SUPPORT FOR BREXIT BUSINESSES IN IRELAND

GUIDE TO SETTING UP A BUSINESS IN IRELAND

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Introduction

Britain is due to leave the EU by the end of 2020. Now may be a good time to consider setting up business operations in Ireland.

The decision as to whether the business in Ireland should be carried on through a branch, an Irish subsidiary or an Irish standalone company may be driven more by commercial considerations rather than taxation. OSK can advise on the tax issues arising on businesses relocating to Ireland.

Some highlights from the Irish taxation system are outlined below:

- Our low corporation tax rate of 12.5% is the lowest in Europe although there are corporation tax surcharges on certain companies with undistributed profits, passive income and foreign income.
- Certain Start-up companies are exempt from corporation tax for three years – but subject to meeting stringent conditions.
- A 25% tax credit is available on qualifying Research and Development expenditure.
- Dividends paid so shareholders not resident in Ireland, but resident in the EU or a country with which Ireland has a double taxation agreement, are exempt from withholding tax.
- VAT registration threshold €75,000 for supply of goods
- VAT registration threshold of €37,500 on supply of services
- A non-resident shareholder disposing of shares in an Irish incorporated company will generally not have a liability to Irish capital gains tax
- A shareholder resident in Ireland would be liable to capital gains tax on the sale of shares subject to qualifying for entrepreneurs' relief

Commercial, non -tax, Highlights

- Keeping your EU trade in a separate Irish Based entity would help manage business and commercial risks and have certain advantages including:
    - The Euro currency means there are no exchange fees when dealing across the majority of EU countries
    - Ireland is an ideal country for foreign direct investment and an attractive market for a business aiming to establish an EU presence.
    - Ireland is only native English-speaking country in the EU and the similarities in how we do business allows us to provide a comparable business environment;

Company formation options in Ireland

Branch

All companies, including private companies, operating a branch in the State are required to register the branch with the Registrar of Companies at the Companies Office. When registering, you must send the following documents:

- A certified copy of the Charter, Statutes or Memorandum and Articles of the Company, or Company Constitution
- A copy of the Certificate of Incorporation of the company
- Copies of the latest accounting documents

On an annual basis, you must file a return together with the following accounting documents:

- The accounts of the company for the period including, if it has one or more subsidiaries, any consolidated accounts of the group;
- The annual report of the directors for the period
- The auditor's report for the period.

On termination of the branch you must notify the Companies Office within 14 days of the termination, that the branch is terminated.

Limited Company

All private limited companies must have at least one shareholder with a minimum issued capital of one share. The main document required for the formation of a company constitution.

All companies incorporated in the State must have 1 director and one company secretary. The director does not have to be resident in the State, but at least one director must be resident in a member state of the European Economic Area (EEA).

On an annual basis, the company must file a return together with abridged accounts. The company's annual return must be delivered to the Companies Office not later than 28 days after the company's Annual Return Date.

Corporate Taxes payable in Ireland

Branch

A non-resident company trading through an Irish branch is subject to corporation tax on the profits connected with that branch and is liable to capital gains tax on any capital gains arising on the disposal of assets used for the purposes of the branch.

Limited Company

An Irish resident company is subject to corporation tax on its worldwide income and is subject to capital gains tax on its worldwide chargeable gains.

A company is resident in Ireland if it is managed and controlled here. A company incorporated in Ireland is resident in Ireland for tax purposes unless it falls within one of the following exemptions:

- The company, or a related company, carries on a trade in Ireland and the company is controlled by residents of other EU states or of states with which Ireland has a tax treaty.
- The company is regarded for the purposes of an Irish double taxation treaty as a resident of another country and not as a resident of Ireland, or
- The company, or a related company, carries on a trade in Ireland and the company is quoted on a recognized stock exchange in the EU or in a state with which Ireland has a tax treaty or is a subsidiary of such a quoted company.

If the company is non-resident and does not trade through a branch in Ireland, it will be liable to income tax on any Irish-source income and to capital gains tax on gains arising on the disposal of certain Irish assets subject to any treaty relief that may be available.

Unused relief arising in the first three years of trading, due to losses or insufficient profits, may be carried forward for use in subsequent years.

Rates of Corporation Tax and Capital Gains Tax

Corporation tax is charged at the rate of 12.5% on trading profits of an Irish resident company and at 12.5% on trading profits of a branch operating in Ireland.

Corporation tax is charged at 25% on foreign business profits and non-trading income.

There is a close company surcharge on undistributed passive income of a close company – this surcharge does not apply to trading profits. The surcharge is charged at 20% on any undistributed passive income.

Capital Gains Tax is charged at the rate of 33% on chargeable gains arising in the 2019 tax year

3-year relief for start up companies

A start-up company commencing a new trade may qualify for relief from corporation tax for the first three years. The relief is available where the total amount of corporation tax payable by the company for an accounting period falling within the 3-year start up period does not exceed €40,000. Marginal relief is granted on a tapering basis where the total amount of corporation tax liability for the accounting period is between €40,000 and €60,000. To ensure that the measure is focused on job-creation, the amount of tax relief is based on the companies' employers' social security contributions in respect of its employees, subject to a limit of €5,000 per employee and an aggregate limit of €40,000 in any one period.

Any unused relief arising in the first three years of trading, due to losses or insufficient profits, may be carried forward for use in subsequent years.

Research and Development Tax Credits

Subject to meeting certain conditions an Irish company carrying on qualifying research and development (R&D) activities in Ireland may qualify for a tax credit of up to 25% of qualifying expenditure.

Year of Assessment/Tax Year

The tax year in Ireland is the calendar year.

Pay and file requirements

Corporation tax operates on a self-assessment basis. A "small" company must pay preliminary tax one month prior to the end of its accounting period. The preliminary tax is calculated at 100% of the preceding period's liability. The company must file a tax return and pay any balance of tax before the 21st Day of the ninth month after its accounting year end. Failure to file by the due date will result in a surcharge penalty of up to 10% and may also result in restriction of tax relief for losses. Where returns and payments are made electronically, the return filing and payment deadlines are extended to the 23rd of the relevant month. Companies are now generally required to pay and file online.

A small company is a company whose Corporation Tax Liability in the preceding accounting period does not exceed €200,000.

New companies with a corporation tax liability of €200,000 or less for their first accounting period will not be required to pay preliminary tax in respect of that first accounting period and will instead be required to pay their final corporation tax liability for that accounting period at the same time they are required to submit their corporation tax return.

If a company fails to submit a return on time, a surcharge will be imposed.

For tax purposes an accounting period cannot exceed 12 months.

Payroll Taxes in Ireland

Foreign Employer

Working for a foreign employer and the duties of the employment are carried out in the State.

Income from a non-Irish sourced employment, attributable to the performance **in** the State of the duties of that employment, is chargeable to Irish income tax and is within the scope of the Pay As You Earn (PAYE) system of deductions at source.

In certain circumstances where an employee/director comes to Ireland on assignment from a country with which Ireland has a double taxation treaty, they can remain outside the charge to Irish tax provided certain conditions are met. Where this applies, the company can obtain an exemption from the obligation to operate withholding tax.

The conditions are:

a) The employee/director will be present in the State for a period or periods not exceeding 183 days in the aggregate in a year of assessment.
b) The employee/director will suffer withholding taxes at source in the 'home' country on the income attributable to the performance in the State of the duties of a foreign employment (evidence of withholding taxes must be provided to Revenue).

The application for exemption from the obligation to operate withholding tax from salary must be made within 21 days from when the employee has taken up duties in the State.

Irish Limited Company/Irish Branch

Employee Taxes

All employees working in Ireland will be subject to income tax, social security and universal social charge. The employer is required to deduct the payroll taxes at source from all salary payments and benefits-in-kind under the Pay As You Earn (PAYE) system.

It is the employer's responsibility to ensure that the PAYE system is operated correctly.

Split year residence

Split year residence can in certain circumstances exempt from taxation in Ireland employment income earned prior to arrival in Ireland and employment income earned following departure from Ireland.

Tax rates and credits for 2019

Income tax is charged at 20% on income up to €35,300 (for a single person) and 40% thereafter.

Universal social charge

0.5%	On Income up to €12,012
2%	On income from €12.012.01 - €19,874
4.75%	On income from €19,874.01 - €70,044
8%	Income above €70,044

There is a surcharge of 3% on individuals who have income from self-employment that exceeds €100,000 in a year.

Employee's Social security is charged at 4% on income without limit. Employer's social security is charged at the rate of 11.05% on income without limit (the employer's rate is 8.8% for employees earning up to €386 per week).

The single person's tax credit is €1,650 and the employee tax credit is €1,650.
Only individuals who are resident in Ireland for a tax year are entitled to individual personal tax credits and the employee tax credit.

Taxation of Married Couples

<u>One spouse resident</u>
Where only one spouse is resident in the State, that spouse is treated for tax purposes as if unmarried. However, where Revenue are satisfied that the non-resident spouse has no income, the couple may be taxed as a married couple (this will afford them higher personal tax credits and higher standard rate tax band).

<u>Both spouses resident</u>
Where both spouses are resident here for tax purposes, the couple may elect to be taxed as single individuals or they may be assessed jointly (where one spouse is assessable on the income of both spouses).

Social Security

All individuals working in Ireland and their employers are required to contribute to the Irish social security system, unless:

a) The individual is on a temporary assignment from another EEA country who can prove that they will continue contributing to the social insurance system in their home country. Usually a portable document form A1 should be obtained from the Department of Social Security in the home country.
b) An individual is on a temporary assignment from a country with which Ireland has a reciprocal agreement who can provide a certificate of coverage from their home country

Value Added Tax (VAT) payable in Ireland

All taxable businesses are required to register for VAT where their turnover from the supply of taxable goods or services exceeds or is likely to exceed a certain limited in any twelve-month period. A taxable VAT business is one that is established in Ireland. Before the Revenue will register your company for VAT, they must be satisfied that your business is established here. If your company is not established in Ireland, the Revenue will not register your company for VAT here. They will request proof of trading such as:

Copy of a lease/rental agreement
Evidence of trade such as copy of a contract/service agreement, a sales' invoice or a couple of purchase invoices relating to the carrying out of your trade.

For the 2019 tax year, the registration threshold is €75,000 where the turnover is at least 90% from the sale of goods and €37,500 where the turnover is from the supply of a service.

VAT will be charged at the standard rate of 23% on the goods and services that your company will be providing.

Input tax is recoverable where it relates to taxable supplies.

This is a brief guide to taxation in Ireland and it is recommended that you obtain professional taxation advice before setting up your business in Ireland. Please contact Imelda Prendergast at OSK on 003531 4394206 or prendergasti@ok.ie