

## **IRISH TAXATION OF BUSINESS PROFITS**

### **Trading from Ireland**

Provided an individual trader or the partners of a partnership are resident in Ireland and not resident or ordinarily resident in the UK, then no UK Income Tax can arise on the business profits, unless there is a branch or permanent establishment in the UK through which the business is carried out.

A company which is controlled from Ireland and / or formed as a company under Irish law, will be subject to Irish Corporation Tax legislation. There are certain exceptions for Irish registered non- resident companies. See our separate note.

Provided that the company does not establish a branch, permanent establishment, agency or subsidiary in the UK, it may trade with the UK without incurring any tax liability in the UK on its business profits.

It is therefore possible to conduct business with the UK without any UK tax on the profits earned provided that no branch, permanent establishment or subsidiary is formed in the UK. See our guide to UK taxation of UK branches and subsidiaries.

### **Double Taxation**

Residence is a key trigger for tax liability. Generally liability to taxation arises in a country because an individual is resident or ordinarily resident there or because the source of the income is in the country concerned. Resident or ordinarily resident individuals and resident companies are subject to tax on all of their income worldwide in the country of residence. Generally countries tax income arising in their country.

Where there an individual or company is resident in one country and income arises in another country, there will generally be tax liability in both countries. Generally a Double Taxation agreement between the countries, sets out which country which has the primary right to tax and which country gives credit for the tax paid in the other country. Generally the country where the income arises has the primary right to tax and the other country gives credit for tax paid. Broadly, the tax paid will be the higher of the tax payable in the two countries on the same income. There is a Double Tax treaty between the UK and Ireland.

### **Residence and Liability to Irish Tax**

The tax residence of an individual is determined by the number of days which he spends in the State. Generally, if a person spends more than 183 days in the state in a tax year or 280 days in two successive tax years he is deemed to be resident. In addition a person who is resident for three successive years would be deemed ordinarily resident until he ceases to be resident for three successive years. An individual who is ordinarily resident will still be liable for Irish tax on most income even though he is no longer ordinarily resident.

There are two alternative bases which determine where a company is resident. In both the UK and Ireland, a company is deemed resident where its central management and control is situated. This is where the guiding decisions of the company are taken.

The factors involved in determining where a company is controlled include such matters as where directors meetings are held, where the majority of directors reside, where shareholders meetings are held, where major contracts and business are undertaken, where key policy is undertaken and where the head office is. This test is the same under both UK and Irish tax law.

Generally a company incorporated under Irish law or which is controlled from Ireland will be resident in Ireland for tax purposes. A subsidiary company can be resident in a country other than that of the "parent" company if it is not controlled in the parent company's country.

A company registered with the Irish Companies Office is deemed Irish resident unless one of two exemptions apply. It can be deemed not resident in Ireland if it carries on a trade in Ireland and is controlled by persons resident in an EU member state or in a country with which Ireland has tax treaties (i.e. non-tax haven) or if the company is related to a company which is quoted on a stock exchange or if the company is not deemed resident under a taxation treaty between Ireland and a third country.

The UK company residence rule is slightly different in that all UK formed companies are deemed resident in the UK.

The tax laws of Ireland and UK may deem a company to be resident in each country. In this case the Double Taxation Agreements determine the position.

### **Taxation of Business Profits in Ireland**

An Irish resident business will be subject to Income Tax on business profits where it is a sole trader or partnership. It will be subject to Corporation Tax on business profits where it is a company.

Irish businesses conducted through companies are in a particularly advantageous position because of the long term commitment of the State to a 12½% Corporation Tax profits rate on Irish trading income. This low rate was approved by the EU some 10 years ago under the so called State Aid Rules which prevent government bodies from unfairly assisting businesses within their country to the detriment of other EU members.

Individuals or partners conducting a trade or business are subject to Income Tax on the profits of the trade or business at their personal rate of tax. Once the individual or partner has earnings in excess of the standard rate band all income received by an individual (including business profits) is taxed at 41% together with income, health and social insurance contributions coming to a further 8%.

Companies are taxed at 12.5 % on business profits under Irish tax law. Where a business is conducted wholly outside Ireland the rate is 25%. The rate 12.5% rate has recently been extended to non resident trading profits.

Although companies are subject to taxation at a rate of 12½% on their profits, this is not the end of the matter. If monies are paid by a company to its shareholders or controllers a further personal Income Tax liability will arise for them. If the individuals concerned are employees (they may also be directors or shareholders) they will be subject to Income Tax at the above rates. Levies and Social Insurance contributions (including Employer contributions by the company) will also arise. The company must account for the individual's tax liability through the PAYE deduction system.

If the payments are paid to shareholders as dividends and the recipients are resident or ordinarily resident in Ireland they will be subject to personal Income Tax and levies. In addition, the company must retain tax at the standard rate (20%) and pay to the Revenue when making the payment to such individuals. The money paid to Revenue will be allowed as a credit in computing the recipients Income Tax.

In addition, most benefits received by the controllers of companies or persons connected with them are treated in much the same way as dividends. Benefits include soft loan, overly generous interest and a range of other disguised benefits in whatever format.

There are special tax surcharges that apply where investment and rental income is not paid out as dividends by companies. In broad terms, the Irish 12½% Corporation Tax rate, which is exceptionally low in Western European context, provides opportunities for business owners to reinvest profits within the company, fund pension schemes and generally to undertake a number of tax planning strategies which are advantageous.

### **Double Taxation Treaty**

A company could be deemed to be resident in Ireland under Irish Law and in the UK under UK Tax Law, if for example, it is incorporated in England and controlled from Ireland. Similarly an Irish company with a UK branch will be taxable in Ireland (the

branch profits being part of the company profits) and the branch profits will be taxable in the UK. In these circumstances (and other double taxation scenarios) the Irish-UK Double Taxation Treaty contains rules that determine which country has the primary taxing right and which country must give a credit for the tax charged in the other country.

If a UK business is conducted through a UK subsidiary, then there will be no Irish taxation implications unless and until profits are paid to the Irish company which holds the shares i.e. the Irish personal shareholders or more likely the Irish holding company which holds these shares in the UK subsidiary.

If, (in the less likely event) the subsidiary is owned directly by Irish individuals, the receipt of dividends from the UK company would create an Irish Income Tax liability (assuming they are Irish residents) at a top rate of 41% together with levies.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.