
CONTENTS

CHAPTER 1	INTRODUCTION AND GENERAL PRINCIPLES	1
1.1	Irish Corporate Environment	2
1.1.1	Tax strategy	2
1.1.2	European access	3
1.1.3	Skilled and diverse workforce.....	3
1.1.4	Legal and regulatory framework.....	3
1.2	Irish Economic Crash.....	4
1.2.1	Austerity.....	5
1.2.2	Recovery	5
1.3	Liquidations, Examinerships and Receiverships	6
1.3.1	Liquidation.....	6
1.3.2	Examinership	7
1.3.3	Examinership-lite	8
1.3.4	Receivership.....	9
1.4	Corporate Regulation	10
1.4.1	The Office of the Director of Corporate Enforcement.....	11
1.4.2	The Irish Competition Authority	12
1.4.3	The Companies Registration Office.....	13
1.5	Irish Company and Non Company structures	13
1.5.1	Company structures	13
1.5.2	Limited company	14
1.5.3	Single member company.....	15
1.5.4	Unlimited company	15
1.5.5	Undertakings for Collective Investment in Transferable Securities (UCITS)	15
1.5.6	European Economic Interest Groupings (EEIG).....	15
1.5.7	Societas Europaea (SE)	15
1.5.8	Cross border merger	16
1.5.9	Non company structures.....	16
1.5.10	Partnerships	16
1.5.11	Sole proprietorship	17
1.6	Corporate Legislation.....	17
1.6.1	Companies Act 2014	18

CHAPTER 2	INCORPORATION OF A COMPANY	21
2.1	Introduction	22
2.2	Companies Registration Office	22
	2.2.1 General	22
	2.2.2 Types of company	23
2.3	Current Regime for the Administration of Companies	25
	2.3.1 Registration of a company	25
	2.3.2 Registering a business name	26
	2.3.3 Reserving a company name	27
	2.3.4 Change in business name or address	27
	2.3.5 Annual return	27
	2.3.6 Registration of a change of registered office	28
	2.3.7 Change of directors or company secretary or their details	28
	2.3.8 Registration of mortgages and charges	29
	2.3.9 Change in type of company	29
	2.3.10 Change in share capital	30
	2.3.11 Change to memorandum and articles of association	31
2.4	Companies Act 2014	31
	2.4.1 Introduction	31
	2.4.2 Private Company Limited by Shares (LTD)	33
	2.4.3 Designated Activity Company (DAC)	36
	2.4.4 Transition period	38
	2.4.5 Changes for registered agents	43
	2.4.6 Changes for directors	43
	2.4.7 E-Certificates	43
	2.4.8 Public Limited Companies (PLC)	43
	2.4.9 Unlimited Company	44
	2.4.10 Company Limited by Guarantee (CLG)	46
	2.4.11 Investment Company	47
	2.4.12 External Companies	47
	2.4.13 Re-Registration	47
2.5	Director's Responsibilities	48
	2.5.1 Fiduciary duties	48
	2.5.2 Compliance report	49
	2.5.3 Finance restrictions	50
	2.5.4 Offences	50

CHAPTER 3	COMPANY LAW AND CORPORATE	
	TRANSACTIONS	53
3.1	Introduction	54
3.1.1	Doctrine of <i>Ultra Vires</i>	54
3.2	Loans and Similar Transactions Involving Directors.....	55
3.2.1	Introduction	55
3.2.2	The general prohibition on loans and similar transactions	56
3.2.3	The exceptions to the general prohibition.....	58
3.2.4	Enforcement of a breach of CA 1990 s31.....	63
3.2.5	Contravention and penalty in relation to CA 1990 s31	63
3.3	Other Transactions Involving Directors.....	64
3.4	Changes brought in by Companies Act 2014	65
3.4.1	The general prohibition on loans and similar transactions	66
3.4.2	10% limit exemption.....	66
3.4.3	Exemption by ratification by company.....	66
3.4.4	Intra-group transactions.....	68
3.4.5	Exemption for directors' expenses	68
3.4.6	Exemption for business transactions.....	68
3.4.7	Contravention and penalty in relation to CA s239 ..	68
3.4.8	Other transactions involving directors	69
3.5	Financial Assistance by a Company to Purchase its Own Shares.....	69
3.5.1	Exemptions to CA 1963 s60(1) prohibition.....	69
3.5.2	Companies Act 2014 changes to CA 1963 s60	71
3.6	Distributable Reserves.....	72
3.6.1	Introduction	72
3.6.2	Distribution.....	73
3.6.3	Restrictions on distributions.....	73
3.6.4	Consequences on an unlawful distribution	75
3.6.5	Value of the distribution.....	75
3.6.6	Companies Act 2014 and distributions	76
3.6.7	Other relevant provisions under CA 2014.....	78
CHAPTER 4	TAX COMPLIANCE FOR CORPORATE	
	TRANSACTIONS	79
4.1	Irish Corporate Residency	80
4.1.1	Guidelines on establishing Irish tax residence	81
4.2	Corporation tax	83

4.2.1	Form name	84
4.2.2	Due dates - pay and file	84
4.2.3	Third party returns	85
4.3	Capital gains tax	85
4.3.1	Form name	85
4.3.2	Due dates - pay and file	86
4.4	Employer/Employee Tax.....	86
4.4.1	Registration and payment filing forms.....	87
4.4.2	Due dates.....	87
4.5	Value-Added Tax (VAT)	88
4.5.1	How often does the VAT need to be paid.....	89
4.5.2	Form names.....	89
4.5.3	Due dates.....	90
4.5.4	Method of payments.....	90
4.6	Dividend Withholding Tax	90
4.6.1	Due dates and method of payment.....	90
4.6.2	Form names.....	90
4.7	Patent Royalties and Interest Withholding Tax	91
4.7.1	Procedure	91
4.7.2	Form name	91
4.8	Professional Services Withholding Tax (PSWT)	91
4.8.1	Due dates.....	91
4.8.2	Form names.....	91
4.9	Relevant Contracts Tax.....	92
4.9.1	Procedure	92
4.9.2	Form names.....	93
4.9.3	Due dates.....	93
4.9.4	Method of payments.....	93
4.10	Base Erosion Profit Shifting (BEPS).....	93
 CHAPTER 5 FINANCING AND SELLING A COMPANY		97
5.1	Raising Finance.....	98
5.1.1	General.....	98
5.1.2	Start-up capital	98
5.1.3	Debt and equity finance	100
5.2	Tax Reliefs Available to Corporates.....	101
5.2.1	Seed capital scheme	101
5.2.2	The employment and investment incentive scheme (EII).....	102
5.2.3	Research and development tax credit.....	103

	5.2.4 Corporation tax relief for start-up companies.....	103
	5.2.5 Start your own business relief.....	105
5.3	Loan Capital.....	105
	5.3.1 Debentures or loan stock.....	105
5.4	Bank Loans.....	107
5.5	Deductibility of Interest	107
	5.5.1 Capitalised interest	108
5.6	Directors' Loans.....	109
5.7	Capital Contributions	110
5.8	Funding within a Business	111
	5.8.1 Retained earnings.....	111
	5.8.2 Cash flow management.....	111
	5.8.3 Invoice discounting/ debt factoring	111
5.9	Buying/Selling a Company	112
	5.9.1 Preparation for bringing a company to market...	112
	5.9.2 Going to market.....	114
	5.9.3 Practical issues on the sale of a business	115

CHAPTER 6 TAX ISSUES ON DEBT RESTRUCTURING..... 117

6.1	Introduction	118
6.2	Minimising Tax Issues Arising on Debt Restructuring.....	118
	6.2.1 Tax treatment of debt write-offs.....	118
	6.2.2 Interest deductibility.....	119
6.3	Interest as a Trading Expense.....	120
	6.3.1 Deductibility	120
6.4	Interest as a Rental Expense	120
	6.4.1 Deductibility	120
6.5	Interest as a Charge.....	120
	6.5.1 Interest allowed as a charge on income	120
	6.5.2 Relief under TCA 1997 s247.....	121
	6.5.3 Recovery of capital.....	123
	6.5.4 Anti-avoidance provisions under TCA 1997 s247.....	124
	6.5.5 Anti-avoidance provisions outside of TCA 1997 s247.....	126
	6.5.6 Section 247 in practice	126
6.6	Restrictions on Capital Debt Release.....	128
	6.6.1 Capital gains tax.....	128
	6.6.2 Persons chargeable.....	128

6.6.3	Overview of calculation of a chargeable gain or loss	129
6.6.4	Base cost.....	130
6.6.5	Indexation relief	131
6.7	Debt Release Provisions	132
6.7.1	How does it work?.....	132
6.7.2	Exposure to changes in capital gains tax rates.....	135
6.7.3	Loans from group companies.....	135
6.8	Working Capital	136
6.8.1	Trading receipts	136
6.9	General Anti-Avoidance Provisions	136
6.9.1	Section 817.....	136
6.9.2	Section 817 in practice	139
6.9.3	Summary of s817.....	140
6.9.4	Section 811/811A.....	140
6.10	Mandatory Disclosure	142
 CHAPTER 7 CORPORATE RESTRUCTURING		145
7.1	Introduction	145
7.2	Overview	146
7.3	Two Party Swap.....	147
7.3.1	Capital Gains Tax relief	148
7.3.2	Share for share – intergroup	152
7.3.3	Stamp duty relief.....	154
7.3.4	Conditions for relief.....	154
7.3.5	Target company	155
7.3.6	Clawback.....	156
7.3.7	Claiming relief	156
7.4	Three Party Swap	156
7.4.1	Transfer of an undertaking – share for undertaking.....	157
7.4.2	Capital gains tax.....	158
7.4.3	Stamp duty relief.....	160
7.5	Group Relief.....	160
7.5.1	Stamp duty	160
7.5.2	Capital gains tax.....	162
7.6	Distributable Reserves.....	163
7.7	Relevant provisions of CA 2014	164
7.7.1	Procedure to declare profits available for distribution prior to a re-organisation	165

	7.7.2 Share premium	165
	7.7.3 Stamp duty – SDCA s80 relief	165
7.8	Relief for Disposal of Holdings in Subsidiaries.....	166
	7.8.1 Conditions.....	166
	7.8.2 Exclusions.....	167
	7.8.3 Relief for disposals of assets relating to shares....	167
7.9	Practical Application/Implementation.....	168
	7.9.1 Step plan.....	168
	7.9.2 Practical steps on the transfer of a trade.....	169

CHAPTER 8 TAX ISSUES ON MERGERS & ACQUISITIONS 175

8.1	Introduction	176
8.2	Overview	176
8.3	Implications for Sellers.....	177
8.4	Implications for Purchasers	178
8.5	Tax Implications for Sellers.....	180
	8.5.1 Pre-sale structuring.....	180
	8.5.2 Capital losses	181
	8.5.3 Dividends prior to share sale	181
8.6	Tax Implications for Purchasers.....	181
	8.6.1 Trading losses	182
	8.6.2 Capital losses	182
8.7	Pricing the acquisition.....	184
	8.7.1 Due diligence for purchasers.....	185
8.8	Structuring the Acquisition	186
8.9	Financing the Acquisition	186
	8.9.1 Tax issues on financing the acquisition.....	186
8.10	Consideration	188
	8.10.1 Assumption of liabilities	188
	8.10.2 Earn-outs and deferred consideration	190
	8.10.3 Escrow and deferred payment arrangements.....	192
	8.10.4 Payment of tax by instalments	193
8.11	Other Issues.....	193
	8.11.1 Completion accounts	193
	8.11.2 Tax clearance.....	194
	8.11.3 Transaction cost deduction	195
	8.11.4 Employee considerations	195
8.12	VAT.....	196
	8.12.1 Selling a business	196
	8.12.2 VAT recovery for the transferor and transferee.....	197

8.12.3	Transactions involving shares	198
8.12.4	Holding companies – recovery of VAT	202
CHAPTER 9 WARRANTIES AND INDEMNITIES		203
9.1	Introduction	203
9.2	Taxation Considerations.....	204
9.2.1	Adequacy of provisions in the accounts for tax	204
9.2.2	Deferred tax	205
9.2.3	Base cost of assets.....	205
9.2.4	Compliance	205
9.2.5	Tax evasion.....	206
9.2.6	Claims and elections.....	206
9.2.7	Extraction of cash or other assets prior to the sale.....	206
9.2.8	Areas of focus during due diligence process	206
9.3	Warranties	207
9.3.1	Who gives warranties?	208
9.3.2	Purpose of warranties.....	208
9.3.3	Common tax warranties.....	209
9.3.4	Sample warranty clauses	210
9.3.5	Limiting liability under warranties - disclosure letter	212
9.3.6	Other options open to purchaser	213
9.3.7	Breach of tax warranties.....	214
9.4	Tax Deed of Indemnity	215
9.4.1	Who enters into a tax deed?	217
9.4.2	Common provisions of a tax deed.....	217
9.4.3	Limiting liability under tax deed	221
9.4.4	Claims under tax deed	221
9.5	Tax Warranties v Tax Indemnities.....	221
9.6	Share Sale v Asset Sale	224
9.6.1	Share sale.....	224
9.6.2	Asset sale	224
9.6.3	Completion matters	224
CHAPTER 10 BANKING AND SECURITY		227
10.1	General Banking Principles	227
10.2	Bank Finance.....	228
10.2.1	Introduction	228
10.2.2	Facility letters and agreements.....	228

10.3	Company Financing	232
	10.3.1 Debentures	232
10.4	Security	233
	10.4.1 Why do lending institutions seek security?	234
	10.4.2 Different types of security in Ireland	236
10.5	Guarantees	236
10.6	Retention of Title	243
10.7	Judgment Mortgage	245
10.8	Registering Security	246
	10.8.1 Companies Registration Office	247
	10.8.2 Property filings	250
10.9	New Companies Act	250

**CHAPTER 11 TAX ISSUES FOR LIQUIDATORS, RECEIVERS
AND EXAMINERS 253**

11.1	General	254
11.2	Examinership	254
11.3	Examinership - Lite	256
11.4	Receivership	257
	11.4.1 Appointment of receiver	257
	11.4.2 Consequences of appointment on the company and directors	259
	11.4.3 Powers of receivers	259
	11.4.4 Primary duties of receivers	260
11.5	Liquidation	260
	11.5.1 Voluntary liquidation	260
	11.5.2 Compulsory liquidation	261
	11.5.3 Effect on a company of the appointment of liquidator	262
	11.5.4 Powers of a liquidator	262
	11.5.5 Principle functions of a liquidator	263
	11.5.6 Order of priority when paying debts	263
11.6	Tax Implications of Insolvency	264
	11.6.1 General	264
	11.6.2 Obtaining information required	265
11.7	Tax Aspects of Examinership	267
	11.7.1 Reduction of debt	267
	11.7.2 Debt release provisions	267
	11.7.3 How does it work?	267
	11.7.4 Exposure to changes in capital gains tax rates	270

11.7.5	Loans from group companies.....	270
11.7.6	Disposal of assets by Examiner.....	271
11.8	Tax Aspects of Receivership	271
11.8.1	Issues on appointment	271
11.8.2	Corporation tax	271
11.8.3	Proposed changes to tax treatment of receiverships	275
11.9	Tax Aspects of Liquidation	276
11.9.1	Corporation tax	276
11.9.2	Capital gains tax.....	279
11.9.3	Stamp duty.....	280
11.10	Chargeable Gains on Disposals by Liquidators and Receivers	281
11.10.1	Computation of CGT liability	281
11.10.2	CGT withholding tax.....	283
11.11	Cessation of Trade.....	285
11.12	Pre-sale Restructuring by Liquidators and Receivers.....	286
11.12.1	Intergroup transfer of assets.....	286
11.12.2	Hive out of a trade	287

**CHAPTER 12 VAT AND RCT FOR LIQUIDATORS,
RECEIVERS AND EXAMINERS 289**

12.1	Introduction	290
12.2	VAT Review on Appointment	291
12.3	VAT Obligations	292
12.3.1	Liquidators.....	292
12.3.2	Receivers.....	293
12.3.3	Examiners.....	294
12.3.4	Administrators	295
12.4	General Entitlement to Input Credit	295
12.5	VAT Deregistration	296
12.6	Bad Debt Relief.....	297
12.7	Retention of Title	298
12.8	Suppliers' Invoices Remaining Unpaid After Six Months	298
12.9	VAT Groups.....	299
12.9.1	Conditions.....	299
12.9.2	Impact of group registration.....	299
12.10	VAT and Property – Issues Arising During Insolvency.....	300
12.10.1	Overview	300

12.10.2	Sales of freeholds (including “freehold equivalents”).....	302
12.10.3	Letting of property – new system (1 July 2008).....	306
12.10.4	Transitional measures.....	308
12.11	Relevant Contracts Tax.....	309
12.11.1	Introduction.....	309
12.11.2	Background.....	309
12.11.4	Practical implications for insolvency practitioners.....	312
12.11.5	The VAT impact.....	313
12.11.6	Insolvency practitioner as subcontractor.....	314
12.12	Revenue Tax Briefing 10/2010.....	315
12.12.1	Background.....	315
 CHAPTER 13 CASE STUDIES		321
 INDEX		337