

Ireland's Holding Company Tax Regime

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About FS taxation

FS taxation is a boutique tax practice specialising in advising clients in the financial services sector. We work with our clients on product and transaction structuring and provide on-going compliance and operational tax services. We provide these services across all tax heads; corporation tax, income tax, withholding taxes, VAT and capital taxes.

We focus on our clients, working closely with them to **understand** their business and their tax needs. With a combined 40 years top level tax **experience** between the principals, we understand the importance of tax **risk management** whilst remaining **commercially focused** and cost efficient.

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Introduction

Ireland has developed a reputation as a key location for the establishment of both EU and international holding companies. Ireland is an English speaking onshore EU jurisdiction which is well placed geographically for conducting business in North America, Europe and Asia in one working day. Importantly Ireland also offers a favourable tax regime for holding companies. The key features of this Holding Company Tax Regime are outlined below.

Taxation of Irish Companies

Companies resident in Ireland are taxed at the low rate of corporation tax of 12.5% on their trading profits, at the rate of 25% on passive income and 33% on capital gains (to the extent that they do not qualify for relief/exemption from tax). By their very nature Holding Companies are generally non-trading entities for Irish tax purposes. However, under Ireland's Holding Company Tax Regime, where properly structured, such companies may pay little or no Irish tax on income and gains derived from their investments. The treatment of capital gains, dividend income / payments and debt financing under this favourable tax regime are discussed below.

Capital Gains Tax Exemption

- ✦ **Subsidiaries** – Irish Holding Companies benefit from a full participation exemption from Irish capital gains tax in respect of gains arising on the disposal of shares in certain subsidiary companies. The exemption applies where:
 - Shareholding test – The Holding Company has held at least 5% of the ordinary shares (and had similar level of rights to profit distributions and assets) in the subsidiary company for a continuous period of 12 months at any time within 2 years prior to the disposal,
 - Jurisdictional test – The subsidiary company is tax resident in an EU country or a country with which Ireland has signed a double taxation treaty (currently 69 tax treaty countries), and
 - Trading test – The subsidiary company is an active trading company (under Irish tax rules) or when viewed as part of a group (taken with the Holding Company and other 5% subsidiaries), that group is mainly (>50%) carrying on trading activities.
- ✦ **Shareholders (profit repatriation)** – Non-Irish resident investors (individuals and corporates) are generally exempt from Irish tax on any gains derived on the sale shares in Irish companies. This exemption does not apply to unlisted shares which derive the greater part of their value from Irish land, minerals or exploration rights.

Therefore in practice, it is possible for foreign investors to establish an Irish Holding Company to invest in domestic and global companies and subsequently dispose of both these investments and the Holding Company itself all free from Irish capital gains tax.

Dividend Income

- ✦ **Irish subsidiaries** – in general, dividends received by one Irish resident company from another Irish resident company are exempt from Irish tax. Such dividends are also received gross, exempt from any withholding tax.
- ✦ **Foreign subsidiaries** – Ireland operates a credit system for providing relief for foreign tax suffered on dividend income. This unilateral credit relief is available for both foreign underlying and withholding tax suffered. 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 a Holding Company on dividend income received from foreign subsidiaries. This is particularly the case for foreign 'trading' dividends which are taxable at the standard 12.5% corporation tax rate.
- ✦ **Foreign 'trading' dividends** – dividends received by an Irish Holding Company from a foreign company which were paid out of "trading profits" may be taxable at the standard 12.5% corporation tax rate. In order for this treatment to apply the dividend paying company must be either resident in an EU/tax treaty country, certain other OECD countries (including Ukraine and Brazil) or be a publically quoted company (or a 75% subsidiary of a publically quoted company). Where the dividend paying company is resident in a country with a higher tax rate than Ireland's low 12.5% rate (which is generally the case), the availability of foreign tax credit relief for the Holding Company often means no Irish tax should be payable on the dividend income.

Dividend Payments (profit repatriation)

- ✦ **Dividend Withholding Tax (DWT)** – The general rule is that dividends paid by an Irish resident company are subject to DWT at the rate of 20%. However, there are a number of exceptions to this general rule which provide exemptions from the imposition of DWT. For example, exemption from Irish DWT is available where the dividend is paid to:
 - A parent company resident in an EU country which has at least a 5% shareholding in the Irish company,
 - A person (individual/company) resident in an EU/tax treaty country which is not under the control of Irish resident,
 - A person resident anywhere but is ultimately under the control of persons who are resident in an EU/tax treaty country, or
 - A publically quoted company (or a 75% subsidiary of a publically quoted company).

Therefore, in practice Irish Holding Companies are often exempt from Irish DWT in respect of dividends paid to their non-Irish resident shareholders.

About our partners

FS taxation is led by **independent** tax professionals with 40 years top level domestic and international tax **experience**.



Patrick McClafferty
ACA, AITI
Partner

Patrick specialises in tax compliance and tax efficient structuring of Irish asset management and structured finance vehicles. He has significant experience advising on taxation matters arising on establishment and operation of Irish investment funds (and fund management companies) and section 110 securitisation companies.



PJ Henehan
FCCA, FITI
Partner

PJ has over 33 years top level tax experience. He was a senior financial services tax partner with Ernst & Young for over 25 years. He is regarded as a leading expert in tax structuring and tax minimisation for banks, insurance companies and asset management and structured/asset financing vehicles. During his career PJ has advised the majority of the world's major financial institutions.

Why Ireland?

- Participation exemption on gains
- Tax efficient profit repatriation
- Transfer Pricing rules do not apply to Irish Holding Companies
- No thin capitalisation rules
- No controlled foreign companies / sub part F type rules
- Established global financial centre
- Educated and skilled workforce and service providers
- OECD/EU country member
- English speaking and central time zone for US and EMEA working day

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Debt financing

- ✦ **Interest deductibility** – in general, interest paid by an Irish Holding Company is not deductible for Irish tax purposes when arriving at taxable profits. However, where an Irish Holding Company borrows funds to acquire shares in, or lend money to, a third party company or certain related companies, interest paid on such loans may qualify for relief. This 'interest as a charge' relief is quite complex and its availability is very much dependant the exact facts of each case. Notwithstanding this, particularly in the case of external borrowings and/or external acquisitions, relief can provide a very tax efficient funding option.
- ✦ **Interest withholding tax** – The general rule is that yearly interest paid by an Irish resident company is subject to withholding tax at the rate of 20%. However, as is the case with DWT, there are a number of exemptions to this general rule. For example, interest withholding tax does not apply on interest paid to persons resident in an EU/tax treaty country.
- ✦ **Interest free loans** – The limited Irish Transfer Pricing rules do not apply to Irish Holding Companies, therefore such companies may be able to lend money (borrowed or otherwise) interest free without adverse Irish tax implications.

Section 110 Companies

Irish tax legislation contains specific provisions regarding the taxation of securitisation companies ("Section 110 Companies"). In practice they are used for a wide variety of transactions (including as a Holding Company) and not merely traditional securitisations. Key features/conditions of Section 110 are that the Irish company must carry on a business of holding or managing what are known as 'qualifying assets' of at least €10m on the date the assets are first acquired. The definition of qualifying assets includes a broad range of financial and other assets such as shares, bonds, other securities, derivatives, loans, deposits and insurance/reinsurance contracts.

Taxation

Section 110 Companies are taxed on their profits at the higher rate of Irish corporation tax of 25%. However, the profits taxable are calculated under the rules applicable to normal trading companies. Section 110 also generally allows qualifying companies a tax deduction for all interest payable including any profit participating element. This is unique in Irish tax legislation; usually such payments would be regarded as non-tax deductible distributions to be made out of after tax profits. Therefore, with correct planning, the favourable tax treatment (i.e. deductions for trading expenses and profit participating interest) enables Section 110 Companies to be effectively tax neutral.

The merits of using a Section 110 company as a Holding Company will depend on the exact facts of each case, however, it can provide an attractive alternative to the traditional tax regime outlined above.

Patrick McClafferty

Partner

patrickmcclafferty@fstaxation.ie

Phone +353 1 636 3163

Mob +353 87 606 2452

PJ Henehan

Partner

pjhenehan@fstaxation.ie

Phone +353 1 636 3163

Mob + 353 86 820 5563



FS taxation
77 Sir John Rogerson's Quay
Dublin 2

Phone +353 1 636 3163
Fax +353 1 640 1899
info@fstaxation.ie
www.fstaxation.ie

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