Destination Ireland

Matheson

Private Wealth Immigration – Ireland's Immigrant Investor Programme

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Background

We are the law firm of choice for internationally focused companies and financial institutions doing business in and from Ireland and have acted for internationally mobile clients and their families for generations.

For such clients, the legal and tax expertise and the international know-how of Matheson's Private Client Relocation Services Team are unique among professional services firms in Ireland.

This document aims to provide guidance for non-EEA persons who are looking to Ireland as a potential home for their families, with specific focus on long-term residency permission through the Immigrant Investor Programme and an executive summary of the tax issues for such persons who relocate.

Immigration Requirements

Subject to being granted permission to enter, all non-EEA citizens will be permitted to stay in Ireland for a maximum of three months. If you are

a citizen of a non-EEA country and want to remain for longer than three months, you must apply for Permission to Remain.

A person of independent means who meets the financial thresholds for income / savings will be able to apply for Permission to Remain which will take the form of a passport endorsement with a Stamp 0 in conjunction with a Certificate of Registration. Stamp 0 is a low level form of immigration. It does not permit the applicant to work nor indeed does any period of residence under a Stamp 0 count as reckonable residence for long-term residence status or indeed citizenship by way of naturalisation.

These limitations mean that wealthy private clients and their families seeking to relocate to Ireland for the long term or have a qualified right of residence for up to five years will need to look to an alternative route. The Immigrant Investor Programme provides an alternative proposition.

Conditions

The programme essentially looks to two issues - the investor and the investment. As part of the application process the investor must produce a statement of good character (in this regard the investor must not have previous criminal convictions in this regard), evidence of net worth of €2m, confirmation of source of funds (in this regard, the investor cannot rely on loan funding), and confirmation that the investment funds can be transferred. The application criteria are the same across all investment types.

The investor is not required to reside in Ireland, provided he/she spends at least one day in Ireland each year.

" We are experienced in identifying international tax issues and collaborating with international advisers to deliver the best result for clients moving to Ireland."

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Investment Type	Conditions	Benefits	Features
1 **Enterprise Investment**	Required minimum investment of €1 million in either a single Irish enterprise or spread across a number of enterprises, for a minimum period of 3 years. If investing in an existing or new business, the investor is required to submit a detailed business plan.	Suitable for investors who wish to create a new enterprise or invest in an existing enterprise in Ireland. This option facilitates investors who have their own investment or business strategy and see the benefits of Ireland as a location for doing business.	Investment is made for a minimum of three years. After the three-year period, the investment is deemed to be complete for immigration purposes.
2. **Investment Fund**	Required minimum investment of €1 million in an investment fund (approved by the Central Bank of Ireland), for a minimum period of 3 years. The fund and fund managers must be regulated by the Central Bank	Suitable for investors who wish to avail of the services of approved professional investment intermediaries to invest in the future potential of Ireland's enterprise sector.	Investment is made for a minimum of three years. After the three-year period, the investment is deemed to be complete for immigration purposes.
3. **Real Estate Investment Trusts ("REITs")**	Required minimum investment of €2 million into any Irish REIT that is listed on the Irish Stock Exchange (or a number of REITs), for a minimum period of 3 years.	Suitable for investors seeking a low-risk property investment as the debt limits within the REIT reduce exposure to negative equity risk. REITs are income producing investments and generate a regular income stream for investors.	Investment must be held for a minimum period of three years from the date of purchase before any divestment is permitted: ▪ after three years, investor may divest up to 50% of shares; ▪ after four years, investor may divest up to a further 25% of shares; and ▪ after five years there are no obligations on the retention of shares.
4. **Endowment**	Required minimum endowment of €500,000 to a project which is of public benefit to the arts, sports, health, culture or education in Ireland. Where a group of five or more investors wish to combine their endorsements, a minimum of €400,000 will qualify.	Suitable for investors who wish to actively engage in philanthropy and in projects which benefit the Irish public. Straightforward option involving a once-off non-refundable payment.	Investors will receive no financial return on the endowment. Once the contribution is made, there is no further financial obligation on the investor.

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Process

There is a four step process in order to become an immigrant investor: i) application, ii) approval, iii) investment, and iv) right of residence.

Once the investor's application has been approved and the investment has been made, the investor and their nominated family members are entitled to a right of residence in Ireland for an initial two-year period. Nominated family members include spouses, children under 18 years of age and children between 18 and 24 years of age, who are in full time education.

At the end of the two-year period, the right to residency may be extended for a further three years if the investor continues to meet the conditions of the scheme. After five years, the investment is deemed to be complete for immigration purposes and the right to residency can then be extended for a further five years without any further investment.

For non-EEA individuals and their families, the Immigrant Investor Programme may potentially act as a stepping stone to acquiring Irish citizenship, subject to meeting certain criteria.

Please note that applications for the Immigrant Investor Programme will only be accepted during four specified periods per annum. Applications received outside of these periods will be returned. These periods change from year to year and are available on the Irish Naturalisation and Immigration Service website (www.inis.gov.ie). An independent review of the Immigrant Investor Programme is currently underway and relevant submission periods for 2019 may be varied accordingly.

Irish Citizenship

In general, a person may acquire Irish citizenship through one of the following:

- Birth;
- Descent; or
- Naturalisation.

This note focuses on the acquisition of Irish citizenship by naturalisation.

Naturalisation

A person may acquire Irish citizenship by way of a certificate of naturalisation from the Minister for Justice (the "**Minister**"). Under sections 15 and 16 of the Irish Nationality and Citizenship Act 2004, as amended (the "**Act**"), the applicant must meet the following conditions:

- be of full age;
- be of good character;
- have a total 'reckonable residence' in Ireland of five out of the nine years immediately proceeding the date of the application, including one year's continuous 'reckonable residence' immediately prior to the application. Actual physical presence in Ireland for 1825/1826 days is required;
- intend in good faith to continue to reside in Ireland after naturalisation; and
- make a declaration of fidelity and loyalty to the State.

If the spouse of the applicant is an Irish citizen, the applicant is required to have a total 'reckonable residence' of three of the five years prior to the application, including one year continuous 'reckonable residence' immediately prior to the application.

As noted above, actual residence is not a requirement for residency renewal under the Immigrant Investor Programme but if the investor ultimately intends to apply for citizenship, he/she must meet the requisite day count in Ireland.

The Minister has discretion to waive any of the criteria but will only do so in exceptional circumstances, such as where the applicant has significant family associations to Ireland.

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The Tax Position

For those that do decide to relocate to Ireland, it will be important to prepare for the Irish tax environment.

(a) Residency in Ireland for Tax Purposes

Tax residence is entirely distinct from residence for immigration and nationality purposes.

Residence for tax purposes is based on a statutory day count test, with the tax year being the calendar year running from 1 January to 31 December. A person will be considered to be tax resident in Ireland for tax purposes if they are either:

- present in the State for 183 days or more in the calendar year; or
- present in the State for 280 days in aggregate in that tax year and the preceding tax year, subject to the caveat that if a person is present in the State for 30 days or less in a tax year, they will not be treated as resident for that year unless they elect to be resident.

The Irish tax residency test offers certainty to taxpayers as it is based entirely on a day count and does not rely on other connections or associations with Ireland.

A person is considered tax resident in Ireland for a day if they are present in Ireland for any part of the day save where:

- the individual is in transit and remains "airside" throughout the period in Ireland (ie remains in a part of the airport or port not accessible to general members of the public); or
- where the individual is prevented from leaving Ireland on their intended departure date because of 'force majeure' circumstances - extraordinary natural occurrences or an exceptional third party failure or action.

The interaction of tax residence and the concept of domicile will determine a taxpayer's liability to tax. Domicile is a legal construct, which might be described as where the law considers a taxpayer's permanent home to be. A person who is born outside Ireland to non-Irish parents is not likely to be considered Irish domiciled on relocating here.

(b) Tax Planning Prior to Arrival in Ireland

A tax resident non-Irish domiciled person will be able to avail of the remittance basis of taxation, which means they will broadly only be subject to Irish tax on Irish source gains and on foreign income and gains, only to the extent they are remitted to Ireland, subject to certain investment specific exclusions such as certain gains from fund investments, for example gains from regulated funds established in the EU, EEA or OECD jurisdictions with which Ireland has a DTA.

There are a number of essential pre-entry planning steps which should be taken to mitigate a potential Irish tax exposure.

These include:

- remitting funds to Ireland before you become resident;
- restructuring existing companies and trusts before you become resident in Ireland;
- selling investments before you become resident in Ireland and 'rebasing' assets;
- arranging your bank accounts so that there is a 'clean' capital account outside Ireland from which you can remit funds to Ireland after becoming resident, without triggering a charge to Irish tax; and
- possible gifting of assets to family members to overcome a charge to Capital Acquisitions Tax (gift / inheritance tax).

This is a complex area but one where advanced planning can achieve a favourable tax outcome.

About Matheson

Matheson is a leading international law firm with over 600 lawyers based in six international offices. Our expert lawyers and tax advisers can provide you with clear advice tailored to you and your family's situation. We are experienced in identifying international tax issues and collaborating with international advisers to deliver the best result for clients moving to Ireland. We will guide you through the steps you should take prior to and on becoming tax resident in Ireland.

We have acted for internationally mobile clients and their families for generations. We understand that business has no borders and we have developed an in-depth understanding of the needs of our clients.

Through our Private Client Relocation Services Team we have particular expertise in assisting internationally mobile clients and their families to achieve significant benefits through our understanding of the cross border regime regarding residence and domicile. In addition to private wealth immigration advice, we can also offer our relocating private clients and their families a range of personal legal and tax services, including advice on:

- pre-entry tax planning;
- implications of long term residence, Irish estate and gift tax issues;
- real estate purchase / lettings;
- implications of holding Irish investments;
- succession law implications of habitual residence in Ireland; and
- ongoing private client related queries as to the operation of the Irish legal and tax system.

For further information on how we can help, please see our ***Private Client Relocation Services Brochure***

We would be delighted to discuss any of these options with you or your representatives.

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Testimonials

Paraic Madigan
Recognised for Trusts and Estates
Best Lawyers Ireland 2018 edition

Paraic Madigan and John Gill:
Private Client Experts
Who's Who Legal 2018

Paraic Madigan and John Gill
Private Client experts
Citywealth Leaders List 2018

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