

Refresher on Irish IP Holding Regime and Substance Requirements

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As further explored in our article on why Ireland is an attractive jurisdiction for businesses developing and exploiting IP assets, one of the key attractions is the standard corporate tax rate of 12.5% that applies to trading income from trading activities. For an activity, such as holding and licencing IP, to be classed as 'trading', there is a general requirement for 'substance' in Ireland.

Irish Revenue (**Revenue**) has published "[Guidance on Revenue Opinions on Classification of Activities as Trading](#)" setting out factors to be considered when determining the trading status of a company, centred around the concept of 'substance':

- **Trading Presupposes Activity** - i.e., there should be a tangible business activity carried out in Ireland from which the trading income derives along with people with skill and authority necessary to carry them out;
- **Distinction between Trading and Investment** – in general, where a company owns an asset and the mere ownership of that asset produces an income, this income will not be trading income. However, Revenue have noted that this is not always straightforward and a company's income from licencing IP can be regarded as trading income provided some 'significant hurdles' are cleared first. In one significant case, IP licencing was considered to be a trading activity where:
 - The company's objects clause empowered the company to carry on the IP licencing business;
 - There was a significant amount of time spent by the company's employees and representatives in managing the company's affairs in Ireland; and
 - The fact that the company's employees and representatives actively sought out customers and exercised skill and labour of a continuous and variegated kind from Ireland.

- **Group Structures** – Where a company seeking trading status is a member of a group and another group company or companies have involvement in the conduct of the particular trade, Revenue will need to be satisfied of the role of each of the various companies. In particular, the Irish company would want to establish that it carries on sufficient activity to be seen as trading with an analysis undertaken of where real decision making lies.

Bringing these together, in practice, it is generally advisable in such circumstances for a company to have directors and employees in Ireland who are actively involved in the operation of the business along with ensuring that any decisions of importance to do with management and control of the business are undertaken in Ireland. Where the holding of IP is combined with related R&D work in Ireland, this is another factor which would go towards trading activity. It should be noted that Revenue can provide advance opinions in certain circumstances on whether a particular activity will constitute the "carrying on of a trade".

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