



RSM International

global excellence in audit, tax & consulting

Doing business
in the
Republic of Ireland

Foreword

Ireland has a lot to offer the inward investor with everything from a favourable tax environment, including one of the lowest rates of corporation tax in Europe, to a highly skilled and motivated workforce and well developed infrastructure.

The country has been successful in attracting and retaining foreign investment with over 1,000 overseas companies already choosing Ireland as their European base from which to do business. These companies are involved in a wide range of sectors including engineering, pharmaceuticals, information communications technology, computer software, cleantech, renewable energy, financial services, medical device manufacturing, food and agri-business.

An overseas company doing business in a foreign environment requires local knowledge and expertise to guide it through the tax and financial reporting requirements and compliance regime in order to operate successfully.

As the independent member firm of RSM International in the Republic of Ireland, RSM Farrell Grant Sparks has produced this guide to assist businesses who are considering investing in the Republic of Ireland. This publication provides a summary of the business and regulatory environment in the Republic of Ireland as of 1 March 2011. We would advise that you seek professional advice before taking or deferring any action.

RSM Farrell Grant Sparks has the necessary accountancy, tax and consultancy skills to assist overseas companies in establishing operations in Ireland and for ongoing trading activity. We hope that you find this guide useful. If we can be of assistance to you, please contact a member of our international team.

Jim Mulqueen
Managing Partner
RSM Farrell Grant Sparks

In a world of different cultures, it's good to have advisors who are consistent everywhere.

RSM International is the sixth largest network of independent accounting and consulting firms worldwide. RSM International is represented in 83 countries and brings together the talents of 32,500 individuals. RSM member firms are driven by a common vision of providing high quality professional services to ambitious and growing organisations.

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General

Geography and Population

Ireland is an island nation on the westernmost border of Europe. It is part of the chain of islands consisting of the United Kingdom and Ireland. The Republic of Ireland (hereafter Ireland) shares only one border with the United Kingdom in the north. Ireland is otherwise surrounded by the Atlantic Ocean on the west, north and south and the Irish Sea on the east. Ireland has a total area of 81,638.1 square kilometres and a population of 4.2 million. The climate of Ireland is classified as oceanic or temperate with temperatures ranging from 0 to 27 degrees Celsius. In general, summers are mild and changeable and winters are cold and wet.

English and Irish (Gaelic) are the official spoken languages of Ireland and the main practiced religion is Roman Catholic. The capital of Ireland is Dublin on the eastern seaboard with a population of 1.7 million in the greater Dublin area followed by Cork with 380,000 and Limerick with 93,000. Ireland is traditionally divided into four provinces of Munster, Leinster, Connacht and Ulster.

The official currency of the Republic of Ireland is the Euro.

Irish public and national holidays are as follows:

- New Year's Day - January 1st
- St. Patrick's Day - March 17th
- Easter Monday - (date will vary)
- May Day - First Monday in May
- June Bank Holiday - First Monday in June
- August Bank Holiday - First Monday in August
- October Bank Holiday - Last Monday in October
- Christmas Day - December 25th
- St Stephen's Day - December 26th

Demographically the population in contrast to the rest of Europe is relatively young with approximately 38% of the population under 25 years of age. This is a significant factor in predicting increasing and sustained growth into this century. The education system in Ireland is one of the best in the world with two universities in the top 200 in the world and one of those in the top 50. Over 60% of new entrants to third level education undertake business, computer science, engineering or science courses. Additionally, while English is the primary spoken language in Ireland, many students speak multiple languages such as French, German or Spanish.

In general, working hours can be anywhere between 08.30-17.30 Monday-Friday. By law all employees are entitled to 1.74 days holiday per month or approximately 20 days per year excluding the nine statutory holidays.

Political Structures

The Republic of Ireland is a parliamentary democracy with bicameral legislative format consisting of two houses making up the Oireachtas. The lower house or 'Dail Eireann' is elected by general election governed by the principle of Proportional Representation managed by the Single Transferable Vote (STV) system. Government is elected by members of the Dail or TD's (Teachta Dála). The recently elected Government is composed of a coalition of the centre-right party Fianna Gael, led by Enda Kenny (TD), and the Labour Party. The Dail sits for a period of five years until the next general election is called. The upper house or Seanad Eireann is not directly elected and has little input into the law-making element of Government. The two houses of the Oireachtas are represented by a Head of State in the form of the President of Ireland (Uachtaran na hEireann) currently Mary McAleese. The Government is limited in its powers by the constitution of Ireland, which only a public referendum can change.

The Republic of Ireland is a member of the European Union since 1973 and is represented in the European Parliament.

Below the executive and the trans-national legislature Ireland is divided into counties and boroughs which are charged with the day-to-day running of local affairs such as the granting of business licences, planning permissions etc.

Judicial power is shared between the courts ranging from the District Courts to the Supreme Court. The highest judicial power in Ireland however is that of the European Court of Justice which is guaranteed to have supremacy over National Law in any matters brought before it.

Economy

The modern Irish economy is a competitive, responsive and flexible system which, although deeply set in recession, is set to recover albeit later than other developed nations. For the present however, economic policy will have a primary focus on regaining control of public finances and the banking sector. Some tax rates will rise during this period, however Ireland is committed to keeping corporation taxes at the low level of 12.5%.

Ireland is often considered as a gateway to Europe. In terms of corporate activity, the most developed sectors of the Irish economy are banking, IT and call-centre service provision, computer technology, pharmaceutical research, development and production. There is little probability of home-grown industries appearing in the near future until credit begins to flow again and the climate for local entrepreneurship is improved. Dublin itself maintains its' position as one of the world's best cities to live in, especially as costs are falling.

Finally Ireland, as a member of the European Community, benefits from and provides for the free movement of citizens, capital and goods and services between Ireland and the 26 other member states of the European Union. This gives it access to a market of over 500 million people with a market value of over 18 trillion dollars, thus creating one single market of gigantic proportions.

Government Incentives

An important part of Ireland's incentive package is the availability of generous government grants towards initial start-up costs. These grants are administered by government agencies such as Enterprise Ireland (EI) and the Industrial Development Agency (IDA). Companies operating in Ireland are also eligible to apply for European grants administered by the EU.

The IDA is the primary government agency with responsibility for the promotion of Foreign Direct Investment into Ireland. In general, the IDA can provide a range of grant aid for new industry, including capital grants and employment grants. Each proposed investment project is assessed against a set of criteria.

Grants towards the cost of fixed assets are available to companies to assist with the cost of setting up an operation.

Employment grants are specifically geared towards companies that create employment but do not invest heavily in fixed assets.

Training grants are also available for companies that are undertaking major training initiatives.

Grants are also available towards investment in Research & Development (R&D) facilities and new R&D projects.

Types of Business Organisations

When considering business entities in Ireland, it is important to make the distinction between unincorporated and incorporated bodies. A major distinguishing feature of an incorporated body is that it has a legal status separate from its owners and is capable of both aggressive and defensive legal action in its own name. An unincorporated body may be a sole proprietorship or a partnership. Incorporated bodies consist of private limited companies, public limited companies and unlimited companies.

Sole Trader

An individual setting up business as a sole trader is the simplest business form. There are minimal legal formalities or costs associated with the operation of a business as a sole proprietorship and this form of entity appeals mainly to small enterprises and ventures.

Due to the personal risk undertaken directly by the owner, he or she is personally liable for the obligations of the business and may be required to pledge personal assets as collateral when borrowing funds or securing additional capital. However, the owner of a sole proprietorship has absolute managerial control and direct access to any profits made.

Private Limited Company

The most common form of business entity in Ireland is the private limited company. The essential features of a private limited company are that members' liability is limited to the amount of share capital owned and that certain obligations imposed on public limited companies do not apply to private limited companies.

In order to qualify as a private limited company a company must:

- Limit the maximum numbers of members to fifty with a minimum of one
- Restrict the rights of members to transfer shares, and
- Prohibit any invitation to the public to subscribe for shares or debentures of the company.

A private limited company is required to show the word 'Limited' which can be abbreviated to 'Ltd' in its name.

The primary legislation governing the incorporation of companies is the Companies Acts of 1963 to 2009. The private limited company itself will be governed by its Memorandum of Association and Articles of Association.

Every private limited company must keep a registered office in the Republic of Ireland. The executive powers of the company lie with the directors who are responsible for the day-to-day operations and transactions of the company. Any individual may act as a director provided they have not been legally disqualified from holding such an office. A private limited company is also required to have a company secretary who is responsible for ensuring the company complies with any legal obligations and other administrative requirements set down by the Companies Acts.

Funds

Over the last 20 years Ireland has become one of the leading locations chosen for the establishment and administration of investment funds. The International Financial Services Centre (IFSC) has played a crucial role in contributing to the growth of the Funds industry. Dublin's IFSC, which was set up by the Irish Government with EU approval in 1987, is globally recognised as a leading location for a range of internationally traded financial services.

Currently Ireland services over 11,000 funds with assets under management in excess of €1.8 trillion.

Why do funds locate to Ireland?

1. Ireland has an efficient regulatory environment.
2. Ireland has a well regulated and reputable stock exchange for listing of investment funds.
3. Ireland has an attractive tax regime.
4. Ireland has significant experience in all aspects of fund management.
5. Ireland has a competent and skilled workforce, with over 12,000 employees in the funds sector.
6. Ireland is a member of the EU, Eurozone, OECD and FATF and is a key player in the European funds sector.

Regulation

Ireland offers a regulatory environment built on openness, transparency and investor protection.

The regulatory bodies in Ireland are The Financial Regulator and The Irish Stock Exchange. They are involved in the initial and ongoing regulation of promoters, service providers, fund structures and information to be provided to investors.

Taxation

Ireland offers a highly tax efficient environment for investment funds. It offers a wide variety of tax efficient investment fund vehicles available to suit individual investor needs.

- Investment funds in Ireland are not subject to Irish tax on their income and gains, although tax may be withheld in respect of the unit holders.
- There should be no Irish withholding tax on distributions to non-Irish unit holders.
- Ireland's 12.5% corporation tax rate may apply to Irish fund management companies.
- Ireland has an extensive number of double taxation treaties.
- From an Irish VAT perspective, the VAT exemptions are wide ranging with regard to the provision of services to funds (e.g administration, investment management).
- Ireland has not been included on any international list of tax havens (e.g. OECD/G20) and was recently included on the OECD's 'white list' of countries that have substantially implemented internationally agreed tax standards.

Public Limited Companies

Public limited companies have many of the same essential characteristics as private limited companies but the key differences are:

- Shares in a public limited company are freely transferable.
- There is no restriction on the maximum number of members but the minimum number is seven.
- Shares may be issued to the public and may be listed on a stock exchange.
- Certain additional reporting obligations and capital requirements apply to such companies.

Only a public limited company can offer shares to the public, yet in this sense the word "public" refers to the facility to issue shares under a general public offering rather than its listing on a stock exchange. Similar to private limited companies, the Memorandum and Articles of Association set out the guidelines for management of the company. There is no upper limit on the level of the issued share capital, but a minimum of €38,092 of share capital must be issued, of which 25% must be paid up. The name of a public limited company must include the letters "plc".

Partnerships - General and Limited

Under Irish law, a partnership is termed as the relationship that exists between two or more individuals carrying on business with a view to profit. Most partnerships are between individuals but partnerships can exist between an individual and a business or corporate entity or between companies themselves. Partnerships do not have a separate legal personality in the eyes of the law. They therefore enter into operation in the name of their partners not their own name.

Partnership agreements are legally formalised by a written partnership agreement. If such a case arises where a formal agreement does not exist, a partnership is governed by the provisions of the Partnership Act of 1890. Although there is no legal obligation to prepare accounts they usually will but have no obligation to file or publish them.

A limited partnership is comprised of a least one general partner and one or more limited partners. The general partner will have unlimited liability. Limited partners are liable for partnership obligations only to the extent of the cash and property they contribute. Where no written partnership agreement is in existence, limited partnerships are governed by the Limited Partnership Act 1907. If the general partner is a limited company, the limited partnership is obliged to file its accounts for public record with the Registrar of Companies.

A partnership, limited or general, is required to register the business name of the partnership with the Registrar of Business Names.

Branches

A branch is a division of a foreign company trading in Ireland that has the appearance of permanency, has a separate management structure, has the ability to negotiate contracts with third parties and has a reasonable degree of financial independence. EU regulations have been implemented that impose a similar registration regime on branches to that imposed on local companies.

Branches undertaking business in Ireland must file basic information with the Registrar of Companies. This information includes certified copies of the constitution of the company, information on its' directors and other documents. Furthermore, the company is required to file the same accounts as it would if it was incorporated as a business entity. These accounts should include the results of the branch operation, however, separate branch financial statements are not required.

Foreign companies undertaking business in Ireland from a fixed place of business but not being a branch must file a copy of the parent company's constitution with a list of the directors and their particulars. The Registrar of Companies will issue a certificate of registration to the business on the receipt of the above.

Formation of a Company

The following are the main requirements to be taken into consideration when incorporating a company in Ireland:

- A company can only be incorporated when it has the intention to carry on an activity in Ireland once registered and it must disclose such activities in both the main objects of the Memorandum of Association and the application form. "Activity" means "any activity that a company may be lawfully formed to carry on and includes the holding, acquisition or disposal of property of whatsoever kind".
- Details of the place or places in the State where it is proposed that the company will carry on its activity.
- Details of the place in the State where the central administration of the company will be undertaken.
- Prior to selecting a company name a search must be carried out with the Companies Registration Office to ensure that the proposed name of the company is not already being used or is not too similar to the name of an existing company.
- A minimum of two directors are required for an Irish company. It is a requirement that every Irish company has one director who is resident of a "Member State of the European Economic Area (EEA)". The EEA includes all of the EU plus Iceland, Norway and Liechtenstein. The company must also have a company secretary, which may be one of the company directors. (Recent legislation has put a limit of 25 on the number of companies any one person may be a director of in Ireland. Accordingly nominee directors are not an option in Ireland).

The above details are disclosed on the documentation lodged at the time of incorporation of each new company. The average time taken to incorporate a new company with the Companies Registration Office can range from five to ten working days.

Legal, Accounting and Audit Requirements

Under the Companies Acts, an Irish company is required to keep books and records that show the financial position of the company at any point in time. These records must be retained by the company for a period of six years. The directors are also required to prepare accounts on a periodical basis, which give a true and fair view of the state of affairs and results of the company for its financial period.

Audit Requirements

Irish incorporated companies are required to have their financial statements audited by a registered auditor, subject to the exemption listed below. The audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed. If the auditor is satisfied with the above, a formal (unqualified) audit report will be issued.

Certain private limited companies are exempt from having their financial statements audited. To qualify for the exemption the company must meet the following criteria for both the current and previous accounting year:

- Turnover less than €7.3m
- Balance sheet gross assets less than €3.65m, and
- Average number of employees below 50.

In both the current and the previous year concerned, the annual return and financial statements must be filed at the Companies Registration Office within the required time limit.

The exemption does not apply to:

- Unlimited companies
- Public limited companies
- Parent or subsidiary companies
- Banks and financial institutions
- Companies limited by guarantee
- Insurance companies, and
- Financial intermediaries.

This is an exemption from an audit only. It does not obviate the need to prepare financial statements.

Financial Year-End

The financial year-end is at the discretion of the company and can be changed at any time by a resolution of the directors. No formal notification is required to the Companies Registration Office.

Annual General Meeting (AGM)

Where a company has more than one shareholder, the Companies Acts require that an AGM is held each year so that the financial statements can be put before the shareholders. The first AGM of the company must be held within 18 months of the date of incorporation of the company and thereafter within 9 months of the end of the company's accounting period and within 15 months of the previous AGM. A single member company may, if it wishes, dispense with AGM's.

Annual Return

All companies must file an annual return once a year with the Companies Registration Office together with the financial statements. The annual return discloses the statutory details of the company which includes:

- Registered office of the company
- Authorised and issued share capital of the company
- Shareholders of the company
- Any transfer of shares since the last annual return
- Directors and secretary
- Political donations

The Companies Registration Office allocates each company an Annual Return Date (ARD) which is based initially on the date of incorporation of the company. The ARD must be no more than 9 months after the financial year-end of the company and can only be changed once within 5 years.

The annual return and financial statements must be filed within 28 days of the ARD. Late filing penalties are imposed if the return is not submitted within the filing deadlines and together with loss of audit exemption if applicable. The Companies Registration Office now offers an online filing facility with reduced filing fees and an opportunity to avail of an additional 28 days to file a company's financial statements.

Financial Statements for Public Filing

The financial statements to be filed with the annual return are the annual financial statements of the company, with certain exceptions.

Small companies may file abridged financial statements that provide less information than the annual financial statements prepared for the shareholders. Typically this would include the company's balance sheet and limited notes to the financial statements.

Companies that are classified as medium in size must disclose the full financial statements; however the profit and loss account is only disclosed from the gross profit line.

An Irish company that is a subsidiary of an EU parent company may file the consolidated financial statements of the parent instead of its own financial statements, provided that the EU parent company guarantees the liabilities of the Irish subsidiary.

Once a company has filed the financial statements with the Companies Registration Office they are available to the public.

Other Statutory Filings

Any of the following amendments must be submitted to the Registrar of Companies within the time limits as set out in the Companies Acts 1963 - 2009 (most changes must be notified to the Companies Registration Office within 14 days):

- Changes to Memorandum and Articles of Association
- Changes in authorised and issued share capital
- Change of directors or secretary
- Change of registered office

Business Names

Where a company or other person uses a business name that is different from its legal name, that name must be registered with the Registrar of Business Names.

Unlike incorporated companies, there is no name protection of business names. Hence it is possible for several companies to have the same business name.

Dissolution & Liquidation of Business Entities

Corporate Insolvency

Irish law contains a number of mechanisms to address the issues raised by corporate insolvencies.

Receivership

A receiver, or receiver and manager, may be appointed by a debenture-holder on foot of a debenture document or by the court under a specific statutory power. The function of a receiver appointed by a debenture-holder is to take possession of the assets subject to the debenture-holder's charge. A receiver, or receiver and manager, takes over from the management of the company as far as the assets which are the subject of the debenture are concerned. Typically, the assets will then be realised and the debenture-holder paid off. A receiver, or receiver and manager, may, in certain circumstances, continue to trade with a view to increasing the value of the company's assets or selling the business as a going concern. A receiver, or receiver and manager, will be discharged on completion of the work and distribution of available funds. In the event that there are surplus assets after the receivership, a liquidator is generally appointed to deal with the unpaid ordinary creditors.

Examinership

This "court protection" procedure allows the company or its creditors to seek the appointment of an examiner where the court is satisfied that there is a reasonable prospect of the survival of the company and the whole or any part of its undertakings as a going concern. The appointment of an examiner gives a company protection from its creditors for a period of 70 days, which may be extended by a further 30 days on application to the court. During this period the examiner will seek to formulate a scheme of arrangement with creditors, which will enable the company to continue in operation after the protection of the court is lifted. In the event that the examination process fails, the company may be wound up by way of a creditors' voluntary liquidation or by the court, or a receiver may be appointed by the chargeholder.

Liquidation

The life of a company can be terminated through the formal process known as liquidation or winding up. A liquidator may be appointed on foot of a resolution of the members or creditors of the company or through an application to the High Court. Liquidation involves the collection and realisation of the company's assets, the payment or part payment of its liabilities in accordance with legal priorities and the distribution to the members of any surplus that remains after paying the costs and expenses of the liquidation. The distribution of the surplus among the members is made in accordance with the rights attaching to their shares as set out in the Memorandum and Articles of Association.

Dissolution

Following the completion of a liquidation, a company will be dissolved after the notices of the final meetings or court certificate are lodged with the Companies Registration Office.

A company may also be dissolved by way of strike-off. An application for strike-off may be made to the Registrar of Companies where a company has ceased trading and has no assets or liabilities. This is a cost effective and simple method of terminating the life of a company.

However, companies are required to obtain tax clearance and advertise before such an application can be made.

Corporation Tax and Tax Incentives

Ireland has many pro business tax incentives for overseas companies establishing business operations in Ireland. Ireland's 12.5% rate of corporation tax is one of the lowest in the EU. Other incentives include:

- Tax relief on acquiring intangible assets.
- A Research and Development (R&D) tax credit regime.
- A generous holding company regime that includes a capital gains tax exemption on certain share disposals, a favourable tax rate in respect of certain foreign dividends and tax credits for foreign dividends and foreign branch profits.

In addition, Ireland has no thin capitalization or controlled foreign companies (CFC) rules.

Corporation Tax Rates

In broad terms, the applicable rates of Irish corporation tax in respect of taxable profits are as follows:

- 12.5% rate of corporation tax where the taxable profits arise from a trade carried on in Ireland. To avail of the 12.5% rate, a company should have appropriate levels of substance in Ireland.
- 25% rate of corporation tax where the taxable profits arise from a trade carried on wholly outside Ireland, on any passive income (e.g. interest income, rental income, certain dividend income) earned by the company and also on any chargeable gains arising on the disposal of assets.

Companies are subject to corporation tax in Ireland at national level only, i.e. there are no regional taxes, municipal taxes etc.

Irish Tax Residence

An Irish tax resident company is subject to Irish corporation tax in respect of its worldwide income and gains. A company may be resident in Ireland under either the "place of incorporation" test or the "central management and control" test. In broad terms, a company will usually be regarded as exercising central management and control in Ireland if it holds director meetings in Ireland and major policy decisions are made in Ireland.

Calculating Trading Profits for Tax Purposes

The rules regarding the calculation of trading profits for tax purposes are outlined below:

Tax Deductible Expenditure

In arriving at taxable trading profits, a company should be entitled to deduct expenses that are wholly and exclusively incurred for the purposes of the trade. Subject to the comments below in relation to expenditure incurred on the acquisition of intangible assets, capital expenditure is generally not deductible for trading purposes. Certain other items are also not deductible on a statutory basis including accounting depreciation and client entertainment.

Interest Payable

In arriving at taxable trading profits, a company is generally entitled to deduct interest on borrowings applied for the purposes of its trade. Interest on borrowings used for other purposes such as the acquisition of shares in other companies may be deductible on a paid basis subject to certain conditions being satisfied.

Capital Allowances (Tax Depreciation)

As outlined above, accounting depreciation is not deductible in arriving at taxable trading profits. However, capital allowances are available in respect of capital expenditure incurred on the acquisition of plant and machinery, motor vehicles and industrial buildings. A tax incentive exists for companies that incur capital expenditure on energy efficient equipment whereby the company may claim the entire amount of capital allowances in the first accounting period in which the equipment is provided and used for the company's trade.

There are separate rules for capital allowances on the acquisition of intangible assets and these are outlined below.

Tax Adjusted Trading Losses

Tax adjusted trading losses are calculated in the same manner as taxable trading profits. Tax adjusted trading losses may be used to reduce or eliminate corporation tax on other taxable profits either in the current accounting period or in the preceding accounting period. Tax adjusted trading losses may be carried forward for offset against taxable profits arising from the same trade.

Group Relief

Tax adjusted trading losses may be offset on a current period basis against taxable profits arising in a company within the same corporation tax group. In broad terms, a group consists of a parent company and its 75% direct and indirect subsidiaries. Although Ireland does not have fiscal unity rules, group relief usually achieves a similar result.

Intangible Assets

Ireland has a range of pro business tax incentives in relation to intangible assets.

Tax Deductions for Acquiring Intangible Assets

Companies may claim tax relief on the acquisition of qualifying intangible assets by either:

- Deducting the amortisation or depreciation charge included in the accounts, or
- Electing to claim the tax deduction over 15 years, namely 7% in the first 14 years and 2% in the final year.

The definition of qualifying intangible assets includes the following:

- Patents and registered designs
- Trademarks
- Brand names
- Know-how
- Domain names, copyrights, service marks and publishing titles
- Authorisation to sell medicines, a product of any design, formula, process or invention (and any rights derived from research into same)
- Goodwill, to the extent that it directly relates to the assets outlined above.

Relief From Stamp Duty (Property Transfer Tax)

The acquisition of qualifying IP assets is exempt from Irish stamp duty.

Tax Credit for Research and Development Expenditure

In 2004 Ireland introduced a tax credit in respect of companies carrying out qualifying R&D activities in Ireland. The credit is 25% on qualifying expenditure in respect of accounting periods commencing on or after 1 January 2009 (formerly 20%). The credit is available in addition to the corporation tax deduction which should also generally be available.

Subject to meeting the relevant conditions, the R&D tax credit applies to all companies within the charge to Irish tax, who undertake qualifying R&D activities within the European Economic Area (EEA) and, in the case of Irish resident companies the expenditure must not qualify for a similar tax deduction under the law of another jurisdiction.

A company's R&D tax credit is calculated based on its incremental R&D expenditure over and above its qualifying R&D expenditure in its 'base year' (currently 2003).

In brief, qualifying R&D activities means:

- Systematic, investigative or experimental activities
- In a field of science or technology
- Being one or more of the following:
 - Certain forms of basic research
 - Certain forms of applied research, and
 - Experimental development.

However, the legislation goes on to provide that activities will not be regarded as R&D activities unless they *"seek to achieve scientific or technological advancement, and involve the resolution of scientific or technological uncertainty"*.

For accounting periods commencing on or after 1 January 2009, any unused credit can be carried back for offset against the corporation tax liability of the preceding accounting period in the first instance. In some cases, where a company has sufficient taxable profits, it may be possible to claim a repayment of the excess credit over a three year cycle (subject to certain restrictions). Claims for the credit must be made within twelve months from the end of the accounting period in which the R&D expenditure was incurred.

A company can also claim the credit on expenditure incurred on the construction of qualifying R&D facilities in the year the relevant expenditure is incurred (subject to certain conditions).

Tax Relief for Start up Companies

New start up companies (subject to certain exceptions) that commence trading during 2009, 2010 or 2011 may be exempt from corporation tax on taxable profits arising from their trading activities and chargeable gains on the disposal of trade related assets. The exemption applies for each of the first three years that the trade is carried on provided that the company's tax liability for the year does not exceed €40,000. Marginal relief may also be applicable where the tax liability is between €40,000 and €60,000.

Capital Gains

Companies are generally subject to tax at 25% in respect of gains arising on the disposal of capital assets. In calculating the amount subject to tax, the cost incurred on acquiring the asset may be deducted as well as certain other expenditure.

Irish tax resident companies are taxable on their worldwide gains. Non resident companies are taxable on gains arising from the disposal of certain specified assets including Irish land and buildings. Non resident companies are also taxable on gains arising from the disposal of assets used for the purposes of a trade carried on in Ireland.

Any losses arising on the disposal of capital assets may normally be offset against capital gains in the accounting period or carried forward for offset against future capital gains. Special rules apply in relation to losses arising on the disposal of development land.

Exemption From Capital Gains Tax For Holding Companies

The benefits of placing added value and strategically important business functions in Ireland are further enhanced by Ireland's participation exemption regime (also known as Ireland's holding company regime). Under this regime, the disposal of shares in a trading subsidiary by an Irish holding company should be exempt from Irish capital gains tax subject to certain conditions being satisfied.

Capital Gains Tax Groups

Capital gains tax may be deferred in respect of the transfer of assets between two companies within the same group subject to certain conditions being satisfied. A group for this purpose consists of a parent company and its 75% direct and indirect subsidiaries.

Transfer Pricing

Irish transfer pricing rules will apply to trading transactions entered into between associated subsidiaries in respect of chargeable periods commencing on or after 1 January 2011. The regime will apply to both domestic and international trading transactions. Transactions that fall within the scope of the regime should be entered into at arm's length. The rules will apply to both trading receipts and expenses. The regime will not apply to businesses that qualify as small or medium enterprises.

Double Taxation Treaties

Ireland currently has 54 double taxation agreements in force with eight others signed and expected to come into effect shortly. Negotiations for new agreements with a number of jurisdictions have been concluded and are expected to be signed shortly.

Repatriation of Profits from Ireland

Profits are normally repatriated by way of dividend payments. However, other methods may be used, e.g. interest and royalty payments.

Dividends

Irish tax legislation provides for a dividend withholding tax ("DWT") at the rate of 20% in respect of dividends paid by Irish resident companies in certain circumstances. However, many of Ireland's double taxation agreements provide for zero withholding tax rates on dividends paid to shareholders in treaty countries. In addition, the DWT legislation provides for exemptions from DWT in many circumstances, including where dividends are paid to non resident companies which are resident in another EU or tax treaty jurisdiction and which are controlled directly or indirectly by non Irish tax residents.

Interest

Withholding tax at the rate of 20% may be deducted on interest payments. However, in many instances interest withholding tax will not apply.

Royalties

Withholding tax at 20% may be deducted in respect of royalties paid on registered patents or annual payments. Many of Ireland's double taxation agreements provide for zero withholding tax on royalties paid to persons resident in treaty countries. Other domestic provisions remove the requirement to withhold tax on royalties.

The Foreign Tax Credit System

Foreign tax suffered by an Irish tax resident company may be credited against the Irish tax arising. An Irish tax resident company may receive a credit for underlying tax in respect of dividends received from EU Member State subsidiaries provided that they have at least a 5% shareholding in that subsidiary. A similar relief is available for most double taxation agreement jurisdictions. In addition, foreign tax credits can be "pooled" in certain instances. In certain circumstances, a company may elect to pay tax at 12.5% on some foreign dividends from trading profits. Otherwise a 25% rate applies. As the underlying tax rate in many EU and other jurisdictions is higher than the Irish 12.5%/25% rates, Ireland's tax credit regime usually means that no Irish tax arises in respect of such foreign dividends.

Irish Corporation Tax Compliance

Companies that are chargeable to corporation tax in Ireland are required to submit a corporation tax return and make appropriate payments of corporation tax.

Submission of a Corporation Tax Return

In general, a company should submit its corporation tax return within eight months and 21 days of the end of its accounting period. This is extended by two days where the corporation tax return and payment is filed online.

Payments of Corporation Tax

The requirements for a company in respect of payments of corporation tax will depend on whether the company should be regarded as a “small company” for corporation tax purposes. In general, a “small company” is a company whose corporation tax liability for the preceding accounting period did not exceed €200,000.

A company that is regarded as a “small company” may base its preliminary corporation tax payment on at least 90% of its final corporation tax liability for the current accounting period or 100% of its corporation tax liability in respect of the preceding accounting period. The payment date is usually ten months and 21 days after the commencement of the company’s accounting period. Any balance of corporation tax should be payable with the submission of the corporation tax return for the accounting period.

For companies not regarded as small companies, the preliminary tax obligations will be split into two installments. The first installment date is usually five months and 21 days after the commencement of the accounting period and the amount payable should be 50% of the corporation tax liability for the preceding accounting period or 45% of the corporation tax liability for the current accounting period. The second installment date is usually ten months and 21 days after the commencement of the accounting period and the amount payable will bring the total preliminary tax paid to 90% of the corporation tax liability for the current accounting period. Any balance of corporation tax should be payable with the submission of the corporation tax return.

The above payment dates are extended by two days where the payment is made online.

Other Taxes

Value Added Tax (VAT)

VAT is an EU sales tax that is charged on the supply of goods and services. Where a business makes supplies that are subject to VAT, the business should be VAT registered and VAT should be accounted for at the appropriate rate. VAT registered businesses should be entitled to recover VAT incurred on the purchase of goods and services. In this manner, the VAT cost is ultimately borne by customers such as private individuals or businesses making VAT exempt supplies (such as certain financial services providers).

VAT may be chargeable at either the standard rate which is currently 21% or the lower rates of 0% and 13.5%. Certain goods and services are regarded as being exempt from VAT.

Where goods or services are supplied between businesses in different jurisdictions, normally the place of supply for VAT purposes should be ascertained.

VAT may not be recovered in respect of certain items of expenditure such as food, drink, entertainment, accommodation and petrol. Irrecoverable VAT may also arise on the acquisition or the hire of passenger motor vehicles subject to certain rules.

VAT registered business are normally required to submit bi-monthly VAT returns.

Income Tax / Payroll Taxes

Income Tax Rates

Ireland has two rates of income tax - the standard rate which is currently 20% and the higher rate which is currently 41%. A Universal Social Charge and Pay Related Social Insurance (PRSI) may also arise.

Scope of Income Tax

An individual may be subject to income tax on any income received depending on the status of the individual's tax residence, ordinary residence and domicile. An individual that is tax resident, ordinarily resident and domiciled in Ireland is subject to income tax in respect of worldwide income.

Meaning of Irish Tax Residence

An individual is deemed to be Irish resident for tax purposes in a particular year if the individual meets either one of the following two tests:

1. The individual spends at least 183 days in Ireland in that year, or
2. The individual spends an aggregate of at least 280 days in Ireland in that year and the previous year - subject to the fact that the individual spends at least 30 days in Ireland in both of these years.

A day will count if the individual is present in Ireland at any time during a particular day.

Expatriate Employees Working in Ireland

Expatriate employees may be regarded as Irish tax resident but non Irish domiciled while being seconded to Ireland. Expatriate employees are liable to income tax on all employment income arising under Irish employment contracts. Where expatriate employees are employed under a non Irish employment contract and are paid outside Ireland, they are liable to income tax on the portion of their employment income that is attributable to the duties of employment which are exercised in Ireland. Other income may be subject to Irish income tax if remitted into Ireland.

Special relief from income tax may apply to certain qualifying individuals who come to Ireland to work provided that certain conditions are satisfied. Amongst these conditions, the employee must be non Irish domiciled and must be employed by a company that is incorporated and is resident in a jurisdiction with which Ireland has a double tax treaty.

Collection of Payroll Taxes by the Employer

Income tax payable by employees in respect of their employment income is generally collected by the employer and paid over to the Irish Revenue through the "Pay As You Earn" (PAYE) payroll system. Employment income includes salary, bonuses and benefits. Each employee should have a Personal Public Service (PPS) number which is obtained from the Department of Social and Family Affairs.

Capital Gains Tax

Capital gains tax is payable on chargeable gains arising on the disposal of capital assets. The current rate of capital gains tax is 25%.

An individual may be subject to capital gains tax depending on the status of the individual's tax residence and domicile.

In calculating a chargeable gain the cost of the asset, any enhancement expenditure incurred on the asset and the costs of acquisition and disposal may be deductible from the sales proceeds.

Stamp Duty (Property Transfer Tax)

Stamp duty is payable on the transfer of property which is effected by way of a written document.

Stamp duty at the rate of 1% applies in respect of the transfer of shares in an Irish incorporated company. Transfers of other forms of property may be subject to stamp duty at 6% although reduced rates are available where the consideration does not exceed €80,000. Rates of 1% may apply in respect of transfers of residential property (with a 2% rate applying in certain instances).

Various reliefs and exemptions from stamp duty are available. Most transfers of property within a 90% group are exempt from stamp duty as are many corporate restructuring transactions.

Capital Acquisitions Tax

Capital acquisitions tax applies to gifts and inheritances. The current rate is 25%. The recipient of the gift or inheritance is the person liable to capital acquisitions tax. There are a number of exemptions and reliefs from capital acquisitions tax including certain rules for non resident individuals and non domiciled individuals.

Rates

Rates are a form of property tax and are imposed by local authorities (such as city, town and county councils) on the owners or occupiers of land and buildings used for business purposes.

Customs Duty

Customs duty is an EU tax arising on the importation of goods into the EU. Customs duty in Ireland arises on the importation of goods into Ireland. Once customs duty is paid on the importation of goods, the goods may then move freely within the EU.

Excise

Excise duties apply to a limited range of goods including hydrocarbon oils (such as gasoline and diesel), alcoholic drinks and tobacco products.

Vehicle Registration Tax (VRT)

VRT is payable on the first time registration of road vehicles in Ireland, regardless of where the vehicle originated.

Accounting

All businesses in the Republic of Ireland are required to maintain proper accounting records for tax purposes. All companies are subject to the legal requirements for accounting, reporting and filing financial information in accordance with the Irish Company Law, comprising The Companies Acts 1963 - 2009.

Legal & Filing Requirements for Financial Information

All companies are required to be registered with the Companies Registration Office (CRO) and are generally required to file financial statements for each financial year, usually within nine months of the end of the financial period. There are penalties for late filing. The financial statements filed are held on the public records and are accessible for a small fee. There is no pre-set or standard date for an entity's year end, which can be set to meet the entity's own requirements. The maximum accounting period permissible in any given year is 18 months.

The level of financial statement detail filed at the CRO each financial year is dependent on the individual company size limit i.e. small, medium or large as set out under Irish Company Law. For example small companies are required to file an abridged balance sheet only whereas medium sized companies are required to file both the abridged profit and loss account (from gross profit position) and the abridged balance sheet. The detailed rules underlying the company size qualification process are set out under the Companies Acts 1963-2009 and require interpretation based on individual circumstances. It is important to note that company directors are ultimately responsible for the preparation of the financial statements and for ensuring that the company is compliant with its filing requirements in accordance with the Companies Acts 1963-2009.

This information is provided for those who wish to gain a broad understanding of the legal and filing requirements for Irish companies but is not intended to be a comprehensive guide to Irish Company Law. Irish Company Law places significant responsibilities on company directors, including the preparation and filing of appropriate financial information. RSM Farrell Grant Sparks strongly recommends that company directors seek the appropriate professional advice in relation to these issues as required.

Financial Reporting Framework in Ireland

The financial reporting framework in the Republic of Ireland, as in many other countries, is governed by a regulatory system that sets standards and requirements and monitors compliance.

Currently financial statements of most Irish registered companies may be prepared in accordance with either;

1. EU Adopted Full International Financial Reporting Standard (IFRS) for their consolidated and individual accounts; or
2. Generally accepted accounting standards in Ireland (Irish GAAP) which are overseen by the Accounting Standards Board (ASB) and as promulgated by the Institute of Chartered Accountants in Ireland.

Generally speaking, Irish GAAP is identical to UK GAAP and thus there has always been a comparability of information contained within financial statements across the two jurisdictions.

The introduction and purpose of IFRS is to effectively provide this level of transparency and comparability on a global basis. IFRS has been available for use by all Irish companies since its introduction into Irish Law in 2005. However Irish GAAP has remained the firm choice of Irish businesses to date for the following reasons:

- Firstly, only companies that have “public accountability” such as listed companies, banks and credit unions, insurance companies, securities brokers and pension funds are required to comply with IFRS. IFRS is optional for all other companies.
- The second reason is born of the first in that the fear of the unknown and the better the devil you know attitude has kept the incumbent Irish GAAP in play.
- Lastly, there is a perception (and not unfounded) that a very significant level of disclosure and work is required in adopting IFRS.

Irish GAAP and Proposed Changes to the Financial Reporting Framework

Current proposals from the Accounting Standards Board (ASB) would see Irish GAAP as we currently know it cease to exist by 2013 and be replaced by the IASB's (International Accounting Standards Board) IFRS for SMEs for a large number of private entities. The proposals would introduce the following three-tier reporting structure as the future of Irish GAAP;

Tier One

All Irish companies that are ‘Publicly Accountable’ would use **EU adopted full IFRS**. All listed companies would be deemed to be publicly accountable, however the definition of ‘public accountability’ would also typically include banks/deposit-takers, insurance entities, many investment funds, credit unions and not for profit organisations;

This would mean that a number of private companies in Ireland that are considered to be publicly accountable, and therefore included in Tier One, will be faced with transitioning their financial statements to full IFRS. A company is deemed to be publicly accountable if;

1. its debt or equity instruments are traded in a public market or it is in the process of issuing such instruments for trading in a public market; or
2. it is a deposit-taking entity and/or holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses. This is typically the case for banks, credit unions, insurance companies, securities broker/dealer, mutual funds or investment banks.

The structure doesn't contain a size threshold in the definition of ‘public accountability’, therefore a number of companies such as credit unions and investment funds that currently use Irish GAAP may have to prepare their financial statements in accordance with full IFRS.

Tier Two

All Irish companies that are **not** 'Publicly Accountable' would be entitled to prepare their financial statements under a new standard called Financial Reporting Standards for Medium Sized Entities (**FRSME**) which is based on the IFRS for SMEs as issued by the IASB.

A significant number of Irish private entities (including subsidiaries of listed companies) would fall into Tier Two of the proposed three tier structure, which would see them transitioning to the FRSME effective for accounting periods beginning on or after 1 July 2013.

The name IFRS for SMEs or FRSME is somewhat misleading as a number of private companies with multi-billion Euro balance sheets that aren't publicly accountable could potentially use the FRSME to prepare their financial statements.

Tier Three

All Irish companies that are **not** 'Publicly Accountable' and meet certain company size criteria could use the ASB's **FRSSE** (Financial Reporting Standard for Smaller Entities) which is based on Irish GAAP and may therefore represent no significant change to a qualifying entities financial reporting.

Within the three-tier structure entities would have the option to choose a higher level for example Tier Three entities could elect to prepare their financial statements using FRSSE, FRSME or full IFRS whereas Tier Two entities could elect to prepare their financial statements using FRSME or full IFRS.

What does this mean for Irish Private Companies?

Compared to Irish GAAP there is potentially a number of measurement differences and additional disclosure requirements. As was the case when "full" IFRS was introduced in 2005, the effect on tax and distributable profits will be among the main issues that companies need to consider.

Preparing financial statements in accordance with the FRSME would see a large number of Irish entities coming to terms with a very different 'look and feel' for their financial statements. However, this is not the only option. An alternative is to adopt full IFRS. This may seem less obvious but it is worth considering, especially in the following cases:

- **Subsidiaries that are consolidated into financial statements prepared in accordance with full IFRS.** If implemented as currently drafted the ASB's proposals would not allow subsidiaries to combine the full IFRS accounting measurements with SME disclosure reductions. As a result some subsidiaries might choose to adopt full IFRS in their individual financial statements so they

can use measurements consistent with those used for group reporting and thereby avoid preparing two sets of numbers.

- **Companies that want to retain certain treatments or options.** The simplifications of the FRSME are helpful overall, but they preclude certain treatments that companies might want to use. Capitalisation of borrowing costs and development expenditure, and the measurement of property, plant and equipment at fair value are not allowed as accounting policy options in the FRSME.

What do Irish Private Companies need to do?

Companies should start planning and working on the basis that the IASB will require adoption of IFRS in Ireland, either full IFRS or based on the SME standard, by 2013. The opening balance sheet for December year ends will be as at 1 January 2012, which means that related conversion decisions need to be made in 2011. It is likely that early adoption will be permitted and therefore careful consideration of the revised financial reporting framework would be recommended for all newly incorporated entities in the Republic of Ireland.

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RSM Farrell Grant Sparks is the seventh largest accountancy, tax and advisory firm in the Republic of Ireland.

We serve our clients with professional staff and partners numbering more than 250, working from offices in the capital Dublin and the Midland's county, Longford.

Our vision is to be the firm of choice for global companies operating in the Republic of Ireland, and we offer all the accounting, tax and advisory services foreign companies need to establish and operate a business in Ireland.

We offer a holistic service for international business start-ups which includes advising on company formations, tax structures, assistance with government grant applications, corporate finance and assurance.

For those foreign companies who are already established or restructuring their operations in Ireland, we offer guidance on tax legislation and compliance, and our familiarity with the Irish and international financial reporting and audit standards means that we help keep your business on track.

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