COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

Ireland

TAX

Contributor

Matheson LLP

Tomás Bailey

Partner | tomas.bailey@matheson.com

Joe Duffy

Partner | joseph.duffy@matheson.com

This country-specific Q&A provides an overview of tax laws and regulations applicable in Ireland.

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1. How often is tax law amended and what is the process?

In December each year an annual Finance Act is passed by the Irish Parliament enacting substantive changes to tax law. This follows a budget statement by the Minister for Finance in September / October and a number of weeks of parliamentary debate and amendments. Very rarely, there may be more than one Finance Act in a calendar year.

Implementing legislation for relevant EU Directives is usually passed as part of the annual Finance Act. Other implementing legislation (regulations or orders) may be issued at other times throughout the year where authorized under the primary Finance Act.

Substantive changes to tax law are typically preceded by a period of public consultation and draft legislation may be released in advance for public comment and debate.

Procedural or administrative changes to Irish Revenue Commissioners' practices issue regularly throughout the year.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Companies are obliged to file a corporation tax return annually, typically 8 months and 21 days after the company's financial year end. This can be 8 months and 23 days if the return is filed electronically. Individuals with employment income only typically have no personal income tax filing obligations as their tax obligations are fulfilled by their employer under a system of payroll withholding taxes. Individuals with other sources of income file a tax return annually on 31 October (extension available for online filing).

There are bimonthly and annual VAT filings and employers have monthly and annual payroll withholding tax filings.

Taxpayers are obliged to maintain adequate books and records to support a tax filing for a period of six years. This time period is extended where there is an ongoing inquiry or audit.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

The Office of the Revenue Commissioners was established by Government Order in 1923 with responsibility for collecting taxes and duties and implementing customs controls. The Order provided for a Board of Commissioners comprising three Commissioners, one of whom is appointed Chairman. Irish Revenue's structure is designed around its customer base. Irish Revenue Regions are responsible for customers within their geographical area, except for those large corporates and high wealth individuals dealt with by the Large Cases Division. There are also Divisions with responsibility for policy, legislation and interpretation functions. In total, Irish Revenue comprises of 16 Divisions each of which is headed by an Assistant Secretary.

Standard queries are normally dealt with through an online portal. Depending on the nature of the query, response times can vary from 2 days to 6 weeks or even longer in complex matters. Complex matters may be dealt with face to face with the relevant technical division in Irish Revenue. Large taxpayers may be invited to join the Irish Revenue's Co-operative Compliance Framework ("CCF"). Taxpayers within the CCF have direct access to an Irish Revenue official and can expect matters to be dealt with more quickly. The CCF is entirely voluntary. However, taxpayers who do not participate in the CCF will not have a dedicated case manager and instead will be required to route queries or submissions to the Irish Revenue Commissioners through the general customer service team. This can result in increased delays with regard to queries being addressed or answered.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

The first instance independent tribunal for tax disputes is the Tax Appeals Commissioners ("**TAC**"). There is currently a significant waiting list of cases before the TAC and typical waiting time to hear an appeal can be more than one year. As of 31 December 2022, the TAC had 1,502 active appeals under its remit.

Appeals on points of law from the TAC may be made through the regular court system in the High Court, Court of Appeal and ultimately the Supreme Court (where the Supreme Court decides to exercise its appellate jurisdiction in circumstances specified by the Constitution). Appeals through the courts system can be expected to take more than 5 years.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

Individuals who have an income tax filing obligation must pay preliminary tax for a calendar year by 31 October of that year. To avoid possible interest charges the payment must be 90% of the current year liability or 100% of the prior year liability. Any balancing tax payment in respect of a calendar year must be paid by 31 October of the following calendar year.

Companies generally pay corporation tax in three instalments: (i) on the 21st day of the sixth month of the current financial year a payment equal to 45% of the current year tax liability (or 50% of the preceding year tax liability); (ii) on the 21st day of the eleventh month of the current financial year a payment to bring the total payments for the year to 90% of the current year tax liability; (iii) on the 21st day of the ninth month following the relevant financial year (along with the corporation tax filing) a balancing payment of the remaining 10% of the relevant financial year liability.

VAT and payroll withholding tax payments are made either bimonthly or monthly in arrears along with the relevant filing.

In order to lodge an appeal the taxpayer must pay the tax that the taxpayer believes is due. There is no requirement to pay the disputed amount. However, if there is an additional tax liability following the determination of an appeal the additional amount becomes due and payable from the original due date of the disputed amount.

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Section 851A Taxes Consolidation Act 1997 ("**TCA**") provides statutory protection in respect of the confidentiality of taxpayer information. The protection is not absolute and taxpayer information may be disclosed by Irish Revenue in certain limited circumstances prescribed within that section. Under separate legislation confidential taxpayer information may also be disclosed to the Office of the Director of Corporate Enforcement (ODCE) where an offence has been committed or to the Official Assignee or trustee in bankruptcy.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Ireland is a signatory to the CRS. The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the "**2019 Regulations**") came into force on 22 March 2019 and required that a Central Register of Beneficial Ownership of Companies and Industrial & Provident Societies be established (the "**Central Register**").

The Central Register went live on 22 June 2019 and companies can file relevant details with the Central Register from that date. There was a five-month grace period given to companies who were already in existence to file necessary data without being in breach of their statutory duty to file. Qualifying companies that are newly incorporated must file within five months from the date of incorporation.

8. What are the tests for determining residence of business entities (including transparent entities)?

Companies incorporated in Ireland are considered tax resident in Ireland unless they are resident in another jurisdiction in accordance with the terms of the relevant double taxation agreement ("**DTA**"). Companies incorporated outside Ireland may be Irish resident where they are centrally managed and controlled in Ireland (subject to application of a DTA).

Individuals are resident in Ireland where they are present in Ireland for 183 days in any calendar year or for 280 days over two calendar years (and at least 30 days in each year).

Partnerships are transparent for Irish tax purposes so one must consider the tax residence of the individual partners.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

For many years Ireland has been an important location for international groups. Therefore cross border transactions have long since been the focus of tax authorities' attention. The key areas of attention in cross border situations typically involve (a) assessing the substance and activity in Ireland to determine applicability of the 12.5% tax rate on trading income; (b) reviewing base-eroding interest payments out of Ireland; (c) consideration of deductibility and arm's length nature of royalty and other payments to foreign jurisdictions, particularly non-DTA partner jurisdictions.

Irish Revenue have also played a significant role over the years in defending the Irish tax base from permanent establishment and transfer pricing assessments by foreign taxing authorities.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

Under the Finance Act 2018, Ireland has introduced EU Anti-Tax Avoidance Directive ("**ATAD**") compliant CFC rules with effect from 1 January 2019. A CFC charge may arise under the legislation in respect of a foreign subsidiary if and to the extent the foreign subsidiary relies on significant people functions carried on in Ireland to generate its profits. However, if those functions are remunerated on arm's length terms, no CFC charge should apply. The CFC charge is applied at the Irish corporation tax rates (12.5% to the extent the profits of the CFC are generated by trading activities and 25% in all other cases). The CFC charge will be reduced and credit will be given for foreign tax paid by the CFC on its income and other CFC charges imposed by other countries by reference to the profits of the CFC. Irish Revenue have published guidance on the application of the CFC rules.

The rules have been amended with effect from 1 January 2021 to provide more stringent criteria in respect of subsidiary companies resident in jurisdictions included in the EU list of non – cooperative tax jurisdictions.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

Ireland has had transfer pricing rules since 2010. Under Finance Act 2019 the transfer pricing rules have been extensively modernised for accounting periods commencing on or after 1 January 2020. The transfer pricing rules must be interpreted in a manner consistent with the 2017 edition of the OECD transfer pricing guidelines. Furthermore the Irish transfer pricing rules now apply to trading and non-trading arrangements as well as capital transactions. Pre 1 July 2010 arrangements are no longer grandfathered and there is a requirement to prepare a Master File and Local File where certain thresholds are met. There is explicit legislation requiring the substance of a transaction to be considered and replace arrangements with arrangements that deliver a commercially rational result. There is a limited exemption to the transfer pricing rules for Ireland to Ireland transactions.

Ireland has introduced ATAD compliant interest limitation rules which commenced on 1 January 2022. The interest limitation rules apply to all corporate taxpayers but with certain exemptions and reliefs as provided for in ATAD.

Ireland has a formal advance pricing agreement ("**APA**") program. Only bilateral or multilateral APAs are possible. It is not possible to agree a unilateral APA with Irish Revenue.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

Ireland has had a GAAR in domestic tax legislation since 1988. Broadly it can apply where a transaction gives rise to a tax advantage and was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage. This is a matter that is threatened and litigated by the Irish Revenue.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

Ireland has not introduced a digital services tax. Irish Revenue has published guidance confirming the circumstances in which digital services taxes incurred by an Irish resident taxpayer may be treated as a deductible expense.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Ireland has been a committed participant in the BEPS project to date and remains committed to implementation. Ireland was one of the first countries to implement Country by Country Reporting. Ireland's Knowledge Development Box ("**KDB**") is a modified nexus based incentive, recognized as the first fully BEPS and Harmful Tax Practices compliant patent box in the world.

Ireland has signed the Multilateral Instrument ("**MLI**") adopting all the BEPS minimum standards and is a strong advocate of Mandatory Binding Arbitration ("**MBA**"). Ireland deposited its instrument of ratification of the MLI on 29 January 2019 and the MLI came into force in Ireland on 1 May 2019. However, the terms of the MLI will take effect to update Ireland's DTAs in accordance with the following dates:

(i) For provisions relating to withholding taxes, the earliest the MLI will take effect to update Ireland's DTAs is 1 January 2020; and

(ii) For provisions relating to all other taxes levied, the earliest date the MLI will take effect to update Ireland's DTAs is for taxable periods beginning on or after 1 November 2019.

Changes in the MLI relating to MAP can apply to Ireland's DTAs from 1 May 2019.

Other BEPS implementation measures have progressed at an EU level through the first and second ATAD. Ireland introduced CFC rules on 1 January 2019. An exit tax has also been introduced with effect from 10 October 2018. It is charged at 12.5% and applies to the latent gain inherent in the assets exiting the Irish tax net. In some cases, the exit charge may be deferred and paid over five years if necessary.

As of January 1, 2020, Ireland has introduced hybrid mismatch rules, on the basis of ATAD 2. Anti-reverse-hybrid rules and ATAD compliant interest limitation rules were introduced with effect from 1 January 2022. The 2017 OECD Transfer Pricing Guidelines have been incorporated by reference into Irish law under Finance Act 2019 having effect from 1 January 2020.

In October 2021, Ireland, along with the other countries in the OECD / G20 Inclusive Framework, signed up to the BEPS statement on a two-pillar solution to address the tax challenges arising from the digitalization of the economy (the "**Two-Pillar Solution**"). It is expected that the GLoBE minimum corporate tax rules proposed in the Two-Pillar Solution will be introduced in Ireland with effect from 1 January 2024 pursuant to the proposed EU Directive on ensuring a global minimum level of taxation for multinational groups in the Union.

15. How has the OECD BEPS program impacted tax policies?

Ireland has long been an active participator and supporter of the BEPS project, recognizing the importance of transparency on tax matters and the need for greater co-ordination of international tax rules to ensure there are no gaps open to exploitation. Ireland is likely to continue to be involved in this process at an EU and OECD level. A recent example of this is Ireland's signing up to the Two-Pillar Solution.

Irish tax policy is focused on ensuring a transparent tax system with a broad base, which is designed for businesses that want to innovate and create employment. By adopting and sticking to a corporation tax system that is sustainable and which meets the highest international standards, Ireland should be in a position to offer certainty to businesses.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

The Irish tax system broadly follows the OECD Model. It is a worldwide system of taxation for Irish residents with a credit for foreign taxes paid. Non-resident are subject to tax on Irish source income or income derived from an Irish branch or agency.

For companies, business profits are taxed at 12.5% where they are derived from a trade in Ireland (expected to rise to an effective tax rate of 15% upon implementation of the GLoBE rules in Ireland for in-scope taxpayers). Passive income is taxed at 25%. Dividends received by an Irish company may also be taxed at

12.5% or 25% with a credit for foreign withholding and underlying taxes. Start-up companies may be able to avail of an exemption from corporation tax for up to three years.

Marginal income tax rates for employees or pensioners are highly progressive rising on a graduated scale from 20% up to 52% (including 4% employee social insurance contribution).

VAT may apply to supplies of goods and services. The standard rate of VAT is 23%. There are reduced rates of 13.5% (broadly construction, tourism industry and related activities, and certain other services), 9% (until 31 October 2023 includes supply of electricity) 4.8% (broadly agriculture) and 0% (broadly food etc.). Certain other services are exempt (mostly finance related).

The rate of tax on deposit interest for individuals is 33% and for companies it is typically regarded as passive income taxable at 25%. There is no separate tax rate for royalties.

Rental income for companies is taxable as passive income at 25% and individuals are taxed at their marginal income tax rate.

The standard rate of capital gains tax is 33% though there is an Entrepreneur Relief which provides for a reduced 10% capital gains tax rate in certain circumstances up to a lifetime limit of €1 million.

There is stamp duty on certain legal documents executed in Ireland or related to Irish property. The applicable rate of stamp duty on the transfer of Irish shares is 1%, on residential property is 2% (or 1% up to €1 million) and on non-residential property is 7.5%. As of 20 May 2021, a residential stamp duty rate of 10% may be payable where more than 10 houses or duplexes are purchased in one year by the same purchaser. This higher rate does not apply when buying apartments, and does not affect local authorities and approved housing bodies. There is no capital duty in Ireland.

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Yes. Corporation tax in Ireland is a tax on profits and the starting point are the profits calculated in accordance with accounting principles. Certain adjustment to accounting profits may be required under law and may be permanent (e.g. entertainment expenses) or temporary (e.g. capital depreciation).

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

Businesses are typically carried on through a limited liability company (which is a taxable entity) or by individuals (who are taxable in their own name). Business may also be carried on through partnerships (of companies or individuals or a combination) but partnerships are transparent for tax purposes and each partner is deemed to conduct its own several trade.

Trusts can attract income tax, capital gains tax or inheritance tax. The tax payable and the person responsible for ensuring the tax is paid largely depends upon the type of trust.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

Liability to business taxation is based on residence or conducting business through an Irish branch or agency. In addition Irish source income (other than that related to a PE) may be subject to withholding taxes.

Companies incorporated in Ireland are considered tax resident in Ireland unless they are resident in another jurisdiction in accordance with the terms of the relevant DTA. Companies incorporated outside Ireland may be Irish resident where they are centrally managed and controlled in Ireland (subject to application of a DTA).

Individuals are resident in Ireland where they are present in Ireland for 183 days in any calendar year or for 280 days over two calendar years (and at least 30 days in each year). Partnerships are transparent for Irish tax purposes so one must consider the tax residence of the individual partners.

Ireland imposes a 25% withholding tax on dividends and 20% withholding tax on interest and patent royalties. However, there are broad exemptions under domestic law on payments to DTA partner jurisdictions (regardless of the rate applicable under the relevant DTA).

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

No.

21. Are there any special tax regimes for intellectual property, such as patent box?

With effect from 1 January 2016 Ireland has enacted a Knowledge Development Box ("**KDB**") which is an OECD compliant, modified nexus patent box. The KDB provides for a 6.25% corporation tax rate on profits derived from intellectual property (including patents and copyrighted software) where the related research and development ("R&D") has taken place in Ireland. The relief is diluted to the extent that the relevant R&D is undertaken by group companies or is based on acquired intellectual property. As the KDB operates to decrease a taxpayer's effective tax rate, the Department of Finance recently acknowledged that the KDB is unlikely to produce a net benefit following the implementation of the GloBE rules for in-scope taxpayers. The KBD regime has been extended to 1 January 2027, with the effective tax rate due to rise to 10% from a date to be set by a commencement order.

Ireland also offers an R&D tax credit of 25% of the qualifying R&D expenditure taking place in Ireland. Taxpayers have the option to request either payment of the credit or for it to be offset against other tax liabilities. The tax credit is payable over a three-year fixed payment schedule.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

Ireland does not operate a fiscal consolidation system but rather provides for a system of group relief. An Irish resident company can surrender losses to another Irish resident group company. The surrender is achieved by making an appropriate election in the corporation tax return. It is not necessary that payment is made for the economic value of the loss but a tax free payment may indeed be made. In order for a 'group' to exist there must be a 75% beneficial ownership relationship (directly or indirectly) between the two companies traced through companies resident in the EU or DTA partner jurisdictions.

In order to comply with the European Court of Justice ruling in the Marks & Spencer case, in certain circumstances an Irish company may also claim relief for losses sustained in a direct subsidiary resident in the EU.

23. Are there any withholding taxes?

In general Ireland applies a 25% withholding tax to dividends and a 20% withholding tax to interest and patent royalties. The withholding tax is typically removed under domestic law, the EU Parent/Subsidiary directive or a DTA.

The primary domestic exemption for interest withholding tax applies for interest paid to a company resident in an EU or DTA partner jurisdiction.

The primary domestic exemption for royalty withholding tax applies to royalties paid to a company in the EU or DTA partner jurisdiction in the ordinary course of a trade; or paid in respect of non-Irish patents (subject to certain conditions being satisfied and application to Irish Revenue).

Subject to appropriate declarations being in place, the primary domestic exemptions for dividend withholding tax applies to

(i) individual resident in EU/DTA country;

(ii) company resident in EU/DTA country and not under the control, (directly or indirectly) of an Irish resident;

(iii) company under the control (directly or indirectly) of person(s) who are tax resident in an EU/DTA country (and not under the control of persons resident outside an EU/DTA country);

(iv) company whose principal class of shares is substantially and regularly traded on a recognised stock exchange in an EU/DTA country;

(v) company which is a 75% direct or indirect subsidiary of another company whose principal class of shares is substantially and regularly traded on a recognised stock exchange in an EU/DTA country.

24. Are there any environmental taxes payable by businesses?

Not as such. There are certain incentives such as accelerated tax depreciation allowances on the acquisition of energy efficient equipment and for the use of electric cars.

25. Is dividend income received from resident and/or non-resident companies taxable?

Dividends received by Irish resident companies from other Irish resident companies are exempt from tax.

Dividends received by Irish resident companies from non-resident companies are taxed as follows: (i) 0% – portfolio holdings (>5%); (ii) 12.5% – dividends from trading subsidiaries (in EU/DTA country or where listed company within group); (iii) 25% – dividends from other subsidiaries.

Tax payable on dividends is reduced by applicable credits. There is an extensive credit regime including provisions for credit for foreign underlying and withholding taxes (including multiple lower tier subsidiaries). Furthermore tax credits may be pooled within separate 12.5% and 25% buckets and excess tax credits may be carried forward.

Finally there is an effective dividend participation exemption on dividends received from subsidiaries in an EU Member State. An Irish company in receipt of a dividend from a company in an EU Member State, which is not fully sheltered by actual tax credits, is entitled to a deemed credit to ensure an effective Irish tax rate of 0% on dividends received from EU subsidiaries.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

The key advantages Ireland offers from a tax perspective are a low, but internationally acceptable, headline corporate tax rate of 12.5% (expected to rise to an effective tax rate of 15% upon implementation of the GLoBE rules in Ireland for in-scope taxpayers) with the opportunity to significantly reduce the effective rate through amortization of intangibles acquired. The taxable profits and effective tax rate in Ireland are not reliant on any rulings or deemed deductions but rather are determined based on accounting profits and OECD transfer pricing principles. Ireland has a wide network of more than 70 double tax treaties reducing or eliminating withholding taxes. Furthermore there are broad domestic exemptions for withholding taxes on payments out of Ireland.

Ireland has long since been a key location for foreign direct investment from all over the world. It is not just about the tax regime. Some other non-tax relevant factors for a UK international group facing the prospect of life outside the EU would be Ireland's continued commitment to the EU and the Euro providing a single point of access to the entire EU market. For financial services groups this may also offer the possibility of regulatory access to the EU. Ireland is culturally and physically close to the UK allowing for the possibility of co-location rather than re-location of activities post Brexit. This is facilitated by shared language and shared common law legal system. Continued access to the large EU labour market will also continue to be a key advantage.

The primary disadvantage with the Irish tax regime is the fact that there is no participation exemption for dividends. Although the credit system typically ensures there is no incremental tax on dividends in Ireland there can be an administrative burden associated with managing dividend flows and the credit calculations. It is expected that a participation exemption on dividends will be introduced in the near future.

Otherwise the primary disadvantage of Ireland is for international groups that rely on physical transportation of certain products by road or rail and need to be close to large customer markets. Clearly for certain industries or products this is not an issue but it may be an issue for some.

Contributors

Tomás Bailey
Partner
tomas.bailey@matheson.com

Joe Duffy
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joseph.duffy@matheson.com