, and before that a tax consultant with Ernst & Young. He has been recommended by a number of directories, including *Chambers and Partners*, *The Legal 500*, *Who's Who Legal*, *World Tax*, *Best Lawyers*, *International Tax Review's World Tax Guide* and the *Tax Directors Handbook*. Andrew has also been endorsed in *Practical Law Company's Tax* on Transactions multijurisdictional guide. Andrew is also the joint author of the book *Taxing Financial Transactions*, Irish Taxation Institute.

Maples Group
75 St. Stephen's Green
Dublin 2
Ireland

Tel: +353 1 619 2038
Email: Andrew.Quinn@maples.com
URL: www.maples.com

David Burke is a highly experienced tax specialist and advises on international transactions structured in, and through, Ireland. He works with companies, banks and investment funds and their advisors to structure and implement capital markets, structured finance, asset finance and funds transactions.

Maples Group
75 St. Stephen's Green
Dublin 2
Ireland

Tel: +353 1 619 2779
Email: David.Burke@maples.com
URL: www.maples.com

Edwina Hilton is an associate in the Tax team at Maples and Calder (Ireland) LLP, the law firm of the Maples Group in Ireland. Edwina advises on a wide range of tax matters in relation to corporate transactions, investment funds and financial services.

Maples Group
75 St. Stephen's Green
Dublin 2
Ireland

Tel: +353 1 619 2017
Email: Edwina.Hilton@maples.com
URL: www.maples.com

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