

## **IRISH HOLDING COMPANIES**

Ireland is not often thought of as a premier holding company location. However, the steady exodus of leading UK companies in favour of Ireland, is a clear indication that that is changing. Ireland's favourable domestic tax laws, capital gains participation exemption, EU approved holding company regime, lack of CFC and thin capitalisation rules and favourable double taxation treaties, inter alia with China, has ensured that companies are attracted to Ireland as a holding company jurisdiction. This is also starting to happen as an alternative to Hong Kong as an increasingly popular gateway for equity investments into China.

### **Establishment of an Irish Holding Company**

An Irish holding company can either be established as a private limited liability company or a private unlimited liability company, for which there are no minimum equity requirements in terms of Irish corporate law. It is also possible to establish a holding company, tax resident in Ireland, but incorporated in another jurisdiction, such as Jersey or the BVI.

### **Capital gains exemption on investment**

Normal Irish CGT is at 25%. However, the Irish holding company regime provides for a participation exemption from capital gains arising from the disposal of shares in certain subsidiaries, in the following circumstances:

- The holding company must have held at least 5% of the ordinary shares in the subsidiary for a continuous period of 12 months within the previous 2 years;
- The subsidiary must be tax resident in an EU member state or a country with which Ireland has concluded, or signed but not yet ratified, a double tax treaty (such as China);
- The subsidiary's business must consist wholly or mainly (ie greater than 50% of net trading profit) of the carrying on of a trade or trades, or be part of a trading group.

Where a holding company disposes of assets relating to the shares, ie options or convertible debt, any gain arising will also be tax exempt.

### **Taxation of dividend income**

Dividends paid to an Irish holding company from its subsidiary company resident in the EU or a country with which Ireland has concluded a double tax treaty will be liable for tax in Ireland as follows:

- Dividends paid out of trading profits will be taxed at a rate of 12.5%. If only a part of the dividend is from trading profits, that portion will be taxed at 12.5%, with the balance taxed at 25%. Where 75% of the subsidiary's profits are trading profits (or derived from dividends received out of the trading profits of its subsidiaries) and the subsidiary's trading assets constitute more than 75% of the value of all its assets, all dividends will be subject to tax at the rate of 12.5%.
- Dividends received from a company of which the holding company's shareholding is 5% or less will also be taxed at 12.5%;
- Dividends received from other Irish resident companies are generally tax exempt.

The Irish tax may be reduced or removed by bilateral credit relief, under the various tax treaties, or unilateral credit relief, which requires a minimum holding of 5%, which are available for both foreign withholding taxes and foreign taxes on the underlying profits out of which the dividend has been paid. Ireland also has a favourable "tax credit pooling" system, whereby excess foreign tax credits

on one source of foreign dividend can be offset against the tax arising on another source of foreign dividend.

It follows that with appropriate planning and the use of credits and pooling, that it is unlikely that any further Irish tax will be payable on dividend income.

### **Repatriation of dividends from Ireland**

An Irish holding company controlled directly or indirectly by persons resident in an EU member state or a country with which Ireland has entered into a double tax treaty or signed but not ratified one, will generally not have any obligation to withhold tax on dividend payments. Also where dividends are paid to a company in a qualifying country provided more than 50% of the company is ultimately controlled by people resident in a treaty country. Withholding tax is also not payable on dividends paid to a listed company.

### **Deductions of cost**

Generally, the holding company's management expenses can be deducted from its taxable profit. In addition, the holding company is generally entitled to a deduction for interest on loans relating to the acquisition of shareholdings.

### **CFC, thin capitalisation and transfer pricing**

Ireland does not have any Controlled Foreign Corporation legislation or thin capitalisation rules and has only limited transfer pricing rules, assisting in making it attractive as a holding company location.

### **VAT**

A holding company should not be considered taxable for VAT if it limits its activity to the holding of shares and therefore does not have to register for VAT.

### **Capital Gains Tax**

Irish capital gains tax for non-residents will only arise on the disposition of shares which derive the greater part of their value from Irish minerals or mining rights or Irish immovable property. The current rate of CGT is 25%.

### **Stamp Duty**

Stamp duty at a rate of 1% may arise on the transfer of shares in Irish companies, but this can be avoided by various reliefs, exemptions and tax planning mechanisms, for example by listing a Jersey or BVI company.

### **Gateway to China: The Ireland-China taxation treaty**

The Ireland-China tax treaty has some favourable provisions, including the prohibition of China imposing CGT on the transfer of underlying Chinese shares regardless of the percentage held. Many competing jurisdictions such as Hong Kong have a threshold of 25% for this provision to be of application. The key benefits from the treaty are:

- An exemption from Chinese capital gains withholding tax on disposals of Chinese shares; and
- An exemption from Irish tax on gains on disposals of Chinese shares; and
- The Chinese withholding tax on dividends is reduced to a maximum rate of 5% (where the Irish company holds 25% of the voting power), otherwise 10%.

However, the regulations issued by China in 2009, requiring a degree of substance in the Irish company, need to be taken into account in determining whether an Irish Holding Company could enjoy the benefits from the treaty.

Ireland's holding company regime and its clear tax advantages, its numerous double tax treaties, including the one with China, as well as various non-tax factors, ensure that Ireland is a favourable holding company jurisdiction and a viable alternative jurisdiction for investment into China.

**Key Contact:**

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