



About InterTradelreland

InterTradelreland is a cross-border trade and business development body funded by the Department of Business, Enterprise and Innovation in Ireland and the Department for the Economy in Northern Ireland. It is the only organisation which has been given responsibility by both governments to boost north/south economic co-operation to the mutual benefit of Northern Ireland and Ireland. InterTradelreland supports businesses through innovation and trade initiatives to take advantage of co-operative opportunities improving capability, driving competitiveness, economic growth and job creation. InterTradelreland is a powerful resource for business growth, helping SMEs through a strong mix of business intelligence, funding support and meaningful contacts.

InterTradelreland

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Published June 2018



A Simple Guide to Cross-Border Business

Your reference for planning or implementing a strategy to enter the Cross-Border Market.

intertradeireland.com



Foreword

Helping Businesses navigate through Brexit

In light of the recent Brexit referendum decision, a key objective for InterTradelreland is to ensure that cross-border trade continues to grow and SME benefits are exploited. Cross-border trade in goods and services on the island of Ireland has grown exponentially over the past twenty years and now stands at circa £5.15bn/€6.29bn equivalent. Over this period cross-border trade has proven to be robust recovering strongly from other shocks such as the banking crisis. While local businesses have proven to be resilient, nevertheless, InterTradelreland will assist SMEs to adjust to any new trading relationships that emerge from Brexit negotiations so that they can continue to avail of these opportunities.

What should I do?

Don't wait and see what will happen, take a planned approach to exporting based on innovation, diversification and scenario planning. InterTradelreland has funding and supports available for ambitious SMEs looking to grow via cross-border exporting (Acumen & Elevate Programmes) or innovation (FUSION & Challenge Programmes), and can help local businesses in both jurisdictions.

InterTradelreland Brexit Advisory Service

If you're a business looking to navigate your way through Brexit and are unsure what to do next, InterTradelreland offers 100% financial support up to £2000/€2000 (inclusive of VAT) towards professional advice in relation to Brexit matters. This support can help your business get advice on specific issues such as movement of labour, goods, services and currency management. It can also support staff training on specialist courses.

www.intertradeireland.com/Brexit/vouchers

InterTradelreland can also help you access information on possible World Trade Organisation tariffs for your product(s). For more information on our Brexit Advisory Service contact Mark Sterritt our Brexit Advisory Service Manager on 028 3083 4122 (048 from Ireland) or by email: mark.sterritt@intertradeireland.com

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I am based
in Ireland



Section 1

I am based in Ireland & want to **sell products** into Northern Ireland

1.1 Must I have an office in Northern Ireland?

It is not necessary to have an office in Northern Ireland to facilitate sales of goods if the goods are to be sold directly to the purchaser. However, if you wish to target a broader spectrum of clients you may wish to consider establishing a presence there for other commercial reasons. This is discussed at Section 5 and in the Brexit section 18.

1.2 Must I form a company in Northern Ireland?

A company is not necessary but if you anticipate profits in the UK or your venture has an element of risk to it, you may wish to consider ring fencing this within a company structure. The rates of tax in the UK must also be considered in determining the route you want to take. As trade increases, it may be advisable for tax reasons to establish a separate company.

1.3 Do I need a licence to sell products in Northern Ireland?

Not generally, but this depends on the type of product to be sold. For example, a licence would be required for sale of pharmaceuticals. Specific advice should be taken on each occasion.

1.4 Must I declare my goods at Customs? Do I need to complete export documentation?

There is free movement of goods within the EU and the only goods which need to be declared at Customs are excisable goods i.e. tobacco, spirits, wines and beer.

However, this may change when the UK leaves the EU on 29 March 2019. See Section 18 for more detail.

1.5 Must my product meet certain regulations?

You must ensure compliance with required Consumer/Health & Safety Standards. Specific advice should be taken on each occasion but assistance may be obtained from websites. For Consumer Regulations visit the following websites – www.consumerline.org and the website of the UK Department of Business, Innovation and Skills (BIS) – www.bis.gov.uk. See also the Northern Ireland Department of Enterprise Trade and Investment website (Consumer Affairs Section) – www.economy-ni.gov.uk

1.6 At what point does the risk pass from me (the seller) to the purchaser?

Risk, in terms of loss, is the responsibility that a carrier, borrower, user/purchaser of property or goods assumes if there is damage or loss. “Passing of Risk” means the point at which the buyer will be responsible for the goods. For example, if goods are delivered by lorry, who bears the loss if the goods are stolen in transit before they reach the purchaser?

This issue arises just as much within your own jurisdiction as in a cross-border context and is covered by the Sale of Goods legislation, which is broadly similar in both jurisdictions. It can (and should) also be covered by your written contract.

Normally, in the absence of a written contract stating something different, where the seller arranges delivery to the purchaser, risk will only pass to the purchaser on receipt of delivery. In a cross-border sale, this may therefore mean that risk would only pass to the buyer when he receives the goods in Northern Ireland.

In a cross-border context, it may be wise to consider appointing a Distributor in the cross-border market. As soon as that Distributor collects goods from your premises in Ireland, the risk passes to him. For further definitions, see Distributor and Sales Agent (Section 13).

1.7 What liability do I have for defective products in Northern Ireland?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

If goods are being sold through a distributor in Northern Ireland, the Distributor will generally be required to take on liability for defective products, as modified by negotiation in any written contract between you and the Distributor. This would be subject to the Distributor being entitled to indemnity from the seller for those defective products. In such circumstances, the Distributor would deal directly with the buyer and would in turn be entitled to be compensated by the seller for any loss arising to

the Distributor as a result of the seller's negligence/ breach of contract. If, however, goods are sold by you personally or through a sales agent, then you will be liable for defective products under Northern Ireland legislation.

Section 16, 17 and 18 provide further details of issues to be considered in respect of planning for Brexit.

1.8 Do I need to have product liability insurance?

Yes. You should also ensure that the current product liability insurance policy issued to you in Ireland is not restricted to sales within Ireland. If it is so restricted, you will need to negotiate with your insurance company to ensure that the product liability insurance extends to sales into the United Kingdom.

1.9 In the event that the product is defective at delivery, what do I need to know about after-sales service in Northern Ireland?

Unless you are selling through a Distributor, you or your Sales Agent will be liable for after sales service for that defective product in Northern Ireland.

1.10 What if I am employing someone in Northern Ireland to work for me?

Section 18 highlights some of the issues to be considered re Brexit with regards to the movement of people.

UK Resident Employee

To determine which legislation applies (i.e. UK or Irish) it is important to establish where the employee will be carrying out their duties. In certain circumstances, if your company is based in Ireland and employs a Northern Ireland resident to carry out duties in Northern Ireland, a special scheme known as a Direct Contribution of National Insurance (DCNI) scheme has to be operated in the UK. This is an NIC only Scheme. NIC will be payable by both the employer and the employee and the employee will need to register for Self-Assessment and pay tax on his salary via Self-Assessment. However, if the Irish company has a tax presence in Northern Ireland e.g. through having a branch or agency in the UK, then the branch or Agency would need to register for UK PAYE and National Insurance and operate same on the payments to the Northern Ireland employee. You should seek

professional advice in relation to this area.

Irish Resident Employee

This is a complex area. If an Irish employer, who does not have a permanent or deemed permanent establishment in Northern Ireland, is sending Irish resident employees into Northern Ireland to work and they spend more than 183 days per year working in Northern Ireland, those employees must be on a UK payroll.

As the UK have a new statutory residence test, employees who exceed 183 days in the UK may need to take separate advice in respect of their overall tax position.

Where an Irish employer has RoI resident employees working in Northern Ireland for more than 60 days for a permanent establishment or branch the Irish employer must register for UK payroll. However, there is no requirement to operate UK payroll between 60 – 183 days where certain conditions are met.

The Irish employee may be entitled to transborder workers relief and therefore no Irish tax will arise on the UK earnings. If it is a temporary secondment to Northern Ireland i.e. less than 2 years, the employee and employer can elect to continue paying Pay Related Social Insurance (PRSI) in Ireland instead of UK NIC. An application can be made to obtain an A1 certificate of continuing liability.

This could result in employees receiving less take-home pay than they would if their salary was only subject to the Irish / UK PAYE system. This is likely to cause great complications and labour relations problems for employers whose employees are regularly assigned to work in the other state. For this reason, you are strongly advised to consult your professional adviser if these rules are likely to impact upon your business.

Bear in mind that if you employ someone in Northern Ireland to work for you, that employee can avail of rights under Northern Ireland Employment legislation. Specific legal advice should be taken with regard to the employment contract. While Ireland and Northern Ireland employment legislation are broadly similar, there are specific areas where the legislation differs

between the two jurisdictions e.g. Disciplinary and Grievance procedures.

1.11 Is my Employers Liability Insurance valid in Northern Ireland?

Your Employer's Liability Insurance is most likely NOT valid in Northern Ireland. Specific advice should be taken by you from your insurance company. If employing someone in Northern Ireland, it is essential that the employee is covered by insurance which applies to Northern Ireland Health & Safety Law.

1.12 Are my vehicles/drivers insured in Northern Ireland?

Normally, vehicles used for business purposes should be specifically insured for such uses. It would be wise, prior to undertaking a new business venture in Northern Ireland, to obtain written confirmation from your insurance company in Ireland that it will cover your vehicles/drivers for business purposes in Northern Ireland.

1.13 Are the traffic/vehicle regulations the same in Northern Ireland?

While traffic/vehicle regulations are broadly similar, specific advice should be taken in each instance. For further information on driver and vehicle licensing in Northern Ireland go to the Northern Ireland Department of Environment website – www.nidirect.gov.uk In certain instances, should you wish to avoid the expense of compliance with the traffic/vehicle regulations of a second jurisdiction, it may be wise to consider retaining a courier or transport agent to deliver your goods within Northern Ireland.

1.14 Do I need a written contract?

It is very wise in all instances to have a written contract, particularly in business-to-business contracts where there is more scope to modify the provisions of the general law. In cross border sales, it is particularly important to define such matters as when risk passes, the liabilities of distributors or sales agents etc.

As a result of Brexit, it is not currently clear whether the EU Regulations governing civil and commercial contracts between member states will apply to Northern Ireland after March 2019. As a consequence, in order to avoid real commercial consequences (i.e. legal fees and delay) resulting from legal uncertainty as

to which country's courts have jurisdiction to resolve disputes post March 2019, in business-to-business sales you are strongly advised to contain an explicit jurisdiction clause within your terms and conditions when trading cross-border. It is highly likely that such a clause will be recognised by the courts in both jurisdictions. (In sales to consumers, such a clause will not be binding on the consumer.)

1.15 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

1.16 Do I charge Irish VAT? Must I register for UK VAT?

Currently if you are selling goods directly from Ireland the charging of VAT will depend on the VAT status of your customer. If your customer is VAT registered and the goods are being dispatched to Northern Ireland for business purposes, effectively no VAT needs be charged by the supplier. However, the customer must account for the VAT under the reverse charge mechanism (note that special wording in this regard must be included on your invoice). In this case you will need to verify your customers VAT status and keep evidence that the goods have been dispatched. If the customer is not registered for UK VAT, then Irish VAT must be charged.

Post Brexit the movement of goods into or out of the UK *may* be treated as imports and exports, meaning the reverse charge procedure will not apply and input VAT will have to be paid by the customer at the point of entry which will of course also impact cash flow. The customer *may* also need to consider customs duties and there *may* also be an additional administration burden on you with regards to import and export documentation. Section 18 provides further information.

You should also be aware of the rules regarding distance selling e.g. selling goods directly to non VAT registered persons by mail order, catalogues, via the internet etc. Each EU member state has its own distance selling thresholds and if you exceed these thresholds you are required to register for VAT in that member state and charge VAT accordingly. If you do not exceed the threshold, then Irish VAT should be charged.

These rules apply to the EC “single market” and therefore may change post Brexit.

Currently the distance selling threshold for selling into UK is £70,000 or €100,000

If your dispatches from Ireland exceed €635,000 per annum or total arrivals from other Member States exceed €500,000 per annum you will be required to complete Irish Intrastat Returns.

A Vat Information Exchange System (VIES) Return would also be required to be completed in respect of the EC supply of goods.

Boxes E1 and E2 on your VAT return are used to record EC Transactions of goods.

If a non-established business sells goods within the UK the VAT Registration threshold is £1.

1.17 Should I invoice in Sterling or Euro?

The first point to note is that, from a technical point of view, VAT invoices can be expressed in a foreign currency but the corresponding figures should be shown in Euro. The invoice must also contain the actual VAT amount in Euro.

A copy of the invoice must be kept to show the figures that were adopted.

For conversion purposes you should use the Central Bank rates which are available online at www.centralbank.ie.

It is possible to agree an alternative rate with the Revenue i.e. a calendar month exchange system. Please note the agreed method must then be used for all of your foreign currency transactions.

Your Northern Ireland client may prefer to agree a price in sterling and pay you in sterling, so that they are not exposed to exchange rate fluctuations. If you want to facilitate your client, you might agree a Sterling equivalent with your client, either on the invoice or as part of a separate contract or agreement. The disadvantage of this is that you then assume the exposure to exchange rate fluctuation.

Some firms will state on their invoices that, should client companies wish to settle the invoice in sterling, they should contact their accounts department on the day of settlement to agree a suitable rate of exchange on that day.

Do not forget to consider your own circumstances and whether or not it would suit you to receive sterling at a certain point in time.

1.18 Is it worthwhile opening a Sterling account?

Where you are making and receiving sterling payments, it is often advantageous to maintain a sterling bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a ‘spread’ (the difference between the bank’s buying and selling prices), so the fewer deals you do the less ‘spread’ you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a sterling account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

1.19 How do I open a Sterling account?

The most convenient way to open a sterling account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said, there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Sterling accounts can be domiciled in Ireland without the need to approach a bank in Northern Ireland.

1.20 Can I protect myself against exchange rate fluctuation?

Exchange rate risk is an important consideration and should always be actively managed. This is best done by netting payments and receipts. However, amounts and timings rarely match exactly, so forward foreign exchange contracts can be used.

A forward foreign exchange contract is a binding contract between two parties to buy or sell a specified amount of foreign currency at an agreed rate on or between a specified future date or dates.

These contracts are offered by all the major banks and allow you to guarantee a future value for your sterling receipts, thus completely eliminating foreign exchange risk.

It is prudent to compare the spot price (i.e. the exchange rate now) and the forward market price (i.e. the price that the bank will commit to offering you at a point in the future) before agreeing any deal.

Currency fluctuations could be experienced with the exit from the European Union and therefore currency management plans should be put in place. See Section 18 for further details.

1.21 How can I ensure I get paid?

It is preferable to insist on “cash on delivery”. If you cannot get payment on delivery and the purchasers subsequently defaults on payment, then it would be advisable to retain the services of a Solicitor/Debt Collection Agency within Northern Ireland to collect payment. While there are circumstances where it would be possible to secure judgment in the Republic of Ireland (where the contract may have been made), it is advisable to secure judgment in Northern Ireland as it will in turn be easier to enforce a Northern Ireland Judgment against a Northern Ireland Debtor. (For more information on this subject read section 15 of this Booklet).

You may also wish to take advice on the “Retention of Title”.

1.22 Where do I pay my tax?

If you are self-employed in Ireland you will be required each year to submit a Tax Return by 31st October (manual filing) or if filing online there may be an extended filing date. This is announced each year by the Revenue Commissioners and is normally at some date in early November. At this date, you are also required to pay to the Collector General in Limerick the balance of tax you owe for the tax return you are submitting and also make payment towards the current tax year – known as preliminary tax.

If you avail of the extended online filing date you must pay any tax due online also.

If you operate through the medium of a limited Company in Ireland the payment date for corporation tax has become more streamlined and all small companies (where the company’s corporation tax liability for the prior year was < €200,000) will be required to have paid either 90% of their expected corporation tax liability for the current period or they can pay 100% of the prior year liability by the 21st of the month prior to the end of their accounting date to the Collector General.

If the company is a large company (where the company’s corporation tax liability for the prior year was > €200,000) then the payment is due in instalments. The First Instalment is payable in the 6th month of the accounting period by the 21st of that month and should be 50% of Corporation Tax liability for the preceding accounting period or 45% of Corporation Tax liability for the current accounting period. The Second Instalment is due payable on the 21st date of the eleventh month of the accounting period and the amount payable will bring the total preliminary tax paid to 90% of the Corporation Tax liability for current accounting period.

The balancing payment of Corporation Tax for all companies is due to be paid to the Collector General by the 21st of the ninth month after the year end.

If you also intend forming a company in Northern Ireland, tax will have to be paid electronically to the Collector of Taxes in Shipley, Bradford. UK corporation tax is generally payable 9 months and 1 day after the Company’s yearend, however, special rules apply to

large companies where quarterly payments on account must be made.

Payments on account for a large company are generally made in four equal instalments with the first payment due 6 months and 13 days after the start of the accounting period. The second and third quarterly payments are due respectively 9 months and 13 days and 12 months and 13 days after the start of the accounting period. The final quarterly payment is due 3 months and 14 days after the end of the accounting period.

Each quarterly payment should represent 25% of the company's estimated corporation tax liability for the accounting period.

If you open a branch in Northern Ireland, UK corporation tax will be payable in respect of branch profits. Credit will be available in Ireland in respect of UK tax suffered but it is restricted to the lower of the two taxes.

If you open an establishment in Northern Ireland but not through the medium of a Company you will come within the self-assessment arrangements and will be required to submit a UK tax return by 31 October (for manual returns) or 31 January (for online returns) following the end of the tax year (5 April) and pay any tax becoming due to the Collector of Taxes.

Tax in this instance is paid on 31 January and 31 July of each year with January being the time for paying the balance of tax for the previous tax year and also the 1st payment on account for the current tax year. The July payment is the 2nd payment on account for that same tax year. Payments on account are calculated at 50% each of the previous year's tax liability. These payments can be reduced if you know your tax bill will be lower than in the previous year.

Again credit will be available in Ireland for any UK tax paid.

Section 2

I am based in Ireland and want to **sell services** into Northern Ireland

2.1 Must I have an office in Northern Ireland?

It is not necessary to have an office in Northern Ireland to facilitate a supply of services. However, if you wish to target a broader spectrum of clients you may wish to consider establishing a presence there for other commercial reasons. This is discussed at Section 5.

2.2 Must I form a company in Northern Ireland?

A Company is not necessary but if you anticipate profits in the UK or your venture has an element of risk to it, you may wish to consider ring fencing this within a Company structure. The rates of tax in the UK must also be considered in determining the route you want to take. As trade increases, it may be advisable for tax reasons to establish a separate company.

2.3 Do I need a licence to sell my services in Northern Ireland?

This will depend on the type of service to be sold. For example, if selling financial services, it would be necessary for you to consult the Financial Services Authority (FSA). Specific advice should be taken on each occasion.

2.4 Must my services adhere to certain regulations?

This will depend on the type of service being sold. For further information on regulations which may apply go to – www.businesslink.gov.uk. Specific advice should be taken on each occasion.

2.5 What liability do I have for substandard work in Northern Ireland?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

Note that in the absence of an explicit agreement to the contrary in a business-to-business contract, Northern Ireland law will apply.

2.6 Do I need professional/trade/indemnity insurance?

Professional/Trade Indemnity Insurance is an insurance policy which provides indemnity to you the Service Provider by your Insurance Company for Breach of Contract. That is, in the event that you, the service provider, provide a substandard service by which the

Service Receiver sustains loss, then the insurance company guarantees to pay any loss which the service receiver has suffered. This is a service insurance which should specifically be taken out in Northern Ireland and you will be required to take out this insurance over and above the professional indemnity insurance which you may have in Ireland for services provided in Ireland. You should check with your Insurance Broker as to the adequacy of your insurance for provision of services in Northern Ireland.

2.7 What if I am employing someone in Northern Ireland to work for me?

Section 18 highlights some of the issues to be considered re Brexit with regards to the movement of people.

UK Resident Employee

To determine which legislation applies (i.e. UK or Irish) it is important to establish where the employee will be carrying out their duties. In certain circumstances, if your Company is based in Ireland and employs a Northern Ireland resident to carry out duties in Northern Ireland, a special scheme known as a "DCNI Scheme" has to be operated in the UK. This is an NIC only Scheme. NIC will be payable by the employer and employee and the employee will need to register for Self-Assessment and pay tax on his salary via Self-Assessment. However, if the Irish company has a tax presence in Northern Ireland e.g. through having a branch or agency in the UK, then the branch or Agency would need to register for UK PAYE and National Insurance and operate same on the payments to the Northern Ireland employee. You should seek professional advice in relation to this area.

Irish Resident Employee

This is a complex area. If an Irish employer, who does not have a permanent or deemed permanent establishment in Northern Ireland, is sending Irish resident employees into Northern Ireland to work and they spend more than 183 days per year working in Northern Ireland, those employees must be on a UK payroll.

As the UK have a new statutory residence test, employees who exceed 183 days in the UK may need to take separate advice in respect of their overall tax position.

Where an Irish employer has RoI resident employees working in Northern Ireland for more than 60 days for a permanent establishment or branch the Irish employer must register for UK payroll. However, there is no requirement to operate UK payroll between 60 – 183 days where certain conditions are met.

The Irish employee may be entitled to transborder workers relief and therefore no Irish tax will arise on the UK earnings. If it is a temporary secondment to Northern Ireland i.e. less than 2 years, the employee and employer can elect to continue paying PRSI in Ireland instead of UK NIC. An application can be made to obtain an A1 certificate of continuing liability.

This could result in employees receiving less take-home pay than they would if their salary was only subject to the Irish/UK PAYE system. This is likely to cause great complications and labour relations problems for Northern Ireland employers whose employees are regularly assigned to work in the other state. For this reason, you are strongly advised to consult your professional adviser if these rules are likely to impact upon your business.

Bear in mind that if you employ someone in Northern Ireland to work for you, that employee can avail of rights under Northern Ireland Employment legislation. Specific legal advice should be taken with regard to the employment contract. While Ireland and Northern Ireland employment legislation are broadly similar, there are specific areas where the legislation differs between the two jurisdictions e.g. Disciplinary and Grievance procedures.

2.8 Is my Employers Liability Insurance valid in Northern Ireland?

It is more than likely that your Employers Liability Insurance issued in the Republic of Ireland will NOT be valid in respect of services provided by them for you in Northern Ireland. It is also important to note that in Northern Ireland (except for “one man” companies) Employers Liability Insurance is compulsory. You should consult with your insurance provider.

2.9 Are my vehicles/drivers insured in Northern Ireland?

Normally, vehicles used for business purposes should be specifically insured for such uses. It would be wise, prior to undertaking a new business venture in Northern Ireland, to obtain written confirmation from your Insurance Company in the Republic of Ireland that it will cover your vehicles/drivers for business purposes in Northern Ireland.

2.10 Are the traffic/vehicle regulations the same in Northern Ireland?

While traffic/vehicle regulations are broadly similar, specific advice should be taken in each instance. For further information on driver and vehicle licensing in Northern Ireland go to the Northern Ireland Department of Environment website www.doeni.gov.uk. In certain instances, should you wish to avoid the expense of compliance with the traffic/vehicle regulations of a second jurisdiction, it may be wise to consider retaining a courier or transport agent to deliver your goods within Northern Ireland.

2.11 Do I need a written contract?

It is very wise in all instances to have a written contract, particularly in business-to-business contracts where there is more scope to modify the provisions of the general law.

It is not currently clear whether the EU Regulations governing civil and commercial contracts between member states will apply to Northern Ireland after March 2019. As a consequence, in order to avoid real commercial consequences (i.e. legal fees and delay) resulting from legal uncertainty as to which country's courts have jurisdiction to resolve disputes post March 2019, in business-to-business sales you are strongly advised to contain an explicit jurisdiction clause within your terms and conditions when trading cross-border. It is highly likely that such a clause will be recognized by the courts in both jurisdictions. (In sales to consumers, such a clause will not be binding on the consumer).

2.12 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

2.13 Do I charge Irish VAT? Must I register for UK VAT? Are there special rules for services?

There are special rules that apply to VAT in respect of services and the charge to VAT will depend on the type of service supplied and also the deemed place of supply. From 1 January 2010 there is a general place of supply rule depending on whether the customer is a business or a consumer. The general rule for the supply of services to a business is the place of supply will be where the customer is based (i.e. Northern Ireland). The customer must then account for the VAT under the reverse charge mechanism i.e. the customer will charge themselves VAT on the services they receive and provided that the services are received for the purpose of their taxable trade they will also be able to claim a deduction for this VAT. If the supply is to a consumer, then the place of supply will be Ireland and Irish VAT must be charged. There are some exceptions to this general rule as follows

The main exceptions relate to:

- Land/Property related services.
- Passenger transport.
- Cultural/educational events.
- Hire of means of transport.
- Service involving physical performance.
- Restaurant and catering services.

However please note that this is a highly complex area and you should seek professional advice specific to your own circumstances.

If you provide services which are deemed to take place in the UK either through a branch or due to one of the above exceptions, the VAT registration threshold which applies to non UK establish persons is £1 and UK VAT registration will be required.

Additional rules have been introduced from 1 January 2015 for suppliers of digital services to non-VAT registered customers in other EC countries. Some examples of digital services include:

- Online advertising
- Distance maintenance of programmes or equipment
- Sale of images or text, such as photos, eBooks, films and games

Information can also be found on the Revenue Commissioners website at www.revenue.ie and at the HM Revenue & Customs website at www.hmrc.gov.uk

Boxes ES1 and ES2 on your VAT return are used to record EC transactions of services. An EC VIES returns would also be required to be completed in respect of the EC supply of services.

The above rules apply to services provided within the EU Single Market and therefore this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

2.14 Should I invoice in Sterling or Euro?

The first point to note is that, from a technical point of view, VAT invoices can be expressed in a foreign currency but the corresponding figures should be shown in Euro. The invoice must also contain the actual VAT amount in Euro.

A copy of the invoice must be kept to show the figures that were adopted.

For conversion purposes you should use the Central Bank rates which are published in the daily newspapers at the time of supply.

It is possible to agree an alternative rate with the Revenue i.e. a calendar month exchange system. Please note the agreed method must then be used for all of your foreign currency transactions.

Your Northern Ireland client may prefer to agree a price in Sterling and pay you in Sterling, so that they are not exposed to exchange rate fluctuations. If you want to facilitate your client, you might agree a Sterling equivalent with your client, either on the invoice or as part of a separate contract or agreement. The disadvantage of this is that you then assume the exposure to exchange rate fluctuation. Some firms will state on their invoices that, should client companies wish to settle the invoice in Sterling, they should contact their accounts department on the day of settlement to agree a suitable rate of exchange on that day.

Do not forget to consider your own circumstances and whether or not it would suit you to receive Sterling at a certain point in time.

2.15 Is it worthwhile opening a Sterling account?

Where you are making and receiving Sterling payments, it is often advantageous to maintain a Sterling bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a 'spread' (the difference between the bank's buying and selling prices), so the fewer deals you do the less 'spread' you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, Sterling account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

2.16 How do I open a Sterling account?

The most convenient way to open a sterling account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said, there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Sterling accounts can be domiciled in Ireland without the need to approach a bank in Northern Ireland.

2.17 Can I protect myself against exchange rate fluctuation?

Exchange rate risk is an important consideration and should always be actively managed. This is best done by netting payments and receipts. However, amounts and timings rarely match exactly, so forward foreign exchange contracts can be used.

A forward foreign exchange contract is a binding contract between two parties to buy or sell a specified

amount of foreign currency at an agreed rate on or between a specified future date or dates.

These contracts are offered by all the major banks and allow you to guarantee a future value for your Sterling receipts, thus completely eliminating foreign exchange risk.

It is prudent to compare the spot price (i.e. the exchange rate now) and the forward market price (i.e. the price that the bank will commit to offering you at a point in the future) before agreeing any deal.

Currency fluctuations could be experienced with the exit from the European Union and therefore currency management plans should be put in place. See Section 18 for further details.

2.18 How can I ensure I get paid?

It is preferable to insist on "cash on delivery". If you cannot get payment on provision of the service and the service receiver subsequently defaults on payment, then it would be advisable to retain the services of a Solicitor/Debt Collection Agency within Northern Ireland to collect payment should your client defaulting payment in due course. While there are circumstances where it would be possible to secure judgment in Ireland (where the contract may have been made), it is advisable to secure judgment in Northern Ireland as it will in turn be easier to enforce a Northern Ireland Judgment against an Northern Ireland Debtor. (For more information on this subject read section 15 of this Booklet)

2.19 How do I pay my tax?

If you are self-employed in Ireland you will be required each year to submit a Tax Return by 31st October (manual filing) or if filing online there may be an extended filing date. This is announced each year by the Revenue Commissioners and is normally at some date in early November following the end of the previous tax year. At this date, you are also required to pay to the Collector General in Limerick the balance of tax you owe for the tax return you are submitting and also make payment towards the current tax year – known as preliminary tax.

If you avail of the extended online filing date you must also pay any tax due online also.

If you operate through the medium of a limited Company in Ireland the payment date for corporation tax has become more streamlined and all small companies (where the company's corporation tax liability for the prior year was < €200,000) will be required to have paid either 90% of their expected corporation tax liability for the current period or they can pay 100% of the prior year liability by the 21st of the month prior to the end of their accounting date to the Collector General.

If the company is a large company (where the company's corporation tax liability for the prior year was > €200,000) then the payment is due in instalments. The First Instalment is payable in the 6th month of the accounting period by the 21st of that month and should be 50% of Corporation Tax liability for the preceding accounting period or 45% of Corporation Tax liability for the current accounting period. The Second Instalment is due payable on the 21st date of the eleventh month of the accounting period and the amount payable will bring the total preliminary tax paid to 90% of the Corporation Tax liability for current accounting period.

The balancing payment of Corporation Tax for all companies is due to be paid to the Collector General by the 21st of the ninth month after the year end.

If you are deemed to be providing a professional service in a close company (i.e. a company under the control of 5 or fewer participators) then you may be liable to an additional surcharge on certain undistributed income, it is important to seek advice to determine if you fall within the definitions of a professional service before commencing trade.

If you open a branch in Northern Ireland, UK corporation tax will be payable in respect of branch profits. Credit will be available in Ireland in respect of UK tax suffered but it is restricted to the lower of the two taxes.

The UK corporation tax will have to be paid electronically to the Collector of Taxes in Shipley, Bradford. UK corporation tax is generally payable 9 months and 1 day after the company's year end, however, special rules apply to large companies / branches where quarterly payments on account must be made.

Payments on account are generally made in four equal instalments with the first payment due 6 months 13 days after the start of the accounting period. The second and third payments on account are due respectively 9 months 13 days and 12 months 13 days after the start of the company's accounting period. The final payment is due 3 months 14 days after the end of the accounting period. Each quarterly payment should represent 25% of the company's corporation tax payable for the accounting period.

If you open an establishment in Northern Ireland but not through the medium of a Company you will come within the self-assessment arrangements and will be required to submit a UK tax return by 31 October (for manual returns) or 31 January (for online returns) following the end of the tax year (5 April) and pay any tax becoming due to the Collector of Taxes.

Tax in this instance is paid on 31 January and 31 July of each year with January being the time for paying the balance of tax for the previous year and also the 1st payment on account for the current tax year. The July payment is the 2nd payment on account for that tax year. Payments on account are calculated at 50% each of the previous year's tax liability. These payments can be reduced if you know your tax bill will be less than in the previous year.

Credit will be given in Ireland for any UK tax paid.

2.20 Is there Professional Services Withholding Tax in Northern Ireland?

There is no professional services withholding tax in the UK. The only type of withholding tax that applies in Northern Ireland is in relation to the construction industry.

The Construction Industry Scheme (CIS) sets out the rules for how payments to subcontractors for construction work must be made. These payments may be made gross in some circumstances or tax at 20% or 30% may be deducted from payments net of VAT.

As the amount of tax to be applied to payments is dependent on the subcontractors own status with HMRC the principal contractor has an obligation to verify the subcontractors details before making any payments.

This is a very complex area and specific professional advice should be sought.

Other issues (including legal issues) that should be considered by service businesses following Brexit are noted at Sections 16 to 18.



Section 3

I am based in Ireland and want to **buy products** from Northern Ireland

3.1 Are there any Customs issues to be aware of?

There is free movement of goods within the EU and the only goods which need to be declared at Customs are excisable goods e.g. tobacco, spirits, wines and beer.

However, this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

Also please note that excisable goods are imported by appointing a Registered Consignee. (See pg 87)

3.2 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

3.3 How do I pay my supplier?

The simplest and most cost effective way of effecting payment to suppliers is usually:

- To write a foreign currency cheque. However, as the use of cheques is being phased out
- A lot of suppliers prefer payment to be made by Bacs or alternatively debit / credit card. This is where having a foreign currency account really comes into its own as it avoids having to arrange electronic transfers or the purchase of a draft from your bank. The foreign currency account can be either funded by currency receipts or periodic currency purchases from your bank. Currency purchases can usually be made by telephone or internet dealing.
- Banks will sell foreign currency drafts to their clients, however these offer little advantage from the purchaser's perspective other than an ability to make payment when no foreign currency account exists, i.e. for one off transactions. A fee is usually payable for the purchase of a draft.
- The most secure payment method is an electronic bank-to-bank transfer. Whilst normally more expensive than the previous methods above it provides cleared funds to the recipient at a known value date and ensures safe receipt. This is especially useful where goods are dispatched upon receipt of payment.

3.4 What currency should I pay my supplier in?

There is no definitive answer to this as individual circumstances differ. However, you should endeavour to pay in the currency most suitable to your needs and reach agreement with your supplier accordingly.

If you wish to resell your purchases in Euro, then buying in Euro would probably be most suitable as this would eliminate your foreign exchange risk all together. Effectively, the risk is passed back to the Northern Ireland supplier.

If you have a surplus of Sterling you might wish to pay the Northern Ireland supplier in Sterling.

In all cases, it is important to get the best value for money, so whilst it may be convenient to pay a Northern Ireland supplier in Euro, it is vital that this convenience is not out-weighted by a price disadvantage. It could be more cost efficient to manage the foreign exchange risk yourself.

3.5 Is it worthwhile opening a Sterling account?

Where you are making and receiving Sterling payments, it is often advantageous to maintain a Sterling bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a 'spread' (the difference between the bank's buying and selling prices), so the fewer deals you do the less 'spread' you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a Sterling account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

3.6 How do I open a Sterling account?

The most convenient way to open a Sterling account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

You may choose to use another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Sterling accounts can be domiciled in Ireland without the need to approach a bank in Northern Ireland.

3.7 Who is responsible for VAT?

If you are VAT registered in Ireland and you are purchasing goods from a UK VAT-registered person and the goods are to be dispatched to you in Ireland for the purposes of your trade, the UK entity will take a note of your VAT number and business address, which they must then verify with HM Revenue & Customs (HMRC). Once HMRC confirm the VAT details, the UK entity may zero rate the supply of goods to you.

You will then account for the VAT on the goods under the reverse charge mechanism i.e. you will charge yourself Irish VAT on the goods you receive and provided the goods are for the purpose of your taxable trade, you will also be able to claim a deduction for this VAT.

Boxes E1 and E2 on your VAT return are used to record EC transactions of goods. You may also need to submit intrastat returns if your **arrivals of goods exceeds €635,000** in a calendar year.

Post Brexit the movement of goods into or out of the UK may be treated as imports and exports, meaning the reverse charge procedure will not apply and input VAT will have to be paid by the customer at the point of entry which will of course also impact cash flow. The customer may also need to consider Customs Duties and there may also be an additional administration burden on you with regards to import and export documentation. Section 18 provides further information.

3.8 When do I assume the risk for the goods?

Normally, in the absence of a written contract stating something different, where the seller arranges delivery to the purchaser, risk will only pass to the purchaser on receipt of delivery. In a cross-border sale, this may therefore mean that risk would only pass to the buyer when he receives the goods in Ireland. Often, the contract will define at which point risk passes. A seller (who generally draws up the contract) will however want to ensure that risk passes at the earliest point. Therefore, a buyer should ensure to read the Contract of Sale carefully and seek legal advice.

3.9 What if the goods turn out to be defective and the vendor will not repair/replace?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

If the goods are defective, and (in a business-to-business context) in the absence of any explicit provisions dealing with this in a written contract, because the sale will have occurred within Northern Ireland, in the normal course the buyer will sue the seller in the Northern Ireland Courts i.e. where the contract occurred. Even if the contract occurred in Ireland (e.g. where the seller from Northern Ireland sold the products in Ireland through a Sales Agent in Ireland) it may still be more appropriate to sue the seller in Northern Ireland as it would be easier to enforce a Northern Ireland judgment against an Northern Ireland seller. There are, however, circumstances where it may only be possible to issue proceedings in Ireland where witnesses in Ireland are not compellable to attend Courts in Northern Ireland to prove the circumstances of the contract.

Section 16, 17 and 18 provide further details of issues to be considered in respect of planning for Brexit.

Section 4

I am based in Ireland and want to **buy services** from Northern Ireland

4.1 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

4.2 How do I pay my supplier?

- The simplest and most cost effective way of effecting payment to suppliers is usually to write a foreign currency cheque. However, as the use of cheques is being phased out a lot of suppliers prefer payment to be made by Bacs or debit /credit card. This is where having a foreign currency account really comes into its own as it avoids having to arrange electronic transfers or the purchase of a draft from your bank. The foreign currency account can be either funded by currency receipts or periodic currency purchases from your bank. Currency purchases can usually be made by telephone or internet dealing.

- Whilst the simplest method of paying is by cheque writing, there are other methods available for one off transactions or where additional payment security is required. Banks will sell foreign currency drafts to their client's, however these offer little advantage from the purchaser's perspective other than an ability to make payment when no foreign currency account exists, i.e. for one off transactions. A fee is usually payable for the purchase of a draft.

- The most secure payment method is an electronic bank to bank transfer. Whilst normally more expensive than the previous methods it provides cleared funds to the recipient at a known value date and ensures safe receipt. This is especially useful where goods are dispatched upon receipt of payment.

4.3 What currency should I pay my supplier in?

There is no definitive answer to this as individual circumstances differ. However, you should endeavour to pay in the currency most suitable to your needs and negotiate with the supplier accordingly.

If you have a surplus of Sterling you might wish to pay the Northern Ireland supplier in Sterling.

In all cases, it is important to get the best value for money, so whilst it may be convenient to pay

a Northern Ireland supplier in Euro, it is vital that this convenience is not out-weighted by a price disadvantage. It could be more cost efficient to manage the foreign exchange risk yourself.

4.4 Is it worthwhile opening a Sterling account?

Where you are making and receiving Sterling payments, it is often advantageous to maintain a Sterling bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a 'spread' (the difference between the bank's buying and selling prices), so the fewer deals you do the less 'spread' you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a Sterling account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

4.5 How do I open a Sterling account?

The most convenient way to open a Sterling account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

You may choose to use another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Sterling accounts can be domiciled in Ireland without the need to approach a bank in Northern Ireland.

4.6 Who is responsible for VAT?

The rules relating to VAT on services are different (and more complex) than those relating to goods.

From 1 January 2010 there is a general place of supply rule depending on whether the customer is a business or a consumer. If you are an Irish business and acquire general rule services from Northern Ireland, then the place of supply will be Ireland.

You must then account for the VAT under the reverse charge mechanism. An Irish consumer then the place of supply will be where the supplier is based i.e. Northern Ireland and they will charge UK VAT. There are some exceptions to this general rule.

The main exceptions relate to:

- Land / Property related services.
- Passenger transport.
- Cultural / educational events.
- Hire of means of transport.
- Service involving physical performance.
- Restaurant and catering services.

However please note that this is a highly complex area and you should seek professional advice regarding the VAT implications of the services you are acquiring. Further information can be found on the Revenue's website at www.revenue.ie or on www.revenue.ie/en/tax/vat/leaflets/place-of-supply-of-services.html

Boxes ES1 and ES2 on your VAT return are used to record EC transactions of services.

However, if you are an Irish consumer then the place of supply will be where the supplier is based i.e. Northern Ireland and they will charge UK VAT unless they are also registered for VAT in Ireland in which case in which case Irish VAT applies.

Additional rules have also been introduced from 1 January 2015 for suppliers of digital services to non-VAT registered customers in other EC countries. Some examples of digital services include:

- Online advertising
- Distance maintenance of programmes or equipment
- Sale of images or text, such as photos, eBooks, films and games

The above rules apply to services provided within the EU Single Market and therefore this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

4.7 What if the service is substandard?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

In the absence of an explicit agreement to the contrary in a business-to-business contract, if the service is provided by the Northern Ireland service provider in Northern Ireland, you would issue proceedings against the service provider in Northern Ireland e.g. where an architect draws up plans in his Northern Ireland office for your house in Ireland. If the service is provided by the Northern Ireland service provider in Ireland, you would issue proceedings against the Northern Ireland service provider in Ireland e.g. a Northern Ireland builder constructing your house in Ireland.

4.8 Is it necessary for the service provider in Northern Ireland to have professional/trade indemnity insurance?

While it is not compulsory in either jurisdiction that service providers have Professional/Trade Indemnity Insurance, it is generally a requirement of membership of professional organisations. For example, just as a Solicitor in Ireland (as a requirement of membership of the Law Society of Ireland) is required to have Professional Indemnity Insurance within Ireland, a Solicitor in Northern Ireland (as a requirement of membership of the Northern Ireland Law Society) is obliged to have Professional Indemnity Insurance in Northern Ireland. If in doubt, you should request the service provider to confirm that he has Professional Indemnity Insurance for his services in the jurisdiction in which he provides those services. If the Northern Ireland service provider is providing those services in Ireland, then it is important to ascertain that the Northern Ireland service provider has professional indemnity to provide services in Ireland.

Sections 16, 17 and 18 provide further detail of issues (including legal issues) to be considered in respect of planning for Brexit.

Section 5

I am based in Ireland and want to **establish a presence** in Northern Ireland

It should be noted that this section is based on the current commercial regulation. When the UK leave the EU on 29 March 2019 the situation may differ, more detail is available at Section 16 - 18.

5.1 Are there any advantages when establishing a presence in Northern Ireland?

The issue of establishing a presence in the other jurisdiction is generally more relevant to service providers rather than to sellers of goods. Sellers of goods can manufacture or procure their products within Ireland and establish a satisfactory means of delivery of those goods into Northern Ireland. The goods may be sold through shops within Northern Ireland and therefore the origin of the manufacture of those goods is not that important. However, a service provider will be providing a personal service and, as such, his presence and identity to the client may be considered more important. Advantages of it include:

- More direct access to that market. Where you don't establish an actual presence and you are not planning to service the market directly from Ireland, you are relying on the integrity of sales agents, distributors and couriers'/transport agents. It may be difficult at times to convince buyers/clients that you are in a position to provide an effective service within that jurisdiction where you do not actually have a presence in that jurisdiction.
- Wider opportunities for grant aid depending on your business sector.
- There are also some attractive tax saving methods available in the UK, such as generous capital allowances, Professional tax advisers in Northern Ireland should be able to advise on these issues, enhanced tax reliefs, for e.g. Research and Development, Patent Box.

5.2 Are there any disadvantages when establishing a presence in Northern Ireland?

Cost

An Irish business person deciding to establish a presence in Northern Ireland will go through almost the very same business start-up expenses which he would have originally encountered when establishing his initial presence in Ireland. For example, it will be necessary to take on the expense of a lease/purchase of premises, building insurance, electricity, telephone

supply, payment of commercial rates and other related expenses. For assistance on "start-ups" within Northern Ireland, visit Enterprise Northern Ireland at www.enterpriseni.com, Invest Northern Ireland at www.investni.com or Department for the Economy, at www.economy-ni.gov.uk.

Tax

As regards tax, if you choose to operate as a sole trader in the UK, your business is chargeable to UK tax and you must also make a return of this income to the Revenue Commissioners. However, double taxation relief will be available.

Where you operate as a trading company, there is an exposure to a higher rate of tax as Irish trading companies are taxed at 12.5% whereas UK trading companies are generally taxed at 19% from 1 April 2017.

5.3 Should I open a branch or a subsidiary?

A branch is an extension of a company, whereas a subsidiary is a legal entity in its own right. In the UK, the term branch has been superseded by the term "permanent establishment".

A Limited Liability Company incorporated in the Republic of Ireland may wish to establish a branch in Northern Ireland. This is facilitated under European Law which requires that certain filings must be made by the Republic of Ireland Company with the Companies Office in Northern Ireland. It is important to bear in mind that a "branch" in legal terms only applies to Corporations e.g. limited liability companies. So, for instance, a partnership or a sole trader would not, in the legal sense, establish a "branch" across the Border. Therefore, it is only in the context of Corporations that exists a requirement for filing information and details with the Companies Office in Northern Ireland. From a legal viewpoint a branch is not a separate legal entity from the Company that established that branch. To take an example, we could have a Republic of Ireland incorporated Company with a branch Office in Belfast. The legal entity doing business in Belfast is the Republic of Ireland Company. It just happens to have an office in Belfast.

On the other hand, a subsidiary is a completely separate legal entity from the parent company. Once again, subsidiaries only apply to Corporations e.g. Limited Liability Companies) as opposed to sole traders or partnerships. To take an example, Company A is established and trades in the Republic of Ireland and decides to set up a new business in Belfast. Rather than merely establish a branch, they decide to establish a separate Northern Ireland Company to conduct the business on their behalf. In the normal course the new Company, NewCo, is incorporated in Northern Ireland but its shareholder is Company A. As such, Company A owns all of NewCo. The important legal distinction is that the business being conducted in Northern Ireland is conducted by NewCo and if a legal dispute arose in respect of the conduct of the business then it is NewCo that will be involved in the legal proceedings not Company A. Therefore, in terms of limiting the risk for the parent company in establishing a new business in a foreign jurisdiction, there may well be practical reasons to use a subsidiary as opposed to a branch. If a Company merely has a branch the Company itself is exposed to all legal liability for the actions of the foreign branch and losses accumulated by that branch. By having a separate Company (subsidiary) such risks and losses can be limited to that Subsidiary and ordinarily the Parent Company should be protected. It should be noted, however, that the decision whether to establish a branch or a subsidiary tends to be primarily informed by the tax implications. For more on tax issues, go to Section 5.5.

5.4 What formalities must we undertake?

It will be necessary to decide whether you propose to trade as a Sole Trader/Partnership or as a Limited Liability Company in Northern Ireland.

If you are operating via a company, regardless of whether the trading is conducted via a subsidiary or a permanent establishment, there is a requirement to register the entity with Companies House. If you choose to operate via a company, then you need to establish a company and register with Companies House using form IN01. If you choose to operate via a branch, then you need to register the branch with Companies House using form OS IN01. These need to be submitted together with the necessary documentation. A charge applies. Annual accounts

must also be submitted to Companies House in respect of subsidiaries.

Whether you choose to operate via a subsidiary company, a branch or as a sole trader, remember to register with HM Revenue & Customs on time to avoid late registration penalties.

If you choose to establish a presence in the UK, registration for VAT must be considered but you are entitled to the same registration thresholds in the UK as an ordinary UK business. If you exceed this threshold, you must register for VAT within 30 days.

5.5 Tax considerations

From a company law perspective, if you set-up a NewCo in Northern Ireland as a subsidiary of your Irish company, the Irish company may lose its entitlement to audit exemption (assuming it was audit exempt prior to this) as the Irish company is now part of a “group” for company law purposes.

Group companies are only entitled to audit exemption if the combined group fulfils at least two of the following criteria;

- Balance sheet total not exceeding €4.4m
- Turnover not exceeding €8.8m
- Employees not exceeding 50

5.6 Can we be taxed twice?

If a **UK subsidiary** is formed its profits will be liable to corporation tax in the UK, as detailed in Section 1.22.

If a **permanent establishment (or branch)** is formed, the profits of that establishment will be taxed in the UK as detailed in Section 1.22, but will also be liable to tax in Ireland. However, double taxation relief will be given in respect of the element of profits taxed twice.

Section 6

Research and Development Tax Credits in Ireland

6.1 What relief is available for R&D?

A company with qualifying R&D expenditure will benefit from a 25% R&D tax credit based on the qualifying R&D expenditure. As the tax credit is in addition to any allowable deduction for R&D expenditure in the accounts of the company, the effective rate of tax relief is 37.5%.

A company with excess tax credits can make a claim to have the credits carried back to reduce the corporation tax liability of the prior year. If any excess remains after that point, a company can claim to have the excess paid to them in 3 instalments over a period of 33 months from the end of the accounting period in which the expenditure was incurred.

The R&D tax credit can now be used as an employee incentive for research staff. The Finance Act 2012 allowed companies to have the option to use some portion of the R&D credit to reward key employees who have been involved in the development of R&D.

6.2 What R&D projects qualify for relief?

To be a qualifying R&D project the project must seek to achieve an advance in the overall knowledge or capability (not a company's own state of knowledge or capability) in a field of science or technology. An advance in science or technology may result in physical adaptations to a product e.g. a new or more efficient product, or improvements to a process e.g. cost improvements. A project is not considered an advance simply because science or technology has been used in its creation. Even if the advance which the project sought to achieve is not realised R&D can still be deemed to take place.

The activities involved must achieve the advance through the resolution of scientific or technological uncertainty. An uncertainty is deemed to exist when knowledge of something is not readily available or deductible by a competent professional working in that field.

Any activity which directly contributes to achieving the advance and indirect activities related to the project will qualify as R&D.

Therefore, any project which makes an appreciable improvement to an existing process, material, device, product or service or which duplicates the effects of an existing process, material, device, product or service through an advance in science or technology in a new or appreciably improved way would constitute R&D.

For example, a manufacturing company manufactures products using machinery. To increase efficiency, the company are looking at the process by which the goods are manufactured. If the company simply bought a new more modern piece of machinery to replace the existing machinery then this would not qualify as R&D as a project is not R&D just because technology has been used in its creation. However, if the company developed changes to the way the product is manufactured so that they are now made in an appreciably improved way which would result in increased efficiency then this could qualify as R&D. There does not necessarily need to be a change to the actual product being released to the market.

On submission of a claim, the Revenue Commissioners would decide whether a project meets the definition of R&D. To do this they can engage the services of qualified individuals with specialised knowledge in the relevant field of science or technology who will give an opinion as to whether the activities constitute R&D activities.

6.3 What costs qualify for relief?

All costs (net of grant aid) incurred on qualifying R&D projects qualify for relief. This includes both revenue expenditure and qualifying capital expenditure on plant and machinery used for the R&D project.

6.4 How can I claim the relief?

The relief can be claimed by filling in the necessary boxes in the company's corporation tax return. No supporting documentation needs to be filed with the return, however, it is important that sufficient backup documentation is retained by the company.

From January 2009 all claims for research and development tax credits must be made within 12 months from the end of the accounting period in which the expenditure was incurred.

6.5 Is relief available for expenditure incurred on buildings?

A tax credit of 25% is available in respect of expenditure incurred on buildings used for R&D purposes. To qualify the company must be entitled to claim Industrial Buildings Allowance on the building.

The full amount of the relief can be claimed in the year in which the expenditure was incurred. However, if a company has an insufficient corporation tax liability to be able to use the full amount of the credit, any excess may be carried forward. The tax credit claimed can be clawed back by the Revenue Commissioners if the building ceases to be used for R&D activities within a 10-year period.

6.6 Is relief available in respect of subcontracted R&D?

Relief is available in respect of payments to a university or institute to carry out R&D activities. The relief is restricted to the greater of 5% or €100,000 of the expenditure incurred by the company itself on R&D activities. E.g. if a company incurs €250,000 on R&D expenditure during the year and also pays €10,000 to a university to carry out R&D then as €10,000 is less than €12,500 ($€250,000 \times 5\%$) no restriction will apply and the full amount of €260,000 qualifies for relief.

If payments are made to an unconnected person to carry out R&D activities, then the relief available to the company will be restricted to the greater of 15% or €100,000 of the expenditure incurred by the company itself on R&D activities and may only be claimed where the subcontractor does not claim this relief.





I am based
in Northern
Ireland



Section 7

I am based in Northern Ireland and want to **sell products** into Ireland

7.1 Must I have an office in Ireland?

It is not necessary to have an office in Ireland to facilitate sales of goods if the goods are to be sold directly to the purchaser. However, if you wish to target a broader spectrum of clients you may wish to consider establishing a presence there for other commercial reasons. This is discussed at Section 11.

7.2 Must I form a Company in Ireland?

A Company is not necessary but if you anticipate profits in Ireland or your venture has an element of risk to it you may wish to consider ring-fencing this within a Company structure. The rates of tax in Ireland must also be considered in determining the route you want to take.

7.3 Do I need a licence to sell products in Ireland?

Not generally, but this depends on the type of product to be sold. For example, a licence would be required for the sale of pharmaceuticals. Specific advice should be taken on each product.

7.4 Must I declare my goods at Customs?

Do I need to complete export documentation?

There is free movement of goods within the EU and the only goods which need to be declared at Customs are excisable goods i.e. tobacco, spirits, wines and beer.

Should your exports from Northern Ireland exceed £250,000 per annum you will need to submit UK Intrastat returns.

However, this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

7.5 Must my product meet certain regulations?

You must ensure compliance with required Consumer/Health & Safety Standards. Specific advice should be taken for each product. For Consumer Regulations visit the following websites –

Consumer Association of Ireland
www.consumerassociation.ie

Food Safety Authority of Ireland
www.fsai.ie

Office of the Director of Consumer Affairs
www.odca.ie

Department for the Economy
www.economy-ni.gov.uk

The Central Bank of Ireland
www.centralbank.ie

7.6 At what point does the risk pass from me (the seller) to the purchaser?

Risk, in terms of loss, is the responsibility a carrier, borrower, user/purchaser of property or goods assumes if there is damage or loss. Passing of Risk means the point at which the buyer will be responsible for the goods. For example, if goods are delivered by lorry, who bears the loss if the goods are stolen in transit before they reach the purchaser?

This issue arises just as much within your own jurisdiction as in a cross-border context and is covered by the Sale of Goods legislation, which is broadly similar in both jurisdictions. It can (and should) also be covered by your written contract.

Normally, in the absence of a written contract stating something different, where the seller arranges delivery to the purchaser, risk will only pass to the purchaser on receipt of delivery. In a cross-border sale, this may therefore mean that risk would only pass to the buyer when he receives the goods in Ireland. Often, the contract will define at which point risk passes. A seller (who generally draws up the contract) will however want to ensure that risk passes at the earliest point.

In a cross-border context, you may want to consider appointing a Distributor based in Ireland to ensure that risk passes to the Distributor. That is, the risk passes to him once goods are collected from your premises in Northern Ireland. For further definitions, see Distributor and Sales Agent (Section 13).

7.7 What liability do I have for defective products in Ireland?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are

allowable in written business-to-business contracts.

If goods are being sold through a Distributor in Ireland, the Distributor will generally be required to take on liability for defective products. This would be subject to the Distributor being entitled to indemnity from the seller for those defective products, as modified by negotiation in any written contract between you and the Distributor. In such circumstances, the Distributor would deal directly with the buyer and would in turn be entitled to be compensated by the seller for any loss arising to the Distributor as a result of the seller's negligence/breach of contract. If, however, goods are sold by you personally or through a Sales Agent, then you will be liable for defective products under Ireland legislation, and you will be liable for after sales service.

Section 16, 17 and 18 provide further details of issues to be considered in respect of planning for Brexit.

7.8 Do I need to have product liability insurance?

Yes. You should also ensure that the current product liability insurance policy issued to you in Northern Ireland is not restricted to sales within Northern Ireland. If it is so restricted, you will need to negotiate with your insurance company to ensure that the product liability insurance extends to sales into Ireland.

7.9 What if I am employing someone to work for me in Ireland?

Irish Resident Employee

In general terms, if your Company is based in Northern Ireland and employs an Irish resident to carry out duties in Ireland, a PAYE scheme must be operated in Ireland and you, as the employer, are required to register and account for PAYE/PRSI contributions in Ireland.

Bear in mind that if you employ someone in Ireland to work for you, that employee can avail of rights under Irish Employment legislation. While Ireland and Northern Ireland employment legislation are broadly similar, there are specific areas where the legislation differs between the two jurisdictions e.g. Disciplinary and Grievance procedures. Specific legal advice should be taken with regard to the employment contract.

UK Resident

This is a complex area, which has been further complicated by a tightening of the rules by the Irish Revenue Commissioners. If a Northern Ireland employer, who does not have a permanent or deemed permanent establishment in Ireland, is sending UK resident employees into Ireland to work and they spend more than 183 days per year working in Ireland, those employees must be on an Irish payroll.

Where a Northern Ireland employer has UK resident employees working in Ireland for more than 60 days the Northern Ireland employer must register for Irish payroll. There is no requirement to operate Irish payroll where certain conditions are met (e.g. employee taxed in UK, employees carry out their duties in Ireland for less than 183 days, etc.). The employer should also seek clearance from Revenue Commissioners within 21 days from employee taking duties in Ireland.

Please note that where the UK business has a permanent establishment (or deemed establishment) Irish PAYE must be operated even if the employee only works for one day in Ireland. The 183 day rule does not apply in this instance.

The UK employer must continue to operate UK PAYE in respect of any payments made to the employee during the period they work in Ireland if this period is less than a year. The employer may then give a credit against the UK PAYE due for the lower of the two taxes i.e. Irish PAYE v UK PAYE. Irish PRSI will not apply in this instance if an A1 certificate is granted to continue paying NIC in the UK. However, if the employee is spending most of their time abroad over a period of a year or more, then HM Revenue & Customs may allow them to use special PAYE arrangements whereby they would get relief from UK tax.

This could result in employees receiving less take-home pay than they would if their salary was only subject to the UK PAYE system. This may cause great complications and labour relations problems for Northern Ireland employers whose employees are regularly assigned to work in Ireland. You are strongly advised to consult your professional adviser if these rules are likely to impact upon your business.

7.10 Is my Employers Liability Insurance valid in Ireland?

More than likely it is not. Specific advice should be taken by you from your Insurance Company. If employing someone in Ireland it is essential that that employee is covered by Insurance which applies to Ireland Health & Safety Law.

7.11 Are my vehicles/drivers insured in Ireland?

Normally, vehicles used for business purposes must be specifically insured for business use. It would be wise, prior to undertaking a new business venture Ireland, to obtain written confirmation from your Insurance Company in Northern Ireland that it will cover your vehicles/drivers for business purposes in Ireland.

If you have Irish resident employees with personal use of UK vehicles you will need to consider VRT (Vehicle Registration Tax).

As Ireland have introduced a new statutory residence test, employees who exceed 183 days in Ireland may need to take separate advice in respect of their overall tax position.

7.12 Are the traffic/vehicle regulations the same in Ireland?

While traffic/vehicle regulations are broadly similar, specific advice should be taken in each instance. For further information on driver and vehicle licensing in Ireland go to the following websites -

Motor Tax Online
www.motortax.ie

Department of Transport, Tourism and Sport
www.dttas.ie

In certain instances, should you wish to avoid the expense of compliance with the traffic/vehicle regulations of a second jurisdiction, it may be wise to consider retaining a courier or transport agent to deliver your goods within Ireland.

7.13 Do I need a written contract?

It is very wise in all instances to have a written contract, particularly in business-to-business contracts where there is more scope to modify the provisions of the general law. In cross border sales, it is particularly important to define such matters as when risk passes, the liabilities of Distributors or Sales Agents etc.

As a result of Brexit, it is not currently clear whether the EU Regulations governing civil and commercial contracts between member states will apply to Northern Ireland after March 2019. As a consequence, in order to avoid real commercial consequences (i.e. legal fees and delay) resulting from legal uncertainty as to which country's courts have jurisdiction to resolve disputes post March 2019, in business-to-business sales you are strongly advised to contain an explicit jurisdiction clause within your terms and conditions when trading cross-border. It is highly likely that such a clause will be recognized by the courts in both jurisdictions. (In sales to consumers, such a clause will not be binding on the consumer.)

7.14 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

7.15 Do I charge UK VAT? Must I register for Irish VAT?

Currently if you are VAT registered in the UK, you will charge UK VAT if your Irish based customer is not Irish VAT-registered. If your customer is Irish VAT registered and the goods are being supplied to them for business purposes, you will verify their VAT number and business address with HM Revenue & Customs. This will then enable you to zero rate the supply and the customer will account for the VAT under the reverse charge mechanism. You must also keep evidence that the goods have been dispatched from the UK.

You will also have to complete an EC sales list giving details of your Irish customers.

Post Brexit the movement of goods into or out of the UK may be treated as imports and exports, meaning the reverse charge procedure will not apply and input VAT will have to be paid by the customer at the point of entry which will of course also impact cash flow. The customer may also need to consider

Customs Duties and there may also be an additional administration burden on you with regards to import and export documentation. Section 18 provides further information.

You should also be aware of the rules regarding distance selling i.e. selling goods directly to non-VAT-registered persons e.g. mail order, catalogues, via the internet etc. Each Member State has its own distance selling thresholds and if you exceed these thresholds you are required to register for VAT in that member state and charge VAT accordingly.

The distance selling threshold for selling into Ireland is €35,000.

These rules apply to the EU “single market” and therefore may change post Brexit.

If your dispatch of goods to VAT registered businesses in other EU Member States exceed £250,000 per annum you will need to submit monthly Intrastat returns.

Box 8 of your VAT return is used to record EC transactions of goods.

If a non-established business sells goods in Ireland the VAT Registration threshold is €1.

However, this may change when the UK leave the EU on 29 March 2019.

7.16 Should I invoice in Sterling or Euro?

The first point to note is that, from a technical point of view, VAT invoices raised by a Northern Ireland-based business can be issued in a foreign currency but you must also convert not only the value of the invoice but the VAT amount into Sterling on the invoice.

If you choose to raise an invoice this way you must convert same into Sterling by either:

A) using the UK market selling rate at the time of supply which can be found in National newspapers

or

B) use the period rate of exchange published by HM

Revenue & Customs (also available from the National Advice Service)

Prior approval does not need to be sought from HM Revenue & Customs to use method B) above but where you have adopted same you cannot then subsequently change to another method of conversion without prior approval of your local VAT business centre.

Your Irish client may prefer to agree a price in Euro and pay you in Euro, so that they are not exposed to exchange rate fluctuations. If you want to facilitate your client, you could choose to raise your invoice in Euro with the Sterling equivalent shown on same or agree a Euro equivalent as part of a separate contract or agreement. The disadvantage of this is that you then assume the exposure to exchange rate fluctuation.

Some firms will state on their invoices that, should client companies wish to settle the invoice in Euro, they should contact their accounts department on the day of settlement to agree a suitable rate of exchange on that day.

Do not forget to consider your own circumstances and whether or not it would suit you to receive Euro at a certain point in time.

7.17 Is it worthwhile opening a Euro account?

Where you are making and receiving Euro payments it is often advantageous to maintain a Euro bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a ‘spread’ (the difference between the bank’s buying and selling prices) thus the fewer deals you do the less ‘spread’ you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a Euro account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

7.18 How do I open a Euro account?

The most convenient way to open a Euro account will be via your existing bankers as this will minimise the amount of documentation that you will be required to

produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Euro accounts can be domiciled in N.I. without the need to approach a bank in Ireland.

7.19 Can I protect myself against exchange rate fluctuation?

Exchange rate risk is an important consideration and should always be actively managed. This is best done by netting payments and receipts. However, amounts and timings rarely match exactly, so forward foreign exchange contracts can be used.

A forward foreign exchange contract is a binding contract between two parties to buy or sell a specified amount of foreign currency at an agreed rate on or between a specified future date or dates.

These contracts are offered by all the major banks and allow you to guarantee a future value for your Euro receipts, thus completely eliminating foreign exchange risk.

It is prudent to compare the spot price (i.e. the exchange rate now) and the forward market price (i.e. the price that the bank will commit to offering you at a point in the future) before agreeing any deal.

Currency fluctuations could be experienced with the exit from the European Union and therefore currency management plans should be put in place. See Section 18 for further details.

7.20 How can I ensure I get paid?

It is preferable to insist on “cash on delivery”. If you cannot get payment on delivery and the purchaser subsequently defaults on payment, then it would be advisable to retain the services of a Solicitor/Debt Collection Agency within Ireland to collect payment should your client default in payment in due course.

While there are circumstances where it would be possible to secure judgment in Northern Ireland (where the contract may have been made), it is advisable to secure judgment in Ireland as it will in turn be easier to enforce an Irish Judgment against an Irish Debtor. (For more information on this subject read section 15 of this Booklet).

You may also wish to take advice on “Retention of Title”.

7.21 Where do I pay my tax?

If you are self-employed in the UK, you will be required to submit a tax return by 31 October (for manual returns) or 31 January (for online returns) following the end of the tax year (5 April) under the self-assessment arrangements and pay any tax becoming due to the Collector of Taxes. Tax is paid on 31 January and 31 July of each year with January being the time for paying the balance of tax for the previous tax year and also the 1st payment on account for the current year. The July payment is the 2nd payment on account for that same tax year. Payments on account are calculated at 50% each of the previous year’s tax liability. These payments can be lowered if you know your tax bill is less than in the previous year.

If you choose to open a place of business in Ireland you will be liable to Irish tax on the profits of your Irish business, as detailed in section 1.22. These profits are also part of your UK self- assessment return but you will receive credit under the double taxation agreement for the element of profits taxed twice.

If you operate through a Company in Northern Ireland, tax will have to be paid electronically to the Collector of Taxes in Shipley, Bradford. UK Corporation tax is generally payable 9 months and 1 day after the Company’s year end, however special rules apply to large companies whereby the company will be required to pay its corporation tax liability in instalments.

Payments on account are generally made in four equal instalments with the first payment due 6 months 13 days after the start of the accounting period. The second and third payments on account are due respectively 9 months and 13 days and 12 months and 13 days after the start of the company’s accounting period. The final payment is due 3 months 14 days after the end of the accounting period. Each

quarterly payment should represent 25% of the company's expected corporation tax payable per accounting period.

If you operate through the medium of a limited company in the UK and choose to open a branch in Ireland, the branch profits will be liable to tax in Ireland (as well as in UK with double taxation relief). UK companies can elect to have their foreign branches exempt from UK corporation tax. However, the election is irrevocable. Therefore, it is extremely important professional advice should be obtained before any election is put in place. Corporation tax in Ireland has become more streamlined and all companies will be required to have paid 90% of their expected corporation tax liability one month prior to the end of their accounting date. There are special rules relating to small companies – where the company's corporation tax liability for the previous year was < €200,000 they can opt to pay their preliminary tax based on 100% of their prior year liability. Corporation tax is also paid to the Collector General.

Section 18 highlights some of the issues to be considered re Brexit with regards to the movement of people.

Section 8

I am based in Northern Ireland and want to **sell services** into Ireland

8.1 Must I have an office in Ireland?

It is not necessary to have an office in Ireland to facilitate a supply of services. However, if you wish to target a broader spectrum of clients you may wish to consider establishing a presence there for other commercial reasons. This is discussed at Section 11.

8.2 Must I form a company in Ireland?

A Company is not necessary but if you anticipate profits in Ireland or your venture has an element of risk to it, you may wish to consider ring-fencing this within a Company structure. The rates of tax in Ireland must also be considered in determining the route you want to take.

8.3 Do I need a licence to sell my services in Ireland?

This will depend on the type of service to be sold. For example, if selling financial services, it would be necessary for you to consult the Central Bank of Ireland. See its website at www.centralbank.ie. Specific advice should be taken on each occasion.

8.4 Must my services adhere to certain regulations?

Again, this will depend on the type of service being sold. Specific advice should be taken on each occasion but assistance may be obtained from websites. For further information on regulations which may apply go to –

Consumer Association of Ireland
www.consumerassociation.ie

Food Safety Authority of Ireland
www.fsai.ie

Office of the Director of Consumer Affairs
www.odca.ie

Department of Enterprise, Jobs & Innovation
www.economy-ni.gov.uk

Central Bank of Ireland
www.centralbank.ie

8.5 What liability do I have for substandard work in Ireland?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

Note that in the absence of an explicit agreement to the contrary in a business-to-business contract, Irish law will apply.

8.6 Do I need Professional/Trade indemnity insurance?

Professional/Trade indemnity insurance is an insurance policy which provides indemnity to you the Service Provider by your Insurance Company for Breach of Contract. That is, in the event that you, the service provider, provide a substandard service by which the Service Receiver sustains loss, then the insurance company guarantees to pay any loss which the service receiver has suffered. This is a service insurance which should specifically be taken out in Ireland and you will be required to take out this insurance over and above the professional /trade indemnity insurance which you may have in Northern Ireland for services provided in Northern Ireland. Again, you should check with your Insurance Broker as to the adequacy of your insurance for provision of services in Ireland.

8.7 What if I am employing someone in Ireland to work for me?

Section 18 highlights some of the issues to be considered re Brexit with regards to the movement of people.

Irish Resident

In general terms, if your business is based in Northern Ireland and employs an Irish resident to carry out duties in Ireland, a PAYE scheme must be operated in Ireland and you, as the employer, are required to register and account for PAYE/PRSI contributions in Ireland.

Bear in mind that if you employ someone in Ireland to work for you, that employee can avail of rights under Irish Employment legislation. Specific legal advice should be taken with regard to the employment

contract. While Ireland and Northern Ireland employment legislation are broadly similar, there are specific areas where the legislation differs between the two jurisdictions e.g. redundancy payments.

UK Resident

This is a complex area, which has been further complicated by a tightening of the rules by the Irish Revenue Commissioners. If a Northern Ireland employer, who does not have a permanent or deemed permanent establishment in Ireland, is sending UK resident employees into Ireland to work and they spend more than 183 days per year working in Ireland, those employees must be on an Irish payroll.

Where a Northern Ireland employer has UK resident employees working in Ireland for more than 60 days the Northern Ireland employer must register for Irish payroll. There is no requirement to operate Irish payroll where certain conditions are met (e.g. employee taxed in UK, employees carry out their duties in Ireland for less than 183 days, etc.). The employer should also seek clearance from Revenue Commissioners within 21 days from employee taking duties in Ireland.

Please note that where the UK business has a permanent establishment (or deemed establishment) Irish PAYE must be operated even if the employee only works for one day in Ireland. The 183 day rule does not apply in this instance.

The UK employer must continue to operate UK PAYE in respect of any payments made to the employee during the period they work in Ireland if this period is less than a year. The employer may then give a credit against the UK PAYE due for the lower of the two taxes i.e. Irish PAYE v UK PAYE. Irish PRSI will not apply in this instance if an A1 certificate is granted to continue paying NIC in the UK. However, if the employee is spending most of their time abroad over a period of a year or more, then HM Revenue & Customs may allow them to use special PAYE arrangements whereby they would get relief from UK tax.

This could result in employees receiving less take-home pay than they would if their salary was only subject to the Northern Ireland/UK PAYE system. This is likely to cause great complications and labour

relations problems for Northern Ireland employers whose employees are regularly assigned to work in Ireland. For this reason, you are strongly advised to consult your professional adviser if these rules are likely to impact upon your business.

As Ireland have introduced a new statutory residence test, employees who exceed 183 days in Ireland may need to take separate advice in respect of their overall tax position.

8.8 Is my Employers Liability Insurance valid in Ireland?

It is more than likely that your Employers Liability Insurance issued in Northern Ireland will not be valid in respect of services provided by them for you in Ireland. Whereas Employers Liability Insurance (except for “one man” companies) is compulsory in Northern Ireland, it is not compulsory in the Republic of Ireland. It is however very advisable to have Employers Liability Insurance in Ireland as the level of Claims in Ireland is generally higher than in Northern Ireland.

8.9 Are my vehicles/drivers insured in Ireland?

In the normal course, vehicles used for business use require to be specifically insured for business purposes. It would be wise, prior to undertaking a new business venture in Ireland to obtain written confirmation from your Insurance Company in Northern Ireland that it will cover your vehicles/drivers for business purposes in Ireland.

If you have Irish resident employees with personal use of UK vehicles you will need to consider VRT (Vehicle Registration Tax).

8.10 Are the traffic/vehicle regulations the same in Ireland?

While traffic/vehicle regulations are broadly similar, specific advice should be taken in each instance. For further information on driver and vehicle licensing in Ireland go to the following websites -

Motor Tax Online
www.motortax.ie

Department of Transport
www.transport.ie

8.11 Do I need a written contract?

It is very wise in all instances to have a written contract, particularly in business-to-business contracts where there is more scope to modify the provisions of the general law.

As a result of Brexit, it is not currently clear whether the EU Regulations governing civil and commercial contracts between member states will apply to Northern Ireland after March 2019. As a consequence, in order to avoid real commercial consequences (i.e. legal fees and delay) resulting from legal uncertainty as to which country's courts have jurisdiction to resolve disputes post March 2019, in business-to-business sales you are strongly advised to contain an explicit jurisdiction clause within your terms and conditions when trading cross-border. It is highly likely that such a clause will be recognized by the courts in both jurisdictions. (In sales to consumers, such a clause will not be binding on the consumer.)

8.12 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

8.13 Do I charge UK VAT? Must I register for Irish VAT? Are there special rules for services?

The rules relating to VAT on services are different (and more complex) than those relating to goods.

From 1 January 2010 there is a general place of supply rule depending on whether the customer is regarded as a business or a consumer. For the supply of general rule services to Irish businesses the place of supply will be where the customer is based i.e. Ireland. The customer will then account for the VAT under the reverse charge mechanism. If the supply is to an Irish non business customer, then the place of supply will be Northern Ireland and as such UK VAT should be charged. There are some exceptions to this general rule.

The main exceptions relate to:

- Land/Property related services.
- Passenger transport.
- Cultural/Educational events.
- Hire of means of transport.

- Service involving physical performance.
- Restaurant and catering services.

An EC sales list should be completed in respect of the intra EC supply of services.

If the supply is to an Irish non business customer, then the place of supply will be Northern Ireland and as such UK VAT should be charged.

Please note that foreign traders carrying on business in Ireland are obliged to register for Irish VAT from day one and do not have the benefit of the VAT registration thresholds that apply to an Irish trader.

Also note if you supply construction services in Ireland to a VAT registered principal contractor you will not need to charge VAT and the principal contractor will account for the VAT via the reverse charge mechanism. If you too act as a principal contractor to other subcontractors you will need to account for the VAT due on their invoices via the reverse charge.

Please note that if a Northern Ireland business in the construction sector is providing services to anyone other than a principal contractor, e.g. shop fitter installing shelves for a shopkeeper in Ireland, the Northern Ireland business must register for and charge Irish VAT under the normal rules.

Please note that this is a highly complex area and that you should seek professional advice specific to your own circumstances.

The above rules apply to services provided within the EU Single Market and therefore this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

8.14 Will any tax be deducted from my payments?

- *Relevant Contracts Tax*

Where you are engaged in the construction, forestry and meat processing industries then a withholding tax known as Relevant Contracts Tax (“RCT”) applies. This is an electronic system whereby the principal contractor notifies the Revenue Commissioners online, of all relevant contracts and in return is advised of the applicable rate.

The rate of Withholding Tax depends on your compliance record and history with the Revenue Commissioners.

There are three rates applicable – 0%, 20% and 35%.

Where “relevant operations” under a “relevant contract” are carried out in Ireland, then RCT will apply. It is important to note that RCT also applies to non-resident businesses. Where no other Irish taxes are due then a refund of RCT can be obtained on application to the Revenue Commissioners.

Gross status can be obtained if an application is made to the Revenue Commissioners. This can be a long and complicated application procedure and professional advice should be sought in this regard.

- **Professional Services Withholding Tax**

Irish Income Tax, at the standard rate, is deducted from payments made for Professional Services by Government Departments, state Bodies, Local Authorities etc. This is known as Professional Services Withholding Tax (“PSWT”).

Services considered as Professional Services are medical, dental, veterinary, architectural, engineering, accountancy, consultancy, legal etc.

Non-resident businesses supplying “Professional Services” to Government Departments etc. will be liable to PSWT. If no other Irish taxes (i.e. Income Tax or Corporation Tax) are due, then a refund of PSWT can be obtained on application to the Revenue Commissioners.

8.15 Should I invoice in Sterling or Euro?

The first point to note is that, from a technical point of view, VAT invoices raised by a Northern Ireland-based business can be issued in a foreign currency but you must also convert not only the value of the invoice but the VAT amount into Sterling on the invoice.

If you choose to raise an invoice this way you must convert same into Sterling by either:

- A) using the UK market selling rate at the time of supply which can be found in National newspapers

or

- B) use the period rate of exchange published by HM Revenue & Customs (also available from the National Advice Service)

Prior approval does not need to be sought from HM Revenue & Customs to use method B) above but where you have adopted same you cannot then subsequently change to another method of conversion without prior approval of your local VAT business centre.

Your Irish client may prefer to agree a price in Euro and pay you in Euro, so that they are not exposed to exchange rate fluctuations. If you want to facilitate your client, you could choose to raise your invoice in Euro with the Sterling equivalent shown on same or agree a Euro equivalent as part of a separate contract or agreement. The disadvantage of this is that you then assume the exposure to exchange rate fluctuation.

Some firms will state on their invoices that, should client companies wish to settle the invoice in Euro, they should contact their accounts department on the day of settlement to agree a suitable rate of exchange on that day.

Do not forget to consider your own circumstances and whether or not it would suit you to receive Euro at a certain point in time.

8.16 Is it worthwhile opening a Euro account?

Where you are making and receiving Euro payments it is often advantageous to maintain a Euro bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a ‘spread’ (the difference between the bank’s buying and selling prices) thus the fewer deals you do the less ‘spread’ you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a Euro account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

8.17 How do I open a Euro account?

The most convenient way to open a Euro account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Euro accounts can be domiciled in Northern Ireland, without the need to approach a bank in Ireland.

8.18 Can I protect myself against exchange rate fluctuation?

Exchange rate risk is an important consideration and should always be actively managed. This is best done by netting payments and receipts. However, amounts and timings rarely match exactly, so forward foreign exchange contracts can be used.

A forward foreign exchange contract is a binding contract between two parties to buy or sell a specified amount of foreign currency at an agreed rate on or between a specified future date or dates.

These contracts are offered by all the major banks and allow you to guarantee a future value for your Euro receipts, thus completely eliminating foreign exchange risk.

It is prudent to compare the spot price (i.e. the exchange rate now) and the forward market price (i.e. the price that the bank will commit to offering you at a point in the future) before agreeing any deal.

Currency fluctuations could be experienced with the exit from the European Union and therefore currency management plans should be put in place. See Section 18 for further details.

8.19 How can I ensure I get paid?

It is preferable to insist on “cash on delivery”. If you cannot get payment on provision of the service and the service receiver subsequently defaults on payment, then it would be advisable to retain the services of a Solicitor/Debt Collection Agency within Ireland to collect payment should your client default in payment in due course. While there are circumstances where it would be possible to secure judgment in Northern Ireland (where the contract may have been made), it is advisable to secure judgment in Ireland as it will in turn be easier to enforce an Irish Judgment against an Irish Debtor.

You may also wish to take advice on “Retention of Title”.

8.20 Where do I pay my tax?

If you are self-employed in the UK, you will be required to submit a tax return by 31 October (for manual returns) or 31 January (for online returns) following the end of the tax year (5 April) under the self-assessment arrangements and pay any tax becoming due to the Collector of Taxes. Tax is paid on 31 January and 31 July of each year with January being the time for paying the balance of tax for the previous year and also the 1st payment on account for the current year. The July payment is the 2nd payment on account for that same tax year.

If you choose to open a place of business in Ireland, you will be liable to Irish tax on the profits of your Irish business as detailed in section 1.22. These profits are also part of your UK self-assessment return but you will receive credit under the double taxation agreement for the element of profits taxed twice

If you operate through a Company in Northern Ireland, tax will have to be paid electronically to the Collector of Taxes in Shipley, Bradford. UK Corporation tax is generally payable 9 months and 1 day after the Company’s year end, however special rules apply to large companies where payments on account must be made.

Payments on account for large companies are generally made in four equal instalments with the first payment due 6 months 13 days after the start of the accounting period. This payment should equal 25%

of the estimated tax liability based on profits at that date. The second and third quarterly payments are due respectively 9 months 13 days and 12 months and 13 days after the start of the accounting period. The final payment is due 3 months and 14 days after the end of the accounting period.

Each quarterly payment should represent 25% of the company's estimated tax liability for the accounting period.

If you operate through the medium of a limited company in the UK and choose to open a branch in Ireland, the branch profits will be liable to tax in Ireland (as well as in UK with double taxation relief). UK companies can elect to have their foreign profits exempt from UK corporation tax. However, the election is irrevocable. Therefore, it is extremely important professional advice is obtained before any election is put in place. If you operate through the medium of a limited Company in Ireland the payment date for corporation tax has become more streamlined and all small companies (where the company's corporation tax liability for the prior year was < €200,000) will be required to have paid either 90% of their expected corporation tax liability for the current period or they can opt to pay 100% of the prior year liability by the 21st of the month prior to the end of their accounting date to the Collector General.

If the company is a large company (where the company's corporation tax liability for the prior year was > €200,000) then the payment is due in instalments. The First Instalment is payable in the 6th month of the accounting period by the 21st of that month. The amount payable should be 50% of Corporation Tax liability for the preceding accounting period or 45% of Corporation Tax liability for the current accounting period. The Second Instalment is due on the 21st date of the eleventh month of the accounting period and the amount payable will bring the total preliminary tax paid to 90% Corporation Tax liability for the current accounting period.

The balancing payment of Corporation Tax for all companies is due to be paid to the Collector General by the 21st of the ninth month after the year end.

Other issues (including legal) that should be considered by service businesses following Brexit are noted at Section 16 to 18.



Section 9

I am based in Northern Ireland and want to **buy products** from Ireland

9.1 Are there any Customs issues to be aware of?

There is free movement of goods within the EU and the only goods which need to be declared at Customs are excisable goods i.e. tobacco, spirits, wines and beer.

However, this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

9.2 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

9.3 How do I pay my supplier?

The simplest and most cost effective way of effecting payment to suppliers is usually to write a foreign currency cheque. As the use of cheques is being phased out most suppliers prefer to be paid by Bacs or debit / credit card. This is where having a foreign currency account really comes into its own as it avoids having to arrange electronic transfers or the purchase of a draft from your bank. The foreign currency account can be either funded by currency receipts or periodic currency purchases from your bank. Currency purchases can usually be made by telephone or internet dealing.

Whilst the simplest method of paying is by cheque writing, there are other methods available for one off transactions or where additional payment security is required. Banks will sell foreign currency drafts to their clients, however these offer little advantage from the purchaser's perspective other than an ability to make payment when no foreign currency account exists, i.e. for one off transactions. A fee is usually payable for the purchase of a draft.

The most secure payment method is an electronic bank to bank transfer. Whilst normally more expensive than the previous methods it provides cleared funds to the recipient at a known value date and ensures safe receipt. This is especially useful where goods are dispatched upon receipt of payment.

9.4 What currency should I pay my supplier in?

There is no definitive answer to this as individual circumstances differ. However, you should endeavour to pay in the currency most suitable to your needs and agree a payment currency with your supplier accordingly.

If you wish to sell on your purchases, priced in Sterling, then buying in Sterling would probably be most suitable as this would eliminate your foreign exchange risk all together. (The risk is passed back to the Irish supplier).

If you have a surplus of euro, then you might wish to pay the Irish supplier in euro.

In all cases it is important to get the best value for money, so whilst it may be convenient to pay an Irish supplier in Sterling, it is vital that this convenience is not out weighted by a price disadvantage. It could be more cost efficient to manage the foreign exchange risk yourself if the supplier has loaded his price to cover himself as is often the case.

9.5 Is it worthwhile opening a euro account?

Where you are making and receiving euro payments it is often advantageous to maintain a euro bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a 'spread' (the difference between the bank's buying and selling prices) thus the fewer deals you do the less 'spread' you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a euro account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

9.6 How do I open a euro account?

The most convenient way to open a euro account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Euro accounts can be domiciled in Northern Ireland, without the need to approach a bank in Ireland.

9.7 Who is responsible for VAT?

If you are VAT registered in the UK and you are purchasing goods from an Irish VAT registered person and the goods are to be dispatched to you in the UK, the supplier will take a note of your VAT number and business address and will then zero rate the supply of goods to you.

You will then account for the VAT on the goods under the reverse charge mechanism and, provided the goods you purchase are for the purpose of your trade, you will be able to claim a deduction for the VAT you have charged yourself.

Boxes 2 and 9 on your VAT return are used to record EC transactions of goods.

If arrivals from other EU Member States exceed £1,500,000 per annum you will be required to complete UK Intrastat returns.

Post Brexit the movement of goods into or out of the UK may be treated as imports and exports, meaning the reverse charge procedure will not apply and input VAT will have to be paid by the customer at the point of entry which will of course also impact cash flow. The customer may also need to consider Customs Duties and there may also be an additional administration burden on you with regards to import and export documentation. Section 18 provides further information.

9.8 When do I assume the risk for the goods?

In the absence of a written contract stating something different, where the seller arranges delivery to the purchaser risk will only pass on receipt of delivery of the goods. In certain circumstances where the seller arranges delivery to the buyer risk may only pass to the buyer on receipt of delivery. In a cross border sale, this may therefore mean that risk would only pass to the buyer when he receives the goods in Northern Ireland. It would be to the buyers benefit if risk only passed to him on receipt of the goods in Northern Ireland. For example, if risk passed to the buyer on collection of the goods in Ireland and the goods were damaged in transit in Ireland, then the buyer would be obliged to ensure that he was properly insured for transit of those goods. Often, the Contract will define at which point risk passes. A seller (who generally draws up the Contract) will however want to ensure that risk passes at the earliest point. Therefore, a buyer should ensure to read the Contract of Sale carefully.

9.9 What if the goods turn out to be defective and the vendor will not repair/replace?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts. If the goods are defective, and (in a business-to-business context) in the absence of any explicit provisions dealing with this in a written contract, because the sale will have occurred within Ireland, in the normal course the buyer will sue the seller in the Republic of Ireland Courts; i.e. where the contract occurred. Even if the contract occurred in Northern Ireland (e.g. where the seller from Ireland sold the products in Northern Ireland through a Sales Agent in Northern Ireland) it may still be more appropriate to sue the seller in Ireland as it would be easier to enforce an Irish judgment against an Irish seller. There are however circumstances where it may only be possible to issue proceedings in Northern Ireland where witnesses in Northern Ireland are not compellable to attend Courts in Ireland to prove the circumstances of the contract.

Section 16, 17 and 18 provide further details of issues to be considered in respect of planning for Brexit.

Section 10

I am based in Northern Ireland and want to **buy services** from Ireland

10.1 What are typical payment/credit terms?

Typical credit terms are 30 days. However, this can vary considerably in practice and depending on the sector in which you operate.

10.2 How do I pay my supplier?

The simplest and most cost effective way of effecting payment to suppliers is usually to write a foreign currency cheque. As the use of cheques is being phased out most suppliers prefer to be paid by Bacs or debit / credit card. This is where having a foreign currency account really comes into its own as it avoids having to arrange electronic transfers or the purchase of a draft from your bank. The foreign currency account can be either funded by currency receipts or periodic currency purchases from your bank. Currency purchases can usually be made by telephone or internet dealing.

Whilst the simplest method of paying is by cheque writing, there are other methods available for one off transactions or where additional payment security is required. Banks will sell foreign currency drafts to their clients, however these offer little advantage from the purchaser's perspective other than an ability to make payment when no foreign currency account exists, i.e. for one off transactions. A fee is usually payable for the purchase of a draft.

The most secure payment method is an electronic bank to bank transfer. Whilst normally more expensive than the previous methods it provides cleared funds to the recipient at a known value date and ensures safe receipt. This is especially useful where goods are dispatched upon receipt of payment.

10.3 What currency should I pay my supplier in?

There is no definitive answer to this as individual circumstances differ. However, you should endeavour to pay in the currency most suitable to your needs and agree a payment currency with your supplier accordingly.

If you have a surplus of Euro, then you might wish to pay the Irish supplier in Euro.

In all cases it is important to get the best value for money, so whilst it may be convenient to pay an Irish supplier in Sterling, it is vital that this convenience is not outweighed by a price disadvantage. It could be

more cost efficient to manage the foreign exchange risk yourself if the supplier has loaded his price to cover himself as is often the case.

10.4 Is it worthwhile opening a Euro account?

Where you are making and receiving Euro payments it is often advantageous to maintain a Euro bank account. This provides the ability to net currency payments against currency receipts, thus minimising the number of foreign exchange deals that you do. Every foreign exchange deal is subject to a 'spread' (the difference between the bank's buying and selling prices) thus the fewer deals you do the less 'spread' you pay.

Where there is considerable bias towards payments or receipts, hence minimal netting, a Euro account will provide an excellent audit trail and the ability to convert currency in larger amounts which are liable to attract a better rate of exchange.

10.5 How do I open a Euro account?

The most convenient way to open a Euro account will be via your existing bankers as this will minimise the amount of documentation that you will be required to produce to meet legislative requirements. Your existing relationship manager will be familiar with your needs and may also be holding security or deeds to facilitate overdraft or loan facilities which may be extendible to your new account.

That said there is nothing to stop you using another bank specifically for your foreign currency business and some account holders prefer to shop around and form a secondary banking relationship.

Euro accounts can be domiciled in Northern Ireland, without the need to approach a bank in Ireland.

10.6 Who is responsible for VAT?

The rules relating to VAT on services are different (and more complex) than those relating to goods.

From 1 January 2010 there is a general place of supply rule depending on whether the customer is a business or a consumer. If you are a UK business and acquire services from an Irish VAT registered company, then the place of supply will be where you the customer is based i.e. Northern Ireland. As such, you will be

required to account for VAT under the reverse charge mechanism and provided the services are used for business purposes you can also reclaim the VAT you charge yourself. If you are a UK non-VAT registered business and acquire services from Ireland, then you will not be liable to account for UK VAT (subject to the registration thresholds). If you are not a UK business and acquire services from an Irish VAT registered company, then the place of supply will be where the supplier is based i.e. Ireland. The Irish company will charge Irish VAT. There are some exceptions to this general rule.

The main exceptions relate to:

- Land / Property related services.
- Passenger transport.
- Cultural / educational events.
- Hire of means of transport.
- Service involving physical performance.
- Restaurant and catering services.

As the rules regarding the supply of services are highly complex you should see professional advice relating to your specific circumstances.

If you are not a UK business and acquire services from an Irish VAT registered company, then the place of supply will be where the supplier is based i.e. Ireland. The Irish company will charge Irish VAT unless they are registered for VAT in the UK.

Additional rules have been introduced from 1 January 2015 for suppliers of digital services to non-VAT registered customers in other EC countries. Some examples of digital services include:

- Online advertising
- Distance maintenance of programmes or equipment
- Sale of images or text, such as photos, eBooks, films and games

The above rules apply to services provided within the EU Single Market and therefore this may change when the UK leave the EU on 29 March 2019. See Section 18 for more detail.

10.7 What if the service is substandard?

The general law infers contractual warranties as to quality as well as a duty of care to users. The standards are higher if selling to consumers as opposed to selling to another business. However, some modifications to the general law standards are allowable in written business-to-business contracts.

In the absence of an explicit agreement to the contrary in a business-to-business contract, if the service is provided by the Irish service provider in Ireland, you would issue proceedings against the service provider in Ireland e.g. an Architect draws up plans in his Irish office for your house in Northern Ireland. If the service is provided by the Irish service provider in Northern Ireland (who is insured), you would issue proceedings against the Irish service provider in Northern Ireland e.g. the Irish builder constructs your house in Northern Ireland.

10.8 Is it necessary for the service provider in Ireland to have professional indemnity/trade insurance?

Professional/Trade indemnity insurance is an insurance policy which provides indemnity to the Service Provider by their Insurance Company for Breach of Contract. That is, in the event that the service provider provides a substandard service by which the Service Receiver sustains loss, then the insurance company guarantees to pay any loss which the service receiver has suffered. While it is not compulsory in either jurisdiction that service providers have Professional Indemnity/trade Insurance, it is generally a requirement of membership of professional organisations that the service provider has Professional/Trade Indemnity Insurance. For example, just as a Solicitor in Northern Ireland (as a requirement of membership of the Northern Ireland Law Society) is required to have Professional Indemnity Insurance within Northern Ireland, a Solicitor in Ireland (as a requirement of membership of the Law Society of Ireland) is obliged to have Professional Indemnity Insurance within Ireland. If in doubt, you should request the service provider to confirm that he has Professional Indemnity Insurance for his services in the jurisdiction in which he provides those services. If the Irish service provider is providing those services in Northern Ireland, then it is important to ascertain that the Irish service provider has professional indemnity to provide services in Northern Ireland.

Sections 16 to 18 provides further detail of issues (including legal) to be considered in respect of planning for Brexit.

Section 11

I am based in Northern Ireland and want to establish a presence in Ireland

It should be noted that this section is based on the current commercial regulations.

When the UK leave the EU on 29 March 2019 the situation may differ, more detail is available at Section 16 to 18.

11.1 Are there any advantages to my establishing a presence in Ireland?

Yes, the rate of corporation tax for trading companies is an advantage and can produce a tax saving where you choose to form a subsidiary or a separate limited company. Formation of a branch will not result in the same saving. However, pricing rules should be considered when exploring tax-saving opportunities.

The issue of establishing a presence in the other jurisdiction is generally more relevant to service providers rather than to Sellers of goods. Sellers of goods can manufacture or procure their products within Northern Ireland and establish a satisfactory means of delivery of those goods into Ireland. The goods may be sold through shops within Ireland and therefore the origin of the manufacture of those goods is not that important. However, a service provider will be providing a personal service and, as such, his presence and identity to the client are more important. The advantages of establishing a presence in Ireland is more direct access to that market. Where you don't establish an actual presence, you are relying on the integrity of Sales Agents, Distributors and Couriers/Transport Agents. It is difficult sometimes to convince buyers/clients that you are in a position to provide an effective service within that jurisdiction where you do not actually have a presence in that jurisdiction.

For general information on deciding whether to lease or purchase premises, go to Section 20 - Useful Topics "[Choosing Business Premises](#)".

11.2 Are there any disadvantages to my establishing a presence in Ireland?

A Northern Ireland business person deciding to establish a presence in Ireland will go through almost the very same business start-up expenses which he would have originally encountered when establishing his initial presence in Northern Ireland. For example, it will be necessary to take on the expense of a lease/purchase of premises, building insurance, electricity, telephone supply, payment of commercial rates and other related expenses. For assistance to "start-ups" within Ireland, contact a City/County Enterprise Board or look at their SME online tool on their website www.localenterprise.ie

It should also be noted that the submission of late tax returns to the Revenue Commissioners for both Companies and sole traders can result in tax based penalties, which vary depending on the degree of lateness.

In addition, for companies which have losses there are restrictions on the set off of those losses where the return has been made late.

New start-up companies which were incorporated on or after 14 October 2008 and commence to carry on a new trade before 31 December 2018 are exempt from corporation tax, including capital gains, in each of the first three years to the extent that their tax liability in the year did not exceed €40,000. This effectively allows a trading company to earn €320,000 in profits tax free in each of the first three years of trading. The relief will be restricted to the employers PRSI paid by the company in an accounting period subject to a maximum of €5,000 per employee and an overall limit of €40,000.

Where you incorporate an Irish company at least one director of the company must be resident in a member state of the EEA., you will need to comply with company secretarial requirements which can be quite onerous and can lead to heavy fines for non-compliance (www.cro.ie).

The key body in this respect of corporate governance is the Office of the Director of Corporate Enforcement (www.odce.ie/) which can strike off defaulting directors for up to five years.

11.3 What's the difference between a branch and a subsidiary?

Whereas a branch is an extension of a company, a subsidiary is a legal entity in its own right. In the UK the term branch has been superseded by the term "permanent establishment"

A Limited Liability Company incorporated in Northern Ireland may wish to establish a branch in Ireland. This is facilitated under European Law which requires that certain filings must be made by the Northern Ireland

Company with the Companies Office in Ireland. It is important to bear in mind that a “branch” in legal terms only applies to Corporations e.g. limited liability companies. So, for instance, a Partnership or a sole trader would not in the legal sense establish a “branch” across the Border. Therefore, it is only in the context of Corporations that there is a requirement for filing information and details with the Companies Office in Ireland. From a legal viewpoint a branch is not a separate legal entity from the Company that established that branch. To take an example, we could have a Northern Ireland incorporated Company with a branch Office in Dublin. The legal entity doing business in Dublin is the Northern Ireland Company. It just happens to have an office in Dublin.

On the other hand, a subsidiary is a completely separate legal entity from the parent company. Once again, subsidiaries only apply to Corporations, e.g. Limited Liability Companies, as opposed to sole traders or partnerships. To take an example, Company A is established and trades in Northern Ireland and decides to set up a new business in Dublin. Rather than merely establish a branch, they decide to establish a separate Irish Company to conduct the business on their behalf. In the normal course the new Company, NewCo, is incorporated in Ireland but its shareholder is Company A. As such, Company A owns all of NewCo.. The important legal distinction is that the business being conducted in Ireland is conducted by NewCo and if a legal dispute arose in respect of the conduct of the business then it is NewCo that will be involved in the legal proceedings, not Company A. Therefore, in terms of limiting the risk for the parent company in establishing a new business in a foreign jurisdiction, there may well be practical reasons to use a subsidiary as opposed to a branch. If a Company merely has a branch the Company itself is exposed to all legal liability for the actions of the foreign branch and losses accumulated by that branch. By having a separate Company (subsidiary) such risks and losses can be limited to that Subsidiary and ordinarily the Parent Company should be protected. It should be noted, however, that the decision whether to establish a branch or a subsidiary tends to be primarily informed by the tax implications.

11.4 What formalities must we undertake?

It will be necessary to decide whether you propose to trade as a Sole Trader/Partnership or as a Limited Liability Company.

Branches of a UK company must be registered with the Companies Registration Office. The registration must take place within one month of setting up the branch, by submitting a Form 12 along with the necessary documentation. For more details, please refer to information leaflet no 5 registration of external companies at www.cro.ie.

It is important to ensure that when making the submission to the CRO that the company Memorandum and Articles of Association of the UK Company are certified to be a true copy of the original by a Notary Public or by the registrar companies from the country that the company was incorporated.

11.5 Can we be taxed twice?

For branches there is a tax charge where the branch is located and a tax charge where the main company is located but double taxation relief also comes into play. Under the UK tax legislation. UK resident companies can elect to have all their foreign branch profits exempt from UK Corporation Tax. This is an irrevocable election. This proposal aligns the tax treatment of foreign branches with those of foreign subsidiaries.

The formation of a separate limited company or a subsidiary will avoid this double exposure to tax.

You should be aware that the formation of a separate Irish company which is under the same control as the UK company will be classed as an associated company. This will not impact on the rate of tax payable, however professional advice should be sought to ascertain the impact on any inter-company transactions.

Group companies are only entitled to audit exemption if the combined group fulfils at least two of the following criteria;

- Balance sheet total not exceeding €4.4m
- Turnover not exceeding €8.8m
- Employees not exceeding 50

Section 12

Research and Development Tax Relief in Northern Ireland

12.1 What relief is available for R&D?

R&D relief is available to companies who have expenditure on R&D activities in an accounting period. It is not available to either sole traders or partnerships. The relief reduces the company’s corporation taxable profits for the relevant period. The amount of relief available to a company depends on the company’s size. There are two schemes of relief available depending on whether a company is small or medium sized (SME) or a large company.

A SME is a company that has less than 500 employees and either turnover of less than €100 million or a balance sheet not exceeding €86 million. If the company is part of a group, these limits must be applied to the whole group in order to determine if R&D relief could be claimed under the SME or Large Scheme.

The enhanced tax relief on allowable R&D costs (see 12.3 below) for an SME is available at an enhanced rate of 130%. Therefore, for every £100 spent on qualifying R&D projects the company’s taxable income will be reduced by a further £130. Furthermore, if your company makes a loss you can opt to receive the R&D relief by way of a cash payment from HMRC. The amount of the payment will be limited to 14.5% of your surrenderable loss.

For companies considered large they can claim enhanced relief under the RDEC. This will give companies a 11% tax credit on qualifying research and development expenditure which is deducted from the corporation tax payable. This credit is in itself taxable. Depending on whether your company is profit or loss making the credit may be used to discharge tax liability or result in a cash payment.

12.2 What R&D projects qualify for relief?

To be a qualifying R&D project the project must seek to achieve an advance in the overall knowledge or capability (not a company’s own state of knowledge or capability) in a field of science or technology. An advance in science or technology may result in physical adaptations to the product e.g. a new or more efficient product, or improvements to the process e.g. cost improvements. A project is not considered an advance simply because science or technology has

been used in its creation. Even if the advance which the project sought to achieve is not realised R&D can still be deemed to take place.

The activities involved must achieve the advance through the resolution of scientific or technological uncertainty. An uncertainty is deemed to exist when knowledge of something is not readily available or deductible by a competent professional working in that field.

Any activity which directly contributes to achieving the advance and indirect activities related to the project will qualify as R&D.

Therefore, any project which makes an appreciable improvement to an existing process, material, device, product or service or which duplicates the effects of an existing process, material, device, product or service through an advance in science or technology in a new or appreciably improved way would constitute R&D.

For example, a manufacturing company manufactures products using machinery. To increase efficiency, the company are looking at the process by which the goods are manufactured. If the company simply bought a new more modern piece of machinery to replace the existing machinery then this would not qualify as R&D as a project is not R&D just because technology has been used in its creation. However, if the company developed changes to the way the product is manufactured so that they are now made in an appreciably improved way which would result in increased efficiency then this could qualify as R&D. There does not necessarily need to be a change to the actual product being released to the market.

On submission of a claim HM Revenue & Customs will decide whether a project meets the definition of R&D. There are specialist HM Revenue & Customs R&D units who can assist with a claim and give guidance as to whether a project would qualify for the relief.

12.3 What costs qualify for relief?

Relief is available in respect of day to day running costs. This includes the following:

- Employee costs
- Externally provided workers
- Materials
- Utilities
- Computer software
- Payments to clinical trials volunteers
- Subcontracted R&D costs

12.4 How can I claim the relief?

The claim for R&D relief is made in your company's tax return. The time limit for making the claim is two years after the end of the accounting period. There is no requirement to submit supporting documentation to HMRC unless they request same in order to process the claim. However, it is important that good records are maintained to support the R&D claim.

12.5 Is there any assistance available?

Grants and subsidies may be available from State bodies such as Invest NI to assist with R&D projects.

Receiving a grant can affect the amount of relief an SME is able to claim. If the grant received is deemed to be state aid (e.g. an Invest NI grant) then no relief is available under the SME scheme. However, relief may be available under the large RDEC scheme instead provided that.

- the expenditure would have been allowable under the RDEC scheme had the company been large, and
- the expenditure is not eligible for relief under the SME scheme because it was subsidised.

In this case, the SME would be able to claim relief under the RDEC scheme with an 11% tax credit on all allowable R&D costs.

If the grant is not deemed to be state aid, then the R&D relief available to an SME under the SME scheme is reduced by the amount of the grant received i.e. the balance of expenditure not covered by the grant. Relief however, may be claimed by the SME under the RDEC scheme in respect of the grant received. E.g. if a company incurs R&D expenditure of £500,000 in

carrying out R&D and receives a non-state aid grant of £100,000 towards the expenditure then £400,000 would qualify for relief under the SME scheme and the balance of £100,000 would qualify for relief under the RDEC scheme (provided conditions are met).

The receipt of grant aid has no impact on the R&D relief available to large companies.

12.6 Is relief available for capital expenditure?

Capital allowances at the rate of 100% are available in respect of money spent on qualifying capital assets such as plant and machinery used in R&D projects.

12.7 Is relief available in respect of subcontracted R&D?

Where an SME subcontracts R&D work to a third party the SME may claim relief. The amount of relief will depend on whether the payment is to a connected company. If the payment is to a connected company, then the SME can claim R&D relief on the lower of the payment it makes to the subcontractor and the relevant expenditure of the subcontractor.

Where the payment is made to an unconnected party, then 65% of the payment made by the SME qualifies for relief. However, the parties may put an election in place for the connected company treatment to apply.

For large companies the expenditure incurred on R&D subcontracted to other persons is generally not allowable unless the company contracts for the work to be undertaken by qualifying bodies such as universities, scientific research organisations, charities, and NHS bodies, an individual or a partnership of which each member is an individual.

Large companies can also claim relief for expenditure on work contracted to it provided the work is contracted by another large company.

If a large company subcontracts work to an SME, then no relief can be claimed by the large company. Instead the SME will claim the relief at 130% for expenditure on the work contracted to it.



Section 13

Patent Box Relief in Northern Ireland

The Patent Box enables companies to apply a lower rate of Corporation Tax to profits earned after 1 April 2013 from its patented inventions and certain other innovations. The relief will be phased in from 1 April 2013 and the lower rate of Corporation Tax to be applied will be 10%.

13.1 Who can benefit from the Patent Box?

You can only benefit from the Patent Box if your company is liable to Corporation Tax and makes a profit from exploiting patented inventions.

Your company must also own or exclusively license-in the patents and must have undertaken qualifying development on them. You can read more about exclusively licensing-in patents later in this guide.

If your company is a member of a group, it may qualify if another company in the group has undertaken the qualifying development.

13.2 Which patents are eligible and what must be done with them?

You can benefit from the Patent Box if your company owns or exclusively licenses-in patents granted by the:

- UK Intellectual Property Office
- European Patent Office
- following countries in the European Economic Area: Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Poland, Portugal, Romania, Slovakia, and Sweden

Your company or another group company must also have undertaken qualifying development for the patent by making a significant contribution to either:

- the creation or development of the patented invention
- a product incorporating the patented invention

13.3 Exclusively licensing-in patents

Patent holders may wish to license their inventions for others to develop. If your company holds licenses to use others' technology it may still be able to benefit from the Patent Box. But to do so it must meet all of the following conditions.

It must have:

- rights to develop, exploit and defend rights in the patented invention

- one or more rights to the exclusion of all other persons (including the licensor)
- exclusivity throughout at least an entire national territory - rights to manufacture or sell within part of a country, for example, would not qualify as exclusive

Also, the licensee must either be able to bring infringement proceedings to defend its rights or be entitled to most of the damages awarded in successful proceedings relating to its rights.

The exclusive licensing conditions are relaxed for groups of companies. This recognises that one company in the group may own a portfolio of patents while another exploits them.

13.4 Income earned from exploiting patented inventions

Not all of your company profits may come from exploiting patented inventions. To be relevant IP (intellectual property) income, it must come from at least one of the following:

- selling patented products - that is sales of the patented product or products incorporating the patented invention or bespoke spare parts
- licensing out patent rights
- selling patented rights
- infringement income
- damages, insurance or other compensation related to patent rights

Your company can also benefit from the Patent Box if it uses a manufacturing process that is patented or provides a service using a patented tool. In these circumstances, you will need to calculate a notional royalty.

The Patent Box enables companies to apply a lower rate of Corporation Tax to profits earned after 1 April 2013 from its patented inventions and certain other innovations. The relief will be phased in from 1 April 2013 and the lower rate of Corporation Tax to be applied will be 10%.

13.5 How and when to claim

You have to make an election to benefit from the reduced rate of Corporation Tax that applies to the Patent Box. You can do this in the computations accompanying your Company Tax Return or separately in writing. There is no special form of words for this election. You must make your election within two years after the end of the accounting period in which the relevant profits and income arose.

The full benefit of the regime will be phased in from 1 April 2013. You will need to apply an appropriate percentage to the profits your company earns from its patented inventions.

The appropriate percentages for each financial year are:

- 1 April 2013 to 31 March 2014: 60 per cent
- 1 April 2014 to 31 March 2015: 70 per cent
- 1 April 2015 to 31 March 2016: 80 per cent
- 1 April 2016 to 31 March 2017: 90 per cent
- from 1 April 2017: 100 per cent

There is no box on the Company Tax Return for making the election. Instead you apply the reduced 10% rate by subtracting an additional trading deduction from your Corporation Tax profits.



Cross-Border Distributorships or Agencies

Section 14

Cross-Border Distributorships or Agencies



14.1 What is the difference between a distributor and an agent?

Distributor

In a distributorship a supplier or manufacturer sells his products to the distributor, who in turn sells the products on to his customers, adding a margin to cover his own costs. Distributorships are used as a low risk means of expanding business into new markets or territories.

The distributor assumes liability for the products incurring a greater degree of risk than an agent in the course of his business. The distributor has no authority to create a contract between the supplier and customer. The customer's contract will be with the distributor.

Agent

A Sales Agent is a self-employed intermediary who has continuing authority to negotiate the sale of goods on behalf of another person "the principal" (or to negotiate and conclude the sale of goods on behalf of and in the name of that principal).

14.2 What are the advantages and disadvantages of each?

Advantages of a Distributorship

- A supplier is able to pass on risk associated with the products.
- The distributor is motivated to sell the stock purchased from the supplier.
- A supplier will not incur any liability as a result of the distributor's activities (although the supplier may remain liable for defective products).
- The appointment of a distributor will avoid the need for a supplier requiring an established place of business in the territory, reducing administrative costs.
- A supplier will only need to monitor accounts with a distributor.
- No compensation is automatically payable to a distributor upon termination of the distributorship agreement.

Disadvantages of a Distributorship

- The supplier has limited control over activities of a distributor.
- Under an exclusive distributorship arrangement,

the supplier's entire credit risk in respect of sales in that territory is concentrated on the distributor.

- A distributorship arrangement is likely to be governed by domestic and European competition legislation.
- Given the large degree of autonomy granted to a distributor, it is critical that the selected distributor is financially and commercially sound.

Advantages of a Sales Agency

- Supplier has more control over the activities of a sales agent
- The financial and commercial background of the sales agent will not be as critically important to the principal; although the principal will want to ensure the integrity of the sales agent since the principal will in the normal course be bound by the actions of the sales agent.

Disadvantages of Sales Agency

- The principal is not able to pass on risk associated with the products to the sales agent.
- The principal will incur liability as a result of the agent's activities.
- In most instances the principal may be obliged to take on the expense of training the sales agent.
- Under EU Commercial Agents Regulations (enacted in both Ireland and Northern Ireland) minimum notice provisions apply (from one month to three months) in the event of termination of the agency and the agent may also be entitled to compensation over and above this notice requirement.

14.3 What should we cover in an agency contract?

- Duty of agent to comply with reasonable instructions from his principal
- Duty of agent to communicate necessary information to his principal
- Duty of principal to provide his agent with the information necessary for the performance of the agency contract.
- Remuneration of agent – entitlement to commission
- Termination provisions
- Consequences of termination
- Agreement to supply product
- Clear order and delivery procedures
- Minimum sales and targets
- Competition and restraint of trade – the principal may wish to prevent the sales agent from selling

similar products on behalf of other competitors which compete with the contract products for a period after termination of the agreement.

Legal advice should be sought in drafting any agency contracts.

14.4 What should we cover in a distributorship contract?

It is probably helpful first to explain that there are different types of Distributorships; namely an Exclusive Distributorship, a Sole Distributorship, a Non-Exclusive Distributorship and a Selective Distributorship.

An Exclusive Distributorship

This is an arrangement whereby a supplier agrees not to appoint another distributor within a defined territory and also agrees not to sell the products directly to customers within that territory. Such an arrangement is frequently used to exploit a product within a new territory. A distributor agrees to take on the risk and cost associated with promoting the new product in the knowledge that he alone will benefit from his efforts. A supplier has the advantage of knowing that the distributorship will be motivated to sell his products.

Sole Distributorship

This is an arrangement whereby a supplier appoints a distributor as his only distributor within a defined territory, but retains the right to promote the products himself within the territory and to sell products direct to customers in the territory in direct competition with the distributor.

Non-Exclusive Distributorship

A non-exclusive arrangement gives a supplier complete freedom both to sell directly and to appoint other distributors in a territory.

Selective Distributorship

A supplier appoints distributors to establish a network provided that additional distributors meet certain criteria. This effectively limits the number of additional distributors who will be appointed within a defined territory. Such arrangements are perceived as particularly suitable where the product requires an enhanced level of service or advice at the point of sale or where the supplier or manufacturer is required to provide after sale support.

Distributors generally agree only to sell products to end users or to other approved distributors and individual distributors are in a position to compete against each other.

The Contents of a Typical Distributorship Agreement

- Agreement to supply product
- Clear order and delivery procedures
- Passing of risk
- Payment terms
- Imposition of specific obligations on pricing and other conditions under which the distributor may sell the product to its customers
- Minimum sales targets
- Inspection of records
- Reservation of intellectual property rights
- Competition and restraint of trade – the supplier may wish to prevent the distributor from manufacturing or distributing products which compete with the contract products for a period after termination of the agreement.
- Exclusion of liability – the principal may want to limit the warranties which are given on sale of the goods
- Product Liability – limiting the circumstances/procedures in which the supplier will be liable to the distributor in the event of defective products
- Length of agreement
- Termination of agreement
- Consequences of termination – disposal of stock upon termination
- Additional obligations, such as after sales maintenance service.

14.5 Are there any tax issues to look out for?

Specific professional advice should be sought regarding your detailed circumstances as this subject is much too complicated to be covered in the context of this publication.

Section 15

Exploring a Cross-Border Joint Venture

15.1 What are the options in terms of co-operation structures?

The type of co-operation structure or Joint Venture vehicle that should be used in any set of circumstances will usually fall to be decided on the basis of how much risk each party is willing to assume for the Venture, the likely period of the joint venture and whether the proposed structure is tax efficient. The main types of joint venture vehicles are as follows:

The Joint Company

The jointly owned Company has often been the favourite vehicle for joint ventures, largely because it is simple to set up, easily understood, and provides limited liability and possible accounting benefits. However, the decision as to where to incorporate/establish the Company i.e. in Northern Ireland or Ireland will obviously be based on where the joint venture business will operate and if this is not conclusive then in the most tax advantageous jurisdiction.

Partnership

Partnerships are becoming increasingly popular vehicles for their flexibility. From a taxation viewpoint, partnerships can often be more straightforward than companies but, on the other hand, the partners in a partnership have joint and several liabilities.

Contractual Joint Ventures

Another mechanism for effecting a joint venture is known as Contractual Joint Ventures. This is a contract that does not amount to a partnership and this is probably the simplest form of Joint Venture from a tax viewpoint. Very often the parties to a Joint Venture may wish to avoid the dangers of joint and several liability that exists in a partnership or sometimes they may wish to avoid certain tax implications that can arise in partnership arrangements. As such, they may wish to opt for a Contractual Joint Venture. This is best explained by an example.

A small chemical manufacturer on one side of the Border agrees to exclusively supply a “pharmaceutical company” on the other side of the Border with certain “know how” and chemicals to allow the pharmaceutical company to develop a new pharmaceutical product e.g. a cold remedy. If the chemical manufacturer were to be entitled to a future share in the profits of the cold remedy, then the arrangement between them

would fall to be treated as a Partnership. The parties decide that they do not want to form a partnership e.g. the chemical manufacturer may not want to risk its money on a new pharmaceutical product that may not be a success. As such, the chemical manufacturer agrees to exclusively supply its “know how” and the chemical raw material to its joint venture partner in return for the pharmaceutical company agreeing (a) to spend x amount of money to develop and market the cold remedy, (b) to pay a set royalty for a pre-determined time period to use the “know how” and (c) to buy the necessary chemical raw material only from the Chemical manufacturer at a pre-set price for the pre-determined period. In this way if the cold remedy were a success the Chemical manufacturer as supplier of the “know how” and raw material would be ensured of strong demand at pre-agreed prices under the contractual joint venture and the Pharmaceutical Company would not be entitled to threaten to source the raw material or “know how” from some other competitor for the period of the contractual joint venture. In the current example the chemical manufacturer was not prepared to risk its own money in establishing a joint venture but in return for offering to supply their “know how” and raw materials on an exclusive basis they will in turn benefit from increased turnover provided its joint venture partner successfully launches the cold remedy on the market.

15.2 What contracts or documents are required?

It is of fundamental importance to have a legal agreement put in place when there is a joint venture. It is absolutely critical to define at the outset the nature of the joint venture i.e. is it a Company, a Partnership or merely some form of Contractual Joint Venture. Obviously, this is critical from a tax viewpoint because each arrangement will be taxed differently. Of fundamental importance from a legal viewpoint is to provide for scenarios where there is a breakdown in the relationship between the Joint Venture parties or there is a dispute between them or how the Joint Venture is to be wound up in the future.

15.3 What law governs our contract?

It would be normal for the Joint Venture Agreement to specify the law that will govern the agreement between the parties. It is a matter of negotiation between the parties to decide the law of which jurisdiction would be most appropriate to deal with matters of interpretation and/or dispute.

15.4 Are there any tax issues we should be aware of?

The choice of Joint Venture vehicle will hugely impact on various taxes such as Corporation Tax, Income Tax and VAT. It is vital that tax advice is taken at the earliest possible opportunity. Before the Joint Venture arrangement is fully negotiated, detailed tax advice should have been taken by all parties.



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Section 16

The Legal Process for Debt Collection In Ireland and Northern Ireland

At the outset, it is advisable to put an internal debt collection structure in place to ensure that most debtors don't become a problem in the first place. If after following the internal procedures (statements, demand letter, phone calls etc.) the debt remains outstanding and you consider it worth pursuing the next step is to commence the legal process of debt recovery set out below.

The Legal process for Debt Collection, by reason of the fact that it is bound to Court dates and time limits, is slow and, in the reasonable view of the client Creditor (the person who is owed the money), frustrating. This frustration is made worse where the Creditor finds that he has reached another stage in the process against the Debtor (the person who owes the money) only to find that there are a number of further stages yet to be undertaken. Where a Creditor, familiar with the process in one Jurisdiction, comes for the first time to collect money from a Debtor in another Jurisdiction, lack of knowledge of the processes which apply in that other Jurisdiction or, indeed, failure to issue Proceedings in the correct Jurisdiction can lead to costly mistakes.

16.1 Where to issue proceedings?

The Debtor can be sued where the Debtor resides/ carries on business or where the original Contract occurred. This can often give a choice to the Creditor in the Border area as to whether he issues proceedings in Ireland or Northern Ireland. For instance, the Contract may have been made in Ireland where the Creditor undertakes his business but the Debtor resides in Northern Ireland and all his assets / income are based in Northern Ireland.

As both Ireland and Northern Ireland, until Brexit is effected, are member states of the European Union, Regulation (EU) No.1215/2012 (Known as "Brussels I Recast") on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters governs the location and nature of proceedings started in the member states of the European Union. Under the Regulations, in the normal course a plaintiff must sue a defendant in the jurisdiction where the defendant resides. There are however certain exceptions to this rule.

Article 5 (1)a (2012 recast; Article 7(1)a) of the Regulation relates to contractual disputes and is

one such exception. It provides that when a person domiciled in a member state is sued in matters relating to a contract, he may be sued in the courts for the place of performance of the obligation in question. The place of the performance of the obligation is:

"in the case of the sale of goods, the place in the Member State, where, under the contract, the goods were delivered or should have been delivered,

"in the case of the provision of services, the place in the Member State, where, under the contract, the services were provided or should have been provided"

This generally therefore means that the debtor can be sued by the creditor either where the debtor resides or where the contract was performed. What is important in consideration of where to issue proceedings is whether the debtor is likely to dispute liability and the proofs which will be required by the creditor in obtaining judgment. For instance, if the Creditor chooses to issue proceedings against a debtor in Northern Ireland but where the contract was performed in Ireland, there is every likelihood that the Creditor will run into difficulty in proving his case in Northern Ireland because he will not be able to secure the attendance of witnesses in Northern Ireland where those witnesses refuse to attend from Ireland. There are some limited instances where a Northern Ireland Court can compel a witness from Ireland to attend the Northern Ireland Court but this could not always be guaranteed at the commencement of the Proceedings.

The temptation in the past would have been to issue proceedings in the jurisdiction where the judgment is likely to be enforced. This was because it was more difficult and onerous to enforce a foreign judgment in another jurisdiction as it was necessary to apply to the court in that jurisdiction for recognition of the foreign decree. Such a court application is however no longer necessary in view of the introduction of regulation number 805/2004. The Regulation creates a European Enforcement Order "EEO" for claims which are uncontested by debtors. The EEO can be sought in the Republic of Ireland by way of a simpler application made ex-parte to a judge who issues the EEO which can in turn be enforced in the foreign jurisdiction. This is done by way of an application to the Courts Service Office in Northern Ireland; where it is no longer necessary to make a Court Application.

16.2 What steps apply in the Debt Collection process in both Jurisdictions?

Initial demand letter to debtor

This letter to the Debtor will threaten legal proceedings unless payment is received within a prescribed number of days (usually seven or ten days).

Issuing legal proceedings

If a satisfactory response hasn't been received from the Debtor in that period, proceedings are issued in Ireland in the District, Circuit or High Court, depending on the amount of the debt which is due. Proceedings are issued in Northern Ireland in the Small Claims Court, the County Court or the High Court, likewise depending on the amount of the debt which is due. The Debtor has more time to respond and will either pay up, ignore the notice or decide to dispute the case.

Small Claims Courts

It should be clarified that where only a small amount of money is due (Northern Ireland < £3,000) then the Creditor is entitled to avail of the cheaper Small Claims procedures provided by the Courts Services. Debts are excluded from the Small Claims procedure in Ireland, which deals with consumer complaints; claims for debts of under €15,000 in Ireland are issued in the District Court.

For further information in the Northern Ireland Small Claims process, see:

https://www.courtsni.gov.uk/en-GB/Services/Online_Services/Pages/default.aspx

European Commission procedures

The European Commission is also making provision for mediation in Cross-Border Debt Collection disputes. For more information, see:

http://ec.europa.eu/justice/civil/index_en.htm

The European Small Claims Procedure (ESCP) Regulation 861/2007

The ESCP offers a standardised method for EU cross-border low value claims (less than €2,000). It offers a speedy way of obtaining a judgment as once the court dispatches the claim form to the defendant they have

30 days to respond. Once the court has received the response and any other necessary information it has 30 days to make judgment.

ESCP judgments are recognised and enforceable in other EU member-states without the need for a declaration of enforceability. For more information, see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l16028>

Judgment

If no response is given either way, then a Judgment (a sworn statement outlining the debt owed and by whom) against the debtor is issued.

There are several options for enforcing this Judgment:

Republic of Ireland

A Garnishee Order

This is an Order against a third party who holds money owed to or belonging to the Debtor and ordering that Third Party to pay the Creditor out of that money.

Judgment Mortgage

This Judgment can be registered as a mortgage over any land or property owned or part owned by the Debtor. It prevents the property being sold and the Creditor has the right to have the property sold off and the proceeds used to pay the debt.

Lodgment of Judgment with Sheriff

The Sheriff will attempt to seize debtor's assets. Proceeds from the sale of assets to cover the money owed will go to the Creditor via his solicitor.

Installment Order

Depending on the financial circumstances of the Debtor a Court Order can rule that a debt may be paid off in installments. Procedures involved are the Summons for Attendance of the Debtor (to be examined as to his Means), the Installment Order and in turn the Order for Imprisonment of the Debtor. Before however a Debtor is imprisoned for failure to discharge a debt the Judge of the District Court must be satisfied that failure to pay is not due to the debtor's mere inability to pay and he must also be satisfied that the debtor has no goods which could be taken in execution under any process of the court (e.g., seizure of goods by the Sheriff). Procedures are strictly

laid down under the District Court (Enforcement of Court Orders) Rules 2010.

Attachment Order

This applies where it appears that the debtor has no assets but is owed a debt by a third party. A creditor can seek an attachment order in respect of that debt.

Bankruptcy

This applies only when the Debtor is an individual and the debt is very large. It usually means that the Debtor will lose everything he/she owns.

Liquidation/Winding Up

This applies where the Debtor is a limited liability company leading to the assets of the company becoming vested in the Receiver/liquidator who is required to sell the same and pay off all the Creditors.

Some of these procedures are described in greater detail in the next section on enforcement of judgements in Northern Ireland.

Northern Ireland

Once the Creditor has obtained Judgment, he has two options. They are:

- (1) Enforcement of the Judgment through the Judgments Enforcement Office
- (2) Bankruptcy proceedings

What the Enforcement of Judgments Office does

The Enforcement of Judgments Office (the EJO) is a branch of the Courts Service responsible for enforcing all judgments in Northern Ireland in all ways except through Bankruptcy proceedings. Once a Judgment is registered with the EJO, an officer is specifically assigned to enforce the debt. Initially, that officer will make an investigation into the Debtor's means. As part of their investigatory powers, the EJO can summons a Debtor to the Magistrates' Court to provide evidence about his means. Failure to answer that summons can result in the debtor going to prison.

Once the officer has enough information about the Debtor, he will decide which method of enforcing the Judgment is appropriate. He can do any of the following:

(a) Warrant of Execution

By this method, a Bailiff is ordered to seize all goods and chattels belonging to the Debtor. The Bailiff then sells them and the proceeds are applied towards the Judgment debt. The only items, which cannot be seized, are the tools of a person's trade and their bedding and clothing.

(b) A Charging Order on land followed by an Order for Sale

This is a two-stage process. Stage 1 - obtaining a Charging Order - is an end in itself, because it virtually guarantees payment of the debt at some time in the future. A Charging Order is an order that the land is charged is like a mortgage. The Charging Order will not take priority over an existing mortgage or charge but will take priority over any later charges. The house or land cannot be sold with a good title until the charge is paid. A solicitor acting for a buyer would find out about the Charging Order by making a Registry of Deeds or Land Registry search during the conveyancing process. Stage 2 - obtaining an Order for Sale is not guaranteed. This is at the discretion of the court and does not always succeed. It usually depends very much on the size of the debt as compared to the value of the house or land and whether there is a family living there. If there are children living there, there is less likelihood of an order for sale.

(c) A Garnishee Order

This is an Order against a third party who holds money which is owed to or belonging to the Debtor and ordering that person to pay Creditor out of that money. Garnishee Orders are usually made against banks or building societies.

(d) An Attachment of Earnings Order

This is an order against an Employer of the Debtor to make payments of a certain amount out of the salary of his employee and pay this direct to the Creditor.

16.3 Bankruptcy Proceedings (or liquidation of a company)

All assets become vested in the Receiver/liquidator who is required to sell the same and pay off all the Creditors. Bankruptcy proceedings against an individual or winding up proceedings against a company are class actions and so there is no priority given to the Creditor who makes a Debtor bankrupt. If the debts, after receiver's commission etc., exceed assets, then a dividend is made of so much in the pound and the creditor gets a proportion of his money back. Bankruptcy/Winding up proceedings are a powerful weapon because a Debtor has no choice but to pay off the debt to save him/itself.

16.4 How fast is each method of enforcement?

If you are issuing Bankruptcy proceedings, it usually takes about 5 months from the time that a statutory demand is served until a final Bankruptcy Order.

In the case of enforcement through the EJO, it can be very slow. Some cases can take more than one year to reach a conclusion.

16.5 Which method of enforcement should be used?

Before the Creditor makes a decision as to which way he wants to enforce the Judgment, it is recommended that the Creditor gathers as much information about the Debtor as he can. In particular, attempts should be made to ascertain the following:

- (1) Whether the Debtor owns their own house and what, if any, mortgages are on it?
- (2) How financially viable is their business?
- (3) Does the Debtor have a job?
- (4) Does the Debtor have any other assets?
- (5) What would be the impact on their business (and consequently their ability to pay you) if the Creditor obtained a garnishee order against their bank?

The advantage of using the EJO is that this office makes that investigation for the Creditor. Unfortunately however, the EJO does not have the resources to act as swiftly as the Creditor might expect and the Creditor might, in that instance, consider using a private detective / credit agency to gather information. Occasionally, Bankruptcy proceedings are the better option. For example, if the Creditor discovers that the Debtor previously owned property and

transferred all of it to his/her spouse or children, Bankruptcy proceedings are the better option because the Receiver can claw the gift back into the Bankrupt's estate.

Before either method of enforcement is chosen, it is recommended that the Creditor firstly carries out a Bankruptcy search against the Debtor to see if any Bankruptcy / Winding Up proceedings have already been instituted.

A lot of these considerations also apply to the enforcement process in Ireland. It is however important to bear in mind that, whereas in Northern Ireland the enforcement process remains under the control of the EJO, in Ireland the Creditor, through his Solicitor, must be more actively involved in commencing / pursuing each stage of the enforcement process.

16.6 Other methods of enforcement applying in both Jurisdictions:

Judgment registered in the Registry of Judgments All judgments will then appear accordingly in the Gazettes of the Dun & Bradstreet (Stubb's) and Experian Ireland (previously the ITPA).

16.7 Brexit

It is not currently clear whether the EU Regulations governing civil and commercial contracts between member states will apply to Northern Ireland after March 2019. As a consequence, in order to avoid real commercial consequences (i.e. legal fees and delay) resulting from legal uncertainty as to which country's courts have jurisdiction to resolve your dispute post March 2019, in business-to-business sales you are strongly advised to contain an explicit jurisdiction clause within your terms and conditions when trading cross-border. It is highly likely that such a clause will be recognized by the courts in both jurisdictions.

However, in sales to consumers, such a clause will not be binding on the consumer.

Section 17

Managing and Commercialising Your Intellectual Property

Intellectual property (IP) rights are increasingly being recognised as valuable assets of many businesses, as global brands, information and technology become major drivers of the economy. Whether your business is operating in the Ireland or Northern Ireland or both, understanding and managing your IP portfolio and its commercialisation potential can be the key to a successful business.

Intellectual property rights are typically valuable assets that can distinguish a business from its competition, making both its products and services unique and attractive to customers. There are many different types of IP rights, including registerable rights (such as trademarks, patents and designs) and unregistered rights (such as copyright, unregistered trademarks and know-how). For example, if a business develops proprietary software; copyright will arise in the software code automatically. A business is also likely to accrue unregistered trademark rights in product names used in the course of trade. Indeed, both UK and Irish law recognises a broad range of national IP rights, and by virtue of membership of the European Union, there are also European IP rights that are enforceable in the UK and Ireland. Some IP rights have the potential to exist indefinitely (e.g. UK and Ireland registered trademarks are renewable every ten years) while the duration of other IP rights is defined (e.g. copyright has varying duration, depending on type, all defined by statute).

17.1 Bankruptcy Proceedings (or liquidation of a company)

As the terms of the UK's withdrawal from the EU are not yet known, there is uncertainty as to the enforceability of certain intellectual property rights in the post-Brexit period. A specific commentary is provided against each IP type.

17.2 Identifying your IP

Many businesses find it helpful having an IP strategy, focused on the identification of what IP is developed and used in their business, understanding its value and any fetters on its ownership. Below is a high-level overview of some of the main types of IP rights that are enforceable in the UK and Ireland.

17.3 Registered Trademarks

A registered trademark is a sign that distinguishes the goods or services of one business from those of another. It must be distinctive and not be identical or similar to an earlier registered mark relating to identical or similar goods/services. There are two types of registered trade mark that are enforceable in the UK: (i) UK registered trademarks and (ii) community trademarks (EUTMs). An EUTM is a unitary right that

is enforceable throughout all the member states of the EU. A EUTM is also enforceable in Ireland. However, in addition, there is a separate Irish trademark registration system under which you can register an Irish trade mark enforceable only in Ireland.

In all of the above jurisdictions, trademarks are registered by way of classes of goods and services. Different goods and services fall into different classes (for example Class 9 covers publications and Class 36 covers financial services). A trademark application must also specify whether a word mark or a logo mark is applied for. It will also set out the classes for which the trade mark is being or will be used.

- Matters which may affect the registerability of, or time it takes to register, a mark included
- (i) the level of distinctiveness of the mark – if the mark is not distinctive (meaning it is not a generic/descriptive word relating to the goods and services) it could face objections from the relevant trademark office; and
 - (ii) whether there are other identical or similar earlier marks registered – if such earlier trademarks are registered then the mark may face an objection either from the relevant trademark office (in the case of Ireland) or from the proprietor of the mark (in the case of Ireland, the UK and the Community);

Effect of Brexit on Registered Trademarks:

The UK system for protecting trademark rights is not affected by its decision to leave the EU. While the UK remains a full member of the EU then EUTMs continue to be valid in the UK. When the UK leaves the EU, an EUTM will continue to be valid in the remaining EU member states.

Post-Brexit, UK businesses will still be able to register an EUTM, which will cover all remaining EU Member States. In addition, the UK is a member of the international trade mark system called the Madrid System. This allows users to file one application, in one language, and pay one set of fees to protect trade marks in up to 113 territories including the EU. UK businesses will continue to have access to the Madrid System when looking to protect their trade marks.

However, uncertainty exists as to the validity, post-Brexit, of an EUTM in the UK.

17.4 Unregistered Trademarks

In addition to the above protection for registered trademarks, there is also a form of protection in the UK and Ireland for unregistered trademark rights. Any goods or services sold in the UK or Ireland in the course of business will generate 'goodwill'. In general terms, an Irish or UK court might assist the owner of goodwill which attaches to a part of their business in preventing a third party from selling goods or offering services in a manner that misleads consumers into believing the goods or services are those of the owner. This type of unlawful activity is called 'passing off' and the protection extends not only to trademarks but also to the get-up and overall 'look and feel' of a product. As the protection arises automatically through trading activities, no registration of rights is required.

Effect of Brexit on Unregistered Trademarks:

Brexit is not anticipated to have an effect on this area of law.

17.5 Patents

A patent is a means of protecting an invention. For an invention to be patentable in the UK and Ireland, it must be:

- (i) new;
- (ii) involve an inventive step (in the sense that the step which is required to achieve the invention is not one which would be obvious to a person skilled in that particular area of technology/science);
- (iii) be capable of industrial application; and
- (iv) not fall within an excluded category (which categories include things like methods for doing business and computer programmes).

Only UK patents are enforceable in the UK, and only Irish patents are enforceable in Ireland, but such patents may be obtained by:

- (i) filing a patent application directly with the UK or Irish patent office respectively,
- (ii) filing an application with a receiving office under the Patent Co-operation Treaty (PCT) and including the UK and/or Ireland in the list of designated countries, or
- (iii) filing an application with the European Patent Office under the European Patent Convention (EPC) and including the UK and/or Ireland in the list of designated countries.

The entitlement to a UK and Irish patent is determined by who is the first to file the relevant patent application, and not by reference to who was the first to make the invention. A UK and Irish patent generally lasts for a maximum of 20 years from its filing date. However, in certain circumstances when a patent has

expired the owner can seek to extend the protection under the patent for specific embodiments of that patent (this really only arises in cases of biological agents e.g. human or veterinary medicines which required a protracted regulatory approval even after a patent is granted). This extension of protection is called a Supplementary Protection Certificate (or "SPC"). An SPC can be extended for a maximum of 5 further years after a patent has expired.

Effect of Brexit on Patents:

Brexit will not affect the current European patent system, as it is governed by the (non-EU) European Patent Convention. UK businesses can continue to apply to the EPC for patent protection which will include the UK. Existing European patents covering the UK are also unaffected.

While the UK remains a full member of the EU, businesses can continue to apply for and be granted SPCs for patented pharmaceutical and plant protection products using the current SPC system. Existing UK SPCs granted under that system continue to be valid. Once the UK leaves the EU, UK businesses will still be able to apply for SPCs in all remaining EU Member States under the existing system.

However, uncertainty exists as to SPC protection in the UK post-Brexit.

17.6 Copyright

Copyright protection is given to original works and arises automatically upon their creation. Traditionally for a work to be an 'original work' the work must have originated from the author by his skill and labour. The amount of skill and labour required is fairly low and there is no need for the work to achieve any form of literary or artistic merit. The categories of works that are capable of being protected include literary works, dramatic works, musical works, artistic works, films and broadcasts. The works which are normally most relevant to commercial activities are literary works (which includes computer programmes, books, manuals and databases). Copyright permits the author of a work to object to (and in turn to have the exclusive rights) in relation to specific uses of a work, to include, reproduction (copying), making available, renting or lending, performing, communicating to the public and adapting. A third party who, without the author's/ copyright owner's permission, undertakes any of these acts in respect of all or a "substantial part" of the work will infringe copyright in the work. Aside from these traditional exclusive rights of a copyright owner, an author also has "moral rights" with respect to a work.

These are rights which are exclusive to the original author of a work. They include the right to be identified as the author of the work and the right to object to any denigration or derogatory treatment of the work (to include distortion or mutilation).

Copyright protection for literary works in the UK and Ireland is generally for the lifetime of the author plus 70 years. However, certain copyright works, for example, broadcasts, are only protected for 50 years.

Effect of Brexit on Copyright:

While the UK remains in the EU, UK copyright laws will continue to comply with the EU copyright directives. The continued effect of EU Directives and Regulations in the UK post-Brexit is not yet clear. However, the UK is a member of a number of international copyright treaties and agreements, which will continue to be the case following Brexit.

17.7 Registered Designs

A UK registered design gives the owner the exclusive right to use the design in the UK. In order to obtain a valid registration, the applicant must have a design (being the appearance of the whole or part of a product), that is new, has individual character within the EU, and is not an excluded category. The application is filed with the UK Designs Registry, and can last for a maximum of 25 years from the filing date. In Ireland an owner of a design applies for registration to the Irish Patent Office. A design filed under the old statute can last for 15 years and a design filed under the new statute (Industrial Designs Act 2001 which covers all designs filed since 1st July 2002) can last for a maximum of 25 years as long as the renewal fees are paid.

A registered Community Design (RCD) is an equivalent EU unitary right that applies throughout all member states of the EU, thereby avoiding the need for separate infringement proceedings in each relevant country. The application is filed with OHIM in Alicante, Spain, and can last for a maximum of 25 years from the filing date.

Effect of Brexit on Registered Designs:

While the UK remains a full member of the EU, RCDs continue to be valid in the UK. Post-Brexit, an RCD will cover the remaining EU member states. However, uncertainty exists as to the validity, post-Brexit, of an RCD in the UK. Post-Brexit, UK businesses will still be able to register an RCD, which will cover all remaining EU Member States.

It is the UK's stated intention to ratify The Hague Agreement to join this international system in a national capacity. The Hague System for the International Registration of Industrial Designs allows for registration of up to 100 designs in over 66 territories through filing one single international application.

17.8 Unregistered Designs

In the UK, the UK Unregistered Design Right (UDR) was introduced to provide a form of shorter term protection against the copying of 'industrial designs' than had previously been available under copyright. Design means any aspect of the shape or configuration of a product. For a design to qualify for UDR, it needs to be original and not be commonplace in the relevant design field. A further qualification for UDR is that of the designer, the person who commissioned the design or the country of first marketing must fall within a permitted list. This list includes all EU countries, but notably excludes countries such as the United States and Japan. UDR arises automatically upon the creation of the design, and remains enforceable for between 10-15 years from when first created or exploited. There are no national rights for unregistered designs in Ireland making the Community protection of these designs very important. Unregistered Community Design (UCD) does not require the owner to qualify by reference to nationality. UCD is a right that arises automatically and applies throughout all member states of the EU, thereby avoiding the need for separate infringement proceedings in each relevant country. UCD protects designs (being the appearance of the whole or part of a product) that are new, have individual character within the EU, have been made available to the public, and are not in an excluded category. UCD lasts for 3 years from the date on which the design is first made available to the public.

Effect of Brexit on Unregistered Designs:

While the UK remains a member of the EU, designs, including patterns, may be automatically protected in the EU as UCDs. Although post-Brexit unregistered protection for designs will continue to exist through the UK unregistered design right and by using copyright, unless otherwise negotiated in the Brexit arrangements, this right will not extend to the EU.

17.9 Database Rights

Databases can be protected in the UK by copyright law (as a literary work) provided that the database is a collection of independent works, data or other materials which (a) are arranged in a systematic or methodical way and (b) are individually accessible by electronic or other means. The test for database

copyright is whether the database is, by reason of the selection or arrangement of the contents of the database, the author's own intellectual creation. Generally speaking, this is considered by most to require a level of creative input on the part of the author that is akin to the usual copyright test that the author has inputted skill and labour into the work. However, even if a database cannot meet this test it may still be protected in the UK (and in Ireland) by a separate database right. Ireland and the UK have both transposed the European Database Directive 1996 into national law. A database right applies to any database (electronic or paper) in which there has been a substantial investment in obtaining, verifying or presenting the contents. This means that the investment required cannot have been mainly in creating the actual data or content but rather must have been in obtaining, verifying or presenting already existing data. Database right protects the owner against acts of extracting (being the transfer of the contents of the database) and acts of re-utilisation (being the making of the database available to the public). It arises automatically upon the database being created, and can last for an initial term of 15 years but in reality the rights can last indefinitely provided that there is a substantial change to the content of the database within every 15 years.

Effect of Brexit on Database Rights:

At this stage no effect is anticipated.

17.10 Confidential Information

In general terms the courts will act to prevent the confidential information of one party being used or disclosed by another party. For information to be classed as confidential, it must be something that is not in the public domain. If information is confidential, then it is important for the holder to treat it as such. Otherwise there is the risk that the courts will not assist the holder if a third party comes into possession of that information.

The rights existing in relation to confidential information cannot be used to prevent the reverse engineering of products (as this is viewed as being information in the public domain), nor to prevent a third party using and disclosing information that it created independently. Furthermore, the law will not usually prevent ex-employees from using confidential information learnt at their previous places of employment because this is viewed as restricting the ability of such employees to work. An exception to this is where the information obtained by the ex-employee is of such a particular and unique nature that it constitutes a trade secret.

Intended disclosures of confidential information to third parties are best done on the terms of a confidentiality agreement or non-disclosure agreement.

Effect of Brexit on Confidential Information:

At this stage no effect is anticipated.

17.12 Domain Names

Although domain names are intangible assets, they are not, strictly speaking, an intellectual property right giving the holder a property right that can be enforced against third parties. A domain name registration derives from a contractual relationship with the domain name registry. Domain names are available on a "first come, first served" basis. However, it is common for domain names to contain registered or unregistered trademarks – and if these are used without the consent of the trade mark owner, the trademark owner can seek to rely on its normal trademark rights to obtain control of the domain name. There are also dispute resolution procedures available within the domain name registrar policies which are useful where a party feels that a domain name encompassing their business name or trade mark has been registered illegitimately by a third party. These procedures are sometimes a more cost effective way to seek to have a domain name cancelled or transferred.

Effect of Brexit on Domain Names:

At this stage no effect is anticipated.

17.13 Protecting and Enforcing your IP

Once identified businesses should consider how to protect this IP including raising awareness amongst staff and where appropriate ensuring confidentiality. Consideration should be given to registration of the intellectual property (where appropriate) and being prepared to take enforcement action against infringers. Such enforcement action may include issuing proceedings against an alleged infringer in the courts of the relevant jurisdiction.

One issue every business should be aware of relates to ownership of IP and the distinction between employees and consultants. IP created by an employee in the course of his/her employment will generally be owned by the employer, unless there is an agreement to the contrary. However, IP created by a third party sub-contractor or consultant will ordinarily be owned by that sub-contractor or consultant in the absence of any agreement otherwise. To avoid difficulties on this issue it is prudent to ensure that all relevant contracts specify who will have ownership of any IP created in the performance of the contract.

Effect of Brexit on Protection and Enforcement of IP

As noted above, uncertainty exists as to the protection and enforcement post-Brexit in the UK of EUTMs, SPCs, rights under the EU copyright directives and regulations, RCDs and UCDS.

17.14 Commercialising your IP

The commercialisation of IP happens in a number of ways including

- (a) licensing of the IP to a third party or related entity on a royalty-bearing basis;
- (b) assigning ownership of the IP to another entity for a lump sum (possibly with licence-back arrangements); and
- (c) using the IP as a valuable asset to secure financing.

Licensing can be one way of generating revenue streams whilst retaining ownership. Under a licensing agreement, the owner/licensor of the IP grants permissions to a third party licensee to use and exploit the IP on agreed terms. Conditions typically include the scope of rights and the proposed "field of use". Other key provisions include the financial terms and termination rights. Businesses licensing-out its IP should carefully consider the commercial terms. For example, a non-exclusive licence will allow the licensor to grant multiple licences of the same IP to different licensees. An exclusive licence can be maximised by limiting exclusivity to a particular geographical territory and/or field of use. This retains the ability to commercialise the same IP in other territories. A licensor should retain sufficient control over its IP by ensuring robust obligations are placed on the licensee, including allowing the licensor to monitor the licensee's use of the IP and incorporating appropriate termination rights.

Commercialisation of IP is a complex area which requires commercial acumen, legal expertise and appropriate appreciation of the tax implications, including tax incentives that may be available for the development and commercialisation of IP (such as the UK Patent Box and R&D tax credits in the UK, and the VAT exemptions for qualifying IP transfers in Ireland).

Conclusions

Many businesses find it helpful having an IP strategy, identifying the IP in their business, understanding its value and any fetters on its ownership. Once identified, businesses should consider how to protect that IP, including where appropriate, seeking to register it, raising awareness amongst staff and where necessary taking enforcement action against infringers.

Although there are some potential pitfalls arising in the context of commercialising IP assets, there are also significant opportunities. Businesses considering commercialising its IP assets should have a clear understanding of what its portfolio comprises, be prepared to protect it and ensure any commercialisation deal contains the appropriate contractual protections.

Because of Brexit, UK or Irish business and individuals who currently rely in the UK market on EU intellectual property protections are strongly advised to seek advice as to making additional national registrations in the UK.

Important note: *This document is a high level overview of IP. It is not intended to be exhaustive and does not constitute legal advice. Specific legal advice should be sought in respect of any specific legal issues arising in relation to intellectual property matters.*

Section 18

Potential Implications of Brexit

Goods

If you are benefiting from trade with the EU/UK or from the EU's free trade agreements you will need to consider the potential impact of the following:

18.1 Tariffs

Tariffs are custom taxes that governments levy on imported goods. The tax can be unit based and/or a % of the cost of the product. In effect they raise the price of the imported good. WTO tariffs are the default tariffs if a trade agreement is not reached between the EU and the UK by April 2019. 5,200 product lines are registered with the WTO with tariffs ranging from 0% to 80%.

Have you checked to see what the tariff might be on your products? (Note that more than 80% of products traded across the border have a WTO tariff of <10%).

Contact mark.sterritt@intertradeireland.com to find out about the potential tariff on your product/s.

Could small innovations in your product reduce the cost of tariffs, if introduced? InterTradeIreland can offer innovation advice to help your business make small innovations which may both add business value and reduce exposure to future changes in the EU-UK trading relationship. Contact the InterTradeIreland Brexit Advisory Service for advice on this at brexit@intertradeireland.com

18.2 Non-Tariff Barriers

Non-tariff barriers result from policy measures other than tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, prices or both. They can be:

- a. **Technical** - sanitary and phytosanitary measures, labelling, standards and quality requirements on products, pre-shipment inspections and other custom formalities.

Consider what would happen to your business if any technical non-tariff barriers were applied or changed?

How might customs costs and possible delays affect your business?

Do you know which EU regulations and measures currently apply to your product(s)?

- b. **Non-technical**

b(i) **Rules of Origin** – rules of origin cover laws and regulations applied by the government of importing countries to determine the country of origin of imported goods. For goods originating from outside

the EU Customs Union (either final or intermediate), rules of origin (RoO) certification is required each time it crosses the customs border. RoO are verified through a Certificate of Origin issued by Chambers of Commerce and can cost in the region of £25.00 for Chamber members and £50.00 for non-members per shipment in Northern Ireland. In Ireland the costs vary depending on your local chamber and can range from €20 for members to €40 for non-members.

Consider how many shipments you may have which cross the border annually.

How might the additional cost affect your business?

How will disruptions in the movement of goods affect your supply chain?

Are you currently a Chamber of Commerce member?

b.(ii) **Intellectual Property** – Intellectual Property Rights (IPRs) such as patents, trademarks, designs, copyrights or geographical indications enable European inventors, creators and businesses to prevent unauthorised exploitation of their creations.

Have you taken a recent audit of your patents, trademarks and copyrights?

Consider: will I need to update trademarks and patents?

Unitary patents may change with the UPC Agreement in December 2017. Have you taken a recent audit of your patents, trademarks and copyrights?

Are there steps you can take now to ensure protection in the event of a 'no deal'?

b.(iii) **Data protection** – The General Data Protection Regulation (GDPR) comes into force across the EU on the 25th May 2018 and will continue to apply to UK companies who process data in ways that bring them within its scope post Brexit.

Do you know what customer and 3rd party data is held by your business, where is it and who owns it?

How important is this data and should any action be taken around it?



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Will Brexit affect ownership or use of licensing of the data?

18.3 Logistics and supply chains

How goods are transported across the border may be impeded after Brexit. Reviewing logistics plans will help you to see where and how you may be affected. Supply, production and distribution networks may be affected in a number of ways post Brexit. Reviewing your supply chain will help you to identify your areas of supply chain risk.

Consider: How do I currently transport across the border?

Will the UK leaving the European transit system affect me?

Do I have expertise in border logistics?

How might delays affect Just In Time deliveries?

How will my customers be affected?

Undertake a stress test to spot risks and opportunities

18.4 Progressive divergence between EU and UK Law

It is the UK's stated objective to repatriate its law-making powers from the EU, so whilst initially EU law will be transposed into UK law, inevitably over time UK law will commence diverging from EU law. This may have an impact on the following areas of commercial law:

- Advertising and marketing
- Agency
- Confidentiality
- Consumer law
- Dispute resolution
- Distribution
- E-commerce
- Franchising
- Outsourcing
- Product labelling
- Product liability
- Regulated professionals
- Rules of origin
- Supply of goods
- Supply of services

Have you considered which EU Law rights your company is currently utilising?

What EU law rights could you potentially lose?

Have you considered EU procedural and substantive law rights?

How will your Commercial Contracts be affected?

Services

18.5 Will my service be able to access the EU post Brexit?

In the absence of a free trade deal in services the General Agreement on Trade in Services (GATS) will apply. This is the first and only set of multilateral rules governing international trade in services. EU countries have their own schedules under the GATS.

Check to see if the EU countries you trade with would continue to allow your services trade under GATS

18.6 Can I continue to provide my service from the UK to EU customers and vice versa?

Currently, customers may cross the border to receive a service from a service provider in the UK/Ireland, for example a tourism experience service. Your right to provide the service is unlikely to be affected, however consider how service demand from EU/UK customers may change post Brexit.

18.7 Can I continue to supply a service across the border?

In cross-border service supply the supplier and customer are in different countries. The service is supplied across the border, for example a software development service. Under GATS the ability of service providers to supply a service within another EU country will vary by country and service sector.

Consider how access to customers and contracts of supply may change post Brexit.

18.8 Rights of Establishment

Currently the EU's freedom of establishment guarantees mobility of businesses and professionals within the EU. The right of establishment will affect commercial presence rights.

Do you have plans to establish a business within the EU or UK?

People

The UK has noted its intention to change inward migration legislation. This will create a divergent system either side of the border post Brexit. Businesses should consider how this changing legislation may impact on their existing access to future workforce and labour.

18.9 Recruitment & Skills

Will businesses still be able to recruit new staff from the EU/UK Post Brexit?

EU rules on admission to the Member States for the purpose of work currently exist and will apply in some form to UK citizens post Brexit. The UK currently also has provision for immigration from the Rest of the World for work purposes – details for recruitment from the EU post Brexit are still to be defined.

If there are skills required for your business that the local market cannot meet, how can these best be met post Brexit?

If affected, you should: Seek advice on immigration matters and engage with staff.

18.10 Cross Border Commuters

Will staff that commute across the border be delayed?

There are more than 30,000 people who cross the border each day to work. As the common travel will be upheld, existing employees are unlikely to be impacted

However do consider: Do I have staff that cross the border to work? How do they travel to work (train, bus, car)? Should travel plans be considered post Brexit to avoid delays?

18.11 Staff Retention

Will my current EU/UK staff be allowed to continue to work here?

How continued rights to work will be affected by the current negotiations is not yet clear – however we do know that as a minimum those who have been in the UK for more than 5 years will have a right to stay. A minimum similar arrangement is likely for UK workers in the EU.

Consider what proportion of my staff and which key roles are currently undertaken by staff with EU or UK citizenship (depending on location)?

Have they been resident in the EU/UK for more than 5 years?

Are staff covered by the common travel area rules?

How can staff be supported to ensure continued residency?

18.12 Seasonal Workers

Will I be able to continue to use seasonal workers from the EU/UK?

The EU supports the need for seasonal workers – EU rules cover all sectors that are dependent on seasonal conditions (Directive 2014-36). The details of access to seasonal labour in the UK post Brexit are yet to be defined.

Consider if your business is reliant on seasonal workers from the EU/UK and how any changes to access to workers will affect your business.

Money

If you benefit from the current free movement of capital across the EU you may be impacted Brexit. Loss of this freedom between the EU and UK may affect cross border transactions and investments. Businesses should consider:

18.13 VAT

Post Brexit, VAT rules in relation to buying and selling goods between the UK and EU are likely to change. There may be VAT implications for what will be treated as exports from the UK to the EU, and imports to the EU from a third country

Will post Brexit VAT rules impact on my cross border trading significantly?

How best can I manage these changes for my business?

18.14 Import Duty

You may have to pay import duty depending on the classification of your products and the final arrangements put in place post Brexit. Import duties can be deferred and reliefs are available in a number of circumstances.

Consider, if import duties would be applied to your goods, would reliefs apply?

Do I know how to claim import duty reliefs?

18.15 Currency

If you trade across the border your business may be affected by sharp changes in currency values. If your margins are small, failure to manage your currency could have a big effect.

How do I currently manage currency volatility?

Are there other mechanisms I should consider if Sterling devaluation was to continue?

18.16 EU Funding

There are a wide range of EU funding programmes that businesses currently have access to (233 at present for SMEs). How this access will change beyond 2019 has yet to be determined, however countries outside of the EU can currently access many of these funds by agreement as a third party.

Does my business currently avail of EU funding mechanisms?

How reliant is my business on these?

Do any of my key suppliers have reliance on EU funding?

18.17 Capital

Currently businesses can freely move capital across the border. This is an important component in cross-border transactions and investments, ensuring few restrictions or capital controls on moving funds between member states.

Will post Brexit movement of capital rules impact on my cross-border trading?

Do I have adequate working capital?

Conclusion

If the UK leaves the EU Customs Union and Single Market, it will mean a change in the trading relationship between the UK and the EU.

Businesses should prepare now for these changes by developing a bespoke Brexit plan. InterTradeIreland can help with this process through its Brexit Advisory Service. www.intertradeireland.com/Brexit

Section 19**Glossary of Brexit Terms****Source**

- <https://www.twobirds.com/en/hot-topics/brexit/glossary>
- <https://brexit.portland-communications.com/publications/glossary-of-terms/>

Terms	Explanation	Source
29 March 2019	The date on which the UK's two years' notice under Article 50 of the EU Treaty expires and on which the UK's membership of the EU will cease (unless a withdrawal agreement between the UK and the EU has already been concluded before that date).	1
Article 50	Article 50 of the Treaty on European Union which was added by the Lisbon Treaty and which for the first time set out an express right and process for a Member State to withdraw from the EU, based on service of two years' notice of withdrawal.	1
Free Trade Agreement (FTA) or Bilateral FTA	Bilateral FTAs facilitate trade and investment by reducing or eliminating tariffs, import quotas, export restraints and other trade barriers.	1
Common Commercial Policy	This complements the Customs Union and means that the EU negotiates on behalf of its member states regarding common arrangements for imports from other countries. 1997's Amsterdam Treaty extended the scope of responsibility to include to services and intellectual property rights.	2
Common Travel Area	The CTA is an open borders area comprising the UK (including the Channel Islands and the Isle of Man) and the Republic of Ireland. Based on legally non-binding arrangements, the internal borders of the CTA have been in operation since the 1920s and are subject to minimal border controls. UK and Irish citizens can normally cross internal borders with minimal identity documents.	2
Council of Europe	An international organisation designed to promote and protect human rights. Composed of 47 member states – the 28 member states of the European Union plus 19 other nations – who are all signatories to the ECHR. The Council of Europe is not an EU body and the UK will remain a member post-Brexit unless it also decides to withdraw from the ECHR.	1
Council of the European Union or Council of Ministers	In the Council, government ministers from each EU country meet to discuss, amend and adopt laws, and coordinate policies. The ministers have the authority to commit their governments to the actions agreed on in the meetings. Together with the European Parliament, the Council is the main decision-making body of the EU. This should not be confused with the European Council or the Council of Europe.	1
Court of Justice of the EU	The Court of Justice of the European Union interprets EU law to make sure it is applied in the same way in all EU countries, and settles legal disputes between national governments and EU institutions. It was established in 1952 and is based in Luxembourg.	1
Customs Union	A customs union is a form of trade agreement between two or more countries. It means they decide not to impose tariffs (taxes on imports) on each other's goods and agree to impose common external tariffs on goods from countries outside their customs union. Goods can travel freely within the EU's customs union without border checks. The EU's Common Commercial Policy (CCP) means that the EU negotiates trade deals on behalf of all its members, and members cannot reach their own bilateral trade agreements."	2

Terms	Explanation	Source
Department for Exiting the European Union (DEEU)	The Government department responsible for overseeing negotiations to leave the EU and establishing the future relationship between the UK and EU. Was established on 14 July 2016 when Theresa May appointed David Davis as Secretary of State for Exiting the European Union	2
Department for International Trade (DIT)	The Government department responsible for promoting British trade across the world and ensuring the UK takes advantage of opportunities open to it. Responsible for developing, coordinating and delivering a new trade and investment policy to promote UK business across the globe; developing and negotiating free trade agreements and market access deals with non-EU countries; negotiating plurilateral trade deals and providing operational support for exports and facilitating inward and outward investment. Was established on 14 July 2016 when Theresa May appointed Liam Fox as Secretary of State for International Trade.	2
Direct effect	The principle of direct effect enables individuals to immediately invoke a European provision before a national or European court. This principle only relates to certain European acts. Furthermore, it is subject to several conditions. The direct effect of European law is, along with the principle of precedence, a fundamental principle of European law. It was enshrined by the Court of Justice of the European Union (CJEU). It enables individuals to immediately invoke European law before courts, independent of whether national law test exist.	2
Equivalence regime	Financial services in the EU are regulated activities. This means that firms have to be authorised and approved by a regulator before they can operate in a market. In the EU, authorisation in one EU Member State can mean that the firm can operate and sell in all EU countries if it has a passport for that activity. This is called passporting. With respect to the relation between the EU and countries outside, there is an alternative system of recognition called EU Equivalence.	2
EU Budget Contributions	The UK will remain a member of the EU until its departure has been negotiated and will continue to contribute to the EU budget until it formally departs the EU. The UK makes its contributions to the EU budget in the same way as all Member States. However, the UK receives a rebate on its net contribution. The rebate was introduced in the mid-1980s to address the issue of the UK making relatively large net contributions to the EU budget. In 2015 the UK government paid £13 billion to the EU budget, and EU spending on the UK was £4.5 billion. The UK's net contribution was estimated at about £8.5 billion.	2
EU-Canada Comprehensive Economic and Trade Agreement (CETA)	This is a new trade deal between the EU and Canada that will cut 98% of tariffs between them and boost trade and investment. It means that European firms can bid for Canadian public contracts, European firms can sell services in Canada and opens the door to recognising European qualifications in Canada.	2
European Commission	The European Commission (EC) is an institution of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU.	2
European Communities Act 1972	The 1972 European Communities Act was the piece of legislation that brought the UK into the Europe Union: it gives EU law supremacy over UK national law. A large amount of EU law effective in the UK currently relies on the 1972 Act. The Act started life as the European Communities Bill, which was introduced into the House of Commons in 1972.	1

Terms	Explanation	Source
European Convention on Human Rights	The European Convention on Human Rights protects the human rights of people in countries that belong to the Council of Europe. All 47 Member States of the Council, including the UK, have signed the Convention. Its full title is the 'Convention for the Protection of Human Rights and Fundamental Freedoms'. The Convention consists of numbered 'articles' protecting basic human rights. The UK made these rights part of its domestic law through the Human Rights Act 1998. All 28 EU member states plus 19 other countries are signatories to the Convention, including Russia. Although Theresa May has previously called for the UK's withdrawal from the ECHR, it is not current Government policy. The ECHR established the European Court of Human Rights (ECtHR).	2
European Council	The European Council defines the EU's overall political direction and priorities. It is not one of the EU's legislating institutions, so does not negotiate or adopt EU laws. Instead it sets the EU's policy agenda, traditionally by adopting 'conclusions' during European Council meetings which identify issues of concern and actions to take.	2
The European Court of Human Rights (ECtHR)	The ECtHR, based in Strasbourg, is the international court established by the ECHR. It is not a European Union body and is distinct from the European Court of Justice (ECJ) in Luxembourg. The UK will remain under the jurisdiction of the ECtHR post-Brexit unless the UK also withdraws from the ECHR. Sometimes referred to as "the Strasbourg Court".	2
European Court of Justice (ECJ)	The highest chamber of the Court of Justice of the EU. Sometimes referred to as "the Luxembourg court".	2
European Economic Area (EEA)	The EEA is the area in which the EU's single market operates – the free movement of goods, persons, services and capital. It comprises 30 signatories to the EEA Agreement, including 27 member states of the EU (Croatia is a provisional member) as well as 3 out of 4 members of EFTA. Switzerland is a member of EFTA but not the EEA. Instead it is linked to the EU through a series of bilateral agreements.	2
European Free Trade Association (EFTA)	The European Free Trade Association (EFTA) is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway, Switzerland. EFTA was founded in 1960 as an alternative trade bloc for European countries who did not join the EU. The UK was a member of EFTA until it joined the EU in 1973. All EFTA members bar Switzerland are part of the European Economic Area (EEA), giving them membership of the EU's single market.	2
European Parliament	The European Parliament is the EU's law-making body. It is directly elected by EU voters every 5 years. The last elections were in May 2014. It has three main roles which are legislative, supervisory and budgetary.	2
Exiting the European Union Committee	The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Exiting the European Union and matters falling within the responsibilities of associated public bodies. The Committee is chaired by Labour MP Hilary Benn.	2
Four Freedoms	In the context of the EU, the freedoms of movement of goods, services, workers and capital between EU member states, without internal barriers (subject to limited exceptions), which arrangements have been extended under the EEA Agreement to cover also Iceland, Liechtenstein and Norway.	1

Terms	Explanation	Source
Free trade agreements (FTAs)	FTAs are agreements between separate nations or trade blocs to reduce trade barriers and increase trade. The area covered by a free trade agreement is known as a “free trade area”. A free trade area is a group of countries that have few or no price controls in the form of tariffs or quotas between each other. Free trade areas allow the agreeing nations to focus on their comparative advantages and to produce the goods they are comparatively more efficient at making, thus increasing the efficiency and profitability of each country. One of the most well-known and largest free trade areas was created by the signing of the North American Free Trade Agreement (NAFTA) on January 1, 1994. This agreement between Canada, the United States and Mexico encourages trade between these North American countries.	2
Freedom of movement	Freedom of movement allows citizens of the European Union (EU) to move to, live in, and in certain circumstances access the welfare system of the EU country to which they have moved. Freedom of movement is one of the founding principles of the EU.	2
Great Repeal Bill	The Government has announced that the Great Repeal Bill will repeal the European Communities Act 1972 and incorporate European Union law into domestic law, “wherever practical”. The Government has indicated that these legal changes within the Bill would take effect on “Brexit Day”: the day the UK officially leaves the European Union. The Government has also stated that the Great Repeal Bill will contain delegated powers to enable the Government to adapt any laws on the statute book that originate from the EU so as to fit the UK’s new relationship with the EU. This may require major swathes of the statute book to be assessed to determine which laws will be able to function the day the UK officially leaves the EU.	2
Hard Brexit	A UK withdrawal from the EU without retaining full access to the EU Single Market (and therefore without continued membership with the EEA) and without continued membership of the Customs Union.	1
Lisbon Treaty	The Treaty of Lisbon between the EU Member States which amended the Treaty on European Union, including the insertion of Article 50 concerning a Member State’s ability to withdraw from the EU.	1
Mixed agreements	An agreement between the EU and external countries concerning issues of Community and member state competence – for example the Cotonou Agreement. Such agreements must be signed by both the EU and its member states. The Lisbon Treaty has established the Union as a legal personality. It opened for mixed agreements on foreign policy and community topics. Hence, in areas where the Union legislates, the EU can sign various kinds of agreements on behalf of the member states, who are consequently not allowed to negotiate international agreements on their own in these areas. The so-called ‘competence of external negotiation’, has become a sole competence of the EU – member states are no longer allowed to negotiate within this area on their own.	2
Passporting	Passporting is the exercise of the right for a firm registered in the European Economic Area (EEA) to do business in any other EEA state without needing further authorization in each country. Often companies based outside of the EEA will get authorized in one EEA state and use its passporting rights to either open an establishment elsewhere in the EEA or providing cross-border services. This is valuable to multi-national companies because it eliminates a lot of red tape associated with gaining authorization from each individual country, a process that can be lengthy and costly for a business.	2

Terms	Explanation	Source
Qualified Majority	The weighted voting system used for all but the most sensitive issues by the EU Council of Ministers, involving a 55% majority or (in some cases) 72% majority of Member States representing 65% of the EU population.	1
Ratification	The action of signing or giving formal consent to a treaty, contract, or agreement, making it officially valid.	2
Right to Remain	Indefinite leave to remain (ILR) or permanent residency (PR) is an immigration status granted to a person who does not hold the right of abode in the United Kingdom (UK), but who has been admitted to the UK without any time limit on his or her stay and who is free to take up employment or study, without restriction.	2
Single Market	A single market is a trade bloc without any internal borders or other regulatory obstacles to the free movement of goods and services. A functioning Single Market stimulates competition and trade, improves efficiency, raises quality, and helps cut prices. The European Single Market seeks to guarantee the free movement of goods, capital, services, and people. It comprises all members of the EEA, plus Switzerland through a series of bilateral agreements.	1
Single Market Access	This refers to the terms on which countries outside the single market can trade with it. Some countries, like Singapore or Canada once CETA takes effect, have favourable access to the European single market through a free trade agreement (FTA). Theresa May has stated that she is seeking access to the single market via an FTA once the UK has left the EU.	2
Single Market Membership	This means being part of EU’s single market with free movement of goods, finance, and people around the EU, without any tariffs. Full ‘membership’ of the EU Single Market substantially reduces the costs of trade within the EU. Whilst some costs such as transport costs and cultural barriers such as language remain, the Single Market eliminates tariffs (border taxes) and customs checks and, importantly, reduces non-tariff barriers, which are particularly important for services trade. Whilst any country has ‘access’ to the EU as an export destination, membership of the Single Market reduces ‘non-tariff’ barriers in a way that no existing trade deal, customs union or free trade area does. Current membership of the single market comprises all members of the EEA, as well as Switzerland through a series of bilateral agreements.	2
Soft Brexit	A UK withdrawal from the EU whereby UK retains membership of the EU Single Market (most likely through continued membership of the EEA) and/or the Customs Union.	1
Super Qualified Majority	The Lisbon treaty provides for that a super qualified majority is composed of 72% of the member states also comprising 65% of the EU-population. The super qualified majority is used when the Council or the European Council is taking a decision not proposed by the Commission or the Foreign Minister, the “High Representative”.	2
Tariff	A tax or duty to be paid on a particular class of imports or exports.	2
Trans-Atlantic Trade and Investment Partnership (TTIP)	TTIP is a free trade agreement currently being negotiated between the EU and US. It aims to help business by opening up the US to EU firms, helping cut red tape that firms face when exporting and setting new rules to make it easier and fairer to export, import and invest overseas. It has been suggested that TTIP will help generate jobs and growth across the EU and help the EU influence world trade rules.	2

Terms	Explanation	Source
UK Representation in Brussels (UKRep)	The United Kingdom Permanent Representation to the European Union (UKRep) represents the UK in negotiations that take place in the EU. UKRep is one of the UK's busiest posts, with a team sourced from over 20 UK government departments working to ensure that UK policies are explained to other EU member states, the European Commission and members of the European Parliament. UKRep is led by the UK's Permanent Representative (or Ambassador) to the EU, formerly Sir Ivan Rogers and now Sir Tim Barrow.	2
Unilateral Tariff Agreement	A unilateral trade agreement is a treaty that's imposed on one nation by another. It benefits one nation only. The World Trade Organization defines a unilateral trade preference, or a preferential trade agreement, as any trade agreement granted by one nation that isn't reciprocated in return. Unilateral trade policies occur whenever one country imposes a trade restriction, such as a tariff, on all imports.	2
Vienna Convention	Adopted in 1969, this is a treaty concerning the international law on treaties between states. The Convention defines a treaty as "an international agreement concluded between states in written form and governed by international law," as well as affirming that "every state possesses the capacity to conclude treaties."	2
World Trade Organization (WTO)	The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business. The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers (who usually meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva).	2
WTO Rules	If no new trading relationship is agreed by the end of the 2-year Article 50 process for the UK leaving the EU, and no extension is granted, the UK would drop automatically out of the EU. The UK's trade with both the EU and most of the rest of the world would revert to World Trade Organisation (WTO) rules. Under WTO rules, each member must grant the same "most favoured nation" (MFN) market access, including charging the same tariffs, to all other WTO members. This would significantly increase the costs of UK-EU trade.	2

Section 20

Useful Topics

Insurance

If you are in business, you will need insurance. You need to insure your buildings and contents and also to provide for goods in transit and business interruption. You will need to take out Employers Liability Insurance and Public Liability Insurance. In Ireland and Northern Ireland, every person is legally obliged to have insurance to cover legal liability for injury to others and damage to their property arising from the use of vehicles on the road - third party insurance.

While it does not specifically deal with Ireland, we recommend that you visit the Association of British Insurers web site which gives a lot of good advice on Insurance needs. Bear in mind that, whereas it advises that Employers Liability Insurance is compulsory, it is not compulsory in Ireland.

Of major concern to any business intending to set up business or trade on the other side of the border is whether its goods and services will be covered by its existing Insurance Policy for the provision of its goods and services on the other side of the border. Generally, insurance companies which provide insurance cover in Northern Ireland (UK) will not automatically provide such cover in Ireland and it will be necessary to check with your insurance company or broker to ascertain exact details of cover for the services which you intend to provide outside your existing jurisdiction.

Choosing Business Premises

Introduction

Making the right choice of business premises is likely to be one of the most crucial decisions which determine viability of the business. Before making that decision, you will need to carefully consider your business needs and the implications for taking on any particular premises.

Should I work from home?

Many successful businesses started their life in the home and consideration should be given to starting a new business from home. It is likely to save you considerably on business expenses and will save time travelling to another place of work. While practical implications such as disruption of family life may arise there are implications on legal and financial levels which will require some thought.

The following points should be considered:

- Will there be any objections from neighbours?
- Would your business or part of its operation (such as an advertising sign) infringe planning law? If so, would you be able to get planning permission?
- If you have a mortgage, would you be in breach of its terms by running the business from home?
- Are there any restrictive covenants or conditions in the title to your property which would preclude you from running a business from home?
- How will your rates liability be affected?
- Would you be able to get any tax relief on any of the facilities you use at home to run your business?
- Would you be in breach of any condition on your insurance policy?
- Will working from home make it more difficult to obtain business?
- How will it affect the usual exemption from Capital Gains Tax if you sell your home in the future?

Should the business be moved to another location?

The need to move should be considered very carefully. The following points should be considered:

- Has your existing business premise enough space to fulfil its current needs or future needs? If not, is there any alternative - such as extending or renting additional nearby premises for storage space - other than moving?
- Has the business got too much space? If so, will a move to smaller premises, with its consequential saving in costs, be better for the business after taking into account the negative aspects of moving? Would you be in a position to rent out your spare space to another business?
- Is the layout of the existing premises inadequate for your needs? If so, will a move be better for the business than other alternatives such as carrying out improvements?
- Consider all the changes in overheads associated with changing premises, including the cost of rent, rates light and heat.
- Consider all the capital expenditure in moving including removal, refurbishment, installation, legal and other professional costs.

Buying or Renting?

Sometimes the decision to buy or rent is based on tax implications and specific tax advice should always be sought. A decision to buy is usually only taken by an established business with a proven track record. Therefore, the rental option is the most realistic for start-up businesses.

Below, we set out the main features of most types of rented commercial property.

Rent

For the person not considering purchasing premises outright, this is likely to be a crucial part of the equation. However, there is more to rent than just the amount being paid annually. Enquiries should be made also about the next rent review date (the date on which the landlord is allowed to review the rent and increase it) and the history of rent increases during the term of the lease. Also, there may be VAT payable on the rent. This would be very important if you were not registered for VAT and thus unable to reclaim the VAT element.

Service Charges

Many commercial leases carry with them a service charge liability. That liability is an amount payable for the provision of services to the property. If the premises are part of a building, this will include the cost of maintaining and repairing the structure and common parts of the property and shared amenities with other tenants. As well as finding out the service charge it is very important to find out what “services” you are getting. Only then can you determine whether the service charge is excessive or whether the services are genuinely beneficial to the property. Normally, you will not get the full picture about service charges until your solicitor has reported back to you on the replies to his enquires.

Other outgoings on the property

Rates and the cost of services do vary in different areas, although these will also be in proportion to the size of the premises.

Size

This is a key element in determining whether the premises meet the needs of the business but it is also a key ingredient in working out comparisons (see square footage value below)

Square footage value

By dividing the total of the annual rent by the number of square feet inside the premises, it is possible to get an idea of the market rental value of the premises and make comparisons with other premises which are not the same size. Although this is likely to be the most important factor determining value, it is only a starting point. All the factors listed here should be taken into consideration.

Planning Permission

It is important to establish that the particular premises have planning permission for your intended use. If not, you will need planning permission before you could commence business.

Condition

The condition of the property may have a bearing on the rent currently being paid. If the premises are in poor condition, it is worth finding out why. It may be an indication of a prior business failure. If you are contemplating taking over an existing lease, the current tenant may well be in breach of an obligation to repair the premises. If you are interested in the premises, this is one reason why you would need to have the refurbishing work costed out, if you are to be liable for that expense.

Use restrictions in the lease

A “user clause” is a covenant imposed by the landlord restricting the tenant to using the premises for a particular purpose or class of purposes. The object of such a user clause is usually to protect either the landlord himself or other tenants from adverse competition. If you are looking to pass on or sell the lease in the future, a user clause could hamper your ability to do that.

Tenure

This term is usually used to distinguish leasehold and freehold property. Short-term leases tend to be between a year and not exceeding 5 years and may or may not contain a Rent Review Clause. It is common practice for leases to be of 35 years’ duration with Rent Reviews every 5 years. Landlords tend to avoid giving tenants the right to terminate their lease prior to the full term. Therefore, signing a lease tends to be an irrevocable financial commitment which must not be undertaken lightly. Even if you cease trading from

a premise this does not mean that you do not have to continue paying the rent required under the lease for the remainder of the term. Often the only way of getting out of a lease is to sell on the remaining number of years in your lease to some third party. This is called an “assignment” and the landlord’s permission must usually be obtained.

Business Start Up And Registration

Businesses can trade under the following business types:

a) Sole Trader

A Sole Trader is an individual who is self-employed. If you trade under a name different than your own, then you must display your name and address at your business premises and on all stationery.

b) Partnership

If your business is a Partnership between two or more people, you should consider a formal Deed of Partnership although this is not a legal requirement. If you do choose to have a formal Deed of Partnership you will need to consult a Solicitor. The Solicitor can draw up a formal Partnership Agreement, called a “Deed of Partnership”. This will cover ownership of the Partnership assets, how you will share the profits, liabilities, leases and other responsibilities. It is important to get these sorted out at the start. If the Partnership is trading under a name other than that of the owner, you must display the name and address of the owner and an address for each Partner at which documents can be served. In certain instances, you must register the trade name with the Department of Economic Development as required by the Business Names (Northern Ireland) Order 1986.

c) Limited Company

To form a Limited Company you can buy an “off-the-shelf” Company or create your own new company. If you create a new Company you must agree and register its name and address with the Registrar of Companies at the Companies Registry Office, Belfast. A Limited Company must display its full corporate name outside all places of business and on all stationary. Registration details must be shown on business letters and order forms. Directors must file statutory documents, such as Accounts and Annual Returns.

There are various benefits to forming a Company, such as better Pension Planning opportunities, ability to obtain Bank or Grant Finance, the passing of Shares by Gift or Inheritance in a family and more particularly the benefit of Limited Liability Protection. Limited liability also provides protection to the Directors personally against financial liabilities such as trade creditors in the event that the company’s business venture proves to be unsuccessful. There are however disadvantages to the formation of a company related particularly to potential double tax charges and additional accounting and auditing requirements. You should consult us and your Accountant for advice in respect of the Tax consequences of forming a company in advance of taking this route.

d) Joint Ventures

The impact of specialization in commercial activities has led to a situation where parties may need to co-operate in order to develop new products, services and markets. Some enterprises find themselves in the situation where they lack particular resources, skill or capital and there are obvious advantages in co-operating with someone who has the missing resources, skill or capital.

The structures which enterprises may decide to use in any particular joint venture situation will vary greatly depending on a number of considerations. The first consideration for joint venturers is whether to operate their venture through (a) a company in which each will hold shares and have a degree of control over the company’s activities or (b) through a partnership agreement or (c) by means of a trading agreement.

The best legal structure for the joint venture will depend on the nature and purpose of the venture, the number of persons or firms who wish to be involved in the venture, the tax considerations affecting each participant, the size of capital investment and other similar matters.

For small operations, where only two persons are involved, a partnership or simple trading agreement may be more favourable. In larger scale activities, it is often more practicable and more efficient to operate the joint venture through the medium of a separate company. In common language this company is referred to as a Joint Venture Company.

If a Joint Venture Company is the chosen vehicle, then a shareholder's agreement will be required to regulate the decision making processes within the company and to provide a framework for resolving any disputes which may arise. Such a shareholder's agreement might also contain a clause providing an exit mechanism for each of the joint venturers.



Section 21

Appendix of Terms

Breach of Contract

Failing to perform any term of a contract, written or oral, without a legitimate legal excuse. This may include not completing a job, not paying in full or on time, failure to deliver all goods, substituting inferior or significantly different goods, not providing a bond when required, being late without excuse, or any act which shows the party will not complete the work ("anticipatory breach").

Contract

An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit, known as "consideration". In some cases, a contract can consist of several documents, such as a series of letters, orders, offers and counter offers.

Double Taxation Relief

Where credit is given for the lower of the two taxes.

Enforce

To enforce Judgment means to obtain monies or compensation which were awarded by the Judgment of a Court. It can also cover what means are used to ensure payment of monies due. For example, to seize property under Court Order from the person who owes money under that Court Order.

Indemnity

The act of reimbursing to someone any losses which they have incurred or will incur. "Indemnify": to guarantee against any loss which another might suffer. Example: two parties settle a dispute over a contract and one of them may agree to pay any claims which may arise from that contract, holding the other harmless.

Jurisdiction

The authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases. It is vital to determine before a lawsuit is filed which court has jurisdiction. In the specific context of Northern Ireland and Ireland, it is important to ascertain whether the Courts in Northern Ireland or Ireland are entitled to try the case.

Liability

Liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves him open to a law suit for any resulting damages or loss which may occur to the other party.

Negligence

Failure to exercise care towards others which a reasonable

or prudent person would do in the circumstances or taking action which such a reasonable person would not. Negligence is accidental, as distinguished from "intentional torts" (assault or trespass, for example) or from crimes. Negligence can result in all types of accidents causing physical and/or property damage, but can also include business errors and miscalculations.

Passing of Risk

Risk, in terms of loss, is the responsibility that a carrier, borrower, user/purchaser of property or goods assumes if there is damage or loss. Passing of Risk means the point at which the buyer will be responsible for the goods. For example, if goods are delivered by lorry, who bears the loss if the goods are stolen in transit before they reach the purchaser?

Permanent Establishment

For detailed information on this, see Article 5 of the Tax Treaty between UK and Ireland – see www.revenue.ie and conduct a search by 'UK Tax Treaty'.

Registered Consignee

A Registered Consignee – used for the import and export of excisable goods.

Reverse Charge Mechanism

Under the Reverse Charge Mechanism, it is the customer or purchaser that accounts for the VAT on a purchase rather than the vendor (as is normally the case).

Risk

Risk, in terms of loss, is the responsibility that a carrier, borrower, user/purchaser of property or goods assumes if there is damage or loss.

Secure Judgment

A judgment is the final decision by a Court in a lawsuit. The word "decree" is sometimes used as synonymous with judgment. The "securing" of a judgment is obtained by either obtaining judgment in the Court Office (where the defendant does not attend Court) or obtaining the final decision of the Court after the hearing of the issues by a Trial Judge. Once Judgment is "secured", a Court Order (written document) is

issued which records the decision of the Court.

Transfer Pricing

The price at which goods or services are transferred between one country and another within the same organisation.

Witnesses

A person who testifies under Oath in a Trial with first-hand or expert evidence in a law suit. It is generally only possible to issue a witness subpoena (to compel attendance at Court) on a witness who resides in the jurisdiction where the Trial is occurring. For example, if a Trial were held in County Fermanagh it would not generally be possible for the Court in Northern Ireland to issue a witness subpoena on a witness residing in Ireland to compel his attendance in the Northern Ireland Court. Therefore, for instance, where you anticipate that liability for payment will be disputed by your customer and your customer resides in the other jurisdiction it would be advisable to issue proceedings in the jurisdiction where the relevant witnesses reside – so that you will know that you will be able to compel their attendance in Court.

Zero Rated

Where VAT is charged at 0%.

