Doing Business in Ireland

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Ireland.

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Background

Country Overview

The island of Ireland is situated in the extreme north-west of the European continent. The population of Ireland is approximately 4.5 million people. The Republic of Ireland consists of 26 counties. It is a stable parliamentary democracy with its own written constitution. There are an additional 6 counties on the island (Northern Ireland) that are part of the United Kingdom. Information in this document relates to the Republic of Ireland.

Ireland is part of the European Union (EU), which comprises 28 member states. Ireland uses the Euro (€) as its official currency.

Ranked in the top 10 in the world for the quality of its education system and 12th for availability of skilled labour (according to the IMD Work Competitiveness Report), Ireland's workforce is young and highly skilled. Almost half of the Irish workforce is under the age of 35 and 52% of 25-34 year olds have a third level qualification (compared to the EU average of 43%).

Ireland was one of the first EU countries to pass the electronic commerce legislation. The telecommunications market in Ireland is fully de-regulated. Ireland can boast high-tech broadband capacity with links to all major EU cities, the US and Asia.

Economic Overview

Ireland offers a stable, competitive and pro-business economy. The Irish economy is the fastest growing in the Eurozone and the 6th most competitive in the world. Ireland is the only English-speaking country in the Eurozone and has a corporate tax rate of just 12.5%; this makes Ireland an ideal hub for organisations seeking a European base.

Ireland is home to many of the world's leading companies in global software, medical tech, pharmaceutical, industrial automation and financial services.

Transport Infrastructure

Ireland has four national airports – Dublin, Cork, Shannon and Knock. EU funding has enabled the country to continuously develop a new motorway system. The National Development plan will see investment of over €100 billion of public, private and EU funds in roads, public transport and other services.

Choice of Legal Form

Limited Liability Company

A Private Company Limited by shares ("LTD") is the most common form of company incorporated in Ireland and has the contractual capacity of a natural person. LTDs are registered under Part 2 of the Companies Act 2014 (the "Act") and are governed by the Act and its own constitution which may contain additional regulations.

To incorporate a LTD, the company must have at a minimum one director and a separate company secretary. The minimum age for a director is eighteen years and body corporates cannot be appointed as directors. If an individual is appointed as company secretary, they must also be eighteen years of age or over. A LTD must have one shareholder but no more than one hundred and forty-nine.

Personal details of the directors and company secretary will be publicly available upon registration of the LTD with the competent authority, the Companies Registration Office (the "CRO"). Changes to the directors and secretary must be notified to the CRO. In addition, the company has an annual requirement to file its Annual Return with the CRO. The Annual Return form B1 must be accompanied by the company's financial statements, except for the six-month Annual Return.

There are a number of administrative benefits to a LTD such as sole director, dispense with the need to hold an Annual General Meeting, audit exemptions, not required to have an authorised share capital, amongst others.

A Designated Activity Company (DAC) is a new company type introduced by the Companies Act 2014 in June 2015. A DAC can be a private company limited by shares or a private company limited by guarantee and having a share capital. A DAC has the capacity to do only those acts set out in its memorandum of association. DACs are registered and governed under Part 16 of the Act and in addition, the company will be subject to additional regulations under its articles of association.

Unlike a LTD, a DAC must have two directors; one of whom may be appointed as company secretary and, the number of shareholders is limited to one hundred and forty-nine. Similar to a LTD, personal details of directors and company secretary will be publicly available and the same annual filing requirements with the CRO apply.

Certain business activities will stipulate the type of corporate entity required, while LTD's are prohibited from carrying on as credit institutions, insurance companies and those engaged in debt securities listing; DACs are not.

A company registered as a DAC must end its company name with Designated Activity Company or abbreviation, DAC. Where a DAC has two or more members it cannot dispense with the requirement to hold an Annual General Meeting.

General Partnership

A partnership involves two or more people carrying on a common business. Most partnerships are unlimited liability ventures with all partners having joint and several liable for the debts of the business. Any business debts may be recoverable from partners' personal as well as business assets. Personal debts may be recovered against a partner's individual share of the business. A Partnership Deed will usually set out the rights, responsibilities and rewards of the partners. Unless such a Partnership Deed exists, the regulations set out in the Partnership Act 1890 apply. There is an obligation to register a business name with the CRO if the Partnership carries on other than in the surnames of the Partners.

Limited Liability Partnership

The Companies Registration Office is the competent authority in Ireland for registering a LLP. Following registration, the CRO will issue a certificate of registration. A LLP must consist of a minimum of one general partner and at least one limited partner. The partnership should not consist of 20 persons. The LLP is not a separate legal entity and does not enter, in the legal sense, contract in its own name, but in the names of its partners.

The General partner's liability is unlimited whereas the limited partner has limited liability up to the amount of capital contribution. The limited partner has no role in the management of the firm and has no power to bind the firm. The LLP is managed by the general partners who are liable for all debts and obligation of the partnership.

Annual compliance obligation can consist of, where all the general partner is limited companies, an obligation to submit financial statements to the CRO with six months of the financial year end.

Branch

A Branch must be registered where a company incorporated outside of Ireland establishes a business in Ireland. The Branch must be registered with the CRO within one month of establishment. Registration requirements depend on the jurisdiction of the foreign company. Branches are governed by Part 21 of the Companies Act 2014.

At least one-person resident in Ireland must be appointed as the person authorised to accept service on behalf of the Company in the State. In addition, a person must also be resident in Ireland to accept responsibility for ensuring that the branch complies with obligations under the legislation.

On an annual basis the branch is required to deliver a "return of accounting documents of an external company" to the CRO.

Sole Trader

A sole trader is a person carrying on business on his/her own account. The business and personal affairs of the individual are not separated in any way. Any debts, whether business or personal, can be recovered against business and personal assets.

Accounting periods are governed by personal taxation considerations. The tax year for sole traders is the calendar year. Accounts have to be filed with the Revenue Commissioners by 31 October following the end of the tax year. All business profits are treated as income for the individual. Preliminary Income Tax is payable by 31 October of the tax year. Any balance of tax owing when the Revenue Commissioners make their tax assessment of the sole trader is payable by 31 October following the end of the tax year.

Public Limited Company

A PLC operates under Part 17 of the Act. A memorandum and articles of association form its constitution. PLC activities are limited to its objects as set out in the memorandum of association. A minimum share capital limit of €25,000 applies and of which at least 25% must be paid up on issue before the entity may commence trading.

The company must have two directors and a company secretary and there is no limit on the numbers of shareholders. The company does benefit from limited liability. A PLC is permitted to make public offering of its share capital and may list those shares on a stock exchange.

While the same annual filing requirements of a LTD with the CRO apply; the company must also hold an Annual General Meeting each year. There may be additional requirements depending on the nature of the company's business and if the company's securities are listed on the stock exchange.

Taxation

Please see the Taxation section on page 8.

Audit Requirement

Requirements and Thresholds

All companies are statutorily required to have their financial statements audited by an independent auditor, unless they are eligible for and choose to avail of audit exemption.

The audit exemption criteria are as follows:

- A company must qualify as a “small company” for the purposes of claiming audit exemption.

  For current and previous years, companies must have filed their annual returns on time and have met 2 of the following threshold criteria: Turnover <€12m; Balance Sheet Total <€6m; Average no. of employees <50.

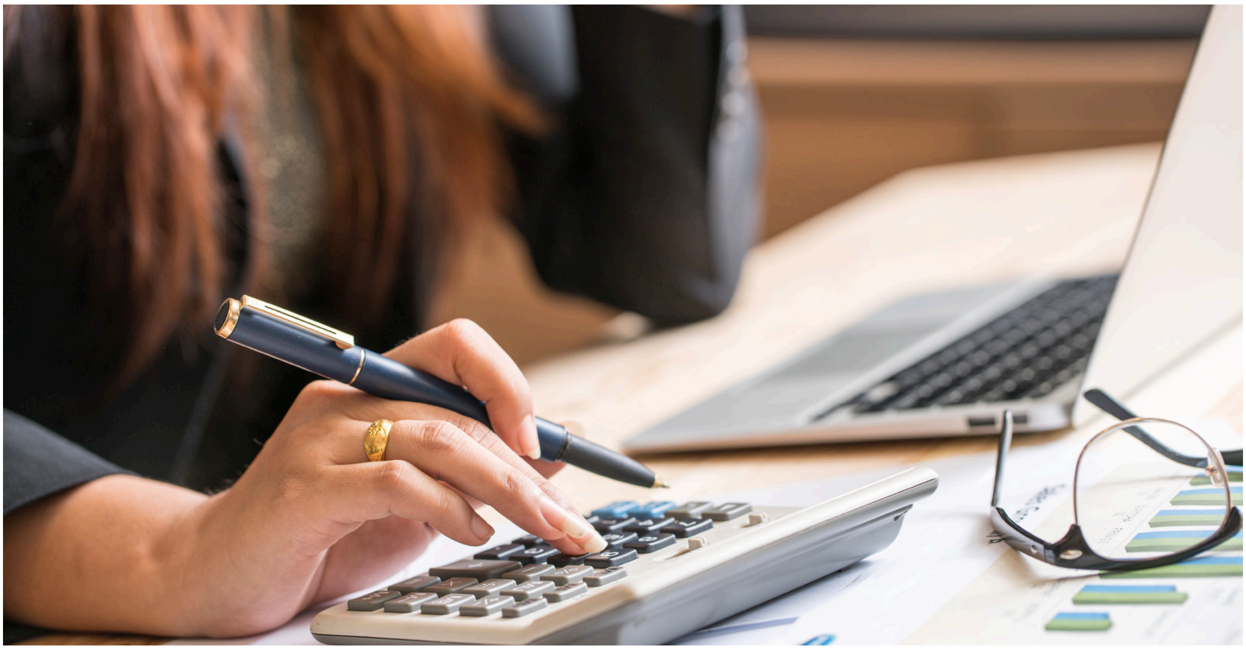
- Where a company is part of a group they can only avail of the exemption provided the group meets the “small group” criteria.

  All Irish registered companies in the group must have filed returns on time and the group taken as a whole meets 2 or more of the following criteria (in current and previous year): - Turnover of the group <€12m after elimination of intra-group balances or €14.4m before elimination of intra-group balances; Balance Sheet Total <€6m after the elimination of intra-group balances or €7.2m before elimination of intra-group balances; Average no. of employees of the group <50.

- Dormant Companies, Companies Limited by Guarantee and Unlimited Companies, are also eligible for audit exemption provided that Companies Limited by Guarantee and Unlimited Companies meet the above criteria and dormant companies meet the “dormant” company criteria:

  - Annual returns filed on time in current and previous years
  - The company had no significant accounting transaction in the year
  - The company’s assets and liabilities comprise only permitted assets and liabilities.

Taxation



Corporation Tax

Companies are subject to Corporation Tax on their total taxable profits. The very low Corporation Tax rate on trading income of 12.5% in Ireland makes it an attractive market to do business.

The tax year for Irish companies follows the company's accounting period. At present a company must make either one or two preliminary tax payments, depending on its corporation tax liability in the previous accounting period.

Companies, whose corporation tax liability was less than €200,000 in the previous accounting year, must make only one payment of preliminary corporation tax one month before the accounting year-end.

All other companies must pay preliminary corporation tax in two instalments: the first in the sixth month of the accounting period and the second one month before the accounting year-end.

Group taxation in Ireland

Group Relief allows members of a group of companies to transfer certain Corporation Tax (CT) losses to other members of the group. Two companies are considered to be group members if either: • Company A is a 75% subsidiary of Company B; or • Company A and B are both 75% subsidiaries of a third company.

Group Relief is generally available between Irish resident companies and branches of foreign companies within the charge to Irish tax. In certain limited circumstances, an Irish resident parent company may claim Group Relief on losses incurred by a subsidiary resident in another country. The other country must be a European Union (EU) or European Economic Area (EEA) state which has a double taxation agreement with Ireland.

Intra-group transfers of assets between Irish group companies are normally tax-neutral. Group companies can generally elect to account for VAT as if they were a single entity.

Dividend Payments

There is no CT due on dividends received by an Irish resident company from another Irish resident company. Dividends received from a non-resident company are subject to CT in Ireland and relief may be available for foreign tax paid.

Irish resident companies must withhold tax on dividend payments and other distributions that they make at the rate of 20%. However, this rate can be reduced to nil where:

• The recipient is a non-resident individual who is resident in a treaty country or an EU member State; or

• The recipient is a non-resident company, where certain requirements are met.

Interest

Interest paid to non-residents must be paid under deduction of tax at 20%.

The obligation to withhold tax may be negated (that is, the payment may be made gross) under the terms of a particular double taxation treaty or if the interest payment is specifically exempt under domestic legislation.

Branch Profit Tax

The profits of an Irish branch of an overseas company are liable to tax at the same rates of corporation tax as a domestic company. Ireland does not impose withholding tax on profits transferred by an Irish branch to its head office.

Personal Income Tax

Individuals are assessed to income tax based upon their income within the tax year (which runs from 1 January to 31 December). The rates of income tax for the tax year beginning 1 January 2018 are 20% (standard rate) and progressive to 40% (marginal rate).

Nearly all income is liable to tax, whether in the form of cash or benefits in kind.

Once an individual’s income that is liable to tax has been determined, the tax is calculated by applying the relevant rates (20% up to a certain level and 40% thereafter) to the taxable income. Tax credits are then deducted and reduce the amount of tax due. Tax credits are deducted after the tax has been calculated, therefore a tax credit has the same value to all taxpayers.

An individual's liability to income tax is based on their tax residence and domicile. A statutory test applies for determining the residence status of individuals.

An individual is resident in Ireland if he/she is in Ireland for a total of:

- 183 days or more in a tax year; or
- 280 days or more in a tax year plus the previous tax year taken together, with a minimum of 30 days in each year.

For these tests, a "day" means any part of a day.

An individual who has been resident in Ireland for three consecutive tax years, becomes ordinarily resident from the beginning of the fourth tax year.

An individual who is resident and domiciled in Ireland is liable to Irish income tax on worldwide income.

An individual who non-resident in Ireland for tax purposes, is chargeable to tax in Ireland on:

- Irish-source income, including income from an Irish public office; and
- Irish employment income and foreign employment income where the duties of the employment are carried out in Ireland.

An individual who is non-resident in Ireland for tax purposes but is ordinarily resident is chargeable to tax in Ireland on worldwide income except:

- Income from a trade or profession, no part of which is carried out in Ireland;

- Income from an office or employment where all the duties are carried out outside Ireland; and
- Other foreign income if it is €3,810 or less (if it is more than €3,810, the full amount is taxable).

The remittance basis applies to a non-domiciled individual regardless of residence/ordinary residence status.

Personal tax is self-assessed by reference to the tax year ending on 31st December each year and taxpayers are obliged to submit an annual tax return to The Revenue Commissioners.

Capital Gains Tax

Capital Gains Tax is payable on chargeable gains arising on the disposal of assets. A disposal takes place whenever the ownership of an asset changes and includes a part disposal. The computation of chargeable gains and allowable losses is made by comparing the proceeds of disposal with the original cost of the asset. Relief is granted by allowing the cost and, if applicable, additional expenditure on the asset to be adjusted by multiplying it by an amount specified in Irish tax legislation. The multiplier is designed to negate the effects of inflation. This indexation relief does not apply to the disposal of assets which were purchased after 2002.

The rate of capital gains tax is 33% for assets sold on/after 6th December 2012. Capital gains of companies are chargeable to Corporation Tax. Certain reliefs are available which include individuals retiring from business, disposals of assets within a group of companies or a new entrepreneur relief that reduces the rate of capital gains tax to 10% subject to certain conditions being met.

Income Tax

An employer is responsible for deducting Income Tax from the earnings of each employee and paying this over to the Revenue Commissioners. He must follow the procedures for the deduction at source of employees' Income Tax. They are known as:

- Pay As You Earn (PAYE)
- Pay Related Social Insurance (PRSI)
- Universal Social Charge (USC)

The Irish tax year runs from 1 January. The standard rate of income tax is 20% and the marginal rate is 40%.

Income tax on gains from sales of financial assets and private real estate

Capital Gains Tax (CGT) is payable on capital gains made on the disposal of chargeable assets. A disposal takes place whenever the ownership of an asset changes and includes a part-disposal. Gains and losses are computed by comparing the disposal proceeds with the cost of the asset plus any qualifying expenditure incurred on enhancing the asset. Where the parties are connected, market value is substituted for any actual consideration paid.

Capital losses can generally only be set off against capital gains.

An Irish resident/ordinarily resident and domiciled individual is subject to Irish CGT on worldwide gains on the disposal of chargeable assets.

A non-domiciled individual who is resident or ordinarily resident in Ireland is liable to CGT on the disposal of Irish chargeable assets, as well as gains realised on the disposal of non-Irish assets to the extent that these gains are remitted to Ireland. A non-resident individual is liable to CGT on the sale of Irish specified assets (primarily land and buildings in Ireland).

The standard rate of CGT is 33%. Certain disposals by individuals of businesses, business assets or shares in a trading company may qualify for a CGT rate of 10% under the entrepreneurs' relief provisions, provided certain conditions are met.

Land Tax

Ireland imposes Local Property Tax (LPT) on residential property. LPT is based on the value of the property on the valuation date and the rates are 0.18% for property up to value of €1,000,000 and 0.25% on the excess over €1,000,000.

Value Added Tax

VAT is a turnover tax that is levied at every stage of the sale and purchase of goods and services within Ireland and the EU. It is payable to the Revenue Commissioners. Businesses with an annual turnover of €75,000 from the supply of goods must register for VAT. Businesses with an annual turnover of €37,500 from the supply of services must register for VAT. The current rates of VAT range from 0% to 23%.

VAT registered businesses can reclaim VAT paid when purchasing goods and services; they must charge VAT on goods and services they provide to customers. VAT charged to customers must be collected by the business and paid to the Revenue Commissioners.

VAT registered businesses must complete and submit a regular VAT return form. The return is used to calculate the difference between VAT reclaimed from the Revenue Commissioners and VAT to be paid to the Revenue Commissioners. The difference results either in a credit or a payment to be made. Should a payment to the Revenue Commissioners be required, this must accompany the VAT return.

Tax treaties / avoidance of double taxation

There exist around 72 tax agreements, see appendix 1 for list of countries.

Allowances

Depreciation

Depreciation charged in the accounts is not generally an allowable deduction for tax purposes. Instead, tax depreciation is given through a system known as capital allowances.

The rate of capital allowances for plant and machinery is 12.5% for a period of eight years.

The availability of wear and tear allowances, and the amount of such allowances on business cars, is linked to the CO2 emissions of a car.

Industrial buildings are written down at the rate of 4% per annum over the tax life of the building.

A balancing allowance or charge arises on the disposal of an asset on which capital allowances have been claimed. This represents the difference between the disposal proceeds of the asset and its tax written down value.

Employment

Social Security

The principal social security tax cost in Ireland is Pay Related Social Insurance (PRSI). PRSI is payable by both the employer (10.85%) and the employee (4%).

The employer is responsible for collecting all PRSI contributions, including the employee contribution and paying them to The Revenue Commissioners, together with Pay-As-You-Earn (PAYE) tax deducted from payments made to the employees.

Additional charges for the employee

Universal Social Charge (USC) applies to individuals whose income exceeds €13,000 per annum. The rates of USC are tapered from 1% to 8 %.

The USC is a separate charge to Income Tax and no reliefs are allowable against it.

Employment of foreign staff

A foreign employer who employs personnel to carry out duties in Ireland is responsible for deducting Income Tax from the earnings of each employee and paying this over to the Revenue Commissioners.

There is an exemption from this requirement where:

- The employee is resident in a country with which Ireland has a double taxation agreement and is not resident in Ireland for tax purposes;
- There is a genuine foreign employment;
- The employee is not paid by, or on behalf of, an employer resident in Ireland;

- The cost of the employment is not borne by a permanent establishment in Ireland of the foreign employer; and
- The duties of that employment are performed in Ireland for not more than 60 working days in a tax year, and for a continuous period of not more than 60 working days.

Medical

Members of approved private health insurance schemes are entitled to relief in respect of premiums paid under a contract which provides specifically for the payment of actual medical expenses resulting from the sickness of the person, his/her wife/husband/civil partner, child or other dependants.

Relief is granted at the standard rate of tax (20%) and is granted at source and need not be claimed by the taxpayer. The premium paid to the insurer will be reduced by an amount equal to the standard rate of income tax, and the insurer will be repaid the equivalent of the standard rate reduction by the Revenue Commissioners.

Payroll Taxes

Under the PAYE system the employer is responsible for deducting Income Tax, PRSI and USC from the earnings of each employee and paying this over to the Revenue Commissioners.

Withholding Taxes

Interest

Deposit Interest Retention Tax (DIRT) is deducted by Irish financial institutions form deposit interest paid or credited to the accounts of Irish residents at the rate of 37%.

This rate is due to decrease by 2% each year until 2020 when the rate of DIRT will be 33%.

Royalties

Royalties and other sums in respect of the use of a patent are generally paid under the deduction of standard rate tax. The gross royalty is allowed as a deduction in arriving at the statutory income of the taxpayer, but the taxpayer is accountable for the tax deducted.

Dividends

Tax at the 20% standard rate applies to distributions made by an Irish resident company. A recipient who is liable to tax on such a distribution, such as an Irish resident individual, can claim an off-set for the tax withheld against his tax liability. Exemption is granted to residents of tax treaty countries, residents of EU Member States, companies not resident in the State which are ultimately controlled by residents of tax treaty countries.

An Irish resident company which receives a dividend from a subsidiary (in which it has at least a 5% holding) which is resident in a territory with which Ireland does not have a double tax treaty will be entitled to reduce Irish tax on the dividend by any withholding tax paid in that territory on the dividend and by an appropriate part of the foreign tax on the income underlying the dividend.

Miscellaneous

Distance selling of goods

Distance sales occur when goods are dispatched or transported to a private consumer (not VAT registered) in Ireland, and the supplier is responsible for the delivery of the goods.

It includes mail order sales, phone or tele-sales and physical goods ordered over the internet.

It does not include sales of new means of transport or excisable goods. Digitised goods are considered to be services (goods that are downloaded via the internet).

A trader is required to register and account for VAT in Ireland when distance sales to Ireland exceed €35,000 in the calendar year. However, it is possible opt to register and account for Value-Added Tax (VAT) on distance sales even if the threshold is not exceeded.

VAT Registration

In Ireland, Value-Added Tax (VAT) registration is obligatory when the VAT thresholds are exceeded or are likely to be exceeded in any 12 month period (except for distance sales). If a trader's turnover is below the thresholds, it is possible to elect to register for VAT.

The principal thresholds are as follows:

- €37,500 in the case of persons supplying services only.
- €35,000 for persons making mail-order or distance sales into the State.
- €41,000 for persons making acquisitions from other European Union Member States.
- €75,000 for persons supplying goods.

A non-established person supplying taxable goods or services in the State is obliged to register and account for VAT irrespective of the level of turnover.

Invoicing retention

A Value-Added Tax (VAT) invoice is a document issued by an accountable person setting out the details of a taxable supply and all related information as prescribed by VAT law.

A VAT invoice must issue within fifteen days of the end of the month in which goods or services are supplied.

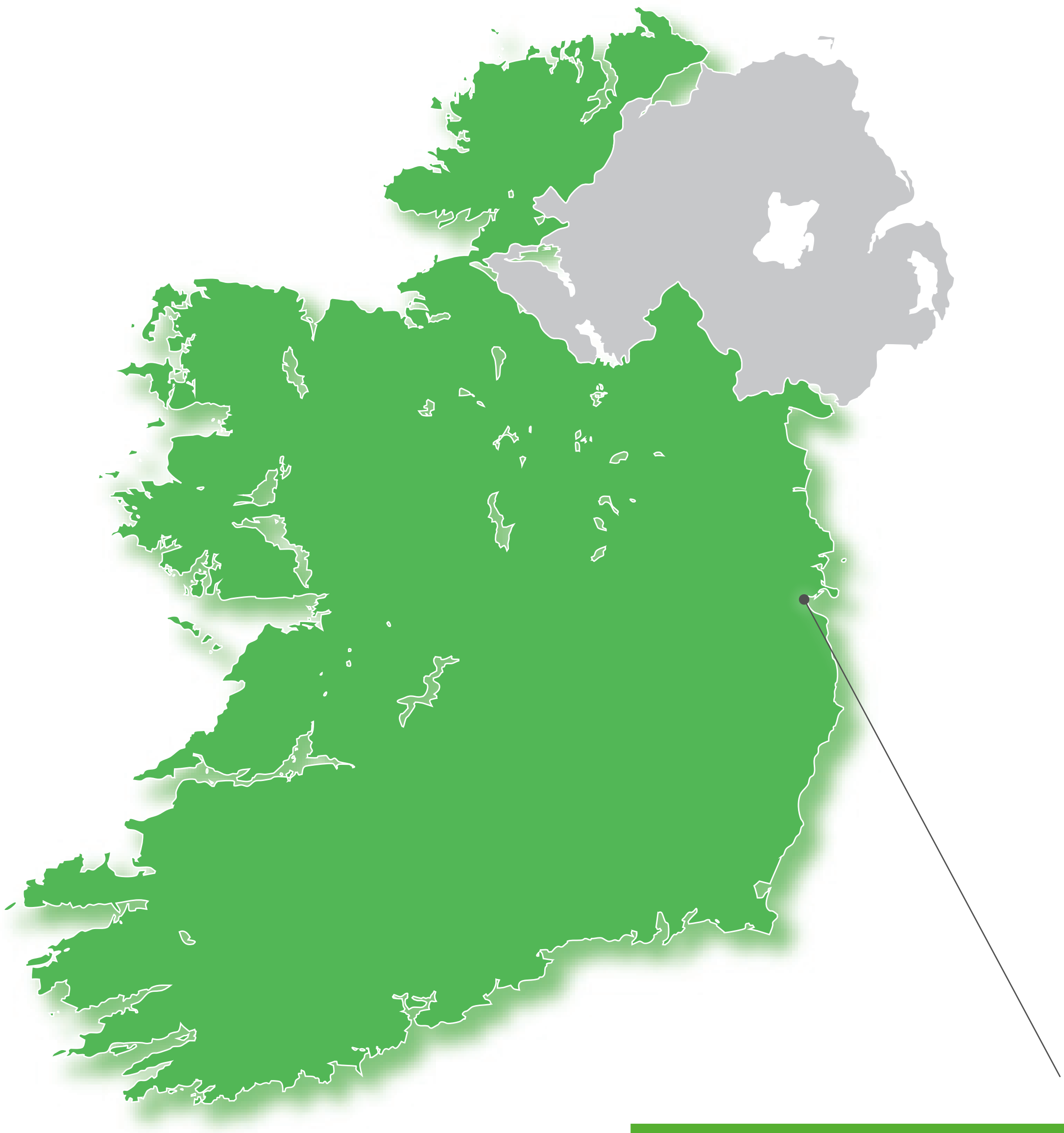
Appendix I, Double Taxation Treaties

Albania	Ghana	Oman	Uzbekistan
Armenia	Greece	Pakistan	Vietnam
Australia	Hong Kong	Panama	Zambia
Austria	Hungary	Poland	
Azerbaijan	Iceland	Portugal	
Bahrain	India	Qatar	
Belarus	Israel	Romania	
Belgium	Italy	Russia	
Bosnia & Herzegovina	Japan	Saudi Arabia	
Botswania	Kazakhstan	Serbia	
Bulgaria	Korea (Republic of)	Singapore	
Canada	Kuwait	Slovak Republic	
China	Latvia	Slovenia	
Chile	Lithuania	South Africa	
Croatia	Luxembourg	Spain	
Cyprus	Macedonia	Sweden	
Czech Republic	Malaysia	Switzerland	
Denmark	Malta	Thailand	
Egypt	Mexico	Turkey	
Estonia	Moldova	Turkmenistan	
Ethiopia	Montenegro	Ukraine	
Finland	Morocco	United Arab Emirates	
France	Netherlands	United Kingdom	
Georgia	New Zealand	United States of America	
Germany	Norway	Uruguay	

This document is provided by Crowleys DFK as a general overview of matters to be considered when setting up an overseas business in Ireland. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in Ireland, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in Ireland please see overleaf.



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