



February 2011

Doing Business in Ireland

Annual Statutory Compliance Requirements of an Irish Registered Company

Post-incorporation, there are various statutory compliance obligations imposed by legislation in Ireland most of which involve the imposition of time limits with which companies must comply in order to avoid the possibility of penalties being imposed on the company and/or its directors.

These obligations may be categorised into Legal, Accounting and Taxation obligations, which are outlined below.

1. LEGAL

1.1 Regulating Legislation

The Companies Acts 1963 to 2009 set out the legislative framework which governs the incorporation and operation of legal corporate entities in this jurisdiction.

1.2 Annual return filing obligation

Every company, whether trading or not, is required by law to file an annual return with the Companies Registration Office (CRO) once at least in every year. The annual return is a public document setting out certain prescribed information in respect of the company including details of the directors, the share capital and shareholders.

The annual return must be filed not later than 28 days from its statutory annual return date (ARD). The ARD of a company is automatically set at the 6 month anniversary of the date of its incorporation and each 12 month anniversary thereafter.

It is necessary to file annual financial statements with each annual return, except in the case of the first annual return.

When financial statements are required to be filed, the financial year end of a company may be no earlier than nine months before the ARD (the 9 month rule); however, it is possible to amend a company's ARD to satisfy this requirement.

It is normal practice for the financial year end of a subsidiary to be the same as that of the other group companies for the purposes of group consolidation; assuming a group financial year end date is 31st December, the first set of financial statements for the Company should be prepared for the period from incorporation to 31st December 2009. To comply with the 9 month rule, the latest date for the second ARD of the Company will be 30th September 2010.

Patrick G Flynn

Alan O'Driscoll

Ian Knight

James D Duggan

Consultants

Mary Swords

Julian Cunningham



1.3 Other annual legal filing obligations

The Companies Acts set down the disclosure requirements for Irish registered companies. Changes in any of the details of the company must be notified to the CRO on the prescribed form and company directors and the company secretary are responsible for ensuring compliance with these obligations. We can advise you if and when any such filings are required. Examples of the most common changes required to be notified to the CRO include:

Change in	Required to file
locations of company's statutory registers	Form B3
memorandum and articles, including authorised capital	Form G1/G1Q plus new memo & articles
particulars in relation to its directors and/or secretary	Form B10
issued share capital	Form B5/B7/H5
authorised capital (increase)	Form B4
company status (becoming/ceasing to be a single member private limited company)	Form M1/M2

1.4 Annual General Meeting

Every company must, in each year, hold a shareholders' annual general meeting (AGM) in addition to any other general meetings required during the year.

The annual general meeting must be held:

- Within 15 months of the previous annual general meeting
- Within nine months of the company's year end
- Once in every calendar year.

Subject to the provision that the first annual general meeting must be held within 18 months of incorporation, it is not necessary to hold an annual general meeting in the year of incorporation or in the following year.

The primary business of the AGM is (i) to consider the audited accounts for the preceding accounting period, (ii) to declare a dividend (if applicable), (iii) to elect directors in place of those retiring (if applicable) and (iv) to authorise the directors to fix the remuneration of the auditors.

The financial statements and a directors' report dealing in general terms with the company's state of affairs and making a number of statutory disclosures, must be sent to shareholders at least 21 days before the annual general meeting.

Single-member companies may dispense with the requirement to hold an AGM. Other general meetings of shareholders are held whenever a decision requires shareholder approval under the Irish companies' acts. While we recommend that all shareholders' meetings are held in Ireland, if possible, from the point of view of tax residency (discussed below in Section 3), this is not a company law requirement.



1.5 Other annual legal compliance requirements

It is necessary to maintain the statutory registers of the Company such as the Register of Members, the Register of Directors and Secretary, and the Register of Officers' Interests.

It is also a statutory requirement that minutes of meetings of directors and minutes of general meetings be maintained and kept in a statutory minute book. We are assisting you with regard to these requirements.

2. ACCOUNTING

2.1 Accounting requirements

The directors must prepare annual financial statements, lay them before the shareholders at the AGM within nine months of the end of the company's accounting period, and file a copy of the financial statements in the CRO with the annual return, as discussed above.

2.2 Accounting records

The directors are required to keep proper accounting records and to this end it is normally necessary to prepare monthly management accounts. These management accounts must contain the information necessary to disclose with reasonable accuracy, at any time, the company's financial position at that time, and to enable the directors to prepare financial statements in compliance with the requirements of the Companies Acts 1963 to 2009. As a matter of best practice they should be prepared by an Irish accountancy firm which cannot be the auditor.

The accounting records must be retained for six years.

2.3 Contents of financial statements

The financial statements must comprise of the following for the company:

- A profit and loss account (income statement) covering the financial period;
- A balance sheet as at the end of the financial period;
- A directors' report;
- An auditor's report (where the audit exemption, as discussed below, is not being availed of); and
- Notes giving certain supplementary information and disclosures.

Financial statements must be drawn up according to generally accepted accounting principles in Ireland (GAAP) and in the format described by the Companies Acts. Irish GAAP is identical to that of the United Kingdom.



In general, the disclosure requirements for financial statements are set out in the Companies Acts, which reflect the requirements of the EC Fourth Directive and regulations governing group financial statements.

Furthermore, the Companies Acts lay down certain minimum requirements for information to be given in the notes to the financial statements, if not given in the financial statements themselves. This information covers a large number and variety of matters, such as accounting policies, departure from generally accepted accounting principles, fixed assets, capital commitments, contingent liabilities, transactions with directors and their connected persons and particulars of subsidiary and related companies.

2.4 Audit Exemption

Private companies that meet certain criteria may avail of an exemption from the requirement to have their financial statements audited. These companies are absolved from the statutory requirement to appoint an auditor.

The following companies are not entitled to the exemption:

- i. public companies;
- ii. parent undertakings or subsidiary undertakings within the meaning of the EC (Companies: Group Financial statements) Regulations 1992;
- iii. a holder of a licence under section 9 Central Bank Act 1971, or a company that is exempt from the requirement under that Act to hold such a licence;
- iv. a company to which the EC (Insurance Undertakings: Financial statements) Regulations 1996 applies;
- v. a company referred to in the Second Schedule to the Companies (Amendment) (No.2) Act 1999.

In addition, in order to avail of the audit exemption, the company must satisfy each of the following 3 conditions, both in respect of the current financial year concerned and the preceding financial year, unless the year in respect of which the exemption is being claimed is the company's first financial year:

- i. the company has turnover of less than €7.3 million during its financial year;
- ii. the balance sheet total of the company is less than €3.65 million at the end of its financial year; and
- iii. the company has an average of less than 50 employees for the year.

2.5 Audit requirements

Where an audit is required it is critical that the auditor be formerly appointed without delay so that they can begin to liaise with the Company accountant to avoid any difficulties at a later stage.

The auditors are required to make a report to the shareholders on the financial statements examined by them and on every balance sheet, profit and loss account (income statement) and all group financial statements laid before the company in the general meeting. The auditors' report must note:



- Whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of their audit
- Whether, in their opinion, proper books of account have been kept by the company
- Whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the books of account
- Whether, in their opinion, the financial statements have been properly prepared in accordance with the provisions of the Companies Acts 1963 to 2009 in the manner so required and give a true and fair view:
 - In the case of the balance sheet, it shows the company's affairs as at the end of the financial year;
 - In the case of the profit and loss account (if it is not framed as a consolidated profit and loss account) of the profit or loss for the financial year;
 - In the case of group financial statements, the affairs and profit and loss account of the company and its subsidiaries, so far as concerns members of the company.
- Whether, in their opinion, there exists at the balance-sheet date a financial situation where the net assets of the company are half or less than the amount of the company's called-up share capital, which would require the convening of an extraordinary general meeting of the company
- Whether, in their opinion, the information given in the report of the directors is consistent with the financial statements (not applicable in the case of unlimited companies).

The auditor is also required if, in the course of, and by virtue of, carrying out an audit, he comes into possession of information that leads him to form the opinion that there are reasonable grounds for believing that the company, or an officer or agent of the company, has committed an indictable offence under the Companies Acts, to notify his opinion to the Director of Corporate Enforcement and provide details of the grounds on which he has formed that opinion.

3. TAXATION

3.1 Disclaimer

Flynn O'Driscoll is a law firm and does not provide tax advice. Normally such tax advice is provided by the company's local auditor or tax advisor.

The undernoted information is a general guide to the tax system in Ireland and is not a substitute for professional taxation advice.

3.2 Tax authorities

The operation and enforcement of the Irish fiscal system is the responsibility of the Revenue Commissioners.



3.3 Regulating Acts

The principal source of Irish tax law is found in the Taxes Consolidation Act 1997 and Finance Acts introduced at yearly intervals. Each annual Finance Act is incorporated into the Taxes Consolidation Act 1997 or other relevant legislation.

3.4 Principal taxes

- Taxes on transactions
 - Value added tax,
 - Custom and excise duties,
- Taxes on business
 - Corporation tax

3.5 Corporation Tax

3.5.1 Requirement of tax residency

In order for an Irish company to come within the Irish tax system, they must be tax resident in Ireland. It is noteworthy that the worldwide income of a company which is tax resident in Ireland is liable to Irish tax.

3.5.2 Tax residency tests

(a) Management and control test

A company which is genuinely managed and controlled in Ireland is deemed to be tax resident in Ireland.

Central management and control is exercised by the directors at directors' meetings where decisions upon matters of fundamental importance to the company's business are taken. Thus, a consideration of the central management and control of a company requires a focus on the location of directors' meetings and the business conducted at those meetings.

Accordingly it is imperative that all decisions relating to financing, investment policy, growth of the Company's business and the entering into of any material contracts by the Company should be taken in Ireland by the board of directors. A majority of the directors of an Irish company should be Irish resident.

The degree of independence enjoyed by the directors of an Irish company in taking decisions regarding its business is of particular interest to the Revenue Commissioners. Accordingly, it is essential that the board of directors should be seen to be acting independently from the parent company when taking decisions on the management of the company's business and should not merely implement instructions received from the parent company. It is therefore essential that the board is provided with full information in connection with proposed activities of the company for their consideration.

It is crucial in the preparation of minutes of meetings of the board of directors that, the wishes of the parent company are not documented as



directions to the company but rather as recommendations or proposals put to the board for their consideration, review and adoption, if considered in the best interests of the company.

The calibre of the persons acting as directors is important in that it should be such as to support a finding that the directors did exercise their discretion and would refuse to carry out any improper or unwise transactions.

At a minimum, at least four scheduled board meetings should be held annually to consider such matters as the quarterly management accounts and any non-resident directors should travel to Ireland to physically attend the meetings.

It is our experience, depending on the level of activity of the company, that in practice a number of unscheduled board meetings will be required to approve various matters and in such circumstances it will be necessary for the non resident directors to participate by telephone. This is permissible provided the articles provide for this and it is noted in the minutes that the meeting is being convened and chaired in Ireland.

It is essential that all bank accounts be in the name of the Company and in as far as is practical the signatories, or a majority of them, should be Irish. All instructions concerning the movement of funds should come from the directors in Ireland and such instructions should be documented in board minutes.

All statutory registers and minute books which are required by law to be kept in Ireland should be kept at the registered office of the Company. The provisions of the Memorandum & Articles of Association should be consistent with the Company's tax objectives in that they should facilitate management and control from Ireland. In as far as possible all books of account should also be kept in Ireland.

Ultimately the residence of a company for Irish tax purposes is a question of fact to be determined by the Revenue Commissioners; should the question ever arise, it will be necessary to demonstrate to the satisfaction of the Revenue Commissioners that the central management and control of the company is genuinely located in Ireland.

It is possible to obtain from the Revenue Commissioners a certificate of tax residency for a company in Ireland confirming that the company is registered in Ireland for tax purposes.

3.5.3 Requirement to carry on a trading activity

Ireland has two rates of corporation tax, a 25% rate and a 12.5% rate. In order for a 12.5% rate to apply, it is important that the income is taxable as income from a trade which is taxable under Schedule D Case I (Case I), and is not considered to be either passive income or income arising from a possession outside of the Irish state (i.e. a foreign trade) which would be taxable at a rate of 25%.

The question of whether a trade is being carried on or not is primarily a question of fact and consequently any determination in this regard will depend on the facts in each particular case. Trading status may be attributed to a company which is carrying on a business on a regular or



habitual basis with a view to making a profit. The manufacture and sale of goods and the buying and selling of goods will invariably constitute the carrying on of a trade. The provision of services for reward in the form of fees or commission will also amount to the carrying on of a trade.

In considering whether a particular transaction or operation amounts to a trade which would qualify for the 12.5% rate the Revenue Commissioners will have regard to the following factors:

- the commercial rationale for the proposal;
- whether any real economic value is added in Ireland; and
- whether there are employees or directors in Ireland with sufficient skill levels to indicate that the trade is actively being carried on by the company.

For the 12.5% rate to apply, the company must be regarded as carrying on a trade in Ireland, rather than a foreign trade. While there is no clear guidance on the level of activity required to qualify as a trade being carried on in Ireland, in principle it is only where no part of a trade is carried on within Ireland that the income would be characterised as income of a foreign trade.

Importantly, to the extent a company is managed and controlled in Ireland, it will not be considered to be undertaking a foreign trade. Accordingly, the management and control issue is absolutely critical; not only for achieving Irish tax residency but also in ensuring that the 12.5% rate of corporation tax applies.

3.5.4 Taxable income

A company's taxable trading income is usually based on the trading income as shown by financial statements prepared on the historical cost basis. Specific statutory adjustments are made to the accounting profits to arrive at the taxable profits including such items as non-allowable expenses and depreciation.

Trading losses are computed in the same manner as trading profits and specific rules determine how a trading loss can be utilised.

3.5.6 Taxable period

Corporation tax is chargeable in respect of the taxable profits of a company for an accounting period, up to a maximum of 12 months. An accounting period commences where a company;

- Commences to carry on a trade,
- Becomes resident in Ireland,
- Acquires its first source of income,
- Is being wound up.



An accounting period ends on the occasion of any of the following:

- On the expiration of 12 months from the beginning of the accounting period,
- On an accounting date of the company or if there is a period for which the company does not make up financial statements, at the end of that period,
- On the winding-up of the company
- On commencement or cessation of residence in Ireland.

3.5.7 Statutory Fiscal Filing Obligations

A company is required to file a corporation tax return for each accounting period showing the profits liable to tax, specifying each source of income and the amount arising from it. The return must also show particulars of such disposals and any capital gains or losses arising as well as charges on income deductible from the total profits. Details of the acquisition of assets are also to be provided for the purposes of tax legislation.

The Company's liability to corporation tax is the responsibility of the Company, however, in practice a professional taxation advisor is appointed to fulfil this requirement. Where a company defaults in submitting a return to the Inspector of Taxes an assessment may be raised.

3.5.8 Payment of Corporation Tax liability

A company is required to file its return of income (including audited accounts where applicable) within nine months of the end of the accounting period. If this date is after the 21st of the ninth month the filing date is brought forward to 21st of the ninth month or 23rd in the case of returns filed electronically (21/23 day rule).

3.5.9 Preliminary Corporation Tax

The total amount of preliminary tax to be paid must be equal to or greater than 90% of the company's final liability for the accounting period. Special provision is made for small companies; a small company is a company whose corporation tax liability in the preceding accounting period does not exceed €200,000. Such a company has the option of basing its preliminary tax on the corresponding corporation tax liability for the preceding accounting period.

New or start-up companies with a corporation tax liability of €200,000 or less for their first accounting period will not be required to pay preliminary tax in respect of that first accounting period and will instead be required to pay their final corporation tax liability for that accounting period at the same time as they are required to submit their corporation tax return, i.e. within nine months after the end of the accounting period, subject to the 21/23 day rule referred to above.

For companies with a tax liability not exceeding €200,000 (in their previous accounting period), preliminary tax is payable in one installment 31 days



before the end of the accounting period, subject to the 21/23 day rule referred to above.

Finance (No.2) Act 2008 provides for revised arrangements for the payment of preliminary tax by large companies, a large company is a company with a Corporation Tax liability exceeding €200,000 in their previous financial year.

The new arrangements provides for payment of preliminary tax by large companies in two installments:

- The first installment will be payable in the 6th month of the accounting period (i.e. 21st/23rd June for a company with a financial year end of 31st December) and the amount payable will be 50% of the corporation tax liability for the preceding accounting period or 45% of the corporation tax liability for the current accounting period;
- The second installment will be payable (as before) in the 11th month of the accounting period i.e. 21st/23rd November for a company with a financial year end of 31st December) and the amount payable will bring the total preliminary tax paid to 90% of the corporation tax liability for the current accounting period.

The revised arrangements apply generally where the accounting period is more than 7 months in length (for shorter accounting periods, preliminary tax of 90% of tax liability is payable in one installment as before)

In order to minimise the interest charges that would otherwise arise for large companies if their preliminary tax payments fell short of 90%, notional allocation of preliminary tax payments between group members for the purposes of assessing the adequacy of preliminary tax payments made by the group for interest charges purposes is now permissible. It is important to note, however, that for such aggregation to take place the claimant company must pay 100% of its Corporation Tax liability by its return filing date.

The balance of tax due is payable at the same time as the company is due to file its return i.e. within nine months of the end of the accounting period, subject to the 21/23 day rule referred to above.

3.5.10 Late submission of returns

If a company fails to submit a return on time, a surcharge will be imposed. The surcharge is 5% of the tax due (up to a maximum of €12,695) in the case of a return lodged within 2 months of the return filing date, and 10% of the tax due (up to a maximum of €63,485) where the return is made more than two months after the return filing date. In addition to the surcharge, there are restrictions on the use the company can make of certain reliefs and allowances in the event of the return not being lodged on time.

3.5.11 Tax audit

The Revenue Commissioners examine returns submitted in varying degrees of detail and make any enquiries they deem appropriate. With the introduction of self-assessment, tax audits have become a common feature of commercial life for companies.



3.6 VALUE ADDED TAX (VAT)

Value Added Tax (VAT) is based on the European System. VAT is chargeable on most supplies of goods and services within Ireland by a taxable person in the course or furtherance of any business carried on by him, and on goods imported into Ireland from outside the EU.

Taxable persons account for VAT on their outputs and they are allowed credit against this liability for tax borne on business purchases and other inputs as evidenced by correctly prepared VAT invoices; therefore, it is a tax ultimately borne by the final consumer.

VAT is also chargeable on the intra-EU acquisition of goods by VAT registered persons and on the intra-community acquisition of new means of transport such as motor vehicles, boats etc. by either a registered or unregistered person. The amount on which VAT is chargeable is the total consideration which the person supplying goods or services becomes entitled to receive.

Exports are zero-rated for VAT purposes except those to unregistered persons in the EU.

Companies that export 75% or more of their output can apply to the Revenue Commissioners for authorisation to purchase goods and services without any VAT charge. This reduces administration and the need to get a refund of VAT.

Taxable persons must be registered with the Revenue Commissioners for VAT purposes. This is required where the annual value of the goods supplied exceeds €75,000, the annual value of services exceeds €37,500 or the annual value of Intra - EU acquisitions exceeds €41,000.

Rates VAT rates range from 0 to 21% depending on the product or service, with most being charged at 21%. Certain activities are VAT exempt.

4. CONCLUSION

We trust that the foregoing will be of assistance for you as an outline guide to the annual statutory compliance requirements of an Irish registered company.

The foregoing is merely a guide and is not a substitute for professional legal, accountancy or taxation advice which should be obtained should you have any queries in relation to any aspect of the foregoing.

If you have any queries in relation to the content of this article please contact James Duggan or any member of our firm.