Ireland’s Holding Company Regime

Ireland has become one of the most attractive locations for the establishment of regional, intermediate and top holding companies of both listed and private multinational groups that are seeking to optimise their operational and fiscal performance. Key reasons for Ireland’s popularity are its favourable holding company tax regime; the fact that it is an onshore EU jurisdiction with a good network of double tax treaties and trade agreements; its developed corporate legal system; and the professional and administration services that are available locally.

Tax Attributes of the Irish Holding Company Regime

Double Tax Treaty Network
Holding companies resident in Ireland are able to take advantage of the extensive network of double tax treaties between Ireland and other countries worldwide. To date Ireland has signed 63 double tax treaties, including treaties between Ireland and the United States, Canada, Australia and China and all EU member states and OECD countries. The full list of treaty countries is set out in the Schedule.

Capital Gains Tax
Shareholders
A non-Irish resident person without an Irish taxable presence disposing of shares in an Irish incorporated company will not have a liability to Irish tax unless the shares are not listed and derive the greater part of their value from Irish land, minerals or exploration rights.

Shares and Related Assets
A full participation exemption from capital gains tax (at the rate of 25%) is available in Ireland in respect of the disposal of shares in a company resident in an EU member state or country with which Ireland has a double tax treaty. The conditions for the relief are:

- **The “EU/treaty” condition.** The target company is resident for tax purposes in an EU/treaty country.
- **The “parent” condition.** The holding company must have held at least 5% of the ordinary shares in the target company (and have been entitled to at least 5% of the profits available for distribution and assets available on a winding up) for a continuous period of 12 months at the time of the disposal or ending within two years of the disposal.
- **The “trading” condition.** At the time of the disposal either (i) the target company is a trading company, or (ii) the holding company, and each of its 5% subsidiaries, and the target company and each of its 5% subsidiaries, together form a trading group (i.e. the business of each company taken together consist wholly or mainly of the carrying on of a trade or trades). A trading company or group means more than 50% of its activities are trading.

In applying these conditions, group holdings and holding periods are aggregated; repo-type arrangements are ignored; and shares acquired in a reorganisation are treated as being the same shares as the shares held before the reorganisation.

No Revenue clearance is required for the capital gains tax exemption to apply. Revenue guidance on the trading condition indicates that the factors of primary importance in applying the test are the proportion of (net) trading assets to (net) total assets and trading profits to total profits. Factors such as the number of hours spent by employees on trading activities, or the total turnover from trading, may also be relevant. In addition, where the businesses of a number of companies “taken together” are being considered, transactions between those companies, such as the payment of dividends, interest or management charges and any trading transactions, are ignored.

A similar exemption from capital gains tax exists in relation to the disposal of certain assets (e.g. options over shares, convertible bonds etc) that are related to exempt shares.
Capital Duty and Stamp Duty
No capital or stamp duty is payable on share subscriptions in or debt financing of an Irish incorporated holding company. No stamp duty is generally payable by the Irish holding company on the acquisition of shares in non-Irish companies. Transfers of shares in Irish incorporated companies are generally liable to stamp duty of 1% subject to certain reliefs and exemptions.

Dividend Income
Dividends received by an Irish resident company from another Irish resident company are usually exempt from Irish tax, including dividend withholding tax. The 12.5% corporation tax rate applies (on election) in respect of foreign dividends paid out of EU/treaty country trading profits where either the dividend paying company (i) is resident in the EU/treaty country, or (ii) is a publicly quoted company or 75% subsidiary of a publicly quoted company. Corporation tax at the rate of 25% applies to foreign dividends sourced from other companies or from non-trading profits.

While Ireland does not have a full participation exemption in respect of foreign dividends, Ireland has a flexible system for granting foreign tax credits which can minimise or eliminate Irish tax on dividend income. Ireland provides for unilateral credit relief for foreign WHT and underlying taxes on dividends paid to an Irish resident company. A minimum 5% shareholding requirement applies. The foreign tax is available as a credit against Irish tax and where the foreign tax exceeds the Irish tax on the dividend, the excess can be pooled and offset against Irish tax on other foreign dividends received in the same accounting period. Any balance unused can be carried forward and used in subsequent accounting periods. If a company has elected to tax trading dividends at the 12.5% rate, any excess foreign tax credits arising on trading dividends can only be applied against other trading dividends. Any excess credit from non-trading dividends (25%) can be used to offset tax on both trading dividends and non-trading dividends.

Relief can also extend to foreign tax suffered by a lower-tier subsidiary where the company paying the dividend has itself received dividends from the lower-tier subsidiary. A minimum 5% association is required as between the companies. Trading profits from lower-tier EU/treaty country subsidiaries can also be traced through to the ultimate dividend received by an Irish company for the purposes of applying the 12.5% rate.

Dividend Withholding Tax (DWT)
Dividends paid by Irish resident holding companies are subject to a 20% withholding tax. However, there are a number of exemptions to enable dividends to be paid free from DWT. For example, dividends paid to any of the following persons are exempt from DWT:

- a company or person resident in an EU/treaty country and not under the control of Irish residents;
- a company that is not resident in an EU/treaty country but is controlled by a person(s) who is/are resident in an EU/treaty country and which person(s) is/are not under the control of a person(s) not resident outside an EU/treaty country; or
- a listed company or a 75% subsidiary of a listed company.

In each case, in order to avail of the exemption a declaration must be filed with the dividend paying company before the dividend is paid.

Interest Withholding Tax
Interest paid by an Irish resident holding company is subject to a 20% withholding tax. However, a number of exemptions are available as a matter of Irish law. For example, no interest withholding tax applies to interest paid:

- to persons resident in an EU/treaty country; or
- on listed bonds or commercial paper.

Intermediate Holding Companies
Many multinational groups have used Irish intermediate holding companies within their groups. Often this complements the substance and active businesses these groups have in Ireland and in other cases it leads to further investment.

Other Reasons for Locating a Holding Company in Ireland

- Ireland is also a founder member of the OECD and a member state of the EU.
- Ireland is the only English-speaking jurisdiction in the euro-zone.
- The time zone is friendly for the Middle East, Europe and the US.
- Like the UK and the US, Ireland is a common law jurisdiction and its legal concepts will be recognised by most investors.
- A new parent company can be incorporated in a few days in Ireland.
- Ireland has an experienced and efficient Commercial Court which can resolve disputes speedily and in a cost effective manner.
- Dublin is an established international financial centre.
- Ireland has a skilled and well-educated workforce.
- Transfer pricing rules do not apply to Irish holding companies.
- There are no Sub-Part F or controlled foreign companies (CFC) rules in Ireland.
Conclusion
By virtue of its favourable tax and corporate laws, its network of double tax treaties and its status as an EU/OECD member, Ireland is the ideal location for the establishment of a holding company, whether regional, intermediate or as the top holding company of a group.

Why Arthur Cox
Arthur Cox is one of Ireland’s leading law firms. It comprises over 300 lawyers, including more than 100 partners. The firm’s principal office is located in Dublin and we also have offices in Belfast, London and New York. The practice of the firm encompasses all aspects of corporate, business and finance law. Our lawyers in our Corporate, Tax and Finance Departments have extensive experience in advising on the incorporation, establishment and migration of holding companies in and to Ireland.

Schedule
Ireland has signed double tax treaties with the following countries which are currently in force:

<table>
<thead>
<tr>
<th>Australia</th>
<th>Cyprus</th>
<th>Ireland</th>
<th>Malaysia</th>
<th>Republic of Turkey</th>
<th>Switzerland</th>
</tr>
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<tbody>
<tr>
<td>Austria</td>
<td>Czech Republic</td>
<td>India</td>
<td>Malta</td>
<td>Romania</td>
<td>United Arab Emirates</td>
</tr>
<tr>
<td>Bahrain</td>
<td>Denmark</td>
<td>Israel</td>
<td>Mexico</td>
<td>Russia</td>
<td>United Kingdom</td>
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<tr>
<td>Belarus</td>
<td>Estonia</td>
<td>Italy</td>
<td>Moldova</td>
<td>Serbia</td>
<td>United States of America</td>
</tr>
<tr>
<td>Belgium</td>
<td>Finland</td>
<td>Japan</td>
<td>Netherlands</td>
<td>Singapore</td>
<td>Vietnam</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>France</td>
<td>Korea (Rep. of)</td>
<td>New Zealand</td>
<td>Slovak Republic</td>
<td>Zambia</td>
</tr>
<tr>
<td>Canada</td>
<td>Georgia</td>
<td>Latvia</td>
<td>Norway</td>
<td>Slovenia</td>
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</tr>
<tr>
<td>Chile</td>
<td>Germany</td>
<td>Lithuania</td>
<td>Pakistan</td>
<td>South Africa</td>
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<tr>
<td>China</td>
<td>Greece</td>
<td>Luxembourg</td>
<td>Poland</td>
<td>Spain</td>
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<td>Croatia</td>
<td>Hungary</td>
<td>Macedonia</td>
<td>Portugal</td>
<td>Sweden</td>
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</tbody>
</table>

Negotiations for new agreements with the following countries have been concluded and are expected to be signed shortly:
» Panama
» Saudi Arabia
» Thailand
» Uzbekistan

Negotiations for new agreements with the following countries are at various stages:
» Argentina
» Azerbaijan
» Egypt
» Tunisia
» Ukraine

Ireland also has signed and agreed double tax treaties with the following countries which are expected to come into force shortly:

<table>
<thead>
<tr>
<th>Albania</th>
<th>Bosnia Herzegovina</th>
<th>Kuwait</th>
<th>Morocco</th>
</tr>
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<tbody>
<tr>
<td>Armenia</td>
<td>Hong Kong</td>
<td>Montenegro</td>
<td></td>
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</tbody>
</table>

Please Note: Information in these tables is up to date as at 26 September 2011.
Contacts

If you are considering setting up a holding company in Ireland or would like to discuss any of the issues discussed, please do not hesitate to contact any of the Arthur Cox people listed below:

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**September 2011**

This memorandum is a general summary and is not a complete statement of the law. It is not intended to give specific legal advice. If you require advice please contact your usual Arthur Cox contact or any of the persons listed above.