

NON IRISH COMPANIES COMMENCING BUSINESS OPERATIONS IN IRELAND

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ARE YOU THINKING ABOUT COMMENCING BUSINESS OPERATIONS IN IRELAND? THE PURPOSE OF THIS NOTE IS TO PROVIDE A GUIDELINE FOR NON-IRISH COMPANIES COMMENCING BUSINESS OPERATIONS IN IRELAND. IT HIGHLIGHTS THE MAIN AREAS A COMPANY SHOULD CONSIDER.

A director of a non-resident company intending to carry out business operations in Ireland should consider the following question regarding Irish tax;-

Will those operations involve the creation of a permanent establishment (PE) in Ireland?

If the answer is yes, the following further questions may be relevant:-

- Should the company operate in Ireland through a branch or a subsidiary?
- Can the company secure the 12.5% rate of corporation tax (trading activities) rather than the 25% rate (non-trading)?
- Can the company set up a branch initially and later convert the branch into a subsidiary?
- Are there international tax issues to be addressed?

PERMANENT ESTABLISHMENT (PE)

A PE is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The PE article in many of Ireland's Double Taxation Treaties (DTAs) contains an illustrative list of fixed places of business that will constitute a PE. Some Irish DTAs also have provisions that deem a PE to exist if services are rendered in Ireland for a sufficient period of time. A construction site is normally deemed to constitute a PE if it continues for a period of more than twelve months but a shorter period can apply (for example, in the case of the DTA with the UK, the period is more than six months).

The DTA articles dealing with a PE usually contain a list of activities that will not constitute a PE even if there is a fixed place of business. The common feature of these activities is that they are all of a preparatory or auxiliary nature.

MAIN IRISH TAXES

Where there is a branch or subsidiary, the branch or subsidiary may be obliged to register for the following taxes:-

- Corporation tax,
- Value added tax (VAT),
- Employee taxes (PAYE, PRSI and USC),
- Relevant Contracts Tax (RCT). RCT is a mandatory withholding tax regime which applies on payments to subcontractors in the construction, forestry and meat processing industries. Many non-Irish companies who do not observe the requirements for RCT are taken by surprise that a substantial amount is withheld from the payment due to them.
- Professional services withholding tax (PSWT). If the branch or subsidiary is dealing with a government department, a local authority or other state or semi- state body, PSWT may be relevant. PSWT is at the rate of 20 per cent, deductible at source from payments for "professional services" supplied to individuals and companies by a Listed Body.

If the operations in Ireland will **not** involve the creation of a permanent establishment in Ireland the non-resident company may be required to register in Ireland for the following taxes:-

- Value added tax (VAT),
- Relevant contracts tax (RCT), or
- Employee taxes (PAYE, PRSI and USC)?

PSWT may also be relevant in connection with such operations.

EMPLOYEE TAXATION

In Ireland, an employer is bound to withhold and pay the payroll taxes of an employee. If an employee of a non-Irish company is performing any duties in Ireland, a liability for that company to deduct and pay Irish income tax could arise.

Under the terms of the Employments Article of DTAs, the income attributable to the performance in Ireland of the duties of an employment may be relieved from the charge to Irish tax and tax deducted under PAYE must be repaid. Revenue will not require a non-Irish employer of an individual to operate PAYE for him/her where the following criteria are satisfied:-

- He/she is resident in a country with which the State has a DTA and is not tax resident in Ireland for the relevant tax year;
- There is a genuine foreign office or employment;
- He/she is not paid by, or on behalf of, an employer resident in Ireland;

- The cost of the employment is not borne, directly or indirectly, by an Irish PE of the non-resident employer; and
- The employment that is performed in Ireland is for 60 working days or less in total in a tax year and, in any event, is for a continuous period of not more than 60 working days where a 'working day' is any day in which any work is performed in Ireland.
- If the employee stays longer than 60 days, registration for PAYE will be required, however, if the stay is shorter than 183 days, exemptions can be sought from Revenue.

For further information please do not hesitate to contact us.



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DISCLAIMER

The above is intended as a general guide to the law only. It is not intended as a full statement of the law on any point. Before taking action in relation to any matter, full professional advice should be obtained.