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Ireland
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IRELAND

LAW AND PRACTICE: p.3

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The ‘Law & Practice’ sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

The Maples Group Established in 1968, the leading international legal services team of the Maples Group advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg. With offices in key jurisdictions around the world, the Maples Group has specific strengths in areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel in each business centre, the Group leverages this local expertise to deliver an integrated service offering for global business initiatives.

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1. Types of Business Entities Commonly Used, Their Residence and Their Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Businesses in Ireland tend to incorporate in order to take advantage of the benefits of separate legal entity status and limitation of liability. Ireland enacted amended and consolidated company law legislation in 2014 (the Companies Acts 2014), which provides for the following forms of incorporated entity:

- private company limited by shares (LTD);
- designated activity company (DAC);
- public limited company (PLC);
- company limited by guarantee (CLG);
- unlimited company; and
- investment company.

The limited company has traditionally been, and is likely to remain, the most popular form for incorporated trading business. Companies involved in the issuance of listed debt securities are formed as DACs. Investment funds are incorporated as investment companies or as an Irish Collective Asset Management Vehicle (ICAV).

Entities with separate legal form are taxed separately.

1.2 Transparent Entities

In Ireland, partnerships and limited partnerships are treated as transparent for tax purposes. Partnerships are generally used for investment purposes and also by certain professional services firms (eg, accountants and solicitors). In addition, pension funds may make use of a particular form of tax-transparent investment fund called a common contractual fund (CCF).

1.3 Determining Residence

A company which has its central management and control in Ireland is considered resident in Ireland, irrespective of where it is incorporated. A company which does not have its central management and control in Ireland but which is incorporated in Ireland is considered resident in Ireland, except where the company is regarded as not resident in Ireland under a double taxation treaty between Ireland and another country. In certain limited circumstances and subject to defined cut-off periods, companies incorporated in Ireland prior to 1 January 2015 and managed and controlled outside of a double taxation treaty territory may not be regarded as resident in Ireland.

The term 'central management and control' is, in broad terms, directed at the highest level of control of the company. The Irish Revenue Commissioners ('Irish Revenue') and the Irish courts emphasise the location of the meetings of the board of directors.

1.4 Tax Rates

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

The 12.5% rate applies to the trading income of a company which carries on a trade in Ireland (including certain qualifying foreign dividends where paid out of trading profits). There is no precise definition of what constitutes trade for this purpose but, broadly, where a company is carrying on an active business in Ireland on a regular or habitual basis and with a view to realising a profit, it should be considered to be trading for tax purposes.

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

A 33% rate applies to capital gains.

The same capital gains rates also apply to gains earned by individuals directly or through transparent entities. Personal income tax is taxed at rates of up to 55%.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

Corporation tax is imposed on the profits of a company (including both income and chargeable gains), wherever they arise, for the fiscal year or 'accounting period' of the company. The accounting period cannot exceed 12 months.

The starting point for determining taxable profits is the profit of the company according to its statutory accounts, subject to any adjustments required by law. The following are some of the more important items which are not deductible when calculating the tax-adjusted profits:

- any capital expenses;
- any expenses not wholly or exclusively incurred for the purposes of the trade or profession;
- general provisions for bad debts (specific bad debts and specific bad debt provisions are deductible);
- dividends or other distributions paid or payable by the company; and
- certain specific expenses, including business entertainment costs, interest on late payment of taxes, general provisions for repairs and certain motor leasing expenses.

A tax deduction is not available for accounting depreciation. However, capital allowances are available in relation to qualifying capital expenditure on land and buildings, plant and machinery and certain intellectual property.

Chargeable gains which do not form part of the trading profits are calculated in accordance with capital gains tax rules.

2.2 Special Incentives for Technology Investments

R&D Tax Credit

A 25% tax credit for qualifying research and development expenditure exists for companies engaged in qualifying in-house research and development undertaken within the European Economic Area (EEA). This credit may be set against a company's corporation tax liability. It is available on a group basis in the case of group companies. For accounting periods that commenced prior to 1 January 2015, the amount of qualifying expenditure is restricted to incremental expenditure over expenditure in a base year (2003). The tax credit is calculated separately from the normal deduction of the R&D expenditure in computing the taxable profits of the company.

Qualifying R&D activities must satisfy certain conditions and, in particular, the activities must seek to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty.

Where a company has insufficient corporation tax against which to claim the R&D tax credit in a given accounting period, the tax credit may be credited against corporation tax for the preceding period, may be carried forward indefinitely or, if the company is a member of a group, may be allocated to other group members. The R&D credit can also be claimed by the company as a payable credit over a three-year period or surrendered to 'key employees' to set off against their income tax liability.

Knowledge Development Box

Ireland recently introduced an OECD-compliant 'knowledge development box' for the taxation of certain intellectual property. The amount of expenditure incurred by a company in developing, creating or improving qualifying patents or computer programs ('qualifying expenditure') is divided by the overall expenditure on such assets before being multiplied by the profits arising from such assets (eg, from royalties and net sales). The result is effectively taxed at 6.25%. A potential 30% uplift in the qualifying expenditure is available, capped at the total amount of acquisition costs and group outsourcing costs.

Capital Allowances on Provision or Acquisition of Intangible Assets

Capital allowances (tax depreciation) are available for companies incurring capital expenditure on the provision of intangible assets for the purposes of a trade. The relief applies to a broad range of intangible assets (eg, patents, copyright, trade marks, know-how) which are recognised as such under

generally accepted accounting practice, and which are listed as 'specified intangible assets' in the Irish tax legislation. The relief is granted as a capital allowance for set-off against profits arising from the use of the intangible assets. The write-off is available in line with the depreciation or amortisation charge in the accounts or, alternatively, a company can elect to take the write-off against its taxable income over a 15-year period. There is no balancing charge if the intangible assets are held for more than five years. The allowance can be surrendered by way of group relief or carried forward if unused.

2.3 Other Special Incentives

Certain reliefs and incentives may apply for companies involved in shipping, financial services, property development, forestry, farming and mining businesses.

2.4 Basic Rules on Loss Relief

Ireland distinguishes between losses arising from trading income and losses arising from non-trading income. Trading losses are computed in the same manner as trading profits. Trading losses may be offset against non-trading profits, but the losses are adjusted on a 'value basis' so that they do not reduce the non-trading income more than they would have reduced trading income.

Broadly, trading losses can (in the following order) be:

- set off against other profits of the company (before charges) in the same accounting period;
- set off against profits (before charges) of the previous accounting period of corresponding length, if the company carried on the trade in that period;
- trading losses of one Irish company (or of an Irish branch of an EU company) can be set off against the profits of an Irish resident company or Irish branch of an EU company in the same corporate group as the company which has excess trading losses; and
- carried forward on an indefinite basis and set off against future profits derived from the same trade.

2.5 Imposed Limits on Deduction of Interest

In general, trading companies can only take a deduction for interest incurred wholly and exclusively for the purposes of the trade.

Interest expenses incurred on funds borrowed to purchase, repair or improve a rented premises are allowed as a deduction against the related rental income.

Interest incurred by a company on funds borrowed to acquire shares in, or loan money to, certain other companies can be allowable in full against total profits of the company (as a charge on income) where specific conditions are met.

While 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.

The new EU Anti-Tax Avoidance Directive ('EU ATAD') contains certain restrictions on borrowing costs. Ireland has applied for a derogation for implementation of the restrictions until 2024.

2.6 Basic Rules on Consolidated Tax Grouping

The concept of consolidated tax grouping for corporation tax purposes does not exist in Ireland. Trading losses may be offset on a current-year basis against taxable profits of another group company.

Both the claimant company and the surrendering company must be within the charge to Irish corporation tax. To form a group for corporation tax purposes, both the claimant company and the surrendering company must be resident in an EU country or an EEA country with which Ireland has a double tax treaty. In addition, one company must be a 75% subsidiary of the other company, or both companies must be 75% subsidiaries of a third company. The 75% group relationship can be traced through companies resident in a 'relevant territory', being an EU Member State, an EEA treaty country, or another country with which Ireland has a double tax treaty.

2.7 Capital Gains Taxation

Capital gains, other than gains from development land, are included in a company's profits for corporation tax purposes and are charged to tax under a formula whose effect is that tax is paid at the prevailing capital gains tax (CGT) rate, currently 33%.

Substantial Shareholder's Relief

Disposals by a company of a substantial shareholding in a subsidiary company that is resident in an EU Member State or a country with which Ireland has concluded a double tax treaty are exempt from CGT if, at the time of the disposal:

- the subsidiary company carries on a trade, or the activities of the disposing company and all of its 5% subsidiaries taken together amount to trading activities; and/or
- the disposing company holds or has held at least 5% of the ordinary share capital and economic interest in the subsidiary company for 12 months, beginning not more than two years before the disposal.

Intra-Group Relief

Relief from CGT is available where both the company disposing of the asset and the company acquiring the asset are within a CGT group. A CGT group consists of a principal company and all its effective 75% subsidiaries. In addition, the shares must be within the charge to corporation tax on capital gains both before and after the transfer.

The effect of the relief is that both the company disposing and the company acquiring the asset are treated as if the shares were acquired for such consideration as would secure that neither a gain nor a loss would accrue to the disposing company (that is, the acquiring company takes the shares at the same base cost as applied to the disposing company).

Paper-for-Paper Reconstructions
Where shares are transferred as part of a bona fide scheme of reconstruction or amalgamation and certain additional conditions are met, no CGT arises for the disposing shareholders and the acquiring shareholders are deemed to have received the shares on the same date and at the same cost as the old shares. The relief will only apply where the company acquiring the shares has, or as a result of the transaction will have, control of the target company, or where the share-for-share exchange results from a general offer made to the members of the target company.

2.8 Other Taxes Payable by an Incorporated Business
Stamp duty and VAT may be payable by companies on particular transactions.

Stamp Duty
Stamp duty is a tax on certain instruments (primarily written documents). Generally, unless exempted, stamp duty is chargeable on a document if the document is both:

- of a type set out in Schedule 1 to the Stamp Duties Consolidation Act 1999 (SDCA) (this lists the different categories of document to which stamp duty applies, including conveyances or transfers on sale of stocks or marketable securities and property); and
- executed in Ireland or, if executed outside Ireland, relates to something done or to be done in Ireland.

Generally, the purchaser or transferee is liable to pay stamp duty arising on a written instrument, and a return must be filed and stamp duty paid within 45 days of the execution of the instrument.

Stamp duty is broadly charged on either the consideration paid for or the market value of the relevant asset, whichever is the higher. The main categories of instrument to which stamp duty applies and the applicable rates of the duty are as follows:

- transfers of shares or marketable securities: 1%;
- transfers of non-residential property (including assets and other moveable goods): 6%; and
- transfers of residential property:

  (a) 1% on consideration up to EUR1 million; and
  (b) 2% on the balance of consideration in excess of EUR1 million.

Stamp duty may also be chargeable in connection with certain leases and rent payments.

There are a number of reliefs and exemptions, including:

- group relief on transfers between companies where the transferor and transferee are 90% associates at the time of execution and for two years afterwards; and
- exemptions for transfers of intellectual property, of non-Irish shares and land, loan capital, aircraft and ships.

VAT
VAT is an EU transaction-based tax that is chargeable on the supply of goods and services in Ireland by a taxable person in the course or furtherance of a business carried on by him or her. The top rate of VAT is 23% and certain services (such as ‘financial services’) are VAT exempt. VAT is also chargeable on:

- goods imported into Ireland from outside the EU;
- the purchase of certain services from suppliers outside Ireland; and
- the intra-EU acquisition of goods.

2.9 Incorporated Businesses and Notable Taxes
Incorporated businesses operating in certain industries may be subject to additional taxes, such as relevant contracts tax (RCT) and professional services withholding tax. In addition, incorporated businesses are required to withhold income tax on payments to employees and directors of the company (pay-as-you-earn income tax, or PAYE), and to withhold tax at 20% from payments of interest, dividends and certain royalties (unless exempted). They must also pay social insurance contributions in respect of employees.

3. Division of Tax Base Between Corporations and Non-corporate Businesses

3.1 Closely Held Local Businesses
Most closely held local businesses operate in corporate form.

3.2 Individual Rates and Corporate Rates
Further detail on close companies is set out in **3.3 Accumulating Earnings for Investment Purposes**, below. Closely held companies which are professional services companies are liable to a surcharge on both undistributed investment and rental income and professional income. This surcharge is 15% of 50% of the annual undistributed professional income, and 20% of all of the company’s undistributed investment and rental income.

In addition, Irish Revenue guidelines note that their position is that the mandating, allocating or routing of remuneration through a firm or company of remuneration arising from

an individual having or exercising an office or employment does not mean that the remuneration is taken outside of that individual's income tax rules.

3.3 Accumulating Earnings for Investment Purposes

For Irish tax purposes, a closely held company is a company controlled by five or fewer 'participators' or by any number of participators who are directors. A 'participator' is a shareholder or a person having an interest in the company's capital or interest.

Closely held companies are subject to a tax surcharge on investment income (including interest and distributions) or rental income which is not distributed within 18 months of the end of the company's accounting period. This surcharge is 20% of the undistributed income. The surcharge is intended to act as a disincentive to individuals using corporates as personal holding companies and availing themselves of corporation tax rates which are lower than the tax rates applicable to individuals.

Closely held companies which are professional services companies are liable to a surcharge on both undistributed investment and rental income and professional income, as further described in **3.2 Individual Rates and Corporate Rates**, above.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Irish-resident individuals are liable to income tax at their marginal rate on the gross amount of any dividend received from an Irish company (whether that company is a closely held company or otherwise) with a credit for any dividend withholding tax suffered.

Withholding tax at 20% is deducted from payments of dividends by Irish-resident companies to both Irish and non-Irish-resident individuals.

Irish-resident individuals are liable to capital gains tax at a rate of 33% on the sale of shares in an Irish company (whether that company is a close company or otherwise).

Non-Irish-resident individuals are generally only liable to Irish capital gains tax on sale of unquoted shares in an Irish company if those shares derive the majority of their value from:

- land and buildings in Ireland;
- minerals in Ireland and rights or interests associated with mining for or searching for minerals in Ireland; or
- exploration or exploitation rights in the Irish Continental Shelf.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

The treatment set out in **3.4 Sales of Shares in Closely Held Corporations**, above, also applies to dividends from quoted companies and gains on disposal of shares in quoted companies.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Dividend Withholding Tax

Dividend withholding tax (DWT) at the standard income tax rate of 20% applies to dividends and distributions made by Irish tax-resident companies.

There are a wide range of exemptions from DWT where the dividend or distribution is paid by an Irish-resident company to certain parties, including:

- another Irish tax-resident company;
- companies resident in an EU Member State (other than Ireland) or a country with which Ireland has concluded a double tax treaty, and which are not controlled by Irish residents;
- companies that are under the control, directly or indirectly, of a person or persons who are resident in an EU Member State or a country with which Ireland has concluded a double tax treaty and are not controlled by persons not resident in that country;
- companies whose shares are substantially and regularly traded on a recognised stock exchange in another EU Member State or country with which Ireland has concluded a double tax treaty or where the recipient company is a 75% subsidiary of such a company or is wholly owned by two or more such companies; and
- a company resident in another EU member state with at least a 5% holding in the Irish paying company (under Directive 90/435/EEC on the taxation of parent companies and subsidiaries (the Parent-Subsidiary Directive)).

Interest Withholding Tax

Irish tax legislation provides that tax at the standard rate of income tax (currently 20%) is required to be withheld from payments of Irish-source interest.

However, there a large number of exemptions available from the requirement to withhold on payments of interest, including for:

- interest paid in Ireland to a bank carrying on a bona fide banking business;
- interest paid by such a bank in the ordinary course of business;

- interest paid to a company which is resident in an EU Member State, or a country with which Ireland has signed a double tax treaty, where that territory imposes a tax that generally applies to interest receivable in that territory by companies from outside that territory;
- interest paid to a US corporation that is subject to tax in the US on its worldwide income;
- interest paid in respect of a 'quoted Eurobond' (provided certain other conditions are met); and
- interest paid to certain Irish entities, including qualifying companies for the purposes of Section 110 of the Taxes Consolidation Act, 1997 (as amended) ('TCA'), investment undertakings and certain government bodies.

Withholding Tax on Patent Royalties

Withholding tax at a rate of 20% applies to payments of a royalty or other sum paid for the use of a patent.

Withholding tax will not apply to royalty payments that are made to associated companies resident in another EU Member State or to royalties paid by a company in the course of a trade or business to a company resident in a country with which Ireland has a double tax treaty.

It has been Irish Revenue's administrative practice since 2010 not to charge withholding tax on royalties payable 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's obtaining advance approval from Revenue).

4.2 Primary Tax Treaty Countries

Ireland is an open jurisdiction which encourages investment from all countries. There are no specific countries which are preferred for investing in Ireland. Many US, UK, European, Asian and GCC companies invest directly in Irish companies.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

Generally, the use of a treaty by a tax-resident beneficial owner should be respected.

4.4 Transfer Pricing Issues

Ireland first introduced transfer pricing in 2011. The Irish transfer pricing regime only applies to trading transactions involving the supply and acquisition of goods, services, money or intangible assets between associated persons or companies. As such, generally, in order for the rules to apply, one of the parties to the transaction must be an Irish company subject to tax at the 12.5% rate in Ireland.

The rules require that transactions between associated persons should take place at arm's length, and that the principles contained in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration must be followed when analysing whether a transaction has been entered into at arm's length. There is an exemption for small- and medium-sized enterprises.

If Irish Revenue determines that a transaction was not entered into at arm's length, and this transaction has had the effect of reducing profits or increasing losses within the charge to Irish corporation tax at 12.5%, an adjustment will be made by substituting the arm's-length consideration for the actual consideration.

4.5 Related Party Limited Risks Distribution Arrangements

Ireland should follow OECD norms and guidelines in relation to the application of transfer pricing rules.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

It is intended that Ireland will introduce new legislation in 2019 to update transfer pricing rules with effect from January 2020, in order to ensure that provisions remain in line with OECD Guidelines.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims are Settled

Irish Revenue allows for compensating adjustments where a MAP request is made and successfully resolved by Irish Revenue and any other relevant competent authorities. No particular difficulties are faced by claimants where DTCs apply, with Irish Revenue seeking to implement best practice in line with the OECD's Manual on Effective Mutual Agreement Procedures.

5.2 Taxing Differences

Non-resident companies which carry on a trade in Ireland through a branch or agency are subject to corporation tax in the same manner as local companies.

5.3 Capital Gains of Non-Residents

Non-Irish-tax-resident companies are liable for tax on gains arising from the disposal of certain assets, including:

- land and buildings in Ireland (relief from CGT may be claimed in respect of real estate acquired between 6 December 2011 and 31 December 2014 which has been held for a period of at least seven years);
- minerals in Ireland and rights or interests associated with mining for or searching for minerals in Ireland;
- exploration or exploitation rights in the Irish Continental Shelf;

- unquoted shares or securities deriving their value or the greater part of their value directly or indirectly from the above assets;
- assets situated in Ireland that are used, held or acquired for business carried on in Ireland through a branch or agency; and
- assets of a life assurance company that are situated outside Ireland but held in connection with the life business carried on by the company in Ireland that were used or held by or for the purposes of that company's branch or agency in Ireland.

5.4 Change of Control Provisions

Changes of control provisions could arise in relation to the indirect disposal by a non-resident of an Irish land-rich company as explained in the last response.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

OECD standards would be expected to be applied in the determination of the income of foreign-owned local affiliates selling goods or providing services.

5.6 Deductions for Payments by Local Affiliates

The basic rule for allowance of deductions for Irish corporation tax purposes is that the expenses must have been incurred wholly and exclusively for the purposes of carrying on the trade or profession. As a general matter, it is difficult to envisage a situation where expenses incurred by a non-local affiliate could be considered to be incurred wholly and exclusively for the purposes of the trade of an Irish company, but there could be exceptions based on specific circumstances.

5.7 Constraints on Related Party Borrowing

Other than as set out below, Ireland does not operate what would be considered statutory thin capitalisation rules.

In broad terms, an Irish-based borrower should be entitled to a tax deduction for payments of interest to a non-local affiliated lender. However, there are certain restrictions that would need to be considered, including but not limited to:

- the interest payments should be an arm's-length amount;
- the interest payments may be subject to withholding tax if the lender does not fall within relevant exemptions (see **4.1 Withholding Taxes**, above for details of potential exemptions); and
- in certain cases, payments to a non-EU 75%-related affiliate may be re-characterised as a distribution and disallowed as a deduction.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Foreign income is not exempt from corporate tax. A company which is tax-resident in Ireland is subject to corporation tax on all its profits, wherever they arise.

6.2 Taxation on Dividends from Foreign Subsidiaries

Foreign dividends received by Irish companies are generally subject to corporation tax at a rate of 25%. However, dividends received by an Irish company from non-resident subsidiaries are subject to corporation tax at 12.5% where such dividends are paid out of the trading profits of a company that is resident:

- in an EU Member State;
- in a country with which Ireland has a double tax treaty;
- in a country that has ratified the Joint Council of Europe/ OECD Convention on Mutual Assistance in Tax Matters; or
- in a non-treaty country, if the company is directly or indirectly owned by a quoted company.

Companies that are portfolio investors (ie, investors holding not more than 5% of the company and having no more than 5% of the voting rights) and that receive dividends from a company resident in an EU Member State or a country with which Ireland has a double tax treaty will be subject to corporation tax on those dividends at the 12.5% rate.

6.3 Use of Intangibles

If an Irish company licenses intellectual property to a subsidiary, it will be subject to Irish corporation tax on the licence fees (or deemed licence fees if transfer pricing applies) received in respect of the licence. The rate will be 12.5% if licensing is part of the trading activity of the Irish company, or 25% if it is part of non-trading activity.

An Irish company would also be subject to tax on the proceeds of a transfer of intellectual property by the Irish company to a non-Irish subsidiary, either at capital gains tax or corporation tax rates.

6.4 Taxation of Income of Non-Local Subsidiaries Under CFC-type Rules

Currently, Ireland has no CFC-type rules. However, following the formal adoption of the EU ATAD by the Economic and Financial Affairs Council of the EU on 12 July 2016, Ireland will be required to introduce legislative provisions to give effect to the CFC rules contained in Article 7; legislation is expected to be published in the forthcoming Finance Bill 2018.

EU Member States have a certain level of flexibility in choosing the form and method of achieving the results intended by the EU ATAD. For example, the preamble to the EU ATAD notes that rules can target a low-taxed subsidiary or particular types of income, or that a targeted rule may tax profits which have been artificially diverted to that subsidiary.

A corporation tax strategy paper published by the Irish Department of Finance on 1 August 2018 has provided a broad indication of Ireland's proposed approach. It suggested that the CFC provisions will focus on non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage and target CFC income that has been artificially diverted from Ireland.

The deadline for implementation of the EU ATAD in Member States is 1 January 2019.

6.5 Rules Related to the Substance of Non-Local Affiliates

There are no applicable rules relating to the substance of non-local affiliates.

6.6 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Irish companies are subject to capital gains tax on the sale of shares in directly held non-local affiliates under the normal capital gains tax rules at a rate of 33%, unless the substantial shareholder's exemption or group reliefs apply (as described in detail at **2.7 Capital Gains Taxation**, above).

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

Ireland does have general anti-avoidance rules, recently amended, which are intended to negate the effects of transactions with little or no commercial reality, but which are primarily intended to avoid or reduce a tax charge or artificially to create a tax deduction or tax refund. The anti-avoidance rules mean that Irish Revenue may at any time deny or withdraw a tax advantage created through the use of a tax avoidance transaction by making or amending an assessment of that person.

In determining whether a transaction is a tax-avoidance transaction, regard should be had to the form and substance of the transaction, the substance of any other transactions directly or indirectly related to the transaction and the final outcome of the transaction and any related transactions.

Where a person enters into a tax-avoidance transaction, ie, one which gives rise to a tax advantage contrary to general or specific anti-avoidance provisions, that person shall be liable to pay a 30% surcharge of the amount of the tax advantage. However, no surcharge is payable by a person who has made a valid protective notification. In addition, a taxpayer can also avail themselves of a reduced surcharge amount if a 'qualifying avoidance disclosure' is made to Irish Revenue.

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

8. Other

8.1 Regular Routine Audit Cycle

Ireland does not have a defined audit cycle for tax purposes: companies are subject to audit by the Irish tax authorities at any time. The time limit for enquiry by Irish Revenue into a tax return is four years from the end of the accounting period in which that return was filed.

9. BEPS

9.1 Recommended Changes

In response to the BEPS recommended changes, Ireland has introduced country-by-country reporting and updated its transfer pricing legislation, among other measures.

Other recent reforms include ratification and implementation of the BEPS Multilateral Instrument, introducing automatic exchange of information between tax authorities, and mandatory disclosure of tax planning. Ireland has also amended its corporate tax residence rules in order to phase out the so-called 'double Irish' structure used by certain multi-national groups.

9.2 Government Attitudes

The Irish Government is committed to ongoing work on corporate tax reform and has recently published a Corporate Tax Roadmap, which lays out the next steps in Ireland's implementation of various commitments they have made through BEPS, along with other international initiatives. In this regard, Irish legislation concerning tax regulation has significantly increased over the past few years, with this effort set to continue in the coming years.

With respect to the Irish Government's wider attitude, the Irish Department of Finance has insisted that transparency and substance are key components of the Irish tax regime, and is keen to ensure that Irish tax policy is continually in step with all BEPS proposals.

9.3 Profile of International Tax

The emergence, and subsequent phasing out, of the double Irish structure, along with the EC's recent Apple State Aid decision, has drawn public attention to international taxa-

tion. The Irish media also comments frequently on international tax matters, such as BEPS and US tax reform, given its importance to Ireland as an open economy.

Whilst this has not influenced Ireland's implementation of BEPS, the Irish Government has repeated that its commitment to corporate tax reform remains steadfast, and is keen to play a strong role in promoting BEPS in an international context.

9.4 Competitive Tax Policy Objective
Ireland has undertaken to review its corporate tax code regularly to ensure that new standards such as BEPS are met while remaining competitive as the economy continues to grow. Irish officials have made clear, however, that there will be no change to the corporate tax rate, indicating that *"the cornerstone of our competitive offering remains the 12.5% corporation tax rate."*

For Ireland's tax policymakers, the key balancing task is to ensure that the implementation phase of BEPS would result in the country's tax regime being seen as meeting the standards for substance and transparency while maintaining the country's reputation as an open economy that encourages foreign direct investment, and has a low rate of corporation tax.

9.5 Features of the Competitive Tax System
Ireland's headline corporate tax rate of 12.5% has faced some commentary internationally. The Irish government has reiterated its intention to retain the rate at its current level and has pointed to the fact that, under EU law, the determination of corporate tax rates remains the responsibility of each individual country as a national competence.

In a similar context, the Irish authorities have firmly voiced their opposition to the EC's interim proposal for a 'digital economy tax', with the Irish Minister for Finance emphasising the need for unanimity before any EU digital tax proposal can be agreed. Similarly, the Irish government has urged caution in respect of the proposed EU Common Corporate Tax Base, stating that discussions on harmonising tax across the eurozone are at a relatively early stage and much more technical analysis and discussion is needed.

9.6 Proposals for Dealing with Hybrid Instruments
In addition to the measures to be taken as part of BEPS, Ireland is required to adopt laws and regulations necessary to comply with the anti-hybrid rules contained in Article 9 of the EU Anti-Tax Avoidance Directive (ATAD). The deadline for implementation is 1 January 2020, with the exception of the anti-reverse hybrid rules, which must be implemented by 1 January 2022.

Given the potential complexity of anti-hybrid rules, the Irish government has indicated that a consultation period will be provided for in 2019, prior to the enactment of transposing legislation.

9.7 Territorial Tax Regime
Ireland does not have a territorial regime, but rather taxes companies on a worldwide basis. That said, as Ireland is party to a large number of tax treaties, the operation of a foreign tax credit system means that foreign tax paid on income can, in certain cases, be used to offset any Irish tax payable on the same income.

Further, following a review of Ireland's corporate tax code that was commissioned by the Department of Finance in 2017, one of the recommendations was that consideration should be given to moving to a territorial system. Whilst further public consultation is expected to take place before any changes are introduced, this recommendation has generally received support from stakeholders.

Interest limitation rules are already in existence in Irish tax law, although these are different in structure from the rules set to be introduced under ATAD. Broadly, the effect of the Irish rules is that a tax deduction for interest is only available where the relevant borrowings are used for certain limited qualifying purposes.

Ireland has applied for a derogation for implementation of the restrictions until 2024, but it is unclear whether agreement will be secured in relation to this derogation from the EC.

9.8 CFC Proposals
A sweeper CFC rule would be problematic in that such a provision would lead to an infringement regardless of the substantial activity of the companies in question. If revenues are gained abroad through a foreign subsidiary, then having them subsequently taxed in Ireland primarily on the grounds of the company in question being an offshore subsidiary, and without any reference to substance, would appear to be inappropriate.

9.9 Anti-Avoidance Rules
Ireland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017 and intends to adopt the principal purpose test (PPT) provisions in its DTCs. Ireland has indicated that it will not implement the supplementary limitation on benefits provisions when incorporating the PPT in its treaties.

In respect of anti-avoidance rules, Ireland already maintains a long-standing general anti-abuse rule under its tax code. Following a review of the relevant provisions, the Irish tax authorities have indicated that an amendment to the current GAAR will not be necessary. Consequently, the proposed DTC limitation of benefit and anti-avoidance rules are

unlikely to have a significant impact on Ireland in respect of inbound and outbound investors.

9.10 Transfer Pricing Changes

As Ireland has had transfer pricing rules since 2011, we do not sense that the proposed changes will present any major hurdles to the Irish regime. Furthermore, it has been indicated that there will be updates to the Irish transfer pricing rules in line with the new 2017 OECD Transfer Pricing Guidelines, which reflect the outcomes of BEPS Actions 8-10 and 13. It is expected that these updates will be introduced with effect from 1 January 2020.

As discussed in **2.2 Special Incentives for Technology Investments**, above. Ireland has recently introduced a 'knowledge-development box'. The operation of this regime is in line with similar schemes introduced in neighbouring jurisdictions such as the UK and provides for an effective 6.25% tax rate on income from IP and software that was improved, created or developed in Ireland. The introduction of this scheme has generally been welcomed and has not been the subject of controversy or criticism.

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9.11 Transparency and Country-by-Country Reporting

Ireland is in favour of the country-by-country reporting proposals. Regulations implementing these rules have applied since 2016 to groups with an Irish presence and turnover exceeding EUR750 million.

More recently, an OECD peer group report has confirmed that Ireland has introduced sufficient national laws to implement country-by-country tax reporting measures and recommended that follow-up action was not necessary. Accordingly, no change to the current Irish regime is anticipated.

9.12 Taxation of Digital Economy Businesses

No changes have been discussed or proposed at a domestic level. In respect of wider international developments, the Irish Government has strongly opposed the EC's interim proposal for a 'digital economy tax'. Responding to the proposal, the Irish Minister for Finance referenced the OECD reports on digital taxation, hinting at a need for broader international consensus on this issue, rather than EU-focused measures. Moreover, the Irish Government also published a reasoned opinion on 16 May 2018, addressed to the President of the EU Council, questioning the necessity of these measures.

9.13 Other General Comments

Even before the commencement of the BEPs process, Irish tax law had already seen the introduction of BEPs-type measures over many years, such as a general anti-abuse rule, measures to prevent cross-border 'double non-taxation' and transfer pricing provisions. Ireland has made further modifications to its tax legislation drives as a result of the BEPS process and will continue to do so going forward.