The landscape of international corporate taxation is undeniably changing, with a host of forces driving this change. In September 2014, the OECD released the first of three deliverables as part of its wide-ranging project aimed at tackling base erosion and profit shifting (BEPS), which has sharpened the focus on national tax legislative changes.

In October 2014, as part of Budget 2015, the Irish Government published the Road Map for Ireland’s Tax Competitiveness. This document, which sets out the government’s international tax strategy for Ireland, re-emphasised the importance of the ‘Three Rs’:

• The corporate tax rate of 12.5% will not be changed, it is here to stay;
• Regime – a number of positive changes to Ireland’s intellectual property (IP) regime, R&D tax credit regime and Special Assignee Relief Programme were included in Finance Act 2014; and
• Reputation – changes to the corporate tax residence rules affecting the Double Irish structure were enacted in Finance Act 2014.

As set out above, the 12.5% rate is settled policy and it is not ruling-based. The regime and reputation elements are discussed in further detail below.

‘Double Irish’ structure

In May 2014, the Irish Department of Finance launched a BEPS consultation process to seek opinion on a number of issues, including the appropriateness of Ireland’s corporation tax residence rules in the 21st century. International and media focus on the use of the Double Irish structure by many US multinationals has intensified during the previous 12 months, with most of the focus on Ireland’s tax regime rather than the exemptions included in the US controlled foreign company (CFC) regime (subpart F rules) that facilitated the effectiveness of the structure.

The consultation process, which allowed interested parties to provide input to the Department of Finance, continued during summer 2014. Therefore, there was no great surprise when as part of his Budget 2015 speech, the Minister for Finance announced changes to the corporate tax residence rules. Briefly, the amendments provide that a company incorporated in Ireland on or after January 1 2015, will be treated as resident in Ireland for tax purposes. There is an exemption to this rule whereby a company that is regarded as resident in a country with which Ireland has a double taxation agreement (DTA) under the terms of that DTA will be considered as resident in that other country. Grandfathering provisions have been introduced for existing structures such that companies incorporated by December 31 2014 may continue to be treated as non-Irish-resident until December 31 2020.

To allay fears that there would be a stockpile of companies incorporated pre-December 31 2014 to allow additional companies to benefit from the grandfathering period, Finance Act 2014 contains a provision such that the grandfathering would not apply where there is a change in ownership of the Irish-incorporated company and a major change in the nature of conduct of the company’s activities.

Looking to the future: Life after the ‘Double Irish’

Competitive tax regimes and tax-planning strategies have been increasingly in the spotlight over the past 18 months or so, and the international tax landscape is changing. Louise Kelly, tax partner at Deloitte, looks at recent tax changes and assesses how Ireland is positioned after the abolition of the infamous ‘Double Irish’. 
business. This means: a major change in the nature or conduct of a trade; commencing to carry on a new trade; or a major change relating to the acquisition of property or rights over property.

Given the significant grandfathering period, companies are provided with sufficient time to consider alternative IP structures and regimes before restructuring. However, the impact of the BEPS project also needs to be taken into account. Action Point 8 relates to the transfer pricing of intangibles, and proposes changes to Chapter VI of the OECD’s Transfer Pricing Guidelines to seek to ensure that companies holding intellectual property with little or no substance or functions relating to the IP will not be entitled to all of the IP related profits.

Although a number of alternative IP structures remain, taking account of Action 8 and an overall focus on aligning profits with substance, we expect that groups will increasingly avail of onshore IP regimes/IP box-type regimes in the future. Ireland is well positioned in that regard, given its existing attractive onshore IP regime and Knowledge Development Box to be introduced later this year.

Irish onshore IP regime

Ireland’s onshore IP regime (known as section 291A relief) provides for relief in the form of capital allowances against trading income for companies that have incurred capital expenditure on the acquisition of qualifying IP or rights to the qualifying IP. In addition, tax relief should be available for interest on borrowings used to fund the IP acquisition. In an encouraging move, the definition of IP, while previously considered quite broad and covering most forms of IP, including patents, trademarks, copyrights, ‘know-how’ and goodwill, has been extended to include customer lists (otherwise than when acquired as part of the transfer of a business as a going concern).

Before Finance Act 2014, the minimum ETR was 2.5% taking account the combined capital allowances and related interest expense with the excess carried forward to future periods. This cap has been removed completely, allowing 100% of IP-related trading profits to be offset in any one accounting period, reducing the potential effective tax rate (ETR) to zero.

The low ETR, along with opportunities for a tax-free exit are very attractive. Some of the perceived challenges relating to the regime can generally be managed and we expect further improvements to the regime in future years.

As companies evolve from the Double Irish structure, we anticipate that given high values attributed to the offshore IP, many companies will seek to bring the IP onshore to avail of the onshore IP regime, which is supported by the significant presence that many multinational companies (MNCs) already have in Ireland.

Knowledge Development Box

In his Budget 2015 speech, the Minister for Finance announced the introduction of a new Knowledge Development Box (KDB) which would aim to “be best-in-class and at a low, competitive and sustainable tax rate”. At that point, it was flagged that the KDB would be developed to fall within the parameters of acceptable IP regimes to be agreed upon by the OECD and European Union (EU). There have been no details on the proposed rate, but there is speculation of a reduced rate of between 5% and 6.25%.

Nine IP regimes in other European countries are the subject of a review under the EU’s Business Code of Conduct Group for possibly representing harmful tax practices.

As part of the BEPS Action 5 work which is focused on IP regimes, a modified nexus approach was proposed by the OECD in February 2015, following a statement by Germany and the UK on a similar approach in November 2014. The modified nexus approach seeks to only allow a taxpayer to benefit from an IP regime to the extent that it can show that it itself incurred expenditures, such as R&D, which gave rise to the IP income. Therefore, broadly the regime would not be available to acquired IP or where the R&D activities take place elsewhere in the organisation. In our view, the nexus approach could disadvantage smaller countries, such as Ireland, given their ability to support the large-scale R&D activities required to benefit from a nexus-based IP regime.

A 12-week consultation process in respect of the KDB was launched by the Irish Department of Finance on January 14 2015, which seeks views on a number of matters including the type of IP to be included in the regime, the qualifying income and how to calculate the qualifying expenditures. It assumes that the modified nexus approach will be the agreed outcome of the BEPS Action 5 project.

The Department of Finance will take on board the feedback from the consultation process, together with the final outcome of the EU and OECD projects to shape the KDB. The KDB will be attractive to organisations conducting their R&D activities in Ireland (supported by the R&D tax credit regime, discussed below). However, where R&D occurs elsewhere or for acquired IP, we expect that alternative regimes, such as the existing onshore IP regime, would be the preferred route.

R&D tax credit regime

Having a competitive R&D tax credit regime is a very important part of Ireland’s international tax strategy. In addition, it is very
important to support the KDB, the benefit of which is likely to be dependent on where the R&D activities take place.

Before January 1 2015, the R&D tax credit regime offered a credit of 25% on qualifying expenditure over and above similar expenditure incurred in the base year of 2003, as well as the normal corporation tax deduction available for the R&D expenditure. While it did not pose an issue for any new entrants to Ireland, the incremental base year test had previously acted as a barrier to companies who do not have the relevant details to ascertain the base year R&D expenditure or whose activities in the years since 2003 have not surpassed the R&D spend threshold in 2003. The removal of that barrier by Finance Act 2014 is very welcome.

To support companies in attracting key R&D talent, there are opportunities for companies to use their R&D tax credits to remunerate key R&D employees in a very tax-efficient manner.

The availability of grant aid for certain R&D projects, in addition to the R&D tax credit, has led to a significant increase in the number of R&D centres in Ireland in recent years.

**Special Assignee Relief Programme**

Personal income tax rates can be an important consideration when making a decision on where to locate activities. The increase in personal tax rates over recent years has not been helpful in that regard. However, the enhancement of the existing Special Assignee Relief Programme (SARP) is a welcome move, particularly at a time when the focus of the OECD’s BEPS project is aligning substance with taxing rights and key people functions. The Irish SARP regime was introduced to provide a more attractive income tax regime for foreign employees assigned to Ireland. Favourable amendments to the regime include the removal of the €500,000 ($570,000) salary threshold.

**Ireland’s FDI policy**

Tax is only one of many attractive features of Ireland’s proposition for inward investment. The Irish economy has recently received the following recognition, from various sources:

- Third out of 43 countries in the European region in terms of economic freedom;
- The best country in the world for business;
- The best country in Western Europe in which to invest;
- First in the world for inward investment by quality and value;
- First in the world for attitude to globalisation;
- First in the world for FDI and technology transfer; and
- First in Europe for number of investment jobs per capita.

Ireland has achieved this success by positioning itself strategically over the past number of years, and continues to focus on positioning itself in the following areas:

- *Access to markets* – Ireland’s proximity to continental Europe and membership of the EU makes it an ideal location for gaining access to all 28 EU member states, as well as other countries in the EMEA region;
- *Availability of skilled labour* – The IMD World Competitiveness Yearbook 2014 recently named Ireland as the first in the world for skilled labour that is readily available and in the past the country has been recognised by the European Commission for producing the most highly employable graduates in Europe. Its long association with MNCs has led to the creation of a significant pool of skilled talent available to existing and new investors;

**Cost base** – While Ireland’s economy was one of the hardest hit in the global financial crisis, overall it has allowed Ireland’s cost base to improve across a range of metrics over the past four or five years; and

**Business environment** – In addition to that mentioned above in respect of advantages of doing business in Ireland, in terms of trading across borders, Ireland ranks as fifth in the world.

However, in a rapidly changing international environment, Ireland must continue to adapt to be recognised as a key location for international investment. This has been documented in the Government’s *Policy Statement on Foreign Direct Investment in Ireland*, published in July 2014, and the *Road Map for Ireland’s Tax Competitiveness*, which was published as part of Budget 2015. They highlight, among other things, a commitment to be regarded as an attractive location for inward investment with a renewed focus on the four crucial areas: talent; technology; clusters/sectors; and providing great places to live and work.

**Compelling investment offering**

Recent tax changes represent a very positive direction for Irish tax policy for MNCs. They are attractive for Irish-listed companies and US and non-US multinationals that are considering Ireland as a location for IP-based operations and should provide a credible alternative to the Double Irish structure.

As the BEPS project evolves and companies focus on restructur- ing to align profits with substance, Ireland has plenty to offer. Ireland’s low corporate tax rate, together with attractive IP and R&D tax credit regimes, offer an attractive tax environment. This tax environment is supported by the availability of talent, increased cost competitiveness, ease of doing business and Ireland’s unquestionable track record in attracting FDI, meaning Ireland retains a very compelling investment offering.

Louise Kelly is a tax partner specialising in corporate and international tax. Louise led Deloitte’s Irish desk in New York during 2011 and 2012. She advises Irish and multinational companies in relation to tax-effective structures for both inbound and outbound transactions and has been involved in advising on cross-border group restructures and developing IP management and tax-aligned supply chain strategies for multinationals. She has a particular focus on companies in the life sciences and technology industries.

Louise holds a BSc in accounting from UCC and is an associate of both the Institute of Chartered Accountants in Ireland and the Irish Taxation Institute. She is a regular author for the *Irish Tax Review* and *BNA* publications. Louise has given presentations on international tax matters at various seminars and conferences in Ireland and abroad.
Sino-Irish relations: China outbound investment guide

Caroline Devlin, partner at Arthur Cox, explains the features of the Irish tax and legal system which make it an attractive investment location, and looks specifically at Chinese outbound investment in this regard.

Ireland is a member of the EU, the OECD and is the only English speaking member of the Eurozone. Ireland has a well-established legal system and tax structure. It also has an extensive list of double taxation treaties, including a comprehensive double taxation treaty with China. Like the US and the UK, Ireland is a common law jurisdiction and its legal concepts will be recognised by most investors. Ireland is an onshore jurisdiction and top class professional and administration services are available locally. It is also a flexible jurisdiction in terms of company law, regulation and tax.

What support is there for Chinese outbound investment (COI)?
There are certain government departments – including the Industrial Development Authority (IDA) and Enterprise Ireland (EI) which have a representative office in most locations. These departments work closely with businesses looking to invest in and out of Ireland. They can introduce a business to Ireland and in certain circumstances incentive grants can be available, particularly for certain types of operations in parts of Ireland that can offer employment. Ireland has a long history of inward investment from many jurisdictions, and has a well-developed system to facilitate investors.

What are the areas that COI is taking place in?
Inward investment into Ireland spans various different types of industries and interests. From China, there has been a significant interest in the area of aircraft leasing, and many of the major Chinese banks have established aircraft leasing platforms in Ireland. Ireland has also seen significant investment by pharmaceutical companies, and other types of companies looking for a base as a holding company. Many of the top international software companies have located some or all of their intellectual property (IP) in Ireland. The financial services sector is well-developed in Ireland and most of the major international financial services entities have a presence in Ireland – for example in the area of regulated funds, insurance or securitisation. This is particularly attractive due to the EU passporting system which enables a regulated entity in Ireland to provide the same services throughout the EU without the need to become regulated again. For example, entities have looked at acquiring a licenced bank in Ireland and using this as a platform to access the EU.

What are the tax highlights of Ireland?
Ireland has a very attractive tax system for business. Some of the highlights are:
- **Trading tax rate 12.5%**: Companies pay corporation tax at 12.5% on their trading profits. Many international companies use an Irish company to base their Irish, European or indeed worldwide operations to avail of this low rate of tax, while still being an onshore company with tax treaty access. Activities such as leasing, trading in licences/IP, banking, and manufacturing would all be covered by this attractive rate.
- **Holding company structures**: Using an Irish company as an overall holding company either for an overall structure or as a holding company for a mini-group within a structure. This should facilitate grouping profits and passing them upwards in a tax efficient manner. Further details are outlined below.
- **Intellectual property and R&D tax reliefs**: Companies get various tax breaks on IP in Ireland. These include: capital allowances (similar to depreciation) on the acquisition of certain IP; this would include the acquisition of or the licence to use:
  - patents and registered designs;
  - trademarks, brands, brand names, domain names and services marks;
  - copyright or related rights;
  - know-how, generally related to manufacturing or processing, industrial, commercial or scientific experience whether protected or not;
  - goodwill to the extent that it is directly attributable to specified intangible assets;
  - computer software or a right to deal in or use such software;
  - applications for grant or registration of patents, trademarks, copyrights and so on; and
  - certain other rights.

The tax write-off is granted as a capital allowance and the write-off is available in line with the depreciation or amortisation charge for accounting purposes. Alternatively, a company can elect to take the write-off against its taxable income over a 15 year period. The capital allowances that are available must be used or offset against profits generated from exploiting the IP itself (which includes profits from the sale of goods or services that derive the greater part of their value from the IP). If the allowance cannot be used up in one year, it can be carried forward.

In addition, where a company incurs R&D expense, in addition to having this as a deduction against taxable profits in the normal way, an increased tax credit is available, which has the effect of meaning that incurring R&D expense will trigger a deduction for more than double the amount actually spent against profits.

Finally, the use of the 12.5% tax rate, allowances for the acquisition of IP and the generous R&D allowances combine to make Ireland an attractive location to place IP. All of these allowances are available before any structuring is done to enhance the effective rate. A popular structure that has been used in Ireland is the ‘Double Irish’ structure. Since January 1 2015, the original form of Double Irish is no longer used. However companies will always seek
to structure their business in the most tax efficient way. In addition, the Irish Department of Finance introduced a new knowledge box system of relief in the budget announcement made in 2014. Details of the relief will be published as soon as consultations with businesses and advisors are completed. The announcements from the Government confirmed the commitment of the Irish government to maintaining and increasing the tax efficiency of conducting research in Ireland.

**What are the common investment structures used in Ireland?**

**Tax efficient holding company structures**

Private holding companies set up in Ireland provide tax efficient mechanisms for holding shares in subsidiary companies, and EU subsidiaries in particular. Not only do such companies benefit from certain tax exemptions but the Irish company law regime offers great flexibility. Many private companies and family holding vehicles have chosen Ireland as the base of their European or intermediate holding companies. Advantages for holding companies in Ireland include dividends being payable without withholding tax to countries with which Ireland has a double taxation agreement, certain capital gains tax exemptions on share disposals, a lack of CFC legislation, no thin capitalisation rules and relief from stamp duty on share transfers within 90% groups.

**Irish trading companies**

Regular Irish trading companies subject to tax at 12.5% with full access to Ireland double tax treaties (more than 70) have proven to be a very popular vehicle for investment. These are often used as the company of choice for Chinese aircraft leasing platforms.

**Special purpose vehicles**

Special purpose vehicles (SPVs) for structured finance transactions, including bond issues, financings for international groups, synthetic and cash flow CDOs [collateralised debt obligations], asset-backed commercial paper programmes, securitisations and a host of other financing transactions, are common in Ireland and are designed to minimise tax leakage and maximise return for investors. These transactions have made Ireland a global hub for financial services and enable Ireland to offer maximum benefits to international companies and investors in Asia.

**Funds**

Ireland is a leading onshore location for global funds. There are approximately €70 billion in net assets in funds domiciled in Ireland. Ireland offers a highly regulated funds environment and requires independent custody and administration arrangements for all its funds. The Irish funds regime provides for both UCITS and non-UCITS funds. Ireland has been the fastest growing UCITS funds domicile and UCITS funds account for almost 80% of Irish domiciled funds. In addition to being subject to a legal and regulatory framework that is tailor-made for the funds industry, there are a number of beneficial tax provisions for funds domiciled in Ireland. These include there being no Irish tax levied on regulated funds and also no annual subscription tax for funds, which marks Ireland out from other jurisdictions. Certain Irish funds are also particularly attractive for use in investing in a variety of investments, including in particular Class A shares in China.

**What about incentives for individuals?**

Ireland has recently introduced an Immigrant Investor Programme which is open to non-EEA nationals and their families who commit to an approved investment in Ireland. It has proven already to be of particular interest to high net worth Chinese families (and in some cases has facilitated their children’s education in Irish schools and universities). Approved participants in the Programme and their immediate family members will be granted rights of residence in Ireland which will allow them to enter Ireland on multi-entry visas and to remain here for a defined period but with the possibility of ongoing renewal.

Ireland taxes individuals based on the source of the income and gains and the residence and domicile of the individual. Irish sourced income and gains are generally subject to tax in Ireland. However while Irish resident and domiciled individuals would generally be subject to tax in Ireland on their worldwide income and gains, for individuals coming to Ireland for a period, the tax system is quite efficient. In particular – where an individual is resident in Ireland but not domiciled – they will only be subject to tax in Ireland on their Irish income.
sourced income and gains and only on their foreign income and
gains if remitted to Ireland – that is, the remittance basis. If the
individual is not resident or domiciled in Ireland – they will only be
liable to tax in Ireland on Irish source income and gains.

Double tax treaties can also reduce any of the taxes mentioned
above.

How easy is it to set up in Ireland?
It is easy to establish in Ireland. A company can be set up in about
one working week. If regulatory approval is needed, this would
take longer, as an application to the appropriate regulator would be
necessary. However, it should be noted that unless the company is
to engage in a regulated activity – such as banking or insurance –
there is no regulation required simply to set up a company.

An Irish company should have two directors, who should be
individuals, a company secretary, and a registered office in Ireland.
It is recommended that some advice is taken to ensure that the
most tax efficient structure is selected – such as the identity of
shareholders, and the location of directors.

Irish private companies operate on a relatively informal manner.
Their business is done through the board of directors and then typ-
ically the day-to-day operations are delegated to manage-
ment.

In the case of inward investment into Ireland, where a business
requires clarification from the Irish governmental bodies on any
particular matter – such as a tax confirmation – it is usually gener-
ally quite easy to arrange a meeting with the Irish Revenue who are
pleased to understand and assist new operations in Ireland.

How can I extract profits?
Profits can be extracted from an Irish company in a number of
ways. These include:

- Dividends – note there is no withholding tax on dividends paid
to a Chinese resident shareholder. Dividend payments are not a
deductible expense for an Irish company.

- Interest – if the company was funded by loan, profits can be
extracted by way of interest payment. There is no withholding
on interest paid to a Chinese lender. Interest should be a
deductible expense in general where the borrowings were
incurred for the purpose of the trade of the company. There are
no thin capitalisation rules in Ireland, but in certain cases the
interest will not be a deductible expense.

- Fees – an Irish company might in certain circumstances pay a fee
for services rendered to a group company.

- Where an SPV is used and is formed under a particular tax
regime (Section 110), this company can issue profit dependant
debt – which is like equity in terms of subordination and being
related to profits, but is technically debt.

- Shares in an Irish company can be sold and typically a non-Irish
shareholder will not have a liability to capital gains tax on a sale.

- Ireland has more than 70 tax treaties, and in general this means
that profits can be extracted to persons in those territories in a
tax efficient manner with no withholding.

What is the regulatory regime like in Ireland?
As an EU country, Ireland’s regulatory system emanates mainly
from EU law as enacted in Ireland. In implementing EU law in
Ireland, traditionally, Ireland has endorsed a ‘light touch’ regula-

tyre regime. Since its inception in 2003, the Irish Financial Regulator

has regulated on a principles basis. Principles-based regulation
involves the establishment by regulators of the basic principles that
a firm is compelled to follow. The approach involves management
internally supervising adherence to these standards and confirming
compliance with these principles to the national regulator. Firms
are subject to less direct intervention than under a rules-based
approach and this is why the approach is perceived as ‘light-touch’
regulation. Such a system is reliant on an effective corporate gov-

erance structure and a relationship of trust between the regulator
and firm. However, the Irish Financial Regulator responded to the
financial crisis by changing the rules governing regulation and
moving from a ‘light touch’ approach to stricter regulatory rules.

What legal protections does Ireland offer?
Ireland is a common law jurisdiction which originates from the
English legal system. As Ireland is a member of the EU, disputes
involving European law may be referred to the European Court of
First Instance or the European Court of Justice.

Where parties use a law other than Irish law in their dealings,
this will generally be respected in Ireland, provided there is some
nexus to the law chosen. Furthermore, judgments granted with
Ireland can generally be enforced in another EU jurisdiction with
minimal additional court intervention required. Disputes in
Ireland can be brought before the Irish courts, arbitration or gen-

eral mediation discussions. Judgments made in other jurisdictions
– including outside the EU – are also usually enforceable in
Ireland. Ireland has an excellent commercial court system that
deals efficiently and speedily with commercial and especially IP dis-

putes and, as a result, Irish law is often selected where possible, as
disputes can be brought to a conclusion before the Commercial
Court within a matter of months. The Irish system respects the
rights of nationals and non-nationals equally.

Continued popularity
In conclusion, as an English speaking, EU, common law country,
with interesting benefits for investors, Ireland continues to be a
popular destination for investment. The favourable tax system,
geographical location and availability of genuine good bargains
make Ireland a much sought after jurisdiction both for investment
and as a base to access both the EU and the US.

Caroline Devlin
Partner
Co-chair, tax and head of China group
Arthur Cox
Tel: +353 1 6180585
Email: caroline.devlin@arthurcox.com

Caroline Devlin is the co-chair of the Arthur Cox tax group, and the head of the
China group. She advises multinational companies on investing in Ireland
including structuring their operations in the most legal and tax efficient manner
possible. She has extensive experience in mergers and acquisitions, and struc-
tured finance products.
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Contact Caroline Devlin, Partner and Head of China Group, on
+353 1 618 0585
caroline.devlin@arthurcox.com
www.arthurcox.com