

# Investing in Ireland

## A Guide to Investing in Ireland










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## Why Ireland?

Ireland is a well-established destination for Foreign Direct Investment (FDI) and is home to more than 1,200 multinational companies that have chosen Ireland as their strategic European base, including the world's top five software companies and top ten pharma companies.

Ireland continues to attract FDI for several reasons, including:

	The main English-speaking member of the Eurozone
	Unrestricted access to EU markets with over 500 million consumers
	Corporation tax rate of 12.5% on annual trading income up to €750m and double taxation treaties with 73 countries
	R&D tax credit up to 25% on qualifying expenditure
	OECD BEPS-compliant Knowledge Development Box (KDP) which can result in a 6.25% corporate tax rate on qualifying profits from patented innovations and copyright software
	Consistent high ranking for quality of life which attracts and retains talent from all over the world
	Pro-business policies and advanced infrastructure servicing leading global organisations
	A wide variety of funding grants and incentive programmes for new and existing investors
	Strong geographical location provides easy access to both UK, EU and North American markets
	Shared land border with NI provides unique advantages for trade and logistics
	As a leading European tech hub, Dublin has a thriving start-up eco system supported by government initiatives, venture capital funding and incubators

## Getting Started

One of the first steps is to meet with your **professional advisers** in Ireland to discuss your investment objectives and explore the options available in terms of business structure.

At Byrne Wallace Shields LLP (**BWS**), we see our role as a business partner, rather than just a legal services provider. We can help you develop your network in Ireland, which will ultimately support the long-term sustainability and success of your investment in Ireland.

### CHOOSING A BUSINESS STRUCTURE

Inward investors into Ireland can choose from a variety of structures to enter the Irish market. The right structure will depend on factors such as the specific sector, business product or service and the extent to which a local presence is required. You can choose from a variety of structures, including:

- Trading through a private company limited by shares (LTD), private unlimited company (ULC) or a designated activity company (DAC);
- Offering securities to the public through a public limited company (PLC);
- Registering a branch of an overseas company (Branch);
- Establishing a Section 110 SPV for holding and/or managing qualifying assets (Section 110);
- Registering a Limited Partnership (LP);
- Establishing a Unit Trust, ICAV or UCITS regulated by the Central Bank of Ireland;
- Acquiring an existing business in Ireland;
- Using a joint venture with a third party; or
- Entering a partnership with another business.

The two entity types most often utilised by inward investors setting up trading or holding operations in Ireland are the LTD or a Branch. Companies and branches are subject to tax at the corporate tax rate.

## Setting up a private company limited by shares (ltd) - Key Considerations

### TYPE OF STRUCTURE

An LTD is a separate legal entity and the shareholders enjoy limited liability on the amount of capital invested. It is typically structured as a wholly owned subsidiary of an overseas parent company.

### INCORPORATION

The incorporation of an LTD is a straightforward process which requires the submission of a signed application form together with the Constitution of the Company to the Companies Registration Office (CRO). A company is usually incorporated within three to five business days of the submission date to the CRO.

### NUMBER OF DIRECTORS

An LTD may have just one director, provided the sole director is not also the company secretary. A director must be a natural person over the age of 18 years and must not be disqualified from acting as a director.

### RESIDENCY OF DIRECTORS

Irish companies are required to have at least one EEA resident director, however there is a straightforward solution available.

A Section 137 insurance bond can be put in place for a company at minimal expense. The bond alleviates the requirement to appoint an EEA resident director.

Once a company has established economic activity in Ireland over three or more years, it may apply for an indefinite exemption from appointing an EEA resident director.

### COMPANY SECRETARY

All Irish companies must have a named company secretary. The directors of a company have a statutory duty to appoint a company secretary with the necessary skills to fulfil the role. Companies often appoint a local company secretarial professional to fulfil this duty.

### SHARE CAPITAL

An LTD can be incorporated with one shareholder. The minimum issued share capital can be as little as one share of €1.00. There is no restriction on the residency of shareholders and corporate shareholders are permitted.

### DIRECTORS' DUTIES

The directors of a company in Ireland have a wide range of duties which were codified in the Companies Act 2014. It is recommended that overseas directors of an Irish company receive initial and ongoing training on their duties in Ireland from local company law specialists.

### FLEXIBLE FINANCING

Irish companies can be financed by way of debt, subscription for shares, and, in certain circumstances, contribution of capital without an issue of shares. There is no restriction on the size of the share capital or the currency in which the share capital is denominated.

### BANKING

Unlike many other European countries, it is not necessary to establish a bank account before registering an entity in Ireland. BWS has long standing relationships with several financial institutions and can make the necessary introductions.

### AUDIT AND ACCOUNTS

An LTD is required to file annual accounts at the CRO. Micro and small companies may be entitled to claim audit and abridgement exemptions provided they meet certain criteria.

## Setting up a branch – Key Considerations

### TYPE OF STRUCTURE

As an alternative to incorporating a new Irish company, a branch operation can be easily established and enjoys relatively discrete ongoing filing requirements.








A branch is not a separate legal entity nor is it a “subsidiary” of the parent company. Rather, it is an extension of the overseas parent company and performs the same business operations. Where an overseas company, establishes a branch in Ireland, it must register the establishment of the branch with the CRO within 30 days of establishment of the branch.

The directors/officers mirror that of the parent company and the parent company is fully liable for the branch and its activities in Ireland.

### DISCLOSURE REQUIREMENTS

Often a branch is seen as a “lighter” form of entry into the Irish market, with lower regulatory requirements and maintenance costs than an LTD. This can be an attractive option for inward investors taking a tentative first step into the Irish market or where the levels of activity in Ireland are likely to remain limited.

## Taxation

	Attractive holding company location with tax treaties with 78 countries
	Effective zero tax rate for foreign dividends
	Income tax relief for foreign employees
	12.5% corporate tax, one of the EU's lowest
	25% research and development tax credit
	6.25% preferential tax rate on income arising from intellectual property with the Knowledge Development Box
	Reputed and robust tax regime fully committed to OECD BEPS and EU ATAD Programmes

### INTRODUCTION

Ireland enjoys a transparent and business-friendly tax environment centered around its attractive and stable corporation tax rate, generous tax credits for research and development and innovative reliefs on activities involving intellectual property.

### COMPETITIVE AND STABLE CORPORATION TAX RATE

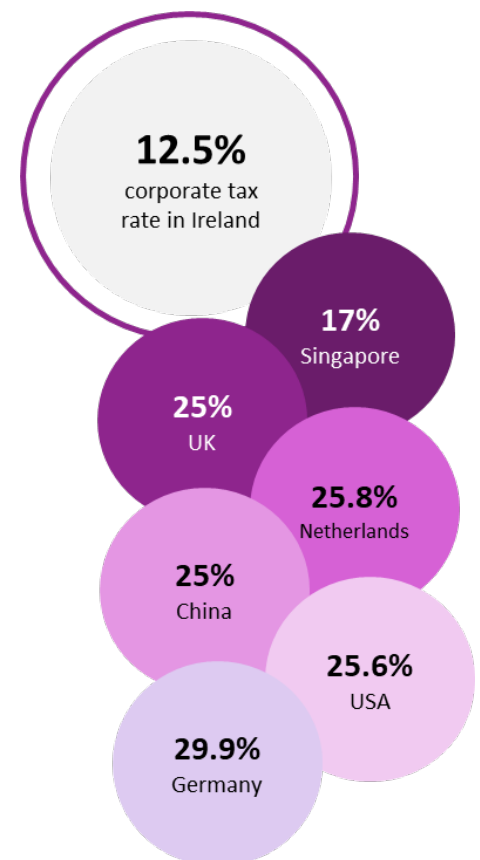
Ireland's main corporate tax rate of 12.5% on trading income is one of the lowest "onshore" corporate tax rates in the world. The 12.5% tax rate is applicable to trading income up to €750 million in general and is not an incentive rate.

Irish tax resident companies are liable to tax on their worldwide income and gains, while income earned by Irish branches of foreign companies is taxable in Ireland.

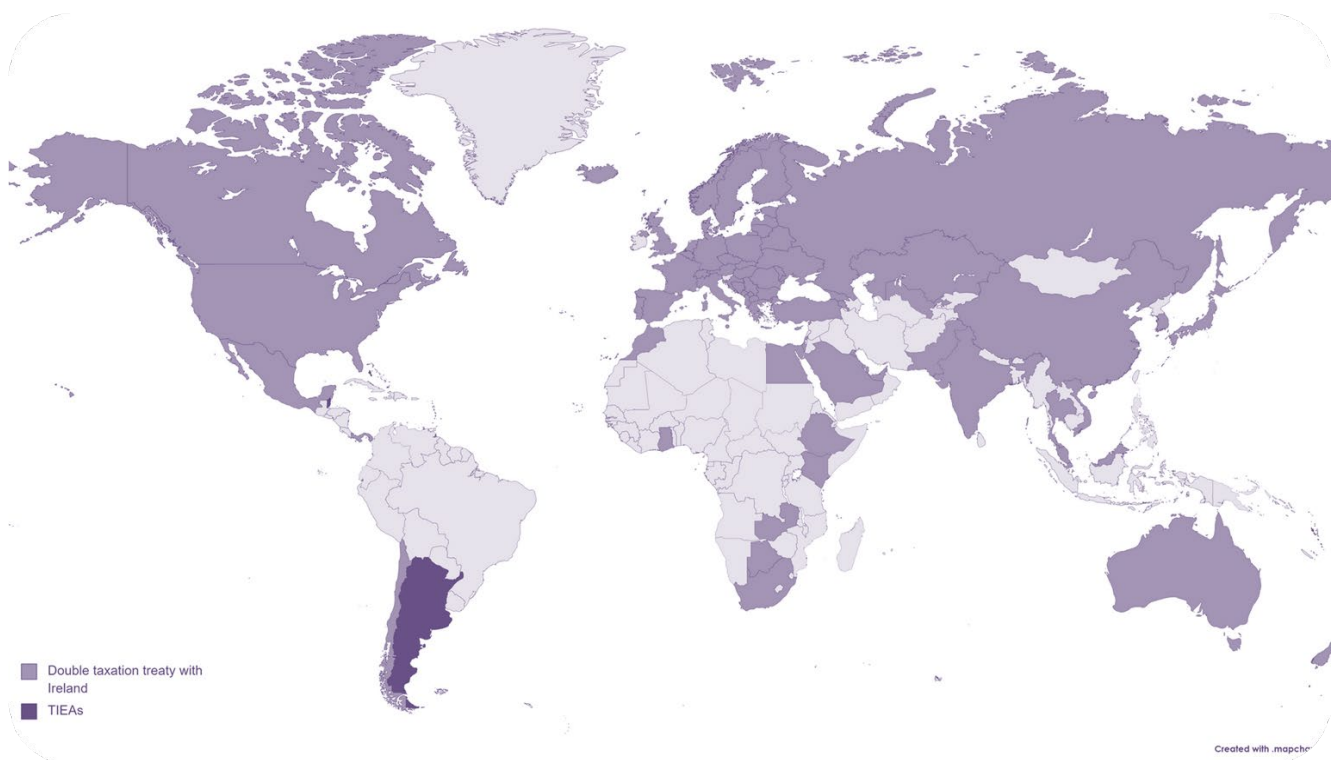
Corporation tax at the rate of 25% applies to investment income, certain land dealing activities as well as oil, gas and mineral exploitation.

### ATTRACTIVE LOCATION FOR HOLDING COMPANIES

Irish located holding companies may avail of numerous incentives including:



1	The participation exemption provides for Capital gains tax relief on gains from the disposal of shares (shareholding of 5% or more) by parent companies in subsidiaries that are trading and tax resident in an EU or tax treaty country
2	Effective tax exemption for foreign dividends through onshore pooling which enables foreign tax credits to be mixed so that no additional Irish tax may arise. Unused foreign tax credits may also be carried forward.
3	New participation exemption for foreign dividends, will exempt qualifying distributions made on or after 1 January 2025 from corporation tax in the hands of the recipient.
4	No withholding tax on outward bound dividends, interest and royalties paid to EU member states and most tax treaty countries.
5	Ireland's extensive double taxation treaty network with 78 countries combined with its tax information exchange agreements (TIEAs).



#### RESEARCH AND DEVELOPMENT (R&D) TAX CREDIT

Ireland's R&D tax credit scheme allows qualifying R&D expenditure to generate a 25% tax credit for offset against corporation tax or it can be refunded in cash. This is in addition to the normal tax deduction at 12.5%.

The R&D tax credit is available to Irish resident companies and branches on the cost of in-house qualifying R&D undertaken within the European Economic Area (EEA), provided that such expenditure is not otherwise eligible for tax benefits elsewhere in the EEA.

A company may surrender some, or all, of its R&D credits to key employees working in R&D, so that they reduce their income tax payable.

### **TAX RELIEFS ON INTELLECTUAL PROPERTY**

Capital expenditure on the acquisition of intangible assets may be written off over the life of the asset or fifteen years (whichever is shorter). The relief is provided by allowing the accounting amortisation of the asset as a tax deduction against trading income from the management, development, or exploitation of the intangible asset concerned.

### **KNOWLEDGE DEVELOPMENT BOX**

Where a company avails of Ireland's OECD compliant Knowledge Development Box relief, it is entitled to a 50% allowance on its qualifying profits which, in effect, results in a 6.25% corporate tax rate on those qualifying profits. With proper planning, the Knowledge Development Box relief can be of great benefit to multinational enterprises.

### **STARTUP RELIEF**

New businesses can benefit from a corporation tax startup relief in their early years of trading. In brief, the companies qualifying for the relief are granted a reduction in the corporation tax payable on the profits of the new trade and a reduction in the chargeable gains on the disposal of any assets used for the purposes of the new trade.

### **PERSONAL TAXES**

Where income is earned under a foreign employment contract, such income will be liable to Irish tax to the extent attributable to duties undertaken in Ireland.

Foreign executives may reduce their Irish tax liabilities through numerous exemptions and reliefs including the remittance basis of taxation which can be used to limit an executive's Irish tax liability to Irish source income and remitted income (foreign income and gains brought into Ireland). Advance structuring can greatly reduce the remitted income that is liable to tax in Ireland.

The Special Assignee Relief Programme (SARP) provides income tax relief to qualifying employees by allowing them to have a portion of their employment income not liable to income tax in Ireland. Transferred employees arriving may elect to have 30% of their employment income and benefits between €100,000 and €1,000,000 not liable to Irish income tax. Additionally, employees who qualify for SARP may also receive, free of tax, specific expenses for travel and costs associated with the education of their children in Ireland.

The employee must have been employed by their employer for at least six months before arriving in Ireland. SARP may be claimed for a maximum of five consecutive years. An employer, for SARP purposes, is a company that is incorporated and tax resident in a country with which Ireland has a double taxation treaty or a tax information exchange agreement.

Foreign executives should have no Irish capital acquisitions tax exposure in relation to foreign inheritances or gifts during their first five years in Ireland.

### **REVISED ENTREPRENEURS' RELIEF**

This relief provides for entrepreneurs by providing for a revised relief of 10% rate of Capital Gains Tax instead of the normal rate of 33% to apply in respect of a chargeable gain or chargeable gains on a disposal or disposals of qualifying business assets on or after 1 January 2016 up to a lifetime limit of €1m.

### **ANGEL INVESTOR RELIEF**

This relief for investments in innovative enterprises allows individuals to avail of a reduced capital gains tax rate of 16%, or 18% in the case of investments made via a qualifying partnership, on a gain arising on the sale of a qualifying investment in a qualifying company.

### **INVESTMENT RELIEFS**

Start-up companies in Ireland have access to a number of tax incentives and reliefs, including the Start-up Refunds for Entrepreneurs ("SURE") relief and the Employment and Investment Incentive ("EII") scheme. These incentives are designed to encourage entrepreneurship and investment in start-up companies.



## Investment Incentives

Ireland is highly regarded for the attractiveness of its **investment incentives** for inward investors with a wide variety of programs available from numerous state agencies.

These include:



IDA Ireland is charged with securing inward investment into Ireland. IDA grant aids are available for inward investors including capital grants, R&D grants and employment grants. It should be one of the first points of contact for inward investors.

[www.idaireland.com](http://www.idaireland.com)



Údarás na Gaeltachta encourages investment in the Irish speaking areas of Ireland through a range of incentives for new and existing enterprises.

[www.udaras.ie](http://www.udaras.ie)



Enterprise Ireland is the government organisation responsible for the development and growth of Irish companies in world markets. They offer a range of services from funding to arranging introductions in key international markets.

[www.enterprise-ireland.com](http://www.enterprise-ireland.com)

## Financial Services and Investment Funds

Ireland is a global centre for financial services (including investment funds). Over **€4.3 trillion** of investment fund assets are under administration in Ireland, which is also the location of choice for fund promoters from over 54 countries, many international insurance providers and 17 of the world's top 20 global banks.

### REGULATED FUNDS AND EU PASSPORTING

In Ireland, investment funds can be regulated as Undertakings for the Collective Investment in Transferable Securities (UCITS), Retail Investor Alternative Investment Funds (RIAFs), or Qualifying Investor Alternative Investment Funds (QIAIFs).

UCITS are open-ended collective investment schemes that invest in transferable securities and other liquid financial securities. UCITS may avail of a “passport” to market and distribute the shares or units of a UCITS to the public in all EU member states, provided the UCITS complies with the applicable investment and borrowing requirements. Ireland is considered the fastest growing major cross border UCITS domicile.

RIAFs and QIAIFs are designed for funds that invest in alternative asset classes (collectively AIFs). RIAFs can be marketed and sold to retail investors and are subject to less investment and eligible asset restrictions than UCITS, but are subject to a regime more restrictive than QIAIFs. RIAFs do not have the automatic right to market across the EU under an EU marketing passport. Access to individual markets may be granted on a case-by-case basis.

QIAIFs are not subject to many investment or borrowing restrictions. QIAIFs can avail of a 24-hour approval process subject to certain conditions and confirmations. In addition, QIAIFs may be marketed freely to professional investors across the EU under a passport regime.

### WORLD LEADER IN ALTERNATIVE INVESTMENT FUNDS

Ireland is seen as a global centre for AIFs and was the first regulated jurisdiction to provide a regulatory framework specifically for the AIF industry. The principal type of AIF in Ireland is the QIAIF.

QIAIFs offer flexibility for alternative investments such as infrastructure funds, hedge funds and private equity funds and are only open to certain investors.

### GLOBAL CENTRE FOR AVIATION FINANCE

Over 50% of all of the world’s commercially leased aircraft are owned or managed from Ireland with fourteen of the top fifteen lessors by fleet size being located in Ireland. No transfer taxes apply to the transfer of ownership of aircraft and aircraft lessors typically enjoy full recovery of VAT on costs associated with aircraft leasing.

### INSURANCE AND REINSURANCE

A considerable number of the world’s leading insurance and reinsurance providers have selected Ireland as their global headquarters.

Ireland is a particularly attractive location for life insurance companies due to its gross roll up system which enables policyholders’ investments to grow tax-free throughout the term of the investment with a tax charge only arising when payment is made to the policyholder. Exemptions to the tax charge are available where the policyholder is not resident in Ireland.

### **SECURITISATION AND STRUCTURED FINANCE**

Ireland offers favourable tax treatment for qualifying special purpose companies (SPCs) which hold and/or manage or have an interest in, a wide range of qualifying assets. This enables the establishment of an effectively tax-neutral, onshore, EU member SPC, which can benefit from Ireland's extensive tax treaty network to minimise withholding tax leakage.

### **ONGOING STATE COMMITMENT TO THE FINANCIAL SERVICES INDUSTRY**

As part of its International Financial Services 2025 Strategy, the Irish Government is committed to creating 5,000 new jobs in the international financial services sector by 2025.

### **SUCCESSFUL INVESTMENT LIMITED PARTNERSHIP (ILP) REGIME**

Following significant enhancements to the ILP regime in 2021, Ireland now has a modern investment limited partnership structure for private equity, private credit, real asset and other private fund strategies. The ILP, which enhances Ireland's suite of legal structures available for fund formation, is a flexible structure that can be utilised by asset managers seeking to establish both open or closed ended investment funds through a regulated AIF partnership structure. The use of ILPs by private asset managers continues to grow steadily following the overhaul of the regime, with ILPs now numbering more than 50.

## Technology and Intellectual Property

Ireland is a world-renowned business centre for technology businesses. It is the EMEA **location of choice** for major digital services and content providers such as Google, Facebook, Twitter and LinkedIn.

### INTELLECTUAL PROPERTY

Ireland's IP regime recognises and creates various rights including copyright, databases, patents, designs, topographies and plant varieties. Confidential information, know-how and trade secrets are respected and protected by Irish law. IP disputes automatically qualify to be heard in the "fast track" commercial division of the Irish High Court, to facilitate their prompt resolution.

Due to Ireland's stable legal environment, favourable corporation tax rate and IP- specific tax incentives, many international corporations choose to locate their IP assets in Ireland and use Ireland as a base to licence IP assets.

### ELECTRONIC COMMUNICATIONS

The Commission for Communications Regulation regulates the Irish electronic communications sector. The Irish telecommunications market is open to the introduction of new services, including licences to provide wireless broadband access, which is available throughout Ireland. The Irish Government is actively involved with service providers to ensure that areas where wireless access is less commercially viable, are covered with the necessary services.

The Irish mobile communications industry continues to expand, in turn supporting growth and innovation within the technology sector in Ireland. Digital services and content providers are also experiencing continued growth, particularly in Dublin, which is a hub for Irish and international businesses operating globally.

Coimisiún na Meán is the regulator of broadcasting and online media in Ireland and is responsible for Ireland's Online Safety Framework. The Framework regulates digital services against harm to individuals and Coimisiún na Meán has a role under the following pieces of legislation:

- The Digital Services Act is an EU wide regulation that regulates online service providers such as e-marketplaces, social media sites, app stores and other retail platforms in relation to harmful or illegal content posted on their sites.
- The Online Safety and Media Regulation Act 2022 which overhauled media and content regulation in Ireland and gave effect to the Audiovisual Media Services Directive.

### CLOUD COMPUTING

Ireland continues to be the foremost platform from which many companies carry out their cloud-based businesses for Europe. Many internationally recognised businesses such as Google, Amazon, Facebook and Yahoo! have chosen to locate their data centres in Ireland, through which much of their data traffic and the hosting of most other services for Europe takes place. These areas are regulated by the NIS 2 Directive which is legislation imposing stricter cyber security obligations on entities operating in various critical infrastructure sectors which include data centres.

The advantages afforded by high speed fibre optic networks, a temperate climate (which provides a suitably cool atmosphere for the operation of these centres) and Ireland's political and geological stability makes it an ideal headquarters for data centres.

### ONLINE TRADING

Ireland has been recognised as a global digital hub for many years. Local and international businesses use Ireland as a platform from which to trade throughout the world.

Ireland has the EU Distance Selling Regulations and E-Commerce Regulations which deal specifically with off premises contracts, distance selling and contracts concluded electronically. Online traders or those concluding contracts which are off-premises contracts are required to provide certain information to their customers and are subject to certain obligations in relation to the cancellation and return of products as well as “cooling-off” periods.

## Employment

Employment law in Ireland is governed by **common law**, an extensive statutory framework (some of which has its origins in EU law) and a range of fundamental rights protected by the **Constitution of Ireland**.

### CATEGORIES OF EMPLOYEE

Unlike in the US, there is no “employment at will” in Ireland. Many employees in Ireland are employed on a full-time basis under contracts of indefinite duration (though they may be terminated on notice). Other common categories of employee include fixed-term employees, part-time employees and agency workers, all of whom have certain protections, rights and entitlements under Irish law.

### EMPLOYMENT CONTRACTS

Every employee in Ireland has an employment contract (whether it is express or implied). Employers in Ireland are required by law to provide employees with a written statement of certain key terms and conditions of employment within five days of commencement of employment and, separately, more detailed terms in writing within one month of commencement of employment.

In practice, most employers in Ireland comply with these requirements by providing an employment contract at the outset of the employment relationship that contains the mandatory information together with more comprehensive terms and conditions covering matters such as post-termination restrictions, data protection, confidentiality and intellectual property.

An associated employee handbook containing company/HR policies is typically provided also as a matter of best practice. Strictly speaking, the only policy that is required to be provided to an employee as a matter of Irish employment law is a Disciplinary policy. Such a policy must be provided to the employee within 28 days of commencement of employment. That said, in light of case law in Ireland, it is clear that employers should have in place both a Grievance and a Bullying and Harassment policy as the absence of such policies will make defending any related claims difficult.

### STATUTORY SICK PAY, EMPLOYEE BENEFITS AND PENSIONS

Since 1 January 2024, employees who have at least 13 continuous weeks’ service with their employer, are entitled to up to 5 days statutory sick leave per calendar year. Statutory sick leave is paid at a rate of 70% of normal pay, subject to a current daily maximum of €110. A medical certificate from a registered medical practitioner is required for each day of sick leave. Employers are not prohibited from having more generous sick pay schemes than the statutory minimum requirements above. The number of statutory sick leave days is expected to increase to seven days in 2025 and to 10 days in 2026.

Employers in Ireland can and do provide a range of employee benefits such as life insurance, private health insurance, pensions, permanent health insurance and share option / incentive schemes. However, there is no legal obligation in Ireland to provide any such benefits, save for in relation to pensions, where there is a legal obligation to facilitate access to a Personal Retirement Savings Account (PRSA) to all employees (unless an employee has access to an occupational pension scheme within six months of joining). There is no legal obligation on an employer to contribute to a PRSA on behalf of an employee. It is expected that pensions auto-enrolment will be introduced in September 2025.

### STATUTORY LEAVE ENTITLEMENTS

Full-time employees are generally entitled to a statutory minimum of 20 days paid annual leave each year. Employers can and do often provide more than the statutory minimum to employees.

Employees are also entitled to 10 further paid leave days for statutory public / bank holidays (or payment or time off in lieu, depending on the circumstances) in Ireland.

Subject to satisfying the relevant statutory eligibility requirements, employees may also be entitled to maternity, paternity, parental, parent's, carer's, adoptive, force majeure, domestic violence leave and health and safety leave. With the exception of force majeure leave and health and safety leave, there is no general obligation on employers in Ireland to pay an employee while on any of the leave periods mentioned in this paragraph (although employers are free to do so, if they wish). Employees may be entitled to a payment from the State during some of these leaves.

#### **STATUTORY EMPLOYMENT PROTECTIONS**

Employees in Ireland have a wide range of protections under applicable legislation including, protection from unfair or discriminatory dismissal, protection from penalisation or dismissal on the grounds of having made a 'protected disclosure' (i.e. a whistleblowing complaint) and protection against unlawful deductions of wages by an employer.

Specific legislation also prohibits an employer from discriminating against an employee (or prospective employee) in relation to access to employment (i.e. the recruitment process), conditions of employment, training, promotion, classification of jobs and dismissal on any of the following nine protected grounds: (1) gender (2) civil status (3) family status (4) sexual orientation (5) religious belief (6) age (7) disability (8) race (includes colour, nationality or ethnic or national origins) and (9) membership of the Traveller Community.

#### **ENFORCEMENT OF EMPLOYMENT RIGHTS**

Employment rights can be enforced in Ireland in a statutory forum namely, the Workplace Relations Commission (WRC) or the Labour Court (on appeal) or in the civil courts in appropriate cases. The process of determining which body or court will have jurisdiction in a particular case mainly depends on whether the claim is being brought under common law (e.g. a breach of contract claim, which would be dealt with by a civil court) or statute (e.g. a claim for unfair dismissal under the Unfair Dismissals Act 1977-2015, which would be dealt with by the WRC at first instance).

#### **INDUSTRIAL RELATIONS – TRADE UNION RECOGNITION AND WORKS COUNCILS**

While employees in Ireland are entitled to join a trade union, there is no corresponding obligation on an employer to recognise or to negotiate with any such trade union in relation to employees' terms and conditions of employment.

Specific legislation in Ireland allows for the establishment of European and local level works councils but, in practice, they are rare. Employers can be required to establish a European or local works council in certain limited circumstances and subject to a request being made by a certain minimum number of employees.

#### **EMPLOYMENT PERMITS**

Any EEA (i.e. the EU member states plus Norway, Iceland and Liechtenstein), Swiss or UK national does not require an employment permit to work in Ireland. For non-EEA nationals (other than Swiss and UK nationals), different types of employment permits are available in Ireland. The main types of employment permit are: General Employment Permit; Critical Skills Employment Permit; and Intra-Company Transfer Employment Permit. The relevant permit required in each case will depend on the circumstances.

Some non-EEA nationals will also require a visa to enter Ireland, in addition to an employment permit, depending on their nationality.

Fines and penalties may be imposed where an employer employs a non-EEA national without an employment permit.

## Data Privacy

Data privacy in Ireland is primarily governed by the General Data Protection Regulation (GDPR) and the Data Protection Acts 1988 to 2018. The transfer of personal data from Ireland to locations outside of the European Economic Area is also subject to [Irish and EU data protection law](#). The Data Protection Commission is Ireland's regulatory authority responsible for data protection matters.

### CONTROLLERS

Where personal data is processed by a controller established in Ireland, in most cases, Irish law will apply. A controller is a person or legal entity which determines the purposes and means of the processing of information relating to an identified or identifiable natural person. All controllers must comply with specific obligations under Irish law about how they collect and use personal data. Controllers are also responsible for ensuring their employees, contractors and third parties that process personal data on their behalf comply with applicable data protection law.

### PROCESSORS

A processor processes personal data on behalf of the controller. 'Processing' is defined very broadly under Irish and EU data protection law and effectively covers any action or operation carried out on personal data. Where a processor is engaged by a controller to process personal data on its behalf, that relationship must be governed by a binding written contract that sets out certain prescribed obligations on both controllers and processors.

### TRANSPARENCY

The GDPR sets out fundamental principles that must be complied with in respect of personal data. In particular, all processing of personal data must be lawful, fair and transparent. Controllers must ensure that, when processing personal data, whether related to their employees, customers or other parties, they comply with the transparency requirements under data protection law. Each controller should ensure that transparent and easily accessible data privacy policies are in place.

Employees must be informed of the existence of any monitoring of their activities, which by default must be limited in time and scope. This information requirement includes informing employees about the purpose and legal basis connected to that purpose for which they are monitored. Typically a Data Protection Impact Assessment (DPIA) will first be required before undertaking any monitoring. DPIAs must identify the risks arising from processing the personal data by monitoring for a particular purpose(s) and to minimize those risks as far and as early as possible.

In all instances where an individual's personal data is being processed, irrespective of the purpose the individual must be informed by the controller of their data protection rights in relation to that personal data. Individuals in Ireland have the following data protection rights under the GDPR:

- The right to obtain a copy of personal data a controller holds about them. This right of access is subject to a number of exceptions under Irish data protection laws.
- The right to have inaccurate or incomplete information about them rectified on request.
- The right to request to have their personal data erased where there is no good reason to continue to process it.
- The right to object to processing of their personal data in certain circumstances
- The right to request the controller to suspend processing their personal data in certain circumstances



### CROSS BORDER TRANSFERS OF PERSONAL DATA

The GDPR sets out specific transfer mechanism when transferring personal data from an EU country to third countries outside of the EEA. One form of approved transfer mechanism is that the transfer is permitted because the third country has an adequacy decision from the European Commission meaning that the European Commission has decided that the third country's laws ensure an adequate level of data protection. Where a transfer is to a non-approved third country outside of the EEA, the GDPR only allows the transfer if the controller or processor has provided "appropriate safeguards" for data protection. For the majority of organisations, the appropriate approved transfer mechanism will be to enter into Standard Contractual Clauses (SCCs) with the party importing the personal data in the non-approved third country. SCCs contain specific contractual obligations on both the data exporting party transferring the personal data to a third country and the data importer to ensure that individuals' personal data continues to be protected to the GDPR standard once it leaves the EU. SCCs may be subject to regulatory oversight by Ireland's Data Protection Commission. Individuals are also entitled to enforce SCC obligations directly against data exporters and data importers.

## Real Estate

An inward investor's property requirement is often its **most significant overhead**. Ireland offers inward investors well-established and straightforward processes for the rental or acquisition of real estate.

### LEASING A PROPERTY

Most inward investors will decide not to tie up capital and will look to occupy premises on a leasehold basis (especially when initially setting up in Ireland). For inward investors, the form of lease and their covenant strength as a tenant will largely determine the commercial terms of the lease.

### TERM OF LEASE

Inward investors should consider how long a term of lease they are prepared to take. Commercial leases in Ireland are normally for terms between five and twenty years. There is no automatic right to "break" the term of the lease and rent reviews normally take place once every five years. The break date could be one or more fixed dates, or a rolling break exercisable at any point after a date specified in the lease.

### PRINCIPAL RENT, SERVICE CHARGES AND INSURANCE

Rent payable will usually be negotiated on a rate per square foot/square metre and may include an element of "turnover rent" in the retail sector. A lease of a premises forming part of a larger building or development will normally provide for service charges as a proportionate contribution to the costs of maintenance, repair and upkeep of the building/development. The landlord normally insures the premises and recovers proportionally the cost from the tenant.

### RENT REVIEW

Rents are normally reviewed at five year intervals. Rents may be revised upwards or downwards with reference to open market conditions at the time of the review. Increasingly there is a tendency towards rent reviews being calculated with reference to indices such as the Consumer Price Index.

### INCENTIVES

Landlords may incentivise inward investors to take a lease, by offering a rent-free period or a contribution towards the fitting out costs of the property.

### FULL REPAIRING LEASE

Commercial leases in Ireland are normally full repairing and insuring leases. Tenants will have extensive obligations relating to repair normally comprising a covenant to put (and keep) the premises in good and tenantable repair and condition. These clauses need to be carefully negotiated.

### GREEN LEASE CLAUSES

The majority of commercial leases now contain green lease clauses. These clauses promote the sustainable operation, occupation and management of commercial buildings. The purpose of these clauses is to incentivise the parties (most often the tenant but depending on the type of building, also the landlord) to adopt environmentally efficient practices that can reduce the carbon footprint of commercial property.

### TAX ON LEASED REAL ESTATE

Stamp duty is payable by a tenant upon the granting of the lease. There may be VAT payable on rent on commercial leases. VAT registered entities using the property for their taxable activities can reclaim VAT paid.

In addition, municipal taxes for commercial rates are determined and imposed by local authorities on the occupier of a business premises within their functional area.

### **PURCHASING A PROPERTY**

Real estate in Ireland comprises all immovable property. In certain circumstances, inward investors may wish to purchase a property for their Irish business operations. A 10% deposit is paid by the buyer on execution of a contract for sale. The transfer of title occurs when the buyer completes the purchase of the property on payment of the balance of the purchase price. Purchasers are liable to pay stamp duty on the purchase deed.

### **REAL ESTATE DEVELOPMENT**

Most development of property (including change of use) requires planning permission and compliance with building regulations. Applications are made to the local planning authority through a public application process. The decisions of the local planning authority can be appealed to An Bord Pleanála within four weeks of the decision. Only the applicant or a person that has made a submission or observation at the planning application stage can appeal.

Planning legislation in Ireland is currently undergoing a significant change with the introduction of the Planning and Development Act 2024. Much of the Act has not yet been commenced by Government.

## Further Information – Our Team



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