

Answer-to-Question-_1_

To: Client X

Report in relation to the Main Features of Ireland as a Holding Company Location from a Tax Perspective:

Ireland has a multiple features that make it an attractive Holding Company Location which I will summarize below.

Corporation tax Rate

Ireland taxes Company profits at 12.5% for trading & 25% for passive income.

Whether a company is trading or not is not set out in legislation but is instead by reference to guidance of Badges of Trade & in particular the Noddy case.

The following Badges of Trade would be considered to determine if a company is Trading:

1. Subject matter of Realisation - what is being bought/ provided?
commodities & materials are not likely to be investment so more likely to trading
2. Frequency of similar transactions
3. Motive
4. Length of period of Ownership
5. supplementary Work
6. Circumstances that led to realization

Double Taxation & multilateral instruments (MLIs)

Ireland has DTAs/ MLIs with > 70 countries. MLIs is a minimum standard & best practices to counter treaty abuse & improve dispute resolution mechanisms.

Dividends received

Dividends received from an Irish company are not taxable (FII)

Up to 31 Dec 2024 foreign dividends received were taxed at either 12.5%

(S21B) or 25% with a tax credit for the underlying Foreign tax suffered plus additional tax credits. Onshore pool of excess credit is also available

From 1 Jan 2025 Participation exemption for Foreign dividends can be opted into by receiving company for qualifying dividends. If opted into this applies to all Foreign Dividends received. Alternatively companies can continue to use the foreign tax credit method, whichever is more beneficial.

The criteria for PE (S831B) is similar to that for exemption from CGT on disposal of subs under S626B broadly

Receiving co must own >5% for OSC for an uninterrupted period of 12 months.

Must be received from a co in DTA/ EEA country

Consist wholly or mainly of carrying on a trade & not derive >50% of value of shares from L&B

EU Parent & Subsidiary directive - can exempt dividends from EU subs co (with a holding > 5% OSC) from WHT

EU Royalties & Interest Directive - exemption from WHT on Royalties & Interest from an associated co (2 years)

Ireland has numerous exemptions from WHT on the payment of dividends to foreign holding co.s / individual shareholders under S172D. Other reductions are included in DTA Article 10 for dividends, Article 11 for interest & Article 12 for Royalties

Ireland can sometimes wrongly be referred to as a Tax Haven Ireland has fully embraced OECD BEPs, ATAD & BEPs 2.0 by introducing:

Transfer Pricing rules Part 35A

Arrangements between associated parties are to be at arms length.

Contemporaneous documentation showing TP method used & comparables.

Country by Country reporting for MNES > €750m turnover. Masterfile > €250m Turnover & local file > €50m turnover. Advance Pricing agreements for TP.

Interest Limitation Rules Part 35D

Intrust is normally tax deductible when incurred wholly & exclusively for the purpose of the trade. ILR prevents MNES artificially reducing the profits with excessive interest. it applies to internal & external debt & restricts the net interest deductible to 30% of EBITDA. Group Ratios is greater can be used or Equity Ratio that is within 2% of the Group Equity ratio would result in no restriction. There is a deminmus of €3m where no restriction applies but once above this ILR applies to the entire amt. Any restricted interest can be carried forward indefinitely to be used in future years.

Controlled Foreign Company (CFC) Part 35B

A CFC is a foreign co is a low/no tax country under the control of an Irish company where its income is derived from activities of the Irish company. Where the activities are non genuine.

This applies tax @ either 12.5% or 25% to any undistributed income.

Exemptions apply:

Effective Tax Rate Exemption

Low Profit margin exemption

Low accounting profit exemption

Exempt period exemption

Where Transfer pricing applies to the transactions

Exit Tax Charge S627

This is a deemed CGT charge @12.5 (rather than 33%) where a company migrates their tax residence from Ireland. 33% will apply is part of a transaction to dispose of assets at the reduced rate. S629 allows for a deferral over 6 instalments for the CGT due

Anti Hybrid Mismatch

This is where MNES take advantage of the different tax treatment in various countries to avoid paying tax:

- Double deduction
- Deduction non inclusion
- Disregarded PES
- Hybrid entities

BEps 2.0 has introduced:

Pillar 1

Amt A MNEs > €20bn Turnover & 10% margin. Applies a tax charge of 25% on the amt above 10% margin. Reallocation of tax rights to market jurisdictions. Not ratified yet & US effectively has a veto.

Amt B- clearing TP on marketing & distribution activities. Mbr states can introduce from 1 Jan 2025.

Pillar 2 - GloBE CT minimum of 15%

Applies to MNEs > €750m Turnover & includes

- Income inclusion Rule (IIR) Ultimate parent Entity (UPE) must review effective tax rates in each country & where <15% pay a top up tax.
- Undertaxed profit rule (UTPR) - where Pillar 2 not in a jurisdiction, untaxed amts allocated across other jurisdictions for top up tax
- Qualifying Domestic top up tax (QDMTT) - Ireland has introduced this into domestic law so that any top up tax under IIR/ UTPR would be collected in Ireland

Subject to tax rule (STTR) is a treaty rule that allows countries to apply a minimum tax on certain payments in the form of a 9% WHT.

Substance Based income exclusion (SBIE) there is an exclusion from the top up tax for costs in relation to staff & assets.

Special Assignee Relief Program (SARP) S825C to attract foreign high earning individuals to Ireland. Must earn > €100k & have worked for a foreign employer for > 6mths & come to work in Ireland for at least 12 months & become resident. This applies a reduction to taxable income of 30% of the amount above €100k to a max of €1m.

- R&D tax credit of 30% S766 C & S766D on qualifying expenditure, P&M & Buildings. Can offset CT liability or cash refund over 3 years. Also R&D Key Employee credit to use to reduce It of key employee engaged in R&D to min 23%.

Knowledge development box - reduced rate of CT 10% on income from IP from

R&D activities carried out in Ireland.

Ireland is English speaking has highly skilled workers & has easy access to EU, UK & US.

If you require any further information on any of the above we can set up a meeting to discuss

Regards

Laura

Answer-to-Question-__2__

1) Domicile is not contained in legislation but is a common law concept. An individual can only have one domicile at any one time. There are 3 types of domicile:

- Domicile of origin - this is domicile of a person's father at their birth or if their parents are unmarried the domicile of their mother. Domicile of origin is adhesive & cannot be extinguished only displaced.

- Domicile of Dependency - A person's who is < 18 years in Ireland or has not got sufficient mental capacity, domicile will follow that of their father (or mother where relevant) if the father (or mother) change their domicile of choice before they reach the age of 18.

- Domicile of Choice - is where a person changes their domicile. This is not easy to do & the person must show intention to change their domicile, be present in the country to which they want to change it & sever all ties with the country of their domicile of origin. Whoever states that a domicile has changed has to prove this e,g, the Revenue or the individual.

Income Tax Planning

- a person who is resident & domiciled in Ireland is subject to IT/ CGT on their worldwide income & gains
- a person who is Resident but not domiciled is subject to IT/ CGT on their Irish situate income & gains, any foreign employment the duties of which are carried on in Ireland & on any remittances into Ireland
- a person who is Ordinary resident (OR) & domiciled is subject to IT/ CGT on their worldwide income excluding any employment duties or trade carried on outside Ireland or Foreign investment income < €3,810
- a person neither Res/ OR or domiciled is only subject to tax on Irish income & gains.

As you can see from the above the domicile of an individual would greatly affect how they are taxed & therefore is always something to consider for individuals in Ireland.

For example if someone is subject to the remittance basis it is very important that they have kept separate bank accounts for income taxed, capital, untaxed income etc, so that it is clear what funds a remittance is been taken from. If possible this should be put in place before an individual becomes Irish resident.

Disposals of foreign assets should be done if possible before becoming Irish tax resident.

If a person has investments in numerous shares & is not domiciled, moving out of Irish stocks would ensure that Irish tax only applies on the remittance of funds.

2) As mentioned above how individuals are taxed in Ireland is by reference to their residence & domicile. Wealthy elites who move their residency to Ireland are likely non domiciled in Ireland & would only be subject to IT/ CGT on their Irish situate income & gains on an arising basis, any foreign employment the duties of which are carried on in Ireland & on any remittances into Ireland.

This may allow them to defer tax on income they earn outside Ireland until it is remitted here. This is not the case under the new UK non dom

rules where they will be subject to tax immediately.

Note that the domicile levy that Ireland charges to wealthy Irish domiciled individuals (assets > €1m) to ensure that they pay at least €200k tax each year would not apply to a person e.g. UK domiciled individual, despite them be resident here.

3) Irish Capital Acquisitions Tax (CAT) @ 33% (above the relevant threshold) is payable on a gift or inheritance in the following circumstances:

- where the disponent is resident or ordinarily resident (OR), or
- where the beneficiary is resident or OR, or
- the subject of gift/ inheritance is an Irish situate asset

Domicile is not a consideration in the above. However when an individual is non Irish domiciled, they are not considered either resident or OR for CAT purpose for the first 5 years of Irish tax residency. This applies to the beneficiary or disponent.

Therefore where the disponent is non Irish domiciled & the beneficiary is neither resident or OR & not an Irish situate asset no CAT is chargeable.

Also where the beneficiary is non Irish domiciled & the disponent is neither resident or OR & not an Irish situate asset no CAT is chargeable.

In summary in the above circumstances, CAT would only apply where the assets are Irish situate assets

Answer-to-Question- _5_

1)

To : JoJo Sarl

RE: Setting up a branch or incorporating a subsidiary in Ireland & Transfer Pricing Considerations for the Irish expansion.

From: Laura & Associates

Setting up a branch in Ireland

A branch or permanent establishment (PE) in Ireland would be subject to CT @ 12.5% on its trading income or 25% on passive income. Determining the profits of the PE should be done under Article 7 of DTA by carrying out an analysis of the Functions, Assets & risks of the branch.

Paragraph 21 refers to Functional & Factual analysis, identification of significant people functions & Para 22 refers to arm's length remuneration.

A branch is not a separate legal entity to JJS & it will be subject to tax in France on its profits with a credit for any Irish tax suffered. JJS would have to register the branch with the Irish Companies Registration office (CRO) & once this is complete JJS would have to register for VAT (as a non established trade - with no registration threshold), CT & employers tax (PAYE, USC & PRSI) in Ireland.

Where supplies of goods are being made from JJS in France to France (VAT at std rate), Belgium (0% intra community supply) & UK (0% export). Any supplies from Ireland would first need to be sold at arm's length to the Irish branch for onward sale- (0% intra community supply), Belgium (0% intra community supply) & UK (0% export)

A company is a separate legal entity to JJS & will be taxed as above CT @ 12.5% on its trading income or 25% on passive income. Dividends could be paid to JJS without WHT under S172D provided JJS is not under the control of Irish persons. A company will also need to register for VAT (threshold for goods €85k & service €42.5k), CT & employers tax (PAYE, USC & PRSI) in Ireland.

Given that it is going to take several years for the Irish operation to be profitable it would be preferable to set up as a branch during the loss making years, so that the loss can be set off against the profits of JJS. Losses made in a subsidiary company, as a separate legal entity cannot be group relieved (except for some very limited circumstance which would not be relevant here) but instead would be carried forward for use in the Irish company in future years.

When the Irish operations become profitable the branch can be converted into a subsidiary company, which will incur CGT on the disposal of chargeable assets used in a trade but exemption available under S617 no gain no loss. Clawback within 6 years if leave the group. Transfer of business relief can be availed of for VAT. Stamp Duty exemption as the branch & subsidiary are associated > 90% S79. Clawback 2 years if leave group.

2) Any transactions between JJS & the Irish entity must be at arm's length price.

Consideration must be given as to how the €50m investment will be provided - if this is by a loan the Irish entity would be able to take a deduction for interest if it is used wholly & exclusively for the purposes of its trade. Intercompany agreement should be set up to show the transfer pricing basis used for the loan & any supply of other goods or services & the a comparability study to benchmark the amounts charged.

TP will apply to the rate charged on the loan as well as the amount provided i.e. would this loan & rate be obtainable from 3rd party.

No information is given to the overall turnover of the group, is >€750m the group would be subject to Country by country reporting & JJS as the UPE would likely be responsible for reporting. The Irish entity must inform Revenue of the reporting entity. Masterfile requirement would also be required if > €250m.

Once turnover in the Irish entity reached €30m it will be subject to local file requirements in Ireland. This provides information on specific intercompany transactions, comparability analysis, TP method etc. Local files are not required to be submitted to Revenue but must be completed by CT filing date of 9 months after yearend & available within 30 days of Revenue requesting. Penalties will apply if not submitted of €25k for local files plus €100 per day late being submitted.

We are told that the subs & trading operation are in OECD countries each with a DTA with Ireland based on the OECD Model Tax Convention

1) Article 10 DTA relates to the WHT on the payment of dividend payments.

30% WHT in Czechia may be reduced under the DTA to 5% if there is a shareholding of 25% which is not the case here or to 15% in all other cases provided Fogarty does not have a permanent establishment in Czechia. We are told it has no other business interest there. Therefore on the completion of the required documentation 15% WHT can be applied to the dividend paid by Czechia Max sro to Fogarty Ltd.

Fogarty Ltd may be able to opt for Participation exemption on the receipt of these dividends but then would be unable to recover the 15% WHT suffered.

2) Article 11 DTA relates to WHT on interest payments. 20% WHT is applicable under Croatia's domestic legislation may be reduced under DTA if Fogarty is the beneficial owner of the interest & resident in Ireland to 10%, which is the case here. However under Article 11(4) this if Fogarty carries on a business in Croatia through a permanent establishment & the loan on which the interest is paid is effectively connected to this permanent establishment. Fogarty has a PE in Croatia but we are told that the loan to the 3rd party in Croatia is an investment independent of its branch activities. Therefore on the completion of the required documentation 10% WHT can be applied to the interest paid by Croatian 3rd party to Fogarty Ltd.

3) Article 12 DTA relates to WHT on royalties payments. 15% WHT is applicable under NLs domestic legislation may be reduced to 0% under DTA if Fogarty does not carry on business in NLs through a PE, which it does not. However under Article 12(4) where there is a special relationship between the payer & beneficial owner (as is the case here Fogarty owns 100% of Alex BV) and the amount of the royalty payment exceeds that which would be payable in the absence of the special relationship the provision of article 12 shall only apply to the amt payable in the absence of the special relationship. AS Fogarty charges a royalty of 10% of net sales to Alex BV but only 6% of net sales to 3rd parties, the reduction to 0% will only apply to the amt that relates to 6% of net

sales, provided the required documentation is completed by Fogarty.

The 15% NLs domestic WHT will apply to the excessive amt i,e 4% of net sales. Fogarty is unlikely to be able to claim a foreign tax credit for this amount as the transaction is not at arm's length. A TP adjustment is likely required in the tax comps of Fogarty Ltd & Alex BV in this regard.

Answer-to-Question-___3

To : Voila GmbHs CFO

RE Tax Residency of Voila Ltd,Recommendation for the Group to avoid DTA related Challenges & CGT for Voila if Group decided to relocate it's activities to Germany

From: Laura Treanor Tax Manager

Date 11/06/2025

1) A company is considered Irish tax resident under domestic Irish tax legislation S23A if it is incorporated in Ireland which Voila Irelandia is or where it is Centrally Managed & controlled (CMC) in Ireland. CMC is where the highest level of mgt takes place not just the day to day management.

However where is a company is also considered resident in another country under their domestic legislation the "Tie breaker test" under Article 4 (3) of DTA needs to be considered. This sets out that the residence of the company shall be determined by mutual agreement of the 2 competent authorities of the contracting states with reference to its Place of Effective Mgt (POEM) & other relevant factors.

In Trevor Smallwood v HMRC it was set out that CMC is by reference to resident in one country whereas POEM relates to determining resident where there are multiple countries involved.

De Beers Mins V Howe set out that it was where the highest level of mgt exists & this is where the CMC abides.

Bullock V Unit Construction - stated it was a question of fact & a Board of directors can control a company even if it unconstitutional.

Things that need to be taken into consideration when determining the residency under the tie breaker test are:

- Where Board Meetings take place
- Where CEO & other Senior executive carry on their activities
- Where the senior day to day mgt takes place
- Where the head office is
- what country's law is the company governed under
- where are the accounting records kept

Looking at the facts Voila irelandia (VI):

- Voila irelandia (VI) Board meetings are held in Dublin & have a full agenda including strategy & risk
- Isabelle Viggian (IV) the executive director of Voila irelandia (VI) is Irish resident & she attends the Board Meetings
- Nate Vaniman (NV) head of European operation at the Voila group resident in Germany dials into the Board meetings
- 2 Bermudian resident chartered accountant P&M also dial into the Board meetings.
- 3rd party service provider in Germany provides the administrative & accounting services

Based on the above it likely that VI will be considered resident in Germany under the tie breaker test as

- although Board meetings have a full agenda of strategy & risk & held in Dublin, only IV attends these in person.
- NV head of European operations attends virtually from Germany and
- the accounting records are located in Germany also
- P&M the Bermudian board members are always outvoted on strategy & risk & therefore there is little risk that the co would be consider Bermudian resident

2) Recommendations - if want VI to be considered Irish resident & avoid DTA related challenges.

- All Board member should attend the Board meetings in person in Ireland
- All strategy decisions should be taken at these meetings
- Minutes should be kept
- No one Board member should have control of these strategic decisions - in this regard consideration should be given to replacing Paula & Martina with Board members who are more experienced in strategy & can take meaningful part in the decision-making & not constantly get outvoted. They should also attend the Board meetings in Dublin in person.
- accounting & administrative services should be carried out in Ireland.

3) If the group decides to relocate the manufacturing & hold company activities of VI to Germany - there would be a charge to exit under S627. VI will be deemed to have disposed of all its assets & immediately reacquire them for CGT purposes. The charge will be at a reduced rate of 12.5% on the gain unless the transaction forms a part of a transaction to dispose of the assets in such a way that they are subject to this reduced CGT rate.

A claim to defer the CGT amt due can be made under S629, in 6 annual instalments.