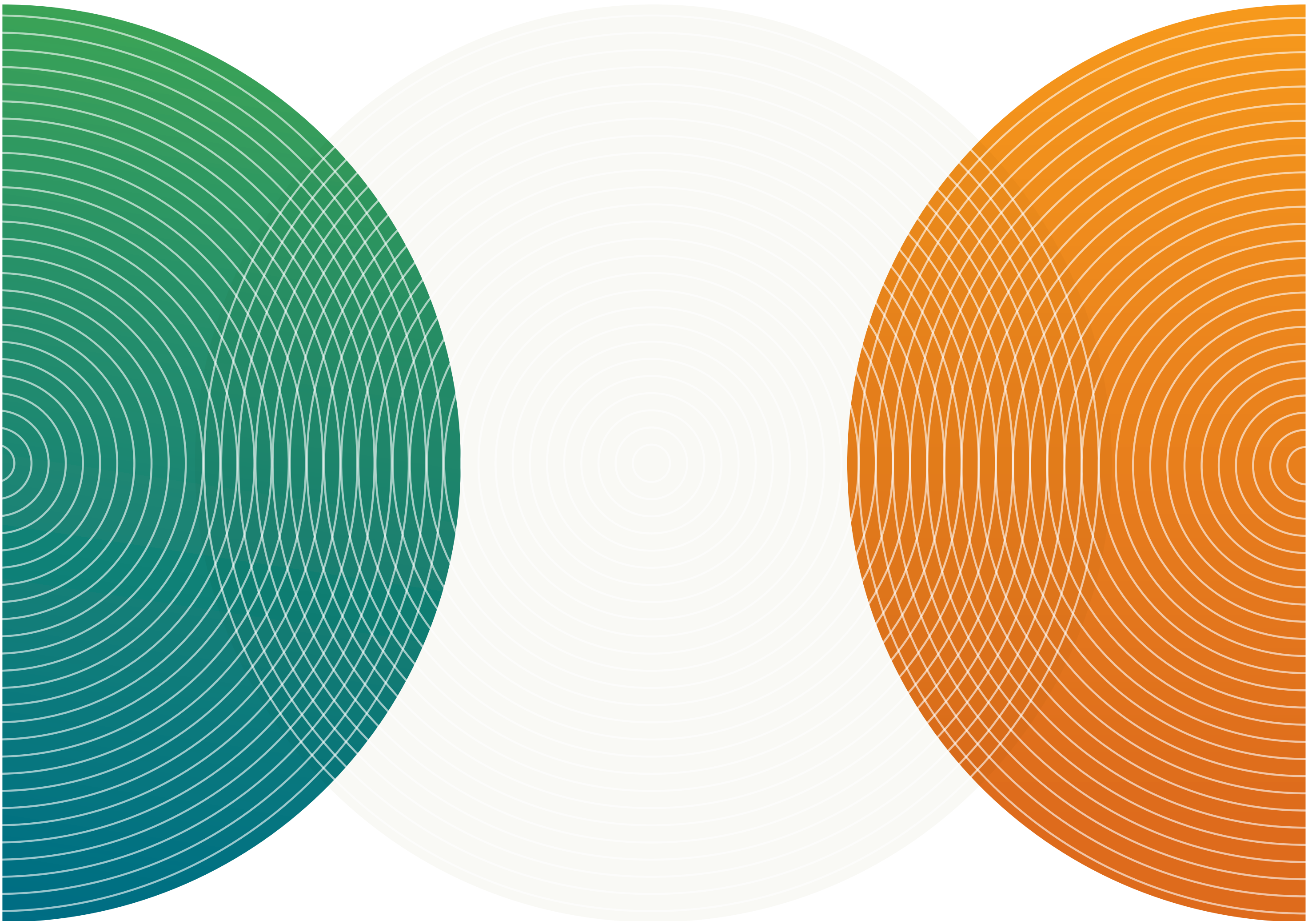
A Guide to
Ireland as a Business Location

McCann FitzGerald



mccannfitzgerald.com

CONTENTS

2 Introduction
6 Investment Incentives
7 Tax & Tax Incentives
16 Business Organisation
19 Employment Law
25 Property Issues
31 Intellectual Property
37 About McCann FitzGerald
39 Inward Investment Group

Introduction

In recent years, Ireland's transformation into a dynamic knowledge based economy has largely been driven by continuous overseas investment into Ireland by leading internationally traded businesses.

The Irish economy is on track to be the fastest growing economy in Europe for the second consecutive year in 2015. The unemployment rate has been falling for three years, exports are at an all-time high, and the domestic economy is recovering and contributing to growth. Furthermore, many of the factors that made Ireland an economic success story during the Celtic Tiger years are still present: social cohesion, political stability, a young, well educated, flexible workforce and a pro-enterprise, export orientated economy. The vibrant ambition that has brought Ireland this far ensures that it continues to win international investments from internationally traded businesses. According to the 2015 KOF Globalisation Index, Ireland is ranked as the most economically globalised country in the world and it is in fourth place on Forbes' list of best countries for business.

Ireland is ranked as the most economically globalised country

1,200 companies assisted by IDA Ireland now employ approximately 187,000 people directly in Ireland. They are primarily employed in the following sectors:

Ireland is ranked first in the euro zone for best countires for business

Information & Communications Technology

This sector employs nearly 40,000 people, accounts for approximately €35bn in exports, representing 22% of total exports. Computer hardware & software producers based in Ireland include Apple, HP, Intel, Microsoft, IBM, Norton-Symantec and Oracle. Some of the leading telecommunications providers that have operations in Ireland include Worldcom/UUNET, BT, Cable and Wireless, and Colt. In addition, Amazon, Google, eBay, PayPal, Yahoo, Facebook, Airbnb and LinkedIn have all established key European centres in internet services in Ireland.

Healthcare & Pharmaceuticals

Medical and pharmaceutical companies from around the world use Ireland as a base for manufacturing and marketing a diverse range of products from pacemakers to contact lenses. The healthcare and pharmaceutical sector makes an enormous contribution to the Irish economy and has experienced significant growth in recent years generating more than €50bn in exports and direct and indirect employment of more than 50,000. Many of the world's top medical and pharmaceutical companies have operations in Ireland. These include Brystol-Meyers Squibb, American Home Products, Boston Scientific, Johnson & Johnson, Medtronic, Stryker, Oral B, Elan, Pfizer, Schering-Plough, Wyeth, GlaxoSmithKline and Takeda. The Bio Pharmaceutical industry alone has made a capital investment of $8 billion in new facilities in Ireland over the last 10 years.

Engineering

Leading international engineering companies have invested in Ireland where they carry out a wide range of activities in key subsectors such as automotive, electrical engineering, aerospace, material handling and automation. Major global engineering companies such as ABB, Ingersoll Rand, Magna, Liebherr, Siemens, and Schlegel are located here. Other major engineering companies with operations in Ireland include Honeywell, Pratt & Whitney and Thermo-King.

Financial Services

Dublin is a significant global financial centre. A wide range of financial services companies are based there engaging in activities ranging from banking and mutual fund management to corporate treasury, equipment leasing and

insurance services. Those operations are serviced by an extensive network of major international banks, brokerage firms and professional advisers. Financial institutions including ABN Amro, Bank of America, Deutsche Bank, BNP Paribas, Citibank, JP Morgan, Merrill Lynch, Rabobank and leading corporates such as Analog, HP, Ericsson, Pfizer and IBM have established operations here.

The various tax and other incentives available for the establishment of international financial services have also facilitated the expansion of the funds industry with Ireland now being recognised as one of the premier global locations for establishing and administering investment funds. Significant tax benefits are available to investors in an Irish regulated fund with regulatory protection also being afforded to prospective investors without requiring the fund to sacrifice its investment objectives. The sector has continued to thrive with data showing funds holding some €3,732 billion were administered out of Ireland at the end of June 2015.

International Services

Ireland is now home to leading international services companies offering business services on a pan European/Global basis. The sector includes a broad range of professional consulting services, internet based businesses, telecommunications, travel and leisure, retail and distribution, media and entertainment and business process outsourcing. Companies operating in the internationally traded services sector have located and expanded here. Many have established call centres, telemarketing activities and shared services centres in Ireland. The broad range of language skills has resulted in an immediately available workforce for this type of operation which is generally very labour intensive. Organisations such as Accenture, AOL, Bertelsmann, Oracle, Dell, UPS and Xerox have all located in Ireland.

Research and Development

Ireland's success in research and development spans a wide range of businesses and sectors. Government departments, funding agencies, regulatory authorities, academic and industry are all interconnected creating a dynamic research environment in Ireland. Recent initiatives on taxation credits and support from the Government funded Science Foundation Ireland ("SFI") have resulted in many new research and development projects being established in Ireland. Among these are Bell Labs, Microsoft, Xilinx, Bristol-Myers Squibb, Pfizer, Citigroup, Genzyme, Smith and Nephew, GlaxoSmithKline, Wyeth Corporation and Intel.

Intellectual Property

Ireland is an attractive location to hold intellectual property. The incentives for research and development have resulted in companies developing intellectual property. In addition, holding companies will very often hold IP related to the group and licence such intellectual property from their Irish operations. The government has introduced the world's first OECD-compliant income-based tax regime for intellectual property. The "Knowledge Development Box" will apply a corporation tax rate of 6.25% to profits arising from the commercialisation of certain IP assets.

Sales and Marketing

Strategic business integration and support activities are also being carried out by companies in Ireland to support global customers. Yahoo, McAfee, IBM and Kelloggs, to name a few, are using Ireland as a location to develop and implement new business models.

Holding Companies

The introduction of the Irish Holding Company Regime has put Ireland in a position to compete with established European holding company locations. The regime broadly provides for a capital gains tax exemption for certain shareholders together with reliefs for overseas tax suffered on dividend income. These changes have resulted in a sharp increase in the establishment of Irish holding companies acting as European regional holding or intermediate holding companies.

Securitisation

Ireland is a popular location for the establishment of entities that will undertake financial operations such as securitisation activities. Specific tax provisions give certainty on the tax treatment that applies to such operations which can generally also avail of the Irish double tax treaty network.

Investment Incentives

Agencies such as Enterprise Ireland and IDA Ireland promote industrial development in Ireland. Enterprise Ireland is concerned mainly with promotion of indigenous industry and IDA Ireland with attracting inward investment projects (for which it can arrange grants and other incentives depending on where they locate and on the level of employment created).

Incentives

A key element of Ireland's inward investment strategy is the availability of generous fiscal incentives including grants and subsidies where projects locate in certain parts of the country. The availability of grants and subsidies is governed by EU state support rules and is dependent on where in the country operations are established. Incentive packages are flexible and vary from project to project. A summary of the primary grant aid available is as follows:

- capital grants towards the cost of fixed assets, including site purchase and development, buildings, and new plant and equipment;
- employment grants are available to companies which will create employment, with amounts being approved for each job created;
- training grants are available to cover the cost of certain training initiatives; and
- research and development grants are available in respect of approved research and development work, including feasibility studies.

Tax & Tax Incentives

Ireland's favourable tax regime has played a significant part in attracting foreign direct investment to the country. 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 72 signed treaties, 68 of which are currently in force. 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.

Corporation Tax

Companies that are resident in Ireland for tax purposes are subject to Irish corporation tax on their worldwide income and gains. Non-Irish resident companies that operate in Ireland through a branch are liable to Irish corporation tax on trading income arising directly or indirectly from the branch, and on any other income from property or rights used by the branch, wherever that income arises.

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. Where capital expenditure relates to industrial buildings or plant or machinery, capital allowances may be claimed in respect of the expenditure. A company is liable to corporation tax by reference to the profits it earns in an accounting period. An accounting period cannot exceed 12 months and normally coincides with the company's accounting year. The standard corporation tax rate applicable to the trading profits of a company is 12.5%. Non-trading profits earned by a company, such as investment income, and the profits derived from particular types of activities (such as certain exploration or land development related trades), are taxed at a rate of 25%.

Ireland's Tax Regine

- 12.5% corporate tax rate
- Excellent Intellectual Property (IP) regime
- 25% R&D tax credit
- Attractive holding company regime
- Effective zero tax rate for certain foreign dividends

Dividends received by an Irish tax resident company from subsidiaries located in an EU Member State or a country with which Ireland has concluded

a double tax treaty and which were paid out of trading profits, can (subject to certain conditions) be taxed at the 12.5% corporation tax rate. Provisions have also been introduced so that 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 also be subject to corporation tax in Ireland at the 12.5% rate subject to satisfying certain conditions.

In addition, the rules for identifying the underlying profits out of which foreign dividends are paid have also been simplified and foreign dividends received by an Irish company holding less than 5% of the share capital and voting rights of a foreign company are now exempt from corporation tax where the dividend income forms part of the trading income of the Irish company.

Special tax regimes also apply to earnings from commercial management of woodlands, artistic earnings, and certain shipping activities.

A research and development (“**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% tax credit related to certain expenditure for companies subject to Irish corporation tax. It is available in respect of certain qualifying expenditure on R&D activities carried on by a company within the European Economic Area (“**EEA**”) provided such expenditure is not otherwise eligible for tax benefit elsewhere in the EEA. The tax credit can be set against a company’s corporation tax liability. The R&D provisions facilitate the carry back and forward of excess R&D tax credits and also permit a tax refund to be claimed in relation to R&D tax credits in certain situations. All R&D tax credit claims made on or after 1 January 2009 must generally be filed within 12 months of the end of the accounting period in which the qualifying expenditure was incurred. Initially the R&D tax credit was designed to encourage incremental expenditure, thus, qualifying expenditure was adjusted by reference to a base year (2003). Since January 2015 the R&D tax credit is calculated based on all qualifying income and no adjustment is required. Where a company incurs R&D expenditure but has not yet commenced to trade, all R&D tax credit claims must be made within 12 months of the end of the accounting period in which the company first commences to trade. The tax credit is in addition to the normal tax deduction for such expenditure. Additionally a new provision has been introduced to support the hiring and retaining of key employees. The company may transfer the R&D credit to key employees when certain conditions are satisfied.

A research and development expenditure tax credit of 25% is available for qualifying expenditure

An intangible assets regime whereby capital allowances are available on capital expenditure incurred by companies on certain specified intangible assets (including patents) is part of the Irish tax code. Companies carrying on a trade are entitled to claim a tax write off for the capital cost of acquiring specified intangible assets. The tax write off is granted as a capital allowance and the write off is available in line with the depreciation or amortisation policy for accounting purposes. Alternatively, a company can elect to take the tax write off over a 15 year period. The list of qualifying intangible assets also includes costs associated with applications for legal protection. In addition, the definition of know-how has been extended to incorporate commercial know-how as well as know-how derived from manufacturing and processing activities. Prior to 1 January 2015, such allowances could only be used up to a maximum of 80% of trading income from the relevant trade in which the acquired assets are used; this restriction has now been removed.

On 1 January 2016 Ireland's Knowledge Development Box ("**KDB**") came into force. A 6.25% rate of corporation tax applies to the profits arising from certain patents, copyrighted software and inventions which are certified as being novel non-obvious and useful which, are the result of qualifying R&D carried out in Ireland. It will be of particular interest to businesses who have R&D facilities in Ireland or who are considering establishing R&D facilities in Ireland and who operate in sectors involving the commercialisation of patents or software (eg pharma, medical devices, technology, etc). It may also be relevant to businesses that create and commercialise inventions but do not apply for patents in respect of those inventions in certain circumstances. Ireland's KDB is the first in the world which is compliant with the "modified Nexus" approach adopted by the OECD as part of its Base Erosion and Profit Sharing ("**BEPS**") project.

Ireland is committed to engage with the BEPS project in order to provide long term certainty for tax payers. Accordingly, the government has introduced an obligation on certain Multi-National Companies to provide the Revenue Commissioners with Country by Country Reporting. Multi-National Companies with a group revenue greater than €750 million which form part of a group that includes two or more enterprises, the tax residence of which is in two different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction will be required to report certain information on a country by country basis to the Revenue Commissioners. The information required includes; profit or loss, income tax paid, capital, accumulated earnings, number of employees, the constituent entity, the jurisdiction of tax residence of such entity and the nature of the business in question.

Where an Irish tax resident company is in receipt of foreign dividend income, relief is available for dividend withholding taxes suffered in the form of a credit which reduces the Irish corporation tax liability. Credit relief is also available in respect of underlying tax applied to the profits of the foreign company paying the dividend. Relief in respect of foreign dividend withholding taxes suffered is available to an Irish tax resident company under either (i) the terms of a double tax treaty, (ii) the EU Parent Subsidiary Directive (as implemented in Irish domestic tax law) or (iii) in accordance with the Irish domestic tax law provisions for a unilateral credit (where the dividends are from a company located in a non EU or non tax treaty country). Generally speaking, the maximum credit relief available in Ireland is restricted to the amount of Irish tax attributable to the particular income item. Where the tax credit available exceeds the Irish tax on dividend income from shareholdings of 5% or more, any excess of foreign tax over the corresponding Irish tax can be offset against the Irish tax on other foreign dividends received in the same accounting period, with any balance of such foreign tax credits unused being carried forward for offset against Irish tax on foreign dividends in subsequent accounting periods.

In general, where a company has a liability for corporation tax it is obliged to make a preliminary tax payment of not less than 90% of its tax liability by the 21st day of the month preceding the end of the accounting period. There are exceptions to this requirement for certain new or start up companies and small companies. Small companies (companies whose tax liability for the preceding year did not exceed €200,000) can base their preliminary tax payment on the prior year's corresponding corporation tax liability. The tax payment rules for "large companies" (defined as companies with a preceding year corporation tax liability of greater than €200,000) are such that they pay their corporation tax in effectively three instalments. The first instalment, which must be at least 50% of the corporation tax liability for the preceding accounting period or 45% of the liability for the accounting period, will be payable by the 21st day of the 6th month of the accounting period.The second instalment, which must bring the total preliminary tax paid to at least 90% of the corporation tax liability for the accounting period, will be payable no later than the 21st day of the 11th month of the accounting period. Any balance of corporation tax payable, must be paid at the same time as the company is due to file its tax return for the period. A tax return in respect

There is a relief for new or start-up companies, which commence to trade in the period up to 31 December 2018, from corporation tax on profits arising from their trading activities and chargeable gains on the disposal of trade related assets.

of a company's income and gains must be submitted within nine months of the end of the accounting period. If this date is after the 21st day of the 9th month, the filing date is brought forward to the 21st day of the 9th month. Where returns are filed electronically, the return filing deadline is extended by a number of days.

There is a relief for new or start-up companies, which commence to trade in the period up to 31 December 2018, from corporation tax on profits arising from their trading activities and chargeable gains on the disposal of trade related assets. The relief can apply for each of the first three years that the trade is carried on provided that the company's tax liability does not exceed €40,000 and subject to a certain level of employment and social insurance contributions arising. Marginal relief is available for companies with tax liabilities of between €40,000 and €60,000. No relief applies where the corporation tax liability is €60,000 or more. Companies carrying on trades which are subject to corporation tax at 25% and companies whose trades consist of the provision of certain professional services are excluded from the exemption.

Losses incurred in the trading activity of a company are available for use in a number of ways. They can be carried forward indefinitely for offset against future trading profits from the same trade. The losses can also be offset against other income that the company has earned. Where the other income is taxed at a different rate, there is provision for the offset of trading losses on a value basis. Where a company has related companies that are tax resident in Ireland, and where certain conditions are met, a loss that is incurred by one company can be offset against the profits of the other company.

Certain pre-trading expenses (incurred in the three years prior to commencement) can be set off against the trading income of a company once it has commenced trading.

Income Tax

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. In general, foreign (ie non-Irish) income, other than employment income where the employment is exercised in Ireland, earned by a person with a 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 the remittance basis applied up to 2011 in respect of certain employment income, where an employee

became resident in Ireland for tax purposes, was paid from abroad and was required by his or her employer to exercise the duties of their employment in Ireland for a period of at least one year. This relief does not apply for 2012 and later years and has been replaced by the Special Assignment Relief Programme ("**SARP**") which is summarised below.

Non-Irish tax resident companies that do not have a branch in Ireland but are in receipt of Irish source income can be liable to Irish income tax if they cannot avail of relief under the provisions of a double tax treaty.

Income tax is generally applied to the income earned by an individual in a calendar year. Current rates of income tax are a standard rate of 20% and a higher rate of 40%. The standard rate applies in respect of the first €33,800 of income of a single person earned for the calendar year 2016. A higher band of income taxable at the standard rate is available for married couples but the actual amount of income taxable at the standard rate is determined by whether one spouse or both spouses are earning income. Income is also subject to a Universal Social Charge ("**USC**") which applies to individuals earning greater than €13,000 per annum. A rate of 1% applies to income up to €12,012, 3% on income between €12,012 and €18,668 and 5.5% on income between €18,668 and 70,044, and 8% on income in excess of €70,044. There is an additional charge of 3% applied to self-employment income above €100,000 in addition to the 8% already chargeable. The income taxes and the USC are either deducted by employers under the Pay As You Earn system (colloquially known as "**PAYE**") or collected via a self-assessment system. Various tax credits (including an employee tax credit of €1,650, a personal tax credit of €1,650 for a single person, €3,300 for a married couple, and an "earned income" tax credit of €550 for the self-employed) are available to reduce an individual's tax bill.

The Special Assignee Relief Program ("**SARP**"), was introduced in 2012 and extended and amended in 2015. SARP is designed to encourage multinational and indigenous companies to attract key staff to Ireland. This affords relief on the Irish income tax that would arise on income earned from such an assignment where certain criteria are met and where the employee earns a gross salary of at least €75,000. The relief, which is subject to various conditions, provides an exemption from income tax on 30% of employment income between €75,000 and €500,000. The relief can be claimed for the duration of the assignment up to a maximum of five years. The relief can also allow the employee recover the cost of one trip to their home country and have Irish school fees paid by their employer.

In 2012, a Foreign Earnings Deduction ("**FED**") relief was introduced as an incentive for companies expanding into emerging markets in Brazil, Russia, India, China and South Africa (the "**BRICS**" countries). The relief provides for

a reduction in the Irish income tax liability of an employee who spends at least 60 qualifying days in a calendar year in any one or more of the BRICS countries. The maximum deduction against employment income is €35,000 per annum. In 2014 the relief was extended until the end of 2017 subject to certain changes; The list of eligible countries was expanded to include Chile, Mexico, and certain Middle Eastern and Asian Countries and the minimum stay requirement was reduced from 60 to 40 days.

Capital Gains Tax

Ireland also imposes 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 33% for disposals made on or after 6 December 2012. Irish resident individuals are liable to capital gains tax on their worldwide gains. 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.

There is an exemption from capital gains tax for Irish tax resident companies on a disposal of shareholdings in excess of 5% in trading subsidiaries located in the EU, or in countries with which Ireland has a double tax treaty, where certain conditions are met.

Persons (companies or individuals) who are not tax resident in Ireland are only liable to Irish capital gains tax on the disposal of certain specified assets such as Irish land or buildings, Irish mineral or exploration rights, assets used for a branch activity conducted in Ireland, or unquoted shares which derive their value or a greater part of their value from Irish land or buildings, mineral or exploration rights.

Since 1 January 2016 a lower rate of 20% applies to chargeable gains arising from the sale of the whole or part of a business by an individual where certain conditions are met. This rate is subject to a lifetime limit of €1 million of such gains.

Pay Related Social Insurance

Pay Related Social Insurance ("**PRSI**") is a social insurance charge generally based on earnings which funds various State benefits including unemployment assistance, retirement pensions and certain medical benefits. Both employees

and employers are obliged to make PRSI contributions. Different rates of contribution apply depending on the type of employment involved. Most employees pay PRSI at the standard rate, currently 4% of all income. Employers pay a rate of 8.5% on income below €376 euro per week and a rate of 10.75% on any income above that amount. PRSI applies to the full amount of salary and non-monetary benefits.

Withholding Taxes

There is an obligation to withhold income tax at the standard rate, which for 2016 is 20%, from certain types of payments. Where tax is withheld it can be offset against the Irish tax liability on the income or gain. If no tax liability arises, the tax withheld is normally refundable. The relevant withholding taxes are:

- dividend withholding tax applies to dividends and other profit distributions made by Irish resident companies. Generally speaking, such payments, when made to persons resident in EU Member States (apart from Ireland) or in countries with which Ireland has a double tax treaty, or when made to companies controlled by EU residents or residents of a country with which Ireland has a double tax treaty, are exempt from the withholding, subject to compliance with certain formalities;
- interest withholding tax applies to Irish source yearly interest payments. Exemptions are available where such interest is paid to a bank carrying on a bona fide Irish banking business in Ireland, or paid to other Irish corporate lenders by corporate borrowers, or where certain conditions are met and it is paid to EU or tax treaty state corporate lenders by borrowers who are either companies or certain mutual funds, or where the interest is paid in respect of quoted Eurobonds;
- withholding tax at the standard income tax rate also applies to payments of rent to non-Irish resident landlords, to certain royalty payments (but see below), to payments made by Government departments and Government-controlled bodies to certain professional service providers, and to interest payments made in respect of certain bank deposits; and
- income tax at rates up to 35% may also be withheld from payments made to contractors in the construction, forestry and meat-processing industries, unless the contractor has a clearance certificate issued by the Irish Revenue Commissioners.

In the case of certain royalty payments that are paid by a company, in the course of a trade or business carried on by the company, they can be paid without deduction of withholding tax to another company provided the company in receipt of the royalties is resident in the EU or in a country with which Ireland has concluded a double tax treaty and which imposes a tax that generally applies to royalties receivable in that country by companies from sources outside that country. The royalties must be made for bona fide commercial reasons and not form part of a tax avoidance arrangement and the royalties cannot be paid to the receiving company in connection with a trade or business carried on by it in Ireland through a branch or agency

Value Added Tax

Ireland has a value added tax ("**VAT**") system based on the EU Sixth Directive. The standard rate of VAT is 23%. Lower rates of 13.5%, 9% 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 2% of purchase price or market value. Since 1 April 2004, instruments effecting 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.

Transfer Pricing

The Finance Act of 2010 introduced transfer pricing rules to Ireland for the first time. The introduction of transfer pricing rules brings the Irish tax regime into line with international norms and supports Ireland's status as an onshore, transparent and well regulated location for business.

The rules include many features expected of a jurisdiction introducing transfer pricing legislation and are confined to related party dealings that are taxable at Ireland's corporation tax rate of 12.5%. There is an exemption for certain small and medium sized enterprises. Arrangements entered into between related parties prior to 1 July 2010 are excluded from the legislation. The rules took effect for accounting periods commencing on or after 1 January 2011. The transfer pricing provisions should not obstruct new companies setting up in Ireland, particularly given that most counterparty locations already have transfer pricing legislation that covers related party transactions.

Business Organisation

FORMATION OF AN IRISH COMPANY

Companies can be incorporated in Ireland as either public or private and can be limited by shares, limited by guarantee or unlimited. Private companies limited by shares are the most common entities. Under the Companies Act 2014 (which became law on 1 June 2015), such companies can either be the newer, paradigm type of company, the “**LTD**”, or a designated activity company (“**DAC**”).

An LTD is a more streamlined, simplified form of company with a single constitutional document and can have a single director (but must have a separate company secretary). The LTD does not have an objects clause and therefore has legal capacity similar to that of an individual. A DAC on the other hand continues to have an objects clause (such that the company can only carry on activities set out in the objects clause and anything incidental to the objects) and must, like other types of companies incorporated in Ireland, have at least two directors. Certain entities, such as banks, insurance undertakings, State companies and companies intending to list debt on a regulated market cannot be incorporated as an LTD.

New LTD Company Model

- May have one director (but must have a separate secretary).
- It may have between 1 and 149 members.
- It does not need to hold an AGM.
- One-document constitution (no objects clause).
- It may claim eligibility for audit exemption(and dormant company audit exemption).
- Private limited company with share capital.
- It can pass unanimous/ majority written resolutions.
- Name must end in “**Limited**”. “**ltd**.” can be used.
- Must not list shares or debt.

Designated Activity Company Model

- Must have at least two directors (one can be secretary).
- It may have between 1 and 149 members.
- It is required to hold an AGM where there are 2 or more members.
- Constitution comprising of memo and arts. Has an objects clause.
- It may claim eligibility for audit exemption and dormant company audit exemption.
- Private limited company with share capital.
- It can pass unanimous/majority written resolutions unless constitution says otherwise.
- Name must end in "**Designated Activity Company**" or unless qualified for an exemption. Abbreviation "**dac**" can be used after incorporation.
- Must not list shares but may list certain debt.

Detailed requirements and formalities apply in relation to the constitutional documents of such companies. The constitutional documents of Irish incorporated companies will comprise those provisions specifically included in the constitution of the company along with certain mandatory and optional (opt-out) provisions in the Companies Act 2014.

Every Irish incorporated company must have at least one director resident in a Member State of the EEA or, failing that, provide a bond to the value of €25,000 (normally provided as an insurance bond) as surety in the event of the company failing to comply with certain company law and tax requirements. A company may be exempted from this requirement, following consultation with the Revenue Commissioners, if it has a "real and continuous link with one or more economic activities" in Ireland however this is only available post incorporation. The normal time period for incorporation of an Irish company is 15 working days although a quick 'fé phrainn' procedure can be utilised to incorporate a private limited company with standard constitutional documents in about ten working days. Alternatively an "Online A1" incorporation with standard constitutional documents can be completed in about five working days.

A public file on the company is held by the Companies Registration Office and contains a copy of the constitution documents. Details of directors, secretary and registered office and certain annual filings (including accounts) are available to the public.

Tax Residency

All companies incorporated in Ireland are regarded as resident for tax purposes in Ireland, unless a company is treated as resident in a treaty partner country by virtue of a double taxation treaty. A company that is incorporated in a foreign jurisdiction and is centrally managed and controlled in Ireland will be resident in Ireland for tax purposes unless it is treated under a double taxation treaty as a resident of another country. In this regard the location of management and control is generally regarded as being located where meetings of the board of directors are held provided the key strategic decisions related to the company are taken at those board meetings. The make-up of the board in terms of the country of residence of individual directors may also be significant to the location of the management and control of the company. For companies incorporated in Ireland prior to 1 January 2015 in certain circumstances they may be regarded as tax resident where they are managed and controlled until 31 December 2020.

Establishing an Irish Branch

The Companies Act 2014 removed registration requirements for foreign entities establishing a place of business in Ireland. Under the 2014 Act a foreign limited liability company that establishes a branch in Ireland must register the branch within one month of its establishment. Registration involves the foreign company filing certain information in the Companies Registration Office including:

- copies of the company's constitutional documents;
- details of its directors/secretary; and
- the name of the person resident in Ireland authorised to accept service of process on behalf of the company.

The 2014 Act requires the foreign entity to file annual accounts in the Companies Registration Office.

Employment Law

Irish employment law and best practice derives from a number of sources, namely the Irish Constitution, domestic and EU-based legislation, decisions of Adjudication Officers of the Workplace Relation Commission, the Labour Court, the civil courts and custom and practice. The main features are:

Contracts

Parties are free to negotiate particular terms as they see fit but should be aware of certain requirements. For example, under statute, employees must be given a written statement of certain terms and conditions of their employment within two months of commencing employment (*eg* salary and deductions, hours of work, holidays *etc*).

Minimum Notice

There are minimum statutory notice periods for termination of contracts of employment. The duration of notice is dictated by the employee's period of continued service and ranges from one week's notice to eight weeks' notice. Longer notice periods may be agreed between the parties and would have to be honoured under contract.

Dismissals

Under the Unfair Dismissals Acts 1977-2015, employees who have one year's continuous service with an employer are protected from being unfairly dismissed unless the employer can establish that there were substantial grounds justifying the dismissal - such as the employee's conduct, capability or redundancy - and that the principles of natural justice and fair procedures were observed. The one year requirement does not apply to terminations connected to discriminatory grounds. While Adjudication Officers of the Workplace Relations Commission may order a maximum award of two years' remuneration, in practice awards are often made, and termination packages agreed, below this level. Employees can also make a claim through the civil courts for an injunction restraining their dismissal, and claiming wrongful dismissal, without the one year's continuous service. Where an employee is unfairly dismissed for making a protected disclosure under the Protected Disclosures Act 2014, the employee may be awarded compensation of up to 5 years' remuneration.

Redundancy

Under the Redundancy Payments Acts 1967-2014, a statutory redundancy lump sum payment is payable to employees dismissed by reason of redundancy where they have at least two years' service. Generally, employees in this jurisdiction also have an expectation of receiving an ex-gratia lump sum payment on redundancy. Even where a redundancy may be justified as genuine, an employer must not unfairly select employees being made redundant. Rather, the selection of pooled employees should involve a scoring process based on objective criteria that is applied fairly. Fair procedures, including employee consultation and consideration of alternatives, should be adhered to. Additional statutory obligations are imposed on employers where the redundancy concerned is a collective redundancy.

Industrial Relations/ Consultation

There is a tradition of free collective bargaining and employees have the right to join trade unions (although many new businesses locating in Ireland are not unionised and there is no requirement ro recognise such trade unions), with disputes being resolved between employers and employees either directly or under the guidance of the Labour Court established under the Industrial Relations Acts 1946 to 2015. The European Works Council Directive has been implemented in Ireland and a number of companies in Ireland have established works councils. The Employees (Provision of Information and Consultation) Act 2006 implemented the 2002 EU Information and Consultation Directive and provides a general framework for informing and consulting with employees, depending on the size of the workforce.

Employment Equality

Discrimination on grounds of age, disability, family status, gender, civil status, race, religion, sexual orientation or membership of the Traveller Community is not permitted under the Employment Equality Acts 1998-2011, either in relation to entry requirements to employment or to the terms, conditions or treatments attaching to the employment, including dismissal. Employees must not be victimised for asserting their rights under equality legislation. Awards under equality legislation can be up to two years' remuneration for each infringement (*ie* the act of discrimination, a discriminatory dismissal and/or victimisation).

Holidays

The minimum annual holidays to which an employee is entitled under law is currently 20 days in addition to nine public holidays as set out in the Organisation of Working Time Act 1997. Longer holiday entitlements can be agreed contractually. Employers may not pay employees in lieu of accrued but untaken annual leave, except in cases of termination of employment.

Maternity

Under the Maternity Protection Acts 1994 and 2004, irrespective of length of service and subject to appropriate notice being given, female employees are entitled to up to 42 weeks' maternity leave, to return to work after such leave, to have reasonable time off for ante-natal and post-natal care and ante-natal classes and to job protection during those periods. The employee may be entitled to a pay-related maternity allowance from the Department of Social Protection during the first 26 weeks of maternity leave. There is no obligation on an employer to pay remuneration to an employee at any time during leave. However, many employers do top up the statutory maternity entitlement so that an employee receives full pay during the first 26 weeks of leave.

Parental Leave

Under the Parental Leave Acts 1998 and 2006, all employees are entitled to up to 18 weeks' unpaid parental leave and to return to work after such leave. Leave may be transferred from one parent to another up to a maximum of 14 weeks if both parents are employed by the same employer, subject to the employer's consent. Although this leave is unpaid, employees continue to accrue employment rights such as service and annual leave.

Adoptive Leave

Irrespective of the length of service and subject to appropriate notice being given, employees are entitled to 40 weeks' adoptive leave in accordance with the Adoptive Leave Acts 1995 and 2005. The employee may be entitled to a pay-related adoptive allowance from the Department of Social Protection during the first 24 weeks of adoptive leave. There is no obligation on an employer to pay remuneration at any time during leave. However, many employers do top up statutory adoptive entitlement so that an employee receives full pay during the first 24 weeks of leave.

Carer's Leave

Employees who have twelve months' continuous service with their employer are entitled, under the Carer's Leave Act 2001, to take a maximum of 104 weeks' unpaid leave to provide full-time care for someone in need of full-time care and attention.

Transfer of Undertakings

In the case of transfer of a business which retains its identity, all accrued employee rights (except certain pension rights) automatically transfer to the new employer, so that any dismissal due to such transfer is usually regarded as unfair. Under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, certain information and consultation requirements in respect of employees must be complied with at least 30 days before the transfer takes effect.

Pensions

Pension schemes and the interests of pension scheme members are regulated and protected by law. Employees changing jobs after at least two years of employment can usually carry most of their pension entitlements with them. Employers must offer employees access to a standard Personal Savings Retirement Account (**"PRSA"**) where the employer does not operate a private pension scheme.

Health & Safety

The Health and Safety Authority is empowered by legislation to promote the health, safety and welfare of those in the workplace. Employers are obliged under statute and common law to ensure the safety, health and welfare at work of their employees.

Part-Time Employees

In accordance with the Protection of Employees (Part-Time Work) Act 2001, part-time employees may not, in respect of conditions of employment, be treated in a less favourable manner than a comparable full-time employee unless the less favourable treatment can be justified on objective grounds. Remuneration is determined on the basis of working hours may be pro-rated.

Fixed-Term Employees

Under the Protection of Employees (Fixed-Term Work) Act 2003, fixed-term employees may not, in respect of conditions of employment, be treated in a less favourable manner than a comparable permanent employee unless the less favourable treatment can be justified on objective grounds. There are limits on the use of successive fixed-term contracts beyond four years as thereafter such contracts will become 'contracts of indefinite duration' (*ie* permanent contracts) unless their renewal can be justified on objective grounds.

Agency Workers

Under the Protection of Employees (Temporary Agency Work) Act 2012, agency workers may not, in respect of conditions of employment, be treated in a less favourable manner than if they have been directly recruited by the hiring organisation. The hiring organisation must furnish such information to the agency as is reasonably required in order for the agency to comply with its obligations under law.

Non-Irish Citizens Working In Ireland

Irish immigration law governs the position of persons other than Irish citizens wishing to enter and remain in Ireland. The following distinct categories exist:

Nationals of EEA Members States (which includes the 28 EU Member States together with Iceland, Norway and Liechtenstein) and Switzerland will not (subject to fulfilling very general conditions) be refused entry into Ireland and are entitled to residence permits entitling them to work in Ireland without further formality; and

Non-EEA and non-Swiss nationals must obtain permission to enter and remain in the State at the airport or port of entry. Subject to certain legislation in relation to asylum seekers, entry will be refused unless immigration officials are satisfied as to certain matters including the validity of a person's passport, visa (if necessary), employment permit or other permission to work.

In accordance with the Employment Permits Acts 2003-2014, all non-EEA and non-Swiss nationals intending to work in Ireland must obtain an employment permit (see below), Irish holiday working visa or another form of permission to work except in limited circumstances. They must also register with the Irish authorities as soon as possible on entry to the State if the intention is to stay longer than three months.

The Department of Jobs, Enterprise and Innovation (the "**Department**") is the body responsible for adjudicating on employment permit applications. In general terms, when applying for an employment permit an employer must be able to show that at least 50% of its employees are EEA nationals (the "**50:50 Rule**"). In the case of start-up companies, the 50:50 Rule may be waived where the company has registered with the Revenue Commissioners as an employer within the last two years, and the company has a letter of support from either Enterprise Ireland or IDA Ireland. There are nine categories of employment permit. The four principal categories of permit are summarised as follows:

- Critical Skills Employment Permit (previously referred to as the Green Card Employment Permit). This permit may be issued to highly skilled personnel in certain designated sectors (eg information technology, healthcare, scientific research and financial services sectors) earning in excess of €30,000 per year. Persons working in other sectors earning in excess of €60,000 per year may also apply, with the exception of certain ineligible categories of employment as determined by the Department;
- General Employment Permit. As a general rule, this permit is available in respect of all occupations with an annual remuneration in excess of €30,000 and who do not fall within designated ineligible categories. There is a requirement that the position be advertised in advance to ensure that Irish or other EEA nationals are afforded the opportunity to fill the vacancy in the first instance;
- Intra-Company Transfer Permit. This permit is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch; and Dependant/Partner/Spouse Employment Permit. Here the spouse/partner or dependant of certain categories of employment permit holder may be also authorised to live and work in Ireland.
- Dependant/Partner/Spouse Employment Permit. Here the spouse/partner or dependant of certain categories of employment permit holder may be also authorised to live and work in Ireland.

Those wishing to pursue a business activity other than as an employed person must obtain "business permission". While such permissions may have onerous conditions attaching (such as the transfer of a minimum capital sum of approximately €300,000 to the State), residency will be granted to the person obtaining business permission for the term of its validity.

Property Issues

Ireland has a highly developed commercial property and construction sector with scope for different types of ownership and occupation to suit all types of business.

Title

The way in which property is owned or held in Ireland can be broadly divided into two categories - freehold (where property is owned outright, albeit potentially subject to covenants and conditions) and leasehold (where property is owned, held or occupied for a period or time subject to the terms of a lease). While not the only means, long leases (ie leases usually for periods in excess of 99 years) are traditionally favoured as a means of sale of land or buildings in urban areas and in managed schemes of development, where the estate or scheme owner requires, and through the use and operation of covenants in the lease, is able, to retain a certain control over the overall estate and / or the use to which the land is put. Occupational leases (ie leases for periods of up to 25 years) are the usual means by which office, retail, industrial and other commercial premises are made available to third parties for occupation for a period of time in return for the payment of a market rent.

Registration

There are two registration systems for property ownership in Ireland: the Land Registry and the Registry of Deeds. Registration in the Land Registry is intended to provide conclusive evidence as to the ownership of and title to the property registered there, whereas registration at the Registry of Deeds records relevant deeds and their priority (both as against other registered and unregistered deeds). For land, the title to which is registered or compulsorily registered in the Land Registry, title does not technically pass until registration is complete. If it hasn't already been done, all sales of land are now subject to an obligation for the title to be registered in the Land Registry, as Ireland moves towards a system of e-conveyancing, better facilitated by the Land Registry title registration system.

Promoting transparency in the commercial lease market, tenants under commercial leases entered into since 1 January 2010 are required to submit certain details of the lease to the Property Services Regulatory Authority, which are then entered on a publicly held commercial leases register. The register must

be kept updated on the happening of certain events throughout the term of the lease. In the residential market the landlord is responsible for registration of tenancies with the Residential Tenancies Board and the maintenance up to date of the register.

Pre-Contract Considerations – Sales, Purchases and Lettings

A contract for the sale of land and grant of a lease in Ireland must be evidenced in writing and signed by or on behalf of the party against whom it is to be enforced (except where the justice of the case, on the basis of established equitable principles, demands otherwise). While the General Conditions of Sale (2009 Edition) issued by the Law Society of Ireland are almost universally adopted for sales (albeit subject to amendment), by law contracts do not have to be a single document or take a particular form, so that care must be taken to avoid unwittingly creating a binding obligation (for sale, purchase or lease) by exchange of correspondence, whether by letter, fax, email or other written communication or document.

The principle of "*buyer beware*" generally applies, so that buyers and tenants take property "as is" and in its actual condition with no requirement in general law on the owner to ensure that it is free from defects or to disclose anything which is apparent from inspection. Buyers and prospective tenants are therefore always well advised to have a property surveyed to establish the position with regard to all physical aspects of the property including boundaries, services and structural condition.

While the need for compliance with planning and building control legislation is covered in more detail below, as part of the selection of a property for buying or letting, it is extremely important for the buyer or tenant to establish early in the process, that their intended use for the property is permitted under planning legislation and is not subject to any restriction in relevant planning permission(s). If planning permission is required for a change of use, this would need to be factored in to the legal documents and also the anticipated timescale for the purchase or letting.

The VAT (value added tax) treatment of a sale or letting, expanded on in a little more detail below, is also an important pre-contract commercial consideration and should form part of the commercial understanding reached at the outset.

Commercial Leases

In Ireland, commercial leases are generally granted for periods of up to twenty-five years. Subject to commercial negotiation otherwise, leases in excess of five years typically place full responsibility on the tenant for the cost of repair and insurance of the premises, whether directly or through a contribution towards a service charge controlled and levied by the landlord for that purpose. Commercial leases also typically provide for rent reviews every five years with rents by law capable of going upwards and downwards upon review under leases entered into after 28 February 2010 (or on foot of an agreement for lease entered into before that date). Market factors such as supply and demand will determine the negotiating power of the parties in settling the commercial terms of the lease. The momentum in favour of tenants in the recent past is now rebalancing but break clauses, rent-free periods and other tenant incentives such as contributions to fit-out might all be expected to feature in commercial negotiations to some degree. Short-term leases are typically less onerous for tenants given the temporary nature of their interest in the property.

Importantly commercial leases (and also residential leases) in Ireland are governed by a significant body of legislation in place which provides for certain statutory rights, obligations and safeguards for both landlords and tenants.

Planning & Building Control

The use to which a property is put, the construction of a new property and changes to an existing property must comply with the planning and building control regime in Ireland (unless the developments are "exempt"). These regimes are operated by local authorities. Planning considerations require adherence to local and regional development objectives while building control is concerned with the proper construction of buildings having regard to, among other considerations, structural integrity and fire safety.

Applying for planning permission is a public process. Notice of proposed applications must be published in a local newspaper and be displayed at the property itself so that the notice is visible and legible to passers-by.

Once an application for planning permission has been made, the decision (which may be a refusal, a grant of planning permission or a grant subject to certain conditions) must generally be made within eight weeks of receipt of the application. The planning authority may extend this time if they seek further information in relation to the application. In these circumstances, time stops running and only starts to run again once the additional information has been furnished, with a decision having to be made, in general, within four weeks of

this re-start. In the absence of a decision by the planning authority, a decision to grant permission is given by default on the last day of the time period.

Members of the public may make a submission or object in writing to the application before any decision is made by the planning authority. Members of the public and the applicant can also appeal any decision granted by the planning authority provided, in the case of members of the public, such parties have made submissions or observations on the planning application in question. Any such appeal to the Planning Board (called generally by the Irish name "An Bord Pleanála") must be lodged within four weeks of the decision. There is also a procedure for judicial review of planning decisions to the High Court.

To avoid unnecessary delays in the planning process, the Planning Board must ensure, where possible, that all planning appeals are, in general, determined within eighteen weeks from receipt of the appeal. Subject to a contrary condition in the permission, if a planning permission is not acted upon, the planning permission generally expires within five years from the date of the grant of the permission.

Special statutory local planning regimes apply in some areas where their development is of economic or social importance to the State. Typically these regimes curtail public objections and appeals. An example is the North Lotts & Grand Canal Dock SDZ Planning Scheme in the heart of Dublin's docklands.

Following implementation of a planning permission, there is a "self-certifying" system for planning compliance whereby the architect or engineer responsible for the design of the building or scheme will be required by the owner to provide an "Opinion on Compliance" confirming that what was built conforms to the development permitted by the relevant planning permission(s).

The building control regime was strengthened by the introduction of new regulations in 2014

The building control regime was strengthened by the introduction of new regulations in 2014. Obligations under the regime, which affect all but limited construction works, include requirements prior to the commencement of works for the submission of proposals and undertakings by nominated competent professionals involved in the design and construction of the works, to certify compliance of the works with the regulations on completion. Important evidence of compliance with the regulations include a fire safety certificate and a disability access certificate, which both issue from the building control authority. In addition a certificate of compliance on completion must be filed with and registered by the authority. In the absence of the registration of the certificate of compliance on completion with the building control authority, the building cannot be opened, occupied

or used so that it is important for all parties interested in the works ie owners, developers, occupiers and lenders, that compliance is certified and registered in accordance with the requirements of the regulations.

Tax

Stamp duty is payable on instruments transferring ownership of property, with current rates of up to 2% for transfers of both commercial and residential property. Stamp duty is also payable on the creation of occupational leases and is charged at 1% of the average annual rent (where the term of the lease does not exceed 35 years).

VAT is a tax on consumer spending. It is collected by VAT-registered traders on their supplies of goods and services within the State. Typically each trader in the chain of supply from manufacturer to retailer charges VAT on his/her sales or supplies and is entitled to deduct from this amount the VAT paid on his/her purchases. For final consumers and other entities who are not VAT-registered or who make supplies which are exempt from VAT, VAT is a cost to be factored into the purchase price.

With effect from 1 July 2008, the VAT treatment of property sales is such that where property, which is regarded as "new" for the purposes of the VAT legislation, is being sold, VAT will generally arise (at a rate of 13.5%) on the purchase price. In contrast, where properties which are not "new" are being sold, they are typically exempt from VAT but with an option in favour of the seller to charge VAT on the sale.

In relation to occupational leases, VAT is payable on rent at 23% unless the landlord opts not to tax the letting.

Where VAT arises (unless there is an option to tax), it must be charged (or self-accounted for by the buyer). However if the buyer/tenant is registered for VAT, the VAT may, in most circumstances, be reclaimed so that it isn't a transaction cost. A "capital goods scheme" operates which essentially links the deductibility of VAT to the use to which the property is put and allows for both additional recovery and a clawback of VAT previously deducted during a twenty year period so that businesses need to have an ongoing regard to this in their VAT compliance procedures.

Rates

Subject to certain limited exceptions, the occupier of commercial property in Ireland is liable for local authority commercial and water rates. Commercial rates are levied annually and payable half yearly. Rates are assessed and levied by the local authority for the area in which the property is situated by multiplying

the "net annual value" of the property, as assessed by the Valuation Office, by the "annual rate on valuation" ("**ARV**") which is set by the local authority. The rates levied can vary considerably between similar properties in other local authority areas.

Commercial rates are levied primarily on occupation and so it is important (and on the occurrence of certain events, required by law) to keep the local authority formally notified of changes in occupation in order to limit an owner's exposure to unpaid rates. Owners have an obligation by law to notify the local authority that a sale has taken place and to discharge all arrears or commercial rates for which the seller is liable. Where commercial rates due by the seller are not discharged, those unpaid rates will be a charge on the property for a period of twelve years. Similarly, where the owner has let the property and so is not in occupation and so not primarily liable for the rates, the owner must notify the local authority when an occupying tenant has transferred its interest. A landlord owner will be liable for a charge of up to two years of the outstanding rates due if (i) the local authority has not been notified of the transfer and (ii) the tenant did not discharge its arrears on assignment. Again any such charge will affect the property for up to twelve years. If property is unoccupied partial exemptions or refunds of commercial rates are generally available, depending on the rules and criteria set by the relevant local authority.

There is an on-going national programme of revaluation of all commercial and industrial properties across the State, (to assess the up to date net annual value of property to which the ARV is applied in order to calculate the rates liability) run by the Valuation Office and planned sequentially by local authority area, with the potential for occupiers to be called upon to assist in one or more of the steps involved in achieving revaluation of property.

For residential properties, owners are liable to pay a "local property tax" levied by Revenue and an annual water charge levied by Irish Water. It is important that all accounts for these (and any prior residential charges and taxes) are brought up to date on any sale of residential property.

Intellectual Property

Many of the overseas businesses setting up operations in Ireland are in sectors in which intellectual property in products or research is a very valuable asset. Aspects of Ireland's regime for protection of intellectual property rights are summarised below. Generally the legal and commercial climate in Ireland for acquiring, exploiting and enforcing intellectual property is favourable and consistently ranked highly in international indexes regarding IP law regimes.

In relation to acquisition of IP, the Irish Patents Office deals with the registration of trade marks, registered designs and patents. Ireland is part of the Community trade mark system and accordingly a granted Community trade mark takes effect in Ireland as if it were an Irish registered mark. Ireland is also a part of the European Patent Convention and accordingly, the centralised application and examination system provided under that convention may be utilised to obtain patent protection in Ireland and the other Member States to the convention.

Qualifying profits from certain intellectual property may qualify for a further reduced rate of 6.25% if they fall within the "knowledge development box" regime

As regards exploitation of IP, depending on a company's field of activity, the research and development grants mentioned earlier may be applicable. Tax relief is available in respect of certain sums spent on R&D and profits from the exploitation of IP may qualify for the 12.5% corporation tax rate. In addition, qualifying profits from certain intellectual property may qualify for a further reduced rate of 6.25% if they fall within the "Knowledge Development Box" regime.

Tax measures are also in place to drive the development of Ireland as a hub for companies engaged in the ownership and development of intangible assets including intellectual property assets. The measures take the form of a scheme of capital allowances for capital expenditure incurred by companies on the provision of certain specified intangible assets. Companies carrying on a trade will be entitled to claim a tax write-off for the capital cost of acquiring specified intangible assets.

The tax write-off is granted as a capital allowance and the write off is available in line with the depreciation or amortisation for accounting purposes. Alternatively, a company can elect to take the tax write- off over a 15-year period. Here a rate of 7% will apply for years 1-14 and 2% for year 15. Where a company

elects to claim the allowance over 15 years, it is required to make that claim in its tax return. The 15-year period will apply to all capital expenditure incurred on that particular asset. Where a specified intangible asset is held for more than 10 years (15 years for expenditure incurred before 4 February 2010), there will be no clawback of the capital allowances granted on a disposal of that asset, unless the asset is sold to a connected company that then claims allowances on the asset under the new provisions.

In terms of the legal environment for IP exploitation, a guiding principle in dealing with IP rights is freedom to contract; parties may tailor IP exploitation agreements to their needs. However, EU competition law applies to agreements that have an impact on inter-State trade within the EU; Irish competition law (the substantive rules of which mirror those of the EU) applies in the national sphere.

A very broad exemption from stamp duty applies to transfers of IP. The exemption covers transfers of goodwill in so far as such goodwill is directly attributable to intellectual property rights but not otherwise.

As regards enforcement of IP, the Irish High Court is experienced in dealing with commercial disputes and is a suitable forum for resolving intellectual property disputes. The commercial division of the High Court (known as the Commercial Court) specialises in the hearing of complex commercial disputes including intellectual property matters. The Irish Revenue Commissioners are designated as the competent customs authority for receiving and processing actions in connection with counterfeit and pirated goods.

Patents

Since 1992 substantive patent law in Ireland has been consistent with the European Patent Convention. An invention that is new, not obvious, capable of industrial application and that does not belong to the categories of excluded subject matter may be protected under patent for a period of 20 years from filing. Short term patents which last for 10 years are also available under Irish law. A patent is infringed, broadly, if the patented product or process is made, used or marketed without the right holder's permission. Copying is not a pre-condition to infringement. Ireland has ratified the World Intellectual Property Organisation ("**WIPO**") Patent Law Treaty which aims to harmonise the formal requirements demanded of applicants for patents by national regional patent offices and to streamline the procedures for obtaining and maintaining a patent. The Patent Law Treaty came into effect in Ireland on 27 May 2012. Ireland has also, pursuant to the Patents (Amendment) Act 2012, implemented the London Agreement, which aims to provide for simplified translation requirements for European patents and to reduce costs for patent applications. Ireland

signed the International Agreement on a Unified Patent Court on 19 February 2013, however, the ratification of this agreement will require a constitutional referendum. Ireland has indicated that it will establish a local division of the Unified Patent Court.

Trade Marks

These are protected both under common law by way of action for passing off and by statute under the Trade Marks Act 1996 which implements EU legislation aimed at harmonising trade mark law through the EU. Any sign that is capable of graphic representation and of distinguishing the goods and services of one business from those of another and that does not conflict with a prior right may be registered. Registered trade marks have a 10 year term but are renewable for successive periods of 10 years indefinitely. Unauthorised use of a mark which is identical to one that is registered on or in relation to the goods or services for which the mark is registered will constitute infringement of the registered owner's rights. Where the unauthorised use is in respect of a mark and/or goods and services that are similar (rather than identical), infringement will occur if there is a likelihood of confusion or where the unauthorised use takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the trade mark.

Copyright

Many international initiatives and all EU harmonising measures in relation to copyright that predated the Copyright and Related Rights Act 2000 have been implemented in Ireland by that legislation. Consequently, a very broad range of subject matters is accorded copyright protection, including literary, artistic, dramatic and musical works, sound recordings, films, television broadcasts and published editions. Since Ireland is a member of the Berne Union, no registration is required in order for copyright to vest in the copyright owner and works are protected as soon as they are recorded in written or other form. The duration of copyright protection varies according to the type of work and for literary, dramatic, musical and artistic works copyright lasts for the life of the author plus 70 years. Infringement of copyright depends upon the copying of, or other dealing with, the works of the copyright owner without their permission. Use of an identical work that was independently created will not amount to copyright infringement. In October 2013, a Copyright Review Committee established by the Department of Jobs, Enterprise and Innovation published a report setting out a range of recommendations aimed at modernising copyright

law in Ireland to foster and support innovation, particularly in the digital sphere. No changes have been made in connection with this report and copyright reforms seem more likely to be brought about as a result of general reforms of EU copyright law that are expected to take place in the near future.

Moral Rights

Irish law protects certain moral rights of the author, specifically the right to have a work correctly attributed to the author and the right to object to derogatory treatment of the work. Such rights vest in authors and may not be assigned (and accordingly are not transmitted with copyright ownership) but they may be waived.

Performers' Rights

Exclusive rights are also granted to performers under the Copyright and Related Rights Act 2000. These rights include the right to prevent certain unauthorised acts in relation to performers' live performances (ie recording a live performance, the live broadcasting of a performance and the recording of a broadcast or transmission of a live performance). In addition, a substantial body of rights in relation to the fixations (ie recordings) of performances which mirror the property rights of a copyright owner are also provided for under the Copyright and Related Rights Act 2000. These rights exist independently of copyright. Directive 2011/77/EC on the term of protection of copyright and certain related rights extended the copyright term on sound recordings and on musical compositions with words (ie songs) in the EU from 50 to 70 years. The Directive was transposed into Irish law on 1 November 2013.

Databases

Databases are accorded copyright protection under Irish law if the database passes a certain threshold of 'originality' by virtue of the selection and arrangement of the data. There also exists a database right that will vest irrespective of whether the database qualifies as a copyright work. The database right will subsist in a database where there has been a substantial investment in obtaining, verifying or presenting the contents of the database. The investment may be of financial, human or technical resources. The right comprises the exclusive right to authorise extraction or re-utilisation of all or a substantial part of the contents of a database. The database right subsists for 15 years from the end of the calendar year in which the database was made but a substantial

change to the contents of the database can re-start the clock again in respect of the period of protection on the database.

Designs

Ireland implemented EU harmonising legislation in relation to registered designs in the Industrial Designs Act 2001. The changes in the law brought about by this legislation broadened the range of subject matters that may be registered as a design. That range includes graphic symbols. The design must be new and have individual character in order to be registerable. A global test for novelty is applied (with some mitigating provisions) and significantly, a design will still be registerable in Ireland within 12 months of the owner of the design making it available to the public. The requirement to have "individual character" is met if the overall impression produced by a design on an informed user differs from the overall impression produced on such a user by any earlier design which has been made available to the public. The period of protection conferred by registration lasts for an initial period of 5 years from the date of application. The period of protection is renewable every 5 years for a maximum period of 25 years. The protection afforded by registered design is strong in that infringement does not depend on copying.

EU legislation creating a pan-European unregistered design right came into effect in Ireland on 6 March 2002. This unregistered right is similar to a copyright in the sense that no formality or registration is required for the right to vest. The protection afforded is also similar in that a copying of or unauthorised dealing in the design owners' work is required before infringement will be found. The criteria as to the vesting of the right in terms of novelty and so on are the same as those for registered designs but the protection lasts only 3 years from the date on which the design is first made available to the public within the EU.

Confidential Information

Confidential information may be protected through an action for breach of confidence. The plaintiff must be able to show that the information is not in the public domain (ie that it is secret or not known to the "relevant public"), that the information was obtained for a limited purpose and that the information was used or disclosed in a manner which was not in keeping with that limited purpose. The text of a directive to harmonise trade secrets law across the EU was approved in December 2015. It is expected that this Directive will be formally adopted in early 2016 and EU Member States will then have a maximum

of 2 years from the date of entry into force of the Directive to transpose it into national law. It is not expected that the Directive will result in major changes to the existing levels of protection available for confidential information in Ireland through an action for breach of confidence. Once transposed it will, however, provide for additional statutory protection for trade secrets in Ireland.

Data Protection

Those who collect and process data relating to living individuals are usually subject to data protection obligations. In Ireland, these obligations are set out in the Data Protection Acts 1988 and 2003 and in certain regulations. The legislation takes into account the concern to protect an individual's privacy and implements the 1995 European Data Protection Directive. The legislation obliges persons or bodies who are data controllers or data processors to comply with certain data protection principles. Data controllers must ensure that personal data is collected and processed fairly, is kept only for specified and lawful purposes and is not kept for longer than necessary. Data controllers must also ensure that personal data is kept safe and secure. Data processors are also under obligations to take appropriate measures to ensure the security of the data and must only process data in accordance with the instructions of the data controller. The 1995 European Data Protection Directive will be replaced by a new "General Data Protection Regulation" in the near future. This Regulation is intended to modernise EU data protection law and to bring about greater harmonisation across the Community. The text of the Regulation has been approved and is scheduled to be formally adopted in early 2016. The new Regulation will come into force in all EU Member States 2 years after it is adopted, most likely in spring 2018.

Electronic Commerce

The Electronic Commerce Act 2000, was enacted to provide a legal framework for electronic commerce in order to facilitate the growth of electronic commerce and electronic transactions in Ireland. This Act provides, among other things, for the legal recognition of electronic contracts, electronic signatures, electronic originals, the retention of electronic documents and the admissibility of electronic evidence in courts.

About McCann FitzGerald

McCann FitzGerald is one of Ireland's premier law firms with an extensive range of clients both overseas and Irish. We recognise that our clients are business people facing daily challenges in dynamic and often newly-emerging industries where the ability to anticipate trends and issues is crucial. Businesses facing rapid and constant change need lawyers who can respond quickly and who can also see the commercial and legal issues equally clearly.

Legal advice designed to assist each client in achieving their particular business objectives

At McCann FitzGerald we recognise that each client's business is unique and that to give the best value to our clients we must have a sound knowledge of their business and the issues that are of interest or concern to them.

We combine a personal approach with the highest professional standards blending commercial awareness with clear and practical legal advice designed to assist each client in achieving their particular business objectives. While many of our lawyers specialise in particular areas of law, we recognise that some clients prefer a more broad-based approach. With this in mind we have a number of lawyers who advise across the general range of legal issues which arise in a business context.

We nominate a contact partner for each client whose role it is to take responsibility for that client's relationship with the firm and to be available to discuss any matter which arises out of that relationship.

We appreciate that clients need to provide a budget for their legal costs. We like to discuss professional fees at the outset so that we can accommodate our clients' requirements as far as possible.

Our principal office is located in Dublin on the south bank of the river Liffey in the Grand Canal Dock area and we have overseas offices in London and Brussels. The firm, which traces its origins back to 1829, now has more than 350 lawyers and professional staff and a total staff of over 500 people, 69 of whom are partners.

How we can assist

We have an established team of lawyers who form our Inward Investment Group, assisting and guiding clients on a full range of legal issues facing the overseas investor. The lawyers on the team, in conjunction with other lawyers in the firm who concentrate on particular branches of law, assist overseas clients establishing in Ireland by drawing on their experience and expertise to advise clients on:

- Government incentives for overseas investors;
- negotiations with IDA Ireland, banks and other regulatory bodies;
- optimum tax structures of Irish operations (as well as ongoing advice on taxation and regulatory issues);
- company formation and ancillary matters;
- employment contracts, establishment of pension schemes and other employee benefits;
- acquisition of land and premises;
- environmental and planning law;
- intellectual property law;
- construction law; and
- corporate reorganisations.

The information in this briefing is current as at January 2016.

Inward Investment Group

Our Inward Investment Group was established with the specific purpose of advising and guiding overseas clients contemplating investing in Ireland. All of the lawyers in the group are fully familiar with the issues facing such investors and are experienced in negotiating with IDA Ireland, banks and others.

Our lawyers have considerable knowledge of the various industry sectors which form the principal focus of overseas investment in Ireland and are therefore familiar with the issues likely to be of concern in any given sector.

We continue to advise and guide many companies, particularly in the pharmaceutical, healthcare and electronics sectors, which have had Irish operations for many years. Our client base also reflects the more recent growth in newer activities such as software development, call centres and shared services centres.

Corporate and Commercial

Gary McSharry

Partner, Corporate - M&A, Head of US Office

T: +1 917 921 5077

gary.mcsharry@mccannfitzgerald.com

Paul Heffernan

Partner, Corporate & Commercial

T: +353 1 607 1326

paul.heffernan@mccannfitzgerald.com

David Lydon

Partner, Corporate & Commercial

T: +353 1 607 1335

david.lydon@mccannfitzgerald.com

Tax

Michael Ryan
Consultant, Head of Tax
T: +353 1 611 9130
michael.ryan@
mccannfitzgerald.com

Alan Heuston
Partner, Tax
T: +353 1 607 1472
alan.heuston@
mccannfitzgerald.com

Eleanor MacDonagh
Consultant, Head of Financial Services Tax
T: +353 1 611 9174
eleanor.mcdonagh@
mccannfitzgerald.com

Employment

Terence McCrann
Partner, Employment
T: +353 1 607 1336
terence.mccrann@
mccannfitzgerald.com

Mary Brassil
Partner, Employment
T: +353 1 607 1279
mary.brassil@
mccannfitzgerald.com

Real Estate

Shane Fahy
Partner, Real Estate
T: +353 1 611 9130
shane.fahy@
mccannfitzgerald.com

Donal O'Raghallaigh
Partner, Real Estate
T: +353 1 607 1268
donal.oraghallaigh@
mccannfitzgerald.com

Intellectual Property

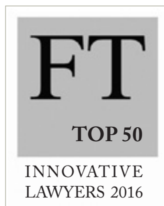
Paul Lavery
Partner, Intellectual Property (non-contentious)
T: +353 1 607 1330
paul.lavery@mccannfitzgerald.com

Fiona O'Beirne
Partner, Intellectual Property (contentious)
T: +353 1 607 1311
fiona.obyrne@mccannfitzgerald.com

Useful Websites	
McCann FitzGerald	www.mccannfitzgerald.com
Industrial Development Agency (IDA)	ida.ie
Enterprise Ireland	enterprise-ireland.com
IBEC	ibec.ie
Institute of Directors in Ireland	iodireland.ie
Revenue	revenue.ie
Central Bank of Ireland	centralbank.ie
Irish Stock Exchange	ise.ie
Irish Funds	irishfunds.ie

mccannfitzgerald.com

McCann FitzGerald



Principal Office
Riverside One, Sir John Rogerson's Quay
Dublin 2 D02 X576
+353 1 829 0000

London
Tower 42, Level 38C, 25 Old Broad Street
London EC2N 1HQ
+44 20 7621 1000

New York
Tower 45, 120 West 45th Street, 19th Floor
New York, NY 10036
+1 646 952 6001

Brussels
40 Square de Meeûs, 1000 Brussels
+32 2 740 0370

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

© McCann FitzGerald, October 2016