

If you are planning on **doing business in Ireland** knowledge of the investment environment and information on the legal, accounting and taxation framework are essential to keep you on the right track...

Grant Thornton 



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## Grant Thornton in Ireland

Grant Thornton in Ireland comprises 20 partners and over 220 staff operating from offices in Dublin and Limerick.

Our firm's client base consists mainly of entrepreneurial indigenous growth orientated owner managed businesses.

We are able to provide from this office the full range of professional services. In addition, to mainstream audit and tax we provide tax planning, corporate finance, computer assurance, corporate secretarial services, IT consultancy, Human Resources, PRIMA, personal tax and financial planning and corporate recovery services.

To aid entrepreneurs we have prepared this guide "Doing Business in Ireland". It is intended to be user friendly whilst providing guidance to the business and regulatory environment.

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## Foreword

Grant Thornton is one of the world's leading organisations of accounting and consulting firms providing assurance, tax and specialist advice to fast-growing, entrepreneurial people and businesses.

We focus on helping the individuals who own the businesses they manage, reach their personal and business goals by providing practical, customised solutions and identifying and pursuing business opportunities domestically and internationally.

The strength of each local firm is reflected in the quality of our organisation. We operate in over 110 countries, bringing together 21,500 personnel in over 585 offices worldwide. All Grant Thornton firms share a commitment to providing the same high quality service to their clients wherever they choose to do business.

Experienced professionals combine invaluable local market knowledge with technically advanced systems to help businesses prosper in today's highly competitive international markets.

If you require any further information, please do not hesitate to contact your nearest Grant Thornton office.

This guide has been prepared for the assistance of those interested in doing business in Ireland and includes legislation in force at **1 January 2004**. It does not cover the subject exhaustively but is intended to answer some of the important, broad questions that may arise. When specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Ireland and to obtain appropriate accounting and legal advice.

## Country profile

### Summary

The primary focus of Ireland's strategy to attract investment has been to create a favourable economic and fiscal environment, which is supportive of industry. Ireland's strategy has proven successful, as in recent years there has been growing recognition of Ireland as a jurisdiction providing stable economic environment. Ireland's government policies have continued to provide infrastructure and support, conducive to business activity.

In addition to the commercial aspects of investing in Ireland, there are other factors which has seen Ireland become recognised as the pre-eminent jurisdiction for establishing a European foothold for multinational business such as its geographical proximity to neighbouring European Union nations, the competitive advantages it holds in telecommunications and infrastructure, its supply of qualified labour, together with one of the most beneficial tax environments.

Key to creating a beneficial tax environment in Ireland is the corporation tax rate of 12.5% from 1 January 2003 on all trading income, whether manufacturing or not. A low corporation tax rate is an incentive, which has been maintained by successive Governments since 1955, an endorsement of their support for private enterprise and industry. This endorsement is also demonstrated by the availability of non-repayable financial grants, which can significantly reduce start-up costs.

Competitive operating costs, low corporation tax and generous financial incentives combine to give investors in Ireland a uniquely high return on their investment. The continued cost competitiveness of Ireland as a business base is ensured through low inflation, and a stable currency.

### Geography and population

Ireland is an island situated off the northwest coast of Europe, lying 96 km (60 miles) to the west of Great Britain. It is relatively small, with a land area of 70,280 sq km. The island comprises two separate political entities, the Republic of Ireland – which is dealt with in this guide – and Northern Ireland, which is part of the United Kingdom.

Dublin, the capital city is on the east coast and is one hour by air from London, 90 minutes from Paris and Brussels. The major centres of population are Dublin (1,120,000), Cork (123,000), Limerick (54,000), Galway (65,000), Waterford (44,500), and Dundalk (30,000). 60% of the population live in cities and towns of 1,000 people or more. The population of Ireland is approximately 4 million. Overall population density is approximately 52 persons per square kilometre with large variations between the east and south, where densities are highest, and the less populous west of the country.

Ireland has a temperate climate with average summer temperatures of 14-19°C (57-66°F) and winter temperatures of 4-7°C (39-45°F). Annual rainfall is typically between 800mm (32 inches) and 1,500mm (60 inches) spread throughout the year.

The country is regarded as having the fastest growing population in Europe. One of the reasons why so many companies choose Ireland is because of the unique workforce - Ireland has the youngest population in Europe with approximately 38% under the age of 25 years. They are also highly educated and highly motivated. The past few decades have seen a shift from a predominantly rural based society to one which is urban based. The population is English-speaking. Successive governments have invested heavily in education and training and there is a plentiful supply of both skilled and non-skilled labour.

### Political and legal system

The Republic of Ireland is a stable parliamentary democracy with a President and two houses of parliament. It has a written constitution with provisions protecting fundamental rights of the person, the family, education, private property and religion. The President is the constitutional head of State whose powers and functions are largely ceremonial. The lower chamber of the parliament (the Dáil) is elected by universal suffrage and has effective legislative power. The upper chamber (the Seanad) has limited powers and is elected by various select groups. The Dáil elects a government, which generally controls the political and legislative process. The government is elected for a five-year period.

There are four main political parties, which command significant support. Historically, these parties either singly or in various combinations have formed the government. They are all moderate in outlook and this has resulted in relative stability and consistency in industrial and economic policy.

Ireland is a member of the United Nations and the European Union (EU). It is however, militarily neutral and is not a member of the North Atlantic Treaty Organisation (NATO) but it is a member of the Partnership for Peace.

Ireland is a member of the EU since 1972. Access to EU markets has facilitated the free movement of goods, labour and capital between Ireland and other EU member states, resulting in a significant increase in Irish trade with the EU continental countries in particular.

### Language

Although the Irish language as the national language is the first official language, the country is English speaking.

### Business hours/time zone

Time in Ireland is GMT.

Offices in the Ireland primarily open from 9 a.m. to 6 p.m. with an hour for lunch. Keep in mind that some offices will close between 1 p.m. and 2 p.m. for lunch. Factories usually start at 8 a.m. and run to 5 p.m.

Most banks open from 10 a.m. - 4 p.m. Monday - Wednesday and Friday, with Thursday opening until 5 p.m.

Government offices open between 9 a.m. and 4-5 p.m. Most will be closed between 1-2 p.m. for lunch.

Shops open from 9 a.m. to 6 - 7 p.m. Monday - Wednesday, Friday and Saturday with Thursday openings till 8 or 9 p.m. and Sunday openings from 12 to 6 p.m.

### Public holidays

Irish statutory holidays/public holidays are as follows:

- New Years Day - 1st January
- St. Patrick's Day - 17th March
- Easter Monday
- May Day - first Monday in May
- June holiday - first Monday in June
- August holiday - first Monday in August
- October holiday - last Monday in October
- Christmas Day - 25th December
- St. Stephen's Day/Boxing Day - 26th December.

### Economy

Traditionally, Ireland had an agricultural economy. While agricultural exports still form a substantial proportion of total exports, there has been rapid industrial expansion over the last thirty years. Numbers employed in industry and services have increased steadily. Over 1,050 overseas companies have chosen Ireland as their European base and are involved in a wide range of activities in sectors as diverse as e-business, engineering, information communications technologies, pharmaceuticals, medical technologies, financial and international services.

Ireland is also an important source of base metals, with rich deposits of lead, zinc and copper. A commercial gas field has been developed off the south coast as well as a recent discovery off the west coast. However, the country's most significant natural resource is its grassland, on which its beef and dairy agribusiness is based.

Ireland's economic progress during the 1990's consolidated its position as one of the most open economies in the world, which benefits significantly from its membership of the EU and good relations with its main trading partners. It is a significant exporter of goods, exporting in excess of 85% of Gross National Product (GNP) annually. Accordingly, the Irish economy is very dependent on the state of the world economy.

The economy is dominated by private ownership. State involvement is principally in the infrastructural area, for example, electricity, road, rail and air transport.

### Economic growth

Ireland is at a critical juncture in its development. It has come through a period of unprecedented growth in output and development. The growth took place against a backdrop of favourable global trading conditions and nationally positive political developments.

In the late 1950s policy makers adopted an outward looking strategy for the development of the economy after a long period of protectionism. In the period 1958-1972, the annual rate of growth in GNP was on average over 4%. The expansionary fiscal policies of the 1970s, however, led to both a large public sector deficit and a balance deficit. The 1980s were characterised by efforts to correct these imbalances.

In 2002 the public balance for Ireland showed a deficit of 0.2% of Gross Domestic Product (GDP) in 2002 which compared favourably with a Eurozone deficit of 2.2%. However, for 2004

there is agreement among most commentators that economic recovery will be sustained with a GNP growth rate in the order of 3% expected this year compared to 2.2% across the Euro area.

After several years of low inflation during the mid-nineties, inflation for the year 2002 was in the region of 4.6% compared with 2.2% in the Euro area. However, a combination of the appreciation of the currency, more modest wage settlements and a decline in interest rates have offset rising administered prices and indirect tax hikes to bring the annual average rate of consumer price inflation down to 3.5% in 2003 and is expected to be 2.75% in 2004. In addition, the current employer/employee pay agreement aims to keep Ireland's economy competitive in a rapidly changing world and provide a strong basis for further economic prosperity.

### Living standards

The last number of years have been a significant improvement in living standards for workers compared with earlier periods:

The GDP per capita figure for Ireland was the second highest in the EU in 2002 while Gross National Income (GNI) per capita exceeded the EU average for the first time in 2002. Our forecast for Irish output growth in 2004 is 3.5% and 3.3% in real GDP and real GNP terms respectively.

Ireland experienced phenomenal overall employment growth during the 1990's. In the period 1993 to 2000, employment grew by an average of 4.7% per year and now stands at 1.8 million, an increase of over 43% since 1993. This was completely unprecedented in Irish economic history and was outstanding within the EU. Employment growth remained quite strong in 2003, increased by 1.4% annually.

As a result, the rate of unemployment has dropped to historically low levels in recent years from 15.9% in 1993 to 5.2% in August 2003 as a consequence of Ireland's remarkable growth performance.

One significant feature of the Irish labour market in recent years is the turnaround from emigration to significant levels of immigration. 208,000 emigrated from Ireland between 1981 and 1987. Since the early 1990's, the country has had net migration of over 64,000.

### Cost of living

Ireland's living standards per head are now 112% of the European average, a considerable improvement on the 60% per head when we joined the EEC in 1973.

## Regulatory environment

### Summary

There has been a considerable increase in the level of focus on regulatory and compliance practices in Ireland over recent years. This has been due to both the continuing success of Ireland as an e-commerce hub and also by an increased interest in consumer protection. Perhaps the most fundamental recent development has been the announcement by the Irish Government to restructure the current Irish regulatory framework, through the launch of a single financial services regulatory authority, the Irish Financial Services Regulatory Authority (IFSRA). This new authority will be responsible for consumer protection and prudential supervision. EU and international regulatory developments are also impacting on the industry.

### Restrictions on foreign ownership

Irish laws are very liberal toward trade and industry. There are no general prohibitions against the acquisition of majority holdings by foreign interests in Irish companies or against foreign ownership of either business entities or real property.

### Government approvals and registration

The Central Bank of Ireland (CBI) does screen and approve all foreign investment. Remittance of dividends and profits and the repatriation of capital must also have prior Central Bank approval but approval is mainly a formality. Royalty agreements between resident and non-resident companies must be approved by the CBI. These approvals are routinely granted and serve more as a monitoring function than as a method of capital control.

### Competition rules/consumer protection

Competition law is designed to protect competition and consumers by prohibiting anti-competitive business practices. The Competition Act, 1991, sets out the basic competition rules, while the Competition (Amendment) Act, 1996, gives the Competition Authority power to investigate breaches of the law and, where necessary, to bring court actions. The Acts are designed to protect consumers by preventing competing firms from coming together to fix prices, limit output, divide business between them, or to make other anti-competitive arrangements that provide no benefit to consumers and to prevent firms in a dominant position from abusing that position. The role of the Competition Authority is to protect consumers in such circumstances by enforcing the legislation.

### Import and export controls

The Licensing Unit of the Department of Enterprise, Trade and Employment administers European Union (EU) restrictions on the importation into the Union of certain non-EU products. In some instances, it may be necessary to apply to the Licensing Unit for a license to import such products.

Some degree of control of exports from Ireland has to be retained in order to:

- prevent the export of "Dual-Use" items i.e. items which have both civilian and military uses,
- prevent the export of military goods to countries whose behaviour is considered a threat to international or regional peace
- to comply with restrictions imposed by the UN, EU and OSCE.

Exporters are strongly advised to consult the legislation where and when queries arise in relation to specific exports and exporting situations. Applicants for exports licences should be submitted to the Export Licensing Unit of the Department of Enterprise, Trade and Employment.

### Price controls

There are no legal price controls in Ireland. Competition law is now based on EU legislation.

### Use of land

Building development requires the approval of the relevant Local Authority. Legislation to protect and maintain the environment is closely modelled on EU Directives and covers matters such as planning and building regulations, public safety and the issue of pollution control licences. This legislation is implemented primarily by local authorities and by the Environmental Protection Agency. This agency is a government body responsible for monitoring and licensing those industrial activities that are considered to carry a significant risk of environmental pollution.

### Exchange control

There are no restrictions on the repatriation of earnings, capital, royalties or interest and repatriation payments can be made in any currency. Similarly there are no restrictions on the import of capital to Ireland. Residents and non-residents can operate bank accounts in any currency and Irish businesses are free to open bank accounts in any location outside Ireland. Inward investors must, of course, have regard to exchange control regulations in their home countries.

### Government incentives

Ireland provides a very favourable tax environment to encourage business development and sustain rewarding investment. Tax reliefs form an important part of the total incentive package available to overseas companies establishing a business in Ireland.

Ireland offers a unique tax incentive into the 21<sup>st</sup> century. Until 31 December 2002 the corporation tax rate for certain activities was 10%. From 1 January 2003 a corporation tax rate of 12.5% applies to nearly all Irish trading profits in all sectors, including manufacturing and international services.

Ireland offers an extremely cost competitive business environment with operating costs among the lowest in Europe. An important part of the incentive package offered is the availability of generous grants towards initial start-up costs. A variety of grants are available which can be specifically tailored to meet the needs of each company. These cash grants are non-repayable and are administered by Enterprise Ireland, the IDA Ireland or by Shannon Development. Each proposed investment project is assessed by the IDA against a number of criteria. Grant levels are determined by negotiation and grant payments are structured in a way that best suits the financing requirements of the company. The European Union (EU), as part of its social and regional development policy, contributes towards the funding of industrial development.

**Capital grants**

Cash grants towards the cost of fixed assets are available to companies to help to defray the cost of setting up an operation. Fixed assets eligible for assistance include site purchase and development, buildings and new plant and equipment. Where a factory building is rented, a grant towards the reduction of the annual rental payments may be available instead.

**Employment grants**

Employment grants are specifically geared towards companies which create employment but do not need to invest heavily in fixed assets. These grants are non-taxable and are geared to low employment areas. An amount will be approved for each job. One-half of the agreed amount per job will be paid on certification that the job has been created and the balance one year later, provided the job still exists.

**Training grants**

Grants are available towards the cost of training workers and management for new industries. The costs that are covered include trainees' wages and travel and subsistence expenses either in Ireland or abroad. The cost of bringing training personnel to Ireland may also be recovered. The grants also extend to the engagement of instructors, technical advisors or consultants to train or to assist in the training of persons for supervisory or management positions.

Training grants are based on specific training programmes agreed between each investing company, IDA Ireland and FAS (the Irish Training Authority).

**Research and Development (R&D) grants**

Cash grants are provided to assist overseas companies to engage in industrial research and development that will result in increased competitiveness and growth.

- Product and process development

Grants are available for research into new and improved products and processes. The costs eligible for grant-aid include expenditure on the provision of sites, premises and plant and equipment to set up facilities including wages and salaries, materials, services and consultancy fees.

- Feasibility studies

Companies based in Ireland investigating the feasibility of new products or markets may apply for a feasibility grant. The work can include assessing markets, technical work and raw material sourcing. Eligible expenditure includes salaries, travel costs, expenses and consultancy.

- Technology acquisition

Grants are provided towards the cost of acquiring new technology, which will assist companies in their production operations.

- Equity

In some situations, the IDA will take an equity stake in companies, in the form of ordinary or preference shares.

## Finance

### Summary

Ireland has a well-developed domestic financial services industry and has provided incentives (broadly a 10% tax) for financial services in the International Financial Services Centre (“IFSC”), which will go on to a 12½% rate once the 10% entitlement ceases.

In general, the banking sector is dominated by a number of domestic banks particularly in the retail sector. However, a large number of foreign banks also have operations in Ireland concentrating principally though not exclusively on the corporate sector. The Central Bank of Ireland is the regulator for banks established in Ireland. It is also the regulatory authority for investment funds domiciled here.

The insurance industry is well developed in Ireland. A number of foreign insurers have a significant market share mainly through Irish subsidiaries or branches.

The euro is the currency of Ireland and of the 11 other euro-zone countries. The countries participating in Economic and Monetary Union (EMU) are Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

Ireland will hold the Presidency of the European Union for the sixth time from 1 January until 30 June 2004. The Irish presidency will see the historic enlargement of the European Union to include ten new Member States on 1 May 2004.

### Banking system

Irish licensed banks can be classified into three main categories:

- clearing banks;
- merchant and commercial banks; and
- industrial banks.

The main clearing banks are AIB, Bank of Ireland, National Irish Bank and Ulster Bank and these provide a full range of banking services, including foreign exchange dealing and hedging activities. Many international banks are represented in Ireland for commercial lending and foreign exchange facilities.

### Capital markets

The Irish Stock Exchange plays a key role in Ireland’s financial infrastructure with roots that stretch back to 1793 when the Stock Exchange first began in Dublin. Since that time, the Exchange has brought together those wishing to raise finance (whether business or Government) with those who wish to invest.

The Exchange provides a market place where listed securities can be traded efficiently. This includes maintaining market rules, and providing services for market users.

While the Exchange lists hundreds of securities, including investment funds, the main markets, from a trading point of view, are in the shares of Irish listed companies and Irish Government bonds.

## Imports

### Summary

International and internal transport services are well developed. EU structural funds have been used to upgrade the network of main secondary roads linking the major population centres. The rail network includes a cross-border rail link with Northern Ireland. Six international airports provide connections to the UK, the rest of Europe and the US. Imports and exports are transported mostly by sea. Dublin is the main port but there are a number of other large ports. Passenger car ferry services provide direct sailing to the UK and France.

Ireland has one of the most advanced telephone systems in Europe. It is the Government's intention to make Ireland the e-commerce hub of Europe.

### Import restrictions

The Licensing Unit of the Department of Enterprise, Trade and Employment administers European Union (EU) restrictions on the importation into the Union of certain non-EU products. In some instances, it may be necessary to apply to the Licensing Unit for a licence to import such products. The three types of import restrictions which are applied are:

- Quantitative restrictions - a limit or "quota" is imposed on the volume of goods that may be imported from non-EU countries ("third countries"). Quotas may be managed in different ways, but the most commonly used method is that of "first come, first served basis".
- Single surveillance - a statistical tool which enables the EU to monitor the level of imports of certain goods from third countries. There is no limit on the volume that may be imported.
- Double surveillance - the EU monitors the level of imports of a particular product while the supplier country monitors the level of exports to the EU. There is no limit on the volume of goods that may be imported.

In most cases, the decision to issue an individual licence is subject to explicit approval from the European Commission. The system does not allow any margin of indiscretion to the Department.

### Customs duties

Ireland is a member of the European Union (EU) and all border controls between member countries have been eliminated. This created the Single European Market, which allows duty free importation of goods from other EU countries.

Goods imported from outside the EU are subject to customs duty at the appropriate rate specified by the EU's Common Customs Tariff. The rate of duty is based on the International

Harmonised System (HS). The EU has preferential tariff agreements with certain countries and country groupings, which will result in the rates being reduced or eliminated.

Excise duty is chargeable on a limited number of goods including petrol, diesel, LPG, beer, spirits, wine, tobacco products and motor vehicles. Excise tax rates vary depending on the goods and are payable in addition to any customs duties payable.

**Duty relief**

Customs and Excise Duties are collected at point of importation. There are, however, some arrangements in operation under which goods may be imported without payment of duty.

Inward processing – approval may be obtained to import goods duty-free from outside the EU for processing and re-exportation to non-EU countries.

Warehousing – businesses can obtain approval to store goods duty free on their premises until required. If the goods are for processing the above relief will apply. Where it is finished product for sale, no duties are payable if the goods are re-exported outside the EU. Where the goods are released into the EU, the appropriate duties are payable.

Special arrangements operate to allow movement of dutiable goods within the EU, with the duty being eventually paid in the country of consumption.

## Business entities

### Summary

In considering business entities in Ireland, a distinction needs to be made between unincorporated and incorporated bodies. A significant feature of an incorporated body is that it has a legal status separate from its owners and is capable of suing and being sued in its own name. An unincorporated body may be a sole proprietorship or a partnership. Incorporated bodies include private limited companies, public limited companies and unlimited companies.

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

To qualify as a private limited company the company must:

- limit the maximum number of members to 50 with a minimum of one;
- restrict the members' right 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 may be abbreviated to "Ltd") in its name. A 1% capital duty is payable on the issue of shares in limited companies. Stamp duty is payable at a rate of 1% of the market value on the transfer of shares in all companies.

### Memorandum of Association

The constitution of a private limited company is made up of the Memorandum of Association and the Articles of Association. The Memorandum of Association regulates the relationship of the company with the outside world and will contain clauses dealing with:

- the name of the company;
- the objects of the company;
- the nature and amount of share capital (for example common, preferred etc) which it may issue.

### Articles of Association

The Articles of Association regulate the internal organisation of the company and contain clauses dealing with matters such as the issue and transfer of shares, the appointment and removal of directors, the conduct of shareholders' and directors' meetings and payment of dividends, etc. Both the Memorandum and Articles of Association may be amended by the members of the company in general meeting or by written resolution if their Articles so permit.

## Corporations

### Formation

The following is a brief summary of the main requirements when incorporating a company.

- a company must have the intention of carrying on an activity in Ireland. This includes any activity that a company may lawfully be formed to carry on and includes the holding, acquisition or disposal of property of any kind;
- details of the place or places in Ireland where it is proposed that the company will carry on its activity and the place where the central administration of the company will normally be carried on (full business postal address) must be provided;
- a name search with the Companies Registration Office to ensure that the intended name of the company is not already being used or is not too similar to the name of an existing company;
- at least one of the directors is required to be resident in Ireland. Alternatively the company may hold a bond to the value of €25,400. A certified copy of the bond must also be filed with the Companies Registration Office, and thereafter a copy must be filed with the annual return.

This information must be disclosed on the documentation lodged at the time of incorporation of each new company. The proposed directors and the company secretary of a new company must sign their consent to act. In addition, one of the directors, the company secretary or a solicitor engaged in the formation of a new company must swear compliance with the requirements as outlined before a practicing solicitor, Commissioner for Oaths or a Notary Public. The completed documentation and the Memorandum & Articles of Association must then be lodged with the Registrar of Companies. It is likely to take approximately ten working days to incorporate a company and the Registrar will then issue a Certificate of Incorporation. When incorporating a company, it is important to ensure that the company name has not already been used in Ireland or is so unwittingly similar to any existing names as to give rise to confusion in the marketplace. The Registrar will not permit the use of any such similar name.

In addition, the Companies (Auditing and Accounting) Act 2003 was signed into law on the 23 December 2003. The Act contains amendments to existing legislation and introduces some significant new provisions. In summary, it requires all public and private companies with a turnover greater than €50 million and/or a balance sheet total in excess of €25 million to establish an audit committee. This committee will have responsibility for reviewing the annual company accounts to ensure they are true and fair. Other responsibilities include the examination of annual statements by company directors to ensure company compliance with laws and regulations.

The Companies (Auditing and Accounting) Act 2003 also has introduced the Directors' Compliance statement. This is an obligation imposed on directors of all public and private companies with a turnover in excess of €15,236,856 and/or a balance sheet total exceeding €7,618,428 to prepare a statement detailing the steps being taken to ensure adherence with company law, tax legislation and other relevant obligations material to the financial statements of the company.

The provisions of the Act have not yet commenced though it is envisaged that they will commence in the immediate future.

**Minimum capital/Capital maintenance**

The share capital of a private limited company may be denominated in any currency and the currency adopted is generally dictated by the company's commercial requirements. The minimum capital will be one share of whatever denomination the shares are created in. The maximum amount of shares to be issued will be dictated by the authorised share capital as specified in the Memorandum of Association. The amount of authorised share capital may be revised by the passing of a members resolution.

**Management and officers****Company directors**

The executive powers of a company lie with the directors who are responsible for the day to day running of the company. A company is required to have at least two directors (there is no maximum). Any individual may act as a director, provided he or she has not been legally disqualified from holding such an office.

The directors are required to act in accordance with the Articles of Association and generally:

- to act in good faith in the interests of the shareholders;
- to use their directorship powers in the best interest of the company;
- to apply the assets of the company properly.

Directors' meetings are usually held to discuss and approve policy decisions and to approve the annual financial statements of the company. A director who does not carry out his or her duties properly and diligently may be held personally liable to the company or members for any damage they may have suffered and may also be prosecuted for non-compliance with the Companies Acts.

**Company secretary**

A company is required to have a company secretary and individuals or corporate entities may hold this position. The company secretary is normally responsible for administrative matters such as ensuring compliance by the company with the various filing obligations as set out in the Companies Acts. A company secretary may be one of the directors acting in a dual capacity.

**Single member company**

It is also possible to form what is known as a "single member company". The most significant features of such a company are that it may be formed with only one member and it may dispense with the need to hold an annual general meeting. The single member company is an ideal vehicle for inward investors since it reduces administration requirements and eliminates the need for nominee shareholders. In other respects, single member companies are similar to private limited companies.

**Filing requirements**

Business records required

Companies must maintain accounting records that show and explain the company's transactions and also disclose their financial position.

Companies Registers required

Companies must maintain the following registers of:

- Members
- Directors and secretary
- Directors' and secretaries interest in shares
- Directors' interests in company contracts
- Debenture holders and charges

A plc must keep a Register of significant interests.

Minutes of directors' and shareholders meetings must also be kept.

**Financial statements**

Financial statements are required for each financial year a copy of which must be filed with the Registrar of Companies.

Format and contents are regulated by law and by standards established by the Accounting Standards Board.

Financial statements must be audited by a Registered Auditor, depending on size.

**Filing dates**

All companies are required to file their first annual return on the 6 month anniversary of their date of incorporation. This form provides details of the members and directors of the company. A company must then submit an annual return with accounts annexed to the Registrar of Companies 12 months after their 6 month return which is effectively within 18 months of the date of incorporation. The date of the return is based on the company's allocated ARD (Annual Return Reference Date) and must be filed with the Registrar within 28 days of this date. The ARD can only be extended once every 5 years. Late filing penalties are imposed on companies that do not file within the 28 days. Finally, a company must lay accounts before an annual general meeting within 9 months of its year end.

Information filed with companies office

An abridged form of financial statements can be filed depending on the size of entity, as is common in other EU countries.

Annual financial statements, as filed with the Registrar of Companies are open to public inspection.

**Dissolution**

In circumstances where a company has disposed of all assets and discharged all liabilities, application may be made to the Registrar of Companies to have the company struck off voluntarily. This is a cheap and simple method of terminating the life of a company.

## Other entities commonly used by foreign investors

### Public limited company

Public limited companies have the same essential characteristics as private limited companies i.e. the liability of members is limited to the amount of nominal capital subscribed, 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 and capital requirements apply to such companies.

The word "public" refers not to the listing of the company's shares on a stock exchange, but rather to the facility to issue shares under a general public offering. Any limited company that does not qualify as a private company is deemed to be a public limited company. As with private limited companies, the Memorandum and Articles of Association set out the objects and rules 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". In all other respects, public limited companies are similar in nature and form to private limited companies. In practice, public limited companies are seldom used by inward investors since the facility to issue shares to the public is often not of interest to such investors, while the minimum requirements in relation to the number of members and issued share capital can prove unnecessarily burdensome.

### Unlimited company

This is a form of business entity where there is no limit on the member's liability if the company's assets are insufficient to discharge the creditors. As a result of the risk of unlimited liability, inward investors do not often use these companies unless such risk can be eliminated. This can be achieved by having a limited liability company as the parent of the unlimited company. A number of advantages arise from this form of body corporate and these can be summarised as follows:

- capital duty at 1% is not payable on the issue of shares in a private unlimited company;
- an unlimited company may, without formality, purchase its shares from its members and may reduce its share capital without recourse to the courts;
- an unlimited company is generally not required to file a copy of its annual accounts with the Registrar of Companies provided at least one of its members does not have a limit on its liability. However, if all the members of the unlimited company are companies with limited liability, the unlimited company is required to file its accounts with the Registrar of Companies.

On application to the Registrar of Companies, an unlimited company may be converted into either a private or a public limited company and vice versa. However, this process is not reversible. An unlimited company is required to have at least two members, one of which may act as nominee for the other. In all other respects, unlimited companies are similar in form to private limited companies. In practice, the use of unlimited companies is confined to particular situations where greater flexibility is required in terms of share capital movements. In addition, the members may wish to avoid either the public disclosure associated with filing of accounts with the Registrar of Companies, or the 1% capital duty arising on the issue of shares. Alternatively, an entity may be required that will be disregarded or treated as transparent under the law of the investing country.

**Partnerships: general and limited**

A partnership, under Irish law, is defined as the relationship that exists between "two or more persons carrying on business in common with a view to profit". In practice, most partnerships are between individuals but a partnership may exist between individuals and companies and indeed between companies alone. The partnership entity does not have a legal personality separate from that of its partners. In the legal sense, the partnership does not enter into contracts in its own name, but in the names of its partners. Similarly, for legal purposes the assets of the partnership usually belong jointly to the persons making up the partnership and, subject to the comments below regarding limited partnerships, each partner is jointly and severally liable for the debts of the partnership. A partnership other than a limited partnership is described as a general partnership.

Partnership arrangements are often formalised by way of a written partnership agreement. Where such an agreement is not in place, a general partnership is governed by the provisions of the Partnership Act 1890. It is usual for a partnership to prepare accounts showing the results of the partnership business. Generally, partnerships are not obliged to file these accounts with the regulatory bodies nor are they otherwise obliged to publish these accounts. It is also possible to establish what is known as a limited partnership. A limited partnership is comprised of at least one general partner (who has unlimited liability) and one or more limited partners. Limited partners are liable for partnership obligations only to the extent of the cash and property they contribute. A 1% capital duty is payable on amounts subscribed as capital to a limited partnership. 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.

**Sole proprietorship**

An individual setting up business as a sole proprietor is the most rudimentary business form. There are few legal formalities or costs associated with the operation of a business as a sole proprietorship and this form of business entity appeals primarily to small enterprises. Because the business is undertaken directly by the owner, he or she is personally liable for the business' obligations and may be required to pledge personal assets as collateral when borrowing funds. However, the owner has absolute managerial control and direct access to profits.

**Incorporated in other countries trading in Ireland**

Foreign companies (i.e. companies incorporated outside Ireland) may conduct business in Ireland either through a branch or a place of business depending on the level of independence of the Irish operation.

**Branch**

For Irish company law purposes, 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 as that imposed on local companies. A foreign company setting up a branch in Ireland is required to file basic information with the Registrar of Companies. This includes the date of incorporation of the company, the country of incorporation, the address of the company's registered office, details regarding the directors of the company and the name and address of the person responsible for the branch's operation within the State. The foreign company's constitution,

certificate of incorporation and audited accounts must also be filed with the Registrar of Companies.

A foreign company trading in Ireland through a branch is also required to file its financial statements with the Registrar of Companies within 11 months of the company's year end or at the same time as they are published in the country of incorporation, whichever is the earlier. Separate branch financial statements are not required. As with Irish incorporated entities, changes in previously notified information must be reported to the Registrar of Companies.

### Other entities

#### **Place of business in Ireland**

A foreign company undertaking business in Ireland from a fixed place of business, not being a branch, must file a copy of its constitution together with a list of the directors of the company and the address of its established place of business in Ireland with the Registrar of Companies. Foreign companies that have a place of business in Ireland (not being a branch) and that would be regarded as a public limited company if registered in Ireland are required to file annual accounts with the Registrar of Companies.

## Labour

### Summary

The labour market in Ireland offers inward investors a pool of young, well-educated and highly motivated workers. Irish people have a strong work ethic and this is reflected in the rate of employee turnover that tends to be well below the European average. The structure of the Irish population is such that the availability of a young workforce is likely to continue well into the next century. Approximately 38% of people in Ireland are under 25 years of age; this compares with a European average of approximately 30%. These features have been a significant factor in attracting the large number of multinationals that have located operations in Ireland.

In terms of demographic factors, immigration from outside the European Economic Area continues to contribute to labour force growth through the work permit system. However, when enlargement commences in May 2004, most of the jobs previously filled by work permit holders are expected to go to workers from the acceding countries.

### Structure of the labour market in Ireland

The educational system in Ireland ranks among the best in the world. Over 60% of new entrants to third level education in Ireland undertake business, engineering, computer science or science courses.

While Ireland is English speaking, a significant proportion of students and graduates are proficient in more than one language.

### Average earnings

For the average worker, take home pay increased by 14% in the period 1996-1999 and by 30% from 2000 to 2003. From 2002 a significant moderation in wage inflation was effected across most sectors of the economy. Earnings growth is expected to continue to moderate as currently the rate of average earnings growth remains well above the euro average of about 2.75%.

### Social security costs

Social Security in Ireland is provided by means of social welfare insurance known as Pay Related Social Insurance (PRSI). It is compulsory for all employees aged 16 or over to be covered by social insurance. Both employers and employees contribute towards the scheme and the contributions are calculated as a percentage of earnings.

Employers contribute on a sliding scale as follows:

Employee earnings	Rate
Up to €356 per week	8.5%
Over €356 a week	10.75%

### **Employers PRSI exemption scheme**

Companies who employ additional qualifying employees, resulting in a net increase in the numbers employed, are exempt from employers PRSI for the first two years of their employment, subject to certain conditions. Also, the employment of long term unemployed has additional tax attractions.

### **Pension costs**

Many employers pay pension contributions to an Occupational Pension Plan on behalf of their employees. The employer cost is generally in the range of 4% to 9% of the payroll. Employer and employee contributions are paid into a pension fund whose assets are kept separate from the assets of the employer.

Occupational Pension Plans may either be defined benefit or defined contribution plans, but defined contribution plans are now favoured. Pension contributions paid into a Revenue approved plan are tax deductible. The pension fund pays no tax on its investment returns.

Benefits are not generally payable until retirement age, which would typically be 60 and 65 years of age. At retirement the accumulated fund is available to provide a lump sum, a member's pension, a contingent dependent's pension, cost of living increases on pensions or a combination of all of these benefits according to the wishes of the member. However, there are maximum limits imposed by the Revenue Commissioners.

With the passing of the Pension (Amendment) Act, 2002 an employer who is not operating an Occupational Pension Plan or who excludes an employee from joining their plan is now compelled to provide access to a payroll deduction facility by way of a Personal Retirement Savings Account (PRSA) for these employees.

### **Healthcare and usual fringe benefits**

Entitlement to health services in Ireland is primarily based on residency and means, rather than payment of income tax or pay related social insurance (PRSI). Any person, regardless of nationality, who is accepted by the health boards as being ordinarily resident in Ireland is entitled to either full eligibility (medical card) or limited eligibility for health services. Health boards normally regard a person as "ordinarily resident" in Ireland if he/she satisfies the health board that it is his/her intention to remain in Ireland for a minimum period of one year.

### **Paid holidays**

In respect of public holidays, an employee is entitled to whichever of the following the employer determines;

- (a) a paid day off on that day;
- (b) a paid day off within a month of that day;
- (c) an additional day of annual leave;
- (d) an additional days pay.

The usual arrangement is for employees to have a paid day off on public holidays. In addition to public holidays, all full time employees and certain part-time employees are entitled to be given a

minimum period of paid annual leave. From 1st April 1999 the annual leave entitlement shall be calculated using one of the following methods;

- (a) four working weeks, where at least 1,365 hours have been worked in any leave year, or
- (b) a leave period equivalent to 8% of the hours worked in any leave year or
- (c) a leave period equivalent to one third of a working week where the employee works at least 117 hours in a calendar month.

### Minimum wage

From 1 February 2004 the National Minimum Wage has been increased to €7.00 per hour.

### Employment protection legislation

The legal framework of employment relationships in Ireland is based upon individual contracts of employment for each employee underpinned by the general and specific labour law (both legislation and case law). The legislation concerning labour relations reflects Ireland's long-standing membership of and strong commitment to the EU. Particularly important legislation affecting employment rights and obligations includes:

Protection of Employees (Fixed-Term Work) Act 2003 - provides that where an employer proposes to renew a fixed-term contract, the fixed-term employee shall be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration at the latest by the date of the renewal.

Employment Equality Act 1998 - prohibits discrimination on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability (mental and physical), race and membership of the travelling community in the workplace.

Equal Status Act 2000 - protects against discrimination in non-workplace areas. It prohibits discrimination on the same grounds as the Employment Equality Act 1998 and encourages the evaluation of people on their merits as individuals rather than by reference to the group to which they belong.

Industrial Relations Act 1990 - concerns trade disputes and industrial relations law. This is the basic industrial relations machinery, which regulates the right to take industrial action and the manner in which it is exercised. It reformed the institutional framework of the Labour Relations Commission and redefined the role of other such bodies including the Labour Court, Conciliation Service, the Rights Commissioner and the Employment Appeals Tribunal.

Maternity Protection Act 1994 - provides improvements in the health and safety at work of workers who are pregnant and workers who have recently given birth or who are breastfeeding.

Parental Leave Act 1998 - entitles both mother and father to 14 weeks unpaid leave per child born after 3 June 1996.

Protection of Young Persons (Employment) Act 1996- prohibits the employment of children under 16 except with certain exceptions.

Redundancy Payments Acts 1967-2003 - impose a statutory obligation on employers to pay compensation to employees dismissed for reason of redundancy.

Safety, Health and Welfare at Work Act 1989-imposes obligations on employers, employees and the self-employed to contribute to ensuring that their workplace and systems of work are safe.

The Carer's Leave Act 2001-provides an employee with an entitlement to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention for a person who is in need of such care.

The Minimum Notice and Terms of Employment Acts 1973 to 2001 - regulates the minimum notice to be given by an employer to terminate the contract of employment of an employee.

The Terms of Employment (Information) Acts 1994 and 2001- requires employers to provide a written statement to employees within two months of commencement of employment detailing the terms of their employment.

The Payment of Wages Act 1991 – gives every employee the right to a written statement every payday with every deduction itemized.

Organisation of Working Time Act 1997 - provides for a minimum of 20 days of annual leave for employees.

The Unfair Dismissals Acts 1977-2001- provides protection for employees from unfair dismissal.

### Unemployment levels

Unemployment which peaked at 232,000 in 1998 (18%) has fallen to 98,900 (5.2%) in August 2003 compared with 4.6% in the third quarter of 2002.

### Unions

Approximately 65 trade unions are affiliated to the Irish Congress of Trade Unions. About half the workforce belongs to a union and, of trade union members, almost 40% belong to a single union, the Services, Industrial, Professional and Technical Union - SIPTU (*Source: Irish Congress of Trade Unions*). Unions tend to be concentrated in the older, indigenous Irish companies. While an employee has a constitutional right to join a trade union, there is a preference of large multinational employers for non-union status. EU legislation, under the Social Charter requires the establishment of workers' councils by larger employers which have undertakings in two or more Member States of the EU.

### Work permits

With a few exceptions, a non-European Economic Area (EEA) national must have a work permit to take up employment in Ireland. In general, a work permit is issued only on condition that the Department of Enterprise, Trade & Employment (DETE) is satisfied that all reasonable steps have been taken to recruit a suitably qualified EEA national.

### Transfers

An Intra Corporate Transfer is considered to be an individual who is posted for a maximum period of four years to an establishment or undertaking in Ireland which is owned by a company or group which has operations in one or more Member States. Intra Corporate Transfers do not require work permits but they will require "letters of confirmation" from the overseas company and the Irish entity, in order to apply for and receive residence permits.

**Interaction of work permit requirements and tax compliance clearance**

The DETE seeks clarification in relation to the tax compliance status of the employees on whose behalf the work permits are being sought. Work permit applications ask for the employer's tax registration number and the individual's Personal Public Service Number (PPSN), and renewal applications request a copy of the individual's most recent annual certificate of pay and taxes deducted (P60).

**Work visa scheme**

Prospective employees who are non-EEA nationals in the IT, nursing and construction sectors may apply to the Irish Embassy or Consulate in their home country for a work authorisation to be placed in their passport, enabling them to work in Ireland for up to two years.

**Visas**

All EEA nationals may enter into Ireland without a visa. Some non-EEA nationals will require visas to enter into Ireland. The individual must apply for a visa as the visa may not be applied for by the company on behalf of the individual. The employee should apply for a visa in the Irish embassy or consulate in his country of residence. In addition, the employee must specifically apply for an employment visa as opposed to a business or tourist visa. The standard employment visa (single entry) allows only one entry to Ireland.

**Residence permits**

Non-Irish nationals (with the exception of UK nationals) are required to register with the local police authorities within seven days of their arrival in Ireland, if they plan to stay longer than three months. Their passports will then be stamped and they will receive a residence permit which is renewable annually.

## Financial reporting and audit

### Summary

- Irish accounting principles conform with the International Accounting Standards (IAS)
- Irish incorporated companies are required to have their financial accounts audited by a registered auditor.
- a foreign company trading through a branch in Ireland must register certain details with the Registrar of Companies.

In relation to accounting standards for both domestic corporations and branches of foreign companies, Irish accounting principles conform with the International Accounting Standards (IAS). There are certain differences between these principles and US Generally Accepted Accounting Principles (GAAP).

Irish accounting principles are governed by guidelines issued by the Accounting Standards Board and as endorsed by the relevant Accounting bodies in Ireland. It should be noted that as and from 1 January 2005, adoption of International Financial Reporting Standards (“IFRS”) by listed companies who prepare consolidated accounts, will be mandatory in Ireland.

Irish Generally Accepted Accounting Principles (“GAAP”), IFRS and US GAAP are all currently being reviewed to ensure that they are as compatible with each other as possible before this implementation date (“Convergence project”). Whilst every effort is being made to ensure that convergence will eliminate differences between the GAAPs, certain differences will remain. The principal areas where such a difference is likely to occur are Business Combinations, Financial Instruments and Intangible Assets.

### Domestic corporations

#### **Filing/publication requirements**

Irish companies are required to keep proper financial records. 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.

In addition, as previously mentioned, the Companies (Auditing and Accounting) Act 2003 requires all public and private companies with a turnover greater than €50 million and/or a balance sheet total in excess of €25 million to establish an audit committee which must review annual company accounts to ensure they are true and fair. Other responsibilities include the examination of annual statements by company directors to ensure company compliance with laws and regulations. The Companies (Auditing and Accounting) Act 2003 also has introduced the Directors’ Compliance statement. This is an obligation imposed on directors of all public and private companies with a turnover in excess of €15,236,856 and/or a balance sheet total exceeding €7,618,428 to prepare a statement detailing the steps being taken to ensure adherence

with company law, tax legislation and other legislative obligations relevant to the business of the company. The provisions of the Act have not yet commenced though it is envisaged that they will be commenced in the immediate future.

### **Audit requirements**

Irish incorporated companies are required to have their financial accounts audited by a registered auditor, subject to the exemptions 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.

Small companies are exempt from having their financial statements audited. To qualify for the exemption the company must have:

- turnover less than €317,500;
- balance sheet total less than €1,904,607; and
- average number of employees below 50.

The new Companies (Auditing and Accounting) Act 2003 has now raised the level of turnover to €1,500,000. However, this section has yet to be commenced but it is expected to happen in the very near future.

This exemption does not apply to:

- parent or subsidiary companies;
- banks and financial institutions;
- insurance companies; and
- financial intermediaries.

This is an exemption from an audit only. It does not obviate the need to prepare financial statements. In the year concerned the annual return and accounts must be filed at the Companies Office within the time limit specified in the Companies Acts.

### **Branches of foreign companies**

#### **Filing/publication requirements**

A foreign company trading through a branch in Ireland must register certain details with the Registrar of Companies, including:

- names, addresses and nationalities of directors
- name and address of secretary
- a certified copy of its Charter, Statutes of Memorandum and Articles of Association and its number and place of registration
- address and activities of the branch
- names and addresses of person(s) in the State authorised to accept notice on behalf of the company
- names and addresses of person(s) in the State authorised by the company to ensure compliance with the regulations.
- copy of the financial statements of the company.

**Audit requirements**

Branches of foreign companies operating in Ireland are not required to have accounts audited independent of the group accounts to which they relate.

# Tax

## Summary

Ireland provides a very favourable tax environment to encourage business development and sustain rewarding investment. Tax reliefs form an important part of the total incentive package available to overseas companies establishing a business in Ireland. The Finance Act 2004 introduced provisions which will further establish Ireland as a favourable location for multinational corporations to base regional headquarters and holding companies. As multinationals tend to consolidate their financing, regional head office and R&D activities in one location, measures recently introduced should now cater for all these requirements. The incentives for the establishment of multinational organisations in Ireland are:

- Research and Development Credit
- Extension of tax credit for foreign dividends
- EU Parent Subsidiary Directive
- CGT Exemption on Share Disposal
- Intellectual Property Stamp Duty Exemption

These new provisions coupled with Ireland's low corporation tax rate of 12.5% on trading activities and absence of transfer pricing and controlled foreign company rules will place Ireland in a competitive position for attracting international companies to establish their global or European headquarters in Ireland.

## Companies

### General

The Irish tax system incorporates a self-assessment regime under which a company is obliged to determine whether or not it is chargeable to corporation tax and, if so, to file a tax return and make an appropriate tax payment. When corporate activities in Ireland come within the charge of Irish tax, the company (whether in the form of a subsidiary or a branch) is required to file Form TR2 with the Irish Revenue Commissioners, which provides for the registration for Irish corporation tax. (This form also provides for the registration for PAYE/PRSI and VAT, as appropriate). Ireland has recently introduced the Revenue On-line Service (ROS), an Internet-based system which allows taxpayers to file tax returns through the internet and view details of their tax balances. Electronic tax filing via ROS is not mandatory, but it is an example of the government's continued effort in encouraging electronic business and the development of the infrastructure for internet trading.

The timing of a company's payment of corporation tax and its corporation tax filings is dictated by its accounting year end. The first installment of preliminary tax is due within one month of the accounting period and the second installment is due within six months after the accounting period end. The aggregate of both installments must equal 90% of the final liability for the

accounting year. The corporation tax return and accounts must be filed within nine months of the year end together with the balance of corporation tax due.

In general, a company's tax accounting period will coincide with its commercial accounting period. However, a tax accounting period may not exceed a period of 12 months so that where a company prepares accounts for, say, an 18 month period it will have two tax filings, one in respect of the first 12 months of that period and the other for the remaining six months. The concept of a consolidated tax return (a single return for a group of companies) does not apply in Ireland. Each company is required to file an individual return.

In respect of dividend withholding tax, a company must pay the tax withheld over to the Revenue Commissioners by the fourteenth day of the month following the month in which the dividend is paid. In addition companies must make a return of distributions by the same date indicating the following:

- name and address of recipients;
- amount and dates of payments made; and
- the amount of withholding tax deducted.

The return must be made whether tax is withheld or not.

#### **Liability to tax**

A company that is tax resident in Ireland is liable to Irish corporation tax on its total profits wherever arising. Companies not tax resident in Ireland are only liable to corporation tax on profits generated by an Irish branch or agency.

A company is tax resident in Ireland if it is an Irish incorporated company or if it is managed and controlled in Ireland (there are certain exceptions to the rule on Irish incorporated companies).

#### **Tax rates**

The standard rate of corporation tax in Ireland is 12½% on trading income. These rates have been agreed by the EU. There is a rate of 25% on non-trading income and certain trades.

#### **Tax base (differences between book and taxable profits)**

Corporation tax is charged on the profits of a company. "Profits" for corporation tax purposes consist of income and capital gains. Capital gains arise on disposal of capital assets. Profits are determined by applying generally accepted accounting principles (GAAP) subject to any adjustments provided for by tax law.

The rules relating to the calculation of taxable profit are summarised below.

Dividends and distributions received from other Irish tax resident companies are not included in taxable profits. Employment grants paid by the IDA are exempt from tax.

The Revenue Commissioners will accept accounts prepared in a foreign currency provided that it is the company's functional currency.

#### **Deductions**

Deductible expenditure must be wholly and exclusively incurred for the purposes of the trade and non-capital in nature. Non-capital expenditure incurred prior to commencement of business

is deductible in computing company profits. The deduction can be taken for expenditure incurred in the three years prior to commencement of business.

Non-capital expenditure incurred in the course of a business activity is generally tax deductible. Significant exceptions are entertainment expenditure, accounts depreciation and a proportionate part of the leasing charges of cars costing over €22,000.

Special tax depreciation allowances, known as capital allowances, enable capital expenditure on certain capital assets used for the purpose of trade to be written off against profits for tax purposes. Normal accounting depreciation of capital assets is not allowed as a deduction.

An annual writing down allowance is available for industrial buildings. It is claimed at a rate of 4% of the cost of the buildings per annum, net of any IDA grant and excluding any land element.

In addition, annual allowances can be claimed for wear and tear of plant and machinery, new or second hand. The annual allowance is 12½% of the cost. Software and the right to use such software is included as plant and machinery. Except for equipment purchased for processing food for human consumption, the allowances are restricted to the cost net of any IDA grants. Passenger vehicles are written off at 12½% p.a. with a maximum qualifying cost of €22,000.

Subject to satisfying certain conditions, accelerated allowances on buildings are available for designated Urban Development Areas and Enterprise Areas. The rate depends on the location of the building, the timing of the expenditure and whether the buildings are owner-occupied or leased.

Accelerated depreciation allowances are also available for companies operating in the International Financial Services Centre or the Shannon Airport Zone. Up to 100% of expenditure on new plant and machinery (except passenger vehicles) can be written off against taxable profit in the first year.

Interest incurred wholly and exclusively for the purposes of the trade is tax deductible on an accruals basis in computing income. The main exception is interest paid to a non-resident non-trading parent or associated company where there is a 75% or greater ordinary shareholding relationship. Such interest is classified as a deemed distribution and is not tax deductible. With effect from 6 February 2003, non-trading interest paid to a 75% related company in an EU Member State is treated as tax deductible rather than as a deemed dividend. In addition, there is a restriction on the amount of interest deductible in the case of interest payable to a connected person. The cumulative deductions for loan interest cannot exceed the cumulative amount chargeable to tax in the hands of the recipient in the same chargeable period. Interest on borrowings used for non-trading purposes, for example for the acquisition of shares in other companies, may be deductible on a paid basis subject to conditions.

**Expenditure on scientific research and development**

Subject to EU approval, incremental R&D expenditure will qualify for a 20% tax credit. This credit will be in addition to any existing deductions or capital allowances for R&D expenditure. The following conditions must be fulfilled in order to qualify for this credit:

- R&D activities must be carried out in the European Economic Area.
- Relief is granted provided the expenditure is not deductible in any other territory.
- Qualifying expenditure will be reduced by any grant or State Aid received.
- Payments to a connected party in respect of tax-exempt patent royalty income will not qualify for the relief.
- Payments made other than at arms length will not qualify for relief.

The relief will be calculated on an incremental basis. The tax credit is allowable against a company's corporation tax liability (including a surcharge for late payments) for the current year with the unused balance available to carry forward against the corporation tax liability of the company until it is used up. There are no carry back provisions. R&D is extensively defined to include systematic, investigative or experimental activities in the field of science or technology being or more of the following:

- Basic research
- Applied research, or
- Experimental development

Such activities however will not be regarded as Research and Development activities unless they:

- Seek to achieve scientific or technological advancement and
- Involve the resolution of scientific or technological uncertainty

The Finance Act 2004 also includes a relief for qualifying R&D expenditure on buildings or structures. The credit for such expenditure is given over a 4-year period. There is a provision for clawback of the relief where the building or structure is sold or ceases to be used for R & D activities within 10 years of the period in which the expenditure was incurred.

**Groups**

The concept of "fiscal unity" or consolidated group tax does not exist in Ireland. However, trading losses may be offset on a current period basis, against taxable trading profits of another group company. A group consists of a parent company and all of its 75% subsidiaries, with all group members being tax resident in Ireland or in another Member State of the EU. Non-Irish members may only surrender losses from activities which would, if profitable, be subject to Irish tax. Capital losses cannot be surrendered within a group.

**Payment dates and tax returns**

A company must submit a return of profits, chargeable gains and other particulars to the Inspector of Taxes not later than 9 months from the end of the accounting period to which the return relates. For accounting periods ending on or after 1 January 2003, the balance of corporation tax also falls due for payment on the return filing date.

Every company must pay to the Collector General the amount of preliminary tax appropriate to the accounting period. The preliminary tax payment date is one month before the end of the accounting period. This payment plan is being phased in over five years and will be fully effective in 2006 when 90% of the final corporation tax liability will be payable one month before the end of the accounting period.

In the case of a “small” company, preliminary tax can be based on 100% of the liability of the previous year. A company is small if its tax liability for the preceding year does not exceed €50,000.

During the transition period to 2006, preliminary tax will be payable in two installments:

- the first will be due one month before the end of the accounting period and
- the second payment will be due within six months after the end of the accounting period.

#### **Amounts payable – first Installment**

The amount of the first installment will be:

- for 2002 accounting periods, 18% of the final corporation tax liability, or if a small company 20% of the previous year’s liability.
- for 2003 accounting periods, 36% of the final corporation tax liability, or if a small company 40% of the previous year’s liability.
- for 2004 accounting periods, 54% of the final corporation tax liability, or if a small company 60% of the previous year’s liability.
- for 2005 accounting periods, 72% of the final corporation tax liability, or if a small company 80% of the previous year’s liability.

#### **Amounts payable – second Installment**

During the transition period the second instalment (payable six months after the period) should bring the total preliminary tax payments for the accounting period up to 90% of the final liability for the accounting period.

A company is required to pay the balance of tax within 9 months after the end of the accounting period i.e. the due date for submission of the corporation tax return to the Revenue Commissioners.

#### **Close companies**

A close company is a company which is controlled by five or fewer participators or under the control of its directors. A participator includes any person who has a share or interest in either the capital or income of the company.

A surcharge of 20% is chargeable on a close company where it does not distribute the after tax passive income (e.g. rental and investment income) within 18 months of the end of an accounting period. This brings the tax rate on such passive income to approximately 40%, if not distributed. A surcharge of 15% also applies to “professional” service companies.

#### **Use of losses**

Trading losses can be offset against total taxable profits on a tax value basis for the current year or the previous year. All unutilised trading losses can be carried forward indefinitely to offset future trading income of the same trade.

There are a number of special reliefs available for members of a group of companies. Companies resident in an EU state can be taken into account in determining if the required group or consortium relationship exists. However, trading losses may be only surrendered between Irish resident companies and Irish branches of foreign companies. In addition, transfers of assets between Irish resident group members are not liable to tax.

**Dividends**

Dividends are not an allowable expense for the purposes of calculating corporation tax. However, a company may wish to pay a dividend in order to avoid a close company surcharge.

A company when paying a dividend may have to deduct dividend withholding tax, at the standard rate (currently 20%). In some instances, however, the dividend may be paid gross, for example,

- dividends to an Irish resident company
- dividends to individuals resident in a country with which Ireland has a tax treaty
- dividends to individuals resident in a country within the EU

Companies must make a return of all dividends paid by the fourteenth day of the month following the distribution.

**Foreign dividends**

The Finance Act 2004 extended the scope of double taxation relief on dividends paid by subsidiaries to parent companies. The extended relief will make it more attractive for headquarter operations to be located in Ireland by reducing the shareholding requirement under double tax treaty provisions or under unilateral credit relief provision (where no treaty applies) from 25% to 5%, and by also allowing the Irish recipient company to “pool” the tax credits arising on foreign dividends. In addition, credit can also be taken for local tax suffered by a branch of a foreign subsidiary.

This onshore pooling allows companies to mix the credit for foreign tax on different dividend streams for shareholdings of 5% or more for the purposes of calculating the overall credit. Any unused credit balance can be carried forward and offset in subsequent accounting periods.

The 2003 EU Parent-Subsidiary Directive extends the list of entities that can avail of the Directive’s exemption from withholding on distributions made by an Irish subsidiary company to its EU parent company. This includes the following:

- the requisite holding of share capital in the subsidiary is reduced from 25% to 5%
- credit can be taken for underlying tax in lower tier subsidiaries
- Irish branches of EU resident companies are entitled to same reliefs as Irish resident companies.
- the Parent/Subsidiary directive covers unlimited companies.
- credit will be available in Ireland for foreign tax suffered by companies that are “transparent” for Irish purposes.

### Effect of treaties

The Irish tax treaty network continues to be expanded and updated and now numbers 42 tax treaties. New treaties have been negotiated with Croatia, Egypt, Greece, Iceland, Malta and Singapore. See appendix 1 for a full listing. Negotiations are underway on treaties with Argentina, Turkey and Ukraine. In addition, some existing treaties, such as those with Canada, Cyprus and France are being reviewed.

Where a double taxation agreement does not exist, there are provisions within the Irish Taxes Acts which allow unilateral credit relief against Irish tax for tax paid in the other country in respect of certain types of income (e.g. dividends and interest). There is also legislation implementing the EC "Parent-Subsidiaries Directive" (90/435/EEC) (TCA 1997 section 831), the "EU Mergers Directive" (90/434/EEC) (TCA 1997 sections 630-638) and the EU Arbitration Convention (European Communities Mutual Assistance in the Field of Direct Taxation Regulations 1978) (S.I. 334 of 1978).

### Other foreign income

Foreign taxes borne by an Irish resident company (or EU branch), whether imposed directly or by way of withholding, may be creditable in Ireland. The calculation of the credit depends on the nature of the income item, but in all cases, the credit is limited to the Irish tax referable to the particular item of income. The credit is computed on an item-by-item basis (except for dividends from 5% subsidiaries) and excess credits can be relieved only by deduction; there is no carry-back or carry-forward of excess credits.

### Capital Gain Tax exemption on share disposal

An exemption from tax on capital gains arising to Irish-based holding companies on disposals of shareholdings or assets related to shares in EU/double tax treaty resident (DTA) companies was recently introduced. The exemption will apply where the following conditions are satisfied:

- The parent company must hold either a minimum of 10% of the subsidiary's ordinary share capital where the share holding value exceeds €15 million or 5% of the subsidiary's ordinary share capital where the share holding value exceeds €50 million.
- The investee company must be resident in the EU state (including Ireland) or DTA State. At the time of disposal, the investee must exist wholly or mainly for the purposes of carrying on a trade.
- The investor company must satisfy a parent test and a shareholding value test.

### Individuals

Income tax is payable by individuals (and certain non-resident companies on Irish source income) and is charged on an annual basis. The income tax year runs from 1 January to 31 December.

### Tax rates - 2004

Single person	First €28,000	20%	Balance 42%
Married couple	First €37,000	20%	Balance 42%
Both spouses working	First €56,000	20%	Balance 42%

**Taxable income**

Taxable income is the total of income from all sources. Income tax is reduced by tax credits for personal circumstances. The principal credits for 2004 are:

	€
Single person	1,520
Married couple	3,040
Employee	1,040

The employee credit is generally for individuals paying tax under the pay as you earn (PAYE) system. Other credits available include those for widowed/one parent, age (persons aged 65 and over), rent and service charges etc. Tax credits for mortgage interest and health insurance are given at source.

**Residence criteria**

An individual is resident in Ireland for tax purposes where he is in Ireland for either a total of 183 days in any tax year, or where the total number of days in that tax year (ignoring 30 days or less) and the previous tax year exceed 280 (known as the look-back rule). A day will only be taken into account where a person is present at the end of the day (i.e. midnight) in Ireland.

If an individual does not satisfy these tests, he may still opt certain limited circumstances to be treated as Irish tax resident. Exercising this option would be of benefit to the individual in a limited number of cases, such as where advantage could be taken of a Taxation Treaty.

Where an individual satisfies these tests, but is not domiciled or ordinarily resident in Ireland, he may obtain relief in that his foreign income and gains will only be subject to Irish tax if it is remitted to Ireland.

**Taxation of domiciliaries**

Most foreign executives working for overseas companies in Ireland would be resident but not domiciled in Ireland and thus are subject to Irish income tax on income and gains arising in Ireland and the UK and any foreign income or gains remitted to Ireland from abroad.

Therefore, if an executive is employed and paid from outside Ireland and the UK, taxable income is limited to remittances made to Ireland and locally provided benefits.

**Payment dates & tax returns**

All individuals who are subject to self-assessment must submit a tax return not later than 31 October in the year following the year of assessment.

The due date for payment of preliminary tax is 31 October in the year of assessment. In order to avoid interest charges in relation to preliminary tax or any balance of tax payable on an assessment, the taxpayer must pay by 31 October in the tax year preliminary tax of : -

- a) 90% of the final tax payable for that year, or
- b) 100% of the final tax payable for the previous tax year (ignoring any relief claimed under the business expansion scheme or film relief).

The balance of tax assessed must be paid on or before 31 October in the year following the year of assessment, when filing the tax return.

## Value Added Tax/Sales taxes

### Scope

Value Added Tax (VAT) is based on the European System. VAT is chargeable on most supplies of goods and services within Ireland by a taxable person in the course or furtherance of any business carried on by him, and on goods imported into Ireland from outside the EU.

Taxable persons account for VAT on their outputs and they are allowed credit against this liability for tax borne on business purchases and other inputs as evidenced by correctly prepared VAT invoices; therefore, it is a tax ultimately borne by the final consumer.

VAT is also chargeable on the intra-Community acquisition of goods by VAT registered persons and on the intra-Community acquisition of new means of transport such as motor vehicles, boats etc. by either a registered or unregistered person. The amount on which VAT is chargeable is the total consideration which the person supplying goods or services becomes entitled to receive.

Exports are zero-rated for VAT purposes except those to unregistered persons in the EU. Companies that export 75% or more of their output can apply to the Revenue Commissioners for authorisation to purchase goods and services without any VAT charge. This reduces administration and the need to get a refund of VAT.

Taxable persons must be registered with the Revenue Commissioners for VAT purposes.

### Rates

VAT rates range from 0 to 21% depending on the product or service, with most being charged at 21%. Certain activities involving immovable goods (land and buildings together with all fixtures attached) are liable to VAT at 13.5%

### Returns

Companies must make bi-monthly returns and payment of VAT before the nineteenth day following the end of a taxable period. Each taxable period is a period of two months beginning on the first of January, March, May, July, September or November.

The Collector General may authorise persons to make an annual VAT return and pay their VAT liability on an annual basis.

## Other taxes

There are other minor taxes, which have to be considered aside from the major taxes of Income and Corporation Tax. These taxes include Stamp Duty, Capital Gains and Gift and Inheritance taxes. The taxes are very wide in scope and detail, but are outlined below briefly.

### Stamp duty

Stamp duty is payable on the transfer of land and buildings, the lease of property as well as on certain legal instruments. Rates vary between 1% and 9% except on leases of greater than 100 years that are at 12%.

Transfers between companies with a 90% relationship are exempt from stamp duty. The Finance Act 2004 introduced an additional exemption for sale, transfer or other disposition of intellectual property. However, this amendment requires a commencement order to be made by the Minister of Finance.

**Property taxes**

The largest of the property taxes is Capital Gains Tax. Capital Gains Tax is payable on chargeable gains by Individuals, Trusts and unincorporated bodies. Capital Gains of companies are chargeable to Corporation Tax.

Capital Gains are determined by the difference between the proceeds from disposal and the original cost of the asset. A disposal takes place whenever the beneficial ownership of an asset transfers. Assets include all forms of property, whether in the State or not.

An Irish domiciled individual who is resident or ordinarily resident in the State for a year of assessment is chargeable to capital gains tax on chargeable gains made on the disposal of all assets wherever situated.

An individual who is neither resident nor ordinary resident in the State for a year of assessment is chargeable to capital gains tax on chargeable gains made on the disposal of the following:

- Land or buildings in the State
- Minerals in the State
- Exploration or exploitation rights in the continental shelf
- Unquoted shares deriving the greater part of their value from such assets mentioned above
- Assets of a business carried on in the State

A resident individual who is not domiciled in the State, is liable to capital gains tax on the disposal of assets situate outside Ireland and the United Kingdom, only to the extent that the chargeable gains are remitted to the State.

The rate of capital gains tax is 20% with the exception of foreign life assurance policies and off-shore funds, where the rate is 40%.

**Estate tax/inheritance tax**

Capital acquisitions tax at 20% is applied to gifts and inheritances. There is a territorial limit to the extent to which gifts and inheritances are taxable for non residents. As it is a tax on acquisitions the donee is responsible for the payment of the tax. There are a number of exemptions and reliefs.

**APPENDIX 1 – IRISH TAX TREATIES**

<b>Table of Source Country Tax Rates for Dividends, Interest and Royalties</b>			
<b>Country</b>	<b>Withholding Tax Rates %</b>		
	<b>Dividends(a)</b>	<b>Interest</b>	<b>Royalties</b>
Australia	15	10	10
Austria	0(b)/10	0	0/10(m)
Belgium	0(b)/15	15	0
Bulgaria	5(d)/10	0(i)/5	10
Canada	0(c)/15	15(j)	0(n)
China	5(d)/10	0(i)/10	10(u)/10(p)
Croatia	5(e)/10	0	10
Cyprus	0	0	0/5(o)
Czech Rep	5(d)/15	0	10
Denmark	0(b)(d)/15	0	0
Estonia	5(d)/15	10	5(p)/10
Finland	0(b)(e)/15	0	0
France	0(b)/10(f)/15	0	0(q)
Germany	0(b)/15(g)	0	0
Hungry	5(h)/15	0	0
India	10	0(l)/10	10
Israel	0(b)/15	10	0
Italy	0(b)/15	10	0
Japan	10(d)/15	10	10
Korea (Rep)	10(e)/15	0	0
Latvia	5(d)/15	10	5(p)/10
Lithuania	5(d)/15	10	5(p)/10
Luxembourg	0(b)/5(d)/15	0	0
Malaysia	10	0(l)/10	8
Mexico	5(e)/10	0(l)/5(t)/10	10
Netherlands	0(b)(d)/15	0	0
New Zealand	15	10	10
Norway	0(d)/10	0	0
Pakistan	15/0-35(i)	No Limit	0
Poland	0(d)/15	0(k)/10	10
Portugal	0(b)/15	0(l)/15	10
Romania	3	0(k)/3	3
Russia	10	0	0
Slovak Rep	0(d)/10	0	0/10(u)
Slovenia	5(d)/15	0(l)/5	5
Spain	0(b)(d)/15	0	5 (r)/8(s)/10
South Africa	0	0	0
Sweden	0(b)/5(e)/15	0	0
Switzerland	10(d)/15	0	0
UK	0(b)(e)/15	0	0
United States	5(e)/15	0	0
Zambia	0	0	0

**Notes**

- (a) From 6 April, 1999 Irish withholding tax applies.
- (b) Per EC Parent-Subsidiary Directive (25% holding).
- (c) Inter-corp. rate – 100% holding (see other conditions in treaty)
- (d) Inter-corp.rate – 25% holding
- (e) Inter-corp.rate – 10% holding
- (f) Inter-corp.rate – 50% holding
- (g) Subject to variation – see treaty
- (h) 10% holding
- (i) For an Irish individual recipient (not engaged in trade or business in Pakistan through a permanent establishment) – the withholding tax rate is the Pakistani tax rate (currently graduated scale to a top rate of 35%) which would have applied if he/she were a Pakistani resident liable to tax on his/her total world income.
- (j) From Ireland – domestic standard rate applies
- (k) Certain credit sales and bank interest and in the case of Romania any loan of whatever kind made for 2 years or more and any debt-claim guaranteed, insured or financed by the Government of either Contracting State.
- (l) Certain Government loans and in the case of Mexico certain pension funds.
- (m) If the recipient holds more than 50% of the payer company.
- (n) Literary, dramatic, musical or artistic copyrights (other than for films or tv) – otherwise domestic rate applies.
- (o) For films (not TV)
- (p) For use of industrial, scientific, or commercial equipment. In the case of China, the rate is 10% of the adjusted amount of the royalties – adjusted amount means 60% of the gross amount of the royalties.
- (q) Excluding films – domestic rate applies.
- (r) Literary, dramatic, musical or artistic copyrights.
- (s) Films, tapes and lease payments.
- (t) For loans from banks and in the case of Ireland/Norway certain Government funds.
- (u) For technical royalties or for information concerning industrial, commercial or scientific experience.

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