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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile is a very significant connecting factor. Where an individual is tax resident in Ireland ("**State**"), the addition of domicile as a connecting factor will mean that all of the individual's worldwide income and gains are subject to Irish tax, subject to any reliefs under existing double tax treaties.

The concept of habitual residence does not exist in Ireland and is not defined under Irish law.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

There is no statutory definition of domicile under Irish tax law, rather it is a legal concept. Pursuant to Irish law, every individual is born with a domicile of origin. It is possible for a person to lose their domicile of origin and acquire a domicile of choice or to lose their domicile of choice and revive their domicile of origin, but a person can never be without a domicile.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Under Irish tax law, a person's tax liability is determined by the concept of residence. A resident individual's worldwide income and gains are subject to income tax and Capital Gains Tax ("**CGT**") (save if they are Irish tax resident but non-Irish domiciled and being taxed on the remittance basis of taxation as outlined at question 3.2 below). As of 1 December 1999, Capital Acquisitions Tax ("**CAT**") is charged if either the beneficiary or the disponer is Irish resident or ordinarily resident on the date of the gift or inheritance.

1.4 If residence is relevant, how is it defined for taxation purposes?

In accordance with Irish tax law, a person will be regarded as Irish tax resident if they are:

- present in the State for a period of 183 days or more in the tax year (which is a calendar year); or
- present in the State for a period of 280 days or more in the current and previous tax year, subject to the provision that where a person is present here for 30 days or less, they will not be regarded as resident in that tax year.

The other important issue is that of ordinary residence. Under Irish legislation, an individual becomes ordinarily resident in Ireland for a tax year after he/she has been resident in the State for three consecutive tax years. An individual who has become so ordinarily resident in Ireland for a tax year shall not cease to be ordinarily resident until a year in which he/she has not been resident in the State for the previous three consecutive years.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Irish nationality is not relevant in determining an individual's liability to tax in Ireland.

1.6 If nationality is relevant, how is it defined for taxation purposes?

See question 1.5.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Outside of domicile and residency, if assets are regarded as Irish situate under Irish tax legislation (for example, Irish real property), an Irish tax charge will apply.

1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?

Tax residence in Ireland is determined by the number of days present in the State in the calendar year; however, where the individual is "unavoidably present" in Ireland on that day due only to *force majeure* circumstances, they will not be regarded as being present in Ireland for tax residence purposes. The Irish Revenue Commissioners have confirmed that where an individual's departure from Ireland is prevented due to COVID-19, the *force majeure* principle will be applied for the purpose of establishing that individual's Irish tax residency. An individual's departure from Ireland will be considered prevented due to COVID-19 if:

- the individual, a family member or partner that they are travelling with has COVID-19;

- the individual has been quarantining or self-isolating in a particular location due to suspected COVID-19; or
- the individual is self-isolating, be it self-imposed or based on professional/public health advice.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

CAT is a tax imposed on gifts and inheritances ("**Benefits**"), payable by the beneficiary. The current rate of CAT is 33%, subject to tax-free thresholds that provide monetary value lifetime limits. The thresholds vary depending on the relationship between the person making the gift/inheritance and the beneficiary. All gifts/inheritances between spouses or civil partners are exempt from CAT. In the case of gifts/inheritances from parents to children (or to the minor child of a deceased child), the Group A lifetime threshold is now €335,000 and applies to gift/inheritances taken on or after 9 October 2019. This includes adopted children, stepchildren and some foster children. The Group B threshold applies to gifts or inheritances from grandparents, brothers, sisters, aunts or uncles) and is currently €32,500; and the Group C threshold applies to anybody else not covered by Group A or B and is currently €16,250 (Schedule 2 CATCA 2003).

CAT is charged on Benefits if:

(i) either the donor or the beneficiary is Irish tax resident or ordinarily resident; or

(ii) the subject of the gift or inheritance is an Irish situate asset.

A foreign domiciled person is not considered resident or ordinarily resident in Ireland for CAT purposes unless the person was both:

- resident for the five consecutive years of assessment preceding the year of assessment in which the Benefit is received; and
- on that date is either resident or ordinarily resident in Ireland.

There are no wealth taxes in Ireland, with the exception of a domicile levy discussed further at question 2.3.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

An individual's tax residence, ordinary residence and domicile status (as referred to in section 1 above) needs to be considered when determining the extent of the individual's exposure to Irish income tax.

Income tax

(i) Individual is resident and domiciled:
- The individual is subject to Irish income tax on his/her worldwide income as it arises.

(ii) Individual is resident and non-domiciled:
- The individual is subject to Irish tax on foreign income under the remittance basis of taxation.
- The remittance basis of taxation involves liability for Irish income tax on:
  - Irish-source income;
  - foreign employment income relating to Irish duties, irrespective of where paid; and
  - foreign income remitted to Ireland.

(iii) Individual is non-resident but ordinarily resident and domiciled:
- Notwithstanding non-residency, the individual is subject to Irish income tax on worldwide income with the exception of income derived from:
  - a trade or profession, no part of which is carried on in Ireland;
  - an office or employment, all of the duties of which are carried on outside Ireland; and
  - other foreign income that is less than €3,810 *per annum*.

(iv) Individual is non-resident and non-ordinarily resident (domicile irrelevant):
- The individual is subject to Irish tax on Irish-source income and income from a trade, profession or employment to the extent it is exercised in Ireland.

CGT

CGT is chargeable at 33% on any person who is resident or ordinarily resident in the State for a year of assessment in relation to chargeable gains accruing on the disposal of chargeable assets made during that year.

In the case of an individual who is resident or ordinarily resident but not domiciled in the State, gains realised on disposals of assets situated outside the State are liable to tax only to the extent that they are remitted to Ireland. Such gains are not chargeable to tax until so remitted.

A person who is neither resident nor ordinarily resident in the State is liable to CGT only in respect of gains on disposals of:

(1) land and buildings in the State;

(2) minerals in Ireland including related rights and exploration rights;

(3) unquoted shares deriving their value, or the greater part of their value, from such assets as outlined above; and

(4) assets in the State used for the purposes of a business carried on in the State.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

(i) **Pay Related Social Insurance ("PRSI")**

PRSI is Ireland's equivalent of social insurance or social security. The amount of PRSI paid by an individual depends on that person's earnings and the type of work they do.

(ii) **Universal Social Charge ("USC")**

USC is payable on gross income, including notional pay, after any relief for certain capital allowances but before pension contributions. Currently, annual income not exceeding €13,000 is exempt from USC.

(iii) **Deposit Interest Retention Tax ("DIRT")**

DIRT has been applied at a rate of 33% since January 2020, having previously been applied at a rate of 35%, and is deducted at source by deposit takers from interest paid or credited on deposits of Irish residents.

(iv) **Stamp Duty**

Stamp duty is charged at 1% on the first €1 million in respect of residential property transactions and 2% on the excess. Residential property for stamp duty purposes means a dwellinghouse with a maximum curtilage of 1 acre (0.405 hectares). The duty is paid by the purchaser. The stamp duty charge for all non-residential property transactions is 7.5% in respect of all conveyances, transfers and leases executed on or after 9 October 2019.

(v) **Domicile Levy**

Irish-domiciled individuals whose worldwide income in the year exceeds €1 million, whose Irish property in the year is greater than €5 million and whose liability to Irish income tax for the year is less than €200,000, are subject to a levy of €200,000 in respect of that tax year. A credit is available against the levy for any Irish income tax paid in that year.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Value Added Tax ("**VAT**") is a tax levied on most supplies made by businesses in Ireland. Generally, the supplier will account for the VAT. The standard rate of VAT is 23%.

Some supplies benefit from one of the reduced rates of VAT, which include 13.5%, 9%, 4.8% and 0%. The 13.5% reduced rate applies to supplies including those in the tourism industry, those of building services, certain fuels and certain supplies of immovable property.

The 9% rate applies in respect of certain goods and services, primarily in respect of printed and electronic news media, e-books, and subscriptions to digital news content and the provision of sports facilities. The 4.8% rate applies to supplies of livestock. The 0% rate applies to intra-Community supplies of goods to VAT-registered persons in EU Member States and supplies of clothing and footwear appropriate to children under 11 years of age. Some goods and services are exempt from VAT. These relate principally to financial, insurance, medical and educational activities.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Income

S.806 Taxes Consolidation Act 1997 ("**TCA 1997**") contains anti-avoidance legislation in relation to the transfer of assets abroad and specifically imposes a tax charge on Irish resident or ordinarily resident persons who have "power to enjoy" income arising to an offshore structure or who have received a "capital sum" from such offshore structure.

In addition, s.807A TCA 1997 taxes certain income from an offshore vehicle, which is payable to Irish resident or ordinarily resident beneficiaries.

A motive defence provides a carve out from the charging provision where tax avoidance is not the purpose, or one of the purposes, for which the offshore structure was established, assets were transferred offshore or any associated operations were effected. The motive defence is restricted where the non-resident person is resident in an EU/EEA Member State. In that case, it is necessary to show that genuine economic activities are carried on in the EU/EEA Member State in order to avail of a carve out from the charging provisions.

Gains

S.590 TCA 1997 operates to apportion gains within a non-resident close company to Irish resident or ordinarily resident and domiciled individuals who are participators in the company (shareholders).

S.579 TCA 1997, which is known as "the settlor charge", operates to attribute gains in an offshore trust to an Irish resident or ordinarily resident settlor who is deemed to have an interest in the settlement, irrespective of their domicile. S.579A TCA 1997 applies to tax capital payments from an offshore trust to Irish resident or ordinarily resident and domiciled beneficiaries on a proportionate basis.

There is no longer a motive defence available in respect of s.590, s.579A and s.590 TCA 1997 and the only exception to attribution of gains of offshore trusts is where genuine economic activities are carried on by the settlement in an EU/EEA Member State.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

S.811 and s.811A TCA 1997 are general anti-avoidance provisions that are designed to counteract certain transactions that have little or no commercial merit but are orchestrated in such a way so as to result in a tax deduction or to reduce tax liability. The general anti-avoidance rules contained in s.811 and s.811A TCA 1997 apply to transactions commencing on or before 23 October 2014.

The Irish Supreme Court delivered its first judgment on the interpretation of the general anti-avoidance provision in December 2011. The Supreme Court held that when determining whether a transaction, which complies with the strict letter of tax code, may nevertheless be disallowed as a tax avoidance transaction, the Revenue Commissioners should have regard to the form of the transaction, its substance, whether the transaction was undertaken for the realisation of profit in the course of business, and whether it was undertaken primarily for purposes other than tax.

S.811 and s.811A TCA 1997 have now been replaced by s.811C and s.811D TCA 1997 in relation to transactions commencing after 23 October 2014.

S.811C TCA 1997 (similar to s.811 TCA 1997) provides that where a person enters a transaction and it would be reasonable to consider, based on a number of specific factors, that the transaction is a tax avoidance transaction, that person shall not be entitled to benefit from any tax advantage arising from that transaction.

S.811D TCA 1997 provides that where a person enters into a tax avoidance transaction and claims the benefit of a tax advantage, contrary to s.811C TCA 1997, an additional payment in the form of a surcharge will be due and payable.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

A Mandatory Disclosure regime operates in Ireland that places an obligation on promoters, marketers and users of 'disclosable transactions' to notify the Irish Revenue Commissioners about the transaction. A disclosable transaction is a transaction that meets the following three conditions and is not specifically excluded:

- it may result in a person receiving a tax advantage;
- the tax advantage is, or might be expected to be, one of the main benefits of the scheme; and
- the scheme matches any one of the specified descriptions set out in the legislation.

The disclosure should include details of the scheme and of any person who will use it. The disclosure must also give enough information to allow the Irish Revenue Commissioners to understand how the scheme works.

In itself, the disclosure of a scheme under the regime will not affect its tax treatment. That said, the scheme will most likely be assessed by Revenue to see if it fits the description of an aggressive scheme and subsequent actions may be taken accordingly.

The Mandatory Disclosure rules impact on certain tax transactions relating to income tax, corporation tax, CGT, the USC, VAT, CAT, stamp duty and excise duties. It does not encompass customs duties.

The EU mandatory disclosure regime ("**DAC6**") came into operation on 1 July 2020. DAC6 introduces a new EU mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning. These are referred to as reportable cross-border arrangements. Lookback reporting in relation to reportable cross-border arrangements (the first step of which was implemented between 25 June 2018 and 30 June 2020) commenced on 28 February 2021, and periodic reporting on marketable arrangements commenced on 30 April 2021.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

CAT applies to gifts and inheritances if either the disponer or the beneficiary is resident or ordinarily resident in the State or where the subject matter of the gift or inheritance comprises of Irish situate property. Non-domiciled individuals are not treated as Irish tax resident until they have been tax resident for **five consecutive** tax years prior to the year of assessment in which the gift/inheritance is received.

Therefore, a gift or inheritance should be made before a disponer (or a beneficiary) becomes resident in the State where the beneficiary (or the disponer) is not Irish resident or ordinarily resident and the gift/inheritance does not comprise of Irish situate assets.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Where an individual is Irish resident and domiciled they will be liable to Irish income tax and CGT on their worldwide income and gains. Therefore, where assets comprise of gains, those assets should be realised before the individual becomes tax resident in Ireland, subject to relevant advice in the country of current tax residence and the jurisdiction in which the asset is situated.

Separately, where an individual is non-domiciled and becomes resident in Ireland, liability to income tax and CGT is limited to Irish-source income and Irish gains and other worldwide income and gains to the extent remitted to Ireland (the remittance basis of taxation). Accordingly, an individual prior to taking up residence in Ireland could establish separate bank accounts to which accumulated income and gains arising prior to taking up residence would be lodged separately to any future income and gains arising after taking up residence.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

In short, there are no other taxes that would benefit from pre-entry estate planning save for those outlined above at questions 3.1 and 3.2.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

Irish tax will arise to non-resident individuals on Irish-source income and income from a trade, profession or employment to the extent it is exercised in Ireland and in respect of gains on disposals of:

(1) land and buildings in the State;
(2) minerals in Ireland including related rights and exploration rights;
(3) unquoted shares deriving their value, or the greater part of their value, from such assets as outlined above; and
(4) assets in the State used for the purposes of a business carried on in the State.

Non-resident individuals receiving dividends from Irish companies can claim an exemption from dividend withholding tax where they are resident in another EU Member State or in a State that Ireland has a double taxation agreement with.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

No tax should arise on the transfer of private assets into Ireland from other EU Member States. VAT may arise on such transfers where they are carried out for business purposes.

The importation of assets to Ireland from outside the EU may give rise to VAT, customs and/or excise duties.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Non-resident individuals who are also non-Irish domiciled should consider acquiring residential property through a non-Irish corporate structure to shelter the residential property from the charge to CAT.

The residential property will be subject to stamp duty on acquisition (please refer to question 2.3) and CGT on the gain arising on a disposal (please refer to question 2.2). Local property tax is charged on an annual basis on the market value of all residential properties.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Previously, certain companies incorporated in Ireland were not treated as Irish tax resident if they were managed and controlled outside of Ireland. From 1 January 2015, all companies that are incorporated in Ireland are automatically tax resident here (unless otherwise determined under a bilateral tax treaty that supersedes our domestic law). Any existing companies with such tax structures in place will be allowed to retain these until the end of 2020. Companies incorporated outside of Ireland may still be treated as tax resident if managed and controlled in Ireland.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Companies in Ireland pay corporation tax on their profits, which includes both income and chargeable gains.

There are three rates of corporation tax:

- 12.5% for trading income unless the income is from an excepted trade, in which case the rate is 25%;
- 25% for non-trading income (e.g. investment income); and
- 33% for capital gains (e.g. sale of shares).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

Irish tax legislation provides that a company that is not resident in Ireland is only subject to corporation tax if it carries on a trade in Ireland through a branch or agency. If it does carry on a trade in Ireland then it is subject to Irish corporation tax on:

(1) any trading income arising from the branch or agency;
(2) any other Irish-source income;
(3) any income from property or rights used by, or held by, or for, the branch or agency; and
(4) chargeable gains arising from assets that are situated in Ireland and that are used in or for the purposes of the trade carried on through the branch or agency.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Ireland currently has signed 74 double taxation treaties, of which 73 are in effect. These treaties generally alleviate double tax that may arise under domestic legislation by either exempting the income from tax in one of the countries, or allowing the tax payable in one country (which has primary taxing rights) to be used as a credit against the tax payable in the other country (which has secondary taxing rights).

In cases where no treaty is applicable, Irish legislation provides for unilateral relief. Broadly speaking, the same main principles apply to both treaty relief and unilateral relief.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The double taxation agreements entered into by Ireland generally follow the OECD model but may depart in some respect from the OECD model language, particularly in the case of older agreements.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Ireland has entered into double taxation agreements with the UK ("**UK Convention**") and the USA ("**US Convention**") in the context of inheritance tax.

Under the provisions of the UK Convention, the country where the property is not situated gives a credit for tax paid in the country where the property is situated. Credit is only given when the same property is taxed in both countries, on the same event.

The US Convention applies to CAT in Ireland and US federal estate tax in the US. It does not extend to gifts, nor does it extend to separate estate death taxes imposed by the individual US States on their residents. The double taxation relief provided by the US Convention is two-fold and applies an exemption method of double taxation relief in certain cases and the credit relief method in other cases.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The UK Convention largely follows the OECD model for gifts and estates, although the US Convention predates the OECD model.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

Irish law provides that the domicile of the deceased determines the succession of movable property, whereas the succession of immovable property is determined by the law of the country where the property is situated.

The EU Regulation on Succession Law (known as "**Brussels IV**") came into force on 17 August 2015 and removes the distinction between movables and immovables in determining the forum for succession matters, instead concentrating on where the deceased was habitually resident at their date of death. Brussels IV allows a testator to choose the law of his/her nationality to apply in the succession of their estates and in these circumstances the signatories of Brussels IV would be obligated to comply with this. Although Ireland has opted out of Brussels IV, the regulation will still affect the relationship between Ireland and the Brussels IV signatories.

Under Irish law, in order for a Will to be valid it must be in writing and must be signed at the foot or end of the Will (it is sufficient that, if the signature is so placed at, after, following, under, beside, or opposite to the end of the Will, it is apparent on the face of the Will that the testator intended to give effect by the signature to the writing signed as his/her Will) by the testator/testatrix, or by some person in his/her presence and by his/her direction, who must sign or acknowledge his/her signature in the presence of at least two witnesses at the same time, whilst each witness must also sign in the presence of the testator/testatrix.

Ireland has given effect, under s.102 Succession Act 1965 ("**SA 1965**"), to the Hague Convention on the Conflict of Laws relating to the form of testamentary disposition.

In addition, a testamentary disposition shall be valid if its form complies with the internal law of:

- the place of the testator's nationality at the time the Will was made;
- the place where the testator made the Will;
- the place in which the testator had his/her domicile, either at the time when he/she made the disposition or at the time of his/her death;
- the place of the testator's habitual residence, either at the time he/she made the disposition or at the time of his/her death; and
- the place where the assets are situated (in the case of real property).

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

See questions 7.1 and 8.3.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

A widow or widower is entitled, by virtue of a legal right, to a share in the estate of his/her deceased spouse ("**LRS**"). If a testator dies testate, leaving a spouse only, then that spouse is legally entitled to one half of the estate (s.111(1) SA 1965). If a testator dies testate, leaving a spouse and children, the spouse has a legal right to one third of the estate (s.111(2) SA 1965).

Thus, a surviving spouse is provided for regardless of the terms of the deceased spouse's Will, provided he/she makes the necessary election between provision made under the Will and the LRS within the strict statutory time limits (s.115 SA 1965).

If no provision is made by Will, the surviving spouse is automatically entitled to the LRS.

On intestacy, a surviving spouse is entitled to all of the estate if there are no children and two-thirds of the estate if there are children (s.67 SA 1965).

Children may apply for greater provision from a parent's estate if disappointed with the provision made under the Will (usually only on the death of the survivor of both parents) if they can prove that the parent failed in his/her moral duty to make proper provision for the applicant, whether during lifetime or by Will (s.117 SA 1965). See question 8.3 for further details.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

Yes, trusts are recognised in Ireland under common law.

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

Income tax, CGT, CAT and stamp duty can all impinge on trusts in certain circumstances.

Income Tax

The residence of the trustees determines the extent of their liability to income tax. If all trustees are resident in Ireland, they will be assessed on the worldwide trust income from all sources. Equally, if none of the trustees are resident in Ireland, they may only be taxed on Irish-source income and this will apply whether the trust was established under Irish or foreign law. Undistributed trust income may also be subject to a surcharge of 20%.

CGT

Irish CGT will only be imposed on trust property if the trustees are resident in Ireland, or if they are not Irish resident, where they dispose of a specified asset (primarily land/minerals in the State, or shares deriving their value from land and minerals in the State).

Irish resident professional trustees shall not be considered Irish resident for CGT purposes where the settlor was non-Irish domiciled and non-Irish resident and ordinarily resident at the time of settling the trust.

Trustees are liable to CGT in respect of any gains they make on actual disposal of assets in the course of the administration of the trust. Trustees may also be liable to CGT when they are deemed to have disposed of assets and on gains arising on appointments from the trust.

CAT

If trust property is appointed to a beneficiary who becomes beneficially entitled in possession to the property, CAT will be payable by the beneficiary if the beneficiary is resident or ordinarily resident in Ireland or if the property is situated in Ireland.

However, if the trust was established pre-1 December 1999 by a non-Irish domiciled individual, who continues to remain non-Irish domiciled (or if deceased, was not Irish domiciled at date of death), and all value was contributed to the trust pre-1 December 1999, then, provided there are no Irish *situs* assets within the trust, Irish resident or ordinarily resident beneficiaries may not be subject to CAT on distributions from the trust.

Discretionary Trust Tax ("DTT")

DTT applies to discretionary trusts at an initial levy of 6% and an annual levy of 1%. The initial levy applies to discretionary trusts on the latest of the date on which the property becomes subject to the discretionary trust, the date of death of the settlor or the date of the youngest principal object attaining the age of 21. It should be noted that the initial levy of 6% and annual levy of 1% cannot both arise in the same 12-month period and that a rebate of half the initial levy is available if all assets are appointed from the trust within a period of five years.

Stamp Duty

Stamp duty will also apply on the transfer of assets into a trust (save where the transfer of assets is to a trust created under a Will). The relevant stamp duty rates are referred to at question 2.3 above. There is no stamp duty on an appointment from a trust.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Irish succession law does not provide for forced heirship; however, the SA 1965 provides that a surviving spouse is entitled to the LRS of a testator's estate, where the deceased was Irish-domiciled, or where the assets involved are real property located in Ireland. The provisions only apply to assets held within the deceased's estate and not to assets held within trusts.

Irish legislation also provides that a child of a testator may apply to court for provision to be made from the testator's estate. In making such an order, the court must be satisfied that the testator failed to provide for the child as a prudent and just parent would have done.

The Land and Conveyancing Law Reform Act 2009 ("**LCLRA 2009**") introduced provision for the variation of trusts in Ireland. A trustee, beneficiary, or any other person concerned ("**Appropriate Person**") may bring an application to court to vary, revoke or resettle a trust or vary, enlarge, add to, or restrict the powers of trustees under the trust ("**Arrangement**") (s.24 LCLRA 2009), for example to extend the trust period or include non-marital children as beneficiaries. Such an Arrangement can be made for the benefit of a person with a vested or contingent interest if it has been assented to in writing by each person who is beneficially interested and is capable of assenting. An Arrangement can also benefit a person who lacks capacity to assent to the variation, such as unborns, those whose identity, existence or whereabouts cannot be established, or a person with a contingent interest.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Foundations established elsewhere are recognised in Ireland but Irish law does not prescribe any particular form for a foundation.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Foundations may be liable to DTT, as outlined at question 8.2 above.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

This is not applicable.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Same-sex marriage is permitted under the Marriage Act 2015 and civil partnerships of same-sex couples are recognised under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ("**2010 Act**"); however, following the commencement of the Marriage Act 2015 on 16 November 2015, civil partnerships can no longer be registered.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Irish law does not recognise matrimonial property regimes.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre-/post-nuptial agreements/marriage contracts are not recognised under Irish law. However, cohabitants' agreements are permitted under the 2010 Act. Couples may enter into a cohabitants' agreement to provide for financial matters during the relationship or on termination of the relationship, whether by death or otherwise. While pre- (and post-) nuptial agreements are not legally binding, it is likely that principles laid down in relatively recent UK case law (*Radmacher v Granatino*) in favour of nuptial agreements would be of persuasive authority in Ireland.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

Irish courts are under a statutory and constitutional obligation to ensure proper provision is made for the spouse and any dependent children. When making ancillary orders on divorce, the court will have regard to the terms of any separation agreement previously entered into by the parties and is obliged to consider the changed circumstances (if any) of the spouses since their separation.

The factors taken into account when making ancillary orders are set out in s.20(2) of the Family Law (Divorce) Act 1996 and include as follows:

- actual and potential financial resources;
- financial needs, obligations and responsibilities;
- standard of living; and
- age of spouses and length of marriage.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Citizens of the EU, EEA and Switzerland, do not require a visa to enter Ireland. Family members of EU citizens holding "Residence cards of a family member of a Union citizen" do not require a visa.

Possession of a visa does not guarantee entry into Ireland and all persons can be subject to immigration controls upon arrival. Non-EEA nationals, whether they require a visa or not, must be in a position to satisfy immigration officers that they can be granted leave to land and in particular must have sufficient funds to support themselves during their visit and that they have a work permit if required.

EEA citizens and certain family members have the right to stay in Ireland. However, if staying more than three months, it is necessary to:

- be engaged in economic activity (employed or self-employed);
- have sufficient resources and health insurance;
- be enrolled as a student or vocational trainee; or
- be a family member of a Union citizen in one of the previous categories.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

The Immigrant Investor Programme permits non-EEA nationals who commit to an approved investment in Ireland to secure residency status for them and their immediate family members. Initial residence permission will be granted for a defined period with the possibility of renewal. There are a number of different investment options available (with minimum investment requirements ranging from €500,000 to €2 million), including: REIT investment (€2 million); approved fund investment (€1 million); direct enterprise investment (€1 million); and charitable endowment (€500,000) invested in a project of public benefit in the arts, sports, health, cultural or educational fields (reduced to €400,000 per investor where a group of five or more investors combine their philanthropic endowment).

The Start-up Entrepreneur Programme permits non-EEA nationals with an innovative business idea for a high potential start-up and who have funding of €50,000 to acquire residency for the purposes of developing their business. (Usually, they receive residence permission for five years.)

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

The position on attaining Irish citizenship through naturalisation is that an individual requires a "**reckonable residence**" in Ireland. A reckonable residence equated to a period of five years, which can be derived from a period of four years within the last eight, with one year of "continuous residence" in the **year prior** to the citizenship application. There is a policy within the Department of Justice and Equality (the adjudicators of citizenship within Ireland) that allows for approximately six weeks of absence from Ireland during the year of continuous residence, so as to facilitate normal work trips and holidays. This was colloquially referred to as the "six-week rule".

A recent decision of the High Court caused controversy when it fundamentally altered this position. The High Court ruled that the literal interpretation of the phrase "*one year's continuous residence*" as prescribed by s.15 of the Irish Nationality and Citizenship Act 1956, must be "*unbroken, uninterrupted, connected throughout in space and time*".

Further, the ruling also noted that the Department of Justice and Equality had no legal basis for the operation of the six-week rule, which brought into question the legal validity of certificates of naturalisation already granted to persons who did not meet this strict interpretation of continuous residence.

The decision was widely criticised and, on appeal to the Court of Appeal, was ultimately overturned.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

See question 1.5 above.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

See question 10.2 above.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The Foreign Account Tax Compliance Act ("**FATCA**") is designed to prevent tax evasion through the improvement of the exchange of information between tax authorities regarding US citizens and residents who hold assets offshore. Ireland has entered into an intergovernmental agreement ("**Model I IGA**") with the US in relation to the implementation of FATCA ("**Agreement**"), which provides for the automatic reporting and exchange of information on an annual basis in relation to accounts held in Irish financial institutions by US persons, and the reciprocal exchange of information regarding US financial accounts held by Irish residents.

The Common Reporting Standard ("**CRS**") (of which Ireland was an early adopter) is an initiative of the OECD and is similar to FATCA in that it involves the mutual exchange of information between tax authorities. CRS involves the collection of information for tax purposes, commencing with high-value accounts by the tax authority of the jurisdiction where an account is held, and passing that information to the tax authority in the jurisdiction where the holder of the account is resident. The legal basis for the exchange of information is set in existing double taxation agreements.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

S.896A TCA 1997 requires any person making a settlement, who has reason to believe that at the time of making the settlement, the settlor was resident or ordinarily resident in the State and the trustees were not resident in the State, to deliver a statement to the appropriate inspector specifying the name and address of both the settlor and the trustees and the date the settlement was created.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Register of Charities

The Charities Regulatory Authority provides for a Register of Charities in respect of charities, trusts, foundations and companies limited by guarantee with charitable status.

Register of Companies

A corporate entity must maintain a register of its beneficial owners since 15 November 2016 in accordance with the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016, which gave effect to Directive (EU) 2015/849, the Fourth Anti-Money Laundering Directive ("**4AMLD**"). The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 ("**2019 Regulations**") came into force on 22 March 2019 and operated to give effect to the 4AMLD as amended by Directive (EU) 2018/843 (the "**5AMLD**"). The obligation on such corporate and other legal entities to gather information and to establish and maintain a beneficial ownership register ("**Beneficial Ownership Register**") remains. However, the 2019 Regulations also require that, with effect from 22 June 2019, such entities must also file their beneficial ownership details on a central beneficial ownership register ("**Central Register**").

Who is in scope?

The Irish corporates and other legal entities that were in scope under 4AMLD are the entities falling within the scope of the 2019 Regulations and are called "relevant entities". Irish companies continue to be excluded from the scope of the 2019 Regulations if they are listed on a regulated market that is subject to disclosure requirements consistent with the law of the EU or are already subject to equivalent international standards that ensure transparency of ownership information. Irish incorporated subsidiaries of listed companies are not exempt.

The definition of "beneficial owner" remains unchanged. It captures any natural person who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted, and includes an individual who ultimately owns or controls a legal entity through direct or indirect ownership of more than 25% of the shares or voting or ownership interest in that entity. Furthermore, the obligation on a relevant entity to list its "senior managing officials" on its Beneficial Ownership Register where it cannot identify any beneficial owners remains.

Central Register

A Statutory Instrument to establish the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies ("**RBO**") was signed into law in April 2019. This legislation provides for the appointment of a Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies. Filing of beneficial ownership data can only be made online through a portal on the RBO website at http://www.rbo.gov.ie. There are no paper forms and no filing fees involved.

Access

In terms of access to information filed in the Central Register, the public may access the Central Register but access will be restricted to certain of the content only and it should be noted that PPS numbers and residential addresses will not be made available to the public. Certain authorities such as Garda Siochana, the Revenue, the Criminal Assets Bureau or a competent authority engaged in the prevention of money laundering will have open access to the Central Register. These authorities may exchange this information with other EU competent authorities.

Register of Trusts

The European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 (the "**2021 Regulations**") set out new obligations that represent significant developments for trusts, their ultimate beneficial owners and their trustees.

The 2021 Regulations transpose 5AMLD, which came into force on 10 January 2020.

Who is in scope?

The 2021 Regulations, apply to all express trusts (whose trustees are resident in Ireland or where the trust is otherwise administered in the State), irrespective of whether or not the trust generates a tax effect and obligate designated persons to seek and obtain information from beneficial owners of trusts and to establish beneficial ownership local registers.

Under the 2021 Regulations, the definition of a beneficial owner in the context of trusts is wider than in the context of corporates where there is a 25% threshold. It includes the settlor, trustees, the protector(s) (if any), beneficiaries (who are natural persons) and any other natural person exercising ultimate control over the trust.

Central Register

Pursuant to the 2021 Regulations, trustees should now keep and maintain a beneficial ownership register. Each local register must hold the information collected pertaining to the relevant trust's beneficial owner(s). There is an obligation on the trustees to keep such information up to date. Filing of beneficial ownership data can only be made online by trustees, their agents, advisors or employees through the "Trust Register" portal on the Revenue Online Service ("**ROS**").

A relevant trust must keep its Beneficial Ownership Register up to date and the information aligned with that filed in the Central Register. Trustees, beneficial owners and various other individuals may have duties to notify the Registrar of changes to relevant particulars.

Access

Under the 2021 Regulations, the information gathered on local registers is required to be made available to Revenue and State competent authorities on request. A State competent authority may disclose the information in a beneficial ownership register to a corresponding competent authority in another EU Member State.

John Gill is a Partner and Head of the Private Client Department at Matheson. He advises individuals and families on investment vehicles and appropriate trust structures for estate planning and asset protection purposes and advises a number of domestic high-net-worth individuals on a wide range of taxation issues and domiciled and non-domiciled individuals with Irish tax concerns, including relocating to and establishing tax residence in Ireland. He advises executors, trustees and beneficiaries on all legal and tax issues arising in Wills and the administration of estates and trusts, both domestic and offshore. He has significant experience in estate and trust disputes advising trustees, executors and claimants. In particular, John has experience in advising on Will challenges and Will disputes under s.117 of the SA 1965 and acting for clients in the mediation of such disputes. John also has considerable experience in charity issues, including charity formation and governance. He also advises on capacity issues, including powers of attorney and wards of court, and on the establishment of tax-efficient trusts for incapacitated individuals.

Experience Highlights

John is a Solicitor and an Associate of the Irish Tax Institute (AITI Chartered Tax Advisor (CTA)), a member of the Association of Contentious Trust and Probate Specialists, a member of the International Bar Association, and a past Chair and current member of STEP (Society of Trust and Estate Practitioners). He has also lectured to members of The Law Society, STEP and the Irish Taxation Institute on a wide range of estate planning issues and is a regular contributor to articles and journals on these matters. He is co-author of the Irish chapter of *International Succession* (5th edition 2015) by Oxford University Press, the Irish chapter of the *European Lawyer Reference Series on Private Client Tax* (3rd edition 2015) and has been an author of *ICLG – Private Client* since 2012.

Accolades

- John Gill "is a pleasure to work with; he possesses a good combination of technical and softer skills". "When dealing with sensitive estate planning engagements, John's emotional intelligence is a distinct advantage", *Chambers HNW Guide 2020*.
- John is listed in the *Citywealth Leaders List 2019* and *2020*.
- John is ranked as a leading lawyer by the international legal directory *Who's Who Legal 2019* and *2020*.
- John "is my go to guy for Irish private client tax and legal advice, he is technically reliable and gives sound commercial advice", *Citywealth Leaders List 2019*.
- John is listed in the *2019 Private Client Global Elite*.
- John "has the technical skills but also the ability to articulate technical topics in a way that clients can easily understand and relate to", *Chambers HNW Guide 2018*.

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Accolades

- Lydia is ranked as a leading lawyer by the international legal directory *Who's Who Legal 2020*.
- Lydia is ranked as "up and coming" by *Chambers HNW Guide 2020*.
- Lydia is co-author of the Irish chapter of *International Trust Laws* (2020) and the Irish chapter of *ADR and Trusts: An International Guide to Arbitration and Mediation of Trust Disputes* (2015) by Spiramus Press.
- Lydia is a Chartered Tax Advisor with the Irish Tax Institute, a member of STEP and holds the STEP Advanced PGDip in Wealth Planning.

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