

# Corporation Tax

**Rates:** The standard rates of corporation tax may be summarised as follows:

	<u>Trading Income</u>	<u>Non-Trading Income</u>
2012	12.5%	25%

The 25% rate applies to trading income from dealing in and developing land other than fully developed land. A 20% rate applied to trading income from dealing in residential land up to 2008, from 2009 these profits are subject to tax at the individuals' marginal rate or the 25% tax rate for Companies. In addition a windfall tax of up to 80% may apply to certain disposals of development land,

Trading losses and charges subject to the lower rate of tax may be offset against income other than that which is taxed at the lower rate on a "value and credit basis". Manufacturing losses and charges can be used in a similar fashion. The effect of this is basically to give a credit against corporation tax payable for the value of the losses or charges.

No loss relief or group relief on a value basis applies where the Corporation tax refers to profits of the policy holders of a life assurance company.

## Corporate Group Relief

Losses may be surrendered within a group or consortium subject to certain restrictions, which apply to losses in general. This applies to both Ireland and EU/EEA resident participants and to non EU residents in certain circumstances. A Group may have a non EU/EEA parent if it is resident in a country with which Ireland has a double taxation agreement, or where the parent Company is recognized on a recognized Stock Exchange.

## Close Companies

A surcharge of 20% is payable on the undistributed investment and rental income of a close company. Professional service companies are liable to a surcharge of 15% on one-half of its undistributed trading income and a surcharge of 20% on the undistributed rental and investment income.

The close company surcharge does not apply in situations where a company is the recipient of a dividend from a foreign subsidiary, and the company would be exempt from capital gains tax on the disposal of the shares in that subsidiary provided it is located in an EU or tax treaty country.

Where a close company settles money to a trust on or after 1 January 2011, it will be treated as a distribution from the close company to the trustee of the trust, and will be subject to tax as a dividend in the hands of the trustee. In addition any sum received out of the settlement to the member of the close company or by the relative of such an individual will be chargeable to Income tax.

A close company that pays a dividend to another close company may jointly elect for the dividend “not” to be treated as a distribution. In effect this provides relief where a trading company pays a dividend to an investment/holding company as the income will not be treated as investment income in the holding company which will eliminate the close company surcharge.

**Tip: Care needs to be exercised when making a payment from one investment company to another as this simply transfers the close company problem from one company to another.**

## Corporate donations

Companies are allowed deduct, as a trading expense, donations made to charities and other approved bodies. The minimum amount of donation in any year is €250. The following are some of the bodies in which payments will qualify for corporation tax relief:

- A body approved for education in the arts;
- A body approved as an eligible charity;
- An institute of higher education, or a body established for the sole purpose of raising funds for such an institution;
- Certain secondary level institutions;
- The Equine Foundation;
- An approved sports body for an approved project;

## R & D Credit

Incremental research and development expenditure qualifies for a tax credit of 25%; this is in addition to a tax deduction at 12 ½ %, giving an effective write off for R&D expenditure of 37½%. Claims must be made within 12 months of the end of the period in which the expenditure is incurred.

A repayment of excess R&D tax credits is available over a three year period. The repayment is limited to the higher of the total corporation tax payable by the company in the previous ten years or the payroll tax liabilities of the company for the period in which the R&D is incurred.

R&D expenditure may be carried back to the prior period to generate a cash refund.

### Key Employee R&D Credit

A credit may be awarded to a key employee by means of a tax credit. A key employee is described as an employee who has the following characteristics:

The employee must;

- Not be, or have been, a director of the company and must not be connected to a director of the Company.
- Not have, or have had a material interest [\(5%\)](#) in the company or be connected to a person who has a material interest in the Company.
- Perform 75% of their activities in the conception or creation of new knowledge, products, processes, methods and systems.
- Have 75% of the emoluments of the individual qualifying for R&D tax credit.

#### Other conditions:

- The amount that can be surrendered to the employee is capped at the amount of corporation tax due from the Company before taking the R&D tax credit into account, i.e. the company must be paying tax in order to avail of the relief.
- It is up to the Company to determine who receives the benefit of the reward and the amount of credit awarded.
- The employee must make a claim to Revenue for a tax refund.
- The individuals effective tax rate cannot be reduced below 23% (this includes jointly assessed spouses/civil partners). The credit does not apply to the USC. Unused credits may be carried forward indefinitely or until the employee leaves the Company.
- Revenue retain the right to clawback the credit if the R&D claim is denied on an audit. Revenue will seek to levy the clawback on the Company in priority to the employee.

## R&D Tax Credit

The credit will be available for incremental expenditure incurred in any EU/EEA country, where the expenditure is not tax deductible in any other EU/EEA country.

The reference year for determining the incremental expenditure for all years is 2003, with effect from 1 January 2012 the first €100,000 of expenditure incurred does not refer to a base year, for expenditure in excess of €100,000 the base year reference still applies. To establish the incremental spend by reference to the base year, trades of Groups may be separated where they are carried on in separate geographic locations where they are located more than 20Kms apart. This allows a company to cease carrying out R&D activities, or dispose of an R&D facility in a particular location without impacting on the total R&D spend from other R&D centers in a Group.

Expenditure on R&D carried out by a third level college on behalf of the company or group also qualifies if it does not exceed 5% of the company or group's own R&D spends. Subcontracted costs to an unconnected third party, to a maximum of 10% of total qualifying expenditure, are also eligible for the tax credit. For accounting periods ending on or after 1 January 2012 a Company may claim the amount referred to above or €100,000 whichever is higher. The third party contractor cannot also claim the R&D credit and the Company must notify them in writing of this.

Grant aided expenditure on R&D only qualify for relief on a net of grant basis.

A tax credit is also available for construction or refurbishment work carried out on a building used for qualifying research and development activities. The credit is equivalent to 25% of the qualifying cost of construction or refurbishment and may be claimed in full in the year in which the expenditure is incurred.

## New Company Start ups

An exemption from corporation Tax for the first three years of trading applies to certain new start up companies.

Where a company is incorporated after 14 October 2008 and commences to trade up to 31 December 2014 it will be exempt from Corporation Tax and capital gains tax on the disposal of assets used for the

purposes of the new trade. The exemption is subject to a liability threshold, and no relief will be available where liabilities exceed €60,000.

Corporation tax Liability for the period	Availability of Relief
< €40,000	Full exemption
€40,000 to €60,000	Marginal relief
> €60,000	Fully taxable

The relief is restricted to new trades and does not apply where the trade was previously carried on by another person, or where the trade, or part of the trade was carried on by an associated company.

From 1 January 2011, in order to encourage job creation, the relief is limited to the amount of employer PRSI that is paid, or that amount that would have been payable if relief under the Employer Job PRSI Incentive scheme did not apply. There is a cap applied to the amount of employer PRSI per person which is capped at €5,000 per person, with an overall limit of €40,000.

The relief does not apply to companies carrying on professional services, nor does it apply to companies which carry on a trade of :

- land dealing,
- petroleum and mineral activities,
- aquaculture or agriculture,
- coal,
- road freight operations,
- export related activities,
- undertakings in difficulty

In addition, in order to comply with EU requirements it should be noted that Revenue may disclose details of relief granted under the scheme.

## Payment and Compliance

### Large Companies

(a company with a corporation tax liability of €200,000 or more in the preceding year):

For accounting periods commencing on or after 14 October 2008

6 months before the end of the accounting period (day 21 of the 6<sup>th</sup> month)

- 50% of the previous years final liability
- 45% of the current years final liability

One month before the end of the Accounting period (day 21 of the 11<sup>th</sup> month)

- 90% of the final liability (after taking into account the payment five months earlier)

Filing Date (21<sup>st</sup> day of the 9<sup>th</sup> month following the accounting period end)

- Balance of any tax due

A company's preliminary tax liability includes the corporation tax, close company surcharge and income tax liabilities for the accounting period, it also includes tax on chargeable gains, except for those arising from disposals of development land. To ensure interest charges will be avoided, the preliminary tax payment (the aggregate of the first and second installment) must represent at least 90% of the final tax liability for the accounting period.

Special arrangements exist to take account of chargeable gains arising in the last month of an accounting period and for accounting periods of one month's duration.

## Small Companies

A small company i.e. where last years Corporation tax liability was less than **€200,000**, may base its first instalment on 100% of the previous years' liability.

## New Companies

Where a company is a new company with a corporation tax liability of less than €200,000 for the first accounting period, it will not be required to pay preliminary tax for that period. A new company may pay tax for the first year when filing its tax return.

## Group Companies

Where companies are large companies and members of the same Group, where one company has satisfied its preliminary tax obligations and paid in excess of 90% of the final corporation tax liability, and another company has not paid sufficient preliminary tax, then the excess paid by one company may be transferred to the other company to limit any exposure to interest.

## Filing

The corporation tax return must be filed within eight months and 21 days of the Accounting period end otherwise a surcharge will arise.

**Information included in Return** A company is required to disclose information in relation to certain incentives/reliefs on their annual tax return, the reliefs to be detailed will be highlighted on the return forms.

Failure to provide the relevant information may result in a penalty of €950, as well as a surcharge of 5% of the tax due subject to a maximum of €12,695.

## Exemption for Disposal of Shareholdings

An exemption for Irish based companies from Capital Gains Tax on the disposal of shares in a subsidiary company. To qualify for the exemption, a 5% holding of ordinary shares must be held within a two year period of disposing of the shares. The shares must be held for a period of at least twelve months and must be held in a company located in an EU or treaty country.

The company being disposed of must be a trading company, or the holding company of a trading group (i.e. the holding company together with all other companies in which it has a 10% interest must consist wholly or mainly of trading activities).

## Payment Dates for Capital Gains Tax

Payment of capital gains tax relating to a disposal of development land are treated in the same way as a disposal for an individual.

For disposals of assets other than development land, the payment and filing dates are as outlined above.

Special rules apply where a gain is made in the last month of the accounting period, this allows for up payments to be made without an exposure to interest.

## Penalties

The surcharge for late filing and the restrictions on claims for certain losses and relief's are as follows:

<u>Date of Filing</u>	<u>Surcharge</u>	<u>Restriction</u>
Return filed within 2 months of expiry of deadline	5% of tax payable maximum €12,695	25% of loss or relief maximum €31,740
Return filed 2 months or more after expiry of deadline	10% of tax payable maximum €63,485	50% of loss or relief maximum €158,715

Payment and filing deadlines may be extended to the 23<sup>rd</sup> of the month where the return is filed electronically via ROS the Revenue online system.

## Mandatory Reporting

Certain transactions which have the main benefit of obtaining a tax advantage are reportable to Revenue.

*If you would like more information or would like to discuss any other areas of interest,  
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### ***About Lyons & Calzo Accountants:***

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*Please note that the above is intended to be a general guide to the various issues only and further advice should be obtained before taking, or refraining from taking, any action. This leaflet is intended to be informative and issues are condensed in the interest of clarity and brevity, and a more comprehensive examination of the issues is outside the scope*