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Ireland
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Matheson

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IRELAND

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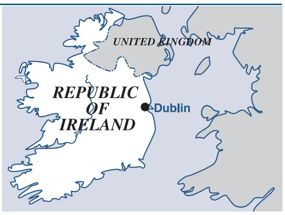

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1. LEGAL SYSTEM

1.1 Legal System and Judicial Order

The judicial system in Ireland is established by the Constitution, the principal courts being the district courts and circuit courts (with limited jurisdiction), the High Court (with unlimited jurisdiction in civil and criminal matters), the Court of Appeal (with appellate jurisdiction) and the Supreme Court (which usually exercises final appellate jurisdiction only). The judiciary is independent of the legislature and the executive.

Ireland is a member state of the EU and the United Nations. The Irish legal system is similar in many respects to that of the UK and the US. Irish law is based upon common law, statute and the Constitution of Ireland. The EU also represents an important source of Irish law and decisions of the Court of Justice of the European Union (CJEU) exercise significant influence over Irish law.

Following Brexit, Ireland is the only EU common law jurisdiction and this makes Ireland an attractive jurisdiction in which to establish operations and litigate international commercial disputes. Together with other factors, such as the ease of doing business in Ireland, this makes Ireland one of the best destinations for foreign direct investment.

2. RESTRICTIONS TO FOREIGN INVESTMENTS

2.1 Approval of Foreign Investments

The FDI Screening Regulation

Currently, Ireland has no foreign investment screening regime but the government has signalled its intention to introduce one with the inclusion of the Investment Screening Bill on recent legislative programmes. This development takes place against the backdrop of the EU Investment Screening Regulation (Regulation (EU) 2019/452, the "FDI Screening Regulation") becoming effective in October 2020. The FDI Screening Regulation sets out rules which will enable scrutiny of investment ventures pursued within the EU by third countries (non-EU members), with a view to maintaining public order and security.

Individual member states retain discretion as to whether they implement a screening system but any such system must then meet basic criteria concerning confidentiality, transparency and the application of review timeframes. Ireland has taken its first steps in this direction by establishing an "FDI Screening Unit" within the Department of Enterprise, Trade and Employment and has conducted a public consultation on prospective investment screening legislation.

The Investment Screening Bill

The Department is also currently finalising draft legislation for the possible introduction of a new foreign investment or FDI screening regime, as mandated by the FDI Screening Regulation and has established an information sharing and co-operation framework across EU member state authorities. The legislation establishing the new Irish regime, the "Investment Screening Bill", was expected to be adopted as early as the end of H1 2021, however this has been delayed until H2 2021 or beyond. While the exact scope of the new FDI regime and whether it will give rise to additional mandatory notification requirements in certain instances remains unclear until the draft legislation is published, the Competition and Consumer Protection Commission (CCPC) is likely to have a role in administering the initial review under the new FDI regime, alongside the general merger control and media merger regimes.

In the meantime, Ireland is subject to the information-sharing mechanisms with other member states and the EU Commission as set out in the FDI Screening Regulation.

2.2 Procedure and Sanctions in the Event of Non-compliance

There are currently no general requirements under Irish law for foreign investors to obtain investment approval.

2.3 Commitments Required from Foreign Investors

Irish authorities currently impose no specific commitments on foreign investors in relation to their investments.

2.4 Right to Appeal

In general terms, Irish authorities currently cannot block foreign investment, so there is no need for recourse to the various appeal mechanisms available under Irish law.

3. CORPORATE VEHICLES

3.1 Most Common Forms of Legal Entities

The Companies Act 2014 (the "Companies Act") provides for the creation of various types of corporate vehicles in Ireland. A company of any type may be incorporated with a single shareholder.

Company Limited by Shares (LTD)

The LTD is the model form of private company limited by shares and is the most common form of corporate vehicle used by foreign investors. The LTD has the same unlimited legal capacity as an individual. It has a one-document constitution and its internal regulations are set out in simplified form in that constitution. An LTD is prohibited from offering securities (equity or debt) to the public.

Designated Activity Company (DAC)

The DAC is an alternative form of private limited company. A key distinction between a DAC and an LTD is the existence of an objects clause in the DAC constitution. A DAC may be a suitable vehicle where an objects clause is needed (eg, to restrict the corporate capacity of a joint-venture vehicle) or for companies listing debt securities on a stock exchange.

Unlimited Company

The Companies Act recognises three distinct types of unlimited company:

- the private unlimited company with a share capital (ULC);
- the public unlimited company with a share capital (PUC); and
- the public unlimited company without a share capital (whose liabilities are guaranteed by its members) (PULC).

Members of an unlimited company may be held liable on an unlimited basis for the debts of the company in the event of it entering insolvent liquidation. Like an LTD, ULCs may not offer for sale or list any new securities, but a PUC and PULC may list debt securities.

Public Limited Company (PLC)

The key distinction between PLCs and private companies is that only PLCs may list their shares on a stock exchange and offer them to the public. A Societas Europaea (SE), the European model company, is regarded as a PLC under the Companies Act. It must have a minimum issued share capital of EUR25,000. There is a general prohibition on the giving of financial assistance by a PLC in connection with the acquisition of shares in itself or its holding company.

Guarantee Company (CLG)

A CLG does not have a share capital and is a popular type of company for charities, sports and social clubs, and property management companies. The members' liability is limited to such amount as they undertake in the constitution of the company to contribute to the assets of the CLG in the event of its winding-up. A CLG has a two-document constitution, consisting of a memorandum and articles of association.

3.2 Incorporation Process

To incorporate a company in Ireland, certain documents, including the company's constitution, must be filed with the Companies Registration Office (CRO). Incorporation papers must contain the company name, registered office, directors' and secretary's details, subscriber details, the company's principal activity and the place in Ireland where it proposes to carry on that activity. The incorporation form includes a declaration that the requirements of the Companies Act have been complied with.

Under an express incorporation scheme, a company can be incorporated within five working days. Otherwise, it may take two to three weeks to incorporate a company. On incorporation, the CRO will issue the company with a certificate of incorporation. CRO fees are EUR50 and the process is completed online.

3.3 Ongoing Reporting and Disclosure Obligations

Documents Presented at the AGM

Irish companies must generally present audited financial statements to the annual general meeting (AGM) and then publicly file a copy with the company's annual return in the CRO (including certain disclosures concerning directors' remuneration). A directors' report on the state of affairs of the company and its subsidiaries must be attached to the balance sheet presented before the AGM. For all LTDs and for other company types with one member (other than PLCs), a written procedure is available in place of an AGM. Small and micro companies are subject to fewer public disclosures and more relaxed reporting requirements.

Directors' Additional Disclosures

Directors may need to make additional disclosures to the company if, for example, they hold shares representing more than 1% of the company's share capital. Directors of companies with assets exceeding EUR12.5 million and turnover exceeding EUR25 million are also required to make an additional prescribed form of compliance statement in their directors' report.

Internal Register on Ultimate Beneficial Owner

Most Irish companies must maintain internal registers on individuals considered to be their ultimate beneficial owner. The EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 also require entities to file their beneficial ownership details on a central beneficial ownership register which is publicly accessible. Where the company has no beneficial owner or the beneficial owner cannot be identified, details of the company's senior managing officials (directors) must be provided.

Filings in Regard to Changes

CRO filings must be made in respect of changes in the following:

- company name;
- directors or company secretary;
- registered office; and
- share capital or the company constitution.

Details of mortgages or charges made in respect of a company must also be filed with the CRO.

3.4 Management Structures

Irish companies are managed by a single-tier board of directors. All companies, other than LTDs, must have a minimum of two directors. The secretary may be one of the directors of the company. An LTD may have one director but, in that case, there must be a separate company secretary. A body corporate may act as secretary to another company, but not to itself. A body corporate may not act as a director.

At least one of the directors of an Irish company must be a resident of a member state of the European Economic Area (EEA) unless:

- the company posts a bond to the value of EUR25,000 which, in the event of failure by the company to pay a fine imposed in respect of an offence under company law or a penalty under tax legislation, will be used in discharge of the company's liability; or
- the company holds a certificate from the CRO confirming that the company has a real and continuous link with one or more economic activities that are being carried on in Ireland.

3.5 Directors', Officers' and Shareholders' Liability

Directors' common law fiduciary duties are codified in the Companies Act. A director's fiduciary duties under the Companies Act include (but are not limited to) the duty to:

- act in good faith in what the directors consider to be the interests of the company;
- act in accordance with the company's constitution and use their powers only for the purposes allowed by law;
- avoid conflicts of interest between the director's duty to the company and their other interests (including personal interests) unless the director is released from this duty; and
- exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both the knowledge and experience that may reasonably be expected of a person in the same position as the director and with the knowledge and experience which the director possesses.

Where a breach of duty by a director is proved, they may be required to account to the company for any personal gain made from the breach and to indemnify the company for any loss or damage resulting from the breach. Generally, parent companies are not liable for the acts of limited liability subsidiaries, but they may be liable under parent company guarantees.

Directors' duties are owed (to varying degrees) to the company, the shareholders, the company's employees, the company's creditors and any appointing shareholder. Directors may be found criminally liable for certain breaches of the Companies Act and for other offences in areas such as environmental, health and safety, and tax law.

Subject to certain limitations in the Companies Act, a company is permitted, however, to indemnify a director in respect of liability incurred in defending proceedings, whether civil or criminal, in which judgment is given in the director's favour or in which the director is acquitted, or where the High Court, in an application for relief, declares that the director has acted reasonably and honestly.

4. EMPLOYMENT LAW

4.1 Nature of Applicable Regulations

Employment protection laws in Ireland apply to all employees working in Ireland, irrespective of the employee's nationality.

Employment law is primarily governed by:

- the Constitution of Ireland;
- Irish statutes and EU law;
- judicial precedents;
- common law (including contract law);

- statutory mechanisms put in place by the state to regulate certain sectors, including Sectoral Employment Orders (SEOs) which require acceptance by the Minister of State at the Department of Enterprise, Trade and Employment following a recommendation from the Labour Court;
- collective bargaining agreements; and
- custom and practice in the workplace and workplace or industry rules.

The primary legislation regulating employment relationships include the:

- Unfair Dismissals Acts 1977 to 2015;
- Employment Equality Acts 1998 to 2015;
- Redundancy Payments Acts 1967 to 2014;
- National Minimum Wage Act 2000 and the Payment of Wages Act 1991;
- Terms of Employment (Information) Acts 1994 to 2014;
- Maternity Protection Acts 1994 to 2004 and other protective leave legislation;
- Minimum Notice and Terms of Employment Acts 1973 to 2005;
- Fixed Term Workers, Part Time Employees and Agency Workers Protection Legislation;
- Organisation of Working Time Act 1997; and
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

4.2 Characteristics of Employment Contracts

The Employment (Miscellaneous Provisions) Act 2018

Under the Employment (Miscellaneous Provisions) Act 2018, employers must notify employees in writing, within five days of commencement of employment, of the following core terms of employment:

- the full names of the employer and the employee;
- the address of the employer;
- the expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract;
- the rate or method of calculation of the employee's pay; and
- the number of hours the employer reasonably expects the employee to work per normal working day and per normal working week.

The Terms of Employment (Information) Act 1994

Under the Terms of Employment (Information) Act 1994, all employers are obliged, within two months of commencement of employment, to provide their employees with a written statement setting out certain fundamental terms of their employment, such as the date of commencement, place of employment, employer and employee details, job title and a description of the nature of the work, expiry date (if relevant), breakdown of wage calculations, annual leave and sick pay entitlements and notice requirements. The statement must be signed by both the employee and the employer. Any change to the statutory particulars must be notified to the employee, in writing, within one month.

4.3 Working Time

An employer may not permit any employee to work for more than an average of 48 hours per week, over a particular reference period (usually four months). This reference period varies depending on the type of employment in question. Working time should only take account of time spent working (ie, it should exclude rest and meal breaks).

Employees cannot opt out of the 48-hour average working week. However, there is a particular exemption for senior or specialist employees, who can determine their own working time, such that they are not subject to the restriction. The contracts of such employees should expressly provide that they are exempt from the 48-hour average working week.

Overtime

Generally speaking, there is no statutory entitlement to overtime under Irish law, or to payment for overtime. Employees will only be entitled to overtime pay if such an entitlement is contained in their employment contract or has been established by custom and practice in the employment concerned. However, employers that require employees to work on Sundays are required to compensate them for doing so, whether in terms of paying a "Sunday premium" or specifically taking into account the fact that they may be required to work on a Sunday in calculating the rate of pay.

4.4 Termination of Employment Contracts

An employer can, under common law, terminate an employment contract without cause, provided this is done in accordance with the terms of the contract. Notwithstanding any express contractual right to terminate, employees are afforded statutory protection against unfair or discriminatory dismissal. Under the Unfair Dismissals Acts 1977–2015 (UDA), an employer cannot lawfully dismiss an employee unless substantial grounds exist to justify termination. Also, it is essential for an employer to be able to establish that fair procedures have been followed before making a decision to dismiss. Subject to certain exceptions, employees must have at least 12 months' continuous service to qualify for protection under the UDA.

Generally, a dismissal will only be justified if it is based on one of the following grounds:

- the capability, competence or qualifications of the employee for the work concerned;
- the conduct of the employee;
- the redundancy of the employee; or
- the employee being prohibited by law from working or continuing to work (eg, not holding a valid work permit where one is required).

If one of the above cannot be established, there must be some other substantial grounds to justify the dismissal.

Ending a Contract of Employment

Where an employee or an employer wishes to end a contract of employment, minimum periods of notice apply where an employee has been in continuous service for at least 13 weeks. The notice period to be given by an employer depends on the employee's length of service. It varies from one week, applicable where an employee has been employed for up to two years, to eight weeks' notice, applicable where an employee has been employed for 15 years and upwards. Employees, on the other hand, are only obliged to give notice of one week, irrespective of their length of service. These are, however, only the minimum periods. A contract of employment may specify a longer notice period on either side, and it generally does, with notice periods typically ranging from one to six months depending on the seniority of the role. There is no requirement to pay an employee severance in the event of a dismissal, unless it arises by reason of redundancy.

PEA procedures

The Protection of Employment Acts 1977 to 2015 (PEA) prescribes the procedures to be followed in a collective redundancy. Employers are obliged to initiate consultation at the earliest opportunity, and in any event at least 30 days before the first notice of dismissal is given. Where an employer effects collective redundancies, the employer must, with a view to reaching agreement, initiate consultations with employee representatives in relation to matters such as the possibility of avoiding or reducing the proposed redundancies and the basis on which it will be decided which particular employees will be made redundant.

The PEA requires employers to provide employee representatives and the Minister for Employment Affairs and Social Protection with certain written information such as the proposed number of redundancies, and a description of the employees it proposes to make redundant. The minister must also be notified of the proposals at least 30 days in advance of the first notice of redundancy being given.

Statutory redundancy pay

Statutory redundancy pay is currently two weeks' pay for each year of service, plus one extra week's pay. A week's pay for these purposes is currently subject to a ceiling of EUR600 a week. For both ordinary dismissals and collective redundancies, it is commonplace for employers to offer employees an ex gratia payment upon termination of employment in exchange for the employees signing a compromise agreement that waives all employment law claims against the employer.

4.5 Employee Representations

The concept of employee representation under Irish law relates to both unionised and non-unionised employees, and is derived from a number of sources, both statutory and otherwise.

Trade Union Representation

Any employee has the right to join a trade union, although trade unions may not legally compel employers to recognise and negotiate with them. The degree to which trade unions may embark upon industrial action is regulated principally by the Industrial Relations Act 1990. Employee representatives are appointed by way of secret ballot.

Information and Consultation Representation

In addition to any local representation arrangements that may exist (whether with trade unions or otherwise), employees may also be entitled to representation in certain circumstances as a matter of statute. This form of representation can arise in transfer of undertakings, collective redundancy situations or where the employees are covered by a local or European-level works council.

The Transnational Information and Consultation of Employees Act 1996 (as amended) (the "1996 Act"), requires undertakings with at least 1,000 employees in the EU and 150 or more employees in each of at least two member states to set up European works councils to inform and consult with their employees on a range of management issues relating to transnational developments within the organisation. Under the 1996 Act, a special negotiating body (SNB) is established to negotiate with the employer. The duration and functions of the SNB will be subject to the terms and purpose of the works council agreement put in place.

The Employees (Provision of Information and Consultation) Act 2006 obliges employers with at least 50 employees to enter into a written agreement with employees or their elected representatives setting down formal procedures for informing and consulting with them. The legislation will only apply if a prescribed minimum number of employees request it. The legislation is silent on how employee representatives are elected, and it will be up to the employees to determine how this is conducted, but usually it is done by way of secret ballot.

5. TAX LAW

5.1 Taxes Applicable to Employees/Employers

The primary Irish taxes applicable to employees and employers in the context of an employment relationship are income tax, pay-related social insurance (PRSI) and the universal social charge (USC).

Income Tax

Irish tax law generally imposes income tax on an individual where they are resident or ordinarily resident in Ireland in the year of assessment or if employment is exercised in Ireland in the year of assessment.

An individual will be considered resident in Ireland in a year of assessment if they are present in Ireland for at least either 183 days in the year of assessment or 280 days in the year of assessment and the preceding year when taken together (provided that the individual has been present for at least 30 days in each of these two years). An individual will be regarded as ordinarily resident in Ireland for tax purposes if the person has been resident in Ireland for three consecutive years immediately preceding the year of assessment.

Different income tax rate bands apply depending on an employee's personal circumstances. The current standard rate of income tax is 20%, which applies to the first EUR35,300 per year earned by a single person without children and to the first EUR44,300 per year earned by a married person or a person in a civil partnership. A higher 40% rate is applied to any remaining balance.

PRSI

PRSI is Ireland's equivalent of social insurance or social security contributions. Subject to certain limited exceptions, anyone employed in Ireland is generally subject to PRSI and payments are generally collected by the employer through the PAYE system. The amount of PRSI paid by an employee depends on the employee's income and the PRSI class of the employee.

The most common PRSI class for private sector employees in Ireland is Class A (employees in industrial, commercial and service type employment with gross earnings of EUR38 or more in a week). A Class A employee's PRSI contribution will generally be 4% of all "reckonable earnings" (which includes employee share-based remuneration and any benefit in kind). Separately, the employer must also make an employer's PRSI contribution of 8.8% on weekly earnings up to EUR398 and 11.05% on weekly earnings over EUR398.

USC

Employees in Ireland are also subject to a further tax payable on total income, known as USC. For 2021, the first EUR12,012 of an individual's aggregate annual income will be taxed at a rate of 0.5%, the following EUR8,675 at 2%, the following EUR49,357 at 4.5% and the remaining balance at 8%. There is also an additional surcharge of 3% applied to individuals whose non-employment-related income exceeds EUR100,000 in a year.

COVID-19 Support Schemes

As part of measures to provide financial support to employers affected by the challenges of doing business during COVID-19, a Temporary Wage Subsidy Scheme was introduced in 2020 which ran until 31 August 2020 and was subsequently replaced by the Employment Wage Subsidy Scheme (EWSS), which has been extended to 31 December 2021.

The EWSS enables employers affected by the pandemic to receive significant support. The scheme is available to employers that possess valid tax clearance, keep employees on the payroll through the COVID-19 pandemic and that have suffered a minimum decline of 30% turnover due to COVID-19. In addition, the scheme allows employers to charge a reduced rate of employer's PRSI of 0.5% on wage payments that are eligible for EWSS.

Employees and self-employed people who have lost their employment due to COVID-19 may apply for the COVID-19 Pandemic Unemployment Payment, which is a form of social welfare payment.

5.2 Taxes Applicable to Businesses

The primary Irish taxes applicable to businesses are corporation tax on income and chargeable gains, value added tax (VAT), withholding tax and stamp duty.

Corporation Tax

A company that is resident in Ireland for Irish tax purposes will be subject to corporation tax on its worldwide profits and gains regardless of where those profits arise. A company that is not tax resident in Ireland is liable to corporation tax in Ireland if it carries on a trade in Ireland through a branch or agency. A non-Irish company may also be subject to corporation tax on gains realised on the disposal of Irish-situated assets used for such a trade carried on in Ireland or realised on the disposal of certain specified Irish assets, including Irish land or buildings or shares in a company that derive the greater part of their value from Irish land or buildings.

A company will generally be considered tax resident in Ireland if it is centrally managed and controlled in Ireland, regardless of where the company is incorporated. If a company is incorporated in Ireland, the general rule is that the company will be Irish tax resident unless it is tax resident in another country pursuant to the terms of a double-tax treaty.

Irish Revenue has published helpful guidance to address certain challenges of doing business during COVID-19, including the implications for the tax residence position of an Irish-resident company where employees, directors, service providers or agents are unable to travel as a result of COVID-19-related travel restrictions. For example, where an individual director is unable to travel to Ireland to attend the board meetings of an Irish-resident company, Revenue will not view this as impacting the Irish tax residence status of the company. Businesses should maintain a record of the reasons for such presence in or outside of Ireland, as Irish Revenue may request evidence that such presence resulted from COVID-19-related travel restrictions.

The rate of corporation tax payable on a company's profits will depend on whether the profits arise from trading (broadly, operational activities) or non-trading (eg, passive investment) activities. A low rate of 12.5% applies to trading profits, with a 25% rate applying to non-trading income. The question of whether a company is carrying on a trade is primarily one of fact to be decided on a case-by-case basis, though Irish Revenue is willing to provide an opinion as to whether a particular activity constitutes the carrying on of a trade in certain circumstances.

Losses incurred by a company in respect of trading operations can generally be carried forward indefinitely for use against future profits of that trade. Losses can also be surrendered to other companies within a group for Irish corporation tax purposes.

Chargeable Gains

Chargeable gains realised by an Irish tax-resident company on the disposal of a capital asset are generally subject to corporation tax at an effective rate of 33%. A non-Irish resident company will be subject to corporation tax in a similar manner on gains realised on the disposal of specified Irish assets (broadly, Irish land and buildings or shares deriving their value from such assets or from Irish branch assets).

VAT

Supplies and receipts of goods and services in Ireland are generally subject to VAT. The standard rate of VAT in Ireland is 23%. Reduced rates ranging from 0% to 13.5% may apply to supplies or receipts of certain specified goods and services, and full exemptions apply to certain goods or services. A business that is engaged in an activity to which VAT applies on its supplies should typically be entitled to recover the VAT it incurs on purchases, subject to certain exceptions.

The obligation to account for VAT on supplies made by a company may arise for either the supplier or the customer, depending on the relevant circumstances, such as whether the supply involves a cross-border element. Businesses are generally obliged to register for VAT in Ireland.

Certain temporary VAT reliefs are currently in place due to COVID-19, including a concessional application of the zero rating for the supply of COVID-19 vaccines, testing kits and related services, and relief from import duties for goods imported from outside the EU to combat COVID-19.

Withholding Tax

Ireland imposes withholding tax on payments of distributions and dividends by Irish-resident companies at a rate of 25%, and on payments of interest, patent royalties and certain annual payments at a rate of 20%. However, there are broad exemptions from these withholding requirements such that withholding will generally not arise on payments made to persons resident in another EU member state or in a jurisdiction with which Ireland has agreed a double tax treaty.

Stamp Duty

Irish stamp duty applies to certain documents that transfer property and are either executed in Ireland, relate to property situated in Ireland (such as Irish real estate or shares in Irish companies), or relate to a matter or thing done or to be done in Ireland.

That noted, there are various exemptions and reliefs from Irish stamp duty, including an exemption for transfers of certain IP rights and broad reliefs for intra-group transfers and for group reorganisations and mergers. Where an exemption is not available, a stamp duty rate of 1% generally applies to transfers of shares and a rate of 7.5% generally applies to transfers of commercial property.

5.3 Available Tax Credits/Incentives

There are a number of tax credits and incentives available in Ireland, including research and development tax credits and capital allowances for capital expenditure incurred to acquire certain intellectual property. Recently, a number of new incentives have been introduced to address the business impact of COVID-19.

Research and Development Tax Credit

Irish tax legislation provides for a tax credit in respect of certain expenditure on research and development activities, buildings and plant and machinery. Credit is available for 25% of the allowable expenditure (in addition to a general tax deduction at 12.5%).

A number of conditions must be satisfied in order for the credit to be available, including a requirement that the research and development seeks to achieve scientific or technological advancement and involves the resolution of scientific or technological uncertainty.

Excess credits can be repaid to companies in instalments and during the current COVID-19 crisis, Irish Revenue is willing to accelerate instalments due to be repaid in 2021.

Capital Allowances Regime for Capital Expenditure on the Provision of Certain Intellectual Property

A special capital allowances (tax depreciation) regime is available for capital expenditure incurred to acquire certain categories of intellectual property (known as "specified intangible assets") for the purposes of a company's trade. Specified intangible assets for these purposes include patents, trade marks, brands, copyrights or computer software, among other categories of IP.

Capital allowances on qualifying expenditure may either be claimed in accordance with amortisation charged to the profit-and-loss account of the company or alternatively, on a straight-line basis over 15 years at the rate of 7% for the first 14 years and 2% in the final year. Capital allowances are available to offset taxable profits earned from the specified intangible assets subject to an 80% cap.

Revenue will expect a robust valuation report to support the arm's length nature of the capital expenditure, and taxpayers must maintain documentation and records used in the preparation of the intellectual property valuation.

COVID-19 Related Supports

A COVID-19 Restrictions Support Scheme (CRSS) was recently introduced to support businesses required to prohibit or restrict customer access to their premises during COVID-19 restrictions. Such businesses can apply to Irish Revenue for a payment known as an "Advance Credit for Trading Expenses" (ACTE) based on a proportion of average weekly turnover with a maximum payment of EUR5,000 per week. These ACTE payments are payable for each week that a business is affected by the restrictions and are currently expected to continue until 31 December 2021. An enhanced restart payment has also been introduced for businesses availing of CRSS who can re-open from 2 June 2021 pursuant to which their EUR5,000 payment per week will be increased to EUR10,000 for the first three weeks of re-opening.

As a further support to businesses, the government has announced the introduction of the Business Resumption Support Scheme (BRSS) for vulnerable but viable businesses that were significantly impacted throughout the pandemic, even after restrictions were eased.

In addition, a debt warehousing scheme has been introduced to assist businesses that are struggling to make payments of taxes as a result of the COVID-19 impact. This scheme allows unpaid VAT and PAYE debts resulting from the pandemic to be "parked" for a period of 12 months after a business resumes trading. Furthermore, after the expiry of this 12-month period, employers can repay their warehoused debts at a reduced interest rate of 3% per annum.

5.4 Tax Consolidation

Tax consolidation is not available under Irish tax law and a company subject to corporation tax must prepare and file its own tax return for corporation tax purposes for each assessment period. However, Irish tax law does provide for group relief, which permits companies within the same corporate group to surrender certain losses to other profitable group companies.

5.5 Thin Capitalisation Rules and Other Limitations

Ireland does not have any specific thin capitalisation rules, but there are a number of circumstances where interest payments may be considered to be non-deductible in calculating the taxable profits of a company.

For instance, interest paid by a company may be re-characterised as a non-deductible distribution where interest is paid in respect of securities that are convertible into shares, where interest is dependent on the company's results, or where it represents more than a reasonable commercial rate.

Ireland introduced anti-hybrid rules from 1 January 2020, in accordance with the EU Anti-Tax Avoidance Directive (ATAD), which can deny tax deductions in respect of certain arrangements between associated enterprises, giving rise to tax mismatches as a result of hybrid instruments or entities.

Ireland will also implement new interest limitation rules in accordance with the EU ATAD following a consultation process during 2021. These rules will take effect from 1 January 2022 and, once introduced, deductions for interest will be capped at 30% of earnings before interest, taxes, depreciation and amortisation (EBITDA).

5.6 Transfer Pricing

Irish transfer pricing rules apply the arm's length principle to trading transactions between associated enterprises. In this context, "arm's length" is to be construed in accordance with OECD guidelines. The Irish transfer pricing rules were significantly amended from 1 January 2020 to align with the 2017 OECD guidelines.

Broadly, Ireland's transfer pricing rules require that if the actual consideration payable or consideration receivable by a trader in a transaction with an associated enterprise is other than at arm's length, then any understatement in the trader's profit will be reversed so that the full arm's length profit of the trader will be taxed.

The Irish rules were updated from 1 January 2020 to apply to non-trading transactions (save for certain non-trading transactions between two Irish residents) in addition to trading transactions. Furthermore, the Irish transfer pricing rules can now also apply to capital transactions where the market value of the asset exceeds EUR25 million.

5.7 Anti-evasion Rules

Ireland has strict anti-evasion rules that impose criminal sanctions on those who fraudulently evade tax and on anyone who facilitates such evasion. Anyone found guilty of an offence may be fined and/or imprisoned.

Anti-avoidance Rule

Ireland also has a general anti-avoidance rule that applies in respect of tax-avoidance transactions. Broadly, a tax-avoidance transaction in this context is a transaction which gives rise to a tax advantage and which was undertaken primarily to claim a tax advantage and not for bona fide commercial reasons. In such cases, Revenue may deny or withdraw the relevant tax advantage. In determining if a transaction is a tax-avoidance transaction, regard will be given to:

- the form of the transaction;
- the substance of the transaction and any other transaction(s) directly or indirectly related to or connected with that transaction; and
- the final outcome of the transaction and any related transaction.

As such, genuine commercial arrangements undertaken with a view to making a profit should not be subject to the general anti-avoidance rule.

Exit Charge

Ireland recently introduced an ATAD-compliant exit tax. The exit tax is charged at a rate of 12.5% and applies to unrealised capital gains inherent in assets where:

- a company migrates its place of residence from Ireland to any other jurisdiction; or
- assets or a business of an Irish permanent establishment (PE) are allocated from the PE back to its head office or to a PE in another jurisdiction (this limb of the charge only applies in respect of companies that are resident in an EU member state other than Ireland).

The exit charge does not apply to assets that remain within the Irish tax charge. A higher 33% exit charge can apply where the transaction forms part of an arrangement to subsequently dispose of the relevant assets.

Where the relevant company/assets have been migrated to an EU/EEA country, the exit charge may be deferred and, in such circumstances, is payable in instalments over five years. If the exit charge is unpaid, Revenue may pursue any other Irish-resident group company or a director who has a controlling interest in the company that is subject to the charge.

6. COMPETITION LAW

6.1 Merger Control Notification

The Irish merger control regime applies to "any merger or acquisition", which is defined by Section 16(1) of the Competition Acts 2002 to 2017 (the "Act"), as amended, as including transactions where:

- two or more undertakings, previously independent of one another, merge;
- one or more individuals who already control one or more undertakings, or one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the acquisition of part of an undertaking, although not involving the acquisition of a corporate legal entity, involves the acquisition of assets that constitute a business to which a turnover can be attributed (here, "assets" include goodwill).

Turnover Thresholds

Mergers and acquisitions that meet the turnover thresholds set out in Section 18(1) of the Act are subject to mandatory notification to the CCPC, where, for the most recent financial year:

- the aggregate turnover within Ireland of the undertakings involved is not less than EUR60 million; and
- the turnover within Ireland of each of two or more of the undertakings involved is not less than EUR10 million.

Where these requirements are not met, mergers may still be notified to the CCPC on a voluntary basis under Section 18(3) of the Act. The CCPC can also investigate mergers falling below the turnover thresholds, where they believe the merger could have as its object or effect the prevention, restriction or distortion of competition, or involves the creation or strengthening of a dominant position.

Joint Ventures

Only full-function joint ventures (ie, those which perform, on a lasting basis, all the functions of an autonomous economic entity) constitute a merger for the purposes of the Irish merger control regime. The CCPC, which is primarily responsible for the enforcement of the Irish merger control regime, adopts an approach mostly consistent with the European Commission in identifying whether joint ventures are subject to Irish merger control law.

Where a joint venture does not qualify as full-function, the CCPC may assess it under Section 4 of the Act, which is based on Article 101 of the Treaty on the Functioning of the European Union

(TFEU). Typically, the CCPC will have regard to the European Commission's Guidelines on Horizontal Cooperation Agreements and the Guidelines on Vertical Restraints when undertaking such an assessment.

6.2 Merger Control Procedure

A filing must be submitted to the CCPC prior to the implementation of the merger, and may be made as long as the undertakings involved demonstrate a good-faith intention to conclude an agreement.

Phase I

A Phase I clearance determination must be issued by the CCPC within 30 working days of the "appropriate date", which means the date on which a full and complete filing by the merging parties is made, unless either the CCPC has used its power to "stop and restart the clock" by issuing a formal requirement for information (RFI), which has the effect of resetting the clock and only restarting it when the RFI is complied with, or when the parties and the CCPC commence negotiating remedies, in which case, the Phase I period is extended to 45 working days. The CCPC also issues "informal" requests for information that do not stop and restart the clock.

Phase II

A Phase II clearance determination must be issued by the CCPC within 120 working days of the appropriate date. If the CCPC issues a formal RFI in the first 30 working days of the Phase II period, this has the effect of stopping and restarting the clock in the same way as at Phase I. If the parties and the CCPC are negotiating remedies, the Phase II period is extended to 135 working days.

Obligations and Failure to Notify

A suspensory obligation is included in the Act. Section 19(1) of the Act imposes a prohibition on the merging parties putting a merger that has been notified (both mandatorily and voluntarily) into effect prior to the issue of a clearance determination.

Under Sections 18(9) and 18(10) of the Act, failure to notify a merger that meets the turnover thresholds is a criminal offence punishable by fines of up to EUR250,000, plus EUR25,000 per day for a continued breach. The CCPC cannot impose administrative fines but must refer the matter to the Director for Public Prosecutions to initiate either summary prosecution or prosecution on indictment.

6.3 Cartels

Anti-competitive agreements and practices are prohibited under Section 4 of the Act, which is based on Article 101 of the TFEU. Section 4 prohibits agreements, decisions and/or concerted practices that have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in Ireland or in any part of Ireland. The Act applies to businesses operating in Ireland and international business where an agreement is found to restrict competition in Ireland.

Section 4 sets out a non-exhaustive list of agreements that are prohibited, such as those that:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading partners (thereby placing them at a competitive disadvantage); and
- make the conclusion of contracts subject to acceptance by other parties of supplementary obligations that have no connection with the subject matter of the contracts.

Section 6 of the Act makes it a criminal offence to enter into or implement an agreement, decision or concerted practice that is prohibited under Section 4. The CCPC operates a Cartel Immunity Programme with the Director of Public Prosecutions which provides for the possibility of immunity from prosecution for the first company/business to come forward to report a cartel.

6.4 Abuse of Dominant Position

Abuse of a dominant position is prohibited by Section 5 of the Act and Article 102 of the TFEU. Section 5 of the Act mirrors Article 102 of the TFEU, except that Section 5 refers to abuse of a dominant position in trade for any goods or services in Ireland or in any part of Ireland. While the Act refers to trade in goods and services in the state, the provisions of the Act are also likely to apply to international businesses/trade that are/is found to be in a dominant position and where there is an effect on trade in Ireland.

Definition of Dominance

There is no definition of dominance within the Act. The Irish courts and the CCPC have adopted the definition formulated by the CJEU in case 27/76, United Brands v Commission [1978] ECR 207: "[a] position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers".

Remedies

As in the case of cartels, the Act makes abuse of a dominant position a criminal offence that can be prosecuted before the Irish courts and is punishable by financial penalties. The Act also includes specific provision for aggrieved persons and the CCPC to take civil proceedings before the Irish courts seeking remedies for an abuse of a dominant position. The remedies available in civil proceedings include a court declaration, damages, imposing structural measures and an injunction.

7. INTELLECTUAL PROPERTY

7.1 Patents

Definition

Any inventive product/process is patentable under Irish law if it:

- is susceptible to industrial application;
- is new; and
- involves an inventive step.

Certain inventions are specifically excluded under Irish law, including a discovery or scientific theory, computer programs and methods of doing business.

Length of Protection

Patent protection lasts for up to 20 years from the date of the application, subject to the payment of renewal fees. Irish law also provides for the extension of full-term patents for pharmaceuticals for human or animal use for up to five years.

Irish law also provides for short-term patents which have a ten-year duration. The test of inventiveness for a short-term patent is lower than for a full-term patent. Short-term patents may be converted to a full-term patent where they meet the requirements for a full-term patent.

Registration

Applications for Irish patents are filed at the Intellectual Property Office of Ireland (IPOI). The specification forming part of the application must include the title of the invention, the description of the invention and the claim or claims and drawings, if any, referred to in the description.

It is also possible to file a patent application at the European Patent Office (EPO) under the European Patent Convention (EPC) or at the World Intellectual Property Organisation (WIPO) under the Patent Cooperation Treaty (PCT) and to designate Ireland for patent protection. The EPC and the PCT both facilitate the application for patents in a number of jurisdictions, but these are effectively a bundle of applications to a number of states.

Enforcement and Remedies

Patents in Ireland are enforced through civil claims against infringing parties. A patent owner can prevent direct or indirect use of their invention by third parties in Ireland without their consent.

The courts have a wide range of civil remedies available to them to compensate aggrieved owners. These include a declaration of the validity of a patent and that it has been infringed, damages for infringement, injunctive relief and orders to account for profits; and to seize, destroy and/or hand over infringing goods to the patent holder.

7.2 Trade Marks

Definition

A trade mark under Irish law is any sign capable of both:

- being represented graphically; and
- distinguishing the goods or services of one undertaking from those of other undertakings.

A trade mark may consist of words (including personal names), designs, letters, numerals or the shape of goods or of their packaging.

Unregistered trade marks have a limited protection in Ireland through the law of passing off, in a manner similar to that applying in other common law jurisdictions.

Length of Protection

Registered trade marks (be they national Irish marks, Madrid Protocol marks or EU trade marks) are registered initially for a ten-year period but, uniquely among intellectual property rights, this term can be renewed indefinitely for successive ten-year terms on payment of a renewal fee.

A trade mark registration will only remain valid to the extent that the mark is used by the owner in respect of the goods/services for which it was registered.

Registration

There are three options open to trade mark proprietors carrying on business in Ireland.

An application for an Irish trade mark at the IPOI

An IPOI examiner scrutinises the application to ensure that it can be considered a trade mark under Irish law and generally examines the application to see if its use would infringe pre-existing Irish/EU trade marks, or otherwise falls within a prohibited form of trade mark. If satisfied with the application, the IPOI publishes it in the Official Journal. Third parties then have three months within which to oppose the application by filing a Notice of Opposition.

If there is no opposition, the application will proceed to registration on payment of the registration fee.

An application for a European Union trade mark at the European Union Intellectual Property Office (EUIPO)

EU trade marks are filed with EUIPO and undergo an examination, publication and opposition procedure prior to registration, similar to that described for Irish trade marks above. An EU trade mark is a unitary European-wide property right and protects the trade mark proprietor in all member states of the EU.

An international application designating certain states, including Ireland, under the Madrid Protocol

On request, the IPOI will forward a trade mark application or registration to the International Bureau of the WIPO in Geneva. The Irish trade mark application or registration serves as a base on which the proprietor may designate the mark for registration in other Madrid Protocol countries, for example, the United Kingdom and the United States. The International Bureau notifies the trade mark offices designated in the international filing, which, in turn, decide whether to accept the application for registration in their territory.

A Madrid Protocol filing can be a cost-effective and efficient way to obtain trade mark protection in multiple jurisdictions.

Enforcement and Remedies

An infringement will occur where a mark, which is the same or similar to a registered mark, is used in relation to the same or similar goods or services as the registered mark. Where the mark being used by a third party is not identical to the registered trade mark, a proprietor needs to show that there is a likelihood of confusion on the part of the public.

The reliefs available for trade mark infringement include damages, an injunction and orders for an account of profits, or the destruction or delivering up of infringing goods.

An unregistered trade mark can be enforced through the vehicle of "passing off". To succeed in an action for passing-off, the plaintiff must show that the defendant makes a misrepresentation in the course of trade to prospective customers that is calculated to injure the business or goodwill of the plaintiff and that causes, or is likely to cause, the plaintiff damage.

7.3 Industrial Design

Definition

Under Irish law, a "design" is defined as the appearance of the whole or a part of a product resulting from the features of a product or its ornamentation, including the lines, contours, colour, shape, texture or materials of the product itself or its ornamentation. In order to be registerable, a design must be "new" and have "individual character". Unregistered designs are also granted a level of protection under Irish law.

Length of Protection

The total term of protection for designs under Irish law is 25 years, renewable at five-year intervals.

An unregistered design exists for a period of three years from the date the design is first made available to the public within the EU where the disclosure could reasonably have become known to those in the sector concerned, operating within the EU.

Registration

Designs are registered with the IPOI. An application for a Registered Community Design is made with the EUIPO.

Enforcement and Remedies

The reliefs available for industrial design infringement include damages, injunctions and orders for an account of profits.

An unregistered design does not confer a monopoly, unlike a registered design, and infringement can take place only if copying can be established.

7.4 Copyright

Definition

Copyright is an intellectual property right which features mainly in, but is not exclusive to, the cultural, arts and information technology sectors. It is the legal form of protection used by the creators or authors of such works to protect the tangible form of all or part of their individual works. Irish law specifically recognises copyright in computer software as a literary work.

Length of Protection

The duration of copyright protection varies according to the format of the work.

- For literary, dramatic, musical and artistic works and original databases, copyright protection expires 70 years after the death of the author/creator.
- For films, copyright protection expires 70 years after the last to die out of: the director, the author of the screenplay, the author of the dialogue of the film, or the author of the music composed for use in the film.
- For sound recordings, copyright protection expires 50 years after the sound recording is made or, if the recording is made available to the public, then 70 years from the date it was made available to the public.
- Copyright protection for broadcasts ends 50 years after they are first transmitted.
- Copyright protection for computer-generated works ends 70 years after the date they are first made available to the public.

There are some exceptions under Irish law which reflect instances where the wider public interest, or the interests of particular groups, make it necessary to restrict or limit the rights granted to copyright owners.

Registration

There are no registration formalities in Ireland for obtaining copyright protection. Copyright arises automatically on the creation of an original work.

Enforcement and Remedies

Copyright in Ireland is enforced by way of both civil and criminal liability. Copyright holders may bring actions for damages, injunctive relief, orders to "search and seize" and orders for an account of profits. Infringements that may occur include unauthorised copying of the work, performing of the work, making the work available to the public, and adaptation of the work.

The district court and the circuit court now have jurisdiction to determine intellectual property claims, including claims in relation to copyright infringement.

7.5 Others

Databases

Irish law provides protection for both original databases and "non-original" databases where substantial investment has been incurred in obtaining, verifying, or presenting the contents of the database. Original databases are those in which the contents constitute the original intellectual content of the author. The protections for databases under Irish law prevent the unlawful extraction or re-utilisation of a substantial part of the database.

Where a copyright work is included in a database, copyright shall continue in that work as well as the separate database protections.

The protection of databases under Irish law expires 15 years from the end of the calendar year in which the making of the database was completed.

Trade Secrets

Irish law provides for the protection of trade secrets. Trade secret protection is afforded without registration and can last without limitation in time, generally as long as confidentiality is maintained. In order for something to qualify as a trade secret, it must satisfy three requirements:

- the information must not generally be known or readily accessible in the relevant industry;
- the information must have commercial value because it is secret; and
- the information must be subject to reasonable steps, under the circumstances, to keep it secret.

Where a trade secret is unlawfully used, a variety of remedies under Irish law, including injunctions, corrective measures such as recall or destruction of infringing goods and damages, are available to protect the trade secret owner. A person who contravenes or fails to comply with court orders commits an offence and is liable to a fine and/or imprisonment for up to six months.

The EU (Protection of Trade Secrets) Regulations 2018 give effect to the EU Trade Secrets Directive and came into force on 9 June 2018 by way of statutory instrument number 188/2018. The Regulations provide for civil remedies in circumstances where a trade secret is unlawfully used, and allow for measures limiting access to court hearings and documents to ensure the confidentiality of trade secrets in court proceedings, including making it a criminal offence to contravene such measures.

8. DATA PROTECTION

8.1 Applicable Regulations

Principal Data Protection Laws

The principal data protection legislation in Ireland is Regulation (EU) 2016/679 (the General Data Protection Regulation or GDPR) as supplemented by the Irish Data Protection Acts 1988 to 2018 (DPA).

Irish law-specific nuances, as permitted or required under the GDPR, are set out in the DPA. These include, for example, the setting of the so-called digital age of consent, certain narrow derogations from data subject rights, and the administrative powers and procedures of the local supervisory authority, the Data Protection Commission.

The GDPR has general application to the processing of personal data in the EU, setting out extensive obligations on controllers and processors, and providing strengthened protections for data subjects. The GDPR carries the potential for large fines of up to 4% of a firm's worldwide annual turnover from the preceding financial year, or EUR20 million (whichever is higher).

Other Relevant Legislation

Ireland has transposed the ePrivacy Directive via S.I. No 336/2011 – European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (the ePrivacy Regulations). The ePrivacy Regulations deal with security and data breach reporting obligations for certain telecommunications companies and, more generally, electronic direct-marketing rules. The same implementing legislation addresses the local Irish requirements around obtaining consent for the use of cookies and similar technologies.

8.2 Geographical Scope

The GDPR applies to the processing of personal data by controllers and processors established in the EU (regardless of whether the processing itself takes place in the EU).

The GDPR also applies to controllers and processors not established in the EU where the organisation's processing activities involve either the offering of goods or services to data subjects in the EU or the monitoring of the behaviour of data subjects in the EU.

8.3 Role and Authority of the Data Protection Agency

The Irish Data Protection Commission (DPC) is the independent authority responsible for enforcing the GDPR and the DPA in Ireland. The DPC has investigative powers to examine complaints from individuals in relation to potential infringements of data protection law and can order corrective measures where necessary. The DPC has extensive investigative and information-gathering powers.

The DPC co-operates with other European supervisory authorities, and will act as the lead supervisory authority in respect of cross-border processing of personal data by organisations which have their main establishments (from a data processing perspective) in Ireland.

In relation to the COVID-19 pandemic, the DPC has acknowledged that the pandemic may affect organisations' ability to carry out data subject rights requests from individuals, however, where complaints are made, the facts of each case will be taken into account.

9. LOOKING FORWARD

9.1 Upcoming Legal Reforms

There have been a number of recent developments in Irish employment law with certain legislative reforms expected in the near future, as outlined below.

Right to Request Remote Working

At the beginning of 2021, the government announced its plan to legislate to provide employees with the right to request remote working. The Department of Enterprise, Trade and Employment is currently conducting a public consultation on the introduction of a statutory right to request remote work. It is expected that draft legislation will be published in Q3 of 2021.

Code of Practice on the Right to Disconnect

Separately, a Code of Practice on the Right to Disconnect was published at the start of April 2021. The Code of Practice provides for the right of an employee not to have to routinely perform work outside their normal working hours, the right not to be penalised for refusing to attend to work matters outside of normal working hours, and the duty on an employee to respect another person's right to disconnect (eg, by not routinely emailing or calling outside normal working hours). The Code provides that workplaces must put policies and procedures in place to ensure that employees' rights are preserved, that employers and employees adhere to their statutory obligations, that work is carried out safely and that the working relationship between the employer and employee is balanced and mutually beneficial. While failure to follow a Code is not an offence in itself, the Code is admissible as evidence, and any provision of the Code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Gender Pay Gap Reporting

The introduction of mandatory gender pay gap reporting legislation has been actively considered by the government since 2018. The Gender Pay Gap Information Bill was originally published in April 2019 and is working its way through the legislative process. The Bill received Cabinet approval at the end of March and it is currently at Committee Stage in the Parliament of Ireland.

It is envisaged that the legislation will require publication of gender pay data in both public and private sector entities that have more than 250 employees, with the threshold falling gradually to 50. Employers would be required to publish differences in hourly pay, bonus pay, part-time pay and the pay of men and women on temporary contracts. Publication of differences in pay by reference to job classifications may also be required. The precise methodology and reporting obligations are yet to be determined.

Matheson is the law firm of choice for internationally focused companies and financial institutions doing business in and from Ireland. Established in 1825 in Dublin, Ireland, and with offices in Cork, London, New York, Palo Alto and San Francisco, more than 720 people work across Matheson's six offices, including 97 partners and tax principals and over 520 legal, tax and digital services professionals. Matheson's expertise is spread across more than 30 practice groups. Its clients include over half of the world's 50 largest banks, seven of the world's ten largest asset managers, and seven of the top ten global technology brands, and it has advised the majority of the Fortune 100 companies. Matheson's values of partnership, respect, innovation, diversity and entrepreneurship are important to the firm and guide how its professionals work with each other and with their clients.

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