Holding companies in Ireland*

Ireland has become an attractive location for holding companies due to the provisions of its tax treaties and its domestic law tax reliefs. There is a wide-ranging capital gains tax participation exemption for disposals by companies of qualifying shareholdings. Pooling of tax credits on foreign dividend income ensures that in most cases no additional tax is paid in Ireland on foreign dividend income received by Irish resident companies.

Ireland is most commonly used as an intermediate holding company jurisdiction and is of particular interest in the following circumstances:

- for groups, whether international or domestic, with global or regional headquarters operations in Ireland
- when the average tax rate for profits to be repatriated by subsidiaries held by Ireland is not less than the Irish passive income tax rate of 25%
- to avail of the extensive exemptions from dividend withholding tax on dividends paid by an Irish company
- to hold subsidiaries that have scope for significant capital appreciation and that may be spun off or sold in the future
- to access the favourable withholding tax provisions of Ireland's treaty network and the EU Parent-Subsidiary Directive (summarised at Appendix I) in order to reduce the tax burden on dividends received from foreign subsidiaries
- to access the source country capital gains tax exemptions provided (uniquely in many cases) by Ireland's treaty network
- where a jurisdiction is required that does not have controlled foreign corporation legislation
- where it may be important to achieve a tax free unwind of the holding company at some stage in the future
- for EU/NAFTA companies, by accessing the derivative benefits clause of the Ireland/US treaty, to receive US-source interest and royalties at a zero withholding tax rate.

With appropriate planning, Ireland can be used as the ultimate holding company, e.g. in a group that is relocating to a new jurisdiction or on formation of a new publicly traded corporation with international operations.

While the location of a holding company will depend on both tax and non-tax considerations, this document focuses on the tax aspects by considering the Irish tax issues and exemptions of relevance to a holding company, which have resulted in Ireland becoming increasingly attractive as a location for holding companies. The tax issues and exemptions are reviewed under the following headings

- setting up an Irish holding company
- taxation of Irish holding companies
- disposition of shares in an Irish holding company
- ceasing operations in Ireland

Setting up an Irish holding company

No specific legal form is necessary for the incorporation of a holding company in Ireland. When incorporated in Ireland, it must take one of the forms provided by Irish corporate law. The most commonly used forms for intermediate holding companies are private limited liability companies and private unlimited companies. There are no minimum equity requirements for an Irish private company, its capital may be denominated in any currency and its financial statements may be prepared in any functional currency.

Financial statements must be prepared in accordance with accounting standards generally accepted in Ireland, and with Irish corporate law comprising the Companies Acts, 1963 to 2006.

Also, in accordance with EU regulations, Irish companies with one or more subsidiary undertakings are required to prepare consolidated accounts on an annual basis.

Companies listed in the EU should prepare consolidated accounts using International Financial Reporting Standards.

Taxation of Irish holding companies

Capital duty

Capital duty is not chargeable in Ireland either on formation or on subscription for equity in the form of shares.

General taxation regime on income

There is no special taxation regime for holding companies. Passive income earned by a company in Ireland is taxed at 25% - this could include foreign dividends, interest and royalties. However, if the income is earned in the course of an active business (a trade) undertaken in Ireland, the profits are taxable at 12.5%. Dividends from subsidiaries outside Ireland do not rank as active income for Irish tax purposes and are thus taxable at 25%. Dividends from Irish companies are exempt from tax in the hands of a corporate recipient.

Controlled foreign corporation ("CFC") legislation

Ireland does not have controlled foreign corporation legislation and, thus, no income is imputed to an Irish parent, even if this income arises in a subsidiary in a tax haven or in respect of passive activities.

Thin capitalisation

Irish tax legislation does not contain thin capitalisation provisions.

Deduction of costs

- Expenses of management of a holding company should in most circumstances be deductible against its taxable profits.
- An Irish holding company may in principle deduct from its taxable profits, on a paid basis, interest on loans relating to the acquisition of (or lending to) either
    - companies undertaking trading operations directly
    - first tier holding companies of trading companies.

Although interest payments made outside the EU to non-resident parent companies or to other non-resident companies where there is 75% common control are treated as distributions (and consequently not tax-deductible) under domestic law, the interest will in most cases be deductible where it is paid to a company resident in a country with which Ireland has concluded a tax treaty. There are restrictions on financing intra-group acquisitions with debt from a related party.

Tax consolidation

There are no provisions for the filing of consolidated tax returns by related companies in Ireland. In general, however, excess expenses of management of investment companies (which may include holding companies), trading losses

and excess tax deductible interest expense may be offset against the Irish profits of other members of the group for the same financial period.

For this purpose, a group means a parent company together with its 75% subsidiaries that are resident in Ireland, another Member State of the EU or an EEA Member State with which Ireland has a treaty (i.e. Iceland and Norway).

Taxation of trading income

Trading income is taxed at the rate of 12.5%.

Taxation of dividend income

Dividends and other profit distributions received by an Irish resident company from another Irish resident company are exempt from tax.

Dividends and other profit distributions received by an Irish resident company from a foreign subsidiary are liable to tax at the tax rate of 25% for passive income. The availability of the underlying and withholding tax suffered by the foreign subsidiary as a credit against Irish tax, together with tax credit "pooling", can result in an effective exemption from tax.

Foreign tax credit on income received by an Irish company

Dividends paid to an Irish company may be liable to a withholding tax on payment in the country of origin. This tax may be reduced in accordance with the double taxation treaty concluded by the source country with Ireland. Irish holding companies are also covered by the provisions of the EU Parent-Subsidiary Directive, which may eliminate withholding tax.

Foreign taxes on dividends may be relieved in Ireland in three ways:

- under unilateral provisions of Irish tax law, which includes a system of tax credit "pooling"
- in accordance with the EU Parent-Subsidiary Directive
- under bilateral treaty provisions

There is a description of each of the above in Appendix II.

When dividends are repatriated to Ireland, the foreign tax credit is initially given by reference to aggregate dividends from each country. Overall, incremental tax liability on dividends will not arise in Ireland where repatriated profits have suffered tax at an effective rate of 25% or more (including withholding tax and tax paid by the company paying the dividends). Where individual dividends have effective tax rates of less than 25%, the excess tax credits in respect of the high tax income may be offset against the tax liability in respect of any low tax income. Unused excess credits in each year may be carried forward indefinitely.

Capital gains tax participation exemption on disposal of shares

The gain arising on the disposal by an Irish resident company of shares in a company is exempt from capital gains tax if

- the holding company holds, for a continuous 12 month period, a minimum of 5% of the shares (including the right to profits and to assets on winding up).
- the company disposed of is resident at the time of disposal in an EU Member State (including Ireland) or in a country where a double taxation treaty is in force with Ireland.
- a trading condition is met at the time of disposal whereby either:
  - the business of the company whose shares are sold consists wholly or mainly of the carrying on of one or more trades
  - taken together, the businesses of the holding company and companies in which the holding company (or the company whose shares are sold) has a direct or indirect 5% or more ownership interest consist wholly or mainly of the carrying on of one or more trades.

    The Irish tax authorities have issued guidance in relation to the “wholly or mainly” test (Tax Briefing 66 issued July 2007). The guidance confirms that “wholly or mainly” means greater than 50%. It also outlines that the primary tests to determine whether a company or group is wholly or mainly trading are the proportion of net trading profits and the proportion of net trading assets, though other factors may be taken into account. The lesser considerations would include trading turnover as a production of gross receipts

and the proportion of employees' time devoted to trading and non-trading activities. In relation to the combined test, intra-group transactions (e.g. dividends) should be excluded.

The disposal will also be exempt if the holding company has met the minimum holding requirement no earlier than two years prior to the time of disposal.

If the holding company is unable to meet the minimum holding requirement, but is a member of a group (comprising a parent company and its greater than 50% worldwide subsidiaries) and the holding requirement can be met by including holdings of other members of the group, then the gain arising on the disposal will still be exempt. Therefore, the Irish resident company may be exempt from capital gains tax on a disposal of shares even if it does not directly hold a significant shareholding.

The exemption may apply to a disposal of assets related to shares, such as options and convertible debt, but will not apply to the disposal of either shares or related assets that derive the greater part of their value from Irish real property or Irish situated minerals or mining rights.

In determining whether the exemption conditions are met, it should be noted that

- the holding company need not hold its entire shareholding for the minimum holding period of 12 months; the disposal of shares will be exempt provided it holds 5% of the shares for the holding period
- similarly, it is not necessary that the holding company dispose of its entire shareholding in order for the gain arising on the disposal to be exempt; once the prescribed holding requirement is met, then the gain arising on any disposal of shares, or assets related to shares, will be exempt.

Capital losses and write-offs

In general, capital losses arising on the disposal of assets can be deducted from capital gains arising in the same financial period or can be carried forward and deducted from future capital gains. However, capital losses arising on the disposal of shareholdings where a gain on disposal would be exempt under the participation exemption are not allowable losses.

Similarly, write-offs of investments in subsidiaries would be deductible from current or future capital gains where agreement has been obtained from the tax authorities and where the shares written off are of negligible value. However, such write-offs will not be allowed unless a corresponding gain would be taxable.

Close companies

Anti-avoidance provisions apply to closely-held companies, where the company is ultimately controlled by five or fewer individuals (family members being considered as a single individual for this purpose) or by partners in a partnership, who may be resident in Ireland or elsewhere. These provisions may impact on holding companies that are within the close company definition by subjecting dividends received from Irish companies that have not been further distributed as a dividend to the holding company shareholders within 18 months of the financial year end to additional tax at 20%. In addition, passive income on other investments not qualifying for participation exemption (e.g. bank deposits or securities) is liable to additional tax at 15%, and some capital gains realised by non-resident companies held directly or indirectly may be attributed to the Irish holding company (and taxed at 20%).

Repatriation of dividends from Ireland

Ireland imposes a withholding tax on dividends and other profit distributions at a 20% rate. Although the withholding tax applies primarily to dividends paid to Irish resident individuals, it could also apply to some dividends paid by holding companies. However, exemption from dividend withholding tax is available to non-resident shareholders in the following circumstances

- under domestic law, where the dividend is paid to an individual recipient resident in the EU or in a country with which Ireland has a tax treaty
- under domestic law, where the dividend is paid to a company resident in the EU or in a country with which Ireland has a tax treaty and which is not controlled (more than 50%) by Irish residents
- under domestic law, where the dividend is paid to a company that is under the ultimate control of persons resident in another EU Member State or in a country with which Ireland has a tax treaty
- under domestic law, where the dividend is paid to a non-resident company, the principal class of whose shares is listed (and regularly traded) on a recognised stock exchange in a treaty country or another EU Member State, or on another stock exchange approved by the Minister for Finance. This exemption also applies where the recipient of the dividend is a 75% or more subsidiary of such a listed entity
- under domestic law, where the dividend is paid to a non-resident company that is itself wholly owned (directly or indirectly) by two or more companies, the principal class of each of which is listed (and regularly traded) on a recognised stock exchange in a treaty country or another EU Member State, or on another stock exchange approved by the Minister for Finance
- in accordance with the EU Parent-Subsidiary Directive, where the dividend is paid by a subsidiary company to its EU parent (for this purpose, the Irish requirement is a 5% minimum holding)

The shareholder must claim the exemption by filing an appropriate declaration with the dividend paying company and, if there are no changes in circumstances, the exemption will last for five years. Relief may alternatively be available by way of repayment in accordance with the provisions of the tax treaties, many of which provide for exemption or reduced tax rates on dividends.

Stamp duty

The stamp duty rate on transfer of shares in companies incorporated in Ireland is 1%, based on fair market value. The duty applies on transfers of shares in both limited and unlimited companies, but there is a relief known as "associated companies relief" that eliminates the duty on transfers within a group with at least 90% ultimate common corporate ownership. This relief is subject to conditions; in particular, if either buyer or seller leaves the group within two years from the date of transfer, the relief will be recaptured.

Irish stamp duty is not payable on the transfer of shares in a company which is not registered in Ireland except where:

- the shares relate to immovable property situated in Ireland or any interest in such property or
- the shares in the non-Irish registered company are transferred in consideration for the issue of shares in an Irish registered company.

Where companies undertake a scheme of reconstruction or amalgamation for bona fide commercial reasons, stamp duty is not normally payable.

VAT

In principle, activities that do not go beyond the holding of shares and the receipt of dividends do not come within the scope of VAT. The mere holding of shares and receipt of dividends is not an economic activity for VAT purposes. As a consequence, pure holding companies are not required to, and indeed cannot, register for VAT and cannot reclaim any VAT incurred (in Ireland or elsewhere) on costs attributable to the holding activities. To the extent that the holding company receives taxable services from a supplier in another EU Member State (e.g. advice on possible investments, due diligence reports), VAT at the rate applicable in that Member State should normally be charged and will not be recoverable by the holding company.

In contrast, holding companies that take a direct or indirect role in the management of subsidiaries and charge a fee in respect of this, are engaged in an economic activity and are considered to be taxable persons for VAT purposes and entitled to recover VAT incurred (in Ireland or elsewhere) on costs related to this economic activity. Because the company will in these circumstances undertake both taxable management activity and the pure holding activity, it will reclaim the VAT incurred on costs related the former activity, but not the VAT incurred on costs related to the latter activity. To the extent that there are any general overhead costs, these will be eligible for partial VAT recovery by reference to a suitable apportionment calculation. Once the company has registered for VAT (by virtue of supplying taxable goods or services) it would be treated as being in business for the purposes of receiving any services that are subject to VAT under the reverse charge provisions (from elsewhere in the EU or from outside the EU), and would have an Irish VAT obligation in respect of these at 21%; the deductibility of the relevant VAT would depend on whether the costs relate to the taxable (supply of services) or non taxable (holding) activity.

Other taxes

There are no other (significant) taxes to be taken into account for holding companies.

Disposition of shares in an Irish holding company

Disposition of shares in an Irish holding company by a shareholder that is not Irish resident gives rise to considerations of capital gains tax, stamp duty and Irish gift or inheritance taxes.

Capital gains tax

Irish capital gains tax arises on disposition of shares in an Irish resident company only where the shares in question derive the greater part of their value from Irish real property or Irish situated minerals or mining rights.

Stamp duty

As discussed above, the stamp duty rate on transfer of shares in companies incorporated in Ireland is 1%, based on fair market value, payable by the purchaser of the shares if no exemptions are available.

Irish companies with stock exchange listings outside Ireland normally avoid stamp duty by listing American (or Global) Depositary Receipts representing shares in an Irish company. Transfers of these instruments are exempt from stamp duty.

Irish gift and inheritance tax

These taxes may require consideration if shares in an Irish incorporated company are transferred by way of gift or inheritance. The tax rate is 20% and there is an exemption for transfers between spouses.

Ceasing operations in Ireland

Migration of residence

A company is resident in Ireland by reference to Irish incorporation or by reference to the exercise of central management and control in Ireland. The mandatory Irish residence for Irish incorporated companies may be over-ridden in either of the following circumstances

- by the tiebreaker provisions of many of the Irish tax treaties
- if the company or a related (50% or more) company has trading operations in Ireland and either
  - it is ultimately controlled (more than 50%) by residents of treaty jurisdictions or of the EU (including Ireland).
  - it is or is controlled (more than 50%) by a company listed (and regularly traded) in a treaty jurisdiction or in the EU (including Ireland).

Thus, it may be possible to "migrate" an Irish resident company to another jurisdiction by changing the location of its central management and control. Central management and control is determined by the location at which the company's overall policy is set and for this purpose one of the most significant factors is the place at which the directors meet to exercise control of the company.

Exemption from capital gains tax exit charge for companies migrating from Ireland

A capital gains tax "exit charge" of 20% normally applies to a company migrating residence from Ireland, whereby it is deemed to have disposed of all its assets and immediately reacquired them at market value at the time of migration.

Although the capital gains tax participation exemption does not apply to the deemed disposal on migration, a complete exemption is available from this exit charge (on all assets) if all the following conditions are met

- 90% or more of the shares in the Irish company are held by one or more companies not resident in Ireland
- the companies that count to meet the 90% ownership qualification are themselves directly or indirectly owned (more than 50%) by residents of countries with which Ireland has a tax treaty

- the companies that count to meet the 90% ownership qualification are not themselves directly or indirectly owned (more than 50%) by residents of Ireland

Liquidation of holding company.

On the liquidation of an Irish company, a liability to capital gains tax may arise on the disposal of assets by the liquidator. However, gains and losses incurred on liquidation are deemed to be gains or losses of the company and it should therefore be possible for gains arising on the disposal by the liquidator of shareholdings, which meet the necessary conditions for the capital gains tax participation exemption, to be exempt.

Distributions to shareholders made on liquidation

Where a shareholder receives a distribution from a company in the course of liquidation, the shareholder is treated as disposing of the shares and so the distribution may be subject to capital gains tax in the hands of the shareholder.

However, Irish capital gains tax liability would be extremely unlikely to arise to a non-resident shareholder of the holding company on liquidation distributions from an Irish company, since capital gains tax applies to non-residents only on shares deriving their value from Irish real property or Irish situated minerals or mining rights. Liquidation distributions are not subject to any withholding taxes.

If the liquidator transfers the assets to the shareholders in specie in respect of their shares, then the transfer will qualify for exemption from stamp duty.

Conclusion

While tax aspects may not be decisive in choosing a location for a holding company, they are extremely important in the decision-making process.

This paper has considered the tax implications of selecting Ireland as a holding company location, by addressing the significant Irish tax issues facing a holding company, from setting up in Ireland through to leaving Ireland, together with the available exemptions that make Ireland such an attractive holding company location.

In particular, the capital gains tax participation exemption, together with the taxation regime for foreign dividends which can result in an effective exemption for those dividends, have focused international attention on Ireland as a holding company location. When both of these factors are combined with Ireland's extensive and expanding tax treaty network, favourable domestic law exemptions for withholding taxes and the absence of CFC legislation, it will be evident that Ireland provides significant opportunities as a holding company location.

Appendix I

Ireland's double tax treaty network[1]

Withholding tax rates on dividends paid to an Irish holding company

Country	Treaty	EU Parent-Subsidiary Directive
Australia	15%	
Austria	10%	0%
Belgium	15%	0%
Bulgaria	5/10%	0%
Canada	5/15%	
China	5/10%	
Croatia	5/10%	
Cyprus[2]	0%	0%
Czech Republic	5/15%	0%
Denmark	0/15%	0%
Estonia	5/15%	0%
Finland	0/15%	0%
France[2]	10/15%	0%
Germany	10/15%	0%
Greece	5/15%	0%
Hungary	5/15%	0%
Iceland	5/15%	
India	10%	
Israel	10%	
Italy[2]	15%	0%
Japan	10/15%	
Korea[2]	10/15%	

Country	Treaty	EU Parent-Subsidiary Directive
Latvia	5/15%	0%
Lithuania	5/15%	0%
Luxembourg	5/15%	0%
Malaysia	10%	
Mexico	5/10%	
Netherlands	0/15%	0%
New Zealand	15%	
Norway	5/15%	
Pakistan	Normal rates	
Poland	0/15%	0%
Portugal	15%	0%
Romania	3%	0%
Russia	10%	
Slovakia	0/10%	0%
Slovenia	5/15%	0%
South Africa	0%	
Spain	0/15%	0%
Sweden	5/15%	0%
Switzerland	10/15%	
United Kingdom	5/15%	0%
United States	5/15%	
Zambia	0%	

Notes:

1 A treaty with Chile has been signed and is awaiting ratification by Chile. Treaties with Argentina, Egypt, Georgia, Kuwait, Macedonia, Malta, Moldova, Morocco, Singapore, Thailand, Tunisia, Turkey, Ukraine and Vietnam are in the course of negotiation

2 Treaty is in the process of renegotiation

Appendix II

Relief for foreign taxes on dividend income

Unilateral provisions in Irish tax law

Under domestic law, Ireland has a system of unilateral credit relief. This requires a minimum ownership of 5% of the voting power in the company that pays the dividend. This minimum ownership need not necessarily be direct and may be held by a 50% parent company of the Irish company. Unilateral credit relief will permit tax credits in respect of tax (foreign and Irish) borne at first and subsequent tiers of ownership in treaty and non-treaty countries. Relief for double taxation is initially limited to the Irish tax payable on the foreign income. Any foreign tax not qualifying for credit may be claimed as a deduction in arriving at Irish taxable profits. A system of tax credit "pooling" is also available, whereby excess tax credits (where the foreign rate is greater than the Irish tax rate of 25%) on one foreign dividend can be offset against the tax arising on another foreign dividend. Excess credits are available for carry forward indefinitely for offset against tax arising on foreign dividends in later years.

EU Parent-Subsidiary Directive

Ireland has adopted the credit method of foreign tax relief under the EU Parent-Subsidiary Directive and thus when a company resident in Ireland receives a dividend from a company in another EU Member State, underlying tax relief, in respect of foreign tax which is borne either by the foreign company or by lower tier shareholdings, will be available if there is a 5% holding of share capital at each tier. There is no minimum ownership period in the Irish legislation implementing the Directive

Bilateral treaty provisions

Under tax treaty provisions, double tax relief is given in Ireland for withholding taxes on income received and, in the case of dividends from foreign companies, for taxes out of which dividends are paid (this is referred to as "underlying tax relief"). Underlying tax relief generally requires a minimum holding of voting power, which varies by reference to the particular treaty concerned.

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