

# Ireland as a location for International Headquarters and Holding Companies

Leading global companies such as Ingersoll Rand, Accenture, Warner Chilcott, Shire and Experian have established their corporate holding companies in Ireland. They are joined by private groups, private equity funds, sovereign wealth funds, alternative investment funds and family offices that have all chosen Ireland for its benefits as a location for establishing a holding company. Ireland can also be an attractive jurisdiction for investment into companies around the world.

Ireland offers a range of benefits, including a stable legal system, access to financial markets and the benefits of OECD and European Union membership. The Irish tax regime further supports Ireland's status by providing an attractive platform for shareholders and corporates.

## Taxation of an Irish Holding Company Capital Gains

Capital gains realised by an Irish resident company on disposals of qualifying subsidiaries are exempt from Irish tax.

The subsidiary must be resident in an EU or tax treaty partner country. Ireland has tax treaties with 74 countries including China, Hong Kong, Japan, the Republic of Korea, Russia, the US, the UK and Canada (see the Appendix for complete list).

The Irish holding company must hold at least 5% of the subsidiary for at least 12 months and pass a trading test. The exemption is available to a disposal of a single trading

subsidiary but also extends to disposals of non-trading subsidiaries which form part of a wider trading group.

The trading test is widely defined but requires that either the company being sold or the group consisting of the disposing shareholder and all of its 5% subsidiaries must be regarded as “wholly or mainly” carrying on a trade. The phrase “wholly or mainly” means greater than 50%. The primary tests are the proportion of net trading profits and the proportion of net trading assets. Other factors which may be taken into account include gross receipts and the activities of employees of the group.

The holding period requirement is also relatively flexible and facilitates part disposals.

## Dividends

Dividends received by an Irish holding company from another Irish resident company are exempt from Irish corporate tax.

Ireland has a 12.5% rate of corporation tax which applies to:

- a) dividends from other EU or treaty countries which are sourced from trading activities; and
- b) dividends from foreign portfolio companies (i.e. less than a 5% interest).

In terms of the trading test, the conditions for application of the 12.5% rate are:

- a) that 75% or more of the dividend paying company's profits are trading profits, either trading profits of that company or dividends received by it out of trading profits of lower tier companies that are also resident in an EU or treaty country; and
- b) that on a consolidated basis, the aggregate value of the trading assets of the dividend receiving company and all of its subsidiaries must not be less than 75% of the aggregate value of all of their assets.

A 25% rate applies to all other foreign dividends, however it is important to highlight that the availability of a broad system of credits (together with onshore pooling) can reduce or eliminate any Irish tax. Treaty credit relief will apply in many instances. There is also unilateral Irish credit relief in respect of other countries provided a 5% shareholding relationship exists. Ireland's credit pooling arrangements allows excess credits arising in respect of one dividend stream to be applied to other lower taxed streams, subject to certain restrictions. In practice, as many jurisdictions have corporate tax rates in excess of the Irish rate, often the result is that no additional Irish tax is payable on foreign dividends.

### **Financing – Tax Deductions for Interest Payments**

Ireland has limited thin capitalisation rules and therefore an Irish holding company may be financed principally by debt. A tax deduction is potentially available for interest on funds used to acquire ordinary shares in a trading company or the holding company of a trading company. A deduction may also be available for funds used to lend to trading subsidiaries provided they are used wholly and exclusively for the purpose of the subsidiary's trade, or the trade of a connected person.

Under the EU Anti-Tax Avoidance Directive (ATAD) Ireland is required to introduce an interest limitation rule which could limit the ability of a company to obtain a tax deduction for certain borrowing costs. It is currently expected that this rule will be introduced in Ireland from 1 January 2022.

Ireland has extended its transfer pricing legislation so that it now applies to non-trading companies. However, there are numerous exemptions and carve outs which may apply to limit the impact of this.

### **Extracting Profits from an Irish Holding Company**

There is no Irish capital gains tax on disposals of shares in an Irish company by a non-Irish resident, except where the Irish company derives the greater part of its value from Irish land or Irish mineral rights.

Although Ireland levies 25% dividend withholding tax, there are a significant number of exemptions. No withholding tax should arise on payments to residents of other EU or treaty countries. Additionally payments to companies which are not resident in the EU or a treaty country can still be made free of Irish withholding tax provided that shareholder company is ultimately controlled by persons who are so resident. For example, dividend payments to a Cayman Islands company which is controlled by a EU or treaty resident investor should be free of withholding tax.

### **Certainty and Clarity**

Ireland's common law legal system (based on UK law) and tax regime continues to offer clarity and certainty to investors. A long established EU jurisdiction, Ireland was rated in 2019 as the easiest country in Europe in which to deal with business taxes.

## Tax Treaties

In addition to the treaty partner countries listed in the Appendix, Ireland is currently in negotiation with a number of other countries and has a policy to keep expanding its treaty network. Coupled with the ability to utilise various EU directives on cross-border payments, foreign withholding tax on royalty, interest and dividend payments to an Irish company can be eliminated or reduced.

## Irish Section 110 Companies

In certain circumstances, an Irish securitisation vehicle (a section 110 company) could be used as a company to hold share investments. Such companies are generally corporation tax neutral provided they are appropriately structured.

## Accessing Public Markets with an Irish Resident Company

Irish resident holding companies are increasingly common on international stock exchanges, particularly in the US. Shares in Irish incorporated companies can be traded through CREST and held in American Depositary Receipt (ADR) systems. The transfer of ADRs issued in respect of Irish incorporated companies and traded on a US or Canadian recognised stock exchange are not subject to Irish stamp duty. Alternatively, for listings on other exchanges, a non-Irish incorporated company can be considered. Although the company retains the benefit of the Irish holding company regime, the transfer of such shares should not be subject to Irish stamp duty.

## Key Tax Treaty Provisions

Under Ireland's tax treaties, local withholding tax on dividend payments to an Irish company is either reduced to a favourable rate or

excluded entirely, often depending on the shareholding or voting power percentages the recipient holds in the local company. Please see the Appendix for a summary guide of the maximum source country withholding rates for dividends, interest and royalty payments.

The treaties can also relieve an Irish resident company from local capital gains tax on sale of shares in the local company (often, other than a company which consists principally of local land).

## Further Information

If you require any further advice or assistance please speak to your usual Maples Group contact or the persons listed below.

### Dublin

**Andrew Quinn**  
+353 1 619 2038  
andrew.quinn@maples.com

**William Fogarty**  
+353 1 619 2730  
william.fogarty@maples.com

**October 2020**  
**© MAPLES GROUP**

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice. Published by Maples and Calder (Ireland) LLP.

## Appendix- Irish Double Tax Treaties (as at October 2020)

Maximum source country tax rates in Irish tax treaties for dividend, interest and royalty payments.

Country	Dividends	Interest	Royalties
Albania	5/10	7	7
Armenia	0/5/15	0/10	5
Australia	15	10	10
Austria	10	0	0
Bahrain	0	0	0
Belarus	5/10	5	5
Belgium	15	15	0
Bosnia Herzegovina	0	0	0
Botswana	5	7.5	5/7.5
Bulgaria	5/10	5	10
Canada	5/15	10	10
Chile	5/15	4/5/10	2/10
China	5/10	10	6/10
Croatia	5/10	0	10
Cyprus	0	0	0
Czech Republic	5/15	0	10
Denmark	0	0	0
Egypt	5/10	10	10
Estonia	5/15	10	0
Ethiopia	5	5	5
Finland	0	0	0
France	0	0	0
Georgia	0/5/10	0	0
Germany	5/15	0	0
Ghana*	7	0/7	8
Greece	5/15	5	5
Hong Kong	0	0/10	3
Hungary	5/15	0	0
Iceland	5/15	0	0/10
India	10	10	10

<b>Israel</b>	10	5/10	10
<b>Italy</b>	15	10	0
<b>Japan</b>	0	10	10
<b>Kazakhstan</b>	5/15	10	10
<b>The Republic of Korea</b>	0	0	0
<b>Kuwait</b>	0	0	5
<b>Latvia</b>	5/15	10	5/10
<b>Lithuania</b>	5/15	10	5/10
<b>Luxembourg</b>	0	0	0
<b>Macedonia</b>	0/5/10	0	0
<b>Malaysia</b>	10	0/10	0/8
<b>Malta</b>	5/15	0	5
<b>Mexico</b>	5/10	0/5/10	0/10
<b>Moldova</b>	5/10	5	5
<b>Montenegro</b>	5/10	10	5/10
<b>Morocco</b>	6/10	10	10
<b>Netherlands</b>	15	0	0
<b>New Zealand</b>	0	10	0/10
<b>Norway</b>	5/15	0	0
<b>Pakistan</b>	5/10	10	10
<b>Panama</b>	5	0/5	5
<b>Poland</b>	15	0/10	10
<b>Portugal</b>	15	15	10
<b>Qatar</b>	0	0	5
<b>Romania</b>	3	0/3	0/3
<b>Russia</b>	10	0	0
<b>Saudi Arabia</b>	0/5	0	5/8
<b>Serbia</b>	5/10	10	5/10
<b>Singapore</b>	0	5	5
<b>Slovakia</b>	0/10	0	10
<b>Slovenia</b>	5/15	5	5
<b>South Africa</b>	5/10	0	0
<b>Spain</b>	15	0	0/5/8/10
<b>Sweden</b>	0	0	0
<b>Switzerland</b>	0/15	0	0
<b>Thailand</b>	10	10/15	5/10/15

<b>Turkey</b>	10/15	10/15	10
<b>Ukraine</b>	5/15	5/10	5/10
<b>United Arab Emirates</b>	0	0	0
<b>United Kingdom</b>	5/15	0	0
<b>United States</b>	5/15	0	0
<b>Uzbekistan</b>	5/10	5	5
<b>Vietnam</b>	5/10	10	5/10/15
<b>Zambia</b>	7.5	10	8/10

\* Treaty not yet in effect.