

## Introduction

The purpose of this work is to discuss Ireland's place in the fiscal galaxy and the opportunities which Ireland offers to those who establish a "trading" presence in Ireland or who reside or exercise their employment in Ireland.

The work is intended primarily for international tax planners whose clients are actively considering some kind of commercial or fiscal involvement with Ireland. It is not intended for Irish practitioners, who require no introduction to the Irish tax system, to Ireland's treaty network and to the tax planning opportunities available thereunder.

The work is divided into 27 Chapters, grouped in five Parts:

### Part I

Chapter 1 traces the history of the three principal direct taxes in Ireland, that is to say, the income tax, the capital gains tax and the corporation tax. Chapter 2 goes on to explore the territorial limits of these three taxes under the Irish domestic tax legislation. Chapter 3 discusses the nature and underlying theory of treaty relief. Chapter 4 discusses the effect of the Constitution of Ireland on the Irish domestic tax legislation and the extent to which 'treaty override' is possible under the Irish constitutional system. Chapter 5 discusses the various terms used in tax treaties based on the OECD Model Convention, commonly referred to as 'international tax language'.<sup>1</sup> Chapter 6 discusses the rules for the interpretation of a tax treaty, which differ in certain important respects from the rules relating to the interpretation of Irish domestic legislation.

### Part II

Part II is intended as a concise summary of the charging provisions in the Irish domestic tax legislation, arranged by reference to the various species of income and gains which are the subject matter of treaty relief under the provisions of a tax treaty based on the OECD Model Convention.

Chapter 7 accordingly discusses income from immovable property, Chapter 8 business profits, Chapter 9 dividends, Chapter 10 interest and Chapter 11 royalties. Capital gains, whether subject to Irish income tax or to the general capital gains tax introduced by the Capital Gains Tax Act 1975, the provisions of which are now incorporated in Part 19 of the present Taxes Consolidation Act 1997, are discussed in Chapter 12. Income from what are referred to in the former Article 14 of the OECD Model Convention as 'independent personal services', employment income and directors' fees is discussed in Chapters 13, 14 and 15.

### Part III

Chapter 16 discusses the best known and most popular Irish tax planning opportunity, that is to say, the establishment of a "trading" presence in Ireland in order to take advantage of the Irish corporation tax rate of 12.5%. This has taken the place of the former 'manufacturing relief', whereby profits attributable to the sale of goods manufactured in Ireland were subject to Irish corporation tax at an effective rate of only 10%. The new tax regime has increased the applicable tax rate from 10% to 12.5% to include "trading" companies generally. The profits of companies which provide services are thus subject to Irish corporation tax at the 12.5% rate in the same way as companies which manufacture.

Chapter 17 discusses the establishment of a "trading" presence in Ireland. The form which this "trading" presence will take will depend to a large extent on treaty relief available under the tax

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<sup>1</sup> See, for example, *Ostime vs Australian Mutual Provident Society* 38 TC 493,517 per Lord Radcliffe.

treaty concluded by Ireland with the intending trader's country of residence. Some tax treaties favour the incorporation of an Irish resident subsidiary, others the establishment of an Irish "branch or agency". Yet others favour a 'hybrid establishment', whereby some aspects of the Irish "trading" presence (for example, manufacturing) are undertaken by an Irish resident subsidiary, while others (for example, distribution and marketing) are undertaken by an Irish branch or agency.

Chapter 18 discusses the tax-efficient financing of such a trading presence in Ireland.

## **Part IV**

Part IV discusses the other, less well-known, tax planning opportunities available under the Irish domestic tax legislation and Ireland's network of tax treaties. Chapter 19 discusses the opportunities available to writers, artists and inventors who exercise their professions as such while resident in Ireland. Chapter 20 discusses the tax planning opportunities available to individuals who are resident in certain specified treaty partner countries and intend to "exercise" their respective "employments" in Ireland. Employment income derived by such individuals from the exercise of such employments may well be outside the charge to Irish income tax while at the same time exempt from tax in the employee's country of residence by reason of treaty provisions to that effect in the tax treaty concluded by that country with Ireland.

Chapter 21 discusses the opportunities to individuals who, while resident for the time being in Ireland, have no intention of making Ireland their permanent home. Chapter 22 discusses the taxation of a 'golden handshake' paid to an employee to induce him/her to accept early retirement. Careful structuring of the payment of the compensation, coupled with a move to a more benign tax jurisdiction will often alleviate the fiscal hardship otherwise involved.

Chapter 23 discusses the tax planning opportunities available to entertainers and sportsmen, crew members employed aboard ships and aircraft operating in international traffic, and company directors resident in certain specified treaty partner countries.

Chapter 24 discusses the tax planning opportunities available to those engaged in forestry, bloodstock breeding and greyhound breeding activities in Ireland.

## **Part V**

Part V discusses the measures available to the tax authorities of Ireland and its treaty partners to counter tax avoidance arising from what the OECD Model Convention refers to as the 'improper'<sup>2</sup> use of treaty provisions.

Chapter 25 discusses measures to counter 'transfer pricing', whereby a multinational group is in a position to manipulate the prices charged and paid by group members inter se to shunt profits away from high-tax areas into low-tax areas, thus minimizing the group's worldwide tax bill.

Chapter 26 is a new Chapter which discusses the greatly enhanced information gathering powers of tax authorities in an international context, together with the new powers of such tax authorities to institute proceedings for the recovery of tax in treaty partner countries or other EU Member States.

Chapter 27 discusses the anti-avoidance provisions in the Irish domestic tax legislation, based for the most part on corresponding enactments in the UK domestic tax legislation, together with anti-avoidance provisions contained in certain of the tax treaties included in Ireland's treaty network.

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<sup>2</sup> See Para.41 of the Introduction to the OECD Model Convention. Some would substitute 'intelligent' for 'improper'.

Prominent among the latter are the 'limitation of benefits' provisions in Article 23 of the Ireland – US tax treaty of 28 July 1997.