COMPANY FORMATION IN IRELAND

MAIN FORMS OF COMPANY/BUSINESS IN IRELAND

The different types of company available in Ireland are set out in the 2014 Companies Act, which came into force in June 2015. The Act streamlined 50 years of Irish company law and created a number of new company types.

Companies in Ireland can be public or private (public companies may list their shares on a public exchange), limited or unlimited (for limited companies, there is no recourse to the shareholders beyond their invested capital). There are also guarantee companies, typically used by non-profit organisations.

By far the most common types are private limited companies, which can be further split into DAC companies and LTD companies.

The DAC ('Designated Activity Companies') type is best suited to companies incorporated for a specific purpose (e.g. Special Purpose Vehicles). Their activities are limited to those listed in their constituting documents and their compliance requirements (numbers of directors / the holding of Annual General Meetings) are somewhat more onerous.

LTD companies are much less restrictive, and are the default company type for privately-owned small and medium enterprises.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

The different types of company are not taxed differently. Corporation Tax rates in Ireland are 12.5% on earned income and 25% on unearned income (e.g. deposit interest). Companies' capital gains are taxed at 30%. The marginal rate of income tax for individuals, however, is over 50%.

Operating through a company therefore allows much more flexibility in tax planning, as trading profits can be reinvested with significantly less tax leakage. The main disadvantage from a taxation aspect of trading through a company is that the profits are eventually taxed twice, when originally earned by the company and when distributed to the shareholders.

For overseas businesses establishing companies in Ireland, the tax residency of those companies is important. There is no statutory definition of what constitutes an Irish tax-resident company, rather Revenue (the tax authority in Ireland) guidance and case law applies. The key factor is whether the company is managed and controlled from Ireland. In determining this, a company should consider the following:

- does it have a physical presence in Ireland (premises, staff);
- are a majority of the directors resident in Ireland;
- does the Board meet frequently in Ireland;
- are all key decisions taken in Ireland; and
- are all major contracts and other similar company documents signed in Ireland.

There are a number of tax incentives and provisions in place that make Ireland an attractive location to locate a holding company:

- extensive tax treaty network;
- exemption on gains arising from the disposal of shares in trading companies based in other tax treaty countries (criteria apply);

- dividends from trading companies based in other tax treaty countries taxed at 12.5%
- no withholding tax on dividends and onshore pooling available
- no transfer pricing (other than for very large companies) or thin capitalisation rules
- incentives to create and acquire Intellectual Property

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

LTD companies need to have at least one shareholder (whose liability is limited, as noted above) and at least one director (DAC companies need at least two). That director (or at least one director in the case of a DAC) must be resident in the EEA (the EU plus Norway and Liechtenstein). It is possible to avoid this requirement by putting in place an insurance bond, though this would weaken a company's case for Irish tax residency.

Companies also need a Company Secretary. The Company Secretary can be an individual or a body corporate and can be resident anywhere. If the company has only one director, that individual cannot also act as Company Secretary.

All companies need a registered office.

It is possible to engage nominees to act as local directors and company secretaries and to provide a registered office.

It typically takes c.4 weeks from start to finish to incorporate a company, though it is possible to fast-track this process.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

There are no specific cultural concerns to be considered when establishing a company in Ireland.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

The ongoing compliance requirements for a company are as follows:

- submit an Annual Return to the Companies Registration Office (CRO) which lists the company's officers and shareholders
- prepare a set of statutory financial statements and submit to the CRO alongside the Annual Return. The level of disclosure required in those financial statements is dependent on the size of the company (or group). Small companies/groups meet two of the following conditions: balance sheet <€4.4m, turnover <€8.8m and <50 employees. They file only a summary balance sheet and some notes. Medium companies meet two of the following conditions: balance sheet <€10m, turnover <€20m and <250 employees; and file a summary income statement and full balance sheet. Large companies have no disclosure exemptions. Statutory audits of the financial statements are required for medium and large companies and groups and for any companies who are not up to date with their CRO filing requirements
- update the CRO in a timely manner about any changes to the company's address, officers, company type, etc.