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DOING BUSINESS IN IRELAND





COMPANY FORMATION IN IRELAND

MAIN FORMS OF COMPANY/BUSINESS IN IRELAND

The different types of company available in Ireland are set out in the 2014 Companies Act, which came into force in June 2015. The Act streamlined 50 years of Irish company law and created a number of new company types.

Companies in Ireland can be public or private (public companies may list their shares on a public exchange), limited or unlimited (for limited companies, there is no recourse to the shareholders beyond their invested capital). There are also guarantee companies, typically used by non-profit organisations.

By far the most common types are private limited companies, which can be further split into DAC companies and LTD companies.

The DAC ('Designated Activity Companies') type is best suited to companies incorporated for a specific purpose (e.g. Special Purpose Vehicles). Their activities are limited to those listed in their constituting documents and their compliance requirements (numbers of directors / the holding of Annual General Meetings) are somewhat more onerous.

LTD companies are much less restrictive, and are the default company type for privately-owned small and medium enterprises.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

The different types of company are not taxed differently. Corporation Tax rates in Ireland are 12.5% on earned income and 25% on unearned income (e.g. deposit interest). Companies' Capital Gains are taxed at 33%. The marginal rate of income tax for individuals, however, is over 50%.

Operating through a company therefore allows much more flexibility in tax planning, as trading profits can be reinvested with significantly less tax leakage. The main disadvantage from a taxation aspect of trading through a company is that the profits are eventually taxed twice, when originally earned by the company and when distributed to the shareholders.

For overseas businesses establishing companies in Ireland, the tax residency of those companies is important. From 1 January 2015, a company incorporated in Ireland will be regarded as tax resident in Ireland except in a case where it is to be regarded as resident in another country under the terms of a double tax treaty. Companies incorporated prior to 1 January 2015 will be tax resident in Ireland where the company is managed and controlled in Ireland. The key factor is whether the company is managed and controlled from Ireland. In determining this, a company should consider the following:

- does it have a physical presence in Ireland (premises, staff);
- are a majority of the directors resident in Ireland;
- does the Board meet frequently in Ireland;
- are all key decisions taken in Ireland; and
- are all major contracts and other similar company documents signed in Ireland.

There are a number of tax incentives and provisions in place that make Ireland an attractive location to locate a holding company:

- extensive tax treaty network;

- exemption on gains arising from the disposal of shares in trading companies based in other tax treaty countries (criteria apply);
- dividends from trading companies based in other tax treaty countries taxed at 12.5%
- no withholding tax on dividends and onshore pooling available
- no transfer pricing (other than for very large companies) or thin capitalisation rules
- incentives to create and acquire Intellectual Property

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

LTD companies need to have at least one shareholder (whose liability is limited, as noted above) and at least one director (DAC companies need at least two). That director (or at least one director in the case of a DAC) must be resident in the EEA (the EU plus Norway and Liechtenstein). It is possible to avoid this requirement by putting in place an insurance bond, though this would weaken a company's case for Irish tax residency.

Companies also need a Company Secretary. The Company Secretary can be an individual or a body corporate and can be resident anywhere. If the company has only one director, that individual cannot also act as Company Secretary.

All companies need a registered office.

It is possible to engage nominees to act as local directors and company secretaries and to provide a registered office.

It typically takes c.4 weeks from start to finish to incorporate a company, though it is possible to fast-track this process.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

There are no specific cultural concerns to be considered when establishing a company in Ireland.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

The ongoing compliance requirements for a company are as follows:

- submit an Annual Return to the Companies Registration Office (CRO) which lists the company's officers and shareholders
- prepare a set of statutory financial statements and submit to the CRO alongside the Annual Return. The level of disclosure required in those financial statements is dependent on the size of the company (or group). Small companies/groups meet two of the following conditions: balance sheet <€4.4m, turnover <€8.8m and <50 employees. They file only a summary balance sheet and some notes. Medium companies meet two of the following conditions: balance sheet <€10m, turnover <€20m and <250 employees; and file a summary income statement and full balance sheet. Large companies have no disclosure exemptions. Statutory audits of the financial statements are required for medium and large companies and groups and for any companies who are not up to date with their CRO filing requirements
- update the CRO in a timely manner about any changes to the company's address, officers, company type, etc.

PERMANENT ESTABLISHMENT IN IRELAND: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

There is no definition under Irish Company Law of what constitutes either a 'permanent establishment' or a 'branch'.

The Companies Registration Office (CRO) provides the following guidance:

"There is no definition of the term 'branch'. It is a concept of Community Law whose meaning is ultimately to be determined by the European Court of Justice. There is some European case law which would support the view that a branch is a place of business, which has the appearance of permanency, such as an extension of the parent body, has a management and is materially equipped to negotiate business with third parties, without resource to the parent body, the head office of which is abroad."

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A subsidiary is a separate legal entity, whereas a branch is not.

The primary advantages of establishing a subsidiary in Ireland through which to trade are as follows:

- the parent company can avail of limited liability which significantly reduces its exposure
- there is scope to maximise tax planning opportunities
- if there is an intention to sell the Irish operation in the future having a standalone company will facilitate this

The advantages of trading through a branch are the lower compliance costs (both initial and ongoing).

TAX AND ACCOUNTING OBLIGATIONS

An Irish branch of a foreign company will be required to register for all applicable taxes, likely VAT, payroll taxes and Corporation Tax.

- a branch should withhold payroll taxes from any Irish employees (under the PAYE system)
- a branch should operate VAT in line with its local obligations (which will vary widely based on the nature of the business)
- a branch would be liable to Irish Corporation Tax (12.5% on trading income) on its taxable profits

A branch does not have an obligation to prepare statutory financial statements, however a separate income statement will be required in order to calculate the branch's taxable profit.

REGISTRATION FORMALITIES

A foreign company establishing a branch in Ireland is required to register that branch with the CRO within 30 days. It must provide the following information and documentation:



- completed registration form
- certified copy of the constituting documents of the company
- copy of the company's certificate of incorporation
- copies of the latest accounting documents
- translations to English of the above if required

In order to register a branch the company must nominate an Irish-resident individual who will:

1. be responsible for ensuring compliance with branch regulations
2. be available to accept process on behalf of the company

It is possible to engage a nominee to fulfil this role.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch should report any changes to the following to the CRO within 30 days:

- a change to the constituting documents of the company
- a change to the directors, secretaries or other authorised representatives of the company
- a change to the branch's address in Ireland

A branch must also file an annual return with the CRO along with the latest accounting documents of the company.



HOW TO HIRE MY FIRST EMPLOYEE IN IRELAND

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

- Employer must be registered with Irish tax authorities (Revenue).
- If employee does not have a PPS (social security) number they must apply for one from the Department of Social Welfare.
- Employer must comply with national minimum wage – currently €9.15 per hour for an “experienced adult employee” i.e. an employee who has an employment of any kind in any 2 years over the age of 18 (National Minimum Wage Act 2000).
- Employees must be given a written statement of terms of employment within two months of starting work – generally this is issued as part of the employment contract (Terms of Employment (Information) Acts 1994–2012).
- Employers are responsible for making the correct statutory deductions of tax, Pay Related Social Insurance (PRSI), Universal Social Charge (USC) and Local Property Tax (LPT) from their employees’ wages and remitting these to Revenue using the PAYE system. Employers must also pay employer’s PRSI contributions.
- Employers are responsible for ensuring that employees are given adequate rest under The Organisation of Working Time Act 2007.
- Employees have annual leave entitlements from the time they start work. Most full-time employees are entitled to 4 weeks’ paid annual leave per year. Part-time workers’ entitlement is generally calculated as 8% of the hours worked subject to a maximum of 4 working weeks per year. Employers can determine the timing of annual leave, taking into consideration work and personal requirements.
- Employers are obliged to allow employees to avail of statutory protective leave, such as maternity leave, health and safety leave, parental leave, adoptive leave and carer’s leave. There is specific legislation setting down the rules for each entitlement.
- Employers have a duty to ensure employees’ safety, health and welfare at work as far as is reasonably practicable (Safety, Health and Welfare Act 2005).

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

The Terms of Employment (Information) Acts 1994–2012 provide that an employer is obliged to provide an employee with a written statement of terms of employment within the first 2 months of the commencement of employment. However, this requirement does not apply to an employee who has been employed for less than a month.

The statement of terms must include the following information:

- The full name of employer and employee
- The address of the employer
- The place of work
- The title of job or nature of work
- The date the employment started
- If the contract is temporary, the expected duration of the contract
- If the contract of employment is for a fixed term, the details
- Details of rest periods and breaks as required by law
- *The rate of pay or method of calculation of pay
- The pay reference period for the purposes of the National Minimum Wage Act 2000
- *Pay intervals
- *Hours of work



- *That the employee has the right to ask the employer for a written statement of his/her average hourly rate of pay as provided for in the National Minimum Wage Act 2000
- *Details of paid leave
- *Sick pay and pension (if any)
- *Period of notice to be given by employer or employee
- *Details of any collective agreements that may affect the employee's terms of employment

* *In the case of these items instead of giving each employee the details in writing, the employer may refer an employee to other documents, for example, a pension scheme booklet or a collective agreement, provided that the employee has easy access to such documents.*

The statement of terms must indicate the reference period being used by the employer for the purposes of the calculation of the employee's entitlements under the National Minimum Wage Act 2000. (Under that Act the employer may calculate the employee's minimum wage entitlement over a reference period that is no less than one week and no greater than one month).

While the statement of these terms must be signed and dated by the employer, there is no requirement for the employee to sign it. The employer must keep a copy during the period of the employee's employment and for at least a year after it ceases.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Yes. This would be an independent contractor. It is important to distinguish between an employee (contract of service) and an independent contractor (contract for service), as protection of employment legislation does not apply to independent contractors (with the exception of the Safety Health and Welfare at Work Act 2005 and the Equality Act 2004).

The following is a summary of the essential differences between a Contract of Service (employee) and a Contract for Service (independent contractor):

Contracts Of Service

- Employer-Employee relationship.
- Usually a continuous relationship.
- A duty of care owed to employees, as the employer.
- The employer is generally liable for the vicarious acts of employees.
- Protective legislation applies to contract.
- Wages/Salary payment method.
- Subject of contract is to carry on continuous work.

Contracts For Service

- Employer-Independent Contractor relationship.
- A relationship organised around the completion of a once-off piece of work.
- A duty of care, arising from occupiers' liability.
- The employer is generally not liable for the vicarious acts of independent contractors.
- In general, protective legislation does not apply, except for the Safety Health and Welfare at Work Act 1989 and the Equality Act.
- Various methods of payment, including lump sum per job.
- Subject of contract is once-off job.



HOW TO READ FINANCIAL STATEMENTS IN IRELAND

Set out from overleaf is a template set of audited financial statements for a large company, prepared in compliance with Irish GAAP and Irish Company Law. Smaller companies may be eligible to avail of certain disclosure exemptions.

Financial statements in Ireland comprise a profit and loss account, balance sheet and cash flow statement, plus the related notes.

Also required are the related notes, as well as a directors' report, a statement of directors' responsibilities and an audit report, examples of which are included at the end of this document.

Irish LTD Company
Profit and Loss Account
Year Ended 30th June 2015

		€	€
	Note	2015	2014
Turnover	2	2,967,825	2,856,646
Cost of Sales		<u>(2,199,114)</u>	<u>(2,043,816)</u>
Gross Profit		768,711	812,830
Distribution expenses		(126,869)	(125,438)
Administrative expenses		<u>(364,920)</u>	<u>(373,306)</u>
		491,789	498,744
Operating profit		276,922	314,086
Profit on disposal of fixed assets		<u>(2,500)</u>	<u>-</u>
Profit on ordinary activities before interest		279,422	314,086
Interest receivable	3	-	-
Interest payable and similar charges	4	<u>(7,766)</u>	<u>(7,621)</u>
Profit on ordinary activities before taxation		271,656	306,465
Tax on profit on ordinary activities	8	<u>(26,773)</u>	<u>(30,333)</u>
Profit for the financial year		244,883	276,132

The turnover and operating profit relate to continuing operations as no businesses were acquired or disposed of in 2015 or 2014.

A separate Statement of Total Recognised Gains and Losses is not required, as there are no gains or losses other than those reflected in the Profit and Loss Account.



Irish LTD Company
Balance Sheet
As at 30th June 2015

	Note	€ 2015	€ 2014
<u>Fixed Assets</u>			
Tangible assets	9	432,129	119,358
Financial assets	10	<u>81,270</u>	<u>81,270</u>
		513,399	200,628
<u>Current Assets</u>			
Stocks	11	393,811	452,325
Debtors	12	285,219	294,457
Cash at bank and in hand		<u>63,829</u>	<u>106,318</u>
		742,859	853,100
<u>Creditors: amounts falling due within one year</u>	13	(353,032)	(384,886)
<u>Net current assets</u>		<u>389,827</u>	<u>468,214</u>
Total assets less current liabilities		903,226	668,842
Creditors: amounts falling due after more than one year	14	<u>(35,372)</u>	<u>(45,871)</u>
<u>Net assets</u>		<u>867,854</u>	<u>622,971</u>
<u>Capital and Reserves</u>			
Called up share capital presented as equity	16	1,270	1,270
Profit and loss account	17	<u>866,584</u>	<u>621,701</u>
<u>Total Equity Shareholders funds</u>	18	<u>867,854</u>	<u>622,971</u>

The financial statements were approved by the Board of Directors on (Insert date) and authorised for issue on (insert date). They were signed on its behalf by

Mr A Director
Director

Ms B Director
Director

DATE: _____

Irish LTD Company
Cashflow Statement
For the Year ended 30th June 2015

	Note	€ 2015	€ 2014
Net cash (outflow)/inflow from operating activities	26	(84,906)	569,301
Return on investments and servicing of finance			
Interest paid		(69,095)	(57,646)
Taxation			
Corporation tax refund/(paid)		6,815	(68,445)
Capital expenditure and financial investment			
Payments to acquire tangible fixed assets		<u>(63,950)</u>	<u>(37,370)</u>
Equity Dividends paid		-	-
Cash (outflow)/inflow before use of liquid resources and financing		(211,136)	405,840
Financing			
Net bank loans repayments		(76,248)	(76,248)
Movement in cash	27	<u>(287,384)</u>	<u>329,592</u>

On behalf of the board