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The International Comparative Legal Guide to:

# Private Client 2019

**8th Edition**

A practical cross-border insight into private client work

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## General Chapters:

| | | |
|---|---|---|
| 1 | **Tech Entrepreneurs: Is the UK Still an Attractive Place to Establish Your Business?** – Isobel Morton, Macfarlanes LLP | 1 |
| 2 | **Is Privacy a Chimera?** – Helen Ratcliffe & Carolyn O'Sullivan, BDB Pitmans LLP | 6 |
| 3 | **Pre-Immigration Planning Considerations for the HNW Client – Think Before You Leap** – Joshua S. Rubenstein, Katten Muchin Rosenman LLP | 12 |
| 4 | **Essential Points to Consider when Drafting an International Pre-Marital Agreement** – Elizabeth Hicks & Alexie Bonavia, Bryan Cave Leighton Paisner LLP | 18 |
| 5 | **Navigating Complex US Immigration Laws: US Visas & Taxation** – Mark E. Haranzo, Holland & Knight LLP & Reaz H. Jafri, Withersworldwide | 23 |
| 6 | **Canada's New Tax on Split Income Regime is Here to Stay** – Robert Santia & Rachel L. Blumenfeld, Aird & Berlis LLP | 28 |
| 7 | **The Limits to Transparency** – Emily Deane TEP, Society of Trust and Estate Practitioners (STEP) | 32 |

## Country Question and Answer Chapters:

| | | | |
|---|---|---|---|
| 8 | **Andorra** | Cases & Lacambra: Jose María Alfin & Marc Urgell | 35 |
| 9 | **Austria** | DORDA Rechtsanwälte GmbH: Paul Doralt & Katharina Binder | 42 |
| 10 | **Bahamas** | Higgs & Johnson: Heather L. Thompson & Kamala M. Richardson | 49 |
| 11 | **Belgium** | NijsDraye \| Attorneys at Law: Alain Nijs & Joris Draye | 55 |
| 12 | **Brazil** | Utumi Advogados: Ana Claudia Akie Utumi | 64 |
| 13 | **British Virgin Islands** | Maples and Calder: Ray Davern & Alex Way | 71 |
| 14 | **Canada** | Miller Thomson LLP: Nathalie Marchand & Rahul Sharma | 76 |
| 15 | **Cayman Islands** | Maples and Calder: Morven McMillan | 85 |
| 16 | **China** | MWE China Law Offices: Jacqueline Z. Cai & Robbie H. R. Chen | 90 |
| 17 | **Cyprus** | Elias Neocleous & Co LLC: Elias Neocleous & Elina Kollatou | 96 |
| 18 | **Denmark** | Rovsing & Gammeljord: Mette Sheraz Rovsing & Troels Rovsing Koch | 103 |
| 19 | **France** | Tirard, Naudin Société d'avocats: Maryse Naudin | 109 |
| 20 | **Germany** | P+P Pöllath + Partners: Dr. Andreas Richter & Dr. Katharina Hemmen | 118 |
| 21 | **Gibraltar** | Hassans International Law Firm: Peter Montegriffo QC & Louise Lugaro | 126 |
| 22 | **Greece** | Zepos & Yannopoulos: Costas Kallideris & Anna Paraskeva | 134 |
| 23 | **Guernsey** | Collas Crill: Joanne Seal & Angela Calnan | 140 |
| 24 | **Hong Kong** | Jonathan Mok Legal in Association with Charles Russell Speechlys LLP: Jonathan Mok & Jessica Leung | 146 |
| 25 | **India** | AZB & Partners: Anand Shah & Khushboo Damakia | 153 |
| 26 | **Ireland** | Matheson: John Gill & Lydia McCormack | 161 |
| 27 | **Italy** | L&P – Ludovici Piccone & Partners: Paolo Ludovici & Andrea Gallizioli | 169 |
| 28 | **Japan** | Mori Hamada & Matsumoto: Atsushi Oishi & Makoto Sakai | 177 |
| 29 | **Jersey** | Collas Crill: Kellyann Ozouf & Dionne Gilbert | 184 |
| 30 | **Liechtenstein** | Ospelt & Partner Attorneys at Law Ltd.: Alexander Ospelt & Sascha Brunner | 190 |

**Continued Overleaf** →

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## Country Question and Answer Chapters:


| | | | |
|---|---|---|---|
| 31 | **Malta** | WH Partners: Ramona Azzopardi & Sonia Brahmi | 198 |
| 32 | **Netherlands** | Arcagna B.V.: Nathalie Idsinga & Arnold van der Smeede | 204 |
| 33 | **Nigeria** | Miyetti Law: Dr. Jennifer Douglas-Abubakar & Maryam Muhammad | 210 |
| 34 | **Poland** | Ozog Tomczykowski: Paweł Tomczykowski & Katarzyna Karpiuk | 216 |
| 35 | **Portugal** | SRS Advogados: José Pedroso de Melo | 222 |
| 36 | **Singapore** | WongPartnership LLP: Sim Bock Eng & Tan Shao Tong | 229 |
| 37 | **Spain** | Cases & Lacambra: Ernesto Lacambra & Marc Urgell | 235 |
| 38 | **Sweden** | Lebenberg Advokatbyrå AB: Torgny Lebenberg & Peder Lundgren | 241 |
| 39 | **Switzerland** | Walder Wyss Ltd: Philippe Pulfer & Olivier Sigg | 247 |
| 40 | **Turks and Caicos Islands** | Griffiths & Partners / Coriats Trust Company Limited: David Stewart & Conrad Griffiths QC | 257 |
| 41 | **United Kingdom** | Macfarlanes LLP: Jon Conder & Robin Vos | 262 |
| 42 | **USA** | Cadwalader, Wickersham & Taft LLP: William Schaaf & Sasha Grinberg | 278 |


## FOREWORD

Welcome to the 2019 edition of The International Comparative Legal Guide to Private Client which I am delighted to introduce this year. The Guide covers a comprehensive and diverse range of articles that would pique the interest of any domestic or international practice client adviser. The publication is designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

The Guide is divided into two sections and the first section contains seven general chapters. Each topical chapter is written by a different firm which will be most helpful for advisers with international clients.

The second section contains insightful country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 35 jurisdictions.

As an overview, the Guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work. The articles are provided by some of the most authoritative and respected advisers in the private client industry and I trust that you will find them just as valuable.

**George Hodgson, CEO, STEP (Society of Trust & Estate Practitioners)**

# Ireland

John Gill

Lydia McCormack

Matheson


## 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 (the "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 law, it is a legal concept. 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.

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

In Ireland, 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 non-Irish-domiciled and being taxed on the remittance basis of taxation as outlined at question 3.2 below). Since 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?

Under Irish legislation, 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 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 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 does not trigger any tax liability 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?

If assets are regarded as Irish situate under Irish tax legislation (for example, Irish real property), the relevant Irish tax liability will apply.

## 2 General Taxation Regime

### 2.1 What gift or estate 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 which provide monetary value lifetime limits. The thresholds vary depending on the degree of relation 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 applies and is currently €320,000. This includes adopted children, step children 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).



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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 date of the Benefit; and
- on that date is either resident or ordinarily resident in Ireland.

### 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; or
- an office or employment all of the duties of which are carried on outside Ireland; and
- other foreign income which 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, income not exceeding €13,000 is exempt from USC.

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

DIRT, at the current rate of 35%, is deducted at source by deposit takers from interest paid or credited on deposits of Irish residents. It was announced in Budget 2017 that the DIRT rate would decrease by 2% each year from 2018 to 2020 until it reaches 33%.

(iv) **Stamp Duty**

Stamp duty is charged at 1% on the first €1,000,000 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. Stamp duty is charged at 6% in respect of all non-residential property transactions.

(v) **Domicile Levy**

Irish-domiciled individuals whose worldwide income in the year exceeds €1m, whose Irish property in the year is greater than €5m 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?

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 Zero 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-



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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 persons resident or domiciled out of the State.

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 apportions gains in an offshore trust to Irish resident or ordinarily resident and domiciled beneficiaries. There is no longer a motive defence available in respect of the purpose of the establishment of the offshore settlement 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.

Where the non-resident person is resident in an EU/EEA Member State, it is necessary to show that genuine economic activities are carried on in the EU/EEA Member State in order to fall outside the charging provisions of s.579, s.579A and s.590 TCA 1997.

### 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 which are designed to counteract certain transactions which 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 which 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, Capital Gains Tax, the Universal Social Charge, Value Added Tax, Capital Acquisitions Tax, Stamp Duties and Excise Duties. It does not encompass Customs Duties.

## 3 Pre-entry Tax Planning

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

Irish 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. (See question 1.1 above.)

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 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 gains, those assets should be realised before the individual becomes tax resident in Ireland. 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




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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?

See questions 3.1 and 3.2 above. In short, there are no other taxes that would benefit from pre-entry estate planning.

## 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 in your jurisdiction?

As per question 2.2 above, an individual who is resident in Ireland but not Irish-domiciled is subject to Irish tax on foreign income and capital gains under the remittance basis of taxation.

### 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?

Stamp duty is applicable; please refer to question 2.3.

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 which 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 which 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 which are situated in Ireland and which 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 concluded 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 income tax and CGT treaties generally follow the OECD model but may depart in some respect from the OECD model language, particularly in the case of older treaties.

### 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 CAT.

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 USA. 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.



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### 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 but 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 situate.

The new 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 by the testator/testatrix in the presence of at least two witnesses who sign in the presence of each other and 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 domicile, either at the time when he made the disposition or at the time of his death;
- the place of the testator's habitual residence, either at the time he made the disposition or at the time of his 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 as of legal right to a share in the estate of his or her deceased spouse (the "LRS"). If a testator dies 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 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 or 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 or 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).

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.

**CAT**

If trust property is appointed to a beneficiary who is beneficially entitled to possession, CAT will be payable by the beneficiary.

**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.

**Stamp Duty**

Stamp duty will also apply on the transfer of assets into a trust. 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 substantive law does not provide for forced heirship; however, the SA 1965 provides that a surviving spouse is entitled to a legal



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right share 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 (an "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 (an "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 are liable to DTT (see question 8.2 above).

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

Not applicable – see above.

## 9 Matrimonial Issues

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

Civil partnerships were recognised under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the "2010 Act"). The marriage equality referendum was passed in Ireland in May 2015 and the Marriage Act 2015 came into law in November 2015, permitting same-sex marriage.

### 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 the recent UK case law (*Radmacher v Granatino*) in favour of nuptial agreements would be persuasive in Ireland.

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

The 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 certain listed countries, including the EEA Member States (all EU Member States, Iceland, Liechtenstein and Norway) 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



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from €500,000 to €2m), including: mixed investments (currently suspended); immigrant investor bonds (currently suspended); REIT investment (€2m); approved fund investment (€1m); enterprise investment (€1m); and charitable endowment (€500,000).

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 Minister for Justice holds discretionary power to grant naturalisation as an Irish citizen, which is granted on a number of criteria, including good character, residence in the State and intention to continue residing in the State.

In principle, the residence requirement is three years if married to or in a civil partnership with an Irish citizen, and five years otherwise. Time spent seeking asylum will not be counted nor will time spent as an illegal immigrant. Time spent studying in the State by a national of a non-EEA state will not count.

### 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 (the "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 is 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 Fourth Anti-Money Laundering Directive ("4AMLD"). The Registrar of Companies will have responsibility for the establishment and maintenance of the central register of beneficial ownership of companies and industrial and provident societies following the full implementation of 4AMLD.

**Register of Trusts**

Under 4AMLD, taxable trusts are required to disclose beneficial ownership structures in a mandatory register, but this will not be publicly accessible. 4AMLD was required to be transposed by all Member States by 26 June 2017; however, the central register has not yet been established.

Under the Fifth Anti-Money Laundering Directive ("5AMLD"), all trusts are required to disclose beneficial ownership structures in a mandatory register, not only trusts with tax consequences. Any trust which has a "business relationship" (regarded as including the use of professional firm within the EU) or carries out an occasional transaction above certain thresholds, will be required to be disclosed on a register which will be accessible by parties with a legitimate interest. Where a trust holds shares in a non-EU company, details of ownership of that company will be required to be public. 5AMLD was adopted by the Council of the EU on 14 May 2018 and came into force on 9 July 2018 with an 18-month transposition period.





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**Expertise**

John is a Partner in the Private Client Department of Matheson. He advises on a wide range of legal and tax issues arising in estate planning.

He advises on investment vehicles and appropriate trust structures for estate planning and asset protection purposes, as well as advising non-domiciled individuals with Irish tax concerns, including relocating to and establishing tax residence in Ireland. John is head of Relocation Services at Matheson, which provides an integrated offering for executives and their families relocating to Ireland, to address the full range of taxation, immigration, and practical issues that arise and to make that transition seamless.

**Experience Highlights**

John is a Solicitor and an Associate of the Irish Tax Institute (AITI Chartered Tax Advisor) and a member of the Association of Contentious Trust and Probate Specialists and a member of STEP (Society of Trust and Estate Practitioners).

He is the author of the Irish chapter of International Succession (4th edition) by Oxford University Press and also the Irish chapters of the *European Lawyer Reference Series* on Private Client Tax (3rd edition 2016) and *The International Comparative Legal Guide to: Private Client 2012–2019*.

**Accolades**

John is ranked as a leading lawyer by the international legal directory *Who's Who Legal* 2017.

He is listed on the Citywealth Leaders List 2017.

Matheson has been ranked Top 10 Most Innovative Law Firms in Europe for New Legal Products including Relocation Services — *Financial Times Innovative Lawyers Report 2017*.

**Education**

University College Dublin, Michael Smurfit Graduate Business School – H. Dip in Business.

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**Expertise**

Lydia is a Senior Associate in the Private Client Domestic and International Department of Matheson.

Lydia advises on personal estate and tax planning, wills, trusts and international estates. She has particular experience in dealing with cross-border estates, succession planning, trusts and philanthropy.

**Experience Highlights**

Lydia is a Solicitor and an Associate of the Irish Taxation Institute (AITI Chartered Tax Advisor) and is Chairperson of Women in Tax in Ireland (WiTii). She is also a committee member of STEP (Society of Trust and Estate Practitioners).

**Accolades**

Lydia lectures on the STEP/Law Society Diploma in Trust and Estate Planning and presented at the NYSBA Dublin Regional Meeting 2017 on US-Irish tax and succession issues. She has also presented widely on the implications of the Assisted Decision Making (Capacity) Act 2015.

She is co-author of the Irish chapter of ADR and Trusts: An International Guide to Arbitration and Mediation of Trust Disputes (2015) by Spiramus Press and the Irish chapter of International Trust Laws (2014) by Jordan Publishing.

**Education**

University College Dublin – BA (History and Politics).

Dublin Institute of Technology – PGDip Law.

STEP Diploma of Trust and Estate Planning.

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Matheson

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