IRELAND

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1. INTRODUCTION

a. Forms of Legal Entity

There are a number of different legal entities which may be established in Ireland. In general, the most common form of legal entity used in an M&A context is a company.

The Companies Act 2014 introduced two new forms of private company to replace all existing private companies limited by shares:

- A new private company limited by shares ("LTD"), and
- A designated activity company ("DAC").

The LTD is the model company type under the Companies Act 2014. It has the advantage of simplified corporate governance measures that are not available to other company types. A DAC is the closest type of company to the old form of private company limited by shares.

The main difference between a DAC and a LTD is that the legal capacity of a DAC is limited by an object's clause, whereas a LTD has unlimited legal capacity.

Credit institutions, insurance undertakings and companies that have (or wish to have) debentures admitted to trading or listed on a market cannot be a LTD and must be a DAC if they wish to have the form of a private company limited by shares.

Shareholders who do not have a shareholder's agreement and who wish to ensure that the company in which they have invested continues to carry on a business only, rather than having unlimited capacity to carry on any business, may prefer the company to be a DAC rather than a LTD.

Aside from the private company limited by shares, other company types are public limited companies, companies limited by guarantee and unlimited companies. Irish company law also allows for the establishment of a SE ("Societas Europaea") which is a European public limited company ("PLC").

Where a company is incorporated in Ireland on or after 1 January 2015, Irish tax legislation provides that such companies are deemed Irish tax resident. However, if an Irish incorporated company is considered tax resident in another country under the terms of a double taxation agreement the company will not be considered as an Irish tax resident. If a company is managed and controlled in Ireland it will be regarded as an Irish tax resident notwithstanding that it is not incorporated in Ireland.

There is no legislative definition of management and control but case-law has determined that it is typically the location of the board of directors' meetings and at which strategic policy decisions are made.

b. Taxes, Tax Rates

The rate of tax applicable to an Irish company's profits is dependent on the type of income earned by the company and whether the activities are considered to be trading (active) or passive.

A rate of 12.5% applies to the trading income of companies. A rate of 25% applies to non-trading income (i.e. passive income). 'Trade' is defined in the legislation as including 'every trade, manufacture, adventure or concern in the nature of a trade'. The legislation does not provide specific rules for distinguishing between trading and non-trading income. However, trading generally denotes activity with multiple transactions and employees based in Ireland who carry on that activity.

On 7 October 2021 the Irish Government approved the decision to join the OECD International Tax Agreement on the future of corporation tax which in time will result in an increase in the corporate tax rate to 15%. The European Commission has proposed a Directive for the implementation of this 15% rate at EU level. Notably, the 12.5% rate of corporation tax will continue to apply to trading businesses with revenues of less than EUR750 million.

c. Common divergences between income shown on tax returns and local financial statements

Generally, a company's taxable income will be calculated in line with the accounting treatment. The profit figure shown in the profit and loss account is adjusted, by adding back (disallowing) expenses which are not deductible for tax purposes (e.g. depreciation and amortisation), and by giving deductions which would otherwise not be given.

2. RECENT DEVELOPMENTS

Ireland has introduced several measures in recent years in light of developments taking place at an international level.

In particular, many legislative changes have been brought in to comply with EU law, including the EU Anti-Tax Avoidance Directives ("ATAD" and "ATAD 2") and to adopt the provisions recommended in the OECD BEPS Action Plan.

Like many governments around the world, Ireland also introduced various business support measures In response to the spread of COVID-19.

A summary of some of the main legislative measures which will be relevant from an M&A perspective are set out below. There has also been a recent ruling of the Irish Tax Appeals Commission ("TAC") which will be relevant where a takeover transaction is structured as a scheme of arrangement. We have included a summary of the decision below.

a. International tax measures

i Interest Limitation Rule

Ireland has introduced interest limitation rules in line with ATAD in Finance Act 2021 which was signed into law on 21 December 2021.

The interest limitation rules apply for accounting periods commencing on or after 1 January 2022 and apply in addition to the current rules relating to availability of interest relief on various interest payments.

The legislation applies to cap tax deductions for “exceeding borrowing costs” at 30% of EBITDA (earnings before interest, tax, depreciation and amortisation) (subject to certain exceptions). “Exceeding borrowing costs” are a company’s interest (and interest equivalent) borrowing costs as reduced by its interest (and interest equivalent) income. The legislation specifies that “interest equivalent” amounts include (but are not limited to) discounts on the issue of securities, amounts under derivative or hedging arrangements connected with the raising of finance, foreign exchange movements on interest (or interest equivalents) and debt raising costs including guarantee, arrangement and commitment fees. All references to “interest” hereafter refer to interest inclusive of “interest equivalent” amounts.

At a high level the legislation provides that:

- Where the interest expenses of the relevant entity exceed the interest income of the relevant entity; and
- Where the amount by which the interest (expense exceeds interest income is greater than EUR3 million (the de minimis amount));

Then the deductible interest expense will be limited to 30% of the EBITDA of the relevant entity.

As such, at a high level, there is a full exemption from the interest limitation rules where the exceeding borrowing costs (i.e. the net interest expense) of the relevant entity does not exceed EUR3 million.

Once the EUR3 million de minimis threshold is breached, the entire amount of the exceeding borrowing costs is subject to the restriction (not just the amount in excess of the EUR3 million limit).

Certain amounts may be classed as “spare capacity” and carried forward for use in later periods.

Where the interest income of a relevant entity exceeds its interest expense in an accounting period, this excess is called “interest spare capacity”. Additionally, where the amount by which the interest expense exceeds interest income is less than the 30%, this amount is called “limitation spare capacity”.

The sum of interest spare capacity and limitation spare capacity is “total spare capacity” which may be carried forward for use within 60 months. In future years, where the 30% threshold is breached, the relevant entity may use the total spare capacity to increase the interest deduction available in that future year.

Additionally, where a portion of interest is not deductible as a result of the application of the interest limitation rule, that disallowed amount may be carried forward as a “deemed borrowing cost” and a deduction may be claimed for that amount in future years (subject to the relevant entity having sufficient capacity).

For the purposes of the legislation, companies may elect to be a member of an interest group allowing the calculations to be performed at group level. The main benefit associated with interest groups is that interest and spare capacity may be pooled between the group members. It is important to note that the EUR3 million de minimis limit applies to interest groups as a whole (and not on an individual member basis). Where an election is made to be a member of an interest group, a company cannot elect out of the group for three years.

There are two reliefs available which are dependent on the results of the worldwide group (essentially an accounting consolidation group of which the relevant entity is a part). These reliefs aim to prevent the restrictions applying to interest incurred on third-party debt where the interest costs are not disproportionately borne by the taxpayer.

- Group ratio: This relief considers the worldwide group's exceeding borrowing costs as a percentage of its EBITDA. Where the group ratio exceeds 30% for an accounting period of a relevant entity, the relevant entity may elect to replace the 30% limit with the group ratio for the purposes of calculating the allowable interest deduction. At a basic level, the group ratio is calculated as follows:

$$\frac{\text{amount by which group interest expenses exceed group interest income}}{\text{group EBITDA}}$$

This is calculated using the worldwide group's consolidated financial statements.

- Equity ratio: This relief compares the relevant entity's ratio of equity to assets to that of the worldwide group (using the same GAAP for the purposes of doing both calculations). If, when this calculation is applied, the relevant entity's ratio of equity to assets is 98% or more of the worldwide group's ratio, then the interest limitation rule is disapplied.

It should be noted that the group ratio and equity ratio referred to above cannot both be applied in the same accounting period.

There are also a number of noteworthy exemptions from the interest limitation rules as follows:

- There is a total exemption from the interest limitation rules for "standalone entities" being companies resident in Ireland that are not included in a financial statements group consolidation, have no "associated enterprises" (persons with a 25%+ equity relationship or voting rights or entitlement to 25%+ of the profits available on a distribution) and have no permanent establishments outside of Ireland.
- The legislation also contains an exemption for "legacy debt". The exemption only applies where the terms of the debt were agreed before 17 June 2016. However, where the principal was not drawn down by 17 June 2016, the exemption will only apply if there is a legal obligation on the lender to advance funds upon the happening of pre-determined milestones as set out in the terms agreed before 17 June 2016.
- The legislation also provides for an exemption for interest on debt used to fund certain long-term infrastructure projects being projects to provide, upgrade, operate or maintain a "large-scale asset" where the project operator is established and tax resident in an EU Member State, the large scale asset concerned is in an EU Member State and the income and the deductible interest equivalent costs relating to the project arise in an EU Member State.

Revenue guidance is expected to be published mid-2022 in respect of the operation of the interest limitation rules which should be informative as regards the practical application of the rules.

ii Exit charge

Finance Act 2018 introduced an ATAD compliant exit charge, replacing the pre-existing measures which had provided an exclusion for certain companies (those which were 90% owned by residents of a country with which Ireland has a double tax agreement).

The new charge which took effect from midnight on 10 October 2018 applies to unrealised capital gains by deeming a disposal to have occurred where companies migrate or transfer assets out of Ireland, without an actual disposal arising. The rate of exit tax is 12.5%. An anti-avoidance provision is included to ensure that a rate of 33% rather than 12.5% applies if the exit forms part of a transaction to actually dispose of the asset and the purpose of the exit is to ensure that the gain is charged at the lower rate.

The charge will not apply to assets that remain within the charge to Irish CGT, including Irish land, minerals or mineral rights, or shares that derive their value or the greater part of their value from such assets. The charge will also not apply to assets which continue to be used in Ireland by a permanent establishment of the company after the company migrated. There is also an exception for asset transfers relating to the financing of securities, or assets which are given as security for a debt, or where the transfer takes place to meet prudential capital requirements or for liquidity purposes, in each case where the asset is due to revert to the permanent establishment or company within 12 months of the transfer.

Under the new rules, an exit tax charge applies where:

- A company transfers assets from its permanent establishment in Ireland to its head office or to a permanent establishment in another country;
- A company transfers the business carried on by its permanent establishment in Ireland to another country; or
- An Irish resident company transfers its residence to another country.

iii Measures relating to hybrids

Ireland introduced anti-hybrid legislation following on from the extended measures relating to hybrids included in ATAD 2. The rules applied with effect from 1 January 2020 with the exception of the rules relating to "reverse hybrids", which applied from 1 January 2022.

The rules seek to prevent arrangements that exploit the differences in the tax treatment of an instrument or entity arising from the way in which that instrument or entity is characterised under the tax laws of two or more territories to generate a tax advantage or "mismatch outcome". A hybrid mismatch outcome arises due to differences in the tax characterisation, or the hybrid nature of, the instrument or entity. The rules require careful consideration of the tax treatment of transactions and entities in other territories.

Where the rules apply, a tax deduction or relief can be denied in respect of payments made by Irish-resident companies that give rise to a mismatch outcome. In certain specific circumstances, the provisions can also result in hybrid payments being subject to tax in Ireland where this would not otherwise be the case.

The rules apply to all corporate taxpayers and there is no de minimis threshold below which the rules do not apply.

If "check the box" elections are made in the US or a payment is made to a US LLC, these anti-hybrid rules will need to be carefully considered to ensure that the Irish company will be entitled to a deduction for payments, such as management charges or interest.

iv Transfer pricing

Ireland's transfer pricing regime was revised in Finance Act 2019 to align with the 2017 version of the OECD Transfer Pricing Guidelines (the "2017 OECD Guidelines"). The new measures applied from 1 January 2020 and extend the transfer pricing regime to cover arrangements which were previously excluded, including non-trading transactions, capital transactions and arrangements entered into pre-July 2010.

The Finance Act 2021 which was signed into law on 21 December 2021 contains new legislation which provides for the application of the "Authorised OECD Approach" in attributing income to an Irish branch of a non-resident company. These new provisions apply for accounting periods commencing on or after 1 January 2022. See section 10 below for further detail.

v CFC rules

A new controlled foreign companies ("CFC") regime was introduced in Finance Act 2018. The CFC rules apply to accounting periods beginning on or after 1 January 2019. See section 8.b. below for further details.

b. COVID-19 related measures

The Irish government was swift to introduce new measures to mitigate the effects of COVID-19 on business, including suspension of late payment interest and Revenue enforcement activity. Various grants have also been made available to businesses to help with cashflow difficulties.

A range of measures were brought in to provide financial support to Irish workers affected by the COVID-19 crisis. At the start of the crisis the Temporary Wage Subsidy Scheme ("TWSS") was introduced. This ended on 31 August 2020 and was replaced by the Employment Wage Subsidy Scheme ("EWSS"). The EWSS is a payroll subsidy scheme that applies from 1 September 2020 to 30 April 2022. There are a number of conditions which need to be complied with in relation to the measures and many of these are set out in frequently changing guidance rather than legislation. This is an area that is heavily scrutinised by Irish Revenue and as such it is a point which is worth bearing in mind from a due diligence perspective.

There were a range of other COVID-19 measures which were introduced by the Irish government which have now been largely withdrawn, but again would require consideration in tax due diligence processes as appropriate.

c. TAC Decision

In certain cases, shares of an Irish company can be transferred by way of a court approved "scheme of arrangement" under the Irish Companies Act 2014.

A scheme of arrangement typically results in 100% ownership of the target company transferring to the acquiring company. The former shareholders of the target company become shareholders of the acquiring company.

In a cancellation scheme of arrangement, the target company seeks the approval of its shareholders for the cancellation of their existing shares and the issue of new shares to the acquiring company. Some deals will also include a certain amount of cash consideration. The arrangement made between the target company and its shareholders must be sanctioned by the Irish High Court. In return, the shareholders receive consideration from the acquiring company.

This cancellation scheme of arrangement was not previously subject to stamp duty as it did not involve an actual transfer of shares to the acquiring company, despite the fact that the net effect was to transfer ownership of the target company. Where such an arrangement was used, there was no stampable instrument on which to impose a stamp duty charge.

However, Finance Act 2019 introduced a new anti-avoidance measure which sought to impose a stamp duty charge where there is an agreement to acquire a target company using a court approved scheme of arrangement in accordance with the Companies Act 2014 involving the cancellation of the target company's shares and the issue of new shares to the person acquiring the company.

The new legislation was brought in with effect from midnight on 9 October 2019. As such, from that date, Irish stamp duty applies to a scheme of arrangement. In general, a 1% stamp duty charge would arise (on the total value of the Irish company's shares) on the cancellation of shares pursuant to a scheme.

The new measure caught taxpayers by surprise and led to the imposition of stamp duty on some high value takeover transactions involving Irish companies. There were no transitional arrangements for schemes which had already been announced or which were proceeding through the necessary steps, such as the shareholder vote or the court order process.

One of the deals affected by the measure was Abbvie's USD63 billion (EUR52 billion) takeover of Allergan PLC. Abbvie took a case to the Tax Appeals Commission ("TAC", first tier tribunal) to appeal against the EUR587 million stamp duty which arose as a result of the new legislation. In a decision issued on 8 December 2020 and published on 13 January 2021, the Commissioner struck out the stamp duty assessment and effectively rewrote the new stamp duty law.

The Commissioner agreed that the new law needed to be interpreted in light of EU law, specifically Council Directive 2008/7/EC (the "Capital Taxes Directive") which (amongst other things) prohibits the imposition of any form of indirect tax on the restructuring operations of "capital companies" (a term which includes companies whose shares are listed on a stock exchange).

The Commissioner ultimately found that the assessment was contrary to and in breach of the Capital Taxes Directive. On that basis, the Commissioner adopted an interpretation of the new legislation which would conform with the Directive. She did this by including wording which states that the new stamp duty provision does not apply where the consideration received by the target company's shareholders consists, even in part, of shares. She also noted that if necessary, it would also be open to the TAC to disapply the new stamp duty legislation in its entirety.

The Commissioner also indicated that the lack of any transitional arrangements was problematic. In particular, the fact that the assessment sought to impose stamp duty retrospectively by deeming an agreement completed prior to the introduction of the legislation to be executed on a later date, was found to be unconstitutional. The Commissioner stated that the legislation would need to be interpreted in a way which did not unjustly interfere with Abbvie's property rights under the Constitution of Ireland.

Following the TAC decision, the stamp duty position in relation to schemes of arrangement is uncertain. Revenue is appealing the decision to the High Court and it will be some time before there is clarity on the point.

3. SHARE ACQUISITION

a. General Comments

A share acquisition will often be the preferred structure in an M&A context. From a seller's perspective, a share sale avoids the potential double charge to Capital Gains Tax ("CGT") which may arise in the case of an asset sale. The seller may also be able to benefit from the CGT participation exemption regime. Stamp duty costs will also generally be lower for the buyer when compared to an asset sale.

b. Tax Attributes

Subject to anti-avoidance legislation, in general a trading loss in an accounting period may be carried forward indefinitely for off set against the trading income from the same trade in succeeding accounting periods.

Where shares in a loss making company are sold, specific rules apply to carrying losses forward. The legislation provides that relief for the losses forward is not available where:

- Within any period of three years there is both a change in the ownership of a company and (whether earlier or later in that period or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- At any time after the scale of the activities in a trade carried on by a company has become small or negligible and before any considerable revival of the trade, there is a change in the ownership of the company.

The legislation defines 'major change in the nature or conduct of a trade' as including:

- A major change in the type of property dealt in, or services or facilities provided, in the trade; or
- A major change in customers, outlets or markets of the trade.

c. Tax Grouping

There is no fiscal unity or consolidated tax grouping in Ireland. However, group relief may be claimed where one member of a group is entitled to surrender its current year trading loss to another member of the same group. In order to be deemed a member of a group, the following conditions must be satisfied:

- One company must be a 75% subsidiary of the other company or both companies must be a 75% subsidiary of a third company;
- The parent must hold 75% of the ordinary share capital of the subsidiary;
- The parent must be beneficially entitled to not less than 75% of the profits available to equity holders; and
- The parent must be beneficially entitled to not less than 75% of the assets available for distribution on a winding up.

The 75% group relationship may be traced through companies resident in the EU, an 'EEA treaty country' or another country with which Ireland has a double taxation agreement (a "relevant territory"). In addition, in determining whether one company is a 75% subsidiary of another company for the purpose of the group relief provisions, the other company must either be resident in a relevant territory or quoted on a recognised stock exchange in a relevant territory or on another stock exchange approved by the Minister for Finance.

In general, the surrender of losses is only allowed by Irish resident companies, or, in certain cases, branches of companies which are resident in the EU or an 'EEA treaty country' that are within the charge to corporation tax in Ireland and such losses may only be surrendered to an Irish resident company. However, in certain circumstances losses that are incurred by a subsidiary company which is resident in an EU Member State or an EEA state with which Ireland has a double tax treaty may be surrendered to an Irish parent company. It must be shown that the loss being surrendered to the Irish parent company cannot be utilised in any other way by the foreign subsidiary.

In addition, group relief may be claimed on transfers between Irish resident companies from CGT where there is a 75% direct or indirect group. Since Finance Act 2017 it has been possible to trace the group relationship through any country with which Ireland had a double tax treaty. Previously the group relationship could only be traced through companies resident in the EU or an EEA state which Ireland has a treaty with.

d. Tax-Free Reorganisations

The Companies Act 2014, which commenced on 1 June 2015 introduced a statutory framework for mergers and divisions between private companies in a purely national context for the first time under Irish law. Previously, mergers between private companies could generally only be implemented if there was a cross-border element to the transaction and by obtaining court approval. The Companies Act 2014 allows for a merger of private domestic companies, without the need for court approval. Finance Act 2017 introduced new measures designed to ensure that domestic mergers and divisions may be carried out in a tax neutral basis.

It should also be possible for an Irish group to carry out a reorganisation in a tax neutral manner. Relief is available from corporation tax, CGT and stamp duty on intragroup transfers. It should be noted that the definition of a 'group company' or 'associated company' differs for CGT, corporation tax and stamp duty. It should be noted that there are certain conditions which will need to be satisfied in order for the relevant tax reliefs to apply to mergers, divisions and reorganisations. In certain circumstances the reliefs may be clawed back.

e. Purchase Agreement

Generally, a share purchase agreement will be executed by the parties to a share acquisition. This will usually include tax warranties. A separate tax deed of indemnity will typically also be provided which will cover pre-completion tax liabilities of the target.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In general, the stamp duty on the transfer of shares is 1% (as opposed to 7.5% on an asset acquisition) of the consideration paid or of the market value if higher. Provided certain conditions are complied with, an exemption from stamp duty is available on the sale of shares where the amount or value of the consideration is EUR1,000 or less. In certain cases, where the shares derive their value or the greater part of their value from Irish non-residential land or buildings, the rate of stamp duty may rise to 7.5%. There are also certain anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the Finance (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate to impose a stamp duty rate of 10% in respect of the conveyance or transfer certain shares that derive value from residential units. It is worth noting that Irish stamp duty may arise where there is a transfer of non-Irish shares in certain circumstances, including if the shares are transferred in exchange for the issue of shares of an Irish company. Stamp duty must be paid within 44 days of the execution of the stock transfer form to avoid the imposition of any interest and penalties. Stamp duty is a liability of the acquiring entity and is paid via the stamp duty return which is filed on the Irish Revenue Commissioner's ("Revenue") On-line System ("ROS"). It is worth noting that where the entities are not already registered for Irish tax in Ireland, it is necessary to apply for an Irish tax reference number or an Irish PPS number as appropriate, in order to file the stamp duty return.

The legislation provides that the time limit for stamping is 30 days from the date of execution of the relevant stampable instrument. By concession Revenue allow an extra 14 days bringing the time limit to 44 days.

The purchase of shares is a VAT-exempt activity. Therefore, a company which incurs costs in relation to the acquisition of shares in a newly acquired entity is not generally entitled to recover the VAT on such costs.

However, there are specific circumstances where Revenue accepts that a company which has acquired shares can recover a portion of the VAT incurred on such costs.

g. "Purchase accounting" applicable to share acquisitions

This section is left intentionally blank.

h. Share Purchase Advantages

The stamp duty costs arising on an acquisition of shares are generally lower than on an asset acquisition. As mentioned above the stamp duty on the transfer of shares is generally 1% (as opposed to 7.5% on an asset acquisition) of the consideration paid or of the market value if higher. However, there are circumstances where a 7.5% or 10% rate can apply (see above).

From a seller's perspective, share sales typically only trigger a single layer of taxation, either CGT or corporation tax in the hands of the selling shareholder as opposed to a potential double layer as part of an asset purchase (see section 4 below). In addition, in certain circumstances where a company disposes of shares any gain arising will be exempt from CGT under the participation exemption regime. There are no provisions under Irish law allowing an increase in tax basis in the assets of the company where there is a share acquisition.

It is not possible for entities to finalise their Irish tax exposures prior to acquisition. Ireland's tax regime is a self-assessment system. Under the self-assessment system, the notice of assessment issued by Revenue is merely an acknowledgment of the figures submitted by the taxpayer in the relevant return. The statutory time limit within which Revenue may raise an assessment is generally four years from the end of the accounting period in which the return is filed. However, in certain cases, including where Revenue suspect that there was any fraud or negligence in filing the return or any anti-avoidance involved, there is no statutory time limit within which an assessment may be raised.

i. Share Purchase Disadvantages

Any historical liabilities will remain in the target group. The purchaser will typically expect to receive a tax indemnity and tax warranties for pre-completion tax liabilities under the transaction documents. However, this contractual protection is generally subject to certain exclusions and limitations. We are increasingly seeing warranty and indemnity insurance policies being used in M&A transactions.

There is no opportunity to get a step up in the basis of the assets as part of a share acquisition. In a share deal the purchaser's base cost is represented in the shares acquired. To the extent that the target company owns assets which have a base cost of less than their current market value, a deferred or latent gain exists. Such a deferred gain is often taken into account by purchasers in deciding on the price for the shares.

4. ASSET ACQUISITION

a. General Comments

An asset acquisition may be preferred by a purchaser as it allows them to pick and choose the assets and liabilities they acquire. Any historical tax liabilities will generally remain with the existing company. As mentioned above, from a seller's perspective, an asset sale generally gives rise to a double layer of CGT. Stamp duty costs will also typically be higher on an asset deal when compared to a share deal.

b. Purchase Price Allocation

The parties will determine how the purchase price will be allocated amongst the various classes of assets acquired as part of the transaction.

c. Tax Attributes

In a third-party asset acquisition, it is not possible to purchase losses. However Irish tax legislation allows for losses forward to be carried over from one company to another company where a trading company ceases to carry on a trade and thereafter another company carries it on, provided that there is substantial identity in the ownership of the trade before and after the change. Where the necessary conditions are fulfilled, the successor company effectively steps into the shoes of the predecessor company for the purposes of utilising the losses forward.

In order for the losses to be carried over:

- There must be the transfer of and succession to a trade;
- An interest in the trade of at least three quarters (75%) must belong to the same person at some time within one year before the change and at some time within two years after the change, and
- Between the times when the ownership test above is satisfied, the trade must be carried on only by a company or companies within the charge to corporation tax.

Given the requirement for substantial identity of ownership, these provisions are generally only applicable in the case of internal reorganisations rather than third-party acquisitions.

d. Tax-Free Reorganisations

It is possible to carry out tax-free reorganisations (subject to certain conditions).

e. Purchase Agreement

The parties will generally execute an asset purchase agreement which will set out the assets and liabilities being acquired.

f. Depreciation and Amortisation

No specific tax depreciation is available for goodwill in Ireland. However, tax relief is available in Ireland on capital expenditure incurred by companies on the acquisition of intangible assets, including goodwill which is directly attributable to these intangible assets. The definition of an 'intangible asset' which qualifies for this relief is very wide and includes patents, trademarks, brand names, domain names, any copyright, computer software, know-how generally related to manufacturing or processing and customer lists (except where such customer lists have been provided directly or indirectly in connection with the transfer of a business as a going concern).

The relief is designed to provide tax allowances broadly equal to the write-off to the profit and loss account available under normal accounting rules for capital expenditure incurred on the provision of specified intangible assets. Under the relief, the capital expenditure incurred to acquire intellectual property can be written off either in line with the accounting write-off or over a 15-year period. If a company makes this election, a rate of 7% will apply for years 1 to 14 and of 2% for year 15. Certain claw back provisions may apply if the asset is disposed of within five years of acquisition. Additionally, in the case of capital expenditure incurred on qualifying assets on or after 14 October 2020, a clawback may arise where the asset ceases to be used for the purposes of the trade.

Finance Act 2017 reintroduced a cap on the amount of capital allowances that can be deducted for intangible assets. The cap restricts the deduction for capital allowances to 80% of the trading income derived from those intangible assets. This cap applies to expenditure incurred on or after 11 October 2017.

g. Transfer Taxes, VAT

The stamp duty rate on an acquisition of assets is 7.5% of the consideration paid or of the market value if higher. There is an exemption on the sale or transfer of certain intellectual property such as patents and trademarks. Where assets are capable of being transferred by delivery and are transferred by delivery and not pursuant to any written instrument, then no stamp duty applies.

There are also anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the Finance (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate in certain situations to impose a stamp duty rate of 10% in respect of the acquisition of residential units on or after 20 May 2021 where at least 10 residential units are acquired during any 12-month period after that date.

An agreement to transfer assets may be stampable. As such where there is a delay between the signing of the asset purchase agreement and the completion of the transaction and execution of the instruments of transfer, a purchaser should be aware that the 44 day time limit for stamping will begin to run from the date the asset purchase agreement is executed.

Generally, the transfer of assets is subject to VAT. However, where the assets transferred constitute a business or part of a business capable of being operated on an independent basis, the transfer is deemed not to be a supply for VAT purposes. This exemption applies to the transfer of tangible and intangible assets to an accountable person / taxable person depending on the circumstances. It also applies even if the business has ceased trading.

h. Asset Purchase Advantages

In an asset deal the purchaser's base cost in the assets will be the price paid for the assets. This will be relevant for any future sale of the assets.

The purchaser has the advantage of being able to pick and choose the assets and liabilities it wishes to acquire. Historical tax liabilities of the target group will generally not transfer as part of an asset acquisition.

i. Asset Purchase Disadvantages

From a Seller's perspective, an asset sale will typically result in two layers of taxation. Corporation tax will be payable by the company in respect of any chargeable gains or balancing charges triggered on the sale of the target assets. CGT or income tax or corporation tax will also be payable in the hands of the ultimate shareholders, depending on whether the proceeds from the sale are distributed upon a subsequent liquidation of the company or as a dividend.

5. ACQUISITION VEHICLES

In terms of share acquisitions, generally an Irish acquisition vehicle would be used particularly in the case of private equity acquirors to allow a debt pushdown. An Irish acquisition vehicle may also be required from a commercial perspective to allow subordination of loans.

6. ACQUISITION FINANCING

a. General Comments

There are no particular challenges involved in bringing funds into Ireland or administrative steps required to be taken.

b. Equity

It will generally be preferable from a tax perspective for the holding company of an Irish entity to be located in the EU / EEA state or a country with which Ireland has a double tax agreement. This should allow tax efficient repatriation of profits and interest payments.

There are no particular requirements for holding companies to have a certain level of substance in Ireland. However, where a company has no substance in Ireland this will impact on the company's VAT recoverability and the corporate tax rate which will apply. It would be necessary to consider whether any foreign tax implications would arise in such circumstances (e.g. withholding taxes in source country) and whether, for example, benefits under the relevant tax treaty would be available particularly in light of the anti-treaty abuse measures under the Multilateral Instrument.

c. Debt

i Limitations on use of debt

Under the current legislation, an Irish holding company may be financed principally by way of debt as Ireland has no thin capitalisation rules. However it is worth noting that following on from the introduction of the ATAD, Ireland has introduced a general interest limitation rule which applies for accounting periods commencing on or after 1 January 2022 pursuant to which the tax deduction of net financial expenses will be limited to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation ("EBITDA") or to a maximum amount of EUR3 million, whichever is higher (subject to several exceptions).

ii Limitations on interest deductions

Subject to certain conditions, interest relief may be available to a company on interest paid on monies borrowed to acquire shares in or loan money to a trading company or a company whose business consists wholly or mainly of holding stocks, shares or securities in such a company. Such interest relief will be treated as a 'charge'. This means that it can be offset against the company's total profits for the year of assessment in which the interest is paid. The charge can also be used against profits in other Irish group companies subject to certain conditions. It should be noted that this is a complex area which is subject to a number of detailed anti-avoidance provisions.

iii Related Party Debt

In terms of the distinctions between related party debt and unrelated party debt, there are complicated anti-avoidance measures which need to be considered when interest relief is being sought in connection with interest arising on related party debt.

iv Debt Pushdown

It is quite common for debt pushdowns to be used in the context of acquisitions. In the case of a share purchase, assuming that the conditions set out above in relation to interest as a charge are satisfied, interest relief may be available as a charge in respect of the interest paid on the funds borrowed to acquire the shares. Such interest is deductible against the total profits of the company. However, to the extent that there is excess interest, such current-year interest can be surrendered within an Irish corporation tax group (i.e. a 75% group). The interest surrendered can be off-set against the other company's total profits, minimising its tax.

d. Hybrid Instruments

Financial instruments that combine elements of both debt and equity have become increasingly popular. Typically, these hybrid instruments would be used to invest in high growth, high potential businesses due to the increased flexibility they provide to both investors and investee companies. Generally, such instruments allow for investors to initially lend to companies and subsequently convert their loan to equity should the business reach certain milestones.

Where such instruments are used, both the investors and the investee companies should be aware of the potential for interest payments to be classified as distributions for tax purposes, with consequent withholding tax implications and an impact on the availability of deductions for the investee company.

Hybrid financial instruments may also be subject to the new anti-hybrid measures introduced in Finance Act 2019 and Finance Act 2021 (see section 2.a.ii. above), if, for example there is a hybrid mismatch outcome attributable to differences between the Irish and foreign tax characterisation of a financial instrument or payments under a financial instrument.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are relatively common in Ireland. From a Seller's perspective it will be important to determine whether CGT will need to be paid on the full amount of the potential earn-out upfront. This will depend on how the earn-out is structured.

Where an amount of the consideration is contingent but is ascertainable, generally the entire amount of the earn-out should be included when calculating the gain made by the seller for CGT purposes. If the seller does not ultimately receive this amount, a refund may be sought.

Where the ultimate amount which a seller will receive as part of an 'earn-out' cannot be quantified, this will be considered unascertainable consideration. In general, the view is taken that where the consideration is unascertainable, the right to receive that future sum of money should be valued based on what an independent third-party would pay for the right to the future consideration in the given circumstances and the risks involved. This right is then treated as a separate asset for CGT purposes.

In such cases where there is a sale of shares an initial CGT liability will arise based on the up-front consideration received on completion plus the value placed on the earn-out. Subsequent charges to CGT would then arise if / when any earn-out is paid. In the event that the earn out is not paid then a capital loss may arise.

7. DIVESTITURES

a. Tax Free

There is a participation exemption from CGT where shares are disposed of by a company in certain circumstances. In order to qualify for the exemption, the following conditions must be satisfied:

- At the time of the disposal, the subsidiary company must be tax resident in an EU country or a country with which Ireland has a double tax agreement;

- For a consecutive period of twelve months ending not more than two years before the date of disposal, the parent company, must either directly or indirectly:
  - Hold at least 5% of the company's ordinary share capital;
  - Be beneficially entitled to at least 5% of the profits available for distribution to equity holders of the company; and
  - Be beneficially entitled to at least 5% of the assets available for distribution to equity holders on a winding up;
- At the time of the disposal, either:
  - The business of the investee company (the company whose shares are being sold) consists wholly or mainly of the carrying on of a trade or trades; or
  - The business of the parent company, and all companies which meet the residence / holding period test, when taken together, consists wholly or mainly of trading business; and
- The shares disposed of do not derive their value or the greater part of their value from land or mineral rights in Ireland, nor are held as part of a foreign business fund.

b. Taxable

The current rate of Irish CGT is 33%. The charge to CGT applies to individuals, trusts, unincorporated bodies and companies in the case of development land gains.

Companies resident in Ireland are taxed on chargeable gains, other than for development land, at the same rate as CGT, but the tax falls under its corporation tax liability.

c. Cross Border

A company that is non-resident is liable to Irish CGT on the disposal of 'specified assets', including land and buildings in Ireland and the shares of an Irish company which derives its value, or the greater part of its value, from Irish land or buildings.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Ireland operates a worldwide tax system. An Irish tax-resident company will be subject to tax on its worldwide income and gains. To the extent that it is subject to foreign tax, a tax credit should be available when calculating the company's Irish tax liability on the relevant income or gains.

b. CFC Regime

Ireland has recently introduced CFC legislation in line with ATAD requirements. The rules apply for accounting periods beginning on or after 1 January 2019.

Broadly, an entity will be a CFC where it is not resident in Ireland and is subject to more than 50% control by an Irish resident company and / or its associated enterprises. The CFC regime will only apply to an entity whose foreign tax liability is less than half the tax that would have been due had that entity been subject to tax in Ireland. There are also exclusions for companies with low accounting profits and companies with a low profit margin.

When implementing ATAD, Member States were given two options for determining whether the income of a CFC should be attributed to its parent / controlling company.

Option A attributes undistributed income arising from certain categories of primarily passive income of a CFC to the parent company.

Option B attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage, attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage. It requires an analysis of the extent to which the CFC would own the assets or assume the risks if it were not for the parent company undertaking the significant people functions or key entrepreneurial risk-taking functions relevant to those assets and risks. It focuses on bringing income that is artificially diverted from Ireland to a low tax jurisdiction back into the Irish tax net. Ireland has opted for Option B.

The legislation confirms that the CFC charge will not apply to arrangements that have been subject to Irish transfer pricing rules. There is also a carve out for undistributed income which is attributable to relevant Irish activities where it is reasonable to conclude that such arrangements would be entered into by persons dealing at arm's length.

The objective behind the new legislation is to align where tax is paid with where significant people functions are located and where key entrepreneurial risk-taking functions are carried on.

Where a CFC charge arises, it must be calculated in accordance with transfer pricing rules and should reflect the amount that the CFC would have paid to a third-party in respect of the Irish activities (subject to certain restrictions). The CFC charge is applied at the Irish corporation tax rates (12.5% for trading income and 25% in all other cases). In calculating the CFC charge, credit is given for foreign tax paid by the CFC on its income and CFC charges imposed by other countries on the relevant income.

c. Foreign branches and partnerships

An Irish tax resident company with a foreign branch or which is part of a foreign partnership will be subject to Irish tax on profits arising from such branch / partnership. To the extent that the company is also subject to foreign taxes on such income, a tax credit should be available when calculating its Irish tax liability.

d. Cash Repatriation

Ireland does not have a full participation regime for dividends.

In general, distributions (other than in respect of preference shares) received by an Irish resident company from another Irish company are exempt from tax.

Distributions received by an Irish resident company from foreign subsidiaries are subject to tax at either 12.5% or 25% depending on the nature of the profits out of which the dividends are paid.

The 12.5% tax applies when distributions are received by an Irish resident company from companies resident in a 'Relevant Territory' or companies which are publicly quoted or a 75% subsidiary of a publicly quoted company. A 'Relevant Territory' is either:

- An EU member state;
- A state with which Ireland has a double taxation treaty; or
- A country which has ratified the Joint Council of Europe / OECD Convention on Mutual Assistance in Tax Matters.

The dividends must be made out of trading profits of the company making the distribution. Trading profits of non-resident companies will be allowed to pass up through tiers of companies in a group by way of dividend payments, so that when the dividend is ultimately paid to the Irish resident company it will be taxable at the 12.5% rate.

The legislation also contains a 'safe harbour' provision which allows the full amount of a dividend received by a company to be charged at the 12.5% rate provided the following conditions are met:

- At least 75% of the total profits of the top tier company making the distribution arise out of trading activities. In calculating this 75%, dividends from trading profits received from lower tier companies resident in a Relevant Territory constitute trading profits of the top tier company.
- The aggregate value of the trading assets at the end of the accounting period in which the dividend is received by the Irish resident company in receipt of the dividend (including its subsidiaries) must be at least 75% of the aggregate value of all of their assets.

Irish tax legislation operates a tax credit system for underlying tax on the profits out of which the dividend is paid in the source country. As such, if the dividend is subject to tax at 12.5% in Ireland and more than 12.5% tax is paid on the underlying profits out of which the relevant dividends are paid, no further tax should be payable in Ireland. Likewise, if the dividend is subject to tax at 25% in Ireland and more than 25% tax is paid on the underlying profits out of which the relevant dividends are paid, no further tax should be payable in Ireland.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

i Withholding tax

A withholding tax applies where, on a purchase of shares in a company, the consideration exceeds EUR500,000 and the shares (other than shares quoted on a stock exchange) also derive their value or greater part of their value directly or indirectly from land and buildings in Ireland, minerals in Ireland or any minerals or mining rights, exploration, exploitation right in a designated area.

In these cases, under Section 980 of the Taxes Consolidation Act 1997, the purchaser must withhold from the consideration and remit to Revenue tax amounting to 15% of the consideration unless the vendor provides a Form CG50A (CGT Clearance Certificate). A CG50A is also required when the consideration for the shares exceeds EUR500,000, the shares were acquired following a reorganisation and the 'old shares' fell within the category of shares outlined above.

The 15% withholding tax obligation does not apply if the seller obtains a CG50A from Revenue and delivers it to the purchaser prior to the consideration being paid.

ii VAT

Ireland has complex rules for VAT on property which should also be closely examined. A capital goods scheme tracks the use of a property over a 20 year period to ensure the VAT recovered reflects the use of the property over the period. An annual review will establish if there are any adjustments to be made. There are also record keeping requirements over the life of the capital good.

iii Close company

A close company is a company which is controlled by five or fewer 'participators'. When there is surplus rental and investment income, a close company surcharge applies (at a current rate of 20%) if such income has not been distributed by the close company within 18 months of the end of the accounting period.

iv Stamp Duty

For transfers on or after 6 December 2017 of certain shares and interests in companies and funds which derive their value, or the greater part of their value, directly or indirectly from non-residential land and buildings in the State, the rate of stamp duty is 7.5%. This increased rate of stamp duty will apply where the transfer leads to a change in the control of the land or buildings and where the land or buildings were acquired or were developed for the sole or main object of realising a gain on its disposal.

As outlined above, there are also anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate in certain situations to impose a stamp duty rate of 10% in respect of:

- The acquisition of residential units on or after 20 May 2021 where at least 10 residential units are acquired during any 12-month period after that date; and
- The conveyance or transfer certain shares that derive value from residential units.

b. CbC and Other Reporting Regimes

Ireland has introduced country by country reporting in line with the BEPS project.

10. TRANSFER PRICING

Until recently, Ireland had quite limited Transfer Pricing ("TP") rules. However, in Finance Act 2019 Ireland introduced a full TP regime with effect from 1 January 2020. The TP legislation will incorporate the 2017 OECD Guidelines, along with the OECD Guidance issued in 2018 on Hard to Value Intangibles and the Transactional Profit Split Method.

The Irish TP rules require that transactions between associated persons should take place at arm's length. The legislation applies to transactions involving the supply and acquisition of goods, services, money or intangible assets between associated persons or companies, and is applicable to overstated expenses or understated receipts. It is an upwards only adjustment. Generally, companies are regarded as associated if one company is in control of the other or if both are controlled by the same person or by connected persons.

Ireland's TP rules had previously only applied to arrangements which were entered into after 1 July 2010. Since 1 January 2020, all arrangements, including those entered into pre-1 July 2010 are subject to the TP rules. This change is not expected to have a major impact as most arrangements covered by the grandfathering rules have now been phased out.

The rules have been extended to apply to capital transactions where the market value of the asset being acquired or disposed of intragroup exceeds EUR25 million. Irish law already applies market value to capital transitions between connected parties. However, the valuation of relevant capital transactions must now be in line with the 2017 OECD Guidelines and so will also be subject to the new TP documentation requirements (see below).

Ireland's TP rules had previously only applied to trading transactions. However, the new rules extend the scope of the TP regime to cover non-trading transactions (such as intragroup loans, both interest free and interest bearing). There is an exemption for domestic transactions in certain cases.

The legislation requires Revenue to consider the TP rules in accordance with the substance of an arrangement where the substance is inconsistent with the form.

Revenue also has the power to recharacterise an intragroup arrangement if it lacks the required substance and is not consistent with the normal commercial actions of parties acting at arm's length. In such cases, Revenue may disregard the arrangement or substitute an alternative arrangement that is consistent with the arm's length principle.

Ireland has incorporated the documentation requirements at Chapter V of the 2017 OECD Guidelines into its transfer pricing legislation, subject to certain thresholds. Taxpayers must now retain for Revenue inspection a master file where group revenues exceed €250 million worldwide and a local file where such revenues exceed EUR50 million.

The information to be included in master and local files can be found at Annexes I and II to Chapter V of the 2017 OECD Guidelines.

Non-compliance with the documentation requirements can result in penalties of EUR4,000 or EUR25,000 (depending on size), while larger taxpayers will be subject to a further EUR100 daily penalty where documentation is outstanding.

The legislation provides for the extension of transfer pricing rules to SMEs (previously exempt). The key criteria in determining whether a company fits the definition of an SME are that the company has less than 250 employees; and either turnover of less than EUR50 million or assets of less than EUR43 million.

When applying these criteria, one must consider the consolidated enterprise, which will encompass both Irish and foreign companies, and the economic activities of individuals who are controlling shareholders.

However, the commencement of these provisions is subject to Ministerial Order. In light of the potential impact of Brexit and the current impact of ongoing COVID-19 crisis on SMEs, this extension is unlikely to take effect for some time.

Finance Act 2021 incorporated new legislation for the application of the "Authorised OECD Approach", an OECD-developed method for the attribution of profits to branches. The new provisions will apply for accounting periods commencing on or after 1 January 2022 but the implementation date for the application of these provisions to small and medium enterprises is subject to a Ministerial Commencement Order which has not been effected to date.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As discussed in section 2.a.ii. above, Ireland introduced anti-hybrid and reverse hybrid mismatch legislation in Finance Act 2019 and in Finance Act 2021 which will need to be monitored carefully by multinational groups, particularly those with multiple layers of intermediary holding entities such as LLCs or partnerships.

If "check-the-box" elections are made in the US or a payment is made to a US LLC, these anti-hybrid rules will need to be carefully considered to ensure that the Irish company will be entitled to a deduction for payments, such as management charges or interest, made by it to a group entity.

Following acquisition, a purchaser should be aware that the use of hybrid entities (including US entities that have been subject to a check the box election for US tax purposes) as part of a group structure which includes an Irish entity may give rise to certain tax implications. In particular certain reliefs may not be available for intra group transfers and the surrender of losses between group members may be impacted.

b. Use of Hybrid Instruments

As with hybrid entities, the use of hybrid instruments (for example preferred equity which is more akin to a debt instrument than equity share capital) may give rise to complications from an Irish tax perspective when considering the availability of certain tax reliefs and may also be subject to the new anti-hybrid measures outlined in section 2.a.ii.

c. Principal / Limited Risk Distribution or Similar Structures

In terms of post-acquisition tax planning, Ireland is commonly used as the EMEA base for companies.

d. Intellectual property (licensing, transfers, etc.)

Ireland has a very favourable regime for Intellectual Property ("IP") companies the main features of which include:

- A corporation tax rate of 12.5% on trading income;
- An attractive IP amortisation relief which allows an IP company to write off the cost of certain IP it acquires (and any related interest expense) against the income from its IP trade (subject to certain restrictions);
- A research and development tax credit of 25% of qualifying R&D expenditure incurred. This relief is in addition to a corporation tax deduction at 12.5% resulting in effective relief of 37.5% on qualifying R&D expenditure;
- The 'Knowledge Development Box', an OECD compliant IP regime which provides for an effective corporate tax rate of 6.25% on qualifying profits relating to certain IP, namely patented inventions and copyrighted software.

e. Special tax regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

Ireland is part of the inclusive framework and has been a committed participant in the BEPS process.

The Irish government has introduced a number of measures which are designed to prevent base erosion and has committed to adopting further measures over the coming years.

Of particular relevance in the context of M&A activity involving Irish groups will be:

- The introduction of an exit charge with effect from midnight on 9 October 2018;
- The introduction of the CFC regime;
- The impact of the new Multilateral Instrument;
- The introduction of interest limitation rules and the introduction of anti-hybrid and reverse-hybrid rules; and
- The reform of Ireland's TP regime.

13. ACCOUNTING CONSIDERATIONS

The usual accounting principles which apply to the relevant entity will need to be followed in an Irish M&A transaction. For example, typically business combinations will be accounted for using the 'acquisition method', which generally requires assets acquired and liabilities assumed to be measured at their fair values at the acquisition date.

Where there is a divestiture or spin-out, it will be important to understand at the outset the value attributable to the business and assets (including the book value) involved as this may be relevant for a number of company law and tax points including, for example, to ensure that the company has sufficient distributable reserves to allow it to legally carry out the transaction, or to determine whether a CG50A Clearance Certificate will be required.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions may only be paid to the extent that the company has distributable reserves. A repayment of share capital up to the amount paid for the shares will not generally be considered a distribution, although complications can arise where the repayment follows a bonus issue of shares. This is subject to certain procedural requirements from a company law perspective.

b. Substance Requirements for Recipients

Irish tax legislation imposes dividend withholding tax at the standard rate (currently 25%) on all dividends paid by Irish resident companies. The same treatment applies regardless of whether the dividends arise out of capital gains or operational profits.

Exemptions are available for distributions made to certain shareholders, including:

- A non-resident person (other than a company) who is resident for tax purposes in a country with which Ireland has a double tax treaty or in another EU Member State (a "Relevant Territory");
- A non-resident company which is resident in a Relevant Territory and is not under the control of an Irish resident person;
- A non-resident company controlled by persons, who are tax resident in a Relevant Territory and who are not themselves under the control of persons who are not resident in a Relevant Territory.

In order for a non-resident person or company to avail of the exemption certain declarations must be submitted to the dividend paying company prior to the making of the distribution. The declarations must contain a number of confirmations, including that the declarant is beneficially entitled to the dividend.

The declaration from a non-resident person must contain a certificate of residence issued by the tax authority of the Relevant Territory confirming that the person is resident in that country. In the case of US individuals, a Form 6166 should accompany the declarations by any US individuals.

c. Application of Regional Rules

As Ireland is part of the EU it is obliged to implement EU Directives into national law. Given the EU's increasing role in shaping tax policy many of the recent changes to Irish tax legislation have arisen due to the implementation of EU Directives. For example:

- Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("Anti-Tax Avoidance Directive", or "ATAD");
- Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("Anti-Tax Avoidance Directive 2" or "ATAD2"); and
- Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU ("DAC 6").

d. Tax Rulings and Clearances

Tax rulings and clearances are not commonly sought as part of acquisitions, divestitures or post acquisition integrations.

15. MAJOR NON-TAX CONSIDERATIONS

There will be a number of non-tax considerations to bear in mind. For example:

- On an asset sale, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) ("TUPE") may apply. TUPE provides for certain protections for employees where there is a transfer of a business or undertaking.
- Certain mergers and acquisitions require mandatory notification to the Competition and Consumer Protection Commission ("CCPC") before completion where the relevant turnover thresholds are met, or the transaction comes within the definition of a "media merger" (regardless as to whether the thresholds have been met). A failure to comply with competition law can lead to a transaction being void and could potentially give rise to criminal liability.
- The pricing of the transaction (e.g. whether there will be a set of Completion Accounts prepared or whether the deal will be priced based on the last set of audited accounts or whether the deal is a locked box deal) will be relevant in terms of the scope of a number of the warranties and indemnities.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0 / 5 / 10	0 / 7	7	[1] [2]
Armenia	0 / 5 / 15	0 / 5 / 10	5	[3] [4]
Australia	15*	10	10	
Austria	10*	0	0 / 10	[5]
Bahrain	0	0	0	
Belarus	0 / 5 / 10	0 / 5	5	[6] [7]
Belgium	15 / 20	15	0	[8]
Bosnia and Herzegovina	0	0	0	
Botswana	0 / 5	0 / 7.5	5 / 7.5	[9] [10] [11]
Bulgaria	5 / 10	0 / 5	10	[12] [13]
Canada	5 / 15	0 / 10	0 / 10	[14] [15] [16]
Chile	5 / 15	5 / 15	5 / 10	[17] [18] [19]
China	5 / 10	0 / 10	6 / 10	[20] [21] [22]
Croatia	5 / 10	0	10	[23]
Cyprus	0	0	0 / 5	[24]
Czech Republic	5 / 15	0	10	[25]
Denmark	0 / 15*	0	0	[26]
Egypt	5 / 10	0 / 10	10	[27] [28]
Estonia	5 / 15	0 / 10	5 / 10	[29] [30] [31]
Ethiopia	5	0 / 5	5	[32]
Finland	0 / 15*	0	0	[33]
France	10 / 15 / 20	0	0	[34]
Georgia	0 / 5 / 10	0	0	[35]
Germany	5 / 15	0	0	[36]
Ghana (Not in effect)	0 / 7	0 / 7	8	[37] [38]
Greece	5 / 15	5	5	[39]
Hong Kong	0	0 / 10	3	[40]
Hungary	5 / 15	0	0	[41]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Iceland	5 / 15	0	0 / 10	[42] [43]
India	10	0 / 10	10	[44]
Israel	10*	5 / 10	10	[45]
Italy	15	10	0	
Japan	0	10	10	[46]
Kazakhstan	0 / 5 / 15	0 / 10	10	[47] [48]
Kenya (Not in effect)	0 / 8 / 15	0 / 12	10	[49] [50]
Korea (Republic of)	10 / 15*	0	0	[51]
Kosovo (Not in effect)	0 / 5 / 10 / 15	0 / 5	0	[52] [53]
Kuwait	0	0	5	
Latvia	5 / 15	0 / 10	5 / 10	[54] [55] [56]
Lithuania	5 / 15	0 / 10	5 / 10	[57] [58] [59]
Luxembourg	0	0	0	[60]
Macedonia	0 / 5 / 10	0	0	[61]
Malaysia	10	0 / 10	8	[62]
Malta	5 / 15	0	5	[63]
Mexico	5 / 10	0 / 5 / 10	10	[64] [65]
Moldova	5 / 10	0 / 5	5	[66] [67]
Montenegro	0 / 5 / 10	0 / 10	5 / 10	[68] [69] [70]
Morocco	6 / 10	0 / 10	10	[71] [72]
Netherlands	0 / 15	0	0	[73]
New Zealand	15*	10	10	
Norway	0 / 5 / 15	0	0	[74]
Pakistan	5 / 10	0 / 10	10	[75] [76]
Panama	5	0 / 5	5	[77]
Poland	0 / 15	0 / 10	10	[78] [79]
Portugal	15	0 / 15	10	[80]
Qatar	0	0	5	
Romania	3	0 / 3	0 / 3	[81] [82]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Russia	10	0	0	
Saudi Arabia	0 / 5	0	5 / 8	[83] [84]
Serbia	5 / 10	0 / 10	5 / 10	[85] [86] [87]
Singapore	0	0 / 5	5	[88]
Slovakia	0 / 10	0	0 / 10	[89] [90]
Slovenia	5 / 15	0 / 5	5	[91] [92]
South Africa	5 / 10	0	0	[93]
Spain	0 / 15*	0	5 / 8 / 10	[94] [95]
Sweden	5 / 15*	0	0	[96]
Switzerland	0 / 15*	0	0	[97]
Thailand	10	0 / 10 / 15	5 / 10 / 15	[98] [99]
Turkey	5 / 10 / 15	10 / 15	10	[100] [101]
Ukraine	5 / 15	0 / 5 / 10	5 / 10	[102] [103] [104]
United Arab Emirates	0	0	0	
United Kingdom	5 / 15	0	0	[105]
United States	5 / 15*	0	0	[106]
Uzbekistan	5 / 10	5	5	[107]
Vietnam	5 / 10	0 / 10	5 / 10 / 15	[108] [109] [110]
Zambia	7.5	0 / 10	8 / 10	[111] [112]

* Exemption from Irish tax if there is no entitlement to tax credit on dividends, otherwise Irish tax at 15%

Note 1: Ireland generally does not impose withholding tax on dividends paid to a recipient located in a tax treaty country.

Note 2: Under Ireland's domestic law, however, withholding tax is imposed only on patent royalties.

Note 3: Numerous exemptions are available in respect of DWT.

Footnotes	
1	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend. Dividends are exempt from tax where the dividends are paid to the government of a contracting state. The term "government" includes (a) in the case of Ireland: the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund and any other statutory body which is wholly or mainly owned by the government of Ireland and (b) in the case of Albania: the Central Bank of Albania and any other statutory body which is wholly or mainly owned by the government of Albania.
2	Interest - Maximum rate of 7%. Reduced rate of 0% applies where the interest is paid to a statutory body or other government owned entity or the Central Bank of the other state and in the case of Ireland, the National Treasury Management Agency and the National Pension Reserve Fund. Exemption also applies where interest is paid by or to a financial institution, to a pension fund which is exempt from tax on interest income or is paid with respect to an indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
3	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends. Reduced rate of 0% rate applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividends and has owned that holding for a period of at least 2 years. In addition, the beneficial owner must be entirely relieved from tax paid in respect of dividends by an exemption or credit in their state of residence, in order to avail of the 0% rate.
4	Interest - Maximum rate of 10%. Reduced rate of 5% applies where the interest is paid in respect of a loan of any kind granted by a banking enterprise. Reduced rate of 0% applies where interest is paid to a contracting state or a local authority thereof, including the Central Bank of a state or any institution, agency or fund wholly owned by a state.
5	Royalties - Where payments are made to an Irish entity owning more than 50% of the share capital of the Austrian payor, a rate of 10% applies. Otherwise, royalties are only taxable in the state where the recipient of the royalties is resident.
6	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend. Reduced rate of 0% where the recipient of the dividend is the National Treasury Management Agency, the National Pension Reserve Fund or any organisation, agency or institution wholly or mainly owned by the Government as may be agreed from time to time.
7	Interest - Maximum rate of 5%. Reduced rate of 0% where the interest is paid to the government, a central bank, the National Treasury Management Agency, the National Pension Reserve Fund or an organisation owned or partly owned by the government of a state. Exemption also applies to interest on any loan which is government guaranteed or approved and to any loan which is used to finance the acquisition of industrial, commercial, trade, medical or scientific equipment.
8	Dividends - Maximum rate of 15% where dividends paid by Belgium resident company. Dividends paid by Irish resident company subject to the standard rate of tax (20%).
9	Dividends - Maximum rate of 5%. Reduced rate of 0% where the beneficial owner is the government.
10	Interest - Maximum rate of 7.5%. Reduced rate of 0% where the beneficial owner is the government or local authority.
11	Royalties - Maximum rate of 7.5%. Reduced rate of 5% applies in respect of the use of or the right to use industrial, commercial or scientific equipment.
12	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend.

Footnotes	
13	Interest - Maximum rate of 5%. Reduced rate of 0% applies where the interest is paid to the government, a local authority or the Central Bank of the other State.
14	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company which controls 10% of the voting power directly or indirectly in the company paying the dividends (except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada).
15	Interest - Maximum rate of 10%. Reduced rate of 0% applies where interest is paid in respect of indebtedness of the government including political sub - divisions of the other State. It also applies where interest is paid to a non-related party relating to the sale on credit of equipment, merchandise or services, interest is paid on a loan guaranteed by Export Development Canada or by an export credit guarantee scheme administered by the Government of Ireland and for interest paid to the administrator of a pension, retirement or employee benefit plan provided the interest is generally exempt from tax in the hands of the recipient in the other State and is not derived from carrying on a trade or business or from a related person.
16	Royalties - Maximum rate of 10% applies. Copyright royalties excluding films, videotape and reproduction, as well as computer software, patents and information concerning industrial, commercial or scientific experience are exempt.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company that controls directly at least 20% of the voting power in the company paying the dividends.
18	Interest - Maximum rate of 15%. Reduced rate of 5% applies to interest derived from loans granted by banks and insurance companies, bonds and securities regularly and substantially traded in a recognised securities market, and sale on credit by the purchaser of machinery and equipment to a vendor that is the beneficial owner.
19	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
20	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
21	Interest - Maximum rate of 10% applies. Interest is exempt where the interest is paid to the government, a local authority, the Central Bank, or a financial institution wholly owned by the government of the other State; the exemption also extends to interest on debts financed by these bodies.
22	Royalties - Maximum rate of 10% applies. Reduced rate of 6% applies to payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment.
23	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends.
24	Royalties - Generally royalties are exempt, except where a 5% rate applies to payments for use of or right to use motion picture films other than films for exhibition on television.
25	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
26	Dividends - A rate of 15% applies where the dividends are beneficially owned by a company which holds directly less than 25% of the capital of the company paying the dividends, or by an individual. In all other cases, the dividends are exempt.

Footnotes	
27	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
28	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid by or to a statutory body, political subdivision or local authority, the Central Bank or any other agency owned by the government of a contracting state; or the interest is paid in respect of a loan granted by the government, central bank or any other such agency.
29	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends
30	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid or received by the government, a local authority or agent of the government, the Central Bank or any financial institution wholly owned by the government, of the other State. Exclusion also applies to interest paid on loans guaranteed by the government of either State.
31	Royalties - Maximum rate of 10%. Reduced rate of 5% applies for the use of any industrial, commercial or scientific equipment.
32	Interest - Maximum rate of 5% applies. Reduced rate of 0% where interest is derived and beneficially owned by the government, a political subdivision, or local authority of the other state, the National Bank of Ethiopia or the Central Bank of Ireland.
33	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10% or more of the voting power in the company from which the dividend is derived.
34	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies in the case of dividends distributed by a French resident company to an Irish resident company which has held shares representing at least 50% of the capital of the French company for one year. Dividends paid by Irish resident company subject to the standard rate of tax (20%).
35	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends and has invested more than EUR100,000 in the capital of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner is a company which controls directly or indirectly at least 50% of the voting power in the company paying the dividends and has invested at least 2 million Euros in the capital of the company paying the dividends.
36	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company (other than a partnership or a German Real Estate Investment Trust Company) which holds directly at least 10% of the capital of the company paying the dividends.
37	Dividends - Maximum rate of 7% applies. Reduced rate of 0% applies where the recipient of the dividends is the government, a public body, a political subdivision, the Central Bank or any other agency owned by the other state.
38	Interest - Maximum rate of 7% applies. Reduced rate of 0% applies where the interest is paid to the government, a public body, a political subdivision or a local authority thereof or the Central Bank of the other state; or the interest is paid in connection with a loan granted by the government, or any other agency of the other state. The exemption also applies to interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any industrial, commercial or scientific equipment or where the recipient of the interest is a pension fund that is exempt from tax on the interest income.
39	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.

Footnotes	
40	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the beneficial owner is in the case of Ireland: the government, the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund, the National Assets Management Agency or a statutory body mainly owned by the government. Similarly, in the case of Hong Kong, where the beneficial owner is the government, the Hong Kong Monetary Authority or statutory body mainly owned by the government, no tax shall be chargeable. This exclusion also applies where a financial institution pays or receives the interest, or if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
41	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner holds directly at least 10% of the capital of the company paying the dividends.
42	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
43	Royalties - Maximum rate of 10% applies. Reduced rate of 0% applies to royalties for the use of, or the right to use computer software or patents or for information concerning industrial, commercial or scientific experience.
44	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the interest is paid to the government, a local authority, the Central Bank and, in the case of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export – Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India ("ICICI") of the other State; the exemption also extends to interest on debts financed or guaranteed by these bodies.
45	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where the interest relates to the sale of industrial, commercial or scientific equipment, the credit sale of merchandise between two enterprises or bank loans.
46	Dividends - Maximum rate of 15% applies on tax payable in Japan. A reduced rate of 10% applies in Japan where an Irish resident company owns at least 25% of the entire voting shares of the company paying such dividends during the period of 6 months immediately preceding the date of payment of the dividends. A 0% withholding tax rate applies to dividends paid by an Irish resident company.
47	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner is the government, the central bank, or any other institution wholly owned by the government of a state.
48	Interest - Maximum rate of 10%. Reduced rate of 0% where the beneficial owner is the government, the central bank or any other institution wholly owned by the government of a state.
49	Dividends – Maximum rate of 15% applies where dividends are paid by an Irish Real Estate Investment Trust ("REIT"). Otherwise, the reduced rate of 8% applies. Reduced rate of 0% applies where dividends are paid to: in the case of Kenya, the Central Bank of Kenya or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Dividends are also exempt from tax where the dividends are paid to any statutory body or institution wholly owned by the government of a contracting state.
50	Interest – Maximum rate of 12%. Reduced rate of 0% applies where the beneficial owner is: in the case of Kenya, the Central Bank of Kenya or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Interest is also exempt from tax where the beneficial owner is any statutory body or institution wholly owned by the government of a contracting state.
51	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies where the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the company paying the dividends.

Footnotes	
52	Dividends - Maximum rate of 15% applies where dividends are paid by an Irish Real Estate Investment Trust (“REIT”). Reduced rate of 10% applies in all other cases unless the further reduced rates of 5% or 0% apply. The reduced rate of 5% applies if the beneficial owner is a company which holds at least 10% of the voting power of the company for an uninterrupted twelve month period ending on the date the dividend is paid. Reduced rate of 0% applies where dividends are paid to: in the case of Kosovo, the Central Bank of Kosovo or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Dividends are also exempt from tax where the dividends are paid to any statutory body or institution wholly owned by the government of a contracting state.
53	Interest – Maximum rate of 5%. Reduced rate of 0% applies where the interest is paid to the beneficial owner and such interest is paid: to the Government of a contracting state, to a political subdivision or local authority thereof or to the Central Bank of a contracting state; in the case of Kosovo, to the Kosovo Treasury; in the case of Ireland, to the National Treasury Management Agency or bodies under its management; to a statutory body or certain institutions wholly or mainly owned by the government of a contracting state; to or by a financial institution; with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service; or to a pension fund that is exempt from tax on the interest income.
54	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
55	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if the payer or recipient of the interest is the government, local authority or government agency, Central Bank or financial institution wholly owned by government or if the loan is government guaranteed.
56	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.
57	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
58	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if the payer or recipient of the interest is the government, local authority or government agency, Central Bank or financial institution wholly owned by government or if the loan is government guaranteed.
59	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.
60	Dividends - Maximum rate of 15% applies in respect of dividends paid by a Luxembourg resident company. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends. A 0% withholding tax rate applies to dividends paid by an Irish resident company .
61	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner of a company has owned shares directly representing 25% of the capital of the company paying the dividends for an uninterrupted twelve month period ending on the date the dividend is paid, or is a recognised pension fund.
62	Interest - Maximum rate of 10% applies. Reduced rate of 0% applied where the recipient is the government, a local authority or a government agency, Central Bank or financial institution wholly owned by the government or if the loan is guaranteed or insured by any of these bodies.

Footnotes	
63	Dividends - A reduced rate of 5% applies where an Irish resident payee company pays a dividend to a beneficial owner who is Malta-resident and is a company which holds directly at least 10% of the voting power of the company paying the dividends. In other cases involving the paying of dividends from an Irish resident to a Maltese resident, a rate of 15% applies. Where a Maltese resident company pays dividends to a Irish resident, Maltese tax on the gross amount of the dividend shall not exceed that chargeable on the profits out of which the dividends are paid.
64	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting stock of the company paying the dividends.
65	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a bank. Reduced rate of 0% applies where the recipient or payee is the government, local authority, Central Bank or where the beneficial owner is an exempt pension fund or the interest is on a loan in excess of 3 years guaranteed or insured by the government or specified banks.
66	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power in the company paying the dividends.
67	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the interest is paid to or by the government, a local authority, a political subdivision or Central Bank of the other State or if it is in respect of a loan which is made by, to or guaranteed by any of the above bodies. The 0% rate also applies in respect of interest paid to a financial institution or is paid with respect to an indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
68	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 10% of the capital in the company paying the dividends. Reduced rate of 0% applies where dividends are paid to the government.
69	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if it is derived and beneficially owned by the government of the other state or local authority thereof, the Central Bank or any financial institution wholly or almost wholly owned by that government.
70	Royalties - A rate of 10% applies in the case of any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. A reduced rate of 5% applies in respect of royalties which derive from the use of or right to use any copyright.
71	Dividends - Maximum rate of 10% applies. Reduced rate of 6% applies where the beneficial owner is a company which owns directly at least 25% of the capital of the company paying the dividends.
72	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid to the government or the Central Bank of the other state as well as, in the case of Ireland, the National Treasury Management Agency and the National Pension Reserve Fund and in the case of Morocco, the Deposit and Management Fund and the Moroccan Pension Fund.
73	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company and holds directly at least 25% of the voting power in the company paying the dividends.
74	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends. Reduced rate of 0% applies where the dividends are beneficially owned by the government or central bank of either contracting state, in the case of Norway, the Norwegian Government Petroleum Fund and National Insurance Fund, and in the case of Ireland, the National Treasury Management Agency or the National Pension Reserve Fund.

Footnotes	
75	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the share capital of the company paying the dividends.
76	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the beneficial owner is in the case of Ireland, the Central Bank, the National Treasury Management Agency or the National Reserve Fund, in the case of Pakistan, the State Bank.
77	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the beneficial owner is a contracting State, the Central Bank, any of its political subdivisions or local authorities, or the interest is paid in relation to the sale on credit of merchandise or equipment to an enterprise of a Contracting State. In addition, the exemption applies to interest paid to other entities or bodies (including financial institutions) or to interest paid to a pension fund recognised for tax purposes in the other state.
78	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
79	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, the credit sale of merchandise between two enterprises or bank loans.
80	Interest - Maximum rate of 15% applies. Reduced rate of 0% applies where interest paid by or to the Government or a local authority, or to an institution or body (including a financial institution) in connection with any financing granted by them under an agreement between the governments.
81	Interest - Maximum rate of 3% applies. Reduced rate of 0% applies where interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, on any bank loans, on a loan for more than two years or on any debt claim of whatever kind guaranteed by or on behalf of the government.
82	Royalties - Maximum rate of 3% applies. Reduced rate of 0% applies where royalties are attributable to any copyright.
83	Dividends - Maximum rate of 5% applies. Reduced rate of 0% applies where the dividends are paid to a company which holds directly at least 25% of the capital of the company paying the dividends. In addition, dividends shall not be taxable where the recipient of the dividend is in the case of Ireland, the government, the Central Bank or any other institution wholly owned by the government, in the case of Saudi Arabia, the government, the Saudi Arabian Monetary Agency or any other institution wholly owned by the government.
84	Royalties - Maximum rate of 8% applies. Reduced rate of 5% applies where royalties are paid for the use of, or the right to use industrial, commercial or scientific equipment.
85	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly or indirectly at least 25% of the voting power of the company paying the dividends.
86	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where it is beneficially owned by the Government of the other state, including any political subdivision or local authority thereof, the Central Bank or any financial institution wholly or almost wholly owned by that Government.
87	Royalties - All royalties are subject to a rate of 10%, except copyright royalties which are subject to a reduced rate of 5%. Payments for the lease of aircraft and ships operated in international traffic are specifically excluded from the definition of royalties.

IRELAND

Footnotes	
88	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where interest is paid to the government, in the case of Singapore this includes the Monetary Authority of Singapore and the Board of Commissioners of Currency, the Government of Singapore Investment Corporation Pte Ltd or any other statutory body. Similarly in the case of Ireland, government includes the Central Bank of Ireland, the National Treasury Management Agency, the National Pensions Reserve Fund or any other statutory body.
89	Dividends - Maximum rate of 10% applies. Reduced rate of 0% applies where the beneficial owner holds directly at least 25% of the voting power of the company paying the dividend.
90	Royalties - A 10% rate applies to payments for patents and intangibles whereas a reduced rate of 0% applies to payments for copyright.
91	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
92	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the interest is paid to the government, including political subdivisions or local authorities or by a Central Bank thereof, or any other institutions as may be agreed from time to time.
93	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
94	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25% of the voting power in the company paying the dividends subject to the conditions of the Parent Subsidiary Directive.
95	Royalties - Maximum rate of 10% applies. Reduced rate of 8% for royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, and for any copyright of scientific work. Reduced rate of 5% for royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical or artistic work.
96	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends.
97	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends, or where the beneficial owner is a pension scheme or the central bank of a contracting state.
98	Interest - Maximum rate of 15% applies. Reduced rate of 10% where the interest is beneficially owned by a financial institution (including an insurance company) or where the interest is paid with respect to indebtedness as consequence of a sale of any equipment, merchandise or services to an unconnected party. Reduced rate of 0% where interest is paid to the government which includes in the case of Thailand: the Bank of Thailand, the Export - Import Bank of Thailand or the Government Pension Fund and includes in the case of Ireland: the Central Bank of Ireland, the National Treasury Management Agency, the National Pension Reserve Fund and any other institution wholly owned by the Government.
99	Royalties - Rate of 5% for royalties received for use of or right to use any copyright. Rate of 10% for the use of or the right to use industrial, commercial or scientific equipment or any patent. Rate of 15% for the use of or the right to use any trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

Footnotes	
100	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies where the beneficial owner is a company which controls directly 25% or more of the voting power in the company paying the dividends. Reduced rate of 5% where dividends are paid out of profits which are subject to the full rate of corporation tax.
101	Interest - Maximum rate of 15% applies. Reduced rate of 10% where the interest is paid on a debt claim for a period exceeding two years or where the interest is received by a financial institution.
102	Dividends - Maximum rate of 15% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
103	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where interest is paid in connection with the sale on credit of industrial, commercial or scientific equipment or on any bank loan. Reduced rate of 0% applies where the beneficial owner of the interest is the government or any agency authorised by the government or such interest is paid in respect of any loan or debt claim made or guaranteed by the government.
104	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties are paid in respect of any copyright of scientific work, any patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific experience.
105	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly or indirectly at least 10% of the voting power in the company paying the dividends.
106	Dividends - The general rule is that a maximum rate of 15% applies and a reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power in the company paying the dividends. However, special provisions apply in the case of Regulated Investment Companies and Real Estate Investment Trusts.
107	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
108	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 70% of the voting power of the company paying the dividends.
109	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where interest is paid in the case of Ireland, to the government, the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund and any other statutory body. In the case of Vietnam, the reduced rate applies to interest paid to the government, State Bank, Bank for Investment and Development Support.
110	Royalties - Rate of 5% applies where royalties are paid as consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience. Rate of 10% applies where royalties are paid in consideration for the use of, or the right to use, a trade mark or for information concerning commercial experience. Rate of 15% applies in all other cases.
111	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the beneficial owner is in the case of Ireland, the government, the Central Bank, the National Pension Reserve Fund or any other financial institution wholly owned by Ireland. In the case of Zambia, the reduced rate applies to the government, the Bank of Zambia, the National Pension Scheme Authority and any other financial institution wholly owned by Zambia.
112	Royalties - Maximum rate of 10% applies. Reduced rate of 8% in the case of royalties received in respect of any copyright of scientific work, any patent, trade mark, design or model, plan, secret formula or process or information concerning industrial, commercial or scientific experience.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

In our experience, clients generally conduct a tax due diligence review of the three most recent tax periods across all tax heads notwithstanding that the statute of limitations period can be up to five years (and indefinite in certain circumstances).

Nº.	Legal/Commercial	Query
1	Tax (General)	Please confirm how tax, including Corporation Tax ("CT"), Capital Gains Tax ("CGT"), stamp duty, Value Added Tax ("VAT") and payroll taxes under the pay as you earn system ("PAYE"), is managed by the Target Company (i.e. is it managed internally or externally by advisors appointed to assist in a preparatory or review role).
2	Tax (General)	Please advise if there have been any historical Revenue audits across all tax heads (including but not limited to CT, CGT, stamp duty, VAT and PAYE). If so, please provide a summary of how it / they concluded.
3	Tax – (General)	Confirmation that all corporation tax, VAT and Payroll returns and payments have been made on time (i.e. printouts from the Revenue Online Service for each tax head showing dates of filings, tax liability, payment amounts and dates) for the three most recent tax years filed and any tax payments or filings made in respect of the current tax year.
4	Tax – (General)	Copies of any significant or material correspondence with Irish Revenue under any tax head including CT, CGT, stamp duty, VAT and PAYE (e.g. submissions, rulings, concessions, and questions from Irish Revenue etc.).
5	Tax – (General)	Copies of any significant or material tax advice or opinions from advisors in respect of any tax head including CT, CGT, stamp duty, VAT and/or PAYE. This should include any advice concerning: The tax profile of the Company; The tax treatment of any particular transaction or item; and/or Any restructuring, reorganisation or financing undertaken.
6	Tax – CT, CGT and Stamp Duty	Please provide copies of the final financial statements for the three most recent tax years. If there are management accounts available for the current year, please also provide these.
7	Tax – CT, CGT and Stamp Duty	Please provide copies of the final Irish corporate tax returns for the three most recent tax years.
8	Tax – CT, CGT and Stamp Duty	Please provide copies of the final Irish corporate tax computations for the three most recent tax years.
9	Tax – CT, CGT and Stamp Duty	Please provide details of the approach the Target Company takes towards Irish transfer pricing legislation and how it maintains appropriate documentation in respect of the same. If the Target Company qualifies for the SME exemption in respect of transfer pricing legislation, please confirm that the conditions required to avail of the exemption have been satisfied on a continuous basis.
10	Tax – CT, CGT and Stamp Duty	Please provide details of any claims for R&D Tax Credits, if applicable.
11	Tax – CT, CGT and Stamp Duty	Please provide details of any qualifying assets held by the Target Company under Ireland's IP regime (Section 291A TCA 1997).

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Nº.	Legal/Commercial	Query
12	Tax – CT, CGT and Stamp Duty	Please provide details of any reliefs or exemptions claimed by the Target Company in relation to CT, CGT and/or SD. Please confirm if any relief or exemption claimed by the Target Company remains open to and subject to any clawback provisions?
13	Tax – CT, CGT and Stamp Duty	Details of any tax losses or other tax attributes being carried forward to date (not otherwise available from the above requested information).
14	Tax – CT, CGT and Stamp Duty	Please provide details of any interest, dividend or royalty payments made by the Target Company.
15	Tax – CT, CGT and Stamp Duty	Please provide details in relation to any withholding taxes applied on any interest, dividend or royalty payments and copies of the relevant withholding tax returns, if applicable.
16	Tax – CT, CGT and Stamp Duty	Please provide details of any interest relief claimed by the company under Section 247 TCA 1997 (interest as a charge), if applicable.
17	Tax – CT, CGT and Stamp Duty	Details of any activities undertaken abroad including: Details of any foreign employees employed by any Target Company. Details of any foreign offices or permanent establishments abroad.
18	Tax – CT, CGT and Stamp Duty	Details of where board meetings / management decisions for the company are held and made for the three most recent tax years. Please provide copies of the board minutes of the company for meetings for the three most recent tax years.
19	Tax – Value Added Tax	Please provide a sample of VAT returns and all supporting information for three randomly selected return periods for each of the relevant Target Companies who are obliged to file VAT returns.
20	Tax – Value Added Tax	Please provide copies of the Annual Return of Trading Details for the three most recent tax years.
21	Tax – Value Added Tax	Please provide details of any foreign VAT registrations, if applicable.
22	Tax – Value Added Tax	Please provide details of any VAT Group Registrations, if applicable.
23	Tax – Value Added Tax	Please provide a summary of the VAT treatment of the primary revenue streams. Where there are multiple revenue streams, please provide a summary and the associated VAT treatment of each stream. Does the Target Company provide any services to customers outside of Ireland? If so, please provide any relevant details. Are there any VAT exempt activities undertaken by the Company?
24	Tax – Value Added Tax	Is the Target Company satisfied that it is maintaining adequate records in relation to input credits being claimed? Are records kept in line with VAT regulations?
25	Tax – Value Added Tax	If there are any VAT exempt activities, has input VAT on directly attributable expenses been allocated against taxable and exempt activities appropriately?

Nº.	Legal/Commercial	Query
26	Tax – Value Added Tax	If there are any VAT exempt activities, is the Target Company satisfied that its recovery ratio is correct concerning the allocation between exempt and taxable services?
27	Tax – Value Added Tax	If there is more than one activity, how does the Target Company apportion between the various elements of the business and what is the basis for apportionment? Who reviews the process and has ultimate responsibility for ensuring the apportionment is correct?
28	Tax – Value Added Tax	Is each Target Company satisfied that adequate records are being kept in relation to its VAT exempt activities?
29	Tax – Value Added Tax	Has any input VAT been deducted in relation to exempt VAT activities?
30	Tax – Value Added Tax	Has any input VAT been deducted which is specifically disallowable for VAT purposes, for example: Food, drink, accommodation or personal services, entertainment expenses, petrol
31	Tax – Value Added Tax	Has any VAT been reclaimed in relation to expenditure incurred in connection with any share transactions or restructurings?
32	Tax – Value Added Tax	Has the Target Company acquired a business from a VAT registered person?
33	Tax – Value Added Tax	Has the Target Company transferred assets as a transfer of business in the period under review?
34	Tax – Value Added Tax	How does the Target Company account for VAT in respect of its bad debts?
35	Tax – Value Added Tax	How does the Target Company account for VAT in respect of any refunds or discounts to customers?
36	Tax – Value Added Tax	How does each Target Company account for VAT in respect of vouchers?
37	Tax – Value Added Tax	How does each Target Company account for VAT in respect of inter-group charges?
38	Tax – Value Added Tax	How does the Company account for VAT in respect of the supply of food to employees, if applicable?
39	Tax – Value Added Tax	Are invoices issued on time (i.e by the 15th day of the month following the month of supply of services or receipt on account)?
40	Tax – Value Added Tax	Does the Target Company account for VAT on a cash receipts basis? If so, is there written Revenue approval to apply the cash receipts basis?
41	Tax – Payroll Taxes (PAYE and PRSI)	Please provide copies of the annual payroll return for the three most recent tax years.
42	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any foreign employment tax registrations.
43	Tax – Payroll Taxes (PAYE and PRSI)	Directors Fees Is all directors' remuneration subject to payroll tax? Are any other benefits provided to the directors?
44	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any arrangements between the Target Company and its directors?

Nº.	Legal/Commercial	Query
45	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any arrangements between the Target Company and its shareholders?
46	Tax – Payroll Taxes (PAYE and PRSI)	Consultants Are there any individuals who are retained under consultancy arrangements (i.e. not under an employment contract)? If so, what steps are taken to ensure that the individuals are deemed to be carrying on a business of their own and are not de facto employees of the Target Company? Are there appropriate contracts in place?
47	Tax – Payroll Taxes (PAYE and PRSI)	Are there any significant benefits provided to employees (cash or non-cash)?
48	Tax – Payroll Taxes (PAYE and PRSI)	Travel Expenses
49	Tax – Payroll Taxes (PAYE and PRSI)	Expenses
50	Tax – Payroll Taxes (PAYE and PRSI)	Credit cards Do any employees have credit cards? Is PAYE operated on non-business expenditure? Are you satisfied that any personal expenses are not being borne by any Target Company?
51	Tax – Payroll Taxes (PAYE and PRSI)	Do any employees undertake business entertainment and is the reimbursement of such expenses vouched by receipts?
52	Tax – Payroll Taxes (PAYE and PRSI)	Are any accommodation expenses paid on behalf of employees?
53	Tax – Payroll Taxes (PAYE and PRSI)	Are any relocation expenses ever paid to employees?
54	Tax – Payroll Taxes (PAYE and PRSI)	Do any employees avail of any beneficial loans or is there any arrangement whereby employees can avail of goods or services below market value?
55	Tax – Payroll Taxes (PAYE and PRSI)	Are you satisfied that each Target Company is deducting PRSI under the correct contribution class?
56	Tax – Payroll Taxes (PAYE and PRSI)	Please confirm whether there have been any redundancies in recent years?
57	Tax – Payroll Taxes (PAYE and PRSI)	Please advise if there are any share remuneration schemes in place within any Target Company.

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