

# SHIP FINANCE

OPPORTUNITIES FOR THE INTERNATIONAL SHIPPING INDUSTRY



**Irish Maritime**  
Development Office



DILLON  EUSTACE

 [IMDOIreland](#)

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# **FOREWORD**

The Irish Maritime Development Office (IMDO) was established in 1999 and is the national agency responsible for the development of Ireland's maritime industry. The IMDO has a statutory mandate to advise Government on the development and coordination of policy in the maritime sector so as to encourage economic growth and create employment. The IMDO's remit covers the development of both indigenous and international maritime business.

**Ship Finance: Opportunities for the International Shipping Industry** is an important report that was prepared by the IMDO and sets out the case for using Ireland as a location for international ship financing. The report was prepared with input from KPMG and Dillon Eustace, experts in their respective fields of maritime commerce and maritime law. The report concludes that there are many compelling reasons for using Ireland as a location for ship financing, which can be divided into three broad categories:

### 1. Business advantages

With over 1,000 foreign companies located here, Ireland continues to be one of the most successful countries in the world for attracting inward investment. Ireland has the youngest population in Europe and an education system that is ranked fourth in the world, according to the IMD World Competitiveness Yearbook. When these demographics are combined with competitive labour costs, productivity levels that are 40 points above the EU27 baseline, and property rental costs that make Dublin one of the cheapest capital cities in Europe, it is easy to understand why some of the most discerning multi-national businesses in the world have chosen Ireland.

### 2. Economic advantages

Having emerged from a period of recession, Ireland is now the fastest growing economy in Europe. Our economy grew by 4.8% in 2014 and is expected to grow by a similar percentage in 2015. Inflation has been at 1% or lower for the past three years and unemployment is now below 10%. The economy continues to benefit from previous and current investment in infrastructure, in areas such as the transport network, energy and telecommunications. As a result of the economic policies implemented in the last 4 years, Ireland has emerged with many competitive gains and is well positioned for future expansion.

### 3. Taxation advantages

Ireland's tax regime has made it one of the most attractive locations for foreign direct investment for many decades. A key feature of the tax regime has been its certainty and stability through the highs and lows in the economic cycle. When Ireland's 12.5% corporate tax rate is combined with its very competitive tonnage tax regime, extensive double taxation treaty network, and favourable treatment of leasing, securitisation and other structured finance, a particularly attractive value proposition for maritime finance results.

From a legal perspective, Ireland operates a “common law” system along the same lines as the USA and the UK. The Irish legal system is highly developed and has a Commercial Court and Admiralty Court, which provide an effective and efficient means of dealing with commercial and maritime cases. More generally, the Irish legal system is transparent and well administered, providing a reliable and robust environment in which to conduct maritime business.

The report concludes that Ireland is a competitive and stable country in which to do business, with tangible advantages for businesses interested in commencing or expanding operations here. Ireland offers a strong value proposition to the maritime industry, which is based on competitive advantages that have attracted world-leading companies from a wide range of industry sectors. For example, Ireland has emerged as a centre of excellence in relation to aircraft leasing and is well positioned to build on this success in the area of ship finance.

### **Ship Finance: Opportunities for the International Shipping Industry** is

a collaborative work undertaken by the IMDO, KPMG and Dillon Eustace.

I would like to thank the teams in both organisations for their professionalism in preparing the report and commend it to ship owners, financial professionals and practitioners in the various advisory disciplines that support the maritime industry in Ireland and abroad.



*Liam Lacey*

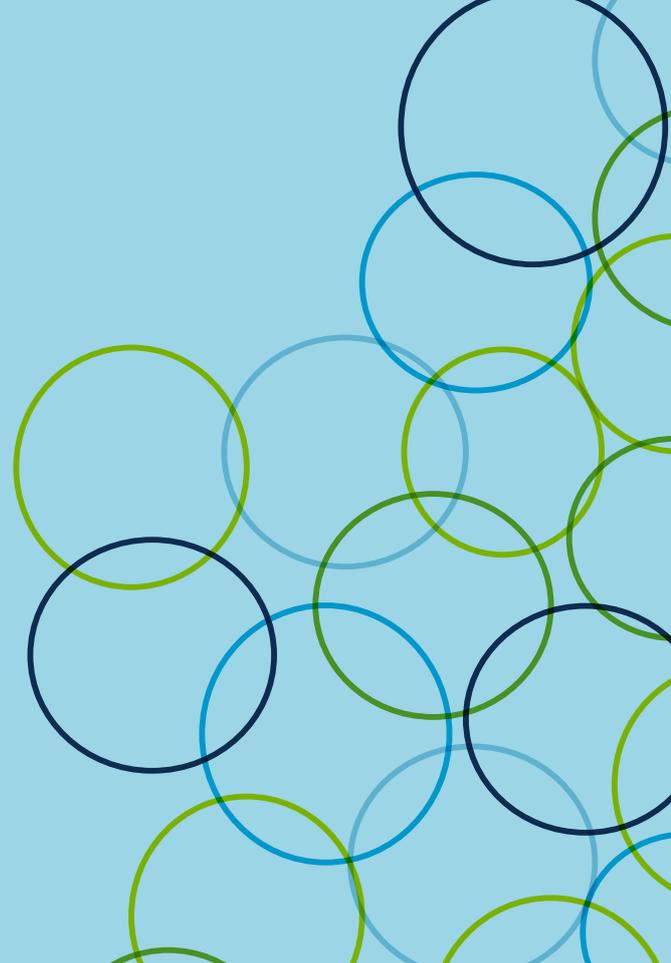
### **Liam Lacey**

Director  
Irish Maritime Development Office

**NOTE:** If you would like to learn more about the opportunities available to your company in the Irish maritime industry, please contact Rebecca Wardell who heads up the Business Development Team in the IMDO on +353 1 775 3918 or email [rebecca.wardell@imdo.ie](mailto:rebecca.wardell@imdo.ie)



# 1.0



## WHY IRELAND?



**HIGHLY COMPETITIVE  
BUSINESS  
ENVIRONMENT**



**YOUNG, TALENTED  
AND WELL EDUCATED  
WORKFORCE**



**FASTEST GROWING  
ECONOMY IN EUROPE**



# WHY IRELAND?



IRELAND HAS THE FASTEST GROWING ECONOMY IN EUROPE

1

IRELAND HAS ONE OF THE MOST PRO-BUSINESS ECONOMIES IN THE WORLD THAT ATTRACTS WORLD-LEADING COMPANIES IN PHARMACEUTICALS, FINANCE AND ICT

2

IRELAND IS 1ST IN THE WORLD COMPETITIVENESS RANKINGS FOR SKILLED LABOUR AND PRODUCTIVITY

3

IRELAND IS A WORLD LEADER IN ASSET FINANCE

4

IRELAND HAS THE YOUNGEST POPULATION IN EUROPE

5

IRELAND'S EDUCATION SYSTEM IS RANKED 9TH IN THE WORLD BY THE OECD

6

IRELAND'S CORPORATE TAX RATE IS 12.5% AND ITS TONNAGE TAX REGIME FOR SHIPPING COMPANIES IS AMONG THE MOST COMPETITIVE IN THE WORLD

7

IRELAND IS ENGLISH SPEAKING AND IN THE EUROZONE

8

IRELAND'S COMPETITIVENESS HAS IMPROVED DRAMATICALLY SINCE 2008, WITH LABOUR COST INCREASING BY ONLY 4% DURING THAT PERIOD, COMPARED TO A 14% IN THE EU

9

IRELAND IS 1ST IN THE WORLD FOR INWARD INVESTMENT

10



# 1.0

## 1.1 OVERVIEW

Ireland is a dynamic, knowledge based economy and it has attracted over 1,000<sup>1</sup> companies as a place to base their European operations.

Ireland attracts some of the highest levels of inward investment of any country in the world and those who invest here consistently achieve some of the best returns available.

Ireland has not only an excellent business track record; it also has a highly skilled workforce and a supportive tax environment, with beneficial tax incentives. Ireland has been successful

in doing this; by focusing on talent, keeping costs competitive and proving to multinational companies that Ireland is serious about attracting inward investment. These benefits are strengthened by Ireland's long term commitment to our 12.5% corporate tax rate.

Ireland is open for business.

## 1.2 ACCESS TO KEY MARKETS

Ireland has consistently provided some of the most attractive long term returns for companies looking for a European investment location. Ireland is an English speaking and fully committed member of the Eurozone and locating in Ireland provides easy access to a market of almost 500 million people.

A range of successful companies have chosen Ireland as their base for operations in the EMEA region (Europe, Middle East and Africa), evidence of Ireland's attractiveness as a location from which to service major international markets.

A comprehensive network of air and sea routes provides fast and efficient access to the rest of Europe. Ireland also offers the shortest transatlantic flights between the US and Europe and a range of direct services to Middle East hubs such as Dubai and Abu Dhabi.

1. Source: IDA Ireland

## 1.3 A PRO-BUSINESS ENVIRONMENT

Ireland is a modern and outward looking economy. Forbes ranked Ireland as the best of 145 countries for business and Dublin as one of the best cities in the world for start-ups. There is strong collaboration between business, government, universities, IDA Ireland (Ireland's inward investment agency) and the IMDO, to provide outstanding support to those looking for a winning European investment location. Once established here companies continue to benefit from a total commitment from government and other stakeholders to help ensure that Ireland continues to deliver exceptional returns.

Doing business in Ireland couldn't be simpler and getting started is both quick and straightforward.

## 1.4 HIGHLY TALENTED PEOPLE

Ireland was ranked number 1 for skilled labour in 2014<sup>2</sup>. A flexible, committed and highly educated workforce has been a feature of Ireland's success as a modern, attractive and open economy. According to the OECD 'Education at a Glance' report, Ireland is ranked in the 10 best educated countries in the world. With a wide pool of multilingual skills readily available, the Irish workforce is characterised by high skills, innovation and flexibility.

Ireland has a wealth of senior management talent with a depth of multinational experience across a range of sectors, ensuring a ready made resource of expertise and leadership. Furthermore, an Economist Intelligence Unit study ranks Dublin as the best city in the world for human capital.

Attainment in higher education (whether university or other higher education) is particularly high among 25-34 year olds in Ireland at 47%, well above the OECD average of 39%.

## 1.5 STRONG COMPETITIVENESS

In a fast changing world economy, Ireland consistently ranks amongst the most competitive business locations. Ireland is one of the most productive economies in the EU, with productivity levels approximately 40 points above the EU27 baseline<sup>3</sup>.

Irish labour costs have also remained relatively stable since 2008, increasing by just 4% in total. This compares to a 14% increase in the EU<sup>4</sup>. Overall, Irish labour costs are 11th in the

EU, below countries like Luxembourg, Germany, Belgium and the Netherlands<sup>5</sup>.

Ireland's cost competitive position is expected to continue into the future.

2. Source: IMD World Competitiveness Yearbook 2014

3. Source: Eurostat

4. Source: Eurostat

5. Source: Eurostat

## 1.6 BUSINESS SUPPORT

Ireland's success in attracting inward investment ensures a wide range of financial, accounting, tax and legal services are available. There is also a strong legal framework for development, exploitation and protection of Intellectual Property rights.

## 1.7 HIGHLY DEVELOPED INFRASTRUCTURE

Ireland has invested significantly in high quality telecoms and transport infrastructure underpinning a commitment to efficient movement of information, goods and people.

A fully de-regulated, competitive telecommunications infrastructure provides state-of-the-art networks to businesses.

Modern road and rail systems and a well-developed air and sea network ensure easy, cost effective export of goods and services.

## 1.8 TAX ENVIRONMENT

Ireland has a highly attractive and certain tax system providing investors with many advantages.

Ireland's long term corporate tax rate of 12.5% is amongst the lowest in the world and compares very favourably with other European countries such as the UK (20% from April 2015) and Germany (approximately 30%). The Irish tax system has shown itself to be stable and certain even through the various stages of the economic cycle.

Ireland also has a favourable holding company regime and is an attractive corporate headquarters location. A 25% tax credit can be claimed for R&D expenditure.

Ireland also has a wide and growing network of double taxation treaties.

### LEASING AND ASSET FINANCING

The Irish domestic tax rules and Ireland's strong double tax treaty network facilitate and support Ireland's position as a leading global asset financing and leasing location. Ireland has become one of the largest centres for asset finance. The estimated value of assets under management in Ireland is over €100 billion, which includes over half of the world's leased fleet.

## TONNAGE TAX REGIME

Ireland has a special tax regime for shipping operations known as the tonnage tax regime. Tonnage tax is an alternative method of taxing qualifying shipping companies by reference

to the tonnage of the ships. The standard corporate tax rate of 12.5% is then applied to this computed profit. The Irish tonnage tax regime is one of the most stable and competitive tonnage tax regimes in Europe (See Section 5).

# 1.9 IRELAND'S DOUBLE TAX TREATY NETWORK

Ireland has an extensive double taxation treaty network with the countries listed in the appendix to this publication.

Ireland has signed double tax treaties with 72 countries, including all EU Member States, Australia, Canada, China, India, Japan, Russia and the United States of America. At the time of writing, 68 of these treaties are in effect with the remainder to come into force in due course. Lessees resident in these jurisdictions can usually pay lease rentals without deduction of withholding taxes or at reduced withholding tax rates.

Certain domestic tax benefits, primarily relating to the ability to make payments abroad free of withholding tax, apply once a treaty is signed and it is not generally necessary to wait until the treaty is in force.

Where a double taxation treaty does not exist with a country there are provisions contained in Irish tax law which allow unilateral relief against double taxation in respect of certain types of income.

The provisions can grant credit relief and pooling to the following sources of income:

- » Dividends from foreign subsidiaries.
- » Foreign branch profits.
- » Foreign interest treated as trading income of the company that receives it.
- » Capital gains on certain foreign assets.

There are also reliefs granted under the EU “Parent-Subsidiary Directive”, the EU “Interest and Royalties Directive”, the EU “Mergers Directive” and the EU Arbitration Convention.

# 2.0

## IRELAND AS A LOCATION FOR MARITIME COMMERCE



**POPULAR LOCATION  
FOR SECURITISATION  
AND OTHER  
STRUCTURED FINANCE**



**WELL-DEVELOPED  
AIRCRAFT LEASING  
INDUSTRY**



**HIGHLY COMPETITIVE  
TONNAGE TAX REGIME**



# 2.0

## 2.1 LEASING AND ASSET FINANCE

Ireland has a proven reputation as a centre of excellence in the aircraft leasing business with many highly skilled personnel including directors, corporate service providers, accountants, tax and legal advisors working closely together on each transaction. These advisors provide important support services to the leasing community and this is a key benefit to setting up a leasing operation in Ireland. This expertise is easily transferable to (and is being applied to) ship leasing and financing transactions.

Globally, Ireland is one of the major centres for aircraft lessors and has played a very significant role in the development of the international leasing industry, in the development of aircraft financing structures such as aircraft lease securitisations and in the public listing of aircraft leasing businesses.

Ireland is a well regulated centre in relation to corporate governance and is recognised by the G20 and the OECD as being in the top tier of co-operative jurisdictions.

Ireland is a common law jurisdiction with its law relating to concepts of legal and equitable title similar to those of English law which typically governs leasing arrangements.

The Irish Stock Exchange is the largest European exchange for the listing of asset backed securities. It is also known for its efficient and speedy response time for applications to list.

Ireland also has an active market in small ticket leasing and financing in short life assets. Irish tax law contains special provisions which allow both a finance or operating lessor of short-life assets to elect to be taxed in accordance with their accounting results rather than calculating profits in accordance with the conventional tax depreciation regime.

## 2.2 SECURITISATION

Ireland is a popular jurisdiction for the establishment of securitisation and other structured finance transactions. Its membership of the EU and the OECD, its legal system and its hugely talented pool of financial services professionals experienced in this area are main contributors to this popularity.

Some investors may prefer to purchase debt issued by EU/ OECD issuers.

Qualifying securitisation companies attract specific tax incentives:

- » The tax regime offers a broadly tax-neutral investment proposition for the securitisation vehicle and its non-resident investors.
- » The rules regarding tax deductibility of interest that is dependent on the results of the company's business are less onerous than for other companies.

The securitisation company may invest in a range of qualifying assets, which include:

- » Plant and machinery (including ships and aircraft).
- » Leases and loan and lease portfolios.
- » Hire purchase contracts.
- » Shares, bonds and other securities.
- » Futures, options, swaps, derivatives and similar instruments.
- » Invoices and all types of receivables.
- » Obligations evidencing debt (including loans and deposits).
- » Acceptance credits and all other documents of title relating to the movement of goods.

- » Bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments.

- » Carbon offsets.

- » Contracts for insurance and reinsurance.

- » Tangible commodities dealt on a commodity exchange.

There are no general licensing or registration requirements applicable to securitisation companies operating in Ireland (other than the usual notification to the Irish Tax Authorities).

The securitisation vehicles take the legal form of a private or public limited company.

## 2.3 ISLAMIC FINANCE

Recognising the growth in international Islamic Finance, Ireland has an Islamic financing regime enabling Islamic finance transactions to be taxed in the same way as their conventional equivalents. This should allow Islamic finance houses use Ireland as their base location for their product offering across the EU (using various EU directives) and beyond.

Regulation of these activities follows the underlying principles set down by the Central Bank of Ireland for the supervision and regulation of all financial institutions

operating in Ireland and the Central Bank of Ireland has set up a dedicated team to deal with the establishment of Shari'a compliant investment funds.

## 2.4 SHIPPING AND MARITIME SERVICES

Ireland is an attractive location for the international shipping industry, with shipping companies established in a broad range of sectors including tankers, dry cargo, offshore support and the ferry industry, under a variety of ownership structures including international and domestic publicly listed companies, funds, privately owned companies and joint ventures.

A number of ship management, brokerage companies and ship pools are also located in Ireland. Marine tourism and the cruise industry are also of growing national significance and importance.

The shipping industry in Ireland is supported by a well-developed, sophisticated and competitive professional services sector with maritime experts and service providers in areas such as maritime law and tax, accounting

and specialist lease management and finance experts.

The opportunities for the shipping industry and the further expansion of maritime commerce in Ireland continue to develop at a fast pace and are fully supported by recent Government strategies in this area. There is also a proposal to establish an International Shipping Services Centre in Dublin, a private initiative which is supported by Government agencies in Ireland.

## 2.5 TONNAGE TAX REGIME

Further details on the Irish tonnage tax regime are set out in Section 5.

# 3.0

## THE TAX ENVIRONMENT FOR LEASING AND ASSET FINANCE



**12.5% CORPORATE  
TAX RATE; STABLE  
AND CERTAIN TAX  
ENVIRONMENT**



**FAVOURABLE TAX  
TREATMENT FOR  
DEPRECIATION,  
INTEREST PAYMENTS  
& DIVIDENDS**



**POPULAR LOCATION  
FOR HOLDING  
COMPANIES**

**KPMG**

# 3.0

## 3.1 GENERAL

Ireland is widely regarded as one of the most attractive and tax efficient locations for leasing assets and asset financing in the world, with an extensive number of skilled arrangers, managers and advisors based here.

A ship leasing or asset financing company based in Ireland can avail of a number of favourable tax benefits, which include:

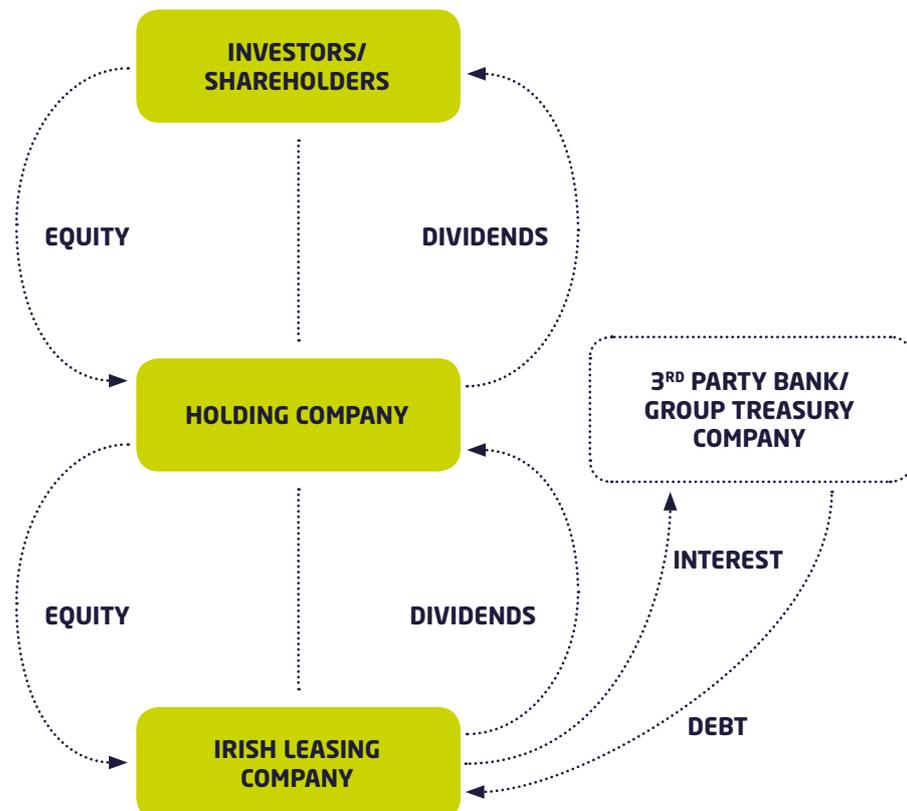
- » 12.5% rate of corporation tax on trading profits – one of the lowest in Europe.
- » Tax depreciation write down period of 8 years.
- » An extensive tax treaty network.
- » Withholding tax exemptions for interest and dividends paid to EU or treaty partner locations.
- » No outbound withholding taxes on lease rentals.
- » Withholding tax exemptions on certain quoted Eurobonds.
- » An attractive securitisation regime for lease receivables.
- » OECD compliant transfer pricing rules.
- » Attractive holding company regime.
- » An effective 0% VAT regime for leasing.
- » Stamp duty exemption for ships and aircraft.

## 3.2 IRISH LEASING GROUP STRUCTURES

In this section consideration is given to the following:

- » The establishment and financing of an Irish leasing company and the related Irish tax implications.
- » Alternative ownership models for a leasing group:
  - » investment as part of a corporate group
  - » investment by an Alternative Investment Fund (including a Qualifying Investor Alternative Investment Fund)
  - » investment by a fund (Irish Collective Asset Management Vehicle)

### 3.2.1 ESTABLISHMENT OF AN IRISH LEASING COMPANY AND THE RELATED IRISH TAX IMPLICATIONS



## RESIDENCE AND CHARGE TO TAX

An Irish tax resident company is subject to tax in Ireland on its worldwide profits and gains.

A company which is incorporated in Ireland will generally be treated as resident in Ireland. A company which is not incorporated in Ireland may still be considered to be a resident of Ireland for tax purposes if it is managed and controlled in Ireland.

A non-resident company carrying on a trade in Ireland through a branch or agency may be liable to Irish tax on its Irish source income.

## TAX RATES

The standard corporation tax rate applicable to trading income in Ireland is 12.5%. A higher rate of 25% is applicable to non-trading income ("passive income"). A rate of 33% applies to capital gains.

An Irish tax resident company carrying on a leasing trade should generally be subject to tax at the 12.5% rate on the sale of ships and other trading income from its leasing activities.

## TAX LOSSES

In general, losses which derive from an Irish leasing company's trading activity may be used to shelter other current year profits or profits arising in the prior accounting period of equal length.

Any unused trading losses can also be carried forward indefinitely and used to shelter future profits from the same leasing trade without a specified time limit.

## TAX DEPRECIATION

### Relief

An Irish leasing company may generally claim tax depreciation in relation to:

- a) capital expenditure which it incurs in connection with the purchase of ships; or
- b) in certain circumstances, capital expenditure incurred by the owner of the ships which are leased to the Irish leasing company.

Tax depreciation may be claimed on the cost of the ships at a rate of 12.5% (i.e. an 8 year period on a straight line basis).

On the eventual sale of a ship on which tax depreciation was previously claimed there would be a recapture of tax depreciation claimed, up to the amount of the original cost of the ship.

In order to claim tax depreciation on assets, it is not necessary that the assets are "new" assets. Tax depreciation may also be claimed on second hand assets, including assets acquired under sale and leaseback transactions.

### Leasing ring-fence

While Irish tax legislation provides that excess tax depreciation may only be set off against income from the trade of leasing (the "leasing ring-fence"), the following categories of income are generally treated in this regard as income from a trade of leasing:

- » income from the leasing of machinery or plant;
- » income from the provision of loans to fund the purchase of machinery or plant;

- » income from the provision of machinery or plant leasing expertise (e.g. deal origination, lease administration or remarketing services);
- » income from the disposal of leased machinery or plant; and
- » income from activities which are ancillary to those set out above.

Excess tax depreciation which is not utilised in the relevant accounting period may be carried forward indefinitely for set off against future income from the trade of leasing.

## **TAXATION OF INTEREST EARNED ON DEPOSITS**

Interest income arising on certain deposits which are integral to the leasing or financing arrangements of the leasing company may be taxed as trading income (at the 12.5% rate).

Any other interest income which is earned by an Irish tax resident leasing company should be taxed at the rate of 25%.

## **DEDUCTIBILITY OF INTEREST**

Interest laid out wholly and exclusively for the purposes of a company's trade is generally tax deductible in Ireland. However, certain intra-group payments of interest may be treated as non-tax deductible.

In certain circumstances, the general rules which restrict the tax deductibility of interest that is dependent on the results of the company's business are relaxed for securitisation companies.

## **DEBT ISSUANCE COSTS**

Leasing companies may generally take a tax deduction for the cost of issuing debt where the funds are used in the company's trade and the borrowing is not long term or capital in nature.

## **DEDUCTIBILITY OF OTHER EXPENSES**

In computing its taxable profits, the Irish leasing company should, in general, be entitled to deduct revenue expenses incurred "wholly and exclusively" for the purposes of its trade. However, as in the case for trading companies generally, certain expenses are not deductible, e.g. client entertainment, accounting depreciation (but tax depreciation may be claimed) and certain other specified expenses.

## **TREATY ACCESS**

Irish tax resident leasing companies generally have full access to the Irish double tax treaty network.

Under these treaties, withholding tax on lease rentals, interest, royalties and other payments paid to Irish resident companies is generally either reduced or eliminated.

## INTEREST WITHHOLDING TAX

Interest may be paid free of withholding tax to a broad range of lenders located in the EU or in countries with which Ireland has concluded a double tax treaty (an exemption from withholding tax should be claimed).

In the absence of an exemption, interest payments may attract Irish withholding tax at the standard rate (currently 20%).

## DIVIDEND WITHHOLDING TAX

Dividends may generally be paid to a broad range of shareholders without deduction of dividend withholding tax, as set out in more detail in Section 3.2.2.1 (“Outbound dividends”).

Documentation requirements apply and in the absence of an exemption, dividend payments may attract Irish dividend withholding tax at the standard rate (currently 20%).

## WITHHOLDING TAX ON SERVICE PAYMENTS

Irish domestic legislation does not generally impose Irish withholding tax on payments made to non-residents in respect of the services to be provided under a proposed servicing agreement.

## TRANSFER PRICING

Ireland’s transfer pricing regime applies OECD guidelines and standards which require the preparation and retention of documentation supporting arm’s length pricing on trading transactions between Irish tax payers and associated persons.

The impact of the Irish transfer pricing rules can be summarised as follows:

- » Where a company supplies goods or services in the course of its trading activities to an associated company for less than arm’s length consideration, it will be taxed as if it received arm’s length consideration for the goods or services provided.
- » Where a company incurs a revenue expense in the course of its trading activities as a result of buying goods or services from an associated company its tax deduction for that expense will be limited to the arm’s length consideration for the goods or services received.

The rules do not apply to a small or medium sized enterprise (“SME”). The question of whether or not an Irish company is an SME is determined on a group level and regard will be had to employee numbers and the group’s financial position. In order to be considered an SME, the group must have fewer than 250 employees and either a turnover of not more than €50 million or assets of not more than €43 million.

## STAMP DUTY

### Creation of loans

The execution / creation / issue of the loans, should not result in an Irish stamp duty liability.

### Acquisition of vessels

There is no stamp duty payable on instruments for the sale or transfer of ships or aircraft or any interest therein. In addition no stamp duty is payable in respect of a lease of a ship or aircraft or any moveable property.

## Shares

The issue of shares should not be subject to Irish stamp duty. The subsequent transfer

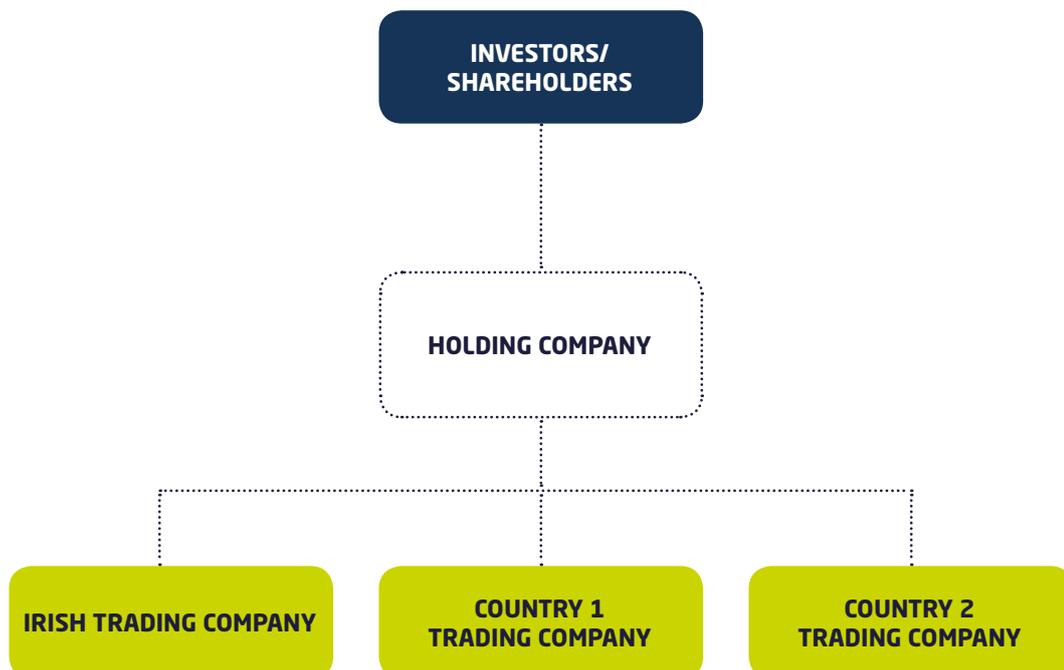
of any of the newly issued shares will attract a charge to Irish stamp duty at a rate of 1%.

## 3.2.2 IRELAND AS A HOLDING COMPANY LOCATION / STRUCTURE OF A LEASING GROUP

In this section consideration is given to the following:

- » Option A: Irish leasing activities which form part of a wider leasing/asset finance group and the related Irish tax implications. (including a Qualifying Investor Alternative Investment Fund (“QIAIF”)); and
- » Option B: Irish leasing activities carried on as part of an Alternative Investment Fund
- » Option C: Irish leasing activities carried on as part of an Irish Collective Asset-Management Vehicle (“ICAV”).

### 3.2.2.1 OPTION A - LEASING CORPORATE GROUP



## IRELAND AS A HOLDING COMPANY LOCATION

Ireland is increasingly becoming the country of choice for locating multinational holding companies. Groups which have chosen to locate holding companies in Ireland include the world's leading financial services, pharmaceuticals, medical devices, ICT and leasing and structured finance companies. Many of the groups which have established Irish holding companies have also successfully implemented variations of the aforementioned business strategies involving the centralisation of high value-adding functions in Ireland.

### Key taxation provisions which benefit Irish holding companies

For reference, we have outlined below the key taxation provisions which are likely to benefit a holding company located in Ireland. Together, these provisions/reliefs ensure that Ireland is consistently regarded as one of the most desirable jurisdictions to hold investments.

The Irish tax regime for holding companies deals with the following matters:

- a) The participation exemption on substantial shareholdings.
- b) Dividend income (Irish and foreign sourced).
- c) Outbound dividends.
- d) Taxation of groups.

The above matters are discussed in further detail below.

### Additional benefits for Irish holding companies

As well as these favourable domestic tax provisions, it is worth noting the following additional benefits Ireland has to offer as a holding company location:

- » Ireland has an extensive double tax treaty network, having signed treaties with 72 countries (68 of these treaties are in effect with the remainder to come into force in due course).
- » Ireland is a Member State of the European Union and as a result has ease of access to all European markets.
- » Ireland has a globally recognised, highly educated, skilled and flexible workforce and a stable pro-business government (as evidenced by our very attractive corporation tax regime). These factors have helped to ensure that Ireland delivers for investors.
- » As a long standing member of the EU and an English speaking member of the Eurozone, Ireland is an ideal location for those looking to do business in a community of almost 500 million people.
- » In a highly competitive environment, Ireland is totally committed to supporting inward investment into Ireland. IDA Ireland (Ireland's inward investment body) has articulated a strategy for future development entitled Horizon 2020. It sets out how Ireland will continue to attract new businesses driven by a desire for innovation, greater productivity and sustainability.

## KEY TAXATION PROVISIONS WHICH BENEFIT IRISH HOLDING COMPANIES

### A) PARTICIPATION EXEMPTION ON SUBSTANTIAL SHAREHOLDINGS

An Irish holding company should benefit from a full participation exemption from Irish capital gains tax (which otherwise applies at the rate of 33%) in respect of gains arising on the disposal of shares in its subsidiary companies. It is not necessary to claim the Irish participation exemption are met or seek advance clearance from the Irish Tax Authorities. Once the conditions for the exemption are met, the exemption applies immediately.

Each of the following conditions should be satisfied for the Irish participation exemption on substantial shareholdings to apply:

» *Shareholding test*

An Irish holding company must hold at least 5% of the ordinary shares (and have been entitled to at least 5% of the profits available for distribution and assets available on winding up) in the subsidiary company for a continuous period of 12 months at any time within two years prior to the disposal.

» *Jurisdictional test*

The subsidiary company must be tax resident in an EU country, including Ireland, or a country with which Ireland has signed a double taxation treaty.

» *Trading test*

At the date of disposal the subsidiary company must be an active trading company (under Irish tax rules) or

alternatively, when the Irish holding company, its 5% subsidiaries and the subsidiary are taken together (and viewed as a group), that group is wholly or mainly carrying on trading activities. In general “wholly or mainly trading” is taken to mean more than 50% of its activities are trading activities.

### B) DIVIDEND INCOME

#### Irish source dividends

In general, dividends received by an Irish holding company from another Irish tax resident company are exempt from Irish tax. Such dividends are also received gross and exempt from any Irish withholding tax.

#### Foreign sourced trading dividends

Dividends which are received by an Irish holding company from a foreign company (if a non-Irish tax resident company formed part of the group) and which are paid out of “trading profits” may be taxable at the standard 12.5% corporation tax rate (on election).

In order for the 12.5% rate of corporation tax to apply, the following conditions must be satisfied:

- » The company which pays the dividend must be either:
  - i) tax resident in an EU/tax treaty country; or
  - ii) a publicly quoted company or 75% subsidiary of a publicly quoted company.
- » The dividend must be paid out of trading profits.

Where the dividend paying company is resident in a country with a higher tax rate

than Ireland's 12.5% rate (which is generally the case), the availability of foreign tax credit relief for the Irish holding company often means no Irish tax should be payable on the dividend income.

If a company has elected to tax trading dividends at the 12.5% rate, any excess foreign tax credits arising on trading dividends may be offset against tax on other trading dividends or else carried forward indefinitely.

### **Foreign sourced non-trading dividends**

Dividends which are received by an Irish holding company from non-Irish tax resident companies are taxable in Ireland at the rate of 25%. However, relief for foreign taxes may be available to reduce any Irish tax payable.

The relief is normally given by way of credit for the foreign tax borne on the dividend and, depending on the circumstances, for the underlying tax paid by the foreign dividend paying company or its subsidiaries. This unilateral credit relief is available for both foreign underlying tax and withholding tax. The foreign tax credit is offset against any Irish tax payable on the income.

Where the foreign tax exceeds the Irish tax payable on the dividend income, these excess credits can be set-off against Irish tax payable on other dividend income streams or carried forward indefinitely.

In practice, this credit system often significantly reduces or eliminates entirely any Irish tax payable by an Irish holding company on dividend income received from foreign subsidiaries.

## **C) OUTBOUND DIVIDENDS**

Dividends may generally be paid to the following recipients without deduction of dividend withholding tax:

- » Individuals who are residents of EU Member States and countries with which Ireland has concluded a double tax treaty ("tax treaty countries").
- » Companies resident in an EU Member State or in a tax treaty country. However, such companies must not ultimately be under the control of Irish tax residents.
- » Non-Irish tax resident companies which are controlled by persons resident in an EU Member State or in a tax treaty country.
- » Non-Irish tax resident companies which are a 75% subsidiary or are wholly owned by two or more companies quoted and traded on a recognised stock exchange in an EU Member State or in a tax treaty country.
- » An EU-resident company which holds at least 5% of the shares in the dividend-paying company under the EU Parent Subsidiary Directive.

Documentation requirements apply such that a declaration is required to be filed with the dividend paying company prior to the dividend being paid. There is no declaration required for the EU Parent Subsidiary Directive to apply.

Dividend payments may attract Irish dividend withholding tax at the standard rate (currently 20%) in the absence of an exemption.

## D) GROUPS OF COMPANIES

Ireland has a system of group relief which allows the transfer of certain losses and other tax attributes, and the tax-free transfer of assets between certain group companies.

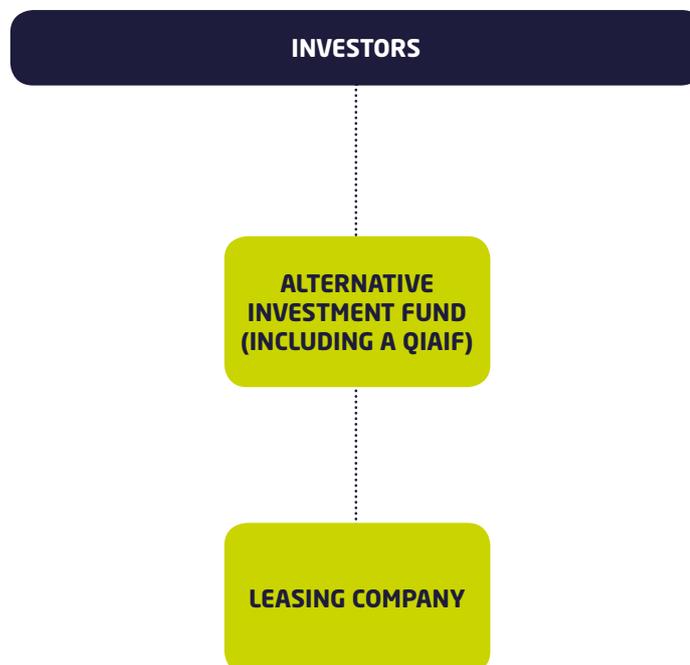
A loss group can include any company which is tax-resident in an EU or tax treaty country as well as any quoted company (and the subsidiaries of such a company) which has its principal class of shares substantially and regularly traded on a recognised stock exchange in a tax treaty country. Members of a group must be in a 75% shareholding relationship with one another.

Tax losses may be surrendered between group companies that are within the charge to Irish corporation tax on a current year basis only (that is, losses which are carried forward by a company from a prior period may not be grouped).

Assets (e.g. ships) may also be transferred intra-group without Irish capital gains tax being applied on the transfer.

There are also provisions under the Irish stamp duty and VAT rules which provide group relief treatment in certain circumstances.

### 3.2.2.2 OPTION B - QIAIF



## ALTERNATIVE INVESTMENT FUNDS

Irish Alternative Investment Funds (“AIFs”) are able to invest in a wide variety of investments. AIFs are regulated vehicles and are required to have a regulated fund manager. Ireland has a fund regime for both retail investors (Retail Investor Alternative Investment Funds - RIAIFs) and a separate regime for non-retail (professional) investors (Qualifying Investor Alternative Investment Funds - QIAIFs). QIAIFs are generally more appropriate for distribution to non-Irish investors as they can be marketed across the EU without seeking separate approval under the private placement regimes of each EU Member State.

There are five legal forms under which a QIAIF may be constituted. There are two forms of body corporate: an investment company (a public limited company – PLC) and the Irish Collective Asset-management Vehicle (“ICAV”). Non-corporate forms of QIAIF are Unit Trusts, Investment Limited Partnerships and Common Contractual Funds.

QIAIFs are sophisticated investments and are targeted at the professional investor. They are not appropriate for small retail investors and require a minimum subscription of €100,000 (or €500,000 if the QIAIF invests more than 50% of its net assets in unregulated funds).

Investors in a QIAIF must be:

- » A “professional client” as defined in the Markets in Financial Instruments Directive (“MiFID”);
- » An investor who has received an appraisal from a EU credit institution, MiFID firm or Undertakings for Collective Investment in Transferable Securities Directive (“UCITS”) provider that the investor has the required expertise, knowledge and experience to understand the investment; or

- » An investor who self-certifies himself as an informed investor with the knowledge and experience to evaluate the risks involved, and who provides confirmation that his business involves management of assets similar to that managed by the AIF’s fund manager.

Certain investors are exempt from the above criteria and the minimum subscription requirement, including the:

- » management company (where applicable) or general partner of an investment limited partnership;
- » a company appointed to provide investment management or advisory services to the QIAIF; and
- » a director or employee of the management company, or of a general partner or a company appointed to provide investment management or advisory services.

### Operation of AIFs

The Central Bank of Ireland requires a QIAIF to have at least two Irish resident directors while the appointment of a management company or general partner is a mandatory requirement if the QIAIF is structured as a limited partnership.

The following are some of the persons who are typically involved in the operation of a QIAIF (though these will vary depending on the legal form of the QIAIF):

- » Alternative Investment Funds Investment Manager (“AIFM”): All AIFs must appoint an AIFM. AIFMs are regulated by the Central Bank of Ireland and are subject to regulation under AIFMD. An AIF can be self-managed or it can appoint another person to be the AIFM.

- » Investment Advisor: The investment management function may be outsourced by the AIFM to a third party asset adviser / manager, who acts as investment adviser to the manager. The appointment of an investment manager requires notification to and, in some circumstances, advance approval, from the Central Bank of Ireland.
- » Administrator: The administrator is responsible for the pricing of the fund's investments and the calculation of the fund's Net Asset Value (NAV) as well as arranging for issues, redemptions, and transfers of units.
- » Custodian: The fund's assets must be deposited for safekeeping with an independent custodian. The custodian also has a supervisory role to ensure that the activities of the fund are carried out in accordance with the relevant regulations and the fund's constitutional documents.
- » Board of directors (in the case of a corporate AIF): A QIAIF formed as an investment company or an ICAV operates under the direction of a board of directors. Appointments to the board require prior approval from the Central Bank of Ireland.
- » Trustee (in the case of a Unit Trust): The trustee is the legal owner of the assets of the fund and holds those assets for the benefit of the unit holders.

### **The Irish tax regime for AIFs**

Irish AIFs benefit from an attractive taxation regime. In particular:

- » Irish AIFs are exempt from Irish tax on their income and gains, irrespective of where their investors are resident.
- » No withholding taxes apply on income distributions or redemption payments made by an Irish AIF to non-Irish resident investors.
- » While an exit tax of 41% applies to distributions or redemption payments made to Irish resident investors, there are exemptions for various categories of Irish investors (e.g. Irish pension funds).
- » Depending on the tax status of the investor in an Irish AIF in their home jurisdiction (for example, a tax exempt pension fund) an Irish AIF can also be structured as a tax transparent vehicle resulting in the retention of the tax benefits (e.g. reduced withholding taxes) that would be enjoyed by the investors through direct ownership of the underlying asset.
- » There is a full exemption from stamp duties on the issue and transfer of units in an Irish AIF.
- » Where an Irish AIF holds investments through Special Purpose Vehicles this may result in additional tax efficiencies.

### ***Value added tax (VAT)***

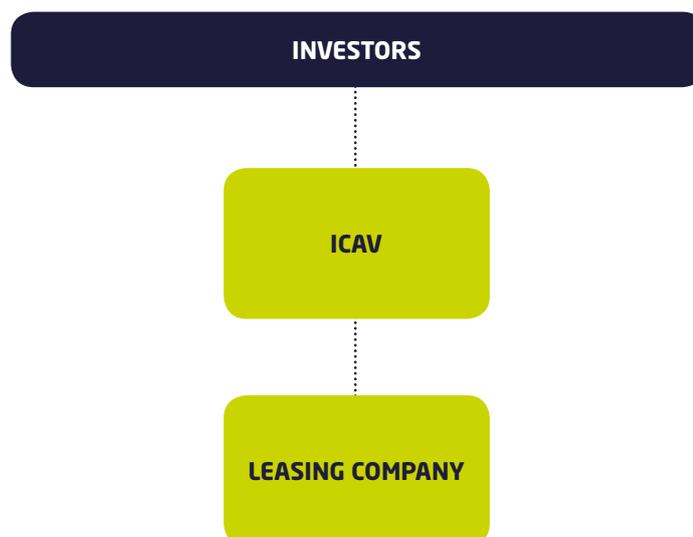
The EU VAT legislation generally provides for an exemption in respect of the management of certain "qualifying" funds (i.e. investment management, fund administration and marketing services).

However, as each EU Member State can define what funds qualify for the “management” exemption its implementation can vary from country to country. This can create issues and opportunities for AIFs and AIFMs. In Ireland, there is a broad VAT exemption for the management of regulated AIFs. As a result, a regulated Irish AIF should not, in general, suffer Irish VAT on fees charged by an AIFM to it in respect of management activities. However, it should be noted that it is possible that an AIFM might provide some services which do not fall within the scope of this exemption, in which case VAT would arise on these services. Examples of such services would include legal or advisory services. Where the AIF is based in the same country as the AIFM then the AIFM will charge local VAT on the supply of any VAT-taxable services it provides (in the case of Ireland the standard rate of VAT is currently 23%). Where the AIFM is not based in the same country as the AIF, in general the supplier will not charge VAT on its supply of goods or services and instead the AIF will be obliged to charge itself VAT in the country in

which it is based. This is known as a “reverse charge”. For example, an Irish AIF or AIFM which receives VAT-taxable services from a UK legal firm will generally not be charged UK VAT by the law firm but will have to reverse charge itself Irish VAT on the supply and account for this reverse charge VAT to the Irish Revenue authorities.

Where an AIF incurs Irish VAT on goods or services that it procures from other parties (including the AIFM), then the ability of the AIF to recover VAT it incurs will depend on whether it is engaged in VAT-taxable or VAT-exempt activities. In this regard, many financial services activities (such as lending money or trading in stocks and securities) are VAT-exempt activities whereas leasing is normally VAT-taxable (though no VAT would actually be charged on leases to non-Irish lessees). VAT recovery is generally not possible in respect of VAT exempt activities except where the activities undertaken are financial services with non-EU persons; VAT recovery is generally available in respect of VAT-taxable activities.

### 3.2.2.3 OPTION C - ICAV



## ICAV

The ICAV is a new type of Irish corporate vehicle which has been specifically designed for investment funds and will be an alternative to Irish public limited company structures. It provides managers and promoters with a corporate structure that is designed specifically for investment funds and which is not subject to rules or requirements designed for other forms of company (thereby helping to reduce the administrative burden and cost).

Like an investment company, ICAVs are a corporate entity that is governed by a board of directors and owned by shareholders. ICAV's are regulated funds and, therefore, have all of the benefits of a regulated structure. Consequently, an ICAV needs an authorisation to carry on business either as an Alternative Investment Fund or as Undertakings for the Collective Investment of Transferable Securities (UCITS).

The ICAV enhances Ireland's competitiveness as a domicile for investment funds by virtue of its attractive legal structure.

An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. It may be listed on a stock exchange. Investors will own shares in the ICAV and the ICAV will be able to issue and redeem shares continually according to investor demand.

ICAVs are subject to the same tax regime as other Irish funds. The key components of this regime are as follows:

- » No Irish income tax at the fund level.
- » 41% exit tax on distributions to Irish investors but no Irish withholding tax / exit tax on all distributions to non-Irish investors and certain categories of Irish investors.

- » No Irish withholding tax / exit tax on all distributions where the shares are held in a recognised clearance system.
- » No transfer taxes on the issue, redemption or transfer of shares.
- » No hidden taxes (e.g. wealth taxes / net asset taxes).
- » Access to Ireland's extensive double taxation treaties minimising the effects of foreign withholding taxes on returns on investments.
- » Exemptions from VAT for many services required by a fund (in particular fund management services).

An important feature of the ICAV is that it will be able to elect its classification under the US check-the-box taxation rules.

The ICAV is attractive to US investors as it simplifies the US tax treatment. This is because the ICAV effectively allows taxable US investors to be in the same tax position as if they had invested directly in the underlying investments of the ICAV. This treatment allows US investors access to relief under US tax treaties as well as the ability to use tax credits attaching to investments made by the fund. It also means that the complex US Passive Foreign Investment Company (PFIC) regime does not apply.



# 4.0

## UNDERSTANDING THE LEGAL IMPLICATIONS



**COMMON LAW SYSTEM**



**COMMERCIAL AND  
ADMIRALTY COURTS**



**WELL-DEVELOPED  
LEGISLATION IN  
RELATION PROPERTY,  
LABOUR, AND THE  
ORGANISATION  
OF BUSINESS**

# 4.0

## 4.1 THE IRISH LEGAL SYSTEM

Ireland operates a “common law” system, along the same lines as both the USA and the UK. Much Irish legislation stems from either UK statutes or European Union directives or regulations.

As a successful location for international financial services over many years, Irish lawyers have become well used to dealing with foreign law governed agreements, particularly where New York or English law is being applied, and with their counterparts in those jurisdictions.

The entry by Irish companies into ship financing agreements governed by the laws of other jurisdictions does not usually raise any particular issues and those agreements are likely to be recognised and enforced by the Irish courts.

## 4.2 NO REQUIREMENT FOR AN IRISH LICENSE OR AUTHORISATION

Typically, Irish companies which own and/or lease ships are not required to be licensed or authorised by any Irish governmental entity in order to carry on their business.

## 4.3 ORGANISATION OF BUSINESS IN IRELAND

### TYPES OF CORPORATIONS AVAILABLE UNDER IRISH LAW

There are two types of company in Ireland; private companies and public companies. The most popular form of business entity for inward investment projects in Ireland is a private company limited by shares. The shareholders of a private limited company have limited liability (i.e. their liability is limited to the amount, if any, unpaid on the shares they hold). A private unlimited company may also be incorporated, however, the liability of its shareholders is not limited. Unlike a private limited company, a private unlimited company is not required to file its annual accounts with the Companies Registration Office and therefore the financial results of a private unlimited company are generally not available to the public.

Beyond a minimum level of share capital, there is no requirement to invest additional amounts of equity in an Irish company.

### PROCEDURE FOR INCORPORATION

In order to incorporate a private company limited by shares, certain documents must be filed with the Irish Companies Registration Office ("CRO"), including details relating to the proposed shareholders, directors and company secretary of the company to be incorporated, and a form of written consent of the directors and company secretary to act and acknowledge their legal obligations. The memorandum and articles of association of the company to be incorporated are also submitted to the CRO. Once the new company

is incorporated, these documents are available for public inspection.

It normally takes 15 days to incorporate a company however, it is possible to have a company formed within five to ten working days.

### BOARD OF DIRECTORS

All companies incorporated in Ireland after 11 February 1999 are regarded as Irish Tax Resident. However, such assumption of residence by incorporation will not apply where a 'treaty' or 'trading' exemption applies and therefore residence of a company will normally be determined by the location of central management and control and accordingly where the meetings of the board of directors are held. The management of a company is usually entrusted to the board of directors of the company. Every Irish incorporated company must have at least one director resident in a member state of the EEA, or alternatively, provide a bond to the value of € 25,394.80 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, if, following consultation with the Revenue Commissioners, it has a certificate from the CRO confirming that the company has a "real and continuous link with one or more economic activities" in Ireland. However, this option will only be available to companies post incorporation.

Every Irish company is required to have a company secretary, who will be responsible for ensuring that the company performs all

administrative functions associated with the regulatory and legislative requirements of the company. A company secretary may also be a director of the company. On a practical level, many companies engage professional company secretarial services to assist with this function.

An Irish incorporated company must have a registered address in Ireland, to which all Companies Registration Office correspondence and legal notices to the company will be sent.

## ACTIVITY IN IRELAND

A company will not be incorporated in Ireland unless the company will, when registered, carry on an activity in Ireland. A declaration to this effect must be filed with the CRO.

## BRANCH OPERATIONS IN IRELAND

For Irish company law purposes, a branch is a division of a foreign company trading in Ireland that has the appearance of permanency, has a separate management structure, has the ability to negotiate contracts

with third parties and has a reasonable degree of financial independence.

A foreign company setting up a branch in Ireland is required to file basic information with the Registrar of Companies in Ireland within one month of the establishment of the branch in the state. This includes the date of incorporation of the company, the country of incorporation, the address of the company's registered office, details regarding the directors of the company and the name and address of the person responsible for the branch's operations. A certified copy of the foreign company's constitution, certificate of incorporation and a copy of the latest audited accounts must also be filed with the Registrar of Companies.

A foreign company trading in Ireland through a branch is required to file the company's financial statements with the Registrar of Companies within eleven months of the parent company's year end or at the same time that they are filed by the parent company, whichever is earlier. Separate branch financial statements are not required. As with Irish incorporated entities, changes in previously notified information must be reported to the Registrar of Companies.

# 4.4 THE IRISH LABOUR MARKET AND ITS LEGAL FRAMEWORK

## LABOUR MARKET

The labour market in Ireland offers inward investors a pool of young, well-educated and highly motivated workers.

Almost 40% of Ireland's growing population are under 25 years of age (compared to the European average of approximately 29%). The

education system in Ireland ranks among the best in the world and approximately 45% of new entrants to third level education in Ireland undertake business, engineering, computer science or science courses. While Ireland is English speaking, a significant proportion of students and graduates are proficient in more than one language. A large foreign labour resource also continues to satisfy multi-lingual

requirements and complement the provision of efficient services by companies such as Google, from Irish based service desks.

## LEGAL FRAMEWORK

Labour (or employment) law, is derived from a number of sources such as the Irish Constitution, legislation (both domestic and EU based), decisions of the Employment Appeals Tribunal, the Equality Tribunal, the courts and custom and practice. Some of the main aspects of Irish employment law are as follows:

### » **Industrial relations**

Ireland offers a well-developed industrial relations system. Free collective bargaining and the right to join a trade union are recognised and disputes between employees and employers are resolved with recourse to the Labour Court, as established under the Industrial Relations Acts 1946 to 2004. Pursuant to the Employees (Provision of Information and Consultation) Act, 2006, employers, subject to the size of their workforce, may be obliged to inform and consult with their employees.

### » **Contracts**

Generally, parties to employment contracts may negotiate terms. However certain requirements must be taken into account. A written statement of details of the contract such as salary and deductions, work hours, holidays, sick pay etc., must be presented to the employee within two months of commencement of employment.

### » **Minimum notice**

In the absence of employee misconduct, the employer is required to provide the employee with minimum notice of termination of contracts of employment. Such a notice period may vary in duration from one week's notice to eight weeks' notice, depending on the employee's period of continued service.

### » **Dismissals**

Unless an employer succeeds in establishing substantial grounds (such as employee's conduct, capability or redundancy) to justify the dismissal, an employee who has been employed for more than one year is protected from being unfairly dismissed. The Employment Appeals Tribunal may award damages up to an amount corresponding to two years remuneration.

### » **Redundancy**

Compensation is payable to employees made redundant. The selection process undertaken to identify those employees dismissed by reason of redundancy must be objectively justified.

### » **Transfer of undertakings**

In the event of the transfer of a business, all employee rights, with the exception of certain pension rights, automatically transfer to a new employer. A dismissal arising from such a transfer is most likely to be deemed unfair.

» **Part-time/fixed-term employees**

Part-time employees may not be treated less favourably than a comparable full-time employee in respect of conditions of employment, unless such treatment can be justified on objective grounds.

Fixed-term employees may not be treated less favourably than a comparable permanent employee in respect of conditions of employment, unless such treatment can be justified on objective grounds. Certain limitations on the use of successive fixed-term contracts exist.

» **Non-Irish citizens working in Ireland**

Irish immigration laws apply to persons other than Irish citizens who wish to enter and remain in Ireland.

Persons born in the United Kingdom do not require work permits and have no restrictions imposed on their movement in Ireland. Nationals of EEA Members States (with the exception of nationals of Bulgaria and Romania), which includes 27 EU Member States and Switzerland will typically not be refused entry into Ireland and are entitled to residence permits which entitle them to work without further formality. Non-EEA nationals must obtain permission to enter and remain in the State at the airport or port of entry and are subject to certain legislative requirements

relating 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), work permit or other permission to work. All non-EEA nationals that intend to work in Ireland must obtain either a work permit. They are obliged to register with the Irish authorities as soon as possible upon entry to the State should they intend to remain in the State for a period greater than three months.

Since 1 October 2014, under the Employment Permits (Amendment) Act 2014 there are now 9 types of employment permit. They include; a General Employment Permit and a Critical Skills Employment Permit, which have replaced the work permit and Green Card permit respectively. New types of employment permit include a Reactivation Employment Permit for those whose employment permit has expired in certain circumstances. The Act also provides that a non-EEA national without an employment permit, who took all reasonable steps to get one, may be allowed to take civil action against the employer to compensate them for work done or services rendered.

## 4.5 PURCHASING OR LEASING COMMERCIAL PROPERTY

The purchase of commercial property involves the investor entering into a contract for sale with the vendor of the property with the payment of (typically) a 10 % deposit and subsequent execution of the deeds of transfer. The transfer of property in Ireland is carried out exclusively by lawyers.

The terms of a lease of a commercial property (“the heads of terms”) are generally negotiated between the parties’ agents prior to the commencement of any legal work, however, such terms may also be the subject of further negotiation and change when the draft deed of lease is being reviewed and approved by the tenant’s solicitor. The principal areas which are the subject of negotiation are the term, the alienation clause (to assign /sublet), alterations, repair, break clause (this usually involves the payment of a penalty by the tenant, the compliance with all covenants in the lease and the serving of a notice to break within a certain period) and rent reviews (these are generally every five years).

Section 4 of the Landlord and Tenant (Amendment) Act, 1994, has been amended

by section 47 of the Civil Law (Miscellaneous Provisions) Act, 2008, whereby a tenant in a commercial premises may contract out of its rights to a new tenancy. This has allowed greater flexibility for landlords and tenants. Accordingly, this now allows tenants to renounce their rights such that the landlord may obtain vacant possession after a five year period.

It is important to consider the rate of stamp duty which is payable by the purchaser of a commercial property, the rate of stamp duty which is payable by the lessee on any premium/rent paid in respect of a lease granted and the amount of VAT and other rates of local taxation that may apply to the commercial property (whether purchased or leased).

## 4.6 IRELAND’S COMMERCIAL COURT

The Commercial Court is an initiative that has recognised the needs of those who choose to do business in Ireland.

Since January 2004, the Commercial Court in Ireland provides an effective, fast and efficient forum for the resolution of most types of commercial disputes where the value exceeds € 1 million. The Commercial Court can also hear intellectual property and judicial review cases (where a commercial point is at issue) even if the relevant value is less € 1 million.

The Commercial Court in Ireland is now recognized as a leading and expedient forum for the resolution of high value international commercial disputes, including worldwide disputes against the International Registry of Mobile Assets (this registry was established pursuant to the Cape Town Convention relating to aircraft and aircraft components).

## 4.7 IRELAND'S ADMIRALTY COURT

The High Court has an admiralty jurisdiction which is exercised by a judge nominated by the president of the court. Though originating in early times when the Lord High Admiral of Ireland heard cases involving claims against ships on the high seas, the jurisdiction has survived to the present day and offers claimants an opportunity not only to bring a claim against a ship but also to obtain security for their claim by having the ship arrested by the Admiralty Marshal of the court.

These claims are known as “maritime claims” and are set out in detail in the Jurisdiction of the Court (Maritime Conventions) Act but the common characteristic of them is that the claim involves the ship in some way. The jurisdiction allows such cases to be brought in Ireland even though the Irish courts may not otherwise have jurisdiction to hear the case. It also allows the court to hold the ship (or bail in lieu) as security for the claim, and this jurisdiction applies even though the case may later go on to be determined elsewhere or by arbitration.

The essential element for bringing such a claim is that the claimant must have the ship arrested by the Admiralty Marshal. This must be done while the ship is in an Irish port. For this reason speed is of the essence in instructing solicitors to have the ship arrested, as once the ship sails the opportunity to arrest her may be lost.

# 5.0

## SHIPPING AND TONNAGE TAX REGIME



**ONE OF THE MOST  
COMPETITIVE TONNAGE  
TAX REGIMES  
IN THE WORLD**



**STABLE AND  
CERTAIN MEANS OF  
CALCULATING  
TAXABLE PROFITS**



**COMBINES WELL WITH  
IRELAND'S CORPORATE  
TAX REGIME AND  
DOUBLE TAXATION  
NETWORK**

**KPMG**

# 5.0

## 5.1 SHIPPING TAX REGIME - OVERVIEW

Ireland has a very attractive tax regime for shipping companies, which includes:

- » A very competitive tonnage tax regime, where certain shipping operations may elect to pay tax on deemed income; and
- » The “normal” tax regime, where profits are taxed at the 12.5% corporate rate.

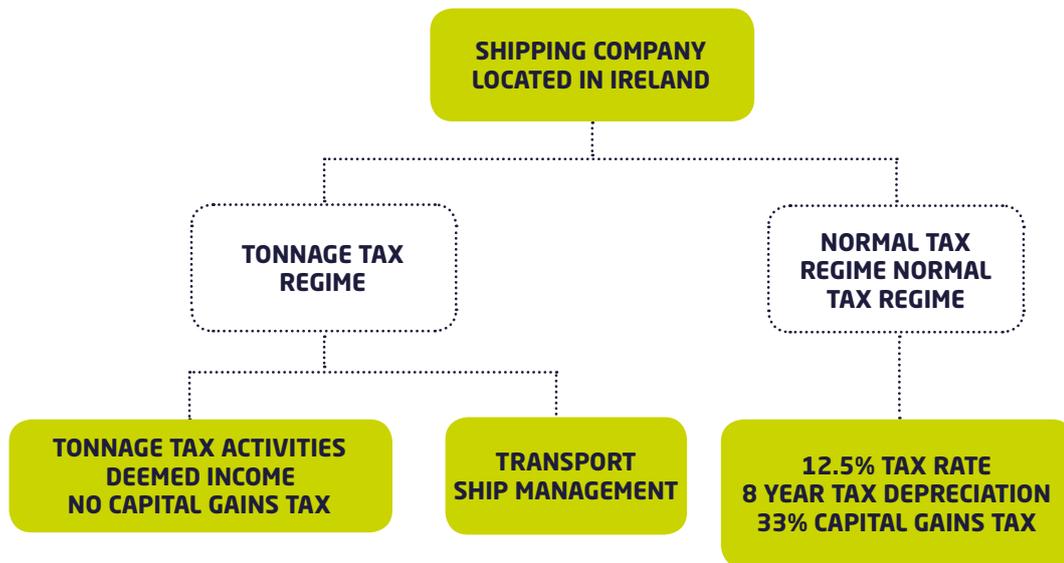
Shipping companies may choose which of the above regimes is more suitable for their business.

## 5.2 TONNAGE TAX REGIME BENEFITS

The Irish tonnage tax regime is a very attractive regime and includes the following benefits:

- » The tonnage tax regime applies to a broad range of qualifying income and gains (see section 5.7).
- » Tonnage tax is a permanent saving - not just a deferral.
- » No capital gains tax on qualifying disposals.
- » Vessels need not be Irish flagged.
- » There are no training requirements associated with the regime.
- » Profits from ship management activities also benefit from the regime.
- » Bareboat chartered-in vessels qualify for the Irish tonnage tax regime in the same manner as owned vessels.
- » Time chartered vessels also qualify for the Irish tonnage tax regime (subject to a tonnage limit of three times the amount of the total net tonnage it owns and operates or bareboat charters in).

## 5.3 INTERNATIONAL SHIPPING - THE IRISH CHOICES



## 5.4 TAXATION OF PROFITS AND APPLICABLE RATES

Tonnage tax is an alternative method of taxing the profits of qualifying shipping companies.

Instead of these companies being taxed on profits arising from their trade (as under normal corporation tax rules), they are taxed on a deemed profit per day, computed by reference to the tonnage of the ships operated by them. The standard corporation tax rate for trading income (12.5%) is then applied to the

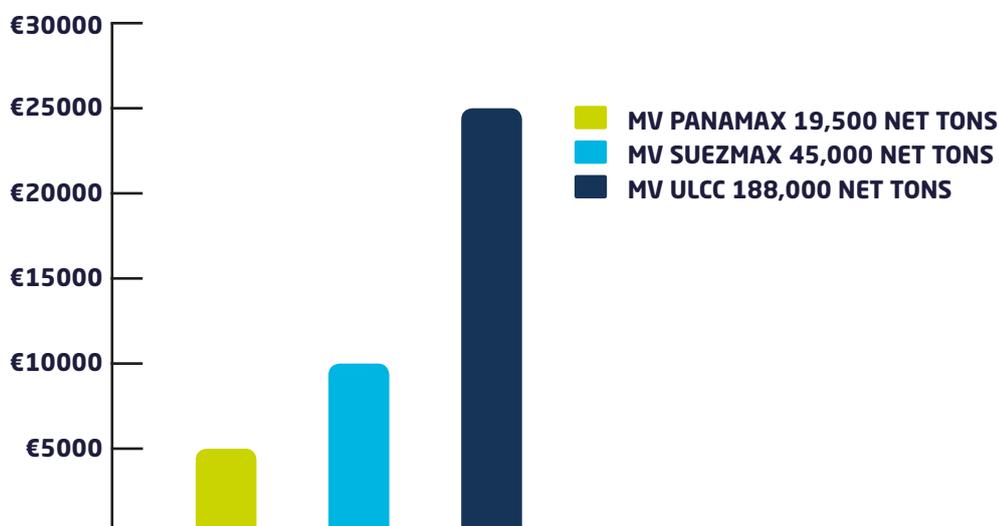
deemed profit. This is the final corporation tax liability on those profits, (i.e. tonnage tax is not a tax deferral).

The Irish tonnage tax regime is fully approved by the EU.

### Computation of Tonnage Tax Liability

Net Tonnage	Tonnage Tax Profit Per 100 net tons per day (€)	Tax per 100 net tons per day (€)
First 1,000	1.00	0.125
1,000 to 10,000	0.75	0.09375
10,000 to 25,000	0.50	0.0625
Over 25,000	0.25	0.03125

#### Examples of annual tonnage tax liability



## 5.5 QUALIFYING VESSELS

In order to be a qualifying vessel for Irish tonnage tax purposes, ships must be self-propelled seagoing vessels, of 100 tons or more gross tonnage and they must be certified for navigation at sea by a competent authority.

The following vessels are not included in the definition of a qualifying vessel for Irish tonnage tax purposes:

- » an offshore installation, including a mobile or fixed rig, a platform or other installation of any kind at sea.
- » a tanker used for petroleum extraction activities in the Irish designated area.
- » a dredger, including a vessel used primarily as a floating platform for working machinery or as a diving platform.
- » a non sea-going tug.
- » a fishing or fish processing vessel.
- » a sport or recreational vessel (capacity less than 50 people).
- » a harbour, estuary or river ferry.

## 5.6 QUALIFYING CONDITIONS

- » The Irish tonnage tax regime is available only to companies that are subject to Irish corporation tax.
- » The company must operate qualifying vessels (including owned, bareboat chartered-in and time chartered ships).
- » The strategic and commercial management of the ships must be carried on in Ireland.
- » Not more than 75% of operated tonnage may be chartered in (other than on bareboat charter).

## 5.7 QUALIFYING INCOME

The tonnage tax regime applies to relevant shipping profits, which are income and gains earned from:

- » Transport of passengers at sea.
- » Transport of cargo at sea.
- » Towage, salvage or other marine assistance.
- » Provision of transport for services at sea.
- » Provision on board a qualifying ship operated by the company of services ancillary to the carriage of passengers or cargo.
- » Granting of rights by which another person will provide such ancillary services on board a qualifying ship operated by the company.
- » Other ship-related activities that are a necessary and integral part of the business of operating the company's qualifying ships.
- » Certain lettings on charter of qualifying ships (excluding most bareboat charters).
- » Provision of ship management services.
- » Certain dividends from overseas qualifying companies.
- » Certain capital gains on sale of ships.
- » Foreign exchange gains arising on qualifying activities.

## 5.8 ELECTION

Entry to the tonnage tax regime is not mandatory but is the preferred option for most shipping groups. Each qualifying company that wishes to enter the tonnage tax regime must file an election.

Qualifying companies in a group elect to join the tonnage tax regime via a joint election. If one qualifying company in an Irish tax resident group elects to join the tonnage tax regime, then all such Irish resident companies must elect to do so. Groups do not have the option to choose that only some of their Irish resident companies participate in the tonnage tax regime.

The election is effective from the start of the accounting period in which the election is made.

The qualifying period for companies to elect to participate in the regime is three years from the date that they become qualifying companies. Otherwise they cannot join the regime for ten years.

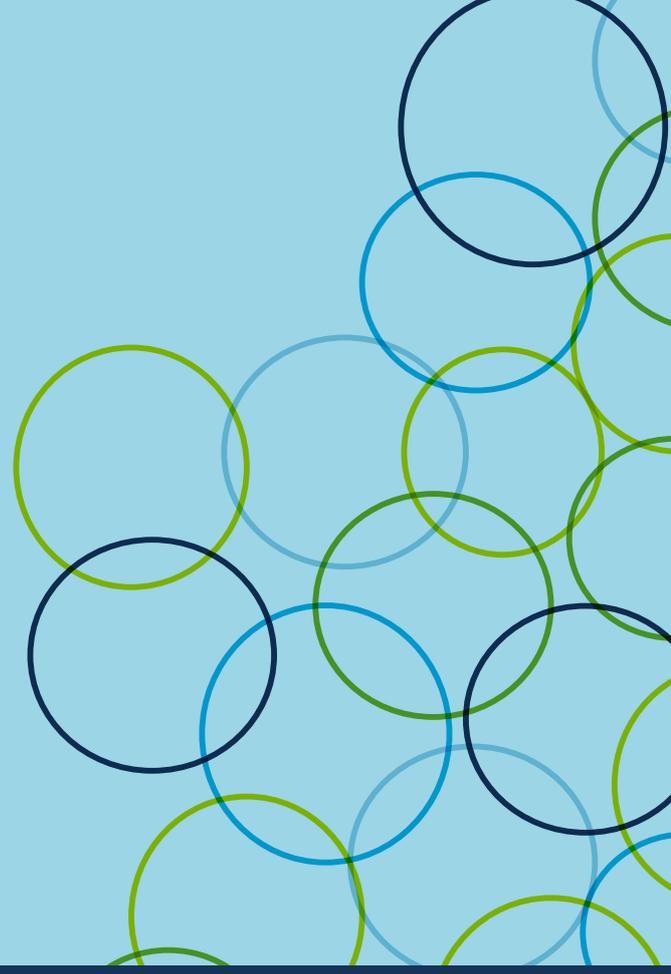
The election is for a maximum period of ten years. Once the election is in effect, it can be renewed, i.e. a rolling ten year election is possible.

## 5.9 EXIT FROM THE TONNAGE TAX REGIME

There is no specific tax liability arising on a company exiting from tonnage tax in the normal course of events at the end of the ten year period. While a company may lose some of the tonnage tax benefits it claimed if it is expelled from the regime due to abuse of the tax rules, we do not foresee a situation where a reputable shipping company would be in this position.

There are special tax depreciation rules for periods subsequent to a company leaving the Irish tonnage tax regime.

# 6.0



## APPENDIX



## IRELAND'S TAX TREATY NETWORK

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Albania	Estonia	Lithuania	Saudi Arabia
Armenia	Ethiopia	Luxembourg	Serbia
Australia	Finland	Macedonia	Singapore
Austria	France	Malaysia	Slovak Republic
Azerbaijan #	Georgia	Malta	Slovenia
Bahrain	Germany	Mexico	South Africa
Belarus	Ghana #	Moldova	Spain
Belgium	Greece	Montenegro	Sweden
Bosnia Herzegovina	Hong Kong	Morocco	Switzerland
Botswana +	Hungary	Netherlands	Thailand *
Bulgaria	Iceland	New Zealand	Turkey
Canada	India	Norway	Turkmenistan #
Chile	Israel	Pakistan	Ukraine *
China	Italy	Panama	United Arab Emirates
Croatia	Japan	Poland	United Kingdom
Cyprus	Jordan #	Portugal	United States
Czech Republic	Korea (Rep of)	Qatar	Uzbekistan
Denmark	Kuwait	Romania	Vietnam
Egypt	Latvia	Russia	Zambia +

\* In force from 1st January 2016

+ Awaiting ratification

# In the pipeline

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