

# MOORE STEPHENS NATHANS

CHARTERED ACCOUNTANTS AND REGISTERED AUDITORS

---

Irish Holding Companies

The Smart Choice For Business



## Irish Holding Companies

This booklet has been prepared to give some general information to those contemplating setting up a holding company in Ireland. This booklet is not intended to be a comprehensive analysis of all relevant aspects of setting up a holding company.

You should consult with us, therefore, before taking any action. Moore Stephens Nathans cannot be held liable for any action or business decision taken on the basis of information in this booklet.

Moore Stephens Nathans

June 2010

Irish Holding Companies

## Contents

	Page
<b>Introduction</b>	<b>1</b>
<b>Dividend Income</b>	<b>2</b>
<b>Capital Gains Tax Exemption</b>	<b>3</b>
<b>Dividend Withholding Tax</b>	<b>4</b>
<b>Transfer Pricing</b>	<b>5</b>
<b>Miscellaneous Features</b>	<b>6-8</b>
<b>Tax Rates for Irish Companies</b>	<b>9</b>
<b>Incorporating an Irish Company</b>	<b>10</b>
<b>Withholding Tax Rates</b>	<b>11-12</b>
<b>Key Personnel</b>	<b>13</b>

## Introduction

Following the introduction of a number of key taxation reliefs and exemptions in recent years Ireland has become a very attractive place for multinational companies to locate a holding company. The main features that give Ireland a competitive advantage over other jurisdictions are as follows:

- No withholding tax on the payment of dividends by the holding company to EU countries or countries with which Ireland has concluded tax treaties
- No capital gains tax on the disposal of shareholdings in qualifying countries.
- Tax deduction for interest on borrowings to acquire shareholdings in subsidiaries
- Favourable treatment on the receipt of dividend income
- Extensive tax treaty network and access to EU Parent Subsidiary Directive. There are currently 56 tax treaties in place , with ongoing negotiations to expand this network
- Low tax rates for both trading operations and investment activities

These incentives together with non tax incentives such as the economic and telecommunications infrastructure, the English speaking population and membership of the EU makes Ireland one of the most attractive destinations in Europe for multinational companies.

One of the major advantages that Ireland has over other jurisdictions is the ability to combine the holding company with trading activities such as Shared Service Centre activities, Group Procurement, Treasury and Research & Development.

This booklet examines the various aspects of holding companies in Ireland and focuses in particular on the taxation aspects.

## Dividend Income

Where a dividend is received by an Irish resident company from another Irish resident company, it is classified as “Franked Investment Income” and is exempt from Irish corporation tax. Dividends received by an Irish company from companies outside of Ireland can be subject to corporation tax at 12.5% or 25%. Foreign dividends can be taxable at the 12.5% rate where:

- The foreign dividend is sourced from the trading profits of a company resident in the EU or a country with which Ireland has a double taxation agreement or
- The foreign dividend is received from a company not resident in the EU or a country with which Ireland has a double taxation agreement. The company paying the dividend is required to have the principal class of its shares substantially and regularly traded on a recognised stock exchange.

Should a dividend be paid partly out of trading profits and partly out of non trading profits, the dividend will be apportioned and the part attributable to trading profits will be subject to the 12.5% rate. In many cases a credit will be available for withholding tax and underlying tax imposed on the foreign subsidiary, which can have the effect of reducing the effective Irish tax rate to nil.

- Ireland operates a system of unilateral credit relief which requires the holding company to have a minimum 5% ownership in the company paying the dividend. The paying company can be situated in both treaty and non treaty countries. Credit is available for local taxes paid in addition to State taxes on income. The legislation also applies to foreign tax paid by lower tier subsidiaries. Any foreign tax not qualifying for credit may be claimed as a credit against corporation tax arising on any other foreign dividends and unused credits can be carried forward to future periods.
- Ireland has implemented the EU Parent Subsidiary Directive, whereby underlying tax relief will be available to an Irish resident company or an Irish branch of an EU resident company, which receives a dividend from a company resident in an EU State. A minimum 5% holding in the subsidiary is required. Double taxation relief is also available through Ireland’s extensive tax treaty network.
- A system of “onshore pooling” allows for a situation where the foreign tax on dividends exceeds the Irish tax. The excess is available for offset against Irish tax on other foreign dividends received in the accounting period concerned and any unused balance can be carried forward and offset in subsequent accounting periods. From 1 January 2008 pooling arrangements apply separately to dividends that are taxable at the 12.5% rate and to dividends that are taxable at the 25% rate. Any surplus of foreign tax arising on dividends taxable at the 12.5% rate will not be available for offset against dividends taxable at the 25% rate. However, there will not be a similar restriction in the case of dividends taxable at the 25% rate.

For example, say an Irish holding company received as dividend of €100,000 from the non-trading profits of a subsidiary in Germany (paying tax at 40% i.e. €40,000) and a dividend of €100,000 from the non-trading profits of a subsidiary in Hungary (paying tax at 16% i.e. €16,000). Each dividend will be taxable in Ireland at 25% subject to a credit for the foreign tax suffered. The credit for German tax will reduce the Irish tax on the dividend received from that company to nil (€25,000 - €40,000 i.e. a surplus of €15,000). The credit for Hungarian tax will only reduce the liability on that dividend to €9,000 (€25,000 - €16,000). However, €9,000 of the surplus German tax of €15,000 will be available for offset against the Irish tax on the Hungarian dividend and the excess of €6,000 can be carried forward as a credit to future accounting periods.

Finance Act 2010 provides that Irish companies in receipt of foreign dividends may be exempt from Irish corporation tax. This treatment will only apply where the Irish company holds less than 5% of the share capital and voting rights in the foreign entity. In addition, this treatment will only apply where the Irish company treats such income as trading income for tax purposes. This treatment will apply to dividends received on or after 1 January 2010.

## Capital Gains Tax Exemption

The disposal by the Irish holding company of shares in a subsidiary (Irish or foreign) will be exempt from Capital Gains Tax ("CGT") when the following criteria is satisfied:

- The holding company must own a minimum of 5% of the shares in the subsidiary. This shareholding must include the right to 5% of the profits of the company and the right to 5% of the assets on a winding up. The minimum holding requirement can also be satisfied where the holding company is a member of a group and the shareholdings of members of the group are taken into account.
- The minimum 5% shareholding requirement must have been held for a continuous period of not less than 12 months in the three year period prior to the disposal.
- The activity of a subsidiary company must consist wholly or mainly of the carrying on of a trade at the time of disposal. This requirement can also be satisfied where the business of the holding company and companies in which the holding company has a direct or indirect ownership interest of at least 5% consist wholly or mainly of the carrying on of one or more trades.
- The subsidiary company must be resident in the EU or a treaty country at the time of the disposal. Subsidiaries located in Ireland will also qualify, but the company cannot derive the greater part of its value from Irish land, buildings or mineral rights.

The exemption also applies to the disposal of assets related to shares which include options and securities convertible into cash. It is not necessary for the holding company to dispose of its entire shareholding in order for the gain arising on the disposal to be exempt; the gain arising will be exempt once the prescribed holding requirement is met.

Capital losses arising under the provisions of the CGT exemption may not be offset against other capital gains.

The following gains do not qualify for the exemption:

- Gains arising on a deemed disposal when a company changes residence status.
- Gains arising on disposals of shares that are part of a Life Assurance Company's life business fund.

## Dividend Withholding Tax

In general, dividends paid and other distributions made by Irish resident companies are liable to a dividend withholding tax ("DWT") at the standard rate of tax (currently 20%). However, the law provides an exemption from DWT in certain circumstances. Dividends can be paid gross (without deduction of DWT) in the following circumstances:

### Exemptions

- Persons, other than companies, who are neither resident or ordinarily resident in Ireland and who are resident for tax purposes in another EU Member State or in a country with which Ireland has a Double Taxation Agreement ("treaty country"). These persons can include superannuation funds and non-resident charities.
- Companies which are resident in an EU country or a treaty country, but which are not under the control, whether directly or indirectly, of a person or persons who are resident in Ireland.
- Companies which are not resident in Ireland and which are ultimately controlled by persons who are resident for tax purposes in an EU country or a treaty country.
- Companies the principal class of shares or the shares of its 75% parent which are substantially and regularly traded on a recognised stock exchange in treaty countries or EU Member States.
- Non-resident companies which are wholly owned by two or more companies each of whose principal class of shares is substantially and regularly traded on a recognised stock exchange in an EU country or treaty country.

Finance Act 2010 removes the requirement for non resident companies receiving dividends from Irish resident companies to provide a tax residence and / or auditors certificate, along with a signed non resident declaration form, in order to obtain exemption from dividend withholding tax. Instead a self certification system will apply.

Under this self certification system, the qualifying non resident company will provide a declaration to the dividend paying company to claim exemption from dividend withholding tax. The declaration will include:

- An undertaking that the company is beneficially entitled to the distribution in respect of which the declaration is being made,
- Details of the tax residency of the company, and
- An undertaking to provide any further supporting documentation relating to the residency or control of the company to Irish Revenue upon request.

This declaration will be valid for a five year period.

These new changes only apply to qualifying non resident companies. There is no change to the arrangements for claiming exemption from dividend withholding tax for non resident individuals. Alternatively, relief may be available by way of repayment in accordance with the provisions of the tax treaties which provide for reduced rate or exemption on dividends.

## Transfer Pricing

Finance Act 2010 announced transfer pricing legislation which adopts the OECD arms length principles and aligns Ireland with international standards. This new legislation upholds Ireland's international reputation as an onshore, well regulated and transparent low tax jurisdiction and has been widely welcomed by Irish businesses.

It is not considered that this announcement will cause undue concern for multinationals doing business in Ireland. This is on the basis that there should be no incremental administration burden on companies in terms of the requirements to have transfer pricing documentation in place. There should be no requirement to prepare additional transfer pricing documentation from a purely Irish perspective for, say, an Ireland / US transaction once the transaction is already covered from the US side. In addition, these new provisions will provide multinationals with a legislative justification for the level of profits generated in Ireland.

The new provisions will come into effect for accounting periods commencing on or after 1 January 2011. However, the regime will only apply in respect of arrangements entered into on or after 1 July 2010. Additionally, these new provisions will not apply to small and medium sized enterprises. In general, the determination of the size of an enterprise will be determined at group level.

The Act indicates that the transfer pricing regulations will only apply to related party transactions in which the taxpayer is subject to tax at the trading rate of 12.5%. Income which may be classified as "passive income" and taxable at the higher rate of 25% should fall outside the scope of this new legislation (e.g. interest, royalties, certain dividends)

## Miscellaneous Features

### Start Up Companies

Start up companies which commenced to trade in 2009 or 2010 will be exempt from corporation tax and capital gains tax in each of the first three years. This exemption will apply to the extent that the entity's tax liability for each of the three years does not exceed €40,000. In essence this exemption enables a company to generate trading profit of €320,000 per annum before incurring a tax liability.

Marginal relief will be available in circumstances where an entity's tax liability is between €40,000 and €60,000. Relief will not be available where the tax payable is €60,000 or more in a period. Any excess profits will be subject to the rate of 12.5%, which applies to trading activities in Irish companies.

This exemption will not be available to companies carrying on trades which are taxable at the higher rate of 25% (e.g. land dealing and mineral exploration trades). In addition, it will not apply where a company transfers an existing trade to a connected person.

### Controlled Foreign Company ("CFC") Regulations

Ireland does not have CFC regulations. It is possible for an Irish company to hold shares in companies that are resident in other jurisdictions and not require the profits to be repatriated to Ireland. Many other international holding company locations include CFC rules which can limit the range of countries into which they can invest.

### Thin Capitalisation Rules

The ability of a holding company to finance its operations by means of borrowings is restricted in many territories due to the imposition of thin capitalisation rules requiring that companies be financed in part by equity. This can limit a company's ability to expand its operations. Ireland does not have thin capitalisation rules. The absence of thin capitalisation rules allows international holding companies to be fully financed through debt. Accordingly, a company with a nominal share capital is in a position to fund its operations by unlimited borrowings.

### Interest Deductions

A deduction is available in respect of interest paid on borrowings used to fund investments in trading and property rental companies in Ireland and overseas jurisdictions. Excess interest paid in a period may be used to shelter the taxable profits of group companies.

Interest will be treated as a distribution and not deducted for tax purposes under Irish tax legislation where:

- It is paid outside the EU to non-resident parent companies, or
- To non-resident companies where there is 75% common control

However, the interest will be deductible in most situations where it is paid to a company resident in a tax treaty country.

## Research and Development

With effect from 1 January 2009, a tax credit of 25% is available in respect of all qualifying incremental R&D expenditure undertaken within the European Economic Area. This credit may be offset against the company's corporation tax liability in the period in which the expenditure is incurred and is in addition to the basic corporation tax deduction. As such, it is possible to obtain a total saving of 37.5%. Should a company have excess R&D credit in a financial period it may opt to

- (i) carry forward indefinitely and use in future periods,
- (ii) surrender to group companies or
- (iii) have the excess refunded.

An additional tax credit is granted on expenditure incurred on buildings or structures used in the research and development process.

## Intangible Assets & Credit Allowances

Companies carrying on a trade will be entitled to claim a tax write off for the capital cost of acquiring specified intangible assets. Such assets include patents, Trade Marks and goodwill. The tax benefit is provided by way of capital allowances and will be in line with accounting depreciation. Alternatively, a company may opt to take the tax write off over a period of 10 years.

## Tax Deduction for interest paid on monies borrowed to invest in subsidiary company

Where an Irish company borrows funds to invest in / lend to a subsidiary company it is possible that they may be entitled to a tax deduction in respect of the interest paid on such borrowings. In order for this treatment to apply it is necessary for the investing company to:

- Acquire 5% or more of the share capital of the investee company and
- The investee company must be either a trading company, or a holding company of a trading group, or a company whose income is taxable Irish rental income

Where the borrowing company is not in a position to fully utilise this deduction, it is possible for the excess to be surrendered to other Irish companies within the group.

## Assignment Relief

In an endeavour to encourage key international talent to relocate to Ireland, a relief programme was announced in 2009. The relief applies to foreign employees from EEA countries who relocate to Ireland for the first time. Prior to 1 January 2010, the relief only applied to employees coming to Ireland from countries outside the EEA. The minimum period for which an individual must remain working in Ireland has been reduced from three years to one year.

Relief is granted by way of a year end rebate of taxes as apposed to a reduced payroll withholding tax obligation. The final Irish tax exposure will be limited to the higher of:

- Total employment earnings and benefits received in / remitted to Ireland; or
- The first €100,000 plus 50% of earnings and benefits in excess of €100,000

## Irish Value Added Tax (“VAT”) and Holding Companies

In general, Irish companies which are engaged in the management of subsidiaries will be regarded as undertaking an economic activity. Accordingly, such entities should be treated as taxable persons for VAT purposes and entitled to recover VAT on costs attributable to the activity. Should the management company be engaged in taxable and exempt activities, it will be necessary to apportion the VAT incurred on common costs (e.g. audit fees).

## Capital Duty

No capital duty is payable in respect of the issue of new share capital.

## Stamp Duty

Stamp Duty at a rate of 1% is payable on share transfers.

An exemption from stamp duty exists on transfers of property between 90% associated companies (includes shares but excludes leases). An exemption also exists for certain company reconstructions and amalgamations.

Stamp Duty rates on commercial property are set at between 0% and 6% depending on the value of the property.

## Tax Rates for Irish Companies

All resident and non resident companies which carry on a trade in the State through a branch or agency (subject to specific exemptions) are liable to corporation tax. The following rates apply;

- Standard rate – trading income 12.5%
- Passive income – investment / rental income 25%

### 12.5% Rate

To qualify for the 12.5% rate a company must demonstrate that it has substance in Ireland and is carrying on an economic activity here. It is important that the company is not just a brass plate operation but can show a physical presence in Ireland (e.g. employees working in the State).

Where an Irish company carries on a trade partly in Ireland and partly abroad the trading profits will normally be taxed at the rate of 12.5% rate. Where an Irish company carries on a trade wholly outside of Ireland then the profits will be taxed at the 25% rate.

### 25% Rate

The 25% rate applies to investment income, rental income and income from the following excepted trades:

- Dealing in or development land but not any part of such trades which consist of construction activities
- Working minerals
- Petroleum activities whether exploration, extraction activities or acquisitions or exploitation of petroleum rights.

## Incorporating an Irish Company

Any person may incorporate a company by subscribing his / her name to the Memorandum of Association and complying with the requirements of the Companies Acts.

A company incorporated in the State must have at least one director resident in the EEA. In the absence of this prerequisite an insurance bond in the amount of €25,395 must be provided.

The bond can be avoided if the company holds a certificate from the Registrar of Companies stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State. The Registrar will only grant such a certificate on receipt of proof of such a link. A statement from the Revenue Commissioners that the Revenue Commissioners have reasonable grounds to believe that the company has such a link shall be deemed to be such proof. Alternatively, we can provide Irish resident professional directors to act for the company.

The following are the various types of companies which can be formed:

### **Private Company Limited by Shares**

The liability is limited to the amount subscribed for by its members. The maximum number of members in this type of company is fifty with a minimum of one member.

### **Private Company Limited by Guarantee having a Share Capital**

The liability is limited to the amount the members have undertaken to contribute to the assets of the company in the event of being wound up, in addition to the amount, if any, unpaid on the shares held by the members.

### **Unlimited Company – Private / Public**

The liability of the members is unlimited

### **Public Limited Company**

A public limited company is limited by shares. It must have at least seven members and a minimum nominal capital of €38,092.

### **Public Company Limited by Guarantee and not having a Share Capital**

The liability is limited to the amount its members have undertaken to contribute to the assets of the company, in the event of being wound up.

## Withholding Tax Rates

Withholding tax rates chart:

<i>Treat With:</i>	<i>Dividends Individual Companies (%)</i>	<i>Qualifying Companies (%)</i>	<i>Interest (%)</i>	<i>Royalties (%)</i>
Australia	0	0	10	10
Austria	0	0	0	0
Bahrain	0	0	0	0
Belarus	10	5	5	5
Belgium	0 (3)	0 (3)	0/15 (4)	0
Bosnia & Herzegovina	0	0	0	0
Bulgaria	10	5	5	10
Canada	15	5	0, 10 (5, 6)	0, 10 (7)
Chile	15	5	5, 15	5, 10
China (Peoples Rep.)	10	5	10	10
Croatia	10	5	0	10
Cyprus	0	0	0	0
Czech Republic	15	5	0	10
Denmark	0	0	0	0
Estonia	15	5	10	5, 10 (3)
Finland	0	0	0	0
France	0 (3)	0 (3)	0	0
Georgia	10	0.5	0	0
Germany	0 (3)	0 (3)	0	0
Greece	15	5	5	5
Hungary	15	5	0	0
Iceland	15	5	0	0, 10 (2)
India	10	10	10	10
Israel	0	0	5, 10 (6)	10
Italy	15	15	10	0
Japan	0 (3)	0 (3)	10	10
Korea (Rep.)	0	0	0	0
Latvia	15	5	10	5, 10 (3)
Lithuania	15	5	10	5, 10 (3)
Luxembourg	0	0	0	0
Macedonia	10	5,10	0	0
Malaysia	10	10	10	8
Malta	15	5,15	0	5
Mexico	10	5	5, 10 (11)	10
Moldova	10	5,10	5	5
Netherlands	15	0	0	0
New Zealand	0	0	10	10
Norway	15	5	0	0
Pakistan	0 (3)	0 (3)	0 (12)	0
Poland	15	5	0, 10 (6)	0, 10 (13)
Portugal	15	15	0, 15 (5)	10
Romania	3	3	3	0, 3 (14)
Russia	10	10	0	0
Serbia	10	5,10	10	5, 10
Slovak Republic	10	0	0	10
Slovenia	15	5	5	5
South Africa	0	0	0	0
Spain	0	0	0	5, 8, 10 (15)
Sweden	0	0	0	0
Switzerland	0	0	0	0
Turkey	15	5, 10, 15	10, 15	10
United Kingdom	15	5	0	0
United States	15	5	0	0
Vietnam	10	5, 10	10	5, 10, 15
Zambia	0	0	0	0

1. Under domestic law, there is generally no withholding tax on dividends paid to residents of treaty countries.
2. Under domestic law, withholding tax is imposed on royalties only if they relate to the use of a patent.
3. The domestic rate applies, there is no reduction under the treaty.
4. The lower rate applies to interest payments between banks on current accounts and nominal advances and to interest on bank deposits not represented by bearer bonds.
5. The lower rate applies if the payer is the government or a local authority.
6. The lower rate applies to interest in connection with the sale on credit of industrial, commercial or scientific equipment and merchandise or on any loan granted by a bank.
7. The lower rate applies to copyright royalties (excluding films), computer software, patents and know how.
8. The lower rate applies to royalties for industrial, commercial or scientific equipment.
9. The lower rate applies to royalties for computer software, patents and for know how.
10. The treaty does not apply to exempt Luxembourg holding companies.
11. The lower rate applies if the beneficial owner is a bank.
12. The domestic rate applies to interest paid, guaranteed or approved by the government of Ireland.
13. The lower rate applies to royalties for technical services.
14. The lower rate applies to copyright royalties.
15. The 5% rate applies to royalties for copyright of literary, dramatic, musical or artistic work; the 8% rate applies to copyright royalties on films etc and to royalties for industrial, commercial or scientific equipment.

## Key Personnel

### General Enquiries:



**Andy Quinn**, Partner

Andy Quinn is a partner in the firm's international group. He acts as lead partner on planning assignments for diverse businesses focusing on corporate tax planning, structuring and financing.

### Tax:



**Mark Barrett**, Partner

Mark has considerable strengths and experience with domestic corporate and private clients. It is Mark's international work that has really been recognised by both his clients and his peers in taxation consultancy.



**Cormac Kelleher**, Tax Manager

Cormac has extensive experience in advising on international transactions, private Irish business, succession planning and personal taxation. He has considerable experience in advising individuals on the management of their personal and corporate tax affairs.



**DUBLIN**

Ulysses House  
Foley Street  
Dublin 1, Ireland  
Tel: +353 (0) 1 888 1004  
Fax: +353 (0) 1 888 1005

**CORK**

83 South Mall  
Cork  
Ireland  
Tel: +353 (0) 21 427 5176  
Fax: +353 (0) 21 427 7305