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Our professional team of over 60 lawyers allows us provide a comprehensive range of services, while at the same time remaining compact and accessible enough for our clients to receive a personalised and client focused service. In fact, our personal style of service is one of the key reasons why many businesses and government agencies choose BEAUCHAMPS. We have set up internal structures to ensure strict quality and cost control and the delivery of service within the client's deadlines and budgets.

Clients include multinational companies, insurance companies, owner managed businesses, government and public bodies and regulatory authorities. We operate across a range of sectors including: healthcare, retail, aquaculture, food and drinks, green tech, renewables, pharmaceuticals, sports, construction, property, hotels, technology, life sciences, waste, manufacturing and medical devices.

We have expertise in numerous practice areas including:

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- Commercial property
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- Construction and procurement
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- Employment
- Healthcare law
- Insolvency and restructuring
- Litigation and dispute resolution
- Planning and environmental
- Public and regulatory law
- Private client / estate planning
- Renewables
- Technology and intellectual property

→ Real Estate Law

There are no particular restrictions on non-Irish or non-EU persons or companies acquiring or leasing real estate in Ireland. The following is a brief outline of the main issues that need to be taken into consideration when acquiring property in Ireland.

Title

In Ireland property ownership is divided into two categories – freehold and leasehold. Freehold land is land which is owned outright by the owner. Leasehold is land which is subject to a lease. Much property in Ireland is held under long leases, usually in excess of 99 years. Long leases are particularly common in urban areas and they help the landlord to maintain some element of control over their land as the tenant will be subject to covenants and conditions in the lease. Office and commercial premises are often let to tenants under shorter leases for terms up to 25 years, subject to the payment of market rents.

Registration

There are two systems of registration of real estate in Ireland, the Property Registration Authority and the Registry of Deeds. Registration in the Property Registration Authority is intended to provide evidence of ownership in one single document called a folio, whereas in the Registry of Deeds, the system is slightly more complicated. A solicitor is required to investigate the title to the property to assess if the vendor owns the land and has “good marketable title” to it.

Buyer Beware – Due Diligence is essential in any property transaction

It is prudent for prospective purchasers and tenants to have the subject property surveyed in advance of signing contracts for sale in order to determine if there are any structural defects. This is because the principle “buyer beware” applies in Ireland so that a purchaser takes a property in its actual state and has no comeback once the transaction is closed should any latent defects flare up.

When buying or selling a property in Ireland, it is vital that a solicitor is consulted as early as possible in the process to avoid a party unwillingly entering into a binding agreement. The vendor’s solicitor must draw up the Contract for Sale and demonstrate that their client has “good marketable title” to the property. The Contract for Sale will also deal with planning, taxation and condition of the property and list any vouching documentation that is held on title in this respect. The solicitor for the purchaser should carry out due diligence to establish that the vendor has definite good marketable title and that no liabilities will pass with the property to their client. For example, the purchaser’s solicitor will ensure that statute has been complied with and that no litigation in relation to the property is pending.

Planning and Development

The use to which a property is put, the construction of new property and alterations to existing property must comply with the planning and building control regulations in Ireland (unless the specific development is exempt). These regimes are operated by the local authorities. Planning considerations require adherence to regional development plans whilst building control is concerned with the proper construction of buildings having regard to fire safety and safety of the structure of the building.

Commercial Leases

In Ireland, commercial leases are typically between five and twenty five years. Leases in excess of five years tend to place full responsibility on the tenant for the cost of repair and insurance of the premises. They also commonly provide for rent reviews every five years and there is now legislative provision for upwards and downwards review for leases entered into after 28 February 2010. It could be said that because of recent economic developments, together with statutory changes (both VAT and Landlord and Tenant Rights), some tenants are now enjoying an increase in their negotiating power. Currently, there is considerable excess in capacity and development and so this has afforded tenants with greater flexibility.

For leases over five years in duration, break clauses are usually inserted giving the option to terminate at year five, ten and fifteen. However, rent reviews which result in downward reviews are still very uncommon. Since the 1960's, practically every Irish commercial lease for a term in excess of five years contained a five yearly upwards only rent review clause. This clause provided that the rent first reserved would be reviewed every five years to the higher of the rent payable immediately before the review or the open market rent at the date of the review. Section 132 of the Land and Conveyancing Act 2009 now provides that rent review clauses in leases granted after 28 February 2012 can be interpreted as reviewing rents to the open market value thus making downwards rent reviews possible.

Stamp Duty

Stamp duty is a tax on deeds and instruments transferring ownership of property. Stamp duty is payable by a purchaser on the purchase price of a property. Stamp duty on commercial property is currently two per cent of the consideration paid. Stamp duty is also payable on occupational leases by the tenant at a rate of one per cent of the annual rent.

Programme to simplify Irish Land Law

A major restructure of Irish land law and conveyancing practice has been undertaken by the Law Reform Commission and the Department of Justice, Equality and Law Reform. A new act introducing major reform was introduced in December 2009. This has brought clarity to the law

in the area and modernized the law to some extent. The aim of the act was to simplify the law in the area, not only for practitioners but for the general public also. Compulsory registration of ownership in the Property Registration Authority was introduced so that, eventually, all ownership will be recorded in the Property Registration Authority and evidenced by one document called a folio. This is going to be a long process but is a step in the right direction.

→ Tax Law

Corporation Tax

The scope and remit of Irish corporation tax is largely dependant on the residential status of a company. In theory an Irish entity is liable to Irish corporation tax on its world wide income and gains, no matter what the nature of these gains. A company that is resident in Ireland for tax purposes is subject to Irish corporation tax on its worldwide income and gains. A non resident Irish company that operates through Ireland is liable to Irish corporation tax on trading income arising directly or indirectly from a branch of its company located in Ireland.

First and foremost a company is tax resident in Ireland if it is incorporated in Ireland. However this general rule does not always apply. The tax net extends further in the following circumstances:

- If the company is under the ultimate control of a person resident in any EU Member State or in another country which has a double tax treaty or which itself is related to a company whose principal class of shares is regularly traded on the stock exchange in an EU country or treaty country.
- If the company carries on trade in Ireland or is related to a company which carries on trade in Ireland.

Generally a company is deemed to be tax resident where its central management resides. Unfortunately there is no definition in statute to this effect and so guidance is obtained from case law. In the past many factors have been taken into consideration by the courts when deciding if a company is in fact tax resident. The most prevalent of these is the place of residence of the directors together with the place where board meetings are held.

How is the tax liability calculated in Ireland?

For many years Ireland had a 10% incentive rate of corporation tax which applied to certain sectors – manufacturing operations established prior to July 1998 continued to avail of this special rate up until 31 December 2012 but now all companies pay the same rate of 12.5%. This is one of the lowest corporation tax rates in Europe. The National Recovery Plan 2011-2014 confirms Ireland's intention to maintain this rate of corporation tax into the foreseeable future.

A company's taxable profit is based on its accounting profit as adjusted for certain items. The principal adjustment is the disallowance of capital expenditure incurred by the company. A company is liable to corporation tax by reference to the taxable profit it earns in an accounting year (12 month period). This normally coincides with the company's accounting year.

Non trading profits earned by a company, such as investment income and other activities are taxed at a higher rate of 25%. Dividends received by an Irish tax resident company from subsidiaries or branches in other EU Member States or a country with which Ireland has a double tax treaty with can be taxed at a rate of 12.5%. Since the introduction of the Finance Act 2012 the dividends paid out of the trading profits of a company resident in a country with which Ireland does not have a double tax treaty can now be subject to the rate of 12.5% corporation tax also.

Exemptions and Allowances

Special tax regimes apply to earnings from commercial management of woodlands, patent royalties deriving from inventions developed in the European Economic Area, artistic earnings, and certain shipping activities. Ireland's favourable tax regime to date has played a significant part in attracting inward investment. Key tax incentives include Ireland's low corporate tax rate for trading income, generous tax depreciation (capital allowances) for capital expenditure and an extensive double tax treaty network, with 59 signed treaties, 49 of which are currently in force and a further 10 in the process of negotiation. Additionally, tax treaty based reliefs are available from the time of signing the relevant tax treaty and not the time it comes into force which in practice can be considerably later. In all, this helps to ensure that inward investment in Ireland is ongoing.

Research and Development Allowance ("R&D")

An R&D expenditure tax credit was introduced into Ireland's tax code with effect from 1 January 2004. The relief now takes the form of a 25% (previously 20%) tax credit for companies subject to Irish corporation tax.

Scientific Research Allowance

A deduction against profits is available for revenue and capital expenditure on scientific research. This can apply even when the scientific research does not apply to the trade being carried out by the company in question at the time. A deduction is also allowable for payments made to a company to a body approved by the Minister of Finance and /or to an Irish university in order to undertake the scientific research.

Know How Allowance

Expenditure incurred in relation to know how purchased from a third party and not as part of trade is tax deductible. However, to avail of the deduction the know how must be related to the trade being carried on by the company in question.

Tax on Individuals: Income Tax

Ireland has a system of income tax which is levied at two rates. As of 2011 an individual is subject to income tax at a rate of 20% on his/her first €32,800 of income and 41% thereafter. The threshold of €32,800 is increased to €41,800 when the individual is married.

In addition to income tax an individual is also subject to two social contributions known as the Universal Social Charge at 7% and PRSI (Pay Related Social Insurance Scheme) at 4% on his/her income.

Scope of Irish Income Tax – Domicile

In order to be liable for Irish income tax the individual must be resident or ordinarily domiciled (have a permanent home) in the state. A person is tax resident if they spend a total of 183 days in Ireland in any one tax year or they spend a combined total of 280 days over two tax years (assuming a minimum of 30 days in each tax year). It should be noted that if a person is resident in Ireland for three consecutive tax years they then become ordinarily resident for tax purposes.

Individuals resident in Ireland for tax purposes are liable to Irish income tax on their worldwide income. Individuals who are not resident in Ireland for tax purposes are liable to Irish income tax (subject to the provisions of any appropriate double tax treaty) where they are in receipt of Irish source income.

Domicile

Domicile is initially determined by an individual's domicile of origin. Generally the country where the individual's father is domiciled when they are born is considered to be his/her domicile and so they will be regarded as domiciled in that country unless a domicile of choice is acquired.

In general foreign income earned by a person with non-Irish domicile who is resident in Ireland is taxed when remitted to Ireland (this is referred to as the remittance basis). A limited form of remittance tax applies in relation to income.

A resident and domiciled but not ordinarily resident person is liable to Irish income tax on Irish source income and on any other income to the extent remitted.

A resident but not domiciled person is liable to Irish source income tax and to income tax on any other income to the extent remitted.

Capital Gains Tax

Ireland also imposes a capital gains tax on gains arising from the disposal of assets where the gains are not treated as trading profits. The rate of capital gains tax is currently 25%. Where a company resident in Ireland is subject to corporation tax, any capital gains are subject to corporation tax in such a way that results in the same liability arising as if capital gains tax had applied to the gain. Where a company has related companies that are tax resident in Ireland and certain criteria are met, assets can be transferred between companies without gains being recognised for tax purposes.

Value Added Tax

Ireland has a value added tax ("VAT") system based on the EU Sixth Directive. At the time of writing the standard rate of VAT is 23%. Lower rates of 13.5% and 0% are applicable to certain supplies of goods and services.

Stamp Duty

Stamp duty is a tax on certain documents referred to as instruments including those transferring ownership in property. Applicable rates of stamp duty vary from nominal amounts up to 9% of purchase price or market value. Since 1 April 2004, instruments affecting the transfer of, and contracts for the sale of, intellectual property (including goodwill directly attributable to intellectual property rights) have been exempt from stamp duty. Capital duty has been abolished since 7 December 2005.

→ Corporate Law

Irish company law is governed by both statute and common law. The statutory regime is contained in the Irish Companies Acts 1963 to 2012 as well as regulations implementing various European directives.

Corporate law is on the threshold of major reform and development as a consequence of the work of a government-appointed advisory body, the Company Law Review Group (the "CLRG"), since 2001. The CLRG was asked to make proposals for the modernization and, where possible, simplification of Irish company law. The reports of the CLRG led to the publication of the heads of a Companies Consolidation and Reform Bill in 2007.

In May 2011, the Department of Jobs, Enterprise and Innovation published a long-awaited draft of the main part of a new consolidated Companies Bill (the "Bill"). This Bill will implement recommendations of the CLRG to update, consolidate and reform Irish company law.

Business Structure

While most foreign companies in Ireland operate through an Irish incorporated subsidiary, business can be conducted through a branch of a foreign company. A foreign company may establish a place of business in Ireland without incorporating an Irish company subject to filing certain information in the Companies Registration Office (the "CRO"), including copies of the company's constitutional documents, details of the persons authorized to bind the company, and the name of the person resident in Ireland authorised to accept service of process on behalf of the company.

The two main types of company in Ireland are private companies and public companies. The vast majority of companies registered in Ireland are private companies limited by shares. They are by far the most popular form of business entity for inward investment projects. The shareholders of a private limited company have limited liability. Public limited companies are typically used where securities are listed or offered to the public.

Procedure for incorporation

To incorporate a private company limited by shares, certain documents must be publicly filed with the CRO. These include details of the proposed name of the entity, the shareholders, directors and company secretary.

Under an express incorporation scheme, it is possible to incorporate a company within 5 working days. Outside of the express scheme, it can take approximately 2 to 3 weeks for a company to be incorporated. There is no minimum capital requirement for an Irish private company and shares can be denominated in any currency. To incorporate an Irish company, the following documents have to be filed with the CRO:

- Memorandum of Association;
- Articles of Association; and
- Form A1.

Every Irish incorporated company is required to have one EEA* resident director unless it holds a surety bond to the value of €25,394.76 or the Revenue has certified it has a real and continuous link with one or more economic activities in Ireland. At all times there must be two directors and a company secretary (who may be one of the directors). A corporation is not eligible to be a director.

Name of an Irish company

The CRO may refuse a company under a proposed name if it is identical to, or too similar to, the name of an existing company, if it is offensive or if it would suggest State sponsorship. Names which are phonetically and/or visually similar to existing company names will also be refused by the CRO. This includes names where there is a slight variation in the spelling. It is often recommended that company names include extra words so as to create a sufficient distinction from existing names.

Registration does not give the company any proprietary rights in the company name. As well as searching the Register of Companies, it is also important to check any proposed name against the names on the Irish Business Names Register and Irish and EU Trade Marks Registries (and any other registers, depending on where it is proposed to carry on business). This is to ensure that the proposed company name does not conflict with an existing business name or trade mark, since the person claiming to have a right to that name or mark could take legal action to protect its interest. It should also be noted that certain names cannot be used unless approved by relevant regulatory bodies. By way of example, the words “bank”, “insurance”, “society” and “university” cannot be included in a company name unless prior permission is obtained from the relevant regulatory authority.

Where a company uses a business name that is different from its company name, the business name must be registered by that company with the Irish Register of Business Names at the CRO. Company names may be reserved for a period of up to 28 days in advance of incorporation.

A company will not be incorporated in Ireland unless the company will, when registered, carry on an activity in Ireland. A declaration confirming this must be completed and filed with the incorporation documents at the CRO.

Statutory obligations of the company

A company has ongoing statutory obligations including:

- holding its first Annual General Meeting (“AGM”) within eighteen months of incorporation and AGMs thereafter at intervals of not more than fifteen months;
- filing the first annual return six months after the date of incorporation and subsequent annual returns in each year thereafter. The second and subsequent annual returns must be filed with the CRO together with the relevant accounts, made up to a date not more than nine months earlier than the date of the annual return; and presenting the company’s accounts to the members of the company for consideration at the AGM.

■ keeping proper books of account. Accounts of all companies must be audited by independent accountants, except for small limited companies with a turnover not exceeding €7,300,000 and which fulfill a number of other conditions.

The shareholder meeting requirements are relaxed for single member companies.

Management and Governance Structure

The management of a company is nearly always delegated to the board of directors. All companies must have at least one secretary and a minimum of two directors, one of whom is required to be a resident of the EEA. The secretary may also be one of the directors of the company. A body corporate may act as secretary to another company, but not to itself. A body corporate may not act as a director.

The directors of a company have wide responsibilities under Irish law. They are obliged to act in the best interests of the company as a whole and to ensure that the company acts in compliance with Irish company law. Directors should familiarise themselves with their duties under Irish law. The Office of the Director of Corporate Enforcement has published an information booklet on the subject entitled 'The Principal Duties and Powers of Company Directors' and a copy is available to download from their website at www.odce.ie.

Statutory Duties

As well as these general duties, a director has specific duties under the Companies Acts including a duty to keep proper books of account and to have the annual audit carried out, although there is an audit exemption for small companies. Directors have a duty to file annual accounts and annual returns and failure to file an annual return can cause the company to be struck off. Late filing of an annual return can mean that the company loses the benefit of the audit exemption. A director also has a duty to disclose certain interests, whether it is in shares in the company or in any contract that the company might be entering into. Directors have duties to keep certain registers. The Companies Acts also govern transactions between the company and directors and/or their connected persons and there are specific duties for directors in companies which are insolvent.

Corporate Governance

There is a great deal of discussion in the media about directors' duties and best corporate governance practice. We can expect to see increased regulation in this area which will affect all companies and not just listed companies, so it is important to get it right from the beginning. This involves, amongst other items, putting the right systems in place, keeping proper records and complying with obligations as a director to act in the best interests of the company.

Registered Office

Every company is required to have a registered office in Ireland to which communications and notices may be sent. The company must file the situation of its registered office in the CRO.

Company's Notepaper

A company must ensure that its name, registered address and registered number are mentioned on all business letters of the company and on all cheques, invoices and receipts of the company. For private limited companies and public limited companies, this information must also be displayed on the company's website and certain electronic communications (for example, email, letters and electronic order forms). The names of directors and their nationality (if not Irish) must be included on all business letters on, or in, which the company's name also appears. A company is also required to paint or affix its name in a conspicuous place, in legible letters, on the outside of every office or place in which its business is carried on.

Investment Incentives

Generous fiscal incentives are available to foreign companies looking to invest in Ireland. These packages are flexible and vary from project to project. A summary of the primary grant aids available is as follows:

- capital grants contributing towards the cost of fixed assets, including site purchase and development, buildings and, new plant and equipment;
- where a factory building is rented, a grant towards the reduction of the annual rental payments may be available instead;
- employment grants to companies which will create jobs. Normally, one half is paid on certification that the job has been created and the balance one year later, provided the job still exists;
- training grants to cover the full cost of certain training initiatives. Covered costs include trainees wages, travel and subsistence expenses and engagement of instructors, consultants to train. Training grants are based on specific training programmes agreed between each investing company, IDA Ireland and FÁS the Irish National Training and Employment Authority; and
- research and development grants in respect of approved research and development work, including product and process development, feasibility studies and technology acquisitions.

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