2026 VOLUME 39 NUMBER 1 ISSN 1649-7899

Irish Tax Institute

Irish Tax Review

The Journal of the Irish Tax Institute

www.taxinstitute.ie

ALSO IN THIS EDITION

Irish Property Investment: A Review of Ownership Structures and Tax Incentives

Irish Tax Institute

Editor Amanda-Jayne Comyn
Editorial Board
Helen Byrne, Fiona Carney, Gabrielle Dillon, Bernard Doherty, Anne Hogan, Séamus Kennedy, Tom Maguire, Cian O'Sullivan, Neil Phair, George Thompson, Eoin Tobin, Gemma Tugwell.

Published by/Origination by
Irish Tax Institute,
South Block, Longboat Quay,
Grand Canal Harbour, Dublin 2
Tel +353 1 663 1700
taxinstitute.ie
Copy-edited by
Aisling Flood
Typeset by Deanta Global Publishing Services
Design and layout by Deanta Global Publishing Services
Production Liaison
Judy Hutchinson
Advertisers please contact
Judy Hutchinson
Tel +353 1 663 1700
jhutchinson@taxinstitute.ie

ISSN 1649-7899
2026, Volume 39, Number 1

The Institute is a company limited by guarantee without a share capital (CLG), registered number 53699.

The Institute is also a registered charity, number 20009533. EU Transparency Register No.: 08421509356-44

Contents

2026 Number 1

Messages from Irish Tax Institute

Regular Features

Feature Articles

Irish Tax Institute News

Editor's Pages

Amanda-Jayne Comyn
Editor

Regular Articles

Policy & Representations Monitor

Lorraine Sheegar provides a comprehensive overview of key developments, including recent submissions from the Institute, and tax policy news.

Recent Revenue eBriefs

Lorraine Sheegar lists all Revenue eBriefs issued between 1 November and 31 January 2025.

Direct Tax Cases: Decisions from the High Court and Tax Appeals Commission Determinations

Mark Ludlow

» In *Hegarty, Geary and Ward v The Revenue Commissioners* [2026] IEHC 59, the Court considered a case stated by TAC regarding Revenue's challenge to losses under s811C TCA 1997

» 244TACD2025 considered a taxpayer's claim that a termination payment that he had received should be exempt from tax under s201(2)(a) TCA 1997 on the basis that the payment was made "on account of...disability

» In *Sean Flaherty v The Revenue Commissioners* [2026] IESC 4 the Supreme Court considered the circumstances in which a condition in a contract will have the effect of delaying the date of disposal (per s542(1)(b) TCA 1997) until that condition is satisfied.

» In *Express Motor Assessors Limited (in liquidation) v The Revenue Commissioners* [2025] IEHC 733, the High Court considered a taxpayer's appeal against a TAC determination concerning whether certain mileage-related amounts paid or credited to a director in 2015 and 2016 were taxable emoluments subject to PAYE, PRSI, USC and employer PRSI

» In *Peadar Hamill v The Revenue Commissioners* [2025] IEHC 627, the Court considered a case stated by TAC regarding a claim by the taxpayer that he had been treated unfairly in the process by which the tax assessments were made.

Direct Tax Cases: Decisions from the UK Courts and Supreme Court of India

Stephen Ruane and **Patrick Lawless**

UK Cases

» *AD Bly Groundworks and Civil Engineering Ltd & Anor v HMRC* [2025] EWCA Civ. concerned two companies that implemented an unfunded unapproved retirement benefit scheme (UURBS) on the advice of their accountants *O'Neil and others v HMRC* [2026] UKUT 13 concerned the tax treatment of a compensation payment for a mis-sold interest rate hedging product, referred to as the redress payment

» The Supreme Court of India delivered a judgment concerning three Mauritius-incorporated entities of the Tiger Global group and their entitlement to capital gains tax exemption under the India–Mauritius double taxation agreement.

International Tax Update

Louise Kelly and **Dylan Reilly** summarise recent international developments

- BEPS Developments
  - Recent and upcoming compliance requirements for groups with calendar year ends are identified
  - The European Commission recognised the "Side-by-Side Package" on Pillar Two global minimum tax rules as a qualifying safe harbour under the EU Pillar Two Directive
- OECD Tax Developments
  - The OECD released the 2026 edition of the *Manual on Effective Mutual Agreement Procedures*, which offers refreshed guidance from the OECD/G20 Inclusive Framework on BEPS
  - There are ongoing global efforts to align tax systems with the BEPS Action 5 minimum standard
  - The OECD announced that the Global Forum on Transparency and Exchange of Information for Tax Purposes had published peer-review reports for five jurisdictions, assessing their compliance with international standards on tax transparency and exchange of information on request
- The Netherlands: The Dutch Parliament has passed several motions calling on the Government to extend its reform of Box 3 – the taxation framework for savings and investment income – beyond the current proposal, which taxes unrealised gains on most assets.
- Poland: The Polish Government has put forward draft legislation to introduce a digital services tax of up to 3%.
- Singapore: The 2026 Budget has introduced significant tax incentives
- United Kingdom: HMRC has released provisional guidance regarding amendments to the anti-avoidance provisions related to share-for-share exchanges and company reconstructions, mainly affecting s137 of the Taxation of Chargeable Gains Act 1992
- Switzerland: Transfer Pricing approach updated for asset management sector
- Germany: The German Ministry of Finance has issued an updated decree regarding the use of the OECD Model Tax Convention Commentary for interpreting double taxation treaties.

VAT Cases & VAT News

Gabrielle Dillon gives us the latest VAT news and reviews the following VAT cases:

VAT Cases

- *Brose Prievidza, spol. s r.o. v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite* C-234/24 relates to the refusal of the Bulgarian tax authority to refund VAT under Council Directive 2008/9/EC to Brose Prievidza, spol. s r.o. which had incurred Bulgarian VAT on the purchase of equipment.
- *MS KLJUČAROVCI, d.o.o., in liquidation v Republika Slovenija* T-646/24 involved a Slovenian company in liquidation, and the Slovenian tax authority in relation to a dispute over the calculation of VAT in triangulation transactions.
- *Svilosa' AD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Veliko Tarnovo* C-535/24, concerned the interpretation of Articles 2(1)(c), 24(1) and 26(1)(b) of the VAT Directive, which define taxable transactions, supply of services, and supply of services free of charge treated as for consideration, respectively.
- *T.P.T. v 'Financial Bulgaria'* EOOD C-744/23 [*Zlakov*] arose out of proceedings between T.P.T. and Financial Bulgaria EOOD, where T.P.T sought a declaration of nullity of a security agreement concluded in the context of a consumer credit agreement, and resulted in an application by T.P.T.'s lawyer seeking payment of VAT together with his fees from Financial Bulgaria EOOD

» *FLO VENEER d.o.o. v Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak* C-639/24 concerned the exemption in respect of intra-Community supplies of goods and required the interpretation of Article 138(1) of VAT Directive and of Article 45a of Council Implementing Regulation (EU) No 282/2011.

Accounting Developments of Interest

Aidan Clifford, ACCA Ireland, outlines the key developments of interest to Chartered Tax Advisers (CTA).

Legal Monitor

Nora Walsh details Acts passed, Bills initiated and Statutory Instruments of relevance to CTAs and their clients.

Tax Appeals Commission Determinations

Catherine Dunne lists of all TAC determinations published, including tax head, if case stated and key issues considered.

Feature Articles

President's Pages

Shane Wallace
Irish Tax Institute President

Introduction

As we begin a new year, the opening months of 2026 have proven to be characteristically busy for the tax profession, with tax advisers navigating a fast-moving and increasingly complex landscape.

As it was this time last year, geopolitical trade tensions are dominating, with a knock-on impact on supply chains and investment decisions, which inevitably carries tax consequences for Irish businesses.

Against this backdrop of uncertainty and change, the year ahead promises to be a demanding one. The Institute and I continue to represent members through our submissions, consultations and attendance at many meetings, where we consistently highlight the need for simplification, certainty and a laser focus on competitiveness.

Tax Talk

The first Tax Talk episode of 2026 is of particular interest for anyone considering a career in tax advisory. Hosted by the *Irish Independent* Business Editor, Donal O'Donovan, the podcast brings together two Chartered Tax Advisers (CTA) at different stages of their careers – Karen Clarke, Tax and Legal Partner at Deloitte, and Sam Totterdell, an award-winning newly qualified CTA. It offers an insightful and practical look at what tax advisory involves and what it offers as a career. The breadth of topics discussed is revealing, from the benefits of summer internships and placements to the adoption of AI in practice. I highly recommend giving it a listen.

Fantasy Budget Lunch

Another highlight for me as President was the presentation of the Fantasy Budget awards at the end of January. We were delighted to welcome the winning students from University College Cork, Dublin City University and the University of Galway to a lunch in the Institute where they were presented with their prizes. The Fantasy Budget has been running for more than 25 years, and the fact that interest continues to grow each year, with hundreds of entries, is testament to the work of the education team in the Institute, working alongside lecturers across the country, to promote the competition.

Contributors' Dinner

Our annual Contributors' Dinner, which provides an opportunity for us to thank all of those who have assisted the Institute in various ways throughout the year, was held at the end of January. A huge thank you to all who came.

We are fortunate to have so many people who contribute to the work of the Institute, through insightful articles in *Irish Tax Review*; participation in conferences, podcasts, working groups and panel discussions; active membership of our committees; and lecturing, setting and marking exams – helping to shape the next generation of tax professionals.

Your contributions ensure that the Institute remains a trusted voice, a respected educator and a vibrant professional community.

Annual Dinner

The Annual Dinner, a highlight in the Institute's calendar, took place at the end of February and brought together some 1,000 members and their clients, as well as representatives from public bodies, the legal profession, academia, business, the media and sister professional institutes.

The Guest of Honour was An Tánaiste and Minister for Finance, Simon Harris TD, who spoke of his commitment to boosting the resilience of the economy through simplification and certainty. The Tánaiste also gave guests a sense of the Government's plans for a new savings and investment scheme and asked that the Institute participate in the consultation process around the development of the scheme.

As Institute President and on behalf of members, I took the opportunity to highlight the layers of complexity that are making it increasingly difficult for taxpayers to adhere to their tax obligations. I outlined members' concerns with the proposed changes to public hearings at the Tax Appeals Commission and the Department of Finance's "Strawman Proposal" to reform the rules on interest deductibility.

I also referenced the positive moves that were made in Budget 2026 to enhance viability in the construction sector and the recent publication of the R&D Tax Credit Compass, which will put us on a path to strengthening it even further.

A huge thank you to all those who attended and made the evening such a memorable one.

Tax Appeals Commission – Submission

The Institute made a detailed submission to the Joint Oireachtas Committee on Finance, which is currently examining the General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2025 at the pre-legislative scrutiny stage.

Currently, where a taxpayer desires a private hearing, they can apply to the Tax Appeals Commission (TAC) and the Appeal Commissioners must accede to this request. The proposed legislation will fundamentally change this by granting the Appeal Commissioners the discretion to decide whether a tax appeal hearing should be held in public or in private and by limiting the redaction of TAC determinations to cases where there are "special and limited circumstances".

As part of the Institute's initial submission, it conducted a survey of members and received 223 very detailed responses. Thank you to each and every member who engaged with the Institute on this matter. The overwhelming response was one of concern about privacy and the effective functioning of the tax appeals system should the proposed amendments proceed. We firmly believe that the proposed changes will have a chilling effect on taxpayers and will result in more of them deciding to "settle" their appeal rather than proceed with a hearing, fundamentally undermining the basis of a case being taken on merit.

A delegation from the Institute appeared before the Joint Oireachtas Committee on Finance, Public Expenditure, Public Service Reform and Digitalisation, and Taoiseach to discuss the Bill where we continued to urge the Oireachtas to stick with the status quo where the entitlement to a private hearing remains. In advance, we also submitted further proof to back our argument including a Senior Counsel legal opinion which confirms that nothing in Zalewski mandates the proposed changes and a comprehensive comparative research on the tax dispute resolution processes which exist in other EU Member States, demonstrating that Ireland's current regime sits comfortably within the European norm. Thank you to the Committee for inviting us and showing interest in this important issue.

Response to Proposed e-Withholding Tax

In our formal response to the Joint Department of Finance and Revenue consultation on a proposed e-withholding tax (eWHT) the Institute warned that the proposals as they currently stand risk damaging Ireland's competitiveness and urged that further consideration be given to the scope, design, cost and economic impact of the proposal before it proceeds any further.

A major reform of withholding taxes is proposed, which includes abolishing the current relevant contracts tax (RCT) and professional services withholding tax (PSWT) rates, including the 0% RCT rate; extending withholding tax to the platform economy; and replacing existing rates with an as yet undisclosed single flat rate for corporates and personalised deduction rates for self-employed individuals.

In formulating our response to the consultation on the proposal, the Institute canvassed members' views via a survey in January 2026 and consulted large member firms to ascertain their views of the impact of the proposal on Irish businesses.

Overwhelmingly, the responses indicated that the proposed eWHT regime appears too broad, too costly and too risky as designed. It could undermine cash-flow, harm much-needed housing and infrastructure delivery, and impact competitiveness and Ireland's reputation as a business-friendly jurisdiction – without clear evidence that it would materially improve tax compliance, which is already very strong in this country, at over 90%.

We strongly believe that further consideration is required before taking this proposal further.

Annual Conference

The Institute's Annual Conference takes place in the Galmont Hotel, Galway, on Friday, 24, and Saturday, 25 April. Each year the Annual Conference offers hundreds of delegates first-class tax technical insights and unique networking opportunities. As usual, a busy programme is planned, with informative and practical sessions on pensions, tax considerations for Irish real estate development and investment, navigating the key CGT and CAT reliefs for SMEs and family businesses, and the R&D tax credit for SMEs, among many others. You can find more information and book your place on the Institute's dedicated webpage: https://www.taxinstitute.ie/learning-and-events/annual-conference-2026/. I look forward to seeing you there.

Joint Conference with Revenue

As well as our Annual Conference in April, members may be aware of the Joint Conference that the Institute is hosting with Revenue on 14 May in the Newpark Hotel in Kilkenny. The full programme will be available shortly, with details of topics and speakers available here.

Conclusion

As you can see, there are a number of conferences, meetings and consultations coming up over the next few months, and as always, the Institute will continue to work constructively with stakeholders and on members' behalf to ensure that our voice is heard.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

Global uncertainty marks the start of another new year. Political upheaval, new wars and regular tariff threats are making international cooperation and trade increasingly difficult.

Representing Your Concerns

With tax changes coming from administrations at home and abroad, the team has been busy responding to consultations and making representations on your behalf at stakeholder meetings. Thank you to everyone who has provided feedback on the various issues, including the proposed Tax Appeals Bill and the proposed e-withholding tax regime. Read all of our submissions at taxinstitute.ie.

Annual Dinner

The crisp, cold evening of Friday, 27 February, did not stop nearly 1,000 guests joining us at the Clayton Hotel, Burlington Road, Dublin, for our black-tie Annual Dinner 2026. We were grateful to have the Tánaiste, Simon Harris TD, as this year's Guest of Honour. During his first address to a room full of Chartered Tax Advisers (CTA) as Minister for Finance, the Tánaiste reiterated the Government's commitment to focus on simplification and competitiveness during Ireland's EU Presidency and his own commitment to the proposed new Savings and Investment Account.

As an educational institute, we look for different ways to support the education of people in Ireland. In that context we partnered with The Ark, a dedicated cultural centre for children, to support its Ark Access for Schools programme. The programme ensures that a child's access to creativity is not shaped by postcode but by possibility. I am delighted to announce that, thanks to the generosity of our guests, we raised more than €2,100 for an excellent cause.

Congratulations to our President, Shane Wallace, and the Institute team on a highly successful evening.

Fantasy Budget

At the beginning of the millennium we launched a competition for college students with the goal of bringing them closer to the mechanics of the national Budget. For Fantasy Budget 2026 hundreds of teams entered, critically analysing three Budget 2026 measures and proposing a measure that they believe should have been part of the Budget package.

After much consideration of the insightful critiques and innovative suggestions, from a frontline student payment to an incentive to address the number of vacant properties and shortage of college accommodation, our judges, Brendan Keenan and Jim Powers, chose the top three teams:

1. University College Cork: Jane Brereton, Jessica Doody, Eimear McGee and Catherine Cooney with lecturer Mark Barrow;
2. Dublin City University: Daniel Bernotas, Andrew Goulding, Matthew Flood and Liam Naughton with lecturer Dr Patrick Mulcahy;
3. University of Galway: Ainla McSharry, Amy Kavanagh, Aoife Devereux and Niamh Loughran with lecturer Mary Cosgrove.

On 28 January our President, Shane Wallace, congratulated the teams and their lecturers on their achievements and presented them with their prizes. Well done to the winners – we look forward to seeing you pursue a career as a Chartered Tax Adviser.

Third-Level Scholarship

The Institute's Third-Level Scholarship is an initiative that we are proud of. Supporting students, through both financial support and mentorship, throughout their third-level education and on to the Chartered Tax Adviser (CTA) programme allows us to open access to third-level education to young people who otherwise may not have had the opportunity. Our 2026 Scholarship is open for applications now. All details are available on taxinstitute.ie.

Best of Luck

As the Autumn courses wrap up, our students shift their focus to their upcoming exams. On behalf of the Institute, I would like to wish them the best of luck with their study and exams.

Recognition of Our Contributors

The support of our contributors enables the Institute to deliver high-quality services to you and make representations on your behalf. We are grateful to everyone who shares their time and expertise with us. To mark our appreciation, we hosted an evening to acknowledge their contribution.

If you would like to get involved in any of our work, please let us know.

Upcoming Conferences

We return to Galway for the Institute's Annual Conference on 24 and 25 April. Join us and your peers for 11 technical sessions and unique opportunities to network with your fellow CTAs. While hotel rooms are now sold out, day delegate places can be purchased from the website. Get a taste of what is in store with a look back at 2025.

The Institute/Revenue Joint Conference returns to the CPD calendar on 14 May. This conference provides members with a unique opportunity to network with, learn from and share perspectives with senior Revenue personnel on current and emerging issues in tax administration. The conference will take place in Kilkenny. Click here to see details of topics and our speaker line up to date.

New Subscription Year

A new subscription year is upon us. You can renew your subscription and fill in your 2025 CPD declaration in your member's dashboard. Look out for communications from the Institute with more details. Please also use this opportunity to make sure that your contact details are up to date on your dashboard.

Policy and Representations Monitor

Lorraine Sheegar
Tax Manager – Tax Policy and Representations, Irish Tax Institute

News Alert

Inclusive Framework agrees Side-by-Side Package on Global Minimum Taxes

On 5 January members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) adopted a Side-by-Side Package ("the Package") relating to the Pillar Two global minimum tax. Ireland, as a member the Inclusive Framework, joined the global consensus in agreeing the Package. The Package aims to resolve the US's concerns about the global minimum tax while preserving the original objectives of Pillar Two as set out in the October 2021 OECD Tax Agreement.

On 12 January the European Commission published a Notice in the *Official Journal of the European Union* acknowledging the OECD Inclusive Framework Agreement on Safe Harbours adopted on 5 January 2026 and confirming its application in the context of Council Directive (EU) 2022/2523 (the Pillar Two Minimum Tax Directive).

The Package includes the following five key components.

Components

A series of simplification measures to reduce compliance burdens for multinational enterprises (MNEs) and tax authorities in calculating and reporting under the global minimum tax rules

The Package introduces **a permanent simplified effective tax rate (ETR) safe harbour**. Under the simplified ETR safe harbour an MNE group's ETR is determined based on the income and taxes drawn from the MNE group's reporting packages . The simplified ETR safe harbour will be available to MNE groups in all jurisdictions from the beginning of 2027, or the beginning of 2026 in certain circumstances.

To allow sufficient time for smooth implementation of the simplified ETR safe harbour the Inclusive Framework has agreed to an **extension of the transitional CbCR (country-by-country reporting) safe harbour** for one year. The transition rate (i.e. the tax rate for the simplified ETR) will remain at 17% for this one-year extension. This will provide in-scope taxpayers the choice of opting for either the simplified ETR safe harbour or the transitional CbCR safe harbour during a transition period.

The Inclusive Framework also commits to a **work programme to achieve additional clarifications and simplifications**, while ensuring the continued integrity of the rules. This includes:

- Finishing the ongoing work on a routine-profits test and a *de minimis* test (scheduled to conclude within the first half of 2026).
- Continuing to work, in close cooperation with business and other stakeholders (including through the Amsterdam Dialogue format), toward further simplification of the Global Anti-Base Erosion rules (GloBE Rules) themselves. This will involve a particular focus on continuity issues to ensure that taxpayers can benefit from the simplifications under the safe harbour even

where, in a subsequent year, they may not qualify for that safe harbour and are required to calculate their ETR under the full GloBE Rules.

- Taking forward further administrative guidance on technical issues relating to the GloBE Rules.
- Exploring integration of the simplified calculations in the simplified ETR safe harbour into the design of the global minimum tax, recognising the implementation challenges particularly faced by lower-capacity jurisdictions.

In addition, the Inclusive Framework will do further work to streamline reporting obligations. This work will consider adaptations to the GloBE Information Return (GIR), the GIR XML Schema and the related validation rules to apply the agreed safe harbours.

Further alignment of the treatment of tax incentives globally through the introduction of a new targeted substance-based tax incentive (SBTI) safe harbour

The Inclusive Framework has adopted a **substance-based tax incentive (SBTI) safe harbour** to allow MNE groups to continue to benefit from certain tax incentives that are strongly connected to economic substance in the jurisdiction. The STBI safe harbour allows an MNE group to treat certain qualified tax incentives (QTIs) as an addition to the covered taxes of the constituent entities located in the jurisdiction.

A QTI is one that is generally available to taxpayers and is calculated based on expenditures incurred (an expenditure-based incentive) or on the amount of tangible property produced in the jurisdiction (production-based tax incentive).

A substance cap limits the allowance for QTIs by reference to the amount of substance in the jurisdiction. The cap is equal to 5.5% of the greater of the payroll costs and the depreciation of tangible assets in the jurisdiction. On an elective basis the MNE group can use an alternative cap that is equal to 1% of the carrying value of tangible assets in the jurisdiction.

New safe harbours are available to MNE groups having an ultimate parent entity (UPE) located in an eligible jurisdiction that meets minimum taxation requirements under a side-by-side system

The Inclusive Framework recognises that some jurisdictions may already have implemented a tax regime that incorporates minimum taxation requirements with respect to the domestic and foreign income of MNE groups headquartered in that jurisdiction.

Where such tax regimes have and maintain similar policy objectives, overlapping scope and a complementary policy impact as the global minimum tax, taking into account the success of qualified domestic minimum top-up taxes (QDMTTs) and based on the commitment of members to address any BEPS or level-playing-field risks arising from the global minimum tax and its interplay with the side-by-side system, the Inclusive Framework has agreed to the **side-by-side (SbS) safe harbour** and **UPE safe harbour** that apply to MNE groups headquartered in jurisdictions that the Inclusive Framework has determined meet the requirements for an eligible tax regime.

The SbS safe harbour will be available only to an MNE group that has its UPE located in a jurisdiction that has both an eligible domestic tax regime and an eligible worldwide tax regime. These tax regimes will be eligible only if they effectively achieve a minimum level of taxation of the MNE group's domestic and foreign operations. When it elects for the safe harbour an MNE group will not be subject to the income inclusion rule (IIR) or the undertaxed profits rule (UTPR).

The Inclusive Framework also agreed a safe harbour for jurisdictions with regimes that meet only the domestic part of the eligibility criteria. The UPE safe harbour will provide a safe harbour with respect to the domestic profits of MNE groups headquartered in jurisdictions

that have a pre-existing eligible domestic tax regime. When it elects for the safe harbour an MNE group will not be subject to the UTPR in respect of the profits located in the UPE jurisdiction. The UPE safe harbour applies for fiscal years commencing on or after 1 January 2026 and effectively replaces the transitional UTPR safe harbour, which expired at the end of 2025.

Where the Inclusive Framework has determined that a jurisdiction has a qualified SbS or UPE regime, that jurisdiction shall be listed as such on the Central Record. As of 5 January 2026, the only country identified on the OECD's Central Record as having a qualified SbS regime is the United States.

An evidence-based stocktake process to ensure that a level playing field is maintained for all Inclusive Framework members

The Package provides for a time-bound stocktake exercise that commits the Inclusive Framework to a **review of the side-by-side system in 2029** to ensure that any risks or competitiveness issues that arise will be addressed in a timely manner.

The stocktake will be accompanied by a European Commission assessment of the implementation and effects of the side-by-side system and its impact on EU competitiveness. This was outlined in the Commission statement provided at the ECOFIN meeting on 12 December 2025.

Reinforcement of the objective that QDMTT regimes remain a primary mechanism in the global minimum tax framework for ensuring the protection of local tax bases, particularly in developing countries

All MNE groups (including those eligible for the SbS or UPE safe harbour) remain subject to the QDMTT in all QDMTT jurisdictions in which they operate. In all QDMTT jurisdictions the QDMTT for all MNE groups must continue to be calculated without the pushdown of taxes on controlled foreign companies or foreign branches.

Next steps

The OECD will release additional tools and factsheets to support implementation of the Package in the coming weeks.

Research and Development Tax Credit and Innovation Compass

On 16 February the Tánaiste and Minister for Finance, Simon Harris TD, published the "Research and Development Tax Credit and Innovation Compass", setting out a medium-term pathway for further work in respect of the R&D tax credit and tax supports for innovation. The Tánaiste confirmed that the R&D Compass sets out areas for future consideration rather than being a roadmap of specific commitments.

In 2025 the Department of Finance carried out a review of the R&D tax credit, including a public consultation, and the responses to the consultation helped to inform policy considerations for Budget 2026 and to identify a wider range of options for the medium-term development of the R&D tax credit and for the design of a new tax-based support for innovation. The Institute responded to this public consultation in May 2025. The Department published the "Research & Development Tax Credit 2025 Review" in January, which examines the effectiveness of the R&D tax credit in the context of the current economic climate.

The R&D Compass identifies four broad areas that will be reviewed further over the term of the current Government, with the specific direction of each area to be determined as relevant analysis is completed. The areas for review are:

- qualifying expenditure,
- capital expenditure,
- administration and simplification and
- supports for innovation.

The R&D Compass also notes the Knowledge Development Box (KDB) regime will be reviewed in 2026, in tandem with work on the innovation support.

Institute provides feedback on Tax Appeals Bill

As outlined in the previous edition of this article, the Department of Finance published the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2024 (the "Tax Appeals Bill") in November 2025. The Tax Appeals Bill proposes a number of significant changes to the legislation underpinning the Tax Appeals Commission (TAC) and the tax appeals process. It also contains amendments to the legislation governing the Irish Fiscal Advisory Council.

The purpose of the changes is to ensure that tax appeal hearings are compatible with the Supreme Court judgment in *Zalewski v Adjudication Officer & Ors* [2021] IESC 24. The proposed amendments arising from this judgment will impact a taxpayer's right to a private hearing and the redaction of TAC determinations.

Under the existing rules governing hearings at the TAC, the default position is that where a taxpayer desires an "in camera" (i.e. private hearing) they can apply to the TAC, and the Appeal Commissioners must accede to this request. Once a tax appeal hearing is held in private, the Appeal Commissioner's published determination of that appeal is anonymised to ensure that the identity of the taxpayer is not disclosed. The proposed legislation will fundamentally change the current provisions by granting the Appeal Commissioners the discretion to decide whether a tax appeal hearing should be held "in camera" and by limiting the redaction of TAC determinations to cases where there are "special and limited circumstances".

As part of the pre-legislative scrutiny process of the Tax Appeals Bill, the Oireachtas Joint Committee on Finance, Public Expenditure, Public Service Reform and Digitalisation launched a public consultation in November. The Institute responded to this public consultation on 12 December 2025.

As part of the Institute's submission, we conducted a survey of members and received 223 detailed responses. The responses outlined profound concerns about fairness, privacy and the effective functioning of the tax system should the proposed amendments proceed.

The overwhelming feedback from members has been that the erosion of the right to a private tax appeal hearing and the publication of unredacted determinations would be extremely detrimental to the rights of taxpayers and would operate as an actual barrier to taxpayers in appealing a tax assessment issued by Revenue.

Key points raised in our submission include:

- The *Zalewski* judgment does not necessitate the removal of the right for a taxpayer to select to have their tax affairs independently reviewed in confidence by the Appeal Commissioners. In fact, Chief Justice O'Donnell in his judgment states: "There is a justification for calm, quiet, and private resolution of many disputes which may be of particular sensitivity for the participants, and it may even be permissible to have a presumption in favour of private hearings at first instance".
- Tax matters are inherently private, involving sensitive personal and commercial information that is not ordinarily subject to public scrutiny. Tax disputes often arise from differing interpretations of complex legislation, genuine errors or legitimate disagreements about tax treatment. The "calm" and "quiet" resolution envisaged by Chief Justice O'Donnell would be impossible given the media attention that would inevitably result from public hearings. Discourse around taxation tends to be emotive, and complex disputes about the technical application of rules could end up being inaccurately portrayed as aggressive tax avoidance or moral failing, negatively impacting an individual's or company's reputation.
- The current provision, whereby the Appeal Commissioner's determination of an appeal is published in detail in an anonymised manner, already strikes a careful balance

between transparency and privacy, allowing non-binding precedents to develop and scrutiny to occur. It ensures that the wider public can understand how decisions are made, how the law is applied and what reasoning underpins those decisions. We noted our strong belief that the current provision already achieves a satisfactory position without sacrificing fairness or privacy.

- The possibility for a taxpayer to have a private hearing of their tax appeal is in line with the position that exists in other EU countries, such as Denmark and Finland, which have similar populations to Ireland. Likewise, in the Netherlands, tax appeal hearings are mainly held in private. In Australia and New Zealand, which, like Ireland, are common law jurisdictions, tax appeal hearings are also generally held in private.
- Other jurisdictions, with significantly larger populations than Ireland, such as Canada, France and the UK, have public hearings of tax appeals. However, those jurisdictions also have alternative avenues available to taxpayers to resolve tax disputes in private before resorting to a public hearing of their appeal.
- In contrast, the TAC is the sole avenue available for taxpayers to resolve disputes regarding tax assessments with Revenue in Ireland. We observed that if the changes proposed in the Tax Appeals Bill are implemented, it would make Ireland an outlier compared with the procedures that exist for the resolution of tax disputes in other jurisdictions.
- We strongly advised against the proposed move to public hearings of tax appeals, highlighting that the sanction of having one's name published by Revenue, which currently applies to certain tax defaulters, should not become the penalty for simply disagreeing with a Revenue assessment.

In a press release on 18 December the President of the Irish Tax Institute, Shane Wallace, said:

> "On average over the past four years, of the determinations issued by the TAC, approximately 20% were in favour of the taxpayer. This clearly demonstrates that in a significant number of cases, where a taxpayer genuinely disagrees with an assessment, pursuing an appeal leads to a different and fairer outcome. However, should the proposed changes proceed we believe it will have 'a chilling effect' and result in more taxpayers deciding to 'settle' their appeal rather than proceed with a hearing."

Mr Wallace concluded: "We are urging the Government not to proceed with the proposed move to public hearings of tax appeals".

The Institute also wrote to the Tánaiste and Minister for Finance, Simon Harris TD, in December, summarising the concerns outlined in our response to the Oireachtas Joint Committee on Finance. In our letter we highlighted that while steering the Finance (Tax Appeals Commission) Bill through the Houses of the Oireachtas back in 2015 as the then Minister of State in the Department of Finance, the Tánaiste had rightly recognised the serious concerns that surround the matter of public hearings, saying:

> "This is a small country. We do not want to have an appeals system that would in any way discourage persons from their right of appealing a decision of the Revenue Commissioners. For example, small shopkeepers could find themselves in a public hearing with their customers in attendance, with material from the hearing being reported locally, and such publicity could undermine their business even if the appeal was upheld. It is a balance we are trying to achieve here. The publication of determinations will be valid and important in terms of increased transparency."

We noted that the concerns that the Tánaiste and the Government recognised more than a decade ago, and that he acted on, remain as relevant today as they were back then.

The Institute's submissions are available on our website, www.taxinstitute.ie.

Institute responds to Feedback Statement on reform of Ireland's taxation regime for interest

The Institute responded to the Department of Finance's "Phase One of Reform of Ireland's Taxation Regime for Interest: Feedback Statement" on 16 January. The Phase One Feedback Statement included a "Strawman Proposal", which sets out a possible approach to how the underlying framework for the taxation and deductibility of interest in Ireland may be reformed. The design of the Strawman Proposal was informed by responses to the 2024 public consultation on the tax treatment of interest in Ireland, to which the Institute responded in January 2025.

The Institute's submission highlighted the strong feedback received from members that the proposed changes outlined in the Feedback Statement would not provide the simplification required to address Ireland's excessively complex interest deductibility rules and protect Ireland's competitiveness.

We emphasised members' concerns that the new interest deductibility rule would be overly restrictive and that bona fide Case I deductions for interest that qualify under the current rules may not qualify under the Strawman Proposal. This would lead to increased costs for businesses. We stressed that the inherent subjectivity of the proposed "profit motive" test would introduce further complication and significant uncertainty for taxpayers.

We also set out observations and recommendations on each element of the Strawman Proposal. We urged that, at a minimum, certain elements of the proposal should be reconsidered, such as:

- The proposal to move away from the "wholly and exclusively" test that applies for a Case I or Case II interest deduction toward the "profit motive" test, as outlined in the Strawman Proposal. The proposed "profit motive" test, which would require annual testing of the "intention" of the borrowings, would result in more complication, increased ambiguity and an onerous administrative burden for taxpayers.
- The proposal that interest expenses would be allocated to a Schedule and Case and the interest accrued on borrowings would be matched to the Case/Schedule under which the profits or gains arising from the activity/investment supported by the borrowings are taxed. As a result, it would not be possible to offset Case III losses against non-Case III income earned in the accounting period on a value basis, to carry the loss back to the preceding accounting period or to avail of the group relief provisions in respect of the Case III loss, unlike the position that exists for Case I. This proposal does not align the tax treatment between trading and passive interest income.
- The proposed extension of the transfer pricing rules to medium-sized entities. Rather than being overburdened with additional compliance requirements, SMEs should be supported as they seek to expand in Ireland and overseas.
- The proposed change to the interest limitation rule (ILR) to apply a new *de minimis* threshold on a group basis at a level of €6m for the group of Irish entities within a worldwide group, in addition to the current entity-by-entity *de minimis* threshold of €3m. This proposal has the potential to make Ireland uncompetitive compared with the ILR regimes in other EU Member States and to reduce the country's attractiveness as a location for investment.
- The lack of meaningful simplification of s247 TCA 1997 and the related recovery-of-capital provisions in s249 TCA 1997. These sections should be streamlined to remove conditions that do not have a clear policy rationale.
- The proposal to change the basis of assessment for Case III income from a receipts basis to an accruals basis for all

taxpayers, with the result that certain taxpayers would have to account for tax on interest before they receive it. This could have an adverse effect on start-up and scaling companies, which often raise funds by borrowing from angel investors, with interest on these loans frequently rolled up for several years. Under the Strawman Proposal these investors would be taxed on an annual basis even where there is no realistic prospect of the interest being paid for many years.

- The importance of ensuring that any widening of the scope of interest deductibility to include "interest equivalents" should not extend to the interest withholding tax provisions in s246 TCA 1997.

We underlined that although the Institute is steadfast in its belief that reform of the interest deductibility rules is necessary, if the choice is between the Strawman Proposal, as it stands, and the status quo, it would be preferable to retain the existing interest deductibility rules for Case I and Case II trades, given the concerns raised by members about increased complexity, costs and uncertainty for Irish businesses resulting from the proposed new "profit motive" test. This is notwithstanding the difficulties with the existing regime and the fact that it would continue to leave Ireland at a competitive disadvantage.

Finally, we urged the Department of Finance to engage with stakeholders directly and via the Business Tax Stakeholder Forum before publishing draft legislation, given the extent of changes that would need to be made to the Strawman Proposal.

It is planned that an outline of draft legislation for further stakeholder feedback will be published on 16 April 2026, with a closing date of 15 May 2026 for written responses from stakeholders on the draft legislation, and amended legislation for Phase One to be included in Finance Bill 2026.

The Institute's submission is available on our website, www.taxinstitute.ie.

Institute responds to Joint Consultation on eWHT

On 30 January the Institute submitted its response to the joint public consultation on e-withholding tax (eWHT) by the Department of Finance and Revenue. Our response reflected feedback received from members who completed the Institute's survey on the proposed new eWHT regime. We also consulted with large member firms to ascertain their views of the impact of the proposal on Irish businesses.

In our submission we noted that the scope of the proposed reform and the specific tax risks that the eWHT regime seeks to address remain unclear. Although the Institute supports modernising tax administration, we stressed that priority should be given to ensuring that the existing tax compliance architecture is efficient, effective and robust before embarking on creating a new compliance model that would require extensive IT investment.

Feedback from members raised significant concerns about the scope and implications of the reform proposed. These included:

- whether Ireland intends unilaterally to move ahead of international agreements by introducing an eWHT for the platform economy and the territorial scope of such a tax;
- the cash-flow impact on Irish businesses of expanding withholding tax;
- the consequences of removing the 0% relevant contracts tax (RCT) rate on funding of critical housing and infrastructure construction projects and accessing specialist expertise from overseas; and
- the compliance and administrative costs that the proposal would impose on Irish businesses.

We made six key recommendations based on members' concerns:

- Ireland has very strong tax compliance rates and a reputation as a good place in which to do business. This reputation is critical to

attracting foreign direct investment and the growth of domestic businesses. We believe that further work by the Department of Finance and Revenue is needed to clarify the scope of the proposal and what tax leakage it is attempting to address. Based on the preliminary information made available with the consultation, we question whether such a substantial reform at this juncture is warranted or wise and, therefore, whether it should be implemented.

- The proposal lacks clarity on how eWHT would apply to the platform economy and its territorial scope. We recommend pausing this strand of the proposal until the specific compliance issues in question, DAC7 implications and VAT in the Digital Age commitments are fully defined. If policymakers decide to proceed, a detailed "Strawman Proposal" should be developed to outline the intended design and scope of eWHT for platform operators.
- We do not agree with a proposal to accelerate the payment of tax by the self-employed. Cash is the lifeblood of business, and individuals are familiar with their obligations under the current regime and can plan accordingly. The use of a personalised rate rather than a flat rate of withholding tax could result in the unintended disclosure of an individual's personal circumstances. The GDPR (General Data Protection Regulation) implications of such a measure would also need to be fully considered.
- It is imperative that the 0% RCT withholding tax rate is retained for compliant resident and non-resident sub-contractors. Its removal would have serious implications for the cost and delivery of critical housing and infrastructure projects, which would be at odds with the Government's National Development Plan.
- A full review of professional services withholding tax should be conducted to determine whether the regime remains appropriate before expanding its scope or altering its operation.
- We urge policymakers to adopt a cautious approach to expanding withholding tax, mirroring the approach taken to modernising Ireland's administration of VAT. It is important that international experience is reviewed first so that Ireland can learn from any mistakes in design and implementation of withholding taxes before taking policy decisions that would have far-reaching consequences for Ireland's competitive position. There is a myriad of practical administrative issues that need to be considered before introducing any reform, which would require extensive consultation with business. Providing a long lead-in time and financial supports for businesses to adapt to any new regime would also be necessary.

The Institute's submission is available on our website, www.taxinstitute.ie.

Institute provides feedback on tax policy priorities for Ireland's Presidency of European Council

As part of the planning for Ireland's Presidency of the Council of the European Union from 1 July to 31 December 2026, the Department of Finance sought feedback from the Institute on the top EU tax policy priorities for the Irish Presidency and the key themes that the Institute considers should guide the Irish Presidency in its work on both direct and indirect tax policy.

The Institute submitted feedback to the Department on 2 December 2025. To help provide this feedback we conducted a short survey at the end of November 2025 to gather views on what should be the tax policy priorities and themes for the Irish Presidency of the Council. The top five EU tax policy priorities for the Irish Presidency selected by members are:

- implementation of any OECD agreement on a "side-by-side" approach related to the Pillar Two EU Minimum Tax Directive,
- recast of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC),
- Tax Omnibus Directive,

- 28th Regime for Innovative Companies and
- Head Office Tax System for SMEs.

The three key themes that should guide the Irish Presidency in its work on direct and indirect tax policy selected by members are:

- reducing administrative burdens for taxpayers,
- simplification of EU rules and
- competitiveness.

The Institute's submission is available on our website, www.taxinstitute.ie.

Institute responds to Commission consultation on recast of DAC

On 10 February the Institute responded to the European Commission's Call for Evidence and Public Consultation on the evaluation of the possible recast of Council Directive 2011/16/EU on administrative cooperation in the field of taxation ("recast of the DAC"). In our position paper we noted that many of the issues we raised in our response to the Commission's Call for Evidence as part of its evaluation of the DAC in 2024 remain relevant when considering the proposed recast of the DAC.

We highlighted that, in line with the Commission Work Programme 2026 and its work toward simplification, we firmly believe that an important focus of the Commission's evaluation of the possible recast of the DAC should be to streamline the reporting requirements to the greatest extent possible to help ease the administrative burden and cost imposed on businesses.

We emphasised that the use of the information collected by tax authorities under the DAC must be carefully considered to evaluate the proportionality of the administrative burden and costs for business that compliance with the DAC entails. A key focus of the Commission's evaluation should be to ensure the most efficient use of the information already collected from businesses rather than introducing new reporting requirements.

As each DAC has distinct objectives, we noted that it is critical each element is considered separately and that any proposed changes are evidence based. We cautioned that, in making changes to the DAC, EU reporting requirements should continue to mirror the reporting requirements under equivalent OECD initiatives.

In considering possible amendments to the DAC, we underlined that a key focus should be to eliminate any unnecessary reporting requirements for taxpayers and intermediaries, given the significant changes to the tax policy landscape since DAC6, in particular, was first proposed, after the implementation of public country-by-country reporting, the Pillar Two Minimum Tax Directive and the Anti-Tax Avoidance Directive.

The Institute's submission is available on our website, www.taxinstitute.ie.

Institute responds to OECD consultation on global mobility of individuals

On 19 December the Institute responded to the OECD public consultation on the global mobility of individuals. In our submission we highlighted that changing working patterns continue to pose challenges from both a personal and a corporate income tax perspective. In general these issues are caused by uncertainty and administrative complexity in applying existing international tax principles to evolving work patterns.

In considering potential solutions to address these challenges, we urged that the key objectives should be to provide certainty and reduce administrative complexity while ensuring that the tax rules do not impede the opportunities that global mobility can afford to businesses and employees, and to growth and investment more generally. We noted that where disputes arise, it is important that effective dispute resolution tools are available, in particular for individuals and SMEs.

The Institute's submission is available on our website, www.taxinstitute.ie.

Policy News

Tax credit for unscripted production sector commenced

The Tánaiste and Minister for Finance, Simon Harris TD, signed Statutory Instrument (SI) 688 of 2025, which commenced the tax credit for expenditure on unscripted production with effect from 23 December 2025, after approval by the European Commission. Finance Act 2024 introduced a new s487A to TCA 1997 to provide for a tax relief for the unscripted production sector; however, the commencement of the credit was subject to State Aid approval from the European Commission.

The Unscripted Production Regulations 2025 also came into operation on 23 December 2025 (SI 671 of 2025) and provide for the certification and administration of the tax credit for expenditure on unscripted production, as set out in the legislation.

The relief will take the form of a corporation tax credit for expenditure incurred on the development of unscripted programmes and will be available at a rate of 20% of certain production expenditure up to a maximum limit of €15m per project.

VAT Modernisation Phase One: large corporates

Revenue has confirmed that VAT-registered businesses whose tax affairs are managed by Large Corporates Division (LCD) **and** are established or have a fixed establishment in Ireland are within the scope of Phase One of Ireland's VAT Modernisation programme. Consequently, these businesses will be required to issue eInvoices and report a subset of relevant data to Revenue for domestic business-to-business (B2B) transactions from **1 November 2028**. Revenue plans to write to this cohort of large corporates to confirm their inclusion in Phase One. Under Revenue's VAT Modernisation implementation plan all businesses in Ireland must be able to receive structured eInvoices from 1 November 2028.

The European VAT in the Digital Age (ViDA) Directive requires eInvoice structures to comply with European Standard EN16931, using structured data formats to enable automatic processing (for example, XML). Unstructured formats, such as PDFs or scanned paper documents, will not meet the VAT compliance requirement.

Revenue outlined its implementation plans for domestic eInvoicing in preparation for ViDA in its report "VAT Modernisation: Implementation of eInvoicing in Ireland", which was published in October 2025.

European Council updates EU tax cooperation agreements with five non-EU countries

In November the European Council approved updated EU tax cooperation and transparency agreements with five non-EU countries: Switzerland, Liechtenstein, Andorra, Monaco and San Marino. The updated agreements reflect new international standards in the field, as developed by the OECD, and expand the automatic exchange of financial account information between the EU and those countries to include electronic money products and digital currencies.

The new protocols also establish a new framework for cooperation between partners on recovery of VAT and on the prevention of tax fraud and tax evasion. In addition, they strengthen due diligence and reporting requirements, allowing tax administrations to act faster and more effectively on the information they receive. The updated agreements entered into force on 1 January 2026.

EU list of non-cooperative jurisdictions for tax purposes updated

On 17 February the Economic and Financial Affairs Council (ECOFIN) approved conclusions on the revision of the EU list of non-cooperative

jurisdictions for tax purposes (Annex I). Turks and Caicos Islands and Viet Nam were added to the list; Fiji, Samoa, and Trinidad and Tobago were removed. With these changes the EU list now consists of 10 jurisdictions: American Samoa, Anguilla, Guam, Palau, Panama, Russia, Turks and Caicos Islands, US Virgin Islands, Vanuatu and Viet Nam.

The Council also approved the state-of-play document (Annex II), which reflects the ongoing EU cooperation with its international partners and the commitments of these countries to reform their legislation to adhere to agreed tax good-governance standards. Nine jurisdictions now make up Annex II, based on commitments that they have made to improve their tax good governance: Belize, the British Virgin Islands, Brunei Darussalam, Eswatini, Greenland, Jordan, Montenegro, Morocco and Türkiye. The EU will closely monitor these commitments to ensure that they are completed.

Joint Declaration published on EU legislative priorities for 2026

In a Joint Declaration on 18 December the European Parliament, the Council of the European Union and the European Commission agreed the EU legislative priorities for 2026. The Declaration notes that the three institutions are committed to reinforcing the EU's competitiveness and resilience and will be guided by the Political Guidelines 2024–2029 and the Strategic Agenda for 2024–2029.

The Declaration highlights legislative proposals that the three institutions commit to pay particular attention to and to prioritise in 2026, which include:

- 28th Regime for Innovative Companies,
- Savings and Investments Union proposals,
- Automotive package,
- Critical Medicines Act,
- European Affordable Housing Plan,
- European Grids package,
- Fair labour mobility package,
- Multiannual Financial Framework sectoral proposals,
- Return Regulation and
- Simplification proposals:
  - Omnibus IV – SMEs and small mid-cap enterprises, and digitalisation,
  - Omnibus V – Defence readiness,
  - Omnibus VI – Chemical products and
  - Omnibus on digital (AI), cybersecurity and data.

The Presidents of the European Parliament, the Council of the European Union and the European Commission will ensure the timely and effective implementation of the Joint Declaration.

New customs duty rules for small parcels approved

In February the European Council formally approved new customs duty rules for items contained in small parcels entering the EU, largely via e-commerce. The agreement abolishes the threshold-based customs duty relief for parcels valued at under €150 entering the EU. Customs tariffs are expected to start applying to all goods entering the EU in 2028, once the EU customs data hub, which is under discussion as part of a broader fundamental reform of the customs framework, is operational.

As an interim measure, from 1 July 2026 to 1 July 2028, EU Member States have agreed to introduce a flat-rate customs duty of €3 on each different category of item, identified by their tariff sub-headings, contained in a parcel. Once the new EU customs data hub is operational, this interim duty will be replaced by normal customs tariffs.

Commission Call for Evidence on Omnibus on Taxation

The European Commission has launched a Call for Evidence for the forthcoming Omnibus on Taxation, which is expected to issue in Q2 2026. The objective of the initiative is to simplify the

EU legal direct taxation framework and support the enhancement of competitiveness in the internal market. This will involve:

- reducing unnecessary reporting and compliance burdens,
- eliminating outdated and overlapping tax rules,
- simplifying tax legislation with the objective to improve competitiveness in the internal market,
- clarifying concepts in tax legislation and
- streamlining and improving the application of tax rules, procedures and reporting requirements.

The Call for Evidence notes that the proposed policy options may involve legislative amendments to the following legal instruments:

- the controlled foreign company rule under the Anti-Tax Avoidance Directive (ATAD) to eliminate overlaps with Pillar Two and rectify the fragmentation in the implementation of the rule by Member States;
- the interest limitation rule under the ATAD to address the procyclical effect of the rule and inflation effects, and to consider the concerns of sectors that usually have high levels of legitimate leverage, as well as the needs of SMEs; consideration will also be given to streamlining the rules;
- the scope of the Parent–Subsidiary Directive, the Interest and Royalty Directive and the Tax Merger Directive to improve the efficiency of these Directives and, by extension, of the internal market;
- the procedural rules to obtain the benefits of the Parent–Subsidiary Directive and the Interest and Royalty Directive with the aim of reducing the administrative burden and compliance costs for businesses and consequently enhancing the overall functioning of the Directives; and
- very limited and targeted amendments to the Tax Dispute Resolution Mechanisms Directive, in particular the provisions regarding the admission phase, to remove ambiguities, ensure its consistent application across Member States and facilitate its use for taxpayers and tax administrations alike.

The deadline for responding to the Call for Evidence is 30 March 2026.

HMRC revises interest rates for late payment and repayment of tax

On 18 December the Bank of England Monetary Policy Committee announced a decrease to the Bank of England base rate to 3.75%. Consequently, HMRC interest rates for the late payment and repayment across the main taxes will decrease to 7.75% on late payments and 2.75% on repayments. The changes came into effect on 29 December 2025 for quarterly instalment payments and 9 January 2026 for non-quarterly instalment payments.

Tax agents to register for agent services account to interact with HMRC

From **18 May 2026** HMRC will introduce an online registration system for agent services accounts, replacing the current way to register. HMRC guidance confirms that where someone interacts with HMRC about someone else's tax affairs and gets paid for it, HMRC considers that person to be a tax adviser. Tax advisers who interact with HMRC on behalf of clients will need to register for an agent services account and meet certain eligibility conditions, including tax advisers that operate outside the UK. HMRC published guidance in February about who needs to register and what they need to do.

OECD updates Model Tax Convention

The OECD released an update to the OECD Model Tax Convention on Income and on Capital in November 2025, providing new and detailed guidance on short-term cross-border remote work and on the taxation of income from natural resources extraction.

The update clarifies when remote work across borders, such as from a home office, creates

a taxable presence for business and provides clear guidance on how cross-border home office arrangements are treated under tax treaties, providing certainty for employers and employees.

The update also introduces a new alternative tax treaty provision setting out how income from activities connected with the extraction of natural resources such as oil, gas and minerals should be taxed.

The 2025 Update to the OECD Model Tax Convention on Income and on Capital will be reflected in revised condensed and full editions of the OECD Model Tax Convention to be released in 2026.

Intergovernmental negotiations continue on UN International Tax Cooperation

The Intergovernmental Negotiating Committee (INC) on the United Nations Framework Convention on International Tax Cooperation held its Third Session in Nairobi, Kenya, in November 2025. Member States and stakeholders were invited to contribute input on the Co-Lead's documents produced during inter-sessional work of the workstreams and at the Third Session of the Committee.

The Fourth Session took place in New York in February, in addition to an organisational session of the INC. The Fourth Session marked the transition between scoping to technical drafting for the following workstreams:

- Workstream I – Framework Convention: Co-Lead's Draft Framework Convention Template,
- Workstream II – Taxation of Services: Co-Lead's Draft Options Paper and
- Workstream III – Dispute prevention and resolution: Co-Leads' Concept Note.

The Fifth Session is due to take place in New York from 3 to 13 August 2026.

Recent Revenue eBriefs

Lorraine Sheegar
Tax Manager – Tax Policy and Representations, Irish Tax Institute

Revenue eBriefs Issued from 1 November 2025 to 31 January 2026

No. 206 Chapter 9 – Key Employee Engagement Programme (KEEP)

Revenue has updated the Share Schemes Manual "Chapter 9 – Key Employee Engagement Programme (KEEP)" to confirm that the limits pertaining to a "qualifying share option" must be satisfied at the date of the grant of a share option.

One of the conditions that must be satisfied for a share option to be treated as a qualifying share option for KEEP is that, with effect from 1 January 2019, the total market value of the share options that may be granted to any one employee/director must not exceed the following thresholds:

- €100,000 in any one year of assessment,
- €300,000 in all years of assessment or
- 100% of the qualifying individual's annual emoluments in the year of assessment in which the qualifying share option is granted.

The manual clarifies that, on each date of grant a company should consider whether the threshold requirements in respect of any year of assessment and all years of assessment have been met. The manual confirms that the market value of shares at the date of grant remains the market value for the purposes of the application of these thresholds. When evaluating whether the thresholds have been adhered to, fluctuations in share value after the date of grant should not be taken into account. Paragraphs 9.3.1 and 9.3.2 and examples 2, 3, 4 and 11 have been updated accordingly.

No. 207 Income Tax Relief for Health Insurance Covering Medical and/or Dental Benefits

The manual "Income Tax Relief for Health Insurance Covering Medical and/or Dental Benefits" has been renamed from "Income Tax Relief for Insurance Against Expenses of Illness (Medical/Dental Insurance) Including Age-related Relief for Health Insurance Premiums".

The manual includes guidance on s470 TCA 1997, which provides for income tax relief at source (TRS) on medical insurance premiums. Relief is provided at 20% (i.e. the standard rate of tax) of the "relievable amount", with the relievable amount capped at the lesser of the premium paid and €1,000 per adult (i.e. the maximum tax relief available is €200).

The manual has been updated throughout to advise that the manner in which TRS is granted on health insurance policies providing medical cover differs before and after 1 January 2026.

Before 1 January 2026 a rate less than the standard rate of tax may have applied to health insurance policies providing medical cover, depending on what medical cover the health insurance policy provided. In respect of TRS up to 31 December 2025 the manual confirms that where a health insurance policy covers health expenses both eligible for and not eligible for income tax relief, a rate of tax relief less than the standard rate may apply, i.e. a "blended rate".

With effect from 1 January 2026 Revenue accepts that the standard rate of tax will

apply to all health insurance policies providing medical cover, applied to the lesser of the premium paid and the applicable cap. This administrative practice seeks to recognise that most health insurance premiums providing medical cover are in excess of the current caps and that the premium available for tax relief is, in most cases, equal to the cap. This administrative practice is subject to change based on a change in health insurance premium trends, the cap amount and other factors.

The following changes have been made to the manual:

- Paragraph 2.1, "Income Tax Relief at Source (TRS)", previously paragraph 2, reflects the way in which TRS is granted on health insurance policies providing medical cover differs before and after 1 January 2026.
- A new paragraph 2.2 provides guidance on TRS on health insurance policies providing medical cover from 1 January 2026.
- A new paragraph 2.3 provides guidance on TRS on health insurance policies providing dental cover from 1 January 2026.
- A new paragraph 2.4 provides guidance on TRS on all health insurance policies up to 31 December 2025.
- The Revenue contact details in respect of claims by authorised insurers in paragraph 4, "Claims by Authorised Insurers", has been updated.
- Paragraph 6, which dealt with the tax treatment applicable to refunds of healthcare insurance premiums made owing to Covid-19 circumstances, has been removed as it is no longer relevant.

No. 208 PAYE Settlement Agreements

Revenue has updated the example in section 3 of the "PAYE Settlement Agreements" manual to include the PRSI rates that are effective from 1 October 2025. The manual has also been updated to include a new section 4, "Repayment claims in respect of prior years", dealing with overpaid amounts of tax under a PAYE settlement agreement.

No. 209 Taxation of Community Midwives Engaged by the Health Service Executive

Revenue updated the manual "Taxation of Community Midwives engaged by the Health Service Executive" to include the following new sections:

- Section 2, "Taxation – employed or self-employed?", has been inserted to confirm that the five-step framework set out in the Supreme Court judgment in *Revenue Commissioners v Karshan (Midlands) Ltd. t/a Domino's Pizza* [2023] IESC 24 should be used to establish the employment status of these individuals for tax purposes.
- Section 3, "Taxation – employees", has been inserted to provide guidance on the taxation of community midwives if they are determined to be employees of the Health Service Executive for tax purposes.
- Section 4, "Taxation – self-employed", has been inserted to provide guidance on the taxation of community midwives if they are determined to be self-employed for tax purposes.

No. 210 Relevant Contracts Tax for Principal Contractors

The manual "Relevant Contracts Tax for Principal Contractors" has been updated in section 4, "Contract Notifications", to include links to the manual "Revenue Guidelines for Determining Employment Status for Taxation Purposes", which outlines that the five-step framework set out in the Supreme Court judgment in *Revenue Commissioners v Karshan (Midlands) Ltd. t/a Domino's Pizza* [2023] IESC 24 should be used to establish the employment status of sub-contractors.

The manual also includes a link to the joint "Code of Practice on Determining Employment Status" published by an interdepartmental group comprising the Department of Social Protection, Revenue and the Workplace Relations Commission.

No. 211 Tax and Duty Manual on the Control and Examination of Baggage

The "Manual on the Control and Examination of Baggage" has been amended at Appendix 4a, "Goods bought duty/tax-paid in other EU Member States", to highlight the rule change for tobacco products brought into the State by a private individual for own use with duty and tax paid in another Member State. Some text changes have also been made to the manual to align better with existing legislation.

From 9 December 2025 where a person brings in a quantity of tobacco product that exceeds the quantity set out in the appendix, this will be regarded as evidence that the tobacco products are not for the private individual's own use, and the full quantity will be seized. The person may also be prosecuted. This change follows the signing of the Control of Excisable Products (Amendment) Regulations 2025.

No. 212 Requests by Credit Unions for Certificates of Residence

The manual "Certification of Tax Residence for Individuals, Partnerships, Companies and Funds" has been updated to provide guidance on applications by credit unions for certificates of residence.

No. 213 Option to Acquire Shares in Lieu of Distributions (Scrip Dividends)

Revenue updated the manual "Option to Acquire Shares in Lieu of Distributions (Scrip Dividends)" to remove material that is no longer relevant and to provide additional guidance and examples.

No. 214 Guide to Preparing VIES Returns on the Return Preparation Facility

Revenue updated "The VIES Traders Manual Version 2" to include a link to the guide to preparing VIES returns on the Return Preparation Facility (RPF) and the VIES CSV template for the RPF. The RPF will replace the ROS Offline application for preparing VIES returns.

No. 215 Electronic Tax Clearance (eTC)

The manual "Collector-General Electronic Tax Clearance (eTC) Guidelines & Procedures" is amended at Appendix 1, "Legislation governing requirement for tax clearance certificate". The "Table of Licences and certain schemes requiring a tax clearance certificate" in the appendix is amended for the following:

- addition of the "Producer's Retail On-Licence and Producer's Retail Off-Licence" under s1(8) Intoxicating Liquor (Breweries and Distilleries) Act 2018; and
- correction of the licence title "Hydrocarbon Oil and LPG Licences" to "Auto-Fuel Trader's Licences (AFTL)" and "Marked Fuel Trader's Licences (MFTL)" as per s101 Finance Act 1999.

No. 216 Territorial Scope of VAT Groups

Revenue published new and updated manuals including important information relating to Revenue's interpretation of the territorial scope of VAT grouping in Ireland.

The manual "Territorial Scope of VAT Groups" has been created to set out the territorial scope of VAT groups as provided for in s15 of the Value-Added Tax Consolidation Act 2010 (VATCA 2010).

The manual "Transitional VAT Groups" has been updated to confirm that this guidance remains in place until 31 December 2026 for VAT groups that are transitioning to the position set out in the manual "Territorial Scope of VAT Groups".

The "VAT Groups" manual has been created to provide guidance on VAT groups in s15 VATCA 2010. It reflects the revised position on the territorial scope of VAT groups as set out in the manual "Territorial Scope of VAT Groups".

The position set out in the manuals is that VAT grouping is available only to a head office or branch established in Ireland. Non-Irish head offices or branches of VAT group members are no longer considered part of the VAT group. The new guidance applies immediately to VAT

groups established from the date of publication of the manuals. Existing VAT groups can avail of a transitional period up to 31 December 2026.

No. 217 Tax Treatment of Debt Issuance Costs (Including Interest Cap Fees)

The manual "Tax Treatment of Debt Issuance Costs (Including Interest Cap Fees)" has been amended to incorporate guidance on the tax treatment of interest cap fees, previously contained in the manual "The Tax Treatment of Interest Cap Fees".

No. 218 Rules of Origin in the Pan-Euro-Mediterranean Zone

Revenue has updated the Customs Manual "Appendix 1 to the Customs Manual on Preferential Origin: Annex I – The Rules of Origin for the Agreement Countries of the Pan-Euro-Mediterranean Zone". The manual confirms that the preferential-origin rules of the Pan-Euro-Mediterranean (PEM) Zone Convention applied in parallel with the preferential-origin rules of the revised PEM Convention for a transition period of one year from 1 January 2025 to 31 December 2025. However, with effect from 1 January 2026, the preferential-origin rules of the revised PEM Convention are the only ones that apply.

No. 219 Share Schemes Chapter 8 – Restricted Shares

The Share Schemes Manual "Chapter 8 – Restricted Shares" has been updated as follows:

- Paragraph 1 has been renamed "Introduction" (previously named "What are Restricted Shares").
- Paragraph 8.2, "Meaning of Restricted Shares", provides clarification that:
  - the conditionality of restricted shares applies both at the time of acquisition and during the whole length of the specified period and
  - Revenue approval is required in respect of restricted shares to be held in any other arrangement that is not a trust.
- Paragraph 8.6, "Disposal of Shares", provides clarity that a disposal or transfer of shares before the end of the specified period in any circumstances not specifically covered in s128D(3)(c) TCA 1997 may result in the shares no longer being restricted shares for the purpose of s128D TCA 1997.
- Paragraph 8.9 has been deleted and its content inserted as paragraph 8.4.1, "Shares Acquired Under Revenue Approved Schemes".

No. 220 The Revenue Technical Service

Revenue has updated the manual "The Revenue Technical Service" to reflect several changes introduced to improve communications to taxpayers/agents who submit queries to RTS and internal communications within Revenue and to provide more clarity in relation to the service, outlined below. Excise duties are now included in the RTS Framework, and this confirmation has been added to the manual. Contact details have also been updated.

The manual clarifies that all non-Large Case RTS queries (i.e. relating to taxpayers dealt with by Business, Medium Enterprises and Personal Divisions) are managed on a national basis by a dedicated team consisting of a centralised Queries Management Team and full-time caseworkers, as well as rotational and part-time caseworkers. This structure is designed to enhance the overall technical capacity countrywide and lead to more efficient turnaround times.

Complex and technical queries for cases managed by Revenue's Large Corporates Division and High Wealth and Financial Services Division are dealt with in the first instance by the branch in those divisions with responsibility for managing their case ("Overview" paragraph).

More information has been included in the manual to outline that opinions/confirmations will not be given where Revenue is of the view that the proposed transaction is part of a scheme or arrangement the purpose of

which or one of the purposes of which is the avoidance of tax/duty, including facilitating the avoidance of tax/duty by a third party. Where Revenue is of the view that tax avoidance may be involved, any communication from Revenue will be confined to a statement "the opinion/confirmation sought cannot be given as the transaction may involve, directly or indirectly, or may facilitate, directly or indirectly, tax avoidance".

Where Revenue provides an opinion/confirmation on the tax/duty consequences of a proposed course of action it will be subject to the transaction not involving, directly or indirectly, or facilitating, directly or indirectly, tax avoidance (paragraph 4).

More details have been included on the correct MyEnquiries pathway to use when submitting queries to RTS (paragraph 5.5).

The manual notes that RTS endeavours to reply to complex technical service queries in a timely fashion, given the complexity of the issues. Revenue has processes and procedures in place to ensure governance and oversight of response times.

In addition, Revenue impresses on caseworkers the importance of regular communication where delays are experienced. An indicated timeline for a response will be provided after an initial review of the query. Where delays are experienced owing to the complexity of the query, the RTS will keep the querist updated on progress (paragraph 6).

No. 221 Share Options – Updates to Share Scheme Manual

The Share Schemes Manual "Chapter 3 – Unapproved Share Options" has been updated as follows:

- The manual confirms the position that it is the employer who is responsible for submitting the tax arising on the date of grant of a long option.
- Clarification has been provided on how to provide credit through payroll on the exercise of a long option for any income tax paid on date of grant.
- Clarification has been added on the amount of a gain to be reported on the Form RSS1 in situations where an individual is taxable in Ireland on only a portion of the share option gain under a double taxation agreement.
- References to indexation on disposal of shares acquired before 2003 have been removed from the manual.

No. 222 Hepatitis C Compensation Payments

The manual "Hepatitis C – Compensation Payments", which sets out the taxation treatment of compensation payments made to people who have been diagnosed positive for Hepatitis C or HIV as a result of the use of infected blood products, has been updated to include a new section 2, "Legislation", and a new section 3, "Definitions", to provide the relevant definitions for the purpose of the exemption.

No. 223 Guidance on the Anti-hybrid Rules

Revenue has updated the manual "Guidance on the Anti-hybrid Rules" to reflect changes to the application of the associated-enterprises test in relation to partnerships and to confirm that partners in a partnership will always be considered to be "acting together" with respect to the voting rights of shares held through a partnership.

The updates have been made to section 3.3.2, "Having regard to other matters", and section 7.3, "Application of the 'associated enterprises' test to Irish partnerships".

No. 224 Income Tax Treatment of Married Persons and Civil Partners

The manual "Income Tax Treatment of Married Persons and Civil Partners" has been updated as follows:

- To reflect the increase in the value of the standard rate tax band and tax credits, as provided for by Finance Act 2024, effective from 1 January 2025. Examples have been updated throughout.
- Paragraph 1.1, "Summary of Basis of Assessment for Married Couples and Civil

Partners", has been inserted. This provides a summary, in tabular form, of the three bases of assessment available to married couples and civil partners.

- Paragraph 4.2, "Joint assessment", provides additional guidance on how joint assessment applies and the process surrounding the nomination of the assessable spouse or civil partner.
- Paragraph 5.2 has been updated to include additional guidance on cases where both spouses or civil partners are non-resident but one spouse or civil partner has income chargeable to tax in the State.
- A new example has been included in paragraph 7.1.1, "Joint assessment", which details the tax treatment of a married couple who separate.

No. 225 Chapter 19 Pension Manual – Small Self-administered Pension Schemes

Revenue has updated Chapter 19 of the Pensions Manual, "Small Self-administered Pension Scheme", in paragraph 4, "Investment of funds in small, self-administered schemes", to update the reference to Pensions Branch, High Wealth and Financial Services Division, the reference to "tangible moveable assets" and the outline of the "deemed distribution" provisions.

No. 226 Tax and Duty Manual Part 04-05-05 – Guidance for Trading Lessors of Certain Short-Life Plant and Machinery Assets

The manual "Trading Lessors of Certain Short-Life Plant and Machinery" has been updated to reflect the transfer of general content relating to finance and operating leases to the manual "Leasing of Machinery or Plant – General Principles of Taxation". In addition, obsolete material relating to the taxation of specified assets has been removed.

No. 227 Guidance on the Interest Limitation Rule

Revenue has amended the manual "Guidance on the Interest Limitation Rule" to update the guidance on the association tests in Part 35D TCA 1997 with respect to partnerships, drawing from the guidance in the manual "Taxation of Partnerships" and in line with the recently updated manual "Guidance on the Anti-hybrid Rules".

Appendix 3 has been added to provide further clarity on the population of the Form CT1 regarding the interest limitation rule.

No. 228 Deposit Interest – Whether a Trading Receipt

The manual "Deposit Interest – Whether a Trading Receipt" has been updated, in section 3.2, to provide additional guidance on whether deposit interest may be regarded as a trading receipt because it is an integral part of the trade to employ capital to generate such income.

No. 229 Department of Finance and Revenue launch eWHT public consultation

Revenue and the Department of Finance launched a joint public consultation survey on electronic withholding tax (eWHT). The consultation process will focus on the proposed modernisation of professional services withholding tax and relevant contracts tax, the expansion of withholding tax to the platform economy and the introduction of personalised deduction rates to a new, modernised and expanded withholding tax regime for self-employed workers. The deadline to respond to the eWHT survey was 5pm on Friday, 30 January 2026.

No. 230 Review of Opinions or Confirmations

Revenue updated the manual "Review of Opinions or Confirmations" to provide guidance to taxpayers who wish to continue to rely on an opinion or confirmation issued by Revenue in the period between 1 January and 31 December 2020, in respect of a transaction, period or part of a period, on or after 1 January 2026. A taxpayer who wishes to continue to rely on such an opinion or confirmation is required to make an application for its renewal or extension on or before 31 March 2026.

The manual has been updated as follows:

- The individual sections dealing with the review of opinions/confirmations issued by Revenue between 2012 and 2019 have been summarised and are now outlined in the table in section 2.3.
- Appendix B, "Number of applications received for the renewal or extension of opinions/confirmations issued before 1 January 2012", has been removed.

No. 231 VAT Deductibility for Insurance & Reinsurance

Revenue published a new manual, "VAT Deductibility for Insurance & Reinsurance", providing guidance on the VAT deductibility rules that apply to supplies of insurance and reinsurance. The manual "VAT Deductibility for Life Insurance Companies" has been marked as no longer relevant, and the content has been incorporated in this new manual.

No. 232 VAT Treatment of Extended Warranties

Revenue published a new manual, "VAT Treatment of Extended Warranties", providing guidance on the VAT treatment of extended warranties and the circumstances where an extended warranty should be treated as insurance for VAT purposes and not as a manufacturer's warranty.

No. 233 Co-operative Compliance Framework – Large Corporates Division and High Wealth & Financial Services Division

The manual "Co-operative Compliance Framework – Large Corporates Division and High Wealth & Financial Services Division" has been updated in section 3.2, "Joining CCF", to reflect the change in group turnover for assignment to Revenue's Large Corporates Division (LCD) and High Wealth & Financial Services Division (HW&FSD). The turnover threshold has increased to €350m (from €190m), and the group tax threshold of €18m has been removed.

As was the case previously, certain sector-specific cases continue to be managed by LCD and HW&FSD irrespective of the group turnover figure. In addition, section 10.3, "Where a CCF Group is Transferred out of LCD/HW&FSD", has been updated to include the criteria for taxpayers to be managed by LCD or HW&FSD, as appropriate.

No. 234 Material Interests in Offshore Funds

Revenue has updated the manual "Offshore Funds: Taxation of Income and Gains from Certain Offshore States" to clarify that a reference to an offshore fund relates only to a foreign company, unit trust scheme or co-ownership arrangement in which a person has a "material interest". The manual has also been updated to reflect the term "reasonably expected" as per s743(2) TCA 1997 and to include contact details in respect of applications to Revenue for certification as a distributing offshore fund.

No. 235 Stamp Duty – Market Capitalisation Exemption

Finance Act 2025 provides for the introduction of an exemption from stamp duty on acquisitions of stocks and marketable securities where:

- the securities are admitted to trading on a regulated market or a multilateral trading facility in the EU, or an equivalent third-country market,
- the market capitalisation of the entity that issued the securities was below €1bn on 1 December in the previous year and
- a valid notification of the applicable market capitalisation was made to Revenue within a specified timeframe.

Where the securities were admitted to trading after 1 December, the exemption may still apply if the expected market capitalisation of the issuer of the securities on admission to the relevant market was under €1bn.

After the enactment of Finance Act 2025, the exemption came into operation on 1 January 2026 and will apply until 31 December 2030.

The availability of the exemption is contingent on a valid notification of the applicable

market capitalisation having been made to Revenue within a specified timeframe. An overview of the proposed exemption has been published on Revenue's Electronic Share Trading (CREST) webpage.

The webpage provides an overview of the conditions required for the exemption to apply and details of how to make a notification to Revenue, including links to notification forms.

No. 236 Guidance for Private Individuals Bringing Tobacco Products from Another EU Member State

The manual "Tobacco Products Brought from Another EU Member State by a Private Individual for His or Her Own Use" has been updated to confirm that, from 9 December 2025, where a person brings in a quantity of tobacco product that exceeds the quantity set out in section 4.2, "Quantity of tobacco products", this will be regarded as evidence that the tobacco products are not for the private individual's own use, and the full amount will be seized. The person may also be prosecuted.

No. 237 Residential Premises Rental Income Relief

Revenue has updated the manual "Residential Premises Rental Income Relief" in paragraph 1.2, "Other Eligibility Criteria", to state that an individual who was tax compliant on 31 December 2024 can claim the residential premises rental income relief tax credit for that year provided they hold a tax clearance certificate when filing their income tax return. All of the other conditions for claiming the relief must also be met.

No. 238 Tax Exemption and Marginal Relief

The manual "Tax Exemption and Marginal Relief" has been updated to clarify that the age exemption is available where total income does not exceed the relevant exemption limit. Paragraph 2 outlines how the age exemption is granted and clarifies that the four-year rule applies in cases where a taxpayer believes that the exemption was due and not applied. A new example has been included in paragraph 3 to demonstrate a scenario where marginal relief is not beneficial to a taxpayer. Other examples throughout the manual have been updated to reflect the standard rate tax bands and personal tax credits in place for the 2025 tax year.

No. 239 Revenue Guidelines for Determining Employment Status for Taxation Purposes

The manual "Revenue Guidelines for Determining Employment Status for Taxation Purposes" has been updated in section 1 to highlight the publication of the revised "Code of Practice on Determining Employment Status". This document was updated in November 2024 by an interdepartmental group comprising Revenue, the Department of Social Protection and the Workplace Relations Commission. In addition, minor updates have been made throughout the manual to reflect publication of the EU Platform Work Directive.

No. 240 VAT Treatment of Establishing and Managing a Pension Scheme

Revenue has published a new manual, "VAT Treatment of Establishing and Managing a Pension Scheme", providing guidance on the VAT treatment of establishing and managing a pension scheme. Previous information contained in the manual "Employer's Entitlement to Deductibility of VAT Incurred in the Setting Up and Management of a Pension Fund for His or Her Employees" has been incorporated in this new manual.

No. 241 VAT Treatment of the Management of Pension Schemes

Revenue has published a new manual, "VAT Treatment of the Management of Pension Schemes", providing guidance on the VAT treatment of the management of defined contribution pension schemes and defined benefit pension schemes. Accordingly, the manuals "VAT Treatment of the Management of Defined Benefit Pension Schemes" and "VAT Treatment of the Management of a Defined Contribution Occupational Pension Scheme" have been marked as no longer relevant.

No. 242 Domestic Employers and the Taxation of Domestic Employees

The manual "Domestic Employers and the Taxation of Domestic Employees" has been updated in section 1, "Details of the Domestic Employment Scheme", to remove references to pre-2018 requirements and in section 2, "Employer PRSI", to include the contact details for the Special Collection Section of the Department of Social Protection (DSP) in relation to the PRSI obligations of domestic employers.

In addition, Appendix 1, "Domestic Employer Scheme Registration Form", and Appendix 2, "Domestic Employer – PRSI Calculation and Payment at End-of-Year", have been removed from the manual as this information is available from the DSP.

No. 243 Accounting for Mineral Oil Tax, Tax and Duty Manual

Revenue has updated the "Accounting for Mineral Oil Tax" manual as follows:

- A new paragraph 1.5, "Right of Appeal to Tax Appeals Commission (TAC)", has been inserted to outline all matters related to excise that may be appealed. This replaces paragraph 15.7 in the previous edition.
- Paragraph 5.1, "Agent", has been updated to include the e-linking requirement for a tax agent to be authorised by a taxpayer.
- Section 6, "Registration for MOT", is revised to reflect current processes.
- Section 7, "Security (Bond) Requirements", is revised to reflect current processes.
- Other minor miscellaneous corrections have been made to the manual.

No. 244 Update to Tax and Duty Manual Part 04A-01-01A – Guidance on Pillar Two – Registration

Revenue's manual "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Administration" has been updated in paragraph 2.2 to confirm that, for in-scope entities whose first fiscal year ends in 2024, the Pillar Two tax registration deadline is extended from 31 December 2025 to 28 February 2026.

Revenue also provided the following key updates regarding inactive/dormant entities, dissolved entities and entities with no active tax registration:

- A new paragraph is inserted at 2.1.1 outlining a new Revenue administrative practice for inactive or dormant entities that meet certain conditions.
- A new paragraph is inserted at 2.1.2 setting out Revenue's administrative practice in circumstances where there is a dissolved entity in the multinational enterprise (MNE) group.
- A new paragraph is inserted at 2.1.3 providing guidance on the registration process for entities that do not have an active tax registration.
- Paragraph 2.5.1 is updated to clarify the ROS permissions required by users using a ROS sub-user certificate.
- Paragraph 4.1.4 has been removed as the "amend fiscal year" function is no longer available.
- Appendix E is updated to include guidance on approving agent link requests within 30 days and requirements for an MNE group registering using its own TAIN DigiCert.

No. 245 Chapter 13 Pension Manual

Revenue has updated Chapter 13 of the Pensions Manual, "Transfer Payments", in paragraphs 1 and 2 to clarify the treatment of the transfer of benefits from an occupational pension scheme to a personal retirement savings account, to another occupational pension scheme or to an approved buy-out bond.

No. 246 Updates to Selected Excise Duty Related Tax and Duty Manuals

Revenue has updated three Excise Duty Manuals.

The manual "Movement of Excisable Products" has been updated in section 11 to reflect the impact of the Control of Excisable Products

(Amendment) Regulations 2025 (SI 531 of 2025) on the arrangements for bringing tax-paid tobacco products into the State from another Member State by a private individual for own use.

The title of the manual "Sugar Sweetened Drinks Tax (SSDT)" has been updated. The manual has also been amended in sections 8.7, "Penalties and Interest", 8.8, "Assessments", and 8.9, "Appeal Provisions", to contain updated, new and consolidated material.

The title of the manual "Gaming and Amusement Licences" has been updated. The manual has also been amended to include a new section 3.3, "Referral and Case Select", to outline the principal provisions of the Gambling Regulation Act 2024.

In addition, various minor corrections and rewordings have been made to the manuals.

No. 247 PRSI – Maintenance Cases

Revenue has moved the content from the manual "PRSI – Maintenance Cases" to two other manuals.

The manual "Income Tax Treatment of Married Persons and Civil Partners" has been updated to include a new section 7.2.1, "Return of PRSI Contributions – maintenance payments", to incorporate guidance on the return of PRSI contributions in respect of payments made under a maintenance arrangement by married persons and civil partners.

The manual "Tax Treatment of Former Cohabitants: Payments Arising Under a Maintenance Arrangement or Asset Transfers on Cessation of the Relationship" has been updated to include a new section 4, "Return of PRSI Contributions – maintenance payments", to incorporate guidance on the return of PRSI contributions in respect of payments made under a maintenance arrangement by qualified cohabitants.

No. 248 Restructure of TDM Part 16-00-02 Relief for Investment in Corporate Trades

Revenue has redeveloped its manual "Part 16-00-02 Relief for Investment in Corporate Trades", which contains guidance on the Employment Investment Incentive (EII), Start-up Capital Incentive (SCI) and Start-up Relief for Entrepreneurs (SURE), into a series of separate manuals covering the EII, SCI and SURE. The guidance on the Part 16 reliefs is now contained in four new manuals, described below.

The manual "Part 16-00-02A Reliefs for Investment in Corporate Trades" provides a brief overview of the Part 16 reliefs and a pathway to the relevant manual depending on whether:

- the company is seeking to raise risk finance under the EII or SCI,
- an individual investor is seeking to claim relief on investments made under the EII or SCI or
- an entrepreneur is seeking to avail of income tax relief under the SURE.

The manual "Part 16-00-03 Relief for Investment in Corporate Trades: Employment Investment Incentive and Start-up Capital Incentive – Qualifying Company Perspective" provides guidance for companies that wish to raise risk finance using the EII or SCI.

The manual "Part 16-00-04 Relief for Investment in Corporate Trades: Employment Investment Incentive and Start-up Capital Incentive – Qualifying Investor Perspective" provides guidance for investors who wish to claim relief on investments made under the EII or SCI.

The manual "Part 16-00-05 Relief for Investment in Corporate Trades: Start-up relief for Entrepreneurs" provides guidance in relation to income tax relief available under the SURE.

The original "Part 16-00-02 Relief for Investment in Corporate Trades" manual can be accessed on Revenue's Part 16 webpage by selecting "show older versions". The original version provides guidance on the different limits, conditions and requirements that applied over time.

No. 249 Charitable Tax Exemption

Paragraph 3 of the "Charitable Tax Exemption" manual reflects the Finance Act 2025 amendment that provides that the charitable tax exemption applies from the date an application for the exemption is approved by Revenue. Further details on tax exemptions and reliefs for charities are also provided.

No. 250 VAT Treatment of the Supply and Construction of Qualifying Apartments and Apartment Blocks

Revenue has published new VAT manuals to provide guidance on the VAT treatment of the supply and construction of qualifying apartments and apartment blocks to reflect Finance Act 2025 changes.

Finance Act 2025 provides for a temporary 9% rate of VAT in respect of the supply and construction of apartments and apartment blocks, as part of a social policy. The temporary 9% rate of VAT on the supply of apartments came into effect on Budget night via Financial Resolution.

A new manual, "Supply and Construction of Qualifying Apartments and Apartment Blocks", outlines the VAT treatment that applies to the supply and construction of qualifying apartments and apartment blocks from 26 November 2025 to 31 December 2030.

The manual notes that to support the supply of housing as part of social policy in Ireland, legislative change was introduced as part of Budget 2026 to reduce VAT on the supply and construction of apartments and apartment blocks. With effect from 26 November 2025, the VAT rate applicable to the supply and construction of qualifying apartments and apartment blocks is the second reduced rate, i.e. 9%.

A new manual, "VAT Rate for Qualifying Apartments (8 October 2025 to 25 November 2025)", outlines the VAT treatment of supplies of qualifying residential apartments from 8 October 2025 to 25 November 2025.

Revenue also amended the following VAT manuals to reflect Finance Act 2025 amendments:

- "VAT Treatment of the Hire of a Room" has been updated to reflect an amendment in Finance Act 2025 to ensure that the hire of a room by all providers is liable to VAT at the standard rate. The manual "Removal of Waiver of Exemption" has been updated following the cancellation of all waivers of exemption.
- "Management of Special Investment Funds" has been updated to include the Automatic Enrolment Retirement Savings System.
- "Treatment of Construction Services" has been updated to reflect the Finance Act 2025 amendment applying the second reduced rate, with effect from 26 November 2025 to 31 December 2030, to services relating to the construction, until completed, of qualifying apartments and qualifying apartment blocks.
- "Flat-Rate Scheme for Farmers" reflects the reduction of the flat-rate addition (effective from 1 January 2026) and includes information relevant to broiler chicken services.
- "VAT Treatment of Broiler Chicken Services" reflects the VAT registration requirements for broiler chicken services, effective from 1 January 2026.
- "VAT Deductibility for Qualifying Conference Accommodation" has been updated to reference the manual "VAT Treatment of the Hire of a Room" and to improve clarity.

No. 251 Stamp Duty – Market Cap Exemption

Revenue published a new Stamp Duty Manual, "Part 7: Section 86B – Market Capitalisation", reflecting the introduction of a new s86B to the Stamp Duties Consolidation Act 1999 by Finance Act 2025. This provides for an exemption from stamp duty to apply to certain transfers of stocks and marketable securities.

A transfer of relevant securities will qualify for the exemption if:

- at the date of execution of the transfer the relevant securities are admitted to trading to a regulated market, a multilateral trading

facility (MTF) or a market outside the EU that is equivalent to a regulated market or MTF;

- the closing market capitalisation of the entity that issued the relevant securities was less than €1bn as of 1 December in the previous year; and
- the transfer is executed during an exemption period, the start and end dates of which are determined by when a valid notification in respect of the market capitalisation was made to Revenue.

Where the relevant securities were admitted to trading after 1 December of the previous year, the exemption may still apply if the expected market capitalisation of the issuer on admission to trading of the relevant securities was under €1bn.

The exemption will apply to a transfer of relevant securities executed between 1 January 2026 and 31 December 2030 where the qualifying conditions are met.

No. 252 Stamp Duty Manual Updated

Revenue has updated several Stamp Duty Manuals to reflect Finance Act 2025 amendments to the Stamp Duties Consolidation Act 1999 (SDCA 1999).

The manual "Part 5: Provisions Applicable to Particular Instruments" reflects the amendments to s31A, s31B and s50A SDCA 1999, which provide that the chargeable instrument referred to in those sections (i.e. the contract or agreement for sale (s31A), licence agreement (s31B) or agreement for a lease (s50A)) will be deemed to be executed on the date on which the instrument becomes chargeable with stamp duty under those sections (i.e. the date on which the 25% payment threshold is reached).

The manual "Part 5: Section 31E – Stamp Duty on Certain Acquisitions of Residential Property" reflects the amendment to s31E SDCA 1999, which provides for a higher rate of duty to apply where a person acquires 10 or more individual residential units during any 12-month period. Section 31E(2) SDCA 1999 was amended to clarify that where a contract or agreement for sale referred to in s31A SDCA 1999 or an agreement for a lease referred to in s50A SDCA 1999 comes within scope of s31E SDCA 1999, the date of acquisition of the residential property concerned will be the date on which the chargeable instrument is deemed to be executed in accordance with s31A or s50A SDCA 1999, as the case may be.

The manual "Part 7: Exemptions and Reliefs from Stamp Duty" reflects Finance Act 2025 changes and includes additional guidance on the application of s83B SDCA 1999 to certain family farm transfers.

The manual "Part 9: Levies" reflects Finance Act 2025 changes to s125C and s126AB SDCA 1999. The manual has also been updated to reflect that guidance on s123B, s123D and s124 SDCA 1999 is now contained in the Stamp Duty Manual "Part 9: Sections 123B, 124 and 123D – Levies on Financial Cards and Bills of Exchange".

The manual "Part 9: Section 125A – Levy on Authorised Insurers" includes guidance on s125A SDCA 1999, which provides for stamp duty to be levied on certain health insurance contracts entered between health insurers and their customers. The manual has been updated to include the changes to the specified rates as introduced by the Health Insurance (Amendment) Act 2025. More detailed guidance on the Finance Act 2025 changes to s125A, which will come into operation on 1 April 2027, will issue later.

The manual "Part 9: Section 126AB – Further Levy on Certain Financial Institutions" reflects Finance Act 2025 amendments to s126AB SDCA 1999, which provides for a stamp duty to be levied on certain financial institutions. The guidance document has been updated to reflect the Finance Act 2025 extension of the levy to the year 2026. For 2026 the levy will be applied at the rate of 0.1025% on the value of deposits held by each bank on 31 December 2024, to the extent that such deposits are eligible deposits within the meaning of the European Union (Deposit Guarantee Schemes) Regulations 2015 (SI 516 of 2015).

No. 253 Chapter 2 Employer Provided Vehicles

The manual "Chapter 2 – Employer Provided Vehicles" has been updated for Finance Act 2025 changes to s121 and s121A TCA 1997, as follows:

- Paragraphs 4.1.3 reflects that the temporary reduction to the original market value (OMV) has been extended to the 2026 to 2028 years of assessment (2027 and 2028 on a tapered basis).
- Paragraphs 4.1.3, 4.1.4 and 6 and Appendix A reflect that a new vehicle category A1, for cars with zero CO2 emissions, is introduced with effect from 1 January 2026.
- Paragraph 4.1.4 and Appendix A note that a permanent reduction to 48,001km in the lower limit of the highest mileage band applies from 1 January 2026.
- The table in paragraph 6.3.1 shows the combined impact of the temporary relief for electric vehicles and the temporary reduction to OMV.
- A new example 6 has been added to demonstrate the impact of the new vehicle category A1.
- Paragraph 10.2 provides clarity on the application of the benefit-in-kind exemption in regard to the installation of a battery electric vehicle home charger by an employer at a director's or an employee's private residence.
- Examples throughout the manual have been refreshed.

No. 254 Part 15 Tax and Duty Manual Updates

Revenue's manual "High-Income Individuals' Restriction: Tax Year 2010 Onwards" reflects that, further to s30 of Finance Act 2025, s372AAE TCA 1997 (capital allowances in relation to conversion or refurbishment of certain qualifying premises) is included in Schedule 25B TCA 1997 (the list of specified reliefs) and is therefore subject to the high-income individuals' restriction under s485C TCA 1997. As a result, Appendix 3 of the manual has been updated to include reference 38D (s372AAE TCA 1997, Living City Initiative). In addition, the examples in the manual have been refreshed to refer to the standard rate cut-off points applicable to the 2025 year of assessment and subsequent years.

The "Rent Tax Credit" manual reflects the extension of the credit for the three years to 31 December 2028. The value of the credit and all conditions pertaining to the credit remain unchanged. In addition, the examples have been refreshed, where relevant, to reflect the tax credits and standard rate bands in place for the 2025 year of assessment and subsequent years.

The "Mortgage Interest Tax Credit" manual reflects the extension of the credit to the 2025 and 2026 years of assessment. Definitions and examples throughout the manual have been added and/or updated to reflect the extension.

Revenue's manual "High Income Individuals' Restriction – Income Chargeable to Tax at the Standard Rate in Joint Assessment Cases" reflects the standard rate band for 2025 and subsequent years for jointly assessed married couples and civil partners. In addition, the footnote that details the increase to the standard rate band for married couples and civil partners has been updated to include the value for the years 2024 and 2025 and to remove the value for the years 2007 to 2018.

No. 255 Deduction for Retrofitting Expenditure

The manual "Deduction for Retrofitting Expenditure" now reflects the Finance Act 2025 amendments to s97B TCA 1997. This section provides for a tax deduction against rental income for certain retrofitting expenses incurred by landlords on rented residential properties. Paragraph 1 of the manual reflects the extension of the provision in s97B TCA 1997 to 31 December 2028, the increase in the number of qualifying premises on which retrofitting expenses can be claimed from two to three, and that retrofitting expenses can now be claimed in-year.

A table has been included in the manual to clarify the procedure for claiming retrofitting

expenses pre- and post-Finance Act 2025. Some examples have been updated to reflect Finance Act 2025 amendments.

No. 256 Ship's Stores Manual

The "Customs Staff Manual on Ship's Stores" has been updated as follows:

- Paragraphs 2 and 4 have been updated with the relevant legislation.
- Paragraphs 4 and 5 have been amended to include a reference to Regulation (EU) 2019/1239 establishing a European Maritime Single Window environment.
- Paragraphs 13.3 and 15 have been amended with updated contact details.
- General text and formatting amendments have been made to the manual.

No. 001 Receiver of Wreck

The "Receiver of Wreck Manual" has been updated as follows:

- Paragraph 1.2 has been amended to include a reference to the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023.
- Paragraph 10.1 has been updated with the relevant legislation.
- General text and formatting amendments have been made to the manual.

No. 002 Confidentiality of Taxpayer Information

The manual "Confidentiality of Taxpayer Information" has been updated as follows:

- In paragraph 3, "Unauthorised disclosure", to replace the word "penalty" with "fine", to replicate the legislation in s851A TCA 1997.
- In paragraph 4.10, "Disclosure to the EU Commission", to reflect the Finance Act 2025 amendment to insert a new sub-section (8)(oa) in s851A TCA 1997, to ensure that Ireland can comply with its obligations under the EU De Minimis Regulation and the EU Agricultural De Minimis Regulation.
- In paragraph 4.12, "Disclosure to charities", in relation to the disclosure of taxpayer information to the Charities Regulatory Authority.
- In paragraph 4.13, "Administrative co-operation in relation to joint audits", to clarify guidance on joint audits conducted by Revenue and the competent authority of another Member State.
- Legislative references have been updated throughout the manual.

No. 003 Chapter 32 Pensions Manual Created

Revenue published a new Chapter 32 of the Pensions Manual, "Automatic Enrolment Retirement Saving System (AE)", which provides guidance on the tax provisions in Chapter 2E of Part 30 TCA 1997 for AE. The manual includes the following information:

- Paragraph 1 is an introductory section.
- Paragraph 2 deals with contributions by participants and repayments of contributions to a participant.
- Paragraph 3 deals with contributions by an employer and repayments of contributions to an employer.
- Paragraph 4 deals with contributions made by the State.
- Paragraph 5 covers the taxation of payments made from AE.
- Paragraph 6 deals with the taxation of payments made after the death of a participant.
- Paragraph 7 deals with the interaction of the standard fund threshold with auto-enrolment savings.
- Paragraph 8 provides contact details for the National Automatic Enrolment Retirement Savings Authority and the Department of Social Protection.

No. 004 Universal Social Charge

The "Universal Social Charge" manual has been updated for Finance Act 2025 amendments as follows:

- Paragraph 4 reflects the increase in the USC rate thresholds in line with increases to the national minimum wage.
- Examples throughout the manual have been updated to reflect the changes.
- Paragraph 6.1 confirms that employer contributions to the Auto-Enrolment Retirement Savings System in respect of an employee are not considered relevant emoluments for the purposes of USC.
- Paragraph 6.2 confirms that a donation under s847AA TCA 1997 in respect of donations to national governing bodies is not relieved from USC.
- Paragraph 13 confirms that the reduced rate of USC for medical card holders has been extended for two further years, until the end of the 2027 tax year.

No. 005 Rent a Room Relief

The "Rent-A-Room Relief" manual, relating to relief under s216A TCA 1997, has been updated to reflect Finance Act 2025 amendments in the following paragraphs:

- The previous paragraph 7.1, relating to the rental income credit, which ceased in 2017, has been deleted.
- Paragraph 7.1 (previously paragraph 7.2) deals with the extension of the rent tax credit by Finance Act 2025.
- Paragraph 7.2 (previously paragraph 7.3) reflects the amendment to s216A TCA 1997 by Finance Act 2025, which replaced the reference to the former mortgage interest relief under s244 TCA 1997 with a reference to the mortgage interest tax credit under s473C TCA 1997. An individual's entitlement to the mortgage interest tax credit is not affected by receiving income to which Rent-a-Room relief applies.
- Paragraph 7.3 now deals with the interaction of Rent-a-Room relief with the Living City Initiative, previously in paragraph 7.4

No. 006 Instruction Manual on Outward Processing

The "Instruction Manual on Outward Processing" has been updated as follows:

- A link to the "Customs Manual on Import VAT" has been included in paragraph 1.1.
- AIS codes for discharge from Outward Processing have been updated in paragraph 6.1.
- Information on the EU–UK Trade Agreement and contact details for Origin & Quota Section have been included in paragraph 7.4.
- Paragraph 7.4 has been updated to note D.E. 1/10 – AES change of code from 21 to 22 as no duty applies on return under the EU–UK Trade Agreement.

No. 007 Interest on Loans to Defray Money Applied for Certain Purposes

Revenue's manual "Interest on Loans to Defray Money Applied for Certain Purposes" has been updated to reflect changes made to s840A TCA 1997 by Finance Act 2025. Section 840A TCA 1997 is an anti-avoidance provision that denies a deduction for interest payable by a company on a loan from a connected person used to purchase an asset from a connected company, subject to certain exclusions.

Paragraph 5.2.1, "Sole business of lending", has been updated to reflect changes made to sub-section (7). A new paragraph 5.3, "Connected loans – exceptions", including examples, has been added to the manual in respect of the new sub-section (7A).

No. 008 Chapter 5 Pension Manual

Revenue has updated Chapter 5 of the Pensions Manual, "Funding and Investments", in paragraph 5.3 to update the reference to Pensions Branch and in paragraph 5.4 to update the details on deemed distributions from a pension fund.

No. 009 Pension Manual Chapter 27 Amended

Revenue has updated and reorganised Chapter 27 of the Pensions Manual, "Taxation of Retirement Lump Sums", as follows:

- Paragraph 1 outlines the features of excess lump sum tax.
- Paragraph 2 explains the calculation of the tax.

- Paragraph 3 outlines lump sums not subject to tax under s790AA TCA 1997.
- Paragraph 4 outlines the treatment of lump sums subject to pension adjustment orders.
- Paragraph 5 gives examples of how to calculate excess lump sum tax.
- Paragraph 6 gives step-by-step instructions on how to pay excess lump sum tax and how the return should be submitted.
- Paragraph 7 outlines provisions for underpayment of excess lump sum tax.
- Paragraph 8 gives further detail about lump sums paid from certain pension arrangements.
- Paragraph 9 explains the credit for lump sum tax against chargeable excess tax.
- Paragraph 10 covers lump sums from foreign pension arrangements.
- The information previously included in Appendices I and II has been incorporated elsewhere in the Chapter.

No. 010 Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union

The manual "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union", which provides guidance on the operation of the Pillar Two rules, has been updated in the following sections:

- Section 6.10, "Section 111N – Calculation and allocation of UTPR top-up tax amount", to include updates relating to the practical application of the undertaxed profits rule (UTPR) allocation key where there is a merger of an entity.
- Section 8.9, "Section 111AB – Post-filing adjustments and tax rate changes", to include updates clarifying that a decrease in covered taxes recorded in the financial accounts of a constituent entity in relation to a pre-transition fiscal year should be excluded from the calculation of the effective tax rate and top-up tax in the fiscal year in which the adjustment arises, where the decrease relates to a decrease in current tax expense owing to a refund of an overpayment of tax.
- Section 9.8, "Section 111AJ – Transitional CbCR safe harbour", to include updates relating to the calculation of simplified covered taxes, to clarify that a decrease in covered taxes recorded in the qualified financial statements that relates to a period before the transition period should be excluded, where the decrease relates to a decrease in current tax expense owing to the refund of an overpayment of tax.
- Section 9.8.1, "Additional considerations with respect to the Transitional CbCR safe harbour", to include updates relating to the change of tax residency of an in-scope entity during a fiscal year.
- Section 10.2, "Section 111AM – Constituent entities joining and leaving MNE groups or large-scale domestic group", to include updates relating to mergers.
- Section 11.5, "Section 111AU – Election to treat investment entity as tax transparent entity", to include updates relating to the determination of whether the tax rate applicable to the constituent entity-owner with respect to the annual changes in the fair value of its ownership interest equals or exceeds the minimum rate.

This manual will be further updated in due course to reflect the amendments made to Part 4A by Finance Act 2025.

No. 011 Exemption in Respect of Compensation for Certain Living Donors

The manual "Exemption in Respect of Compensation for Certain Living Donors" has been updated to reflect the Finance Act 2025 change to s204B TCA 1997 after the enactment of the Human Tissue (Transplantation, Post-Mortem, Anatomical Examination and Public Display) Act 2024.

The following changes have been made to the manual:

- Section 2, "Legislation", has been updated with details of the legislative changes made in Finance Act 2025.
- Section 3, "Background", has been updated to include details of the background to the exemption in s204B TCA 1997.
- Section 4, "Payments qualifying for exemption", has been newly inserted and includes details of conditions required for a payment to qualify for the exemption.

No. 012 Certain Settlements Made by Close Companies

The manual "Certain Settlements Made by Close Companies" provides guidance on the provisions of s436A TCA 1997 and how they apply to the transfer of funds from close companies using trusts and other arrangements. Section 436A TCA 1997 counters attempts to transfer funds from close companies on a tax-free basis to shareholders or family members. The guidance has been updated to restructure the content and to provide additional information on and examples of the operation of these provisions.

No. 013 Enhanced Deduction for Eligible Construction Expenditure

Revenue published a new manual, "Enhanced Deduction for Eligible Construction Expenditure", which provides guidance on the new corporation tax relief available under s81E TCA 1997. This section was introduced by Finance Act 2025 to provide for an enhanced deduction for eligible construction expenditure incurred in the construction of a completed development (being an apartment block subject to certain conditions).

No. 014 Treatment of Certain Payments by a Close Company as Distributions

The manual "Treatment of Interest Payments and Other Forms of Consideration to Directors and Participators as Distributions" provides guidance on the tax treatment of certain payments by close companies to participators and directors under s436 and s437 TCA 1997. These provisions treat interest payments exceeding a prescribed limit and expenses incurred in providing certain benefits as distributions. The content in this manual has been restructured, and additional information on and examples of the operation of these provisions have been included.

No. 015 Income Tax Return Form 2024

Revenue has updated the manual "Income Tax Return Form 2024 ROS Form 11" to include a new paragraph 4.2, "Commercial property, land and other sources of Irish rental income", which clarifies that when claiming an exemption under s664 TCA 1997 for income from leasing of farmland, a seven-year holding requirement applies to land purchased on or after 1 January 2024. There is an exception to the seven-year holding requirement in the case of a transfer to a surviving spouse or civil partner on the death of a joint owner.

No. 016 Investment Undertaking Tax Rate Change

The manuals "Offshore Funds: Taxation of Income and Gains from EU, EEA and OECD Member States" and the "Investment Undertakings" have been updated to reflect Finance Act 2025 amendments that reduced the rate of tax for individuals from 41% to 38%. The reduced rate applies from 1 January 2026 in respect of income and gains from Irish-domiciled investment funds and equivalent offshore investment funds in other EU Member States, EEA States and OECD countries with which Ireland has a double taxation agreement.

No. 017 CESOP Guidelines for Registration and Filing

The manual "European Cross-Border Payments Reporting (CESOP): Registration and Filing Guidelines" has been updated in sections 2.5 and 2.6 to reflect the new agent and adviser e-linking application process. A revised section 6, "Ceasing CESOP Registration", has been included in the manual, outlining the process for ceasing CESOP registration.

No. 018 Agents Guide to the Collector General's Division

Revenue's manual "Agents Guide to the Collector-General's Division" has been updated to include information relating to local property tax, based on the valuation of properties as at 1 November 2025. Information on the vacant homes tax has also been added to the manual.

Paragraph 15, "Change of Address" has been updated to include the requirements for every company to file a notice of the address of its registered office in the State with the Companies Registration Office, as per s50 of the Companies Act 2014. Instructions are also provided on changing addresses on ROS and the requirement for change-of-address requests to be raised via ROS to protect information security.

No. 019 Amendment to Exempt Unit Trusts

The Introduction of the manual "Taxation of Unit Trusts for Pension Schemes and Charities – Exempt Unit Trusts (EUTs)" has been updated to reflect the Finance Act 2025 amendment to s731(5) TCA 1997. This clarifies that, for the purposes of that section, a gain on the disposal of units in an exempt unit trust by an investment undertaking is not considered wholly exempt from capital gains tax. This means, in effect, that a unit trust may not be considered an exempt unit trust where there are unit holders who are investment undertakings.

No. 020 Exemption of Certain Profits of Microgeneration of Electricity

The manual "Exemption of Certain Profits of Microgeneration of Electricity" provides guidance on the income tax exemption of certain profits from the microgeneration of electricity by an individual at their sole or main residence. Finance Act 2025 extended the scheme to 31 December 2028, and the manual has been updated accordingly.

No. 021 Exemption of Certain Profits Arising from Production, Maintenance and Repair of Certain Musical Instruments

The manual "Exemption of Certain Profits Arising from Production, Maintenance and Repair of Certain Musical Instruments" has been updated to reflect the Finance Act 2025 extension of the scheme to 31 December 2028.

No. 022 Accelerated Capital Allowances for Slurry Storage Facilities

The manual "Accelerated Capital Allowances for Slurry Storage Facilities" has been updated to reflect a Finance Act 2025 amendment to extend the scheme for accelerated capital allowances available under s658A TCA 1997 to 31 December 2029.

No. 023 Main Purpose Tests

The "Main Purpose Tests" manual has been updated to include a new section 2.1.1 to provide guidance on the application of the "reasonable to consider" test. This section reflects section 10.1 of the manual "Guidance on the Anti-hybrid Rules". In addition, section 2.1 has been updated to provide clarification of the application of objective tests.

No. 024 Guidance on the Residential Zoned Land Tax

Revenue's manual "Guidance on the Residential Zoned Land Tax" has been updated to reflect Finance Act 2025 amendments.

Section 6, "Exemptions, deferrals and abatements", has been updated to include details on the provision affording landowners an opportunity to request the rezoning of land that appears on a revised map for 2026, published by local authorities by 31 January 2026. Where a landowner whose land appears on the revised map for 2026 submits a request to the relevant local authority for the rezoning of such land between 1 February and 1 April 2026 and meets certain conditions, they may claim an exemption from RZLT for 2026. To claim the exemption from the 2026 liability, the landowner must make a rezoning request to the relevant local authority in the period 1 February to 1 April 2026 even if they have requested a change to the zoning of the same land previously.

Section 6 of the manual has also been updated to reflect the introduction of an exemption for

landowners precluded from developing their land owing to an appeal against a grant of planning permission on the land brought by an unconnected third party.

Section 10.4, "Death – section 653AI TCA 1997", reflects an amendment providing that RZLT arising in respect of liability dates in the period after the death of the deceased and before the administration of the estate is completed will not become due and payable until the earlier of (a) 12 months from the grant of probate or grant of letters of administration of the deceased person's estate and (b) 24 months from the date of death of the deceased person, even when the land is sold before that date.

In addition, the manual has been updated to reflect consequential amendments to Part 22A TCA 1997 that were required on foot of the introduction of the Planning and Development Act 2024.

No. 025 Annual Average Exchange Rates

Revenue's "Annual Average Exchange Rates" manual has been updated to include the average market mid-closing rate versus Euro for the 2025 calendar year.

No. 026 Creation of International Cooperation and Capacity Building

Revenue has published a new manual, "International Cooperation and Capacity Building", which contains details on the framework, scope and objectives of the ICCB unit, based in International Tax Division, that manages International Cooperation and Technical Assistance and Capacity Building requests in Revenue.

Direct Tax Cases: Decisions from the Irish Courts and Tax Appeals Commission Determinations

Mark Ludlow
Senior Associate – Tax, RDJ LLP

	Topic	Court
01	**Capital Gains Tax – *Hegarty, Geary and Ward v The Revenue Commissioners* [2026] IEHC 59**	High Court
02	**PAYE (Termination Payment Disability Exemption) – 01TACD2026**	Tax Appeals Commission
03	**Capital Gains Tax – *Sean Flaherty v The Revenue Commissioners* [2026] IESC 4**	Supreme Court
04	**PAYE – *Express Motor Assessors Limited (in liquidation) v The Revenue Commissioners* [2025] IEHC 733**	High Court
05	**Income Tax – *Peadar Hamill v The Revenue Commissioners* [2025] IEHC 627**	High Court

01 Capital Gains Tax – *Hegarty, Geary and Ward v The Revenue Commissioners* [2026] IEHC 59 (Quinn J)

In this case the High Court considered an appeal by way of a case stated against a determination of the Tax Appeals Commission (TAC) (understood to be determination 57TACD2023). The taxpayers:

- had made gains on the disposal of government gilts under gilt forward contracts that they claimed were exempt from capital gains tax (CGT) under s607 TCA 1997; and
- had hedged those transactions by entering into foreign exchange contracts for difference (FECDs) on which they had made capital losses (which they claimed were allowable losses under s31 TCA 1997).

The net result was that although the taxpayers had incurred a relatively small economic loss, they had generated significant CGT losses (of approximately 35 times the value of the economic loss), which they claimed were available to offset against the their other capital gains pursuant to s546 TCA 1997.

Revenue challenged their claim to those losses under s811 TCA 1997, arguing that the appellants had engaged in a "tax avoidance transaction".

The taxpayers were unsuccessful before the TAC, which found in favour of Revenue and concluded that the taxpayers had procured a "tax advantage" as a result of engaging in a "tax avoidance transaction" within the meaning of s811 and that the transactions resulted in a misuse of s31 having regard to the purposes for which it was provided, with the Commissioner concluding "[t]here is no commercial reality to

acquiring some €36m of CGT losses for a net outlay of some €1.1m".

The High Court held, in allowing the taxpayers' appeals, that the TAC had rejected the taxpayers' argument that the transactions had a commercial purpose of "hedging" each other, doing so in reliance on its reading of the evidence given by Revenue's expert to the effect that that expert "was unwilling to agree" that the transactions were hedging. The High Court held that this conclusion was factually unsustainable: the evidence of Revenue's expert in cross-examination showed that on at least four occasions he had plainly accepted that one set of transactions could be regarded as a hedge of the other. Accordingly, the TAC's stated reason for dismissing the hedging argument was based on an erroneous reading of the evidence before it, which constituted an error of law.

Separately, even if the TAC had been entitled to reach a conclusion different from both experts on the hedging question, it was required to give clear and adequate reasons for doing so. Applying the principles in *Stanberry Investments Limited v Commissioner of Valuation* [2020] IECA 33 and *Donegal Investment Group plc v Danbywiske* [2017] IESC 14, the court held that the absence of any engagement with the taxpayers' expert's evidence, and the failure to give reasons for departing from it, was an error of law (paragraph 85).

The court found that these errors had a domino effect on the TAC's central conclusion at paragraph 116 of its determination that the transactions had no commercial motive other than the deemed tax advantage derived, a conclusion that was now deprived of its evidential foundation. The TAC compounded this error by conflating the question of commercial purpose with the separate issue of whether the two sets of transactions (gilts and FECDs) had to be considered together or could be viewed separately (paragraph 88).

Ultimately, the court concluded that these errors contaminated the TAC's conclusion that the transactions therefore constituted "tax avoidance transactions" within s811(2).

The High Court also held that the TAC had erred in imposing on the taxpayers a positive obligation to demonstrate that there was no misuse or abuse of s31 and consequently in its finding that they had failed to discharge that obligation. The High Court held that this was an important error of lawinconsistent with the Court of Appeal's decision in *Hanrahan v Revenue Commissioners* [2024] IECA 113 (published after the TAC's determination), which made clear that, where an Appeal Commissioner is asked to apply the law to agreed facts, the correct approach "requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden". Therefore (in the context of s811), placing a positive burden on the taxpayers to articulate the purpose of s31 was incorrect, and Mr Justice Oisín Quinn held that to be an "important error of law, that also subsequently impacts on the actual analysis done by the TAC of the provisions that provided the relief in this case" (paragraph 91).

The court also identified a further difficulty with the TAC's approach to interpreting s811(3)(a)(ii) ("the Relief Exclusion"). That provision excluded from the treatment as a "tax avoidance transaction" any transaction undertaken to obtain the benefit of a relief or allowance provided by the Acts where the transaction would not result directly or indirectly in a misuse or an abuse of the provision, having regard to the purposes for which it was provided. As the court explained, because s811(2) can apply only to transactions undertaken primarily to give rise to a tax advantage, it would be illogical if a taxpayer were then denied the benefit of the Relief Exclusion simply because the transaction was designed to produce a tax advantage – the Relief Exclusion would be stripped of any practical meaning:

> "Something more must be required for the transaction to amount to an abuse or misuse of the relief provision. If the position were otherwise, the Revenue

> could assess a transaction as a tax avoidance transaction based on its primary purpose (namely to gain a tax advantage) and then deny a taxpayer the potential benefit of the Relief Exclusion because the very same purpose would mean the relief provision was being abused. The taxpayer would be trapped in a circular argument which they would always lose." (paragraph 113)

The court noted that "the Determination contains no detailed analysis of the purpose of section 607 at all", which it held to be a further error of law given that such analysis was required by s811(3)(a)(ii) (paragraph 115).

In addition, the TAC's conclusion that the losses claimed were not "actual monetary losses" was unsustainable given that the material facts demonstrated actual transactions generating actual gains and losses. The court distinguished the facts in the current case from those in the cases of *Revenue Commissioners v O'Flynn Construction* [2011] IESC 47 and *Hanrahan*, noting that there had been "a clear abuse of the ESR provisions" in *O'Flynn*, whereas in *Hanrahan* the loss created had been "artificial by abusing the deeming provisions related to transactions between connected persons" (paragraph 116).

In contrast, in this case "real gilts had been bought and then sold and real foreign currency CFDs had been entered into and transacted creating actual losses" (paragraph 117).

Finally, the TAC's approach to the statutory interpretation was "deficient"; in particular, the court pointed to the TAC's comment that the transactions "could not have been envisaged by the Oireachtas" in enacting s31, which was held to be a legally incorrect approach to statutory interpretation, amounting to the substitution of the TAC's own subjective view for a proper contextual analysis of the legislative text (paragraph 121).

Although the judgment concerned an assessment under s811 (the general anti-avoidance rule), it may be that the High Court's comments at paragraph 113 will have broader implications, given that many key tax reliefs now contain a clause that the relief can be claimed only in respect of a transaction that was effected for *bona fide* commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax. It remains to be seen whether this decision signals how the High Court may interpret such provisions in the future.

02 PAYE (Termination Payment Disability Exemption) – 01TACD2026

The Tax Appeals Commission (TAC) considered a taxpayer's claim that a termination payment he had received should be exempt from tax under s201(2)(a) TCA 1997 on the basis that the payment was made "on account of...disability".

The appellant had been employed when in 2010 or 2011 he became ill and took periods of sick leave. In 2015 he went on unpaid sick leave, and in 2019 he took a claim against his employer. The nature of that claim is redacted in the determination but it appears to have been unrelated to his disability per se and was described by his solicitor as having been made "to bring the Employer to the table".

In 2023 the appellant and his employer reached a settlement. The appellant was paid a termination payment of €130,000 from his former employer on 1 May 2024, in respect of which he paid income tax of €18,510.80 and USC of €925.54.

The appellant applied to Revenue for a refund of that tax, claiming that the payment was exempt under s201(2)(a) TCA 1997 on the basis that it was made "on account of" disability. Revenue refused the exemption, asserting that the payment was made in consideration of the withdrawal of the appellant's legal claim against the employer rather than on account of disability.

There was no dispute between the parties that the appellant had a disability. Therefore the key question before the TAC was whether the payment had been made "on account" of that disability, so as to bring the payment within the s201 exemption.

The Commissioner interpreted "on account of" as meaning "because of" and, citing Irish case law, noted that for the exemption to apply, "it is not enough for a payment to be made to a person with a disability. The payment must be made 'on account of' the person's disability" (paragraph 38).

The TAC held, in allowing the appeal, that notwithstanding the fact that the individual appears to have initiated a claim against his employer that was unrelated to his disability, and notwithstanding that the employer had not treated the payment as qualifying for s201, on the balance of probabilities the payment had been made "on account" of the taxpayer's disability:

> "This was a case of an employee who was agreed to have a disability and to have been on long-term sick leave since 2015, and who eventually received a termination payment in 2024. The Commissioner has formed the view that on balance, the overall circumstances of this case indicate that while the Claim led the Employer to address the appellant's situation, the material point is that the Employer did so by terminating the appellant's employment because he was unfit to work due to his disability." (paragraph 59)

03 Capital Gains Tax – *Sean Flaherty v The Revenue Commissioners* [2026] IESC 4 (Murray J)

In this case Mr Justice Brian Murray in the Supreme Court considered the circumstances in which a condition in a contract will have the effect of delaying the date of disposal (per s542(1)(b) TCA 1997) until that condition is satisfied.

The matter was first heard before the Tax Appeals Commission (TAC) in 2022 (164TACD2022), where the taxpayer was unsuccessful; the taxpayer also unsuccessfully appealed to the High Court ([2023] IEHC 764) and the Court of Appeal ([2025] IECA 67). The High Court judgment was considered in Issue 2 of 2024 of this publication, and the Court of Appeal judgment was discussed in Issue 2 of 2025.

The facts of the case were that the taxpayer had entered into a Memorandum of Agreement on 21 October 2015 for the sale of the fishing vessel *Glór na dTonn* and its associated capacity (fishing quota) for the sum of €5m. The agreement provided for a deposit of €500,000 to be paid on signing, with the balance of €4.5m paid on completion. The agreement also provided that at completion certain other documentation was to be provided, including the "Confirmation of Fishing Entitlements".

The appellant argued that the requirement to obtain that "Confirmation of Fishing Entitlements" had the effect of making the contract a conditional contract for the purposes of s542(1)(b) TCA 1997, such that the date of disposal for CGT purposes did not arise until that condition was satisfied. The significance of the date of disposal to the taxpayer was that revised entrepreneur relief (under s597AA TCA 1997) was introduced for disposals occurring on or after 1 January 2016.

Revenue and subsequently the TAC, the High Court and the Court of Appeal had each disagreed with the taxpayer, holding that a binding contract had concluded on 21 October 2015 and the fishing entitlements condition was only a condition precedent to completion.

The Supreme Court's judgment first surveyed the regulatory regime applying to the transfer

of fishing capacity, noting that such capacity is "a privately held and traded asset", which is tied to a sea-fishing licence, and "critically for the purposes of this case, in order to obtain a sea-fishing licence and a certificate of registration in respect of a vessel ownership of which has changed, the purchaser must actually have ownership vested in him" (paragraph 9). The court then summarised the documentation and steps necessary to register the vessel and capacity in the purchaser's name, and these are summarised below as they provide additional context to the decision.

- Although the Memorandum of Agreement dated 17 October 2015 recorded that the purchaser was to pay a 10% deposit on signing, in reality the first payment under the agreement was not made until 17 December 2015, when the sum of €65,000 was paid.
- On 21 December 2015 the appellant taxpayer (vendor) signed a bill of sale. Before the TAC the appellant acknowledged that he had transferred ownership to the purchaser on that date. That document also contained a clause that acknowledged receipt of the full consideration of €5m.
- On 22 December 2015 the taxpayer signed a declaration of ownership, which recorded that a director of the purchaser was "entitled to be registered as owner of [the vessel]" and "no other person…is entitled, as owner, to any interest whatsoever, either legal or beneficial, in the said Ship or in any share therein".
- On 22 December 2015 those documents were submitted to the Register of Shipping.
- On 7 January 2016 the licensing authority for sea-fishing boats acknowledged that the ship had been deregistered and that a "capacity assignment note" had been added noting the assignment of capacity to the purchaser.
- On 11 January 2016 the Department of Agriculture, Food and the Marine granted a non-operative licence to the purchaser (a necessary intermediary step to allow the purchaser to register the vessel) and subsequently issued the full sea-fishing boat licence.
- The purchaser paid the balance of the purchase price on 19 January 2016 (€4.93m) and 10 February 2016 (€5,000).

The Supreme Court then turned to consideration of the interpretation of s542(1)(b) by first distinguishing two situations regarding conditions that clearly fall outside its scope:

- First is that the ordinary mutual promises that subtend to all executory contracts do not render those contracts "conditional" in the relevant sense. In this regard the court cited Lord Walker in *Jerome v Kelly* [2004] UKHL 25: "A contract is not conditional merely because it contains obligations which may be termed promissory conditions".
- Second is "subject to contract" cases where the effect of the condition was that there was no contract at all.

Although Murray J expressed approval of Whelan J's analysis in her Court of Appeal judgment, he noted that "the term 'conditional' in the law of contract is plagued by a proliferation of meanings" (paragraph 38). He then summarised the circumstances in which a condition in a contract may have the effect of delaying the date of disposal for the purposes of s542(1)(b):

> "Those distinctions and considerations I think, permit the formulation of a description of the circumstances in which s. 542(1)(b) TCA is properly engaged. The provision operates where, and only where, there is:
>
> (a) a legally enforceable contract between A and B;
>
> (b) 'under' which it might be said that A has agreed to dispose of, and B to acquire, an asset the disposition of which is subject to Capital Gains Tax;
>
> (c) where the obligation of A to dispose of, and that of B to acquire that asset is conditional upon an event; and
>
> (d) where no contractual obligation to dispose of, and no obligation to acquire, that asset comes into being unless and until that event

> occurs. This is to be distinguished from the situation in which there is a contractual obligation to dispose of or acquire the asset irrespective of whether the 'event' occurs, but where the non-occurrence of the event may operate generally, or after the effluxion of a period of time, to extinguish that obligation, or to allow one or other parties to treat itself as discharged from any obligation of performance." (paragraph 54)

The court then stated:

> "[a]ccordingly, the contract in issue here can only be properly described as 'conditional' if on its true construction the mutual obligations of the purchaser (to pay for and accept delivery of the vessel, the appurtenant equipment and its 'capacity') and of the appellant (to deliver same) were made by the contract contingent on the regulatory authorities allowing the transfer of tonnage, registering it as owner or granting an operative Sea Fishing Licence to the purchaser." (paragraph 55).

Reviewing the documentary evidence before the court, Murray J noted, in dismissing the taxpayer's appeal, that:

- The agreement made no express reference to the requirement to apply to the regulatory authorities and referred only to "Confirmation of Fishing Entitlements" being provided on completion.
- The agreement (as drafted) had envisaged that capacity would simply be assigned.
- Under the regulatory framework, the only way the purchaser could reregister the vessel and acquire a sea-fishing licence was if he **first** became owner of the vessel, and therefore "[t]he legislative context would suggest that the Agreement necessarily envisaged that transfer preceded the licence and registration".
- The court rejected the appellant's contention that just because "the parties make provision for an event over which neither has control, the contract is for that reason alone conditional…and, therefore, that there is no contractual obligation to transfer the asset unless and until that event occurs". Rather, the court emphasised that parties are "entirely free to enter into legally binding contractual arrangements on the assumption that an uncertain event outside their control will occur, or for that matter that the non-occurrence of that event would not prevent some obligations from arising between them". The court noted that such a factor might weigh toward indicating that the parties intended that the agreement be non-binding until that condition was satisfied, but it was only one factor.
- The court rejected the appellant's argument concerning the doctrine of frustration, noting that although it may be more difficult for a party to argue that the contract is frustrated if the event was foreseeable and foreseen, there was nothing in principle to prevent the doctrine of frustration from operating.
- Finally, the court rejected the appellant's argument that such a term should be implied into the contract to give it business efficacy. The court emphasised that all the authorities make clear that a term will be implied only where necessary.

04 PAYE – *Express Motor Assessors Limited (in liquidation) v The Revenue Commissioners* [2025] IEHC 733 (Dignam J)

In this case Mr Justice Conor Dignam in the High Court considered a taxpayer's appeal against a determination of the Tax Appeals Commission (TAC) concerning whether certain mileage-related amounts paid or credited to a director in 2015 and 2016 were taxable emoluments subject to PAYE, PRSI, USC and employer PRSI.

Although the High Court broadly agreed with the TAC's approach to the treatment of the case, i.e. its application of the burden of proof and its approach to the treatment of the evidence, the court held that the TAC had erred in not clearly identifying the evidence on which it had relied in reaching its decision. The TAC in its determination had stated that its decision was based on its review of the "prime records" of the appellant without identifying what those records were. The High Court found that the TAC had erred in this respect because:

> "the company is still entitled to know the evidence which the Appeal Commissioner relied on in reaching the conclusion that it had failed to discharge the burden of proof. Perhaps more importantly, the court in being asked for its opinion as to whether the Commissioner was correct in law must know the evidence upon which the Appeal Commissioner's conclusion is based." (paragraph 51)

Because the evidential basis for the TAC's conclusion remained unidentified, the High Court held that it was unable to determine whether the determination was correct or incorrect as a matter of law. A taxpayer is entitled to know what evidence led the TAC to conclude that the burden of proof had not been discharged, and the reviewing court must equally be able to identify that evidence to carry out its function on a case stated. The failure to identify the evidence undermined the legal validity of the determination as something capable of review. The matter was, accordingly, remitted back to the Appeal Commissioner pursuant to s949AR TCA 1997 for the TAC to address that issue.

05 Income Tax – *Peadar Hamill v The Revenue Commissioners* [2025] IEHC 627 (Quinn J)

In this case the High Court considered a taxpayer's appeal against a determination of the Tax Appeals Commission (TAC). In substance the question before the court reflected a claim by the taxpayer that he had been treated unfairly in the process by which the tax assessments were made because he had not been provided with documents obtained by Revenue from various third parties (banks) before Revenue raised its assessments, together with a related complaint that those documents should not therefore have been admitted at the TAC hearing.

Revenue had obtained the taxpayer's bank account records from his bank and had noted discrepancies between his declared income and the lodgements appearing in his bank accounts. It raised assessments to income tax and VAT in respect of those discrepancies.

At the conclusion of the TAC hearing the taxpayer's solicitor submitted that the process was legally invalid as documents obtained from various third parties had not been disclosed to the taxpayer during the investigation before the raising of the assessments and that they should have been excluded from the appeal hearing.

The TAC did not accept the taxpayer's explanations for the discrepancies. It also rejected the taxpayer's procedural argument (that the evidence obtained from the bank accounts should have been disregarded by the TAC for unfairness), as the TAC found that it had no supervisory jurisdiction over Revenue's procedures and that the correct venue for such an argument would be by way of judicial review to the High Court. The TAC also stated that, in any event, it did not consider that there was any evidence of Revenue acting unfairly, as the documents in question were effectively the taxpayer's own documents, even if obtained from third parties, and that the process of obtaining them from third parties had arisen as a result of the taxpayer's own failure to engage with Revenue during the audit.

The taxpayer appealed to the High Court by way of case stated from the TAC's

determination. The subject matter of the appeal related solely to the procedural arguments, and the taxpayer did not dispute the material facts as found by the TAC.

The questions before the High Court were whether the TAC:

- failed to protect the appellant's rights under Articles 41, 47 and 51 of the Charter of Fundamental Rights of the European Union and thus erred in law;
- erred in law in permitting the admission of evidence procured by Revenue from third parties; and
- failed to correctly apply the principles set out by the Court of Justice of the European Union in the case of *Glencore Agriculture Hungary Kft v Nemzeti Adó-* és *Vámhivatal Fellebbviteli Igazgatósága* C-189/18.

The High Court held, in denying the taxpayer's appeal, that it affirmed the TAC's approach and answered all three questions in the negative. The court was satisfied that the requirements of the relevant articles of the Charter and the principles referred to in *Glencore* and the surrounding jurisprudence had been met and been properly considered and applied by the TAC to the facts of the case, and that it was not therefore an error of law to admit the documents at the appeal hearing. The court distinguished *Glencore* from the circumstances of the present case, emphasising that the documents that were the subject of complaint were, in substance, the taxpayer's own documents, that the situation had arisen from his non-cooperation and that no information deficit of the kind relevant in *Glencore* (which arose in the context of alleged fraud by third parties and involved third-party documents not necessarily within the taxpayer's own possession or knowledge) could be identified on the facts.


Direct Tax Cases: Decisions from the UK and Supreme Court of India

Stephen Ruane Partner and Leader, Tax Solutions Centre, PwC Ireland
Patrick Lawless Director, Tax Solutions Centre, PwC Ireland

	Topic	Court
01	**Corporation Tax – Deductibility of Pension Provisions**	England and Wales Court of Appeal
02	**Income Tax – Redress Payments**	UK Upper Tribunal
03	**Capital Gains Tax – Treaty Entitlement**	Indian Supreme Court

01 Corporation Tax – Deductibility of Pension Provisions

The case of *AD Bly Groundworks and Civil Engineering Ltd & Anor v HMRC* [2025] EWCA Civ. 1443 concerned two companies that implemented an unfunded unapproved retirement benefit scheme (UURBS) on the advice of their accountants. The scheme had been disclosed under the UK DOTAS (Disclosure of Tax Avoidance Schemes) regime and involved making unfunded promises to pay future pensions to directors and key employees. These promised pension amounts were deducted for corporation tax purposes.

HMRC disallowed these deductions on the grounds that the liabilities were not incurred wholly and exclusively for the purposes of the trade, as required by the UK equivalent of s81 TCA 1997, and alternatively that they were employee benefit contributions disallowed under specific UK legislation. The companies appealed to the First-Tier Tribunal (FTT), which found that the UURBS arrangements were implemented primarily as a tax-saving scheme rather than as genuine pension provisions. The FTT concluded that tax reduction – not employee remuneration – was the true purpose behind the provisions. This decision was upheld by the Upper Tribunal (UT), which found no error of law and agreed that the factual conclusions of the FTT were sound. The UT's decision was reviewed in "Direct Tax Cases: Decisions from the UK Courts and Other International Cases", *Irish Tax Review 2024 Issue 2*.

The UT decision was appealed to the Court of Appeal, with the companies arguing that the tribunals had misapplied the "wholly and exclusively" test. The Court of Appeal dismissed the appeal. It held that the FTT's factual finding – that the UURBS was adopted as a tax-avoidance scheme and that pension provision was merely incidental – was decisive. As the object of the expenditure was tax reduction, the companies could not satisfy the "wholly and exclusively" test.

As mentioned above, HMRC had advanced a secondary argument based on specific UK legislation. However, the Court of Appeal agreed with the UT that this provision did not apply to deny the deduction. This followed the approach in *NCL Investments Ltd and another v Revenue and Customs Comrs* [2020] EWCA Civ. 663, where the courts held that the specific UK legislation in question did not extend to unfunded pension promises of this kind.

Ultimately, the taxpayer's appeal failed.

02 Income Tax – Redress Payments

The case of *O'Neil and others v HMRC* [2026] UKUT 13 (TCC) concerned the tax treatment of a compensation payment received in the tax year ending 5 April 2015 for a mis-sold interest rate hedging product, referred to as the redress payment. The appellants were former partners of a Scottish partnership, and the dispute centred on whether this redress payment constituted a post-cessation receipt taxable on them.

The appeal arose after the First-tier Tribunal determined that the redress payment was taxable in their hands, leading the appellants to challenge both the substantive tax assessment and the associated penalties.

By the time of the payment, the partnership had sold its business to a company (Blackpool), which was a 100% subsidiary of a company (Lythe) wholly owned by the appellants. The partnership had no ongoing business. The appellants argued that they personally were not the correct taxpayers, contending instead that the payment should have been assessed on Blackpool.

HMRC disagreed, asserting that the appellants were the individuals who had "received" or were "entitled" to the redress payment. The tribunal agreed. The receipt was "from" the partnership's trade (giving "from" a causal meaning) because the swap had been taken out in the course of that business. The payment was therefore within the scope of the post-cessation receipts rules. It was not necessary for the person taxable in the respect of the receipt to be the same as the person who carried on the trade, only that there were persons who received or were entitled to the receipts.

03 Capital Gains Tax – Treaty Entitlement

On 15 January 2026 the Supreme Court of India delivered a judgment concerning three Mauritius-incorporated entities of the Tiger Global group and their entitlement to capital gains tax exemption under the India–Mauritius double taxation agreement (DTA).

The case arose out of a 2018 share sale transaction connected to Walmart's acquisition of Flipkart, in which Tiger Global International II, Tiger Global International III and Tiger Global International IV Holdings sold their shares in Flipkart's Singapore-incorporated parent company. The capital gains from this transaction were substantial, and the Mauritius entities applied for treaty exemption under Article 13(4) of the DTA.

The respondent entities were incorporated in Mauritius between 2011 and 2015 and held valid tax residency certificates (TRCs) issued by the Mauritius tax authorities. Their boards consisted of two Mauritius-resident directors and one US-resident director. They maintained offices, accounting records and bank accounts in Mauritius. These entities acquired shares in Flipkart's Singapore parent during the period 2011–2015, and the value of that company was substantially derived from assets located in India.

The Supreme Court held that although the Mauritian entities held TRCs, this was not conclusive for determining entitlement to treaty benefits, where the tax authority can demonstrate lack of commercial substance or that central management and control are exercised outside the treaty jurisdiction.

The Supreme Court clarified that the Indian general anti-avoidance rules (GAAR) applies to any arrangement that results in a tax benefit arising on or after 1 April 2017, even if the underlying investment was made

before that date. The court held that the DTA "grandfathering" provisions protect only genuine investments, not arrangements that are subsequently found to be impermissible avoidance arrangements. An "arrangement" under the GAAR encompasses the investment itself, and the relevant date for GAAR applicability is the date on which the tax benefit arises, not the date of the initial investment.

In summary, the Supreme Court held that the sale of shares of Flipkart Singapore by Tiger Global's Mauritius entities constituted an impermissible avoidance arrangement, lacking commercial substance, and was designed solely to evade tax.


International Tax Update

Louise Kelly
Tax Partner, Deloitte Ireland LLP
Dylan Reilly
Tax Senior Manager, Deloitte Ireland LLP

01 BEPS: Pillar Two Recent Developments

OECD Side-by-Side Agreement

On 5 January 2026 the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) released highly anticipated detailed guidance on the "Side-by-Side Package" concerning the Pillar Two global minimum tax rules. This package introduces administrative guidance on a permanent simplified effective tax rate (ETR) safe harbour, an extension of the transitional country-by-country (CbC) reporting safe harbour, a substance-based tax incentive (SBTI) safe harbour and a side-by-side system to facilitate coexistence with certain tax regimes.

Pillar Two rules recap

As a reminder, Pillar Two rules, agreed by more than 140 Inclusive Framework members, target large multinational enterprises (MNEs) with consolidated revenues exceeding €750m. These rules aim to ensure that profits earned in each jurisdiction are subject to a minimum 15% ETR. The framework includes:

- qualified domestic minimum top-up taxes (QDMTTs), which allow jurisdictions to impose top-up taxes on local profits;
- an income inclusion rule (IIR), which enables parent jurisdictions to apply top-up tax on a top-down basis; and

- an undertaxed profits rule (UTPR), which acts as a backstop where other rules are insufficient.

Implementation began in January 2024, with jurisdictions incorporating these rules into local law.

Simplified ETR safe harbour

With the aim of reducing compliance burdens where the risk of additional tax is low, a permanent simplified ETR safe harbour has been introduced. Under this, if a "simplified ETR" for a tested jurisdiction meets or exceeds 15%, or shows an overall simplified loss, no Pillar Two top-up tax is due.

The simplified ETR is calculated using financial accounting data from consolidated financial statements, rather than detailed CbC reports. There is reference to the fact that jurisdictions may allow groups to use either local or consolidated accounting standards. The calculation involves mandatory and optional adjustments designed to align simplified income and taxes with local tax bases, accommodating various business circumstances.

Simplified income starts from aggregate jurisdictional profit before tax, adjusted to exclude dividends, equity gains/losses and disallowed expenses (e.g. significant fines). Additional adjustments exist for specific industries and transactions. Simplified taxes include current and deferred taxes, with adjustments for uncertain tax positions and other factors.

The safe harbour includes transfer pricing provisions, simplified cross-border income allocation and rules for special entity types. Integrity rules ensure consistent treatment of income, expenses and taxes within jurisdictions. Given the various adjustments that are required (compared to the transitional ETR safe harbour), it would appear that increased effort would be required for many groups to confirm that the permanent ETR safe harbour would apply.

This safe harbour will be available for fiscal years starting on or after 31 December 2026, with optional early adoption from 2025 if all relevant jurisdictions agree. Groups may enter or exit the safe harbour based on their top-up tax history over the prior 24 months (unlike the transitional ETR safe harbour, which is a "once out, always out" approach)

Extension of transitional CbC reporting safe harbour

As companies would need time to prepare for the new permanent safe harbour approach, the transitional CbC reporting safe harbour, initially limited to the first three years of Pillar Two, has been extended by one year to cover fiscal years beginning on or before 31 December 2027. The 17% transitional ETR test will apply for 2027 as well.

Substance-based tax incentive safe harbour

In acknowledgement of the importance of tax incentives for economic development, a permanent SBTI safe harbour allows groups to reduce top-up tax to zero for "qualified tax incentives" (QTIs) linked to economic substance in a jurisdiction.

QTIs must be generally available and either expenditure-based (e.g. tax credits or deductions tied to expenditure incurred) or production-based (calculated by volume of production). Incentives limited to excluded income or subsidies are excluded.

A "substance cap" limits the benefit of QTIs based on payroll costs and tangible assets in the jurisdiction. Businesses can elect to apply the SBTI safe harbour for years starting on or after 1 January 2026. Qualifying refundable tax credits could be treated as SBTIs depending on the facts. Therefore where groups have been claiming qualifying refundable tax credits to date, modelling would be recommended to confirm the most efficient treatment of qualifying refundable tax credits going forward.

Side-by-side system

The side-by-side system introduces two permanent safe harbours for MNEs headquartered in jurisdictions with qualified tax regimes:

- Side-by-side (SbS) safe harbour: No top-up tax under IIR or UTPR for undertaxed profits

if the ultimate parent entity (UPE) is in a jurisdiction with a qualified SbS regime. This regime requires a minimum 20% nominal corporate tax rate, a QDMTT or alternative minimum tax of 15%, and no significant risk of ETRs below 15%. The US is the only country confirmed as having a qualified SbS regime as of January 2026.

- UPE safe harbour: Replacing the transitional UTPR safe harbour, this applies from 1 January 2026 and exempts top-up tax under the UTPR for undertaxed profits in the UPE jurisdiction if it has a qualified UPE regime meeting similar criteria.

Both safe harbours do not affect QDMTTs, which continue to apply.

The Inclusive Framework plans further simplification and clarification of Pillar Two rules, including routine profits and *de minimis* tests, with completion targeted for mid-2026. Reporting obligations will be streamlined, and integration of simplified calculations into main rules explored.

An evidence-based review of the side-by-side system is scheduled by 2029 to address any risks to the level playing field or BEPS objectives. The framework will also continue efforts to reduce compliance burdens and ensure consistent, non-discriminatory application of domestic minimum top-up taxes.

European Commission confirms Side-by-Side Agreement as a qualifying safe harbour

On 12 January 2026 the European Commission published Notice C/2026/253 in the *Official Journal of the European Union*, recognising the OECD/G20 Inclusive Framework's "Side-by-Side Package" on Pillar Two global minimum tax rules as a qualifying safe harbour under the EU Pillar Two Directive (Council Directive (EU) 2022/2523). This package, adopted by the Inclusive Framework on 5 January 2026, introduces coordinated safe harbours and simplifications to ease Pillar Two compliance while maintaining the 15% minimum tax rate.

Article 32 of the Directive allows EU Member States to apply safe harbours that simplify tax calculations when a jurisdiction's effective tax rate meets the OECD's standards. The Commission's December 2023 guidance confirmed that Inclusive Framework rules qualify, and Cyprus has since agreed to apply them. Notice C/2026/253 mandates uniform application of the Side-by-Side Package across the EU without amending the Directive or requiring Council approval, although Member States must enact national laws for enforcement.

However, Article 32 has faced criticism from nine EU countries, which argue that it extends beyond administrative simplifications to alter Pillar Two's core design, potentially undermining its anti-base erosion goals. Concerns include the delegation of significant tax policy decisions to non-EU bodies, raising constitutional issues under EU law (the Meroni doctrine). Legal challenges against Article 32's scope and the Commission's notice may arise under EU treaties.

Moving forward, we expect that Member States will update legislation to implement the side-by-side measures, with ongoing monitoring of legal and political developments related to this framework.

02 OECD Tax Developments

OECD publishes updated Manual on Effective Mutual Agreement Procedures

On 2 February 2026 the OECD released the 2026 edition of the *Manual on Effective Mutual Agreement Procedures* ("2026 MEMAP"), which offers refreshed guidance from the OECD/G20 Inclusive Framework on BEPS. This updated manual builds on the 2007 edition and introduces a new structure that reflects the practical experiences of competent authorities handling mutual agreement procedures (MAPs). The 2026 MEMAP is designed as a

comprehensive guide to assist tax authorities and taxpayers in navigating MAPs, providing non-binding practical advice, best practices and templates aimed at promoting consistent and effective resolution of cross-border tax treaty disputes.

According to the OECD, the manual provides practical guidance covering the entire lifecycle of a MAP case and includes 59 aspirational best practices developed with input from tax administrations and businesses, drawing on over ten years of experience from BEPS Action 14 peer reviews and real-world MAP case discussions.

The manual complements existing OECD guidance, including the OECD Model Tax Convention and its commentary, as well as the OECD Transfer Pricing Guidelines.

BEPS Action 5: Advancements in addressing harmful tax practices and enhancing transparency by jurisdictions

Recent peer-review findings concerning preferential tax regimes and jurisdictions with no or minimal taxation demonstrate ongoing global efforts to align tax systems with the BEPS Action 5 minimum standard. These efforts aim to prevent harmful tax practices and improve transparency. At its November 2025 meeting the OECD Forum on Harmful Tax Practices (FHTP) issued new determinations on four tax regimes and completed its fifth annual assessment of the substantial-activity requirements for jurisdictions with no or nominal taxes, as part of implementing the BEPS Action 5 minimum standard.

Among three newly reviewed regimes, two were assessed as non-harmful (Ireland* and Peru), while one (Fiji) was confirmed as abolished. Additionally, another regime in Fiji, that had been under prior review, was also confirmed as abolished.

The FHTP's fifth annual monitoring report shows that most no- or nominal-tax jurisdictions comply fully with the substantial-activity requirements under BEPS Action 5. Nevertheless, targeted monitoring will continue for two jurisdictions, Anguilla and the Turks and Caicos Islands, where significant improvements are needed in certain areas.

Since the inception of the BEPS Project, the FHTP has evaluated 326 preferential tax regimes, with nearly 40% having been eliminated.

*Note: Ireland's regime refers to the participation exemption for specific foreign dividends.

OECD: New peer-review reports on tax transparency and EOIR released

On 21 January 2026 the OECD announced that the Global Forum on Transparency and Exchange of Information for Tax Purposes had published peer-review reports for five jurisdictions, assessing their compliance with international standards on tax transparency and exchange of information on request (EOIR). These reports form part of the second round of EOIR peer reviews, which began in 2016, and cover Antigua and Barbuda, Benin, Cabo Verde, Palau and Seychelles. The OECD's announcement highlights key findings and recommendations for each jurisdiction.

The reports for Antigua and Barbuda and Seychelles are reassessments that evaluate both the legal and regulatory frameworks for EOIR and their practical application, providing an overall rating for each. Both countries received a "largely compliant" rating with the EOIR standard.

For Benin, Cabo Verde and Palau – jurisdictions with limited practical EOIR experience – the reports focus on reviewing their legal and regulatory frameworks. Although these frameworks are generally in place, the reports identify areas needing improvement. The practical implementation will be assessed later, with overall ratings to be assigned in the future.

According to the OECD, 129 jurisdictions have now undergone full review in the second round of EOIR peer reviews. Approximately 90% of these jurisdictions received satisfactory overall ratings (compliant or largely compliant), about 8% were rated partially compliant, and 2% were found non-compliant.

03 Netherlands: Box 3 Reform

The lower house of the Dutch Parliament (The House of Representatives (Tweede Kamer)) has passed several motions calling on the Government to extend its reform of Box 3 – the taxation framework for savings and investment income – beyond the current proposal, which taxes unrealised gains on most assets. The motions advocate for a system where gains are taxed only when realised.

The incoming Government had previously indicated its intention to refine the Box 3 reform further to establish a regime that taxes actual gains on realisation.

Specifically, the lower house has requested the Government to:

- develop a fully capital gains-based Box 3 system to be included in the 2029 Tax Plan;
- outline how the existing proposed system could evolve into a comprehensive capital gains tax, including a detailed, step-by-step implementation plan; and
- provide an assessment of the long-term structural budgetary effects of such a system.

These motions were made publicly available on the lower house's official website on 10 February 2026. The bill was approved by the lower house on 12 February 2026. However, The Minister of Finance has announced plans to propose amendments, expressing concern that the upper house (the Senate ("Eerste Kamer")) may reject the bill as it currently stands. This development also casts doubt on whether the planned implementation date of 1 January 2028 remains achievable.

04 Poland: DST Proposed

The Polish Government has put forward draft legislation to introduce a digital services tax (DST) of up to 3%. This tax would target groups with global revenues exceeding €1bn (approximately USD 1.2bn) and taxable revenues in Poland of at least PLN 25m (around USD 7.1m) in the previous year.

The DST would cover activities such as targeted advertising on digital platforms, services that enable user interactions or facilitate the direct supply of goods or services between users, and payments related to the transfer of data generated from user activity on digital platforms. However, the proposal excludes streaming services, communication and payment services, direct online sellers who are not intermediaries, and organisations that mainly publish their own or licensed editorial content.

05 Singapore: 2026 Budget Introduces Significant Tax Incentives

Singapore's Deputy Prime Minister and Minister for Finance, Lawrence Wong, presented the 2026 Budget to Parliament, outlining a plan focused on boosting economic competitiveness, advancing artificial intelligence (AI) capabilities, and providing enhanced support for families, workers and businesses. The Budget also includes substantial corporate tax incentives and continues the phased implementation of the OECD/G20 Pillar Two rules.

Key tax-related measures announced in the Budget are:

- A 40% corporate income tax rebate for the 2026 year of assessment: all active companies that employed at least one local staff member in the previous year will receive a minimum rebate of SGD 1,500, with a maximum benefit of SGD 30,000 per company.
- An enhanced double tax deduction for internationalisation: companies will automatically qualify for a 200% tax deduction on selected eligible activities, with the cap increased from SGD 150,000 to SGD 400,000 and more activities added to the list of qualifying expenditures.
- Inclusion of AI-related expenses under the enterprise innovation scheme for the years of assessment 2027 and 2028, with a cap of SGD 50,000 per year. This scheme offers businesses a 400% tax deduction on qualifying costs related to R&D, innovation and capability development.
- Ongoing implementation of the Pillar Two top-up tax.

06 UK: HMRC Issues Provisional Guidance on Anti-Avoidance Rules for Share-for-Share Exchanges

HMRC has released provisional guidance regarding amendments to the anti-avoidance provisions related to share-for-share exchanges and company reconstructions, mainly affecting s137 of the Taxation of Chargeable Gains Act 1992. The guidance clarifies that these changes respond to recent court decisions (such as *Euromoney* and *Wilkinson*) that found that the previous rules focused narrowly on the purpose of the exchange itself. This approach sometimes allowed tax-avoidance schemes to proceed if avoidance was not the primary purpose of the exchange.

The revised rules shift the focus to the broader arrangements surrounding the exchange. They apply where the main purpose, or one of the main purposes, of the overall arrangements is to reduce or avoid a tax liability – specifically corporation tax or capital gains tax under s137. HMRC emphasises that mere tax deferral without avoidance does not fall within the scope of these provisions.

Importantly, the impact of the updated rules has changed. Rather than disapplying the share exchange relief for all shareholders, HMRC now has the authority to make "just and reasonable" adjustments targeting only the specific tax advantage intended to be avoided. Additionally, the rules now extend to shareholdings of 5% or less.

07 Switzerland: Transfer Pricing Approach Updated for Asset Management Sector

The Zurich Cantonal Tax Administration is revising its transfer pricing approach for the asset management industry. Distribution activities will now generally be regarded as entrepreneurial functions and should be remunerated through a revenue-sharing arrangement. Existing cost-plus rulings may not be renewed and, in certain instances, could be revoked.

08 Germany: Updated Guidance on Use of OECD Model Commentary in Tax Treaty Interpretation

On 24 December 2025 the German Ministry of Finance (MOF) issued an updated decree regarding the use of the OECD Model Tax Convention Commentary (the "OECD Model Commentary") for interpreting double taxation treaties (DTTs). This new decree replaces the previous guidance from 19 April 2023 and responds to a Federal Tax Court ruling of 5 December 2023, which differed from the MOF's earlier stance. The updated decree applies to all ongoing cases.

The role of the OECD Model Commentary in interpreting DTTs has been a contentious issue in German tax law. The 2023 MOF guidance adopted a dynamic approach, suggesting that the most current version of the OECD Model Commentary should generally be used when interpreting DTTs. However, the Federal Tax Court reaffirmed its longstanding position in its 2023 ruling, advocating for a static interpretation. According to the court, only the version of the OECD Model Commentary in effect when the DTT was ratified by the German legislature should be used for interpretation, excluding later versions.

The new two-page decree aligns with the Federal Tax Court's static interpretation approach.

VAT Cases & VAT News

Gabrielle Dillon
Director, Dillon VAT Advisory Ltd

VAT Cases

01 Independent Separate Supplies or Single Complex Intra-Community Transaction – VAT Refunds: CJEU Judgment

On 23 October 2025 the Court of Justice of the European Union (CJEU) delivered its judgment in the case of *Brose Prievidza, spol. s r.o. v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite* C234/24. This case relates to the refusal of the Bulgarian tax authority to refund VAT under Council Directive 2008/9/EC (referred to herein as "the Refund Directive") to Brose Prievidza, spol. s r.o. ("Brose" – a Slovakian company), which had incurred Bulgarian VAT on the purchase of equipment.

Brose is established and VAT registered in Slovakia and is involved in the production of window regulators and door systems for cars. As part of the manufacturing process, it buys components from 'Integrated Micro-Electronics Bulgaria' EOOD ("IME"), which is established in Bulgaria. Brose Fahrzeugteile SE & Co. KG ("Brose Coburg") is established and VAT registered in Germany and is also VAT registered Bulgaria. It is part of the Brose group, which produces the mechatronic systems for car manufacturers. Brose Coburg ordered specific tooling equipment from IME for the manufacture of components that will be integrated into the mechatronic systems. IME invoiced Brose Coburg for the sale of that tooling equipment, with ownership of the equipment transferring to Brose Cobourg, but the equipment remained with IME (in Bulgaria). Brose Coburg then sold that tooling equipment to Brose and issued an invoice including Bulgarian VAT. The tooling equipment remained in Bulgaria with IME for the purpose of manufacturing those components. Brose sought a refund of the Bulgarian VAT, but that application was rejected.

The questions referred were whether a supply of goods may be regarded as an intra-Community supply even if those goods have not left the supplier's Member State and whether the supply of equipment may be regarded as forming part of a single, indivisible supply or as being ancillary to intra-Community supplies of goods produced using that equipment.

In the context of the first question, the court reiterated that the right to an input credit is a fundamental principle of the VAT system and, in principle, may not be limited and is exercisable immediately in respect of all of the taxes charged on input transactions. Under VAT Directive 2006/112/EC (referred to herein as the "VAT Directive") the entitlement to a VAT refund is based on the application of that Directive in the Member State of refund, but the Refund Directive does not apply to VAT amounts invoiced in respect of supplies of goods that may be intra-Community supplies.

Article 138(1)(a) of the VAT Directive requires Member States to exempt the supply of goods dispatched or transported to a destination outside their territory but within the EU by or on behalf of the vendor or the person acquiring the goods, on condition that the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins. The exemption applies only where the conditions of Article 138 are satisfied – namely, the right to dispose of the goods as owner has been transferred to the person acquiring the goods, the supplier establishes that those goods have been dispatched or transported to another Member State, and as a result of that dispatch or transport the goods have physically left the territory of the Member State of supply.

The court referred to previous cases where it was held that the transfer of the right to dispose of tangible property as owner does not require the party to whom the tangible property is transferred to be in physical possession of it, or that the tangible property be physically transported to that party and/or physically received by that party.

The court noted that without the physical movement of the goods concerned outside the territory of the Member State of supply, a supply cannot be classified as an intra-Community supply. Similarly, an acquisition can be classified as an intra-Community acquisition only if the goods have been transported or dispatched to another Member State, to the person acquiring them. If the goods being supplied to the person acquiring them have not physically left the territory of the Member State of supply, then Article 138 cannot apply. This means that there is neither an intra-Community acquisition nor an intra-Community supply.

In this case the tooling equipment was the subject of two sales where the right to dispose of that equipment was transferred from IME to Brose Coburg and from Brose Coburg to Brose, with the equipment remaining in the supplier's Member State. It will be for the referring court to determine if the conditions in Article 138 are not satisfied and in those circumstances the VAT refund under the Refund Directive cannot be refused.

The second question referred related to assessing whether each transaction must, in principle, be regarded as a distinct and independent transaction. Even though the components and equipment were used to make car parts for Brose, this does not mean that the supplies are automatically a single transaction. The court's reasoning focuses on determining whether the supply of the tooling equipment and the supply of components should be treated as separate, independent transactions or as a single, indivisible economic supply. The court reiterated the point that a single supply from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system. Each transaction should generally be treated as distinct and independent, even if there is an economic link or common purpose between them.

The court considered the composite-supply rules and noted that a supply is considered ancillary if it is not an aim in itself for the customer but enhances the principal supply. If supplies have distinct functions or purposes, they cannot be classified as ancillary. The supply of the tooling equipment, intended for use in production on an ongoing basis, has its own purpose and cannot be considered ancillary to the supply of components.
The court noted that the economic and commercial reality of the transactions must be considered, including the business model and contractual relationships. In this case the tooling equipment had its own purpose, which was not merely a means to enjoy the supply of the components. The fact that the equipment and components were invoiced separately supports the classification of the supplies as independent transactions, although this is not decisive on its own.

The court held that the supply of equipment should be treated as an independent transaction unless it is proven to be ancillary or part of a single, indivisible economic supply. If independent, then the VAT refund cannot be refused based on the exemption for intra-Community supplies.

This case highlights the importance of understanding the supply chain and the application of the composite/multiple supplies rules and the VAT consequences where tooling equipment remains with the manufacturer of that equipment.

02 Triangulation Simplification Measure – Missing Trader Fraud: General Court Judgment

The General Court released its judgment on 3 December 2025 in the case of *MS KLJUČAROVCI, d.o.o., in liquidation v Republika Slovenija* T646/24. It involved MS KLJUČAROVCI, d.o.o. ("MS"), a Slovenian company in liquidation, and the Slovenian tax authority in relation to a dispute over the calculation of VAT in triangulation transactions.
MS acquired goods (soya seed, rapeseed presscakes and rapeseed oil) from German suppliers and resold the goods to three Danish companies, with MS organising direct transport of the goods from Germany to Denmark.
MS provided its VAT number to the German suppliers. The goods acquired by MS were handed over by it, as the organiser of the transport, at storage or mixing facilities in Denmark, where they were collected by various companies on behalf of ANC Group (a Danish company and a customer of the three Danish companies).

The purchases and the subsequent supplies to the three Danish companies were included in MS's Slovenian VAT return and VIES statement. The invoices issued by MS to its customers included the reference "Reverse charge".

MS applied the triangulation simplification measure, transferring the VAT accounting obligation to the Danish companies without its registering for VAT in Denmark. The Slovenian tax authority sought confirmation from the Danish tax administration that the three Danish companies had taken delivery of the goods and accounted for VAT. However, it confirmed that the companies had not acquired the goods in question or paid the appropriate VAT, that they had no warehouses or offices in Denmark and that they were therefore missing traders (missing traders include for example traders who acquire goods VAT free and sell on domestically without paying VAT to the tax authority and subsequently disappear). This resulted in unpaid VAT in both Denmark and Slovenia. MS's application of the triangulation simplification measure was rejected on the basis that the chain of supplies involved four operators, not three, and the goods were delivered to a fourth operator (ANC Group) in Denmark, not the third operator (the three Danish companies).

The Slovenian tax authority took the view that the place of taxation of the acquisitions

made by MS is in the Member State in which MS is VAT registered (Slovenia) and that MS could not reduce its taxable amount by the corresponding amount of VAT paid in Denmark, because it was aware that it was participating in transactions aimed at the commission of VAT fraud. It argued that the transaction does not qualify as a triangular transaction because it involves more than two supplies of goods within a single transport operation. It contended that the goods were not made available to the third operator in the supply chain (the Danish companies) but were instead delivered directly to the fourth operator (ANC Group). It submitted that MS does not meet the conditions for applying the triangulation simplification measure.

MS argued that the conditions for triangulation simplification are satisfied even though the transaction in question comprises three successive supplies. It submitted that the fact that in Denmark (Member State of VAT identification of the third operator in the chain of supplies) the goods are supplied to the fourth operator in that chain has no bearing on the fact that the transaction in question may be classified as a triangular transaction.

The first question referred was whether Article 141(c) must be interpreted as meaning that the condition laid down in that Article is satisfied when goods are supplied under a single transport operation to the customer of the person acquiring the goods and not to the third person in the transaction chain, who is registered for VAT purposes in the same Member State as the third person in the transaction chain.

The court indicated that Article 141(c) does not require the goods to be physically transported to the person for whom the subsequent supply is carried out. Instead, the condition is satisfied even if the goods are transported directly to the customer of that person (fourth operator in the chain), provided the customer is VAT registered in the same Member State as the reseller. The court stressed that the concept of "supply of goods" under Article 14(1) refers to the transfer of the right to dispose of tangible property as an owner, not necessarily physical possession or transport to the person acquiring the goods. The court also noted that the objectives of Articles 42 and 141 of the VAT Directive, which aim to simplify triangular transactions and ensure proper VAT application, support this interpretation.

The second question posed was whether the fact that the operator benefiting from the triangulation simplification measure is aware that the goods are not physically transported to the person for whom the subsequent supply is carried out, but to the customer of that person, is relevant to compliance with the condition laid down in Article 141(c).

The court ruled that the operator's awareness of the goods being transported to the customer of the person for whom the subsequent supply is carried out has no bearing on compliance with Article 141(c). The court reiterated that transactions must be assessed based on their objective characteristics, and subjective knowledge of the operator does not affect the condition being satisfied. This approach is in line with the principle that VAT transactions are taxed taking into account their objective characteristics.

The final question was whether Articles 41 and 42 must be interpreted as meaning that the place of the intra-Community acquisition of goods is deemed to be within the territory of the Member State that issued the VAT number under which the person acquiring the goods made the acquisition, and that person cannot benefit from the reduction in the taxable amount if it is established that they knew or should have known they were participating in VAT fraud.

The court confirmed that if a taxable person knew or should have known that they were participating in VAT fraud, the authorities and courts of the Member State issuing the VAT number must refuse the benefit of the triangulation simplification measure. Additionally, the relief under Article 41(2)

of reducing the taxable amount cannot be granted. The court emphasised that EU law cannot be relied on for abusive or fraudulent purposes and that preventing tax evasion and abuse is a recognised objective of the VAT Directive. The refusal to grant benefits in cases of fraud is consistent with principles such as proportionality, neutrality, legal certainty and the protection of legitimate expectations. The court stated that those principles cannot legitimately be invoked by a taxable person who has intentionally participated in tax evasion and who has jeopardised the operation of the common system of VAT.

The General Court held that MS could not benefit from the triangulation simplification measure if it is established that it knew or should have known that it was participating in fraudulent transactions.

This judgment clarifies the operation of the triangulation simplification measure and highlights the key aspect that what is relevant is the power to dispose of the goods rather than the physical receipt of the goods. It is clear that a more flexible interpretation can be given to the measure provided there are no fraudulent structures or transactions involved.

03 Supply of Services Free of Charge – Debt Recovery in Favour of a Third Party: CJEU Judgment

On 2 October 2025 the CJEU published its judgment in *'Svilosa' AD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Veliko Tarnovo* C535/24, concerning the interpretation of Articles 2(1)(c), 24(1) and 26(1)(b) of the VAT Directive, which define taxable transactions, supply of services, and supply of services free of charge treated as for consideration, respectively. Svilosa AD ("Svilosa"), a Bulgarian holding company, deducted input VAT for legal services provided by US law firms. The legal services related to steps taken by Svilosa to recover costs from a loan that it granted to a foundation for organising a charity concert. The loan amount had not been paid into the foundation's account but had been made directly available to third parties who were to organise that concert. The concert did not take place, through no fault of the foundation's, and Svilosa brought legal proceedings against the third parties to recover the funds.

Svilosa deducted the input VAT in respect of the legal services, but following a tax audit the Bulgarian tax authority issued a tax assessment notice, claiming that Svilosa supplied services free of charge to the foundation. The tax authority found that the foundation had authorised a legal representative of Svilosa to represent the foundation before the law firms and that Svilosa had paid for the legal services without receiving payment from the foundation. It argued that there was a supply of services for consideration.

The court reformulated the question that was referred and indicated that the provision under the VAT Directive that required interpretation was Article 2(1)(c), relating to the concept "supply of services for consideration", rather than the concept of "supply of services" under Article 24(1). The question considered therefore was whether Articles 2(1)(c) and 26(1)(b) should be interpreted as meaning that actions taken by a creditor to recover a debt where those actions were taken without authority or mandate from the debtor may be classified as a supply of services for consideration or are to be treated in the same way as that concept for the purposes of Articles 2(1)(c) and 26(1)(b).

The court reiterated the point that a supply of services is effected for consideration only where there is a legal relationship between the service provider and the recipient pursuant to which there is reciprocal performance (i.e. direct link requirement). Here Svilosa granted a loan to the foundation under a bridge financing agreement, but the steps taken by it in relation to the amounts paid to third parties in respect of that loan were not the subject of

an agreement with the foundation. In addition, Svilosa did not receive any payment from the foundation in respect of the legal action taken. Even though Svilosa recovered part of the debt, it was noted that this was irrelevant as they were not payments in respect of the recovery steps taken by Svilosa. The court held that Svilosa's actions to recover the debt were not a supply of services for consideration because there was no legal relationship or reciprocal performance between Svilosa and the foundation regarding the recovery actions.

With regard to the argument that there was a supply of services carried out free of charge by Svilosa, the court noted that the purpose of Article 26(1)(b) is to ensure equal treatment as between a taxable person who supplies services for his/her private use or for that of his/her staff and a final consumer who acquires services of the same type. It indicated that Svilosa's actions were taken for the purposes of recovering the debt owed to it by the foundation and therefore were taken for the purposes of its business. The court found that Svilosa's actions were taken in the interest of its business (recovering its debt) and not for purposes other than its business. Therefore, these actions cannot be treated as a supply of services for consideration. The court held that actions taken by a creditor to recover a debt without authority or mandate from the debtor do not qualify as a supply of services for consideration and are not treated as such under the VAT Directive.

04 Supply of Services for Consideration – Payment of Legal Fees by Unsuccessful Opposing Party: CJEU Judgment

The CJEU delivered its judgment in the case of *T.P.T. v 'Financial Bulgaria'* EOOD C744/23 [*Zlakov*] on 23 October 2025. The case arose out of proceedings between T.P.T. and Financial Bulgaria EOOD, where T.P.T sought a declaration of nullity of a security agreement concluded in the context of a consumer credit agreement, and resulted in an application by T.P.T.'s lawyer seeking payment of VAT together with his fees from Financial Bulgaria EOOD. T.P.T.'s lawyer had provided the legal services on a free-of-charge basis, and the unsuccessful party was ordered to pay the lawyer's fees (the initial order granted the payment of fees without VAT). Financial Bulgaria had opposed that application on the basis that there was no reason to award payment of the VAT amount because the legal services were provided free of charge.

Article 26(1) of the VAT Directive provides that the supply of services carried out free of charge by a taxable person for his private use or for that of his staff, or more generally for purposes other than those of his business, is treated as a supply of services for consideration. The court was required to ascertain whether the legal assistance provided on a free-of-charge basis constitutes a supply of services for consideration. The question referred to the court was reformulated and was as follows: must Articles 2(1)(c), 24(1), 26(1)(b), 28 and 75 be interpreted to mean that legal representation provided free of charge but where the opposing party is ordered to pay the lawyer's fees comprises a supply of services for consideration or a supply of services provided free of charge that must be treated as a supply of services for consideration?

Under the VAT Directive, Article 2(1)(c) provides that services provided for consideration by a taxable person are subject to VAT, Article 9(1) defines a "taxable person", Article 24(1) defines "supply of services" and Article 26(1)(b) treats free-of-charge services for private use or non-business purposes as services for consideration. Articles 28 and 75 address taxable amounts and the treatment of services provided free of charge.

The court noted that as T.P.T.'s lawyer is VAT registered in Bulgaria, he is considered to be a

taxable person, as they independently carry out an economic activity; fees were awarded to him in respect of a person to whom he provided legal assistance free of charge and who was successful in the proceedings. It also indicated that the representation of a client in court by a lawyer comprises a supply of services. In considering whether the services were carried out for consideration, the court noted that a supply of services is effected for consideration only where there is a legal relationship between the service provider and the recipient pursuant to which there is reciprocal performance (i.e. direct link requirement). This direct link is broken when the remuneration is awarded in a voluntary and uncertain way so that its amount is practically impossible to determine or where its amount is difficult to quantify or the circumstances relating to its calculation are uncertain.

However, based on the facts here, the court stated that the existence of a direct link between the legal assistance provided by T.P.T.'s lawyer and the lawyer's fees paid to him is evidenced both by a contract and by law. It also stated that the fact that the fees were paid by a third party was irrelevant, i.e. it is not necessary that the consideration for that supply be obtained directly from the recipient thereof. The court held that legal representation provided free of charge but where the opposing party is ordered to pay the lawyer's fees constitutes a supply of services for consideration under Article 2(1)(c) of the VAT Directive and is subject to VAT.

05 Conditions for Exemption in Respect of Intra-Community Supplies of Goods: CJEU Judgment

On 13 November 2025 the CJEU published its judgment in *FLO VENEER d.o.o. v Ministarstvo financija Republike Hrvatske, Samostalni sektor za drugostupanjski upravni postupak* C-639/24. The case resulted from proceedings between FLO VENEER d.o.o. and the Croatian Ministry of Finance concerning the exemption in respect of intra-Community supplies of goods and required the interpretation of Article 138(1) of VAT Directive and of Article 45a of Council Implementing Regulation (EU) No 282/2011 ("IR 2011").

Article 138(1)(a) requires Member States to exempt the supply of goods dispatched or transported to a destination outside their territory but within the EU by or on behalf of the vendor or the person acquiring the goods, on condition that the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins.

Article 45a of IR 2011 outlines the conditions for presuming that goods have been dispatched or transported from one EU Member State to another for the purpose of VAT exemption under Article 138 of the VAT Directive. It provides that goods are presumed to have been dispatched or transported to another Member State if the supplier provides at least two non-contradictory pieces of evidence from independent parties or one such document along with other supporting documents. Alternatively, the supplier has a written statement from the acquirer confirming the dispatch or transport, along with supporting evidence. The tax authorities can challenge the presumption if they find evidence to the contrary.

FLO VENEER, a Croatian trading company, sold oak logs to a Slovenian purchaser. During a tax audit FLO VENEER provided written statements from the purchaser, invoices, certificates of dispatch and consignment notes to support its claim for VAT exemption on intra-Community supplies. However, the Croatian Ministry of Finance issued a VAT assessment notice, rejecting the exemption, and submitted that the evidence provided did not meet the

conditions outlined in Article 45a of IR 2011. It did not, however, dispute the actual transport of the goods from Croatia to Slovenia. FLO VENEER argued that the substantive conditions for VAT exemption were met by it and that the tax authorities should consider all evidence provided, even if it does not meet the formal requirements of Article 45a.

The questions referred to the CJEU were whether the VAT exemption under Article 138(1) can be refused solely because the supplier failed to provide evidence meeting the conditions in Article 45a of IR 2011 and whether the tax authorities are obliged to assess other evidence provided by the supplier to determine whether the goods were dispatched or transported to another EU Member State, even if the presumption under Article 45a does not apply.

Article 45a provides a framework for presuming the dispatch or transport of goods between Member States for VAT exemption purposes. However, it does not provide an exhaustive list of evidence required to prove an intra-Community supply. Hence, if the conditions for presumption are not met, the tax authorities must still assess other evidence provided by the supplier to determine whether the substantive conditions for VAT exemption under Article 138(1) are satisfied

The court noted that Article 138(1) does not make the grant of the exemptions provided for by that article conditional on the supplier being in possession of specific evidence. It also made reference to the recitals of IR 2011, which indicate that the presumption at issue was envisaged for the purpose of facilitating the production of evidence without excluding the possibility of producing evidence other than that referred to by that presumption. The court pointed out that VAT exemptions cannot be denied solely due to non-compliance with formal requirements if the substantive conditions for an intra-Community supply are met. This point has been regularly highlighted in previous cases. Referring to the principle of fiscal neutrality, the court noted that this requires that VAT exemptions be granted when substantive conditions are fulfilled, even if formal requirements are not fully adhered to. Hence the tax authorities must consider all evidence provided by the supplier to establish the physical movement of goods between Member States.

The court went on to state that there are only two situations in which the failure to meet a formal requirement may result in the loss of entitlement to an exemption from VAT. First, the principle of fiscal neutrality cannot be invoked for the purposes of an exemption from VAT by a taxable person who has intentionally participated in tax evasion that has jeopardised the operation of the common system of VAT. Second, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied.

The court held that VAT exemption under Article 138(1) cannot be refused solely because the supplier failed to provide evidence meeting the conditions in Article 45a of IR 2011 and that the tax authorities must assess all evidence provided by the supplier to determine whether the goods were dispatched or transported to another EU Member State, even if the presumption under Article 45a does not apply.

This case highlights the importance of documentation to prove that goods have moved cross-border, i.e. proof of delivery is critical, and that the tax authority is required to examine all evidence provided, even if that evidence falls outside the list in Article 45a of IR 2011.

VAT News

Ireland

Revenue eBrief No. 231/25, "VAT Deductibility for Insurance & Reinsurance"

A new Tax and Duty Manual (TDM), "VAT Deductibility for Insurance & Reinsurance", has been published to provide guidance on VAT deductibility for insurance and reinsurance. The TDM "VAT Deductibility for Life Insurance Companies" has been marked as no longer relevant.

Revenue eBrief No. 232/25, "VAT Treatment of Extended Warranties"

A new TDM, "VAT Treatment of Extended Warranties", has been published to provide guidance on the VAT treatment of extended warranties.

Revenue eBrief No. 240/25, "VAT Treatment of Establishing and Managing a Pension Scheme"

A new TDM, "VAT Treatment of Establishing and Managing a Pension Scheme", has been created to provide guidance on the VAT treatment of establishing and managing a pension scheme. The eBrief notes that previous information contained in TDM "Employer's Entitlement to Deductibility of VAT Incurred in the Setting Up and Management of a Pension Fund for His or Her Employees" has been incorporated in the new VAT TDM.

Revenue eBrief No. 241/25, "VAT Treatment of the Management of Pension Schemes"

A new TDM, "VAT Treatment of the Management of Pension Schemes", has been published to provide guidance on the VAT treatment of the management of pension schemes. The TDMs "VAT Treatment of the Management of Defined Benefit Pension Schemes" and "VAT Treatment of the Management of a Defined Contribution Occupational Pension Scheme" have been marked as no longer relevant.

Revenue eBrief No. 250/25: VAT TDMs created and updated

After Finance Act 2025 the following TDMs have been updated to include new guidance:

- "VAT Treatment of the Supply and Construction of Qualifying Apartments and Apartment Blocks", which provides guidance on the second reduced rate of VAT applying to the supply and construction of qualifying apartments and apartment blocks during the period 26 November 2025 to 31 December 2030;
- "VAT Rate for Qualifying Apartments (8 October 2025 to 25 November 2025)", which provides guidance on the second reduced rate of VAT applying to the supply of qualifying apartments during the period 8 October 2025 to 25 November 2025; and
- "VAT Treatment of the Hire of a Room".

Existing guidance in VAT TDMs has also been updated to reflect amendments made by Finance Act 2025, as follows:

- "Removal of Waiver of Exemption" has been updated after the cancellation of all waivers of exemption, effective from the date on which Finance Act 2025 was enacted (23 December 2025).
- "VAT Treatment of Management of Special Investment Funds" has been updated to include the automatic enrolment retirement savings system, effective from the date on which Finance Act 2025 was enacted (23 December 2025).
- "VAT Treatment of Construction Services" has been updated to include an amendment arising from the application of second reduced rate, with effect from 26 November 2025 to 31 Dec 2030, to services relating to the construction, until completed, of qualifying apartments and qualifying apartment blocks.

- "VAT Treatment of the Special Flat-Rate Scheme for Farmers" has been updated to reflect the reduction of the flat-rate addition (effective from 1 January 2026) and to include information relevant to broiler chicken services.
- "VAT Treatment of Broiler Chicken Services" has been updated to reflect the VAT registration requirements for broiler chicken services, effective from 1 January 2026.
- "VAT Deductibility for Qualifying Conference Accommodation" has been updated to reference the new TDM "VAT Treatment of the Hire of a Room" and to improve clarity.

EU

VAT Expert Group

The 41st meeting of the VAT Expert Group took place on 7 November 2025. The summary minutes outline the key areas that were discussed, including:

- Preliminary findings of the "Study on VAT Challenges Beyond ViDA" highlighted fiscal implications of reforms, benefits of digital reporting systems, potential improvements in fraud reduction and VAT neutrality, and environmental policy alignment. Topics discussed included artificial intelligence in VAT, circular economy, fraud prevention, exemptions, digital platforms and cross-border VAT refunds.
- Updates were given on the ViDA package, including the Implementation Strategy, explanatory notes on digital reporting requirements, and discussions on technical aspects (invoice definitions, reporting systems and data security).
- Results from the Fiscalis workshop on the Platform Economy were shared, covering the deemed-supplier regime, special schemes and transparency.
- Updates on Single VAT Registration and securing the Import One-Stop Shop were provided, with timelines for implementation extending to 2028.
- Preliminary discussions on revising VAT rules for travel agents and passenger transport services focused on scope, margin calculation and place-of-supply rules (TOMS/TAMS).

Combating fraud

In November 2025 the European Commission proposed a legislative amendment to strengthen cooperation between the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) and Member States to combat fraud. The proposal provides a legal basis for the exchange of information and access to VAT data, enhancing the EU's ability to combat fraud against the financial interests of the Union. This proposal would provide the EPPO and OLAF with a direct and streamlined communication with Eurofisc (the European network of national VAT anti-fraud officials) and a specific, direct and centralised access to relevant VAT information in relation to their respective mandates. The proposal will be submitted to the European Parliament and the Council for adoption.

Accounting Developments of Interest

Aidan Clifford
Advisory Services Manager, ACCA Ireland

CSRD Adoption Compliance Report for Ireland

The first round of 20 Irish companies have reported on their sustainability under the Corporate Sustainability Reporting Directive (CSRD). The Irish Audit and Accounting Supervisory Authority (IAASA) has published a review of this reporting. CSRD reporting is complex and extensive, including as many as 1200 data points. Some of the 20 companies were better at making the disclosures in a clear, comparable and easy-to-understand way, whereas others struggled. The IAASA report provides commentary on what the regulator considers to be best practice. The report identified training, data quality and early engagement as the biggest challenges for the reports, which ranged from 60 to 176 pages long. The IAASA report looks at good and poor reporting, how double materiality was identified, the number of entities making reports under each of the topical European Sustainability Reporting Standards (ESRS) and some of the companies that had entity-specific topic disclosures. It concluded that it "had no significant concerns regarding the compliance of sustainability statements with the requirements of the ESRS".

There is also a section in the report on sustainability assurance. The IAASA noted that there are now 42 sustainability assurance service providers (SASPs) licensed in Ireland to provide sustainability assurance over CSRD reporting. The SASPs work in 11 different audit practices. The IAASA noted that all assurance reports in the first year of CSRD reporting were "unqualified".

A selection of the sustainability reports can be found at these links:

- CRH plc,
- Kerry Group plc,
- Glanbia,
- DCC,
- Kingspan Group plc,
- Smurfit (Smurfit Westrock/Smurfit Kappa),
- RyanairAnnual-Report.pdf,
- Flutter Entertainment plc,
- AIB Group plc,

- Bank of Ireland Group plc and
- Greencore Group plc.

Voluntary Sustainability Reporting

Many companies have a commercial imperative to report on their sustainability but do not want to adopt the European Sustainability Reporting Standards owing to their size and complexity. These companies are increasingly adopting a greatly simplified sustainability reporting standard called the VSME. The VSME standard is issued by the European Financial Reporting Advisory Group, which recently conducted a survey of its use and acceptance by financial institutions, business partners and companies in the value chain. Some of the key takeaways from the survey are a growing awareness and use of the standard and, companies using the standard report improved access to finance and cost optimisation. Some of the challenges identified is adopting VSME include limited training, unclear methodologies and insufficient supporting tools. The respondents to the survey asked for additional guidance, including on specific disclosures and sector-specific topics, and respondents called for awareness-raising initiatives, such as examples of completed VSME reports, training sessions and best-practice cases. An example VSME report for an Irish credit union is available at this link.

Accountants Now Second-Most In-Demand Role in Ireland

Research from IrishJobs.ie shows that accountants are now the second-most in-demand professionals in Ireland. Demand for accountants has surged by 39% over the past year. Eight in ten of the most in-demand professions in Ireland in 2025 were in construction and related sectors, with nurses occupying tenth place.

Revisions to ISAs (Ireland)

The Irish Audit and Accounting Supervisory Authority has revised five International Standards on Auditing (Ireland) to reflect the adoption of the Irish Corporate Governance Code. Entities with an equity listing on Euronext Dublin are required to use the Code for financial years beginning on or after 1 January 2025. The revisions do not introduce new requirements for auditors or remove existing ones; they just reflect the adoption of the Irish Corporate Governance Code by Euronext Dublin.

EU Sanctions Helpdesk

Companies having a difficulty in determining whether a particular sale or customer is subject to sanctions can get assistance from the EU Sanctions Helpdesk. Support can be obtained from this link. Companies can also subscribe for the EU Sanctions Helpdesk newsletter at this link.

Carbon Border Adjustment Mechanism

The European Commission issued an update to the CBAM rules. The Environmental Protection Agency has been appointed as the national competent authority in Ireland, and the CBAM becomes fully operational in Ireland on 1 January 2026.

ESRS Have Been Simplified

Draft simplified European Sustainability Reporting Standards have been published. They include a Log of Amendments and Comparative Table.

AML Reporting in the UK

The UK National Crime Agency has issued its SARs Annual Report. A total of 867,000 suspicious activity reports (SARs) were made in the UK in the year ending March 2025, one for every 80 people; 6,100 of those reports were from the accountancy profession. Ireland, by comparison, had one report for every 73 people for a slightly earlier period. The accounting practice sector in Ireland makes about 22 SARs a year, considerably behind the UK, even when population adjusted.

An accounting practice not having ever made a SAR is considered by the regulators to be a possible indication of a lack of understanding of the anti-money-laundering (AML) regulations. Never having made a report may therefore increase a practice's risk score, and the frequency of AML monitoring for a practice is based on its risk score.

Cyber Security Toolkit

The National Cyber Security Centre in the UK has launched the Cyber Action Toolkit: a single destination for sole traders, micro businesses and small organisations to start building their cyber defences. The toolkit askes the user a number of questions and then provides a checklist of matters to address. It has simple guidance, from how to change a Gmail password to how to turn on automatic updates for your apps. The toolkit, although produced for UK businesses, is fully applicable in Ireland.

Investing in Crypto-Assets

The European Banking Authority published a warning and factsheet regarding the risks and lack of protection for certain crypto-assets and providers. The warning includes a list of the main risks associated with crypto, such as extreme price movements, liquidity risks, misleading information, fraud, scams and hacks, the lack of any consumer protection and product complexity. The factsheet discusses the Markets in Crypto-Assets Regulations and what protections may be available for certain crypto-assets across the EU.

Reducing Businesses' Regulatory Burden

The Minister for Enterprise, Tourism and Employment, Peter Burke TD, has reported on a series of initiatives to cut red tape in business. The simplifications include:

- simplification of Local Enterprise Office grant schemes,
- a "once-only" principle whereby information required to apply for multiple grants will be asked for only once,
- a 24-hour turn-around on grant approvals,

- a reduction in the scope of the Corporate Sustainability Reporting Directive and
- a new SME test for Government policies.

Audit Best Practice

The UK Financial Reporting Council (FRC) ha published a key findings and good practice report. Both the FRC and the Irish Audit and Accounting Supervisory Authority have previously reported on areas of weakness that they have found in audits, and this report looks at some of the best practices in audit in those areas where weaknesses were identified. Areas of the audit considered include Impairments, provisions, revenue recognition, valuation of assets and liabilities, inventory, ISQM1, planning and risk assessment, IT testing and group audit oversight.

DETE Statement of Strategy

The Department of Enterprise, Tourism and Employment has issued a Statement of Strategy. The strategy has six aims:

- Drive competitiveness, sustainability and innovation, building the resilience of the economy.
- Drive prosperity and high standards of living through creating and maintaining high-quality jobs and increased productivity; this includes attracting talent for critical skills areas through simplification of the work permit application process.
- Strengthen tourism and support Irish-based enterprise to start, scale and compete internationally, including a review of costs for SME and micro enterprises to identify effective cost mitigants and simplifying and streamlining information on and access to grants and supports.
- Provide the most competitive environment for the attraction and retention of inward investment at the cutting edge of innovation.
- Provide measured, certain and innovation-friendly regulation for business, workers and consumers. This includes removing unnecessary regulatory or administrative burdens on business and supporting the simplification and burden reduction agenda at European level. Also included under this heading is a review of the Irish Auditing and Accounting Supervisory Authority to ensure Ireland has an effective auditing and accounting regime.
- Advocate Ireland's values and strengthen our relationship and influence with the EU and international partners.

Sanctions Guidance for the Freight and Shipping Sector

New guidance has been published on countering Russian sanctions evasion targeted specifically at businesses operating in the freight and shipping sector. It contains:

- information on the range of goods at heightened risk of being diverted to Russia,
- suggestions for compliance best practice and enhanced due diligence procedures,

- red-flag indicators of potential sanctions evasion via circumvention and
- additional resources to aid businesses in these sectors in managing their risk and meeting their compliance obligations.

Can Charities Give Gift Cards to Staff or Volunteers?

The Charities Regulator has published guidance on the matters a charity should consider before giving staff or volunteers a gift card.

Charities with Excess Cash

The Charities Regulator has issued a warning to charities that they must use any income for their charitable purpose within five years of receiving it and, if they do not, that income may become taxable. The Regulator referenced ss207 and 208 of the Taxes Consolidation Act 1997. If a charity wants more time, it can ask Revenue for an extension, but the charity will need to show that it is in the process of using the money for its charitable purpose.

Sustainability Reporting

The International Sustainability Standards Board has published its latest newsletter; see IFRS - ISSB Update. This newsletter deals with biodiversity, ecosystems and ecosystem services; human capital; and amendments to greenhouse gas emissions disclosure.

Charities Accounting

The body responsible for the Charities SORP (Statement of Recommended Practice) has published the latest version of the SORP, which will be effective for periods commencing on or after 1 January 2026; see https://www.charitysorp.org/. The new SORP reflects the changes to FRS 102 and requires the following:

- The income threshold for requiring a cash-flow statement under the SORP is increased to £15m.
- Most operating leases will now need to be converted to finance leases.
- Charities must adopt a new five-step model for recognising income from exchange contracts, which may require changes to accounting policies and record keeping.
- Risk disclosure: larger charities must now provide a description of principal risks and uncertainties, along with their plans to manage them.
- Social investment: larger charities must explain their social investment policies and how investments contributed to their aims.
- The statement of financial activities will now require a multi-column analysis to show the income and expenditure for different fund types (endowment, restricted and unrestricted).
- The balance sheet will show the split of closing funds between restricted, unrestricted and endowment funds and use “funds of the charity” instead of “shareholders’ funds”.

The Charities SORP is still optional in Ireland, although some funders will require its use as a condition of continued funding and most larger charities apply it voluntarily. When the new Charities Act is finally commenced, the SORP is expected to become compulsory for certain larger charities.

Sustainability Assurance Engagements in the UK

The Financial Reporting Council has issued International Standard on Sustainability Assurance (UK) 5000, "General Requirements for Sustainability Assurance Engagements". The standard provides UK companies, investors and assurance providers with a consistent, internationally aligned assurance standard for voluntary use in sustainability assurance engagements. The same standard is expected to be issued in Ireland shortly.

FRC Reviews Smaller Companies Accounting and Disclosures

The Financial Reporting Council (FRC) examined the UK's smaller listed companies in this report. The sample is smaller companies both on the Main Market and on the Alternative Investment Market. The report focuses on four key areas to which investors pay close attention and where the FRC has historically identified room for improvement:

- Revenue recognition – to ensure clear, company-specific accounting policies.
- Cash-flow statements – to encourage accurate classification and consistency with other disclosures.
- Impairment of non-financial assets – to enhance the transparency disclosure of assumptions and sensitivities.
- Financial instruments – to tailor policies and risk disclosures to the company.

Legal Monitor

Nora Walsh
Senior Tax Manager – Professional Services, Irish Tax Institute

Selected Acts Signed into Law from 1 November 2025 to 31 January 2026

No. 14 of 2025: Health Insurance (Amendment) Act 2025

This Act amends the Health Insurance Act 1994 to specify the amount of premium to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons from 1 April 2026; to make certain other amendments to that Act, including to specify the amount of the hospital utilisation credit applicable from 1 April 2026 and to specify the percentage applicable for the purposes of the definitions relating to high cost claims; to amend Schedule 1 to that Act; to make a consequential amendment to the Stamp Duties Consolidation Act 1999; and to provide for related matters. The Act was enacted on 10 December 2025.

No. 16 of 2025: Employment (Contractual Retirement Ages) Act 2025

This Act provides that an employee may notify his or her employer that he or she does not consent to retire at the contractual retirement age; provides that an employer who receives such notification may not enforce the contractual retirement age where the employee is less than the pensionable age unless the retirement of the employee concerned is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; provides for the prohibition of penalisation resulting from such notification; for those and other purposes amends the Workplace Relations Act 2015; and provides for related matters. The Act was enacted on 16 December 2025.

No. 18 of 2025: Finance Act 2025

This Act gives effect to the measures announced in Budget 2026. Notable, but not exhaustive, changes include an increase in the entrepreneur relief lifetime limit from €1m to €1.5m, an increase in the research and development tax credit from 30% to 35%, a decrease in the VAT rate on food and catering services from 13.5% to 9%, and extensions of the Special Assignee Relief Programme and the Key Employee Engagement Programme. The Act was enacted on 23 December 2025.

No. 19 of 2025: Social Welfare and Automatic Enrolment Retirement Savings System (Amendment) Act 2025

This Act amends and extends the Social Welfare Acts, amends the Automatic Enrolment Retirement Savings System Act 2024 and provides for related matters. The Act was enacted on 23 December 2025.

No. 20 of 2025: Remediation of Dwellings Damaged by the Use of Defective Concrete Blocks (Amendment) Act 2025

This Act amends the Remediation of Dwellings Damaged by the Use of Defective Concrete Blocks Act 2022; amends the eligibility criteria for applications for grants in respect of alternative accommodation, storage and immediate repairs; provides for a further mechanism for the assessment of certain attached dwellings damaged by the use of defective concrete blocks; provides for an application for an increase in the amount of a grant for remediation of certain dwellings damaged by the use of defective concrete blocks; amends the time limit for the payment of a grant for remediation; provides for the construction of a new dwelling in exceptional circumstances; provides for the review of certain approved remediation options and a procedure for the approval of a new remediation option and grant; enables certain joint owners to

become relevant owners; provides for charging orders for additional payments and their release; provides for information sharing between specified public bodies; amends and extends the Building Control Act 1990 to provide for regularisation certificates of compliance on completion in certain circumstances; changes the names of certain certificates issued under that Act; confers on the Minister for Housing, Local Government and Heritage the power to make regulations relating to enforcement notices; extends the powers of authorised persons; provides for the opening up of works in certain limited circumstances; and provides for related matters. The Act was enacted on 23 December 2025.

Selected Bills Initiated from 1 November 2025 to 31 January 2026

No Bills of note were initiated in this period.

Selected Statutory Instruments from 1 November 2025 to 31 January 2026

SI 637 of 2025: Automatic Enrolment Retirement Savings System Regulations 2025

These Regulations are designed to exercise powers conferred on the Minister for Social Protection by the Automatic Enrolment Retirement Savings System Act 2024 ("the Act") to give more detail on the operation of that system where it is warranted. The system is to be administered by the National Automatic Enrolment Retirement Savings Authority ("NAERSA"). The Regulations relate to (i) the circumstances in which contributions are to be repaid; (ii) the information that employers are to provide to NAERSA (An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir); (iii) certain matters in relation to the collection of contributions; (iv) the operation of Part 3 of the Act where technology systems failures arise; (v) the arrangements for the early payment of a participant's funds on the grounds of incapacity or exceptional ill-health; (vi) the details that NAERSA and employers are to provide in relation to automatic enrolment, opt-in or automatic re-enrolment; (vii) the detail with regards to how information sharing with the Revenue Commissioners will operate; (viii) the arrangements in relation to the fixed payment notices provisions that NAERSA may use in the event of non-compliance; and (ix) the prescribed time by which contributions must be paid. The Regulations came into effect on 1 January 2026.

SI 668 of 2025: Automatic Enrolment Retirement Savings System Regulations (Amendment) (Section 52) Regulations 2025

These Regulations set out the standards that are to apply to occupational pension schemes and personal retirement savings accounts for the purposes of s51 of the Automatic Enrolment Retirement Savings System Act 2024, relating to exempt employments in respect of the automatic enrolment system. The Regulations came into effect on 1 January 2026.

SI 684 of 2025: Finance Act 2024 (Section 46(1)(r)) (Commencement) Order 2025

SI 684 of 2025 appoints 1 January 2026 as the day on which s46(1)(r) of Finance Act 2025 comes into operation, which provides for the extension of s481A of the Taxes Consolidation Act 1997 (relief for investment in digital games) for a period of six years to 31 December 2031.

SI 685 of 2025: Finance Act 2024 (Section 52(1)) (Commencement) Order 2025

SI 685 of 2025 appoints 1 January 2026 as the day on which s52(1) of Finance Act 2025 comes into operation. Finance Act 2025 amended s604B of the Taxes Consolidation Act 1997. That section provides for capital gains tax (CGT) relief for farm restructuring where the first transaction in the restructuring (e.g. sale, purchase or exchange of land) is carried out on or before 31 December 2025. Each transaction in the restructuring

must be completed within 24 months of the first transaction. Section 52 Finance Act 2025 amends the "relevant period" from 31 December 2025 to 31 December 2029, thus extending the deadline for the completion of the first restructuring transaction to 31 December 2029. The definition of "agricultural land" is amended to extend CGT farm restructuring relief such that it applies to the sale, purchase or exchange of commercial woodland, and non-commercial woodland that is used for sustainability and biodiversity purposes.

SI 686 of 2025: Finance Act 2025 (Section 86(1)) (Commencement) Order 2025

SI 686 of 2025 appoints 1 January 2026 as the day on which s86(1) of Finance Act 2025 comes into operation. Section 86 amends s81C of the Stamp Duties Consolidation Act 1999, which provides for relief from stamp duty where, within a 24-month period, land holdings are consolidated by way of linked disposals of qualifying land and acquisitions of qualifying land. Section 86(1) extends the availability of the relief by four years so that it will apply to instruments executed on or before 31 December 2029. Section 86(1) also widens the scope of the relief to include non-commercial woodland. Where the relief is claimed in respect of non-commercial woodland, it must be the intention of the person acquiring the land to retain ownership of it, and use it for conservation purposes, for five years.

SI 687 of 2025: Finance Act 2025 (Section 19) (Commencement) Order 2025

SI 687 of 2025 appoints 1 January 2026 as the day on which paragraphs (b) and (c) of Section 19(1) of Finance Act 2025 come into operation. Section 19(1) amends s128F of the Taxes Consolidation Act 1997, which provides for the Key Employee Engagement Programme (KEEP). The KEEP provides for relief from income tax, USC and PRSI on any gain realised on the exercise of a qualifying share option. The relief currently applies to qualifying share options exercised on or before 31 December 2025. Section 19 extends the relief by three years so that it will apply to qualifying shares exercised on or before 31 December 2028. In its current form the relief is available in respect of share options granted to employees of micro, small and medium enterprises (within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003). Finance Act 2025 makes no changes to the conditions of KEEP.

SI 688 of 2025: Finance Act 2024 (Section 49) (Commencement) Order 2025

SI 688 of 2025 appoints 23 December 2025 as the day on which s49 of Finance Act 2024 comes into operation. Section 49 inserts a new s487A in Chapter 3 of Part 15 of the Taxes Consolidation Act 1997 to provide a corporation tax credit for qualifying expenditure incurred on the production of an unscripted programme.

SI 12 of 2026: Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 1) (Income Disregard) Regulations 2026 and SI 13 of 2026: Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 1) (Calculation of Means) Regulations 2026

These Regulations provide that any payments made under the non-statutory inquiry into the licensing and use of sodium valproate in women of child-bearing potential in the State will be disregarded in the means test for social assistance payments, increases for qualified adults, the Working Family Payment, and supplementary welfare allowance payments.

SI 16 of 2026: Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2026

SI 16 of 2026 sets out the updated code of practice for the purposes of the Industrial Relations Act 1990.

Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

Published from 1 November 2025 to 31 January 2026

Income Tax

228TACD2025

Appeal regarding treatment of receipt of pension arrears

s112 TCA 1997

Case stated requested: Unknown

229TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

234TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

241TACD2025

Appeal regarding notice of assessment to income tax where returns filed late, incomplete returns and issues with a former agent

s18 TCA 1997; s19 TCA 1997; s52 TCA 1997; s112 TCA 1997; s959I TCA 1997; s959P TCA 1997; s959V TCA 1997

Case stated requested: Unknown

243TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

Income Tax & USC

226TACD2025

Appeal regarding underpayment of tax due to application of incorrect tax credits when appellant's husband held both a Revenue Customer Number and a PPSN

s15 TCA 1997; s112 TCA 1997; s461 TCA 1997; s472 TCA 1997; s1018 TCA 1997; s1019 TCA

Case stated requested: Unknown

USC

227TACD2025

Appeal regarding underpayment of USC on mix of income from occupational and State pensions

s15 TCA 1997; s112 TCA 1997; s461 TCA 1997; s464 TCA 1997; s472 TCA 1997

Case stated requested: Unknown

Corporation Tax

236TACD2025

Appeal regarding a claim for R&D tax credit that was not filed by the appellant within the requisite time limit

s766C TCA 1997

Case stated requested: Unknown

VAT

231TACD2025

Appeal regarding repayment of VAT incurred on automatic calf-feeder

Value-Added Tax (Refund of Tax) (Flat-rate Farmers) Order 2012; s2 VATCA 2010

Case stated requested: Unknown

VRT

235TACD2025

Appeal regarding payment of VRT charged on late registration of vehicle

s132 Finance Act 1992

Case stated requested: Unknown

Stamp Duty

237TACD2025

Appeal regarding application of the four-year statutory limitation period

s159A SDCA 1999

Case stated requested: Unknown

PAYE

233TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

240TACD2025

Appeal regarding incorrect Statements of Liability, incorrect inclusion of medical insurance relief and administrative error with Tax Credit Certificate not provided

s865 TCA 1997

Case stated requested: Unknown

244TACD2025

Appeal regarding entitlement to relief for third-level tuition fees where fees were paid in an earlier year, and Revenue's power to amend a Statement of Liability within the statutory time limit

s473A TCA 1997; s997 TCA 1997

Case stated requested: Unknown

CAT

238TACD2025

Appeal regarding treatment of money received within a family as a loan, business expenses and consultancy fees

s2 CATCA 2003; s4 CATCA 2003; s5 CATCA 2023

Case stated requested: Unknown

Help to Buy Scheme

232TACD2025

Appeal regarding refusal of Help to Buy relief where it was argued that the original valuation was incorrect and exceeded the maximum value allowed

s477C TCA 1997

Case stated requested: Unknown

242TACD2025

Appeal regarding application of theHelp to Buy scheme where loan-to-value ratio in respect of a claim is below 70%

s477C TCA 1997

Case stated requested: Unknown

RCT

230TACD2025

Appeal regarding application of 0% rate of RCT

s530E TCA 1997; s530G TCA 1997

Case stated requested: Unknown

Customs & Excise

239TACD2025

Appeal regarding importation of motor vehicles that were the subject of a claim under Great Britain Preferential Origin

Article 104 Union Customs Code (Regulation (EU) No. 952/2013)

Case stated requested: Unknown

Aaron Mullan
Tax Director, PwC Ireland
John Walsh
Tax Director, PwC Ireland
Caitriona Gough
Tax Associate, PwC Ireland

Irish Property Investment: A Review of Ownership Structures and Tax Incentives

Background

It is no secret that Ireland's property market continues to face acute challenges, including an ongoing housing crisis, rising construction costs and sustainability imperatives. These challenges are not uncommon globally, and Ireland is competing for a finite amount of capital from private investors. Private investors are attracted to investments that offer a high return, and of course tax is a factor in calculating returns. Against this backdrop, tax incentives have become a critical policy tool to stimulate investment generally and accelerate housing delivery specifically. Finance Act 2025 has introduced targeted measures designed to address challenges, which complement existing schemes. Understanding these measures is essential for investors seeking to optimise returns while navigating complex compliance requirements.

This article focuses on tax incentives for property investment, but readers should note that the taxation of property transactions

is a complex area and relevant specific anti-avoidance provisions require careful consideration in all transactions. We begin with an overview of the considerations in determining whether a transaction is trading or capital and then consider the ownership structure options, as these will impact which incentives may be available.

Property Transactions: Trading or Capital?

As Paul Morris and Christine Kearney noted in their article "Dealing in Land: From 'Ghost Estates' to 'Air Rights'", published in *Irish Tax Review*, Issue 2 of 2018, first principles apply in determining whether the party selling an asset is doing so as an adventure in the nature of a trade or on capital account. This is essential to determine the tax rate applicable to the profit on disposal and the deductibility of expenses and is typically a key factor in choosing an ownership structure.

Specifically with respect to property, below are some indicators that can point towards a tradebeing carried on:

- an intention to realise a profit on disposal shortly after acquisition or development,
- the propertybeing acquired and held as trading stock in financial accounts
- value-add or supplementary work, which could be in the form of physical development or the active management and leasing of a property.

In analysing whether a trade is carried on, all relevant facts should be considered, and it is recommended that taxpayers retain evidence supporting their conclusion. Key sources of evidence typically include financial statements, minutes of the board of directors' meetings, business plans and financing agreements.

As the aforementioned article notes, the miscellaneous land-dealing rules in ss639–53 of the Taxes Consolidation Act 1997 (TCA 1997) can also **deem** a trade to be carried on, and so these also require consideration before reaching a conclusion on the tax treatment of the transaction.

Property Ownership Structure Options

Personal ownership

Personal ownership (including via an Irish limited partnership) is typically the simplest and lowest-cost structure to set up and operate, although it can give rise to personal liability for investors.

An individual who disposes of property held on trading account can expect to pay income tax of up to 40%, with additional USC and PRSI liabilities, typically resulting in a tax rate of 52.2–55.2%. In contrast, capital gains tax at 33% should apply to any gains made from the disposal of assets held on capital account. Given the significant differential in these rates, it is very important to consider the miscellaneous land-dealing rules.

Any rental income earned from the property should be taxable at the rate applicable to income, regardless of whether the asset is held on trading or capital account.

Corporate ownership

Setting up an Irish-resident company to acquire property typically brings increased operating costs (for example, accounting and audit fees). However, it can provide an opportunity for accelerated business expansion, given the lower tax rates applicable to profits, and can segregate liabilities of the company from that of the investor. That said, extraction of funds from the company requires consideration.

Where the company is carrying on a trade involving dealing in or developing land, per the provisions of s21A TCA 1997 corporation tax at a rate of 25% should apply to the trading profits unless the trade consists of either (1) construction operations or (2) a trade in "qualifying land", which essentially consists of the development of a fully completed building on land. Where either (1) or (2) applies, the 12.5% corporation tax rate should apply.

Property that is held on capital account should be subject to corporation tax on the chargeable gain at an effective rate of 33%.

To note, in this structure the net taxable rental income should be subject to corporation tax at 25% (whether the property is on trading or capital account), and where the company is considered closely held, the close company surcharge requires careful consideration to prevent unexpected tax liabilities. The close company surcharge of 20% can apply to companies earning rental income, where any after-tax rental profits are not distributed by the company within 18 months of the end of the accounting period in which the rental profits are earned.We also see non-Irish resident companies used for property transactions – in particular, where the investor is themselves non-Irish resident and the property is held on capital account. This structure is broadly taxed in line with an Irish-resident corporate with a few important differences, including that a non-Irish resident company should not be subject to the close company surcharge.

Regulated Irish fund vehicles

Regulated entities can be established as a qualifying investor alternative investment fund (QIAIF), which can include an Irish collective asset-management vehicle (ICAV). Provided regulatory requirements are met, such bodies can qualify as an "investment undertaking" as defined in s739B(1) TCA 1997 and as a result are typically not chargeable to tax in respect of profits or gains.

Irish-resident investors in these entities must be mindful of investment undertaking tax (IUT) on certain chargeable events that occur in the investment undertaking (including distributions), and the applicable rate can range from 25% to 60%, depending on the investor.

Non-Irish resident investors in these entities should not suffer IUT.; However, where the investment undertaking derives 25% or more of its value from Irish property assets, or was set up with a main purpose of acquiring such assets, it will be regarded as an Irish real estate fund (IREF) as defined in s739K TCA 1997. IREFs suffer IREF withholding tax (WHT) at 20% on certain events, including distributions and a redemption or sale of units in the IREF. Certain investors may be able to avail of an exemption from, or refund of, IREF WHT. However, the qualifying conditions are outside of the scope of this article.

Although the "gross roll-up" regime applicable to these vehicles can reduce their effective tax rate, these entities typically incur significant set-up and running costs and so are typically suitable only for larger property portfolios, particularly where the property would be held with a capital intention, such that the 20% IREF WHT on repatriation of gains compares favourably to the 33% rate in a corporate structure. There are anti-avoidance provisions that can impact the tax relief for financing in IREFs, and therefore specific tax advice and modelling are always recommended.

Real estate investment trusts

The final structure that we will look at is the real estate investment trust (REIT), a publicly listed property company that benefits from an exemption from Irish corporation tax on qualifying property rental business income and gains, provided it meets the relevant conditions.

The REIT is a prevalent investment vehicle internationally, and the Irish REIT regime was introduced via Finance Act 2013 to address certain structural issues in the Irish property market, allow for collective investment in Irish property and eliminate double taxation for those investors. Deirdre Donaghy's article "Real Estate Investment Trusts (REITs): Tax Policy Rationale", published in *Irish Tax Review*, Issue 2 of 2013, provides further detail. There were a number of REITs launched initially, but owing to a mixture of tax and non-tax reasons, there is currently only one REIT operating in the Irish market.

Irish REITs must be Irish tax resident, be incorporated under the Companies Acts,

have shares listed on the main market of a recognised EU stock exchange and not be a close company (unless controlled by qualifying investors). A qualifying REIT must derive at least 75% of its income and asset value from its property rental business, hold at least three properties with no single property exceeding 40% of total value, maintain a property financing costs ratio of at least 1.25:1 and keep specified debt at or below 50% of asset value. Additionally, at least 85% of property income must be distributed annually as property income dividends each period, and only one class of ordinary shares is permitted. Ongoing compliance includes the provision of an annual statement (Form REIT 3) to Revenue, and the regime contains anti-avoidance provisions and rules for cessation.

Tax Incentives Specifically for Residential Development

Section 23 relief

Possibly the best-known tax incentive for property transactions is "Section 23 relief". It was introduced in Finance Act 1981 to encourage investment in designated areas needing development or revitalisation. Under these provisions, investors could avail of tax reliefs for rented residential properties in a tax incentive area. Eligible expenditure on the last qualifying schemes under the relief ended in 2008, but some taxpayers may be able to continue to avail of relief that accrued under the scheme.

Broadly, the scheme operated by providing an upfront deduction for qualifying expenditure on rental properties in certain designated areas. In most cases the upfront deduction would exceed the amount of rental income from the property, thereby giving rise to a rental loss.

Although there had been rumours that a form of Section 23 relief might be announced in Budget 2026, this did not come to pass. Fortunately, a number of incentives were introduced or improved in Finance Act 2025, and these are discussed below.

9% VAT rate

The measure that caught the most attention was a targeted 9% VAT rate for the supply of qualifying apartments, which was announced and took effect on the day after Budget 2026 (8 October 2025). A transitional window applied from 8 October 2025 to 25 November 2025 where VAT at 9% applied to "the supply of housing, as part of a social policy, being the supply of an apartment, used or to be used for residential purposes, in apartment block". For this purpose, the definition of "apartment block" in s31E of the Stamp Duties Consolidation Act 1999 (SDCA 1999) is used (i.e. a multi-storey residential property that comprises, or will comprise, not less than three apartments with grouped or common access). The transitional measure did not apply to supplies of apartments liable to commercial rates (including student accommodation), construction services or land.

From 26 November 2025 to 31 December 2030 the 9% rate applies to the supply of immovable goods that are, or on completion will be, (1) one or more apartments, used or to be used for residential purposes, in an apartment block, or (2) an apartment block used or to be used for residential purposes. More broadly, the 9% rate applies to the development/construction services on such apartments until completion. The definition of "apartment block" during this period has been amended slightly to being "a multi-storey building that comprises, or will comprise, not less than three apartments with grouped or common access". The term "completed" has also been aligned with s94 of the Value-Added Tax Consolidation Act 2010. It is important to note that all other residential supplies, together with supplies connected to commercial units in an "apartment block", remain at the 13.5% reduced VAT rate.

Revenue updated its VAT Tax and Duty Manuals (TDMs) in respect of both the transitional measure, which applied from 8 October 2025 to 25 November 2025, and the measure that applies from 26 November 2025 to 31 December 2030. This guidance confirms that from 26 November 2025 to

31 December 2030, the scope of the 9% VAT rate has been extended to include qualifying student accommodation, sites and construction services. It also confirms that internal common areas, external common areas and car parking spaces of an apartment block qualify for the 9% rate. However, amenities such as a gym, a work hub or a pool do not qualify.

Enhanced corporation tax deduction

An enhanced corporation tax deduction has been introduced in the new s81E TCA 1997. This enhanced deduction is to apply to certain construction costs incurred on both the new development of apartments and the conversion of existing properties (e.g. the conversion of non-residential property such as retail property to apartments) provided the project comprises at least 10 apartments.

Provided all conditions are met (and these include a number of administrative requirements, particularly in the case of forward-fund transactions), a company carrying on a property development trade (broadly, one that is subject to corporation tax at 12.5%) may claim an additional corporation tax deduction equal to 25% of the eligible expenditure incurred. This is in addition to the corporation tax deduction available for the expenditure and is capped at €50,000 per apartment (i.e. a cash tax value of €6,250). There is no limit on the number of apartments for which the relief can be claimed, as long as the development consists of at least 10 apartments.

For expenditure to be eligible, it must be incurred by the company in connection with construction operations. "Construction operations" takes the meaning provided in s21A TCA 1997. It is important to be aware that any capital expenditure is specifically excluded, as are certain other costs, including financing costs, legal fees, and sales and marketing costs.

The relief is available where a commencement notice is lodged with the relevant local authority on or after 8 October 2025 but not later than 31 December 2030. The works that ensure that all apartments in the block are suitable for occupation as a dwelling must be completed before the expiry of the planning permission, and a certificate of compliance on completion must be lodged with the relevant local authority. The relief is claimed in the accounting period in which the certificate of compliance on completion is lodged with the local authority.

One difference between the enhanced corporation tax deduction and the 9% VAT rate is that a specific definition of apartment is provided in s81E TCA 1997:

> *"'apartment' means a separate and self-contained dwelling in a qualifying apartment block –*
>
> *(a) that has sleeping facilities, bathroom facilities and cooking facilities within it for the exclusive use of the occupant of the dwelling concerned, and*
>
> *(b) other than where the dwelling is situated on the ground floor of a multi-storey building, access to the dwelling is grouped or in common with other separate and self-contained dwellings."*

As a result of the requirement for each self-contained dwelling to have its own exclusive sleeping, bathroom and cooking facilities for the occupant, this definition of apartment likely excludes most student accommodation schemes.

Revenue issued an eBrief on 16 January 2026 announcing that a new TDM, Part 04-06-27, "Enhanced Deduction for Eligible Construction Expenditure", had been published. Practitioners are advised to review the guidance and examples in the TDM, including section 2.3, which considers the meaning of an apartment and provides an example in the context of a block of student accommodation.

Cost rental scheme

A new corporation tax exemption for cost rental income has been introduced in the new s222A

TCA 1997 with effect from 8 October 2025 to incentivise the supply of affordable housing in Ireland. This exemption will apply to rental profits earned from residential properties that are formally designated as cost rental dwellings under the Affordable Housing Act 2021. This exemption will apply to all developments that are first designated by the Minister for Housing, Local Government and Heritage as falling within the scheme on or after 8 October 2025.

Stamp duty residential rebate scheme

Stamp duty is a key cost factor when investing in property. The acquisition of undeveloped land is subject to stamp duty at 7.5%. However, residential property developers may be able to avail of the stamp duty residential land rebate as set out in s83D SDCA 1999. Provided certain conditions are met, land that is acquired and developed into residential property can qualify for a refund of 11/15ths of the stamp duty incurred on the land, thereby bringing the effective stamp duty liability to 2%.

The conditions that must be met to claim the refund are:

- The land must be acquired under a conveyance or transfer, so a long lease of land does not qualify for the rebate.
- The purchaser must commence building a house (or houses) or an apartment (or apartments) on the land within 30 months after the date of the transfer (or 36 months in the case of large-scale residential developments).
- The purchaser must commence the building work on or before 31 December 2030.

The refund can be claimed once a commencement notice has been submitted, and acknowledged, in respect of construction operations (as defined). To prevent a clawback of the refund:

- The purchaser must complete the building work within 30 months (or 36 months in the case of a large-scale residential development).
- Once completed, the dwelling units on the land must occupy at least 75% of the total surface area of the land, or the gross floor space of the dwelling units must amount to at least 75% of the total surface area of the land.

Key changes were made to s83D SDCA 1999 as part of Finance Act 2025. First, as identified above, both 30-month limits referenced above were extended to 36 months in respect of "large-scale residential developments", as defined in s2 of the Planning and Development Act 2000, or s82 of the Planning and Development Act 2024 (once that section comes into operation). Second, the date by which building work must commence was extended from 31 December 2025 to 31 December 2030. Finally, in respect of multi-phase developments, it is now possible to claim the refund in respect of the entire site once the first phase commences (rather than claiming the refund on a phase-by-phase basis, as was previously the case). This enhancement should create a cash-flow benefit for developers of multi-phase developments.

Relief for pre-letting expenditure

Section 97A TCA 1997 was introduced by Finance Act 2017 to allow for a deduction for pre-letting expenditure to incentivise landlords to offer further residential rental property stock. To qualify, the premises must not have been occupied for 6 continuous months until the day on which it is first let. The relief allows for a deduction to be taken for expenditure incurred in the 12 months immediately preceding the day on which the premises is first let, to a maximum deduction of €10,000. The expenditure must comply with the requirements of s97(2) TCA 1997 to qualify for a deduction, meaning that any capital expenditure remains disallowable. The relief applies to expenditure incurred by the landlord on or before 31 December 2027.

Other Property-Related Tax Incentives

Wear-and-tear allowances for landlords

Turning towards property investments more generally, capital allowances can provide tax

relief against rental income over eight years for qualifying capital expenditure incurred.

To claim capital allowances, s298 TCA 1997 requires the landlord to bear the "burden of wear and tear". We recommend that leases are reviewed to establish this, and where it is confirmed, the next step is an analysis of whether the expenditure qualifies, and landlords should obtain a capital allowances study to evidence claims. We have found that the involvement of capital allowances specialists earlier in the procurement process typically maximises the qualifying expenditure. Companies holding a property as trading stock are unable to claim allowances (owing to the absence of incurring capital expenditure); however, they can still seek value from the expenditure in transactions by obtaining a capital allowances report ahead of sale and including indicative qualifying expenditure in marketing material for the sale of the property (where the sale is to a taxable purchaser). ICAVs and REITs that similarly cannot claim capital allowances themselves could also seek value in the same way.

Industrial building allowances

Industrial building allowances are capital allowances available in respect of capital expenditure incurred on the construction of qualifying industrial buildings or structures as defined in s268 TCA 1997. The allowances typically consist of an initial allowance (where available) and annual writing-down allowances, which are generally 4% per annum over 25 years. The types of assets are limited to those prescribed in the legislation and include hotels and factories.

Living City Initiative

The Living City Initiative is a targeted tax incentive scheme to promote the refurbishment of and regeneration of historical urban properties. Previously, the scheme covered six cities: Dublin, Cork, Limerick, Galway, Waterford and Kilkenny. The initiative was extended in Finance Act 2025 to include Drogheda, Dundalk, Sligo, Athlone and Letterkenny. Although the scheme provides reliefs for both owner-occupiers and landlords, this article focuses on the availability of the relief for landlords.

Section 372AAC TCA 1997 provides for industrial building capital allowances to be made available for buildings that would not otherwise qualify as industrial buildings under s268 TCA 1997. A landlord can claim the relief where the building is let on an arm's-length basis for use in the retailing of goods or the provision of services in Ireland. The minimum qualifying expenditure is €5,000, and the maximum qualifying expenditure is €800,000 for a company and €400,000 for an individual (with additional rules applying where the property is held by two or more persons), effectively limiting the cash value of the relief to €200,000 for companies. Relief is provided over 7 years at a rate of 15% for the first 6 years and 10% in the final year. Section 372AAD TCA 1997 extends a similar relief to the refurbishment of residential houses that are let on an arm's-length basis.

In addition to the above, Finance Act 2025 provided for the following enhancements to the relief:

- The relief is extended to 31 December 2030.
- The scope for residential properties is extended from those built before 1915 to those built before 1975.
- The relief is expanded to support the use of "over the shop" premises for residential purposes.
- Relief is now granted over two years at 50% per annum (15% per annum over six years and 10% in the seventh year for expenditure incurred before 1 January 2026), and unused relief can now be carried forward for up to ten years (seven years for expenditure incurred before 1 January 2026).
- The maximum amount of the relief available is increased from €200,000 to €300,000, and greater flexibility is to be provided on the time period in which the relief can be claimed.

Leasing Farmland

In the context of the vital role of agriculture in the Irish economy, tax incentives aimed at encouraging the productive use of farmland are particularly significant. Section 664 TCA 1997 provides one such incentive, offering relief to individuals (but not companies) for rent received from the long-term leasing of agricultural land. Subject to meeting certain conditions, this relief exempts rental income up to annual caps that vary with the lease length (higher caps for longer leases) that would otherwise be subject to income tax.

Companies can avail of stamp duty relief on long-term leases of farmland (s81D SDCA 1999) provided certain conditions are met:

- The company must have at least one qualifying individual (director who owns at least 20% of the shares and is involved in the decision-making) who is a trained farmer or spends at least 50% of their normal working time farming.
- The lease must be for a term of at least 6 years and not more than 35 years.
- The land must be used exclusively for farming on a commercial basis.

Tax Incentives for Sustainable Real Estate

There are several tax incentives and grants available to encourage investment in decarbonisation measures in the Irish real estate sector. These generally require a number of conditions to be met, and these conditions, together with the ability to use the benefit of the tax incentives, should be considered carefully before investment. Some examples of these incentives are summarised below.

Accelerated capital allowances

Accelerated capital allowances (ACAs) are a corporation tax incentive for expenditure incurred on qualifying energy-efficient equipment (EEE). The allowance is provided in the year in which the EEE is first used in the business and is equal to 100% of the qualifying costs incurred on the purchase and installation of the equipment. There are a number of conditions, including a requirement that the equipment must meet the performance criteria for its class of technology and be registered on the Triple E product register with the Sustainable Energy Authority of Ireland (SEAI). The regime was extended by Finance Act 2025 to 31 December 2030.

Unfortunately, the requirements that the expenditure be incurred for the purposes of a trade carried on by the owner and that the assets are not leased mean that ACAs are typically not available to either landlords or tenants.

Retrofitting scheme for landlords

Section 97B TCA 1997 contains a relief to incentivise landlords to upgrade the energy efficiency of residential rental properties by providing for a tax deduction for qualifying retrofitting expenses.

For expenditure to qualify, it must relate to works carried out by a qualifying contractor and the works must seek to improve the energy efficiency of the premises. The residential premises itself must be registered with the Residential Tenancies Board and continue to be subject to a tenancy while the works are carried out. The landlord must also be in receipt of an approved retrofitting grant from the SEAI, with the amount of the grant reducing the qualifying expenditure.

The relief allows for a maximum deduction in respect of qualifying retrofitting expenditure on a qualifying residential property of €10,000, and a taxpayer may claim the relief only in respect of two qualifying residential properties.

Landlords should familiarise themselves with the detailed administrative requirements for claiming this relief, as well as the situations that may trigger a clawback of the relief. This had been due to expire on 31 December 2025 but was extended by Finance Act 2025 to 31 December 2028.

Grant funding

Although they are not tax incentives, it is worth noting that there is a suite of grant funding available to encourage investment in decarbonisation measures in Irish property. Grants are available from a number of different agencies, including the SEAI, Enterprise Ireland and IDA Ireland.

Residential Zoned Land Tax

The residential zoned land tax (RZLT) was introduced with the aim of activating land for residential development rather than as a tax incentive; however, given its prevalence across property transactions now, it is worthy of consideration.

The article by Brendan Slattery and Martina Firbank "Residential Zoned Land Tax: Under the Legal Lens", published in *Irish Tax Review*, Issue 2 of 2022, provided an overview of the scope of the RZLT, including what is meant by serviced land, potential exclusions, deferrals and repayments, and potential challenges that the tax faces. An update was provided in an article by Sinead Lew and Aaron Mullan, "Residential Zoned Land Tax: Latest Updates and Operational Considerations", published in *Irish Tax Review*, Issue 1 of 2023. The latter article highlighted practical issues with the tax and suggested potential solutions.

Finance Act 2025 introduced an exemption from RZLT during An Coimisiún Pleanála proceedings brought by a third party in relation to a grant of planning permission in respect of a relevant site. This had previously taken the form of a deferral of a liability that could crystallise where the decision was in favour of the third party.

Landowners have an opportunity to make a submission requesting the rezoning of land that is included in the 2026 annually revised map published by 31 January 2026. The submission must be submitted to a local authority between 1 February 2026 and 1 April 2026. A landowner who makes such a rezoning request may claim an exemption from RZLT in 2026 where certain conditions are met.

Although these are welcome developments, it was disappointing that no further changes were made to the RZLT legislation. Further reforms to RZLT are required to allow it to achieve its original aim of activating land for residential development and in a manner that does not further increase the cost of delivering housing. In the meantime RZLT should continue to be a key area of focus for taxpayers and practitioners, including as part of transactions.

Conclusion

The taxation of property transactions can be a complex area and has evolved significantly in recent years. Prospective investors are advised to establish their commercial intentions at the outset and model the forecasted tax liabilities before choosing a holding structure. Tax incentives can offer a selection of "carrots" for property transactions, particularly those of the residential development variety. Where it is intended to claim incentives, a careful review of the conditions for incentives should be undertaken upfront and on an ongoing basis.

Ian Collins
Partner, Head of Innovation Incentives,
EY Ireland

Lyndsey Browne
Senior Manager, EY Ireland

Challenging the Science Test: What 165TACD2025 Means for R&D Compliance

Introduction

In April 2025 the Tax Appeals Commission ("the Commission") published its first ruling on a case concerning the science test contained in s766 of the Taxes Consolidation Act 1997 (TCA 1997). This was the first case on the R&D science test heard and so sets some interesting precedents in this area. The case concerned the appellant's claims for R&D tax credits in 2012 and 2013, which Revenue sought to disallow following the decision of a Revenue-appointed technical expert.

In the assessments under appeal, Revenue, having decided that the appellant's expenditure on the development of its aggregated service desk did not constitute qualifying R&D expenditure under s766 TCA 1997, refused the appellant's claim for R&D tax credits in the amounts of €86,011 for 2012 and €117,803 for 2013.

In this case an independent expert appointed by Revenue issued a final report in 2018 that held that under s766 TCA 1997, in his opinion,

the appellant did not meet the two key tests required to qualify for the R&D tax credit:

- seeking to achieve scientific or technological advancement and
- involving the resolution of scientific or technological uncertainty.

Background

The appellant, part of a wider IT services group, in 2012 and 2013 set out to transition from on-premises, single-client support to a cloud-delivered model aimed at small and medium businesses, using Microsoft Azure in its early (preview/beta) stage. The objective was to create an "aggregated service desk" – a single platform through which multiple clients could access IT support, project support and (from 2013) remote monitoring and management (RMM). The project was executed by a team, primarily composed of software development experts, who were supported by a project manager and IT support.

The Case

For the appellant's project team's activities in 2012 and 2013 to qualify as R&D activities, they must meet the definition in s766 TCA 1997, which defines research and development activities as:

(1) systematic, investigative or experimental activities

(2) in a field of science or technology

(3) that involve one or more of the following categories of R&D:

- basic research,
- applied research or
- experimental development;

but activities will not be research and development activities unless they:

(4) seek to achieve scientific or technological advancement and

(5) involve the resolution of scientific or technological uncertainty.

Revenue held that under s766 TCA 1997 the appellant met the first three tests in the claim; the dispute centred solely on parts 4 and 5 – whether the project sought a technological advancement and whether its completion depended on resolving technological uncertainty.

Both of the parties to this appeal referred to the OECD's Frascati Manual (both the 2002 and the 2015 edition) and Revenue's R&D Guidelines, published in 2011. The Commissioner stated that neither had the status of law and did not bind him in the interpretation of what constitutes R&D under TCA 1997, but he considered both of them, in particular the Frascati Manual, which was composed by experts in the field of R&D, to be helpful guidance in determining the nature of the work of the project team.

The Frascati Manual (2002 and 2015 editions) sets out that work constituting "routine software development" is not R&D and that:

> "Such activities include work on system-specific or programme-specific advances which were publicly available prior to the commencement of the work. Technical problems that have been overcome in previous projects on the same operating systems and computer architecture are also excluded."

It also states (para. 2.70):

> "The nature of software development is such as to make identifying its R&D component, if any, difficult. Software development is an integral part of many projects which in themselves have no element of R&D. The software development component of such projects, however, may be classified as R&D if it leads to an advance in the area of computer software. Such advances are generally incremental rather than revolutionary."

Technological Advancement: Part 4 of the R&D Test

Revenue's R&D Guidelines (both 2011 and 2025 editions) state:

> "An advance in science or technology means an advance in the overall knowledge or capability in the field of science or technology (not a company's own state of knowledge or capability alone)."

The Commissioner found that the project team was indeed seeking to achieve a technological advancement. Although Revenue argued that the evidence did not disclose that the appellant was seeking to make any advancement in the conduct of the project, the appellant maintained that its objective, developing a remotely accessible, multi-tenant aggregated service desk on an IaaS (infrastructure as a service) cloud platform, amounted to an attempt to achieve a technological advance on the stock of knowledge in the IT services sector. This position was supported by witness evidence that no such product existed before the project and by an initial "environment scan" undertaken at its outset.

Importantly, Revenue's expert accepted under cross-examination that the resulting system constituted an extension of overall technological capability, although he contended that this was achieved without any real technological advance. The Commissioner found that, as a matter of logic, the appellant could not in this instance have managed to extend the "overall capability" in the field of software technology without having sought to make a technological advance in the creation of the aggregated service desk.

Revenue's expert also relied on the argument that multi-tenancy was already an established concept and that applying it to cloud computing amounted merely to using known methods. The Commissioner disagreed, concluding that this overlooked the immaturity of cloud computing and IaaS platforms, in particular, during 2012 and 2013. Evidence from the appellant's technical witnesses and experts demonstrated that cloud technology at the time was in an immature state, with major IaaS platforms available only in preview or beta mode. The Commissioner did not believe that Revenue's expert gave sufficient weight to this fact in his evidence.

The Commissioner found that, despite the immaturity of IaaS cloud technology, the appellant achieved a genuine advance by leveraging early-stage Azure infrastructure to produce a scalable, secure, multi-tenant system enabling remote access to IT, project management and RMM services that could be accessed remotely by different customers at the one time. This was not a routine implementation; the appellant's aggregated service desk represented an advance on the knowledge available to the "competent professional working in the field".

On this basis, the Commissioner determined that the appellant met the statutory requirement under s766 TCA 1997 of seeking to achieve a technological advancement.

Technological Uncertainty: Part 5 of the R&D Test

The Commissioner held that technological uncertainty was clearly present in the project. Revenue's expert criticised the use of Agile as an R&D methodology and the detail of the records produced by the appellant in support of its claims, but the Commissioner did not agree with the expert's suggestion that Agile is incompatible with R&D. Agile was accepted for the years in issue as the dominant framework by which software developers conducted experimental development aimed at producing new software, a position supported by evidence from the appellant's witnesses and by Revenue's own 2025 guidance, which indicates that Agile development methodologies such as Scrum, used by the project team in this instance, are a systematic technique for the purpose of the legislation.

Although the documentation could have been more detailed, the Commissioner found that the appellant had, nonetheless, satisfied the evidential burden of proving that the creation of the aggregated service desk, which constituted a technological advancement, involved the resolution of questions of uncertainty.

Key witnesses provided detailed explanations of the technical challenges encountered in creating a multi-tenant aggregated service desk. The Commissioner found from their evidence that the multi-tenanting of the various Microsoft applications was, in the years in issue, beyond what was "routine" software development, excluded under paragraph 2.72 of the Frascati Manual from being within the scope of R&D. Their separate assertions regarding the complexity and uncertainty of their work in this context were lent additional credibility by the academic paper of Takahashi *et al*. from 2012,[1] which makes express reference to the security challenges arising in respect of cloud-hosted multi-tenanted applications, including in relation to authentication, authorisation and tenant data isolation.

Further examples of uncertainty included the absence of Microsoft service-level agreements, which forced the team to undertake their own investigation of failover and disaster recovery options, and the need to customise Microsoft virtual machines to address security vulnerabilities – modifications that were later adopted by Microsoft itself.

The Commissioner also distinguished the Canadian case law relied on by Revenue, noting that unlike in *CW Agencies v Canada* [2002] 1 CTC 212, the appellant had called all relevant technical personnel to give evidence. Ultimately, because the project aimed at technological advancement and involved resolving technological uncertainty, the Commissioner determined that the software development activities constituted qualifying R&D for the purposes of s766 TCA 1997.

"Wholly and Exclusively" Expenditure on R&D

For expenditure on R&D to qualify under s766 TCA 1997, it is necessary that it is incurred by a company "wholly and exclusively" in the carrying on by it of R&D activities. The Commissioner considered whether costs linked to the project manager and IT support met the "wholly and exclusively" test in s766 TCA 1997 and were exclusively incurred in carrying on research and development activities.

In accordance with *Revenue Commissioners v Doorley* [1933] 1 IR 750, which was referred to in the proceedings via the quotation of McDonald J in *Perrigo Pharma International Activity Company v McNamara* [2020] IEHC 152, it is necessary that a person claiming a tax credit fall "clearly and unambiguously" within the wording of the legislation under which that credit falls.

The project manager role included stakeholder engagement and promotion to potential customers (commercial/business development). The Commissioner found that this role involved the development of the company's business and therefore that expenditure on the role was not incurred wholly and exclusively on R&D. The second individual advised on desired features that should be present in the IT support system but did not perform experimental development, and that advisory activity falls outside qualifying R&D. The Commissioner found that the latter individual was putting the company in a position to carry out experimental development on a new or substantially improved system or process but he was not involved in that experimental development himself.

1 Takeshi Takahashi, Gregory Blanc, Youki Kadobayashi, Doudou Fall, Hiroaki Hazeyama and Shin'ichiro Matsuo, "Enabling Secure Multitenancy in Cloud Computing: Challenges and Approaches", 2nd Baltic Congress on Future Internet Communications, Vilnius, 25–27 April 2012, 72–79.

The Commissioner reached his conclusion:

> "regarding the interpretation of the phrase wholly and exclusively by reference to the natural and ordinary meaning of the words, this being the interpretive approach approved of in *Perrigo Pharma International Activity Company v McNamara*. This natural and ordinary meaning as defined by the Oxford English Dictionary is, in relation to 'wholly', 'completely or entirely', and in relation to 'exclusively', 'to the exclusion of'."

TAC Conclusion

The Commissioner made the determination that the work undertaken by the project team in developing the aggregated service desk, hosted on the IaaS cloud platform, met the definition of qualifying R&D activities within s766 TCA 1997.

The Commissioner determined that expenditure related to the project manager and IT support were not "wholly and exclusively incurred in the carrying on of qualifying R&D", affecting the quantum of qualifying expenditure in both 2012 and 2013, and the amended assessments were directed to be adjusted accordingly.

Key Learnings

Technological advancement and uncertainty

- Ensure to define the technological aim at project inception, documenting the technical uncertainties of the project at the beginning and the advancements that are being sought.

Contemporaneous documentation

- Documentation is key to ensuring that a robust R&D tax credit claim is successful. Evidence that experimentation has been undertaken as the R&D project progresses includes prototypes, test matrices, alternative approaches tried, rejection/failure reasons and performance/security results.
- Maintain a state-of-the-art file (notes on what was "reasonably available" at the time; how your approach differed; an environment scan of what is readily available in the public domain).
- Define each role contributing to the R&D within each project.
- Capture time "wholly and exclusively" in carrying on R&D activities, and ring-fence project management and operational/ support activities.


Philip McQueston
Of Counsel, A&L Goodbody
Saumya Sadanand
Tax Advisor, A&L Goodbody

VAT, Intra-Group Arrangements and Transfer Pricing Adjustments

Introduction

On 15 January 2026 the Opinion of Advocate-General (AG) Kokott issued in *Stellantis Portugal, S.A. v Autoridade Tributária e Aduaneira* C-603/24, a case concerning VAT and transfer pricing adjustments. In her opinion AG Kokott encouraged the Court of Justice of the European Union (CJEU) to apply a principled approach to an issue that has given rise to much debate. *Stellantis* is the latest in a line of CJEU cases addressing the vexed intersection of VAT, intra-group arrangements and transfer pricing adjustments.

Issues considered in recent CJEU cases include the nature and valuation of intra-group management services, dealt with in *Högkullen AB v Skatteverket* C808/23; the deductibility of VAT on intra-group services and the conditions for VAT recovery, addressed in *Weatherford Atlas Gip SA* C527/23 and *SC Arcomet Towercranes SRL* C-726/23; and the VAT treatment of transfer pricing adjustments, considered in *Arcomet Towercranes* and now in *Stellantis*.

As alluded to in AG Kokott's opinion in *Stellantis*, VAT and transfer pricing serve

different, distinct purposes. Generally, transfer pricing adjustments are direct-tax measures that seek to ensure that intra-group transactions reflect arm's-length conditions, aligning prices with those that should arise in transactions between independent parties so that group profits may be fairly allocated between group companies. However, VAT is an indirect tax on the consumption of goods and services. VAT generally takes into account the actual amount paid or payable (Article 73 of the EU VAT Directive (Directive 2006/112/EC)), rather than whether the amount paid is an arm's-length amount, although there are certain circumstances in which the VAT Directive allows for the use of open-market value in calculating the VAT chargeable (Articles 72 and 80). The concept of transfer pricing adjustments is not mentioned in the VAT Directive.

Although there has been a recent spate of European cases concerning the topic, taxpayers have long sought assistance in navigating the interaction between VAT and transfer pricing. Before those cases, principal guidance took the form of non-legally binding pronouncements from the EU VAT Committee (an advisory committee established to promote the uniform application of the provisions of the VAT Directive) and the EU VAT Expert Group (a group set up by the European Commission to assist and advise the Commission on VAT matters).

The EU VAT Committee in a February 2017 paper (Working Paper No. 923) considered the possible VAT implications of transfer pricing adjustments and took the position that transfer pricing adjustments (upward or downward) might have VAT implications, such as where the adjustment could be seen as more or less consideration given in exchange for the taxable supply of goods or services already made. The Committee emphasised the need for a case-by-case approach and the requirement for a transfer pricing adjustment to be sufficiently linked to a VAT taxable supply.

The EU VAT Expert Group in an April 2018 paper (VEG No. 071 REV2) opined that transfer pricing adjustments should be outside the scope of VAT, provided both parties have a full right to deduct VAT. It also stated that transfer pricing adjustments may have VAT implications only if one party lacks full VAT recovery and the adjustment can be directly linked to specific supplies. It further stated that transfer pricing adjustments arising from tax audits should always be treated as outside the scope of VAT, unless the parties expressly agree to revise the consideration for the underlying supplies.

VAT Implications of Transfer Pricing Adjustments

Perhaps the most pressing issue for taxpayers in the area of VAT and transfer pricing is whether transfer pricing adjustments should be regarded as consideration for the supply of services or viewed as outside the scope of VAT.

In September 2025 the CJEU handed down its judgment in *Arcomet Towercranes*, holding that year-end transfer pricing adjustments between group companies, designed to ensure that the pricing under a service agreement was arm's length, constituted consideration for a supply of services within the scope of VAT. The CJEU adopted a case-by-case approach in considering the matter, which very much depends on the contractual arrangement between the parties. However, AG Kokott in her opinion in *Stellantis* has proposed a principled approach to the matter, which, if adopted by the CJEU, would offer taxpayers a more certain ground and construct against which they can assess their arrangements.

Arcomet Towercranes

The Arcomet group operated in the crane rental sector. Under an agreement between a Belgian and a Romanian group company, the parent company, Arcomet Belgium, undertook to assume the majority of the relevant commercial responsibilities, and it bore the main economic risks associated with the activity of Arcomet Romania. Arcomet Romania, for its part, undertook to purchase and hold all of the goods and services necessary for the sale and

rental of those goods and for the provision of services to its customers.

The agreement also provided that Arcomet Belgium's remuneration for services was to be equal to the amount necessary to place Arcomet Romania in a position corresponding to the activities that it carried out and the risks that it assumed. That was calculated using the transactional net margin method (TNMM) laid down in the OECD Transfer Pricing Guidelines. A transfer pricing study set an arm's length profit range for Arcomet Romania, with the agreement between the parties providing for an annual adjustment mechanism requiring Arcomet Belgium to invoice Arcomet Romania if the profit exceeded that range (to recover the excess profit).

In the relevant years Arcomet Romania's profits were above the agreed range, and Arcomet Belgium issued annual adjustment invoices without VAT. Arcomet Romania applied reverse-charge VAT to some of the invoices but treated the adjustment made under one of the invoices as outside the scope of VAT (a position that is sometimes taken for transfer pricing adjustments). The Romanian tax authority disputed this, contending that VAT was due because the invoices related to intra-Community supplies and that VAT recovery should be denied. It contended that Arcomet Romania had not demonstrated that the services had been used for taxable activities.

The CJEU held that the amount of the transfer pricing adjustments invoiced by Arcomet Belgium to Arcomet Romania constituted consideration for a supply of services within the scope of VAT. The court noted that it is a settled principle of EU law that a supply of services for consideration is subject to VAT where there is a direct link between the service provided and the consideration received. It found that such a direct link existed between the service provided and the consideration received in this case. Arcomet Belgium undertook various commercial services and bore the main economic risks of its subsidiary. Arcomet Romania agreed to pay to Arcomet Belgium, at the year-end, the excess-profits adjustment payment. According to the CJEU, this amounted to the reciprocal performance needed to establish a supply for VAT purposes. The court also considered that the services supplied by Arcomet Belgium affected Arcomet Romania's operating profit, as those services achieved savings and an improvement in the services supplied by Arcomet Romania.

The CJEU held that the fact that the consideration was variable (as it depended on Arcomet Romania's profits or losses in a particular year) and not guaranteed did not necessarily mean that there was no direct link between the service provided and the consideration received. This was bolstered by the fact that the consideration in this case was not uncertain or voluntary but based on detailed rules and was to be calculated according to precise criteria.

Although the CJEU avoided applying a general approach to the matter, the decision indicates that a transfer pricing adjustment should be consideration for the supply of a service for VAT where there is the necessary legal relationship between the parties under which there is the necessary reciprocal performance and a direct link exists between the service and the remuneration.

AG Kokott's Opinion in Stellantis: A Principled Approach

The question concerning the VAT treatment of transfer pricing adjustments was raised again in *Stellantis*. However, unlike *Arcomet Towercranes*, this case concerned the VAT treatment of a subsequent adjustment of the price of a supply intended to implement an intra-group allocation of profits.

Stellantis Portugal S.A. operated as a national distributor within the General Motors Group, purchasing vehicles from European original equipment manufacturers (OEMs) and reselling them to independent Portuguese dealers, who sold them to final customers. Where manufacturing defects or warranty issues arose,

the dealers carried out repairs and invoiced Stellantis Portugal, charging VAT on those services. Stellantis Portugal's distribution costs included those repair costs as well as operating costs. The reported costs were taken into account in adjustments to the prices of vehicles sold by the OEMs to Stellantis Portugal, with year–end adjustments ensuring a predetermined level of operating profit for Stellantis Portugal and documented by credit or debit notes.

The Portuguese tax authority took the view that responsibility for repairs lay with the OEMs and that Stellantis Portugal, in passing on after–sales costs, supplied taxable services to the OEMs in Portugal, which should be subject to VAT.

AG Kokott rejected the Portuguese tax authority's contention that the reimbursement payment to Stellantis Portugal was consideration for a service supplied by it. She pointed out that if that approach was to be followed, then in the case where an adjustment resulted in an increase in the purchase price and an additional payment by Stellantis Portugal, it would have paid for the service that it was considered to have provided. In her opinion, in line with settled case law VAT should be levied only where there is a reciprocal legal relationship involving a genuine supply and actual consideration. Mere price adjustments resulting in repayments or additional payments cannot themselves constitute supplies of services.

The AG considered that the question posed to the CJEU by the Portuguese national court could be answered very quickly, on the basis that the mere adjustment (upward or downward) of a sale price for a supply in principle never itself constitutes a supply for services for VAT. However, she went on to consider on a general-principles basis the matter of the consequences under VAT law of a transfer pricing adjustment. She pointed out that the matter was "not answered exhaustively" by the CJEU in *Arcomet Towercranes* and went as far as to say that she considered "it to be entirely possible and even necessary to give a principled answer to the question".

The AG considered that the relevance for VAT of a transfer pricing adjustment depends on what it relates to and how it is made. If a profit adjustment is made by means of a separate supply of services, that service may constitute a transaction subject to VAT. A unilateral profit adjustment made by a tax authority for profit reallocation (usually between two tax-levying Member States) is in principle not relevant for VAT – it is fictitious in nature and does not alter the services previously supplied in return for the agreed consideration. If a profit adjustment relates to a variable sales price for a specific supply of goods, that constitutes an adjustment of the consideration in respect of the supply made – it merely modifies the price of that supply and does not constitute a separate taxable supply of services.

It is helpful for taxpayers that the AG has grasped the matter and has set out a reasoned general approach. However, it is not legally binding, and it remains to be seen whether the CJEU will follow the AG's urging to address the matter on a principled basis.

Deductibility of Input VAT on Intra-group Services: Arcomet Towercranes and Weatherford Atlas

Relevant also to taxpayers is the question of whether VAT on intra-group services is recoverable and the substantive requirements for recovery. In *Arcomet Towercranes* the CJEU considered the documentation required to support the right to deduct input VAT incurred on transfer pricing adjustments.

Conditions for VAT recovery: *Arcomet Towercranes*

In *Arcomet Towercranes* the CJEU considered whether the tax authority could request additional documentation (apart from the invoice) to determine the purchaser's right to deduct VAT. It held that, when assessing entitlement to VAT recovery, a tax authority

may request documentary evidence that services are required for the taxpayer's taxable transactions but the request must be necessary and proportionate.

The court found that it was clear from case law that a tax authority cannot refuse VAT recovery solely on the basis that an invoice does not satisfy formal conditions set out in domestic VAT legislation, if it has the necessary information to determine whether the substantive conditions for VAT recovery are satisfied. To satisfy the substantive conditions, a person must be a taxable person who receives goods or services from another taxable person for use in its own taxable transactions.

Right of deductibility: *Weatherford Atlas*

The question of the right to deduct the VAT paid for the purchase of administrative services provided within the same group of companies was considered by the CJEU in *Weatherford Atlas Gip SA*. In its judgment, delivered in December 2024, the CJEU held that a company is allowed to deduct the input VAT incurred on administrative services that it purchased from a group company. The fact that the services were provided to other companies in the same group and the question of the necessity of the services should be irrelevant, as long as the conditions for deductibility are met.

Weatherford Atlas Gip acquired the Romanian company Foserco. Foserco purchased general administrative services, such as IT, HR and marketing, from Weatherford group companies established outside Romania, accounted for reverse-charge VAT on these services and sought full recovery of the input VAT. The Romanian tax authority denied Foserco's VAT deduction, arguing that there was insufficient evidence that the services were linked to Foserco's taxable activities, particularly as the services benefited multiple group companies, and it contended that the services were unnecessary.

The key question in this case was whether a taxpayer's right to deduct VAT can be refused solely because the services also benefit other group entities or are considered unnecessary, despite a demonstrated link to the taxpayer's taxable activity. The CJEU held that the right of deduction is an integral part of the VAT scheme and may not in principle be limited. It held that the fact that the services were also provided to other companies in the Weatherford group was irrelevant, as long as the costs borne by Foserco corresponded to the services that it received. The fact that several companies in a group may receive intra-group services will not automatically deny a VAT deduction, as long as the necessary conditions for VAT deductibility are met. Additionally, the court held that the question of whether the services were necessary or appropriate was also not relevant, as the right to deduct VAT is not subject to a criterion of the economic profitability of the input transaction.

Nature of Intra-Group Management Services: Högkullen

The CJEU decision in *Högkullen AB v Skatteverket*, handed down in July 2025, provides some clarification for taxpayers in respect of the VAT treatment of intra-group management services. The case focussed on the nature and valuation of intra-group services provided by a parent company to various subsidiary companies.

The case concerned a Swedish holding company of a real estate group that provided various Swedish subsidiaries with company management, financing, real estate management, IT and personnel management services. There was no VAT group. The parent actively managed its subsidiaries and so, in line with CJEU case law, was a taxable person and entitled to recover input VAT. It charged its subsidiaries VAT on the management services that it supplied to them. The subsidiaries did not have full VAT recovery.

The arrangement would be VAT advantageous for the group as a whole where the VAT

charged by the parent to the subsidiaries was less than the VAT recovered by the parent. The VAT charged by the parent was arrived at using the cost-plus method under the OECD Transfer Pricing Guidelines. It took into account a particular percentage of the parent's costs for management, premises, telephone systems, information technology, corporate hospitality and travel. It did not take into account certain "shareholder costs", being annual accounting, audit and capital-raising costs and costs connected with a planned share issuance and listing. The parent recovered all of the input VAT relating to the costs that it had incurred, including the VAT charged on the "shareholder costs".

The Swedish tax authority challenged the arrangement using its powers under the Swedish provisions implementing Article 80(1)(a) of the VAT Directive. That article provides for an exception to the general rule that the amount on which VAT is charged is the consideration agreed between the parties. Article 80(1)(a) allows, in certain circumstances, for VAT to be charged on the open-market value (OMV) instead.

OMV is defined in Article 72 of the VAT Directive, which provides that it is the amount that a customer would pay to a supplier at arm's length and under conditions of fair competition for comparable goods and services. It further provides that where there is no comparable supply, the OMV is to be an amount that is not less than the full cost to the taxable person providing the service.

As noted above, the Swedish tax authority contended that the services supplied by the parent comprised a single, unique supply, with comparables. It viewed the supply to have been made at a price lower than OMV, and as there were no comparable services freely available on the market, the amount on which VAT was chargeable should have been determined by the total amount of costs borne by the parent, which included the "shareholder costs", even though they did not directly relate to the output transactions.

The CJEU decision ruled in favour of the parent. It held that the services provided by the parent should not be regarded as constituting a single supply. The court referred to the AG's opinion, which considered that the services, even though provided together, had their own character and are separately identifiable. Additionally, it was held that the fact that a single price was paid by a subsidiary for all of the services provided by the parent does not determine the treatment of intra-group supplies, as otherwise the group would itself be able to influence the VAT treatment of the supplies by way of the particular intra-group pricing agreements.

The CJEU decision therefore requires a case-by-case analysis when considering intra-group management services. The particular nature and independence of the services provided need to be identified and considered.

It should follow from the CJEU decision that, depending on the facts of the particular case, it is possible that components of intra-group management services may be separately treated as discrete, identifiable services, such that comparable services may be identified to determine the OMV.

Valuation of Intra-Group Management Services: Högkullen

As this determination addressed the case before it, the CJEU did not answer the second question posed by the Swedish national court, on how the OMV is to be calculated. However, this issue was touched on in the Opinion of AG Kokott. As mentioned in paragraph 69 of the Opinion of AG Kokott, she was of the view that the OMV must be calculated separately for each separately identified service and it was not correct to take into account costs relating to expenditure that bore no relation to the service provided to the subsidiary.

Conclusion

The judgments of the CJEU provide helpful guidance on the factors that must be considered by a group in addressing VAT

on intra-group arrangements and transfer pricing adjustments. It is hoped that the principled approach proposed by AG Kokott will be adopted by the CJEU in its decision in *Stellantis*, which should be handed down shortly. The cases also highlight the importance for a group of considering the potential VAT implications of its transfer pricing at the outset when drafting inter-company agreements, particularly where VAT-exempt activities are carried on by the group. Depending on the facts of the case, there remain many instances where transfer pricing adjustments should not come within the scope of VAT.


Kelly Payne
Partner, Deloitte Ireland LLP
Tara Murray
Director, Deloitte Ireland LLP

Special Assignee Relief Programme (SARP): The Journey So Far

Introduction

The Special Assignee Relief Programme (SARP), introduced by Finance Act 2012, is one of Ireland's most significant tax incentives for attracting foreign talent and supporting the country's economic development and business expansion. Provided for under s825C TCA 1997, the relief applies to qualifying individuals who arrive to work in Ireland at the request of their foreign employer.

A report published in June 2025 by Revenue's Strategy, Evaluation and Reporting Branch on the key statistics for the 2023 tax year provided the following insights into SARP claims for that year:

- The relief was claimed by 2,925 individuals from 600 employers in 2023. This represents a *c.* 10% increase on the number of SARP claimants in 2022 (2,663).
- 35% of claimants received the relief through payroll, meaning that the majority of claims were made at the time of filing the annual Form 11 tax return. This is in line with what we see in practice, for reasons we touch on below (see "Practical Considerations").

- The top country of residence before arrival in Ireland continued to be the USA, accounting for 20% of claimants, followed by India and the UK.
- The top three nationalities claiming the relief were Indian, American and Irish citizens, the last showing that this is a beneficial relief for those repatriating to Ireland who have been working abroad for at least five tax years.
- The top sector where SARP claimants were employed was information and communications, followed by financial and insurance activities and then manufacturing.

A number of important changes have been made to SARP to improve the effectiveness of the relief. This is showcased by the fact that the total number of SARP claims made for the period 2012–2017 was 2,897, which is slightly less than that for the 2023 tax year alone. However, some challenges remain, which we touch on below.

Overview of SARP Eligibility

SARP exempts from income tax 30% of a qualifying individual's total employment income between €125,000 (from 1 January 2026) and €1m (introduced for new entrants from 1 January 2019). Note that the relief does not extend to USC or PRSI (where applicable). The relief may be claimed for a maximum of five consecutive years, where the submission is made within 90 days of arrival. From 1 January 2026, where an application is made within 91 to 180 days of arrival, the relief may be claimed for a reduced period of four years.

Employees who qualify for SARP relief are also entitled to the tax-free payment or reimbursement by their employer of the cost of one return trip home, with their family, each year. The section also allows for the payment/reimbursement of the cost of school fees (primary or post-primary) not exceeding €5,000 per annum per child.

The qualifying criteria for SARP eligibility from 1 January 2026 includes the following.

Employment relationship

The individual must be a full-time employee of a non-Irish employer, one that is resident and incorporated in a jurisdiction with which Ireland has a double taxation agreement (DTA) or a tax information exchange agreement by virtue of s826 TCA 1997. The claimant must arrive in Ireland at the request of their employer to perform the duties of their employment, either for their foreign employer or for an associated company of their employer. The individual must have exercised the duties of their employment outside of Ireland for the whole of the six-month period immediately before their arrival in Ireland.

Minimum period of employment in Ireland

The individual must perform the duties of their employment in Ireland for a minimum of 12 consecutive months (dealt with below under "Practical Considerations").

Residency status

The individual must not have been tax resident in Ireland for the five tax years immediately before their arrival. They must be tax resident in Ireland for all years in which they claim the relief and must also obtain an Irish social security number (Personal Public Service Number (PPSN)).

Minimum earnings

The individual must have "relevant income" of at least €125,000, for new claimants from 1 January 2026. Applicants who applied and qualified under previous SARP iterations with a lower relevant income threshold may continue to avail of the relevant income level that applied for the year in which they arrived in Ireland.

In arriving at the relevant income, bonuses, commissions, benefits-in-kind and perquisites, shares or share-based remuneration, termination payments or restrictive covenant payments may not be included, meaning that this is typically made up of base compensation. However, to the extent that SARP is granted, income tax relief on such forms of employment

income should be available, to the maximum threshold of €1m.

Employer certification

An application for SARP relief must be submitted to Revenue within 90 days of the individual's arrival in Ireland to avail of the maximum relief available for five years. From 1 January 2026, applications that are submitted between 91 and 180 days after the individual's arrival may avail of a reduced period of a maximum of four years.

The Irish employer is required to certify that the individual meets the relevant conditions via the e-SARP portal. The application requires an individual's PPSN to be regarded as a "complete" application.

The employer must also complete and file a SARP annual return online via the e-SARP portal. For SARP claims made in 2025 and subsequent years, the annual employer return filing deadline will be 30 June 2026 (for previous years the deadline was 23 February).

Comparison of Qualifying Conditions for SARP Through the Years

Since its introduction in 2012, SARP has undergone several updates, amendments and legislative changes. Table 1, which is based on the table in Revenue's Tax and Duty Manual (TDM) Part 34-00-10, shows the various iterations of conditions required to qualify for the SARP over the years.

Practical Considerations

Alignment of date of arrival in Ireland and commencement of Irish duties

To qualify for SARP, for the whole of the six months before arrival in Ireland the employee must have exercised their employment duties, for their non-Irish employer, outside of Ireland. Revenue confirms (TDM Part 34 00-10) the following exclusions:

- the individual is prevented from travelling to Ireland to take up employment with the associated company owing to unforeseen circumstances (e.g. delays with the issue of an employment permit), in which case a maximum of five days working for the associated company from outside of Ireland may be permitted in the six-month period;
- the individual had presence in Ireland in the six-month period before arrival to take up their role where such a trip was for a brief vacation/holiday or "look–see" visit; or
- the pre-arrival performance of employment duties in Ireland where these were performed under a foreign employment contract for the relevant employer and did not exceed five working days in total in that six-month period.

Where this condition is not managed carefully and such individuals breach the permitted thresholds, the conditions for SARP will not be fulfilled and the relief will be irrevocably forfeited.

It is not uncommon for employees and employers alike to wish for the employee to spend a few weeks working from Ireland before permanent relocation, to familiarise themselves with their teams and working environment or where business travel is necessary to their role. However, this is not permitted under the legislation, which can cause practical issues.

Election for residence in year of arrival

An individual must be resident in Ireland for tax purposes to meet the qualifying conditions for SARP. Where an individual arrives mid-way through the tax year, the day threshold for residency may not be achieved, but it may be possible to elect to be resident in Ireland in the year of arrival by virtue of s819(3). However, when making a decision regarding election for residency for tax purposes, careful consideration should be given to the implications in terms of (1) bringing other income into the scope of Irish tax and (2) the duration of SARP claims to maximise the relief available, i.e. whether it would be more beneficial to claim SARP in the following year, when the individual becomes resident,

as provided for under s825C(4)(b), and hence obtain the relief for five full tax years (or four tax years where the application is submitted after 1 January 2026 between 91 and 180 days after arrival).

Definition of "relevant income"

For new entrants to SARP, arriving from 1 January 2026, the minimum "relevant income" required to qualify for the relief has been increased to €125,000. Revenue's TDM Part 34-00-10 defines this as the employee's income, profits and gains from the employment (net of pension contributions and tax-deductible expenses[1]), excluding benefits-in-kind or perquisites, bonuses/commissions/similar, termination payments, share-based remuneration and payments relating to restrictive covenants. Contemporary reward packages are often heavily weighted towards bonuses and share-based remuneration, and the definition of relevant income for the purpose of determining SARP qualification can sometimes exclude highly skilled workers from availing of the relief, particularly in small and medium-sized enterprises, where fixed cash compensation is not always possible. Note that where SARP is granted, relief for income tax purposes may then extend to such other sources of employment income; the relevant income threshold is applicable only when considering whether the conditions for SARP have been met.

Advisers and employers should carefully consider the various components of an individual's employment income and determine whether each element falls within the definition of relevant income.

For cases below the relevant income threshold, consideration would historically have been given to making a protective claim, in the event that qualifying income levels should increase in the future. However, with effect from 1 January 2026, the legislation has been amended to reflect that only individuals with annualised relevant income of €125,000 in the year of arrival will qualify for SARP.

Minimum period of performance of duties from Ireland

SARP legislation requires qualifying employees to perform the duties of their employment in Ireland for a minimum period of 12 consecutive months from the date of arrival. TDM Part 34-00-10 confirms that where an employee fails to meet that condition, the relief will be withdrawn, and tax will be applied in the normal manner.

Although there is no restriction on the performance of duties by the employee outside of Ireland, including during the first 12 months, the employee must perform some duties in Ireland each month in the first 12 consecutive months from the date they first perform those duties in the State. Example 20 in Appendix 1 of the TDM deals with this scenario and indicates that where an employee does not perform any duties in Ireland in a particular month during the initial 12-month period, they are no longer eligible for SARP.

In practice, with many companies offering remote working opportunities, and taking account of annual leave and/or business travel, this can present challenges and should be carefully monitored and managed to avoid unintended consequences.

Claim for SARP: Payroll or Form 11

SARP relief can be claimed at source through payroll or through the annual Form 11 tax return, after the end of each tax year (claimants through payroll are still required to file an annual Form 11 tax return). The mechanism for claiming the relief is chosen when the original submission application is made to Revenue, after the individual's arrival in Ireland.

The main difference between the two methods for claiming relief is timing. A claim for the relief through payroll is attractive for employees and employers, as it means that the benefit of the relief is received in real time rather than the employee's having to wait to make the claim on a tax return after year-end. However, with this benefit of real-time relief comes the risk

1 As defined in the context of the calculation of "A" in the specified amount formula.

of a situation whereby an individual breaches the qualifying conditions, thereby becoming ineligible for SARP and resulting in the employer's having under-withheld income tax via the PAYE system.

SARP Interactions with Other Tax Reliefs

Double taxation relief

In calculating the specified amount of employment income to which income tax relief will apply, an individual must deduct any employment income on which the employee is entitled to receive double taxation relief (as provided for under Part 35 TCA 1997). It is not possible to elect to claim SARP instead of double taxation relief; where relief is due under a DTA, this must be considered first.

Foreign earnings deduction, cross-border relief and R&D key employee relief

Where an individual makes a claim under for SARP, relief will not be available in respect of the foreign earnings deduction (FED) (s823A), cross-border relief (s825A) or research and development relief (s472D).

Remittance basis of tax

Where an individual makes a claim for SARP, that individual is prevented from also availing of the remittance basis of tax with regards to the taxation of their foreign employment income (s825C(7)(b)). Therefore, consideration should be given to the most favourable tax outcome for non-Irish-domiciled individuals, particularly where the employee is expected to have significant business travel and foreign workdays.

SARP and Tax-Equalisation Arrangements

Tax equalisation is a common feature of international assignments that ensures that employees who accept an international assignment are no better or worse off from a tax perspective for having accepted an international assignment.

The employee will often be subject to "hypothetical tax", which typically represents the taxes that the individual would have been subject to had they remained in their home location. The company's tax-equalisation policy should outline the basis for the calculation of hypothetical tax and the taxes covered. The cost of actual taxes is then dealt with by the employer in the home and host locations, typically through a re-gross arrangement in Ireland, giving consideration to the home net payment delivered to the employee and the cost of the taxes being met by the employer.

The fact that SARP should not be considered when calculating an employee's re-grossed income for Irish PAYE purposes was confirmed by a Tax Appeals Commission determination (143TACD2023) in September 2023. Following this decision, Revenue updated its guidance and confirmed that the terms of a tax-equalisation arrangement are a matter for an assignee and their employer and that there are no references to such arrangements in s825C TCA 1997. Revenue stated that, from 1 January 2024, the calculation of re-grossed income in tax-equalised cases where SARP is available should not take account of the assignee's entitlement to SARP. Instead, the net income should be re-grossed in line with the income tax, USC and PRSI (if applicable) liabilities applying to the employment income. SARP relief is then applied to the re-grossed income figure as calculated, and the relief can be claimed on the re-grossed income through payroll or the annual tax return.

Revenue acknowledged the complexities of this issue and the technical uncertainty that may have resulted in different approaches being adopted by employers, therefore no changes were required to the methodology before 1 January 2024.

Comparative Analysis: SARP and Other EU Expat Tax Regimes

As part of the competitive landscape for attracting foreign direct investment, there are a number of comparable expatriate tax

Table 1: Comparison of SARP-type regimes in selected EU countries.

Location	Ireland	Netherlands	Italy	Luxembourg
Income % exempted	30%	30% (reducing to 10%)	50–60%	50%
Qualifying income threshold	€125,000	€48,013 (relaxed rules where certain educational requirements are met)	–	€75,000
Max. income on which relief is available	€1m	€262,000	€600,000	€400,000
Max. duration	5 years	5 years	5–8 years	8 years

regimes across the EU, which share similar underlying principles to SARP but are not identical. Summarised below are some of the key comparisons from 1 January 2026, This information does not contain the complete picture of each regime and is for illustrative purposes only. It is also important to note that many other countries have expatriate or similar regimes aimed at attracting highly skilled workers, for example Sweden, Denmark and Belgium.

Conclusion

In conclusion, SARP remains a pivotal tax incentive in Ireland's strategy to attract and retain highly skilled foreign talent, thereby supporting economic growth and business expansion. Since its introduction in 2012, SARP has evolved through various legislative updates to enhance its effectiveness, as evidenced by the significant increase in claims in recent years. The programme's structured relief of exempting 30% of qualifying employment income above a defined threshold, combined with additional benefits such as tax-free travel and school fee reimbursements, makes it a competitive offering in the European expatriate tax landscape. However, employers still need to navigate the practical challenges which persist, particularly around strict eligibility criteria, timing of applications, and the complexities of modern remuneration packages. Overall, SARP continues to be a valuable tool for Ireland in attracting international expertise, but ongoing attention to legislative changes and practical implementation is essential to maintain its appeal and effectiveness.


Sandija McCann
Indirect Tax Senior Manager, Deloitte Ireland LLP
Kevin Devenney
Indirect Tax Partner, Deloitte Ireland LLP

Evolving Food Trends: The Challenges of Determining the Applicable VAT Rate

Introduction

The classification of food products for VAT purposes remains complex. This is especially true as convenient, hybrid products that defy traditional categorisation enter the market to meet changing consumer trends. For businesses that are navigating increasingly tight margins, a distinction between a product falling within the remit of the zero-rating VAT provisions as opposed to being subject to a reduced or standard rate of VAT can significantly impact pricing and profitability.

In the authors' opinion the underlying cause of the persisting ambiguity is twofold. Although Revenue guidance seeks to address modern and hybrid products not foreseen by legislation, it struggles to keep pace with product evolution. This, coupled with the requirement for strict interpretation of zero-rating provisions, feeds the inherent ambiguity.

In this article we consider the primary legislation governing the application of the zero rate of VAT to food (Council Directive 2006/112/EC ("the VAT Directive") and the

Value-Added Tax Consolidation Act 2010 as amended (VATCA 2010)), discuss Revenue guidance on defining food and highlight some recent VAT litigation that demonstrates how tax authorities and the courts have approached determining the correct VAT rate.

EU and Irish VAT Legislation for Food

Irish VAT on food and drink follows established legislation and Revenue guidance, with most staple foods zero rated. However, the legislative framework provides limited technical guidance for marginal cases.

The zero rating of food and drink is applied in accordance with Article 98(2) and Annex III(1) of the VAT Directive. Annex III(1) provides that the zero and reduced rates of VAT may be applied to:

> "Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs."

From an Irish VAT perspective, the legislation that applies the zero rate of VAT is largely set out in Schedule 2 VATCA 2010, in conjunction with s46 VATCA 2010. Schedule 2 VATCA 2010 lists broad categories of food that qualify (or do not qualify) for the zero rate of VAT but does not offer a technical definition of food and drink. Instead, Schedule 2 provides that the zero rate applies to "food and drink of a kind used for human consumption", unless it comes within one of the exclusions. The exclusions contained in Part B of Table 1 in paragraph 8 of Schedule 2 (which are not subject to zero rating) can broadly be summarised as:

- excisable beverages and preparations derived from them;
- tea, herbal tea, cocoa, coffee, chicory (among others) when supplied in drinkable form;
- ice-cream and similar frozen products and desserts, including mixes and powders used in preparation of same;
- savoury products of various bases (e.g. cereal, grain, flour starch, pork scratchings) when supplied without further preparation;
- various potato snacks, popcorn and roasted nuts supplied for consumption without further preparation;
- various juices, syrups, concentrates, essences, powders, crystals or other products (with certain exceptions) for preparation of beverages;
- various beverages not specifically listed; and
- chocolate, sweets, biscuits, crackers, wafers, other confectionery, and bakery products (whether cooked or uncooked) with certain exceptions.

In addition to these exclusions, a supply of food and drink under Schedule 1 or 3 of VATCA 2010 is excluded from zero rating in Schedule 2.

Under Schedule 1 VATCA 2010 food and drink supplied part of catering services to patients in hospitals and nursing homes and students in schools is exempt from VAT.

Food and drink that is supplied as part of restaurant or catering services (with certain exceptions) or has been heated before being supplied and has been retained heated or supplied while still warm attracts the reduced rate of VAT under Schedule 3 VATCA 2010.

If it is not otherwise provided for in any of the Schedules, the standard rate of VAT applies.

This intentionally broad approach reflects the legislative principle that VAT rules should be interpreted by guidance and case law without altering the legal meaning of the legislative text. However, this creates a tension: as products evolve, the gap between legislative intent and market reality widens.

That said, there have been some interesting changes to Schedule 2 VATCA 2010 in recent times. For instance, Finance Act 2022 removed

the wording "and preparations and extracts derived from milk" from Schedule 2, resulting in such products' moving from the zero rate to the standard rate of VAT.

As per Revenue's notes for guidance on Finance Act 2022, this change:

> "clarifies that beverages such as smoothies and milkshakes are subject to VAT at the standard rate while preparations and extracts derived from milk which have been zero-rated in the past will continue to attract the zero-rating in line with current practice".

Finance Act 2024 (s87) also made two changes to Schedule 2 VATCA 2010 in relation to food and drink. First, the standard rate of VAT was expanded to apply to "juice extracted from, and other drinkable products derived from, plants, grains, seeds, or pulses". Prior to this change the standard rate applied to such juice/drinkable products derived from "fruit or vegetables". Second, Finance Act 2024 expanded the zero rate of VAT to a named list of milk-substitute drinks. It was understood that Revenue concessionally applied the zero rate to such products, but the change gave a legislative footing to this approach. As per Revenue's notes for guidance on Finance Act 2024, it was outlined that these changes clarified:

> "that beverages derived from fruit, vegetables, plants, grains, seeds, or pulses, such as plant protein drinks, pea protein drinks, smoothies, probiotic drinks, energy drinks derived from plant-based ingredients, and powders for the preparation of beverages, will be liable to VAT at the standard rate".

Additionally:

> "milk substitute drinks derived from plants such as oat milk, almond milk, rice milk, coconut milk, hemp milk, cashew milk, soy milk, pea milk, hazelnut milk, flax milk, potato milk, or similar, will continue to be subject to the zero-rate of VAT".

These changes show a desire by Revenue to provide clarity and a statutory footing for some new products entering the market.

Tax and Duty Manuals: Operationalising the Legislation

The guidance issued by Revenue through its Tax and Duty Manuals (TDMs) explains and operationalises the broad categories of food detailed in VATCA 2010 and assists with interpreting legislation when deciding the appropriateness of applying the zero rate in each particular scenario.

Although the TDMs providing more detailed guidance have been available for many years, the broad definition of food for VAT zero-rating purposes, which aligned with that contained in VATCA 2010, was deemed lacking conceptual detail. Revenue recognised the need to have a consistent, objective, evidence-based definition of food so that the appropriate VAT rate could be applied, not just by exception or concession.

In this regard, a detailed food expert report was commissioned by Revenue, *Report on the Definition of Food and Related Guidance in the Context of the Value-Added Tax Consolidation Act 2010* by Dr Anne Nugent, published in October 2017. The report proposed a detailed definition of food as:

> "Substances that are understood as ordinary[1] food for human consumption by the average consumer and are presented and labelled as such. Ordinary food is not a medicine, medicated preparation, tobacco or a food ingredient in cosmetics, tinctures, or similar. It is not understood or presented as a food (dietary) supplement in forms not limited to: tablets, pills, gels, capsules, lozenges,

1 Ordinary, basic or conventional food relates to foods or food ingredients typically in liquid, solid, frozen, dried, dehydrated or concentrated forms. Such foods are ingested or chewed at meals or snacks for their nutritional value or for their sensory attributes not limited to taste. Ordinary food is primarily composed of plant, animal, bacteria, fungi or insect material.

> liquids, powders or other products for the preparation of beverages or similar."

Although this definition was not adopted in the legislation, it was included in a refined form as part of the updated TDM "VAT Treatment of Food and Drink Supplied by Wholesalers and Retailers", which adds clarity by emphasising the purpose, form and presentation of food through:

- explicitly defining food as "all substances that are understood as ordinary food for human consumption by the average consumer and are presented and labelled as such";
- stating exclusions: "Ordinary food is not a medicine, medicated preparation, tobacco or a food ingredient in cosmetics, tinctures, or similar"; and
- clarifying characteristics: foods are "ingested or chewed at meals or snacks for their nutritional value or for their sensory attributes not limited to taste".

In practice, the inclusion of this clearer definition changed little for ordinary food items: the general position that the zero rate applies to essential food consumed by the average consumer remains unchanged. However, the food report provides clearer criteria on when zero rating can be applied and reduces the scope for discretionary interpretation.

Food Classifications: Learnings from Case Law

As can be seen from the above, the legislation is intentionally broad, and guidance is intended to support interpreting it without changing the law. Therefore, despite continued updates to guidance, several areas remain inherently ambiguous, often leading to engagement with Revenue or, failing that, litigation.

Published Irish Tax Appeals Commission (TAC) decisions specifically addressing food product classification are limited, but several such cases have been litigated at EU level and before the courts in the UK. This does not necessarily indicate fewer disputes in Ireland but reflects different dispute-resolution mechanisms and suggests a tendency towards engagement with Revenue Technical Services for a Revenue opinion. It is apparent that there are few disputes escalated to the TAC.

This creates a practical challenge: businesses and advisers must often look to UK and EU case law for interpretive guidance, but UK case law, specifically, has limited direct applicability in an Irish context.

That said, a common theme emerges from recent case law from Irish, EU and UK jurisdictions, with a multi-layered interpretative approach where the literal wording of statutory language is favoured by the courts, read according to its ordinary meaning, legislative context and purpose. Factors such as consumer perception, ingredients, marketing, packaging, sales context, method of consumption/use and whether the product requires further preparation also often form part of examining the application of statutory language when determining the applicable VAT treatment. These become especially important where arguments of fiscal neutrality in the application of the zero rate of VAT are in play.

What constitutes a "preparation derived from milk"?

In the TAC determination 12TACD2024 the Appeal Commissioner examined the application of VAT to smoothies that contained frozen yoghurt as one of the ingredients. The Commissioner applied the actual VAT law contained in Schedule 2 VATCA 2010, which applied zero rating to "milk and preparations and extracts derived from milk", over reliance on a Revenue concession that allows "milk-based drinks to be zero-rated provided it is a preparation derived from milk where the milk element itself represents more than 50% of the volume".

The Commissioner concluded that the particular product is made using ingredients "derived from milk", which does not necessarily mean that it is a product *"derived from milk"*

itself, and thus it should be liable to VAT at the standard rate rather than being zero rated. This was due to lack of evidence on the composition of the product to demonstrate that the product met the strict definition in the legislation required to apply the zero rate; the Commissioner also noted that Revenue concessions do not have legislative force. Irish VAT legislation was subsequently amended to clarify the position as set out below.

As outlined above, the wording "preparations and extracts derived from milk" was removed from Schedule 2 VATCA 2010 by Finance Act 2022, and Finance Act 2024 (including relevant updates to Schedule 2 VATCA 2010 in the TDM "VAT Treatment of Food and Drink Supplied by Wholesalers and Retailers") clarified that milk substitute drinks derived from plants qualify for the zero rate whereas "juice extracted from, and other drinkable products derived from, fruit, vegetables, plants, grains seeds or pulses" attract the standard rate of VAT. However, the case, in line with earlier jurisprudence, provides valuable insight into the approach applied in the interpretation of VATCA 2010 by reinforcing the Commissioner's authority to apply the "ordinary meaning" of language used in the Act (with reference to the decision in the *UK Innocent Ltd. v HMRC* [2001] STC 526).

When is bread no longer bread?

The Irish Supreme Court case of *Bookfinders Ltd v Revenue Commissioners* [2020] IESC 60, which applied the strict VAT definition of bread, held that that the appellant's bread should be viewed as other confectionery and baked products and subject to a positive rate of VAT by reference to weight limits of particular ingredients listed in Schedule 2 Value Added Tax Act 1972 what is now contained at Table 2, paragraph 8, of Schedule 2 of the VATCA 2010. The decision hinged on the weight of sugar content as a percentage of the weight of flour, which exceeded the percentage limit prescribed by VAT law. The appellant contended that the exclusion only applies where each of the ingredients listed in the particular provision needs to be present, and the relevant limit exceeded. However, the court stressed the need to consider the context of the Act and the application of the absurdity test, whereby a reading of it appears to be contrary to the legislative intent.

When are foodstuffs fit for human consumption?

The judgment of the Court of Justice of the European Union (CJEU) in *Staatssecretaris van Financiën v X* C-331/19 considered the interpretation of "foodstuffs for human consumption" in context of the VAT Directive. The court, in reaching its decision, noted that legislative concepts:

> "must be interpreted in accordance with the usual meaning of their words in everyday language, whilst also taking into account the legislative context in which they occur and the purposes of the rules of which they are part".

In this case the CJEU noted that, in their ordinary meaning, "foodstuffs for human consumption" have to provide the required nutrients to sustain human life, with the purpose of their consumption being to obtain these nutrients, regardless of other effects that they may provide.

The TAC determination 57TACD2022 considered whether raw meat feeds aimed primarily at feeding cats and dogs, ingredients of which are identical to those available at butcher shops aimed for human consumption, could avail of the zero rate of VAT as "food of a kind fit for human consumption". The Commissioner concluded that the product in question would not be "of a kind fit for human consumption" and should thus be taxed as a pet food and subject to the standard rate of VAT. The Commissioner considered factors such as consumer perception, marketing and intended use, as well as noting that "regard must be had to the appropriate Health and Safety and other regulations". This demonstrates the approach of multi-factor consideration in the interpretation of statutory language.

Is it a chocolate-covered biscuit or a biscuit with chocolate?

Although UK cases are non-binding in an Irish VAT context, they can be persuasive (as explicitly documented in Revenue's TDM Part 01-00-06, "Guide to Legislative Interpretation", and commonly cited by Irish courts) and are useful in understanding the statutory interpretation principles that courts and tax authorities apply in their analysis.

The *Ferrero UK Ltd v HMRC* [2018] EWCA Civ. 2449 judgment applied the strict ordinary meaning of the term "covered" when determining whether Nutella biscuits are "partly covered with chocolate or some product similar in taste and appearance", under Schedule 8, Group 1, Excepted Item 2, of the UK Value Added Tax Act 1994 (VATA 1994), and are therefore excluded from zero rating. Both biscuit structure/composition and manufacturing process were considered in arriving at the decision that the particular product was not in the strict meaning "covered with chocolate".

Is a marshmallow confectionery?

The case of *HMRC v Innovative Bites Ltd* [2023] EWCA Civ. 1 went through various tiers of court in determining whether Mega Marshmallows fall within the "confectionery" definition in Schedule 8, Group 1, Item 2, UK VATA 1994, subject to Note 5, which includes "any item of sweetened prepared food which is normally eaten with fingers". Initial decisions of lower-tier courts held against their being confectionery (and, as a result, liable to the zero rate of VAT) based on consideration of multiple factors such as product purpose, appearance, marketing, sales context and presentation, but the Court of Appeal reversed the decision by noting that the VAT rate determination is a question of law not of fact. At the time of writing, the determination has been returned to the First-tier Tribunal to decide whether Mega Marshmallows are "normally eaten with fingers", and it would seem that the determination will rely heavily on factual findings regarding consumption by the ordinary consumer, placing less reliance on how the product is marketed to be used.

Other cases

Other cases worth referencing include *Global by Nature Ltd v HMRC* [2025] UKFTT 24 (TC), concerning drink powders marketed as sports drinks. The First-tier Tribunal ruled that these are zero rated, concluding that the product did not meet the definition of "sports drinks" owing to insufficient carbohydrate content.

The debate in *Walkers Snack Foods Ltd v Revenue and Customs Commissioners* [2025] UKUT 155 (TCC) regarding miniature poppadoms further illustrates the continuous challenges in classifying snack foods for VAT purposes, with a decision reached that the product, labelled "poppadoms", is similar to potato crisps and should be standard rated for VAT purposes.

The case of *Innate-Essence Ltd (t/a The Turmeric Co) v HMRC* [2023] UKFTT 371 (TC) established that cold-pressed turmeric shots can be classified as food rather than a beverage owing to the fact that such drinkable products would not be consumed to quench thirst or for pleasure.

YD v Dyrektor Krajowej Informacji Skarbowej C-146/22 highlighted the fact that two almost identical food products can be distinguished based on how they are prepared and presented. The CJEU provided that a higher rate of VAT can be justified to apply to milk-based products where one is prepared and served hot whereas the other is sold on a pre-packaged basis.

Conclusion

The purpose of commissioning Dr Nugent's *Report on the Definition of Food and Related Guidance in the Context of the Value-Added Tax Consolidation Act 2010* was to reduce uncertainty regarding the VAT rate that applies to food and drink products. Although the report clarifies several areas of doubt, it is evident that complexities persist before modern and hybrid products come to market.

This leaves businesses offering hybrid or innovative food products with a dilemma when determining the correct VAT rate applicable to their products before their release on the market. Revenue guidance provides clarity for traditional foods but leaves modern products in a grey zone.

This uncertainty is structural, not accidental. As consumer preferences evolve faster than legislation can be amended, the gap between legislative intent and market reality will only widen. Businesses should not expect clear answers from guidance alone. Instead, they should adopt a proactive approach: gather factual evidence, apply established case law principles and seek advance Revenue opinion when classification remains uncertain.

Ronan Moore
Director, KPMG

R&D Tax Credits: Finance Act 2025 Enhancements and Department of Finance Review

Introduction

The year 2025 presented many complex challenges for companies operating in Ireland. It began with tensions rising between global trading superpowers, culminating in the introduction of tariffs, which resulted in disruption to global supply chains and increased uncertainty in international markets. Decades of free and open international trade were under threat.

In addition, international tax reforms continued to evolve, with the OECD required to outline its "side-by-side solution" to address US concerns regarding Pillar Two's global minimum tax.

With the international landscape impacting both indigenous and multinational companies, close attention was on Minister Paschal Donohoe's Budget 2026 speech in October last year in which Minister Donohoe described how a sensible 2026 Budget, that protects jobs and supports growth, will safeguard Ireland's future in the midst of international challenges.

R&D Tax Credit Enhancements

The Research and Development (R&D) tax credit (RDTC) is a tax credit available to companies involved in carrying out eligible 'research and development activities'. The amount of credit is calculated by reference to

a percentage of qualifying R&D expenditure incurred on such activities.

Rate increase to 35%

Budget 2026 included welcome enhancements to the R&D tax credit (RDTC) – most significantly, the an increase to the headline rate of relief from 30% to 35%, which was legislated for through Finance Act 2025. This is the second increase in two years, after the increase to the rate of relief from 25% to 30% in Finance (No. 2) Act 2023.

Moving to a 35% rate is a significant step, providing certainty and a positive message to both multi-national corporations (MNCs) and Irish indigenous companies that Ireland remains an excellent location to undertake R&D activity. This is particularly true for companies faced with competitive options for R&D investment from other international locations, as it is the headline rate that catches the attention of senior leadership, many of whom are often based beyond these shores. Other countries, such as Canada and Singapore, have sought to strengthen their own R&D and investment incentives, providing further international competition to Ireland. The hope is that the increased rate will provide security for R&D currently being undertaken in Ireland and also be the catalyst to secure new and additional R&D investment in Ireland.

On a macro-level, the new 35% rate will provide an additional incentive for companies to increase R&D investment in Ireland, helping to boost Ireland's gross expenditure on R&D (GERD), closing the gap with the Government's 2030 target of GERD being at least 2.5% of gross national income.

Increase to first instalment threshold

Finance Act 2025 also provides an increase to the threshold for the first instalment of the RDTC from €75,000 to €87,500. This represents a further extension of the threshold, which was increased from €50,000 to €75,000 in Finance Act 2024.

This means that companies with RDTC claims of €87,500 or less can receive the full benefit of their RDTC claim in one upfront instalment in year 1. Companies with RDTC claims of between €87,500 and €175,000 will also benefit from the increased threshold, by receiving a greater portion of their RDTC claim in its first instalment, with the balance being refunded in instalments 2 and 3 in subsequent years. Companies with RDTC claims above €175,000 will continue to receive a first instalment amount based on 50% of the RDTC claim amount.

This is a positive update and, although it is available to all RDTC claimant companies, it will provide a vital cash-flow benefit to companies engaged in smaller R&D projects, such as high-potential start-ups and SMEs.

Allocation of employee emoluments

Finance Act 2025 also provides that where an employee performs not less than 95% of their duties of employment in the carrying on of R&D, 100% of the employee's emoluments shall be considered eligible R&D expenditure. Similarly to other restrictions in the RDTC legislation, the expenditure will not be eligible where it qualifies for a relief, credit or allowance for the purposes of tax in a territory other than Ireland.

This provision will allow a company to claim the full cost of an employee in its RDTC claim where it can be demonstrated that the employee spent 95% or more of their time on qualifying R&D activities. It is a positive update, particularly for companies that employ researchers who are solely dedicated to R&D projects but spend a small percentage of time on more general tasks, such as HR activities and training. However, as with all RDTC claims, it remains important that a claimant company can support the employee's time engaged in R&D activity through contemporaneous documentation.

Construction of laboratories used for R&D

Finance Act 2025 also provides for an update to the definition of "relevant expenditure" for the purposes of RDTC claims on the construction of buildings/structures to be used for R&D activity under s766A and s766D of the Taxes Consolidation Act 1997 (TCA 1997).

The amendment provides that expenditure incurred by a company on the construction of a qualifying building shall now include expenditure incurred by a company on the "construction of a laboratory for use in the carrying on of research and development activities". The provision also excludes expenditure incurred on "any part of the laboratory for use as an office or for any purpose ancillary to the purpose of an office" from qualifying for the RDTC.

Although it is the author's view that laboratories could already qualify for the RDTC under first principles, it is nonetheless positive that the legislation now specifically allows for the cost of construction of a laboratory, which is to be used for R&D, to qualify for the RDTC.

However, the wording stipulating that "any part of the laboratory for use as an office or for any purpose ancillary to the purpose of an office" is excluded is of concern. How this is interpreted and administered by Revenue may vary and lead to uncertainty for taxpayers. There will be scenarios where a laboratory is constructed and either within the lab itself or connected to the lab there are desk spaces that are occupied by R&D personnel (i.e. scientist and engineers) who are carrying on desk-based R&D work directly linked to the activity conducted in the lab (e.g. analysis of lab results). Although it is clear that the construction of standard office buildings does not qualify for the RDTC (as they are not "industrial buildings"), there is a concern that "office" may be interpreted broadly by Revenue, potentially resulting in the exclusion of any portion of a laboratory or industrial building containing "desk spaces" that are occupied by R&D personnel who are carrying on R&D work directly linked to the activity conducted in the lab.

Take a manufacturing facility that qualifies for industrial buildings allowances (IBAs) as an example. Case law would support that IBAs are available where the building contains desk space or an "office" that is predominately used by skilled technical employees for activities that are directly related to the industrial activities carried on by the company. Thus, the overall building and relevant expenditure in this example could still qualify for the RDTC (if the other s766A criteria are met). It is important that a similar approach applies to laboratories.

Other updates

Finance Act 2025 clarifies that companies must specify whether each of the RDTC instalments is to be treated as an overpayment of tax (to be set against another tax liability of the company) or paid to the company by Revenue, as well as providing clarity on the timing of the third instalment.

Timing of enhancements

The increased rate of relief, the increased first instalment threshold and the allowance of 100% of an employee's emoluments as R&D expenditure where at least 95% of their time was engaged in R&D activities all apply with respect to any accounting period where the specified return date of which is on or after 23 September 2027. This effectively means that the enhancements will first apply for companies with an accounting period ending on or after 31 December 2026 (albeit that for companies with an accounting period ending on an earlier date in December 2026 the enhancements will also apply).

The updates to the definition of "relevant" expenditure for the buildings RDTC apply from the date of the Act's passing (i.e. 1 January 2026). The other administrative updates regarding RDTC instalments will apply for accounting periods ending on or after 31 December 2025.

Department of Finance Review of R&D Tax Credit

On the same day that the US announced the rate of tariffs that would be applied to certain jurisdictions (2 April 2025) the Department of Finance launched its "Public Consultation on the Research & Development Tax Credit and on Options to Support Innovation". Reviews of the RDTC are conducted every three years, and this latest review examined the effectiveness of the scheme in the context of the current economic climate.

The purpose of the consultation was to:

- review the effectiveness of the RDTC against its intended policy objectives and
- consider other options to incentivise innovation in a targeted manner and in line with Government objectives.

After receiving 26 responses from a range of stakeholders, including companies engaged in R&D activities, advisory firms (including KPMG), representative bodies and Government departments, the Department of Finance (DoF) published its "Research & Development Tax Credit 2025 Review" ("the Review") in January 2026.

The Review provides a positive assessment of the RDTC regime in Ireland and frequently highlights the importance of the credit for attracting foreign direct investment (FDI) to Ireland and for supporting an innovation-driven domestic enterprise sector.

Summary of Key findings of the review

Continued strategic importance of RDTC

The Review reaffirms the RDTC as a cornerstone of Ireland's FDI offering and a critical support for domestic innovation. With ongoing international global tax reforms and other economic and geopolitical headwinds, the maintenance, enhancement and clarity of the long-standing R&D tax regime is likely to have greater importance than ever in maintaining Ireland's reputation as a leading destination for FDI and R&D.

Engagement with the RDTC among companies remains strong, and based on the most recent statistics, there has been growth in the number of claimant companies (up to 1,804 in 2023) after a decade-long plateau in the number availing of the credit.

The Review recognises the contribution and importance of R&D and FDI to the Irish economy over the past 20 years and references the Programme for Government 2025 – Securing Ireland's Future, which includes a commitment to:

> "examine options to enhance the R&D tax credit, reward innovation and digitalisation and ensure Ireland has the global best in class incentive to encourage innovation by domestic and international companies".

It is clear that the RDTC and potentially other options to reward specific areas of innovation will be a fundamental fulcrum of Ireland's support offering to companies operating on these shores.

Job creation and R&D investment

Companies that claimed the RDTC in 2023 employed almost 253,000 people (an increase from just over 200,000 in 2020). The increase is primarily in large companies, with the level of employment in SMEs also increasing but on a more gradual basis.

The Review specifically considers the manufacturing sector and finds that the number of R&D claimants in this sector has remained broadly similar from 2020 to 2023. However, the employment levels for these claimant companies have grown by approximately 20%. The DoF economic analysis concludes that it could be assumed that the RDTC has supported the growth of employment in this sector, including that of R&D-active employees, given that claimants in the sector have remained broadly similar yet employment has increased.

An overarching policy objective of the RDTC has always been to incentivise the creation of highly skilled and highly paid jobs in Ireland. The Review finds that the number of PhD-qualified and other researchers increased during the period 2007–2023, from just over 15,000 in 2007 to almost 41,000 people in 2023.

Strong SME engagement

SMEs represented 89% of claimants and accounted for 23.5% of the Exchequer cost of the RDTC in 2023. Small and micro enterprises dominate the Irish R&D activity landscape, with 66% of R&D claimant companies in 2023 employing fewer than 50 people.

Despite a high number of SME claimants, large companies continue to account for most R&D expenditure, with 84% of 2023 business expenditure on R&D attributable to foreign–owned enterprises.

Although the recent enhancements to the RDTC will be available to both large companies and SMEs alike, it is important that the administrative aspects of the RDTC (such as the timeliness of refunds and the Revenue intervention process) are continually reviewed and improved to ensure that SMEs can avail of the RDTC without undue burden.

Importance of skilled workforce and linkages with third-level education sector

The Review outlines that the RDTC is fulfilling a fundamental policy objective by contributing to higher levels of R&D, which is associated with increased labour productivity and economic growth. However, there are other considerations that companies must take into account when investing in R&D projects in Ireland.

Access to specialist talent remains a critical consideration for companies when deciding whether to locate their R&D activities in Ireland. The broad and skilled base of employment is a solid foundation for innovation capacity and supports the rationale for sustained investment in R&D, with higher wages in both the science and technology and the MNC sector than the rest of the economy on average.

Industry–academia collaboration is vital to keep curricula aligned with industry needs and provide pathways to relevant employment for graduates. This can already be seen in the University of Limerick and its Immersive Software Engineering Bachelor's/Master's degree programmes' being backed by Stripe co-founder John Collison, with the idea of producing "job-ready" graduates.

Ireland's RTDC remains competitive internationally

The Review contains an analysis of the RDTC and how it compares internationally based on the most recent data available from the OECD. Across the OECD, R&D tax incentives play a significant role in supporting business R&D compared to direct support instruments (e.g. direct grant funding). When combining the direct and indirect tax supports, relief for R&D expenditure in 2022 as a percentage of GDP (GNI for Ireland) was highest in Ireland, at 0.52% of GNI, followed by Iceland, Portugal, France and the UK. This demonstrates strong Government support for R&D incentives.

To determine country-level support for R&D the OECD developed a framework on which to assess the comparative attractiveness and impact of tax provisions on the tax liabilities of companies conducting R&D. The first metric is the effective average tax rate (EATR), which measures the average tax burden on a profitable R&D investment project. Firms might use the EATR to compare tax incentives when considering where to locate R&D activities.

OECD comparisons also show that Ireland continues to rank among the most favourable jurisdictions for EATRs, strengthening its position in attracting global R&D investment. The lowest (lower = better) EATRs for R&D investments carried out by large companies are observed in Ireland, Poland and Lithuania

The second metric is the "user cost of capital". In general a user cost of capital is a way of measuring how expensive it is for a firm to carry out R&D, taking into account financial cost (e.g. inflation and interest rate) but also the tax system. Ireland's user cost of capital is negative, indicating strong tax support.

The economic analysis indicates that Ireland's RDTC performs considerably well when compared with other regimes.

Among the changes in the international tax landscape in recent years, Ireland's RDTC positively integrates with the OECD Pillar Two Framework so that it remains a valuable incentive to all companies. In addition, given the recent rate increase to 35% and the international comparison provided in the DoF Review, there is strong evidence to suggest

that Ireland's RDTC could be considered "best in class internationally", a previous conclusion from the inaugural "Review of Ireland's Research and Development (R&D) Tax Credit 2013", conducted by the DoF in 2013.

Although this is clearly positive, a degree of caution should be exercised. Since the 2023 OECD data, many other countries have been seeking to enhance existing incentives and introduce new ones to safeguard against international challenges. Singapore, for example, has introduced a refundable investment credit, which supports a broad range of investment activities, including but not limited to R&D and innovation activities. Eligible taxpayers can available of support rates from 10% to as high as 50% under the regime – eclipsing Ireland's headline rate for certain investments.

It is clear that R&D incentives on an international scale are continuously evolving, and although the international review is positive, it is critical that Ireland does not become complacent and that it continues to monitor competition in this space from abroad.

Innovation support

In addition to the review of the RDTC, the DoF consultation considered additional tax-based supports for innovation. The Review's focus was mainly on the effectiveness of the RDTC, but it outlined that the DoF is continuing to explore options in relation to a tax-based support for innovation. Although innovation and R&D are closely linked, there can be certain innovative efforts, such as circular-economy projects, digital-first business models and customer-experience transformation, that fall outside the existing RDTC regime.

Given that innovation is broader and more subjective than R&D, the DoF is seeking to make sure that definitions are robust and clear to ensure that any potential incentive supports value-added activities that might not otherwise occur in Ireland.

Countries such as France, Spain and Portugal already have innovation incentives, and the current lack of a similar measure in Ireland is a threat to the country's attractiveness for innovative companies. A separate innovation inventive is an opportunity to encourage investment by companies in key strategic areas such as digitalisation and environmental/green technologies. For example, there is growing potential in digital transformation and the Review notes that the proposals put forward by stakeholders included the introduction of a separate credit for digital transformation. This could incentivise companies to invest further in these areas.

It is important that this area is closely monitored to that ensure Ireland remains competitive and a location of choice for valuable innovative projects.

R&D Compass

On 16 February 2026, Tánaiste and Minister for Finance Simon Harris announced the release of the "Research and Development Tax Credit and Innovation Compass," a report detailing the Department of Finance's key priorities for the coming years to maintain the competitiveness of Ireland's RDTC regime. The Compass presents an overview of the RDTC's development and areas of further review guided bv stakeholder feedback received following the DoF consultation which ran last year.

The Compass identifies the following four broad directions for future policy work with the first three being specific to the RDTC and the fourth relating to support for innovation:

1) Qualifying Expenditure
2) Capital Expenditure
3) Administration and Simplification
4) Supports for Innovation

Qualifying Expenditure

The Compass considers stakeholder feedback in relation to the legislative definition of *"expenditure on research and development"* and proposals in relation to sub-contracting. The Compass regards the broadening of the former

as a "*material change to the premise on which the R&D tax credit regime is based*" and could potentially have significant Exchequer impacts.

On sub-contracting, the Compass sets out that a detailed review of the sub-contracting provisions and proposals on this aspect has commenced and will involve further stakeholder consultation. Consideration is being given to the current sub-contracting rule and also the potential for the allowance of connected party outsourcing.

The Irish RDTC regime currently does not allow for any outsourcing to connected companies and restricts the amount that can be outsourced to unconnected third parties and universities. This does not align with how companies operate today, and it does not always reward the intellectual-property creation that occurs in Ireland. In addition, the existing limits in relation to outsourcing to unconnected third parties have not been amended in the last 10 years and should be reviewed and considered for enhancement.

Capital Expenditure

The Compass considers certain stakeholder feedback on capital expenditure, focused mainly on the capital expenditure incurred by companies on buildings/structures to be used for R&D activity. While review will be undertaken by DoF, this area is considered less pressing and therefore a medium-term priority. Review points include the 35% di-minimis threshold applying to R&D buildings, the four-year period to which the 35% test applies and the interaction between Industrial Buildings Allowances (IBAs) and the RDTC.

Administration and Simplification

The Compass outlines a review of the RDTC will be undertaken in 2026 as part of the transposition of the provisions outlined within the Pillar Two Side-by-side package. The purpose of the review will be to assess the alignment of the RDTC scheme with the Qualifying Tax Incentive definition contained within the Pillar Two framework.

Data will be reviewed by DoF with respect to the increased rate of relief and increases to the first instalment threshold to determine the impact on recent rate enhancements and to consider the effectiveness of the updated RDTC repayment structure which was first introduced by Finance Act 2022.

Consideration will be given to the proposal for a fixed percentage to be used to determine qualifying overhead costs for RDTC purposes. It is thought that a provision could provide for a level of simplification of the regime. However, the Compass identifies a number of potential complexities that will need to be addressed, including increased Exchequer cost and companies which may be disadvantaged through a fixed percentage approach instead of actual expenditure amounts incurred.

Other areas which the Compass refers to are the interaction with the RDTC and a company's preliminary tax calculations and the recent update to the legislation allowing 100% of an employee's emoluments as R&D expenditure where at least 95% of the duties of their employment is spent on qualifying R&D activities. Both areas will continue to be kept under review.

Supports for Innovation

The Compass reaffirms the Government's commitment to examine options to reward and encourage innovation and digitalisation within organisations. This follows 2025 DoF Consuldation which also sought feedback from stakeholder on ideas for a tax incentive targeted toward value-add innovation.

The Compass confirms that work on the development of a tax-based support for innovation will continue in 2026 and the scope of an innovation support will be influenced by key factors, such as, the potential Exchequer cost; options for targeting an innovation support to ensure value to tax payers through additionality; and the administration of the potential regime.

Other areas of review and future considerations

Whilst not covered under the four key review areas, the R&D compass also reaffirms that the Knowledge Development Box (KDB) regime will also be reviewed in 2026 and will be done so in conjunction with work on innovation support. The KDB review will consider examining the benefits and possible drawbacks of extending the existing regime and/or integrating it with a new innovation support measure.

The Compass gives a clear indication of the areas of the RDTC which are being analysed and the proposals received from stakeholders which are being considered in further detail. There will be a number of reviews undertaken in 2026 and it will be interesting to see the output of the reviews and whether any key enhancements may follow as a result.

OECD Side-by-Side Package

On the 5 January 2026 the OECD published its "side-by-side package" relating to the Pillar Two framework. The package includes a substance-based tax incentive (SBTI) safe harbour, which will reduce any top-up tax payable that is attributable to the use of certain expenditure-based tax incentives (i.e. "qualified tax incentives"), such as the RDTC, subject to a "substance cap".

The substance cap that applies to the SBTI safe harbour is calculated by reference to the MNC group's payroll or tangible assets (the higher of 5.5% of eligible payroll costs or depreciation on tangible assets) in the jurisdiction. Alternatively, a five-year election can be made to apply a cap equal to 1% of the carrying value of tangible assets in the jurisdiction, subject to certain conditions.

Previously, under the OECD Pillar Two rules, qualified refundable tax credits (with which the RDTC aligns) would have been subject to a top-up tax, meaning that the net RDTC rate for companies would be less than the headline rate (now 35%).

However, under the new SBTI safe harbour, many companies within scope of Pillar Two that are conducting R&D activities in Ireland may now receive the full 35% RDTC benefit without being subject to a top-up tax on the credit amount received, where the substance cap has been met. Therefore, rather than companies' receiving a net 29.75% (i.e. 35% tax credit less 15% top-up tax), the full 35% may be available. Although the guidance has been published by the OECD, it still must be legislated for in Ireland.

Conclusion

Ireland continues to be an excellent location for companies to do business in and offers competitive R&D incentives for those who locate their R&D operations here. The RDTC remains, more than ever, a key policy tool to attract vital FDI and valuable R&D projects to Ireland. The spill-over effects from locating R&D here are significant too. This can be seen for companies that strategically co-locate R&D operations along with valuable and labour-intensive manufacturing operations. For Ireland, this often means that significant manufacturing investment opportunities follow where the R&D operations are established, particularly in the life sciences sector.

The RDTC compares favourably internationally, and the rate increase to 35% sends a strong message to the international business community that sets Ireland apart from its competitors. It reinforces our commitment to innovation and ensures that we, as a country, remain globally competitive. However, it is important that the international landscape is closely monitored to ensure that Ireland's R&D incentive offerings are considered "best in class".

Further low-cost, targeted reforms to the RDTC can unlock additional benefits, improve administration and make the regime more dynamic and accessible, especially for ambitious SMEs. In addition, a dedicated innovation incentive should be carefully considered as the next tool to unlock Ireland as Europe's innovation hub.


Julia Shanahan
Tax Director, PwC Ireland

Nicola Sheridan
Tax Director, PwC Ireland

A New Era of Tax Transparency: Understanding DAC 8

Introduction

Over the past 25 years, tax transparency has evolved from a policy aspiration into a defining feature of the international tax landscape. The OECD's 2000 publication of the first list of non-cooperative jurisdictions for tax purposes was a first milestone. The subsequent establishment of the Global Forum on Transparency and Exchange of Information for Tax Purposes institutionalised that commitment, catalysing successive initiatives that have reshaped cross-border tax administration.

In an increasingly globalised economy, tax authorities now cooperate at scale to ensure that tax is paid where taxpayers are resident. Cornerstone regimes, most prominently the United States' Foreign Account Tax Compliance Act (FATCA) and the OECD's Common Reporting Standard (CRS), operationalise this cooperation through the automatic exchange of information. By requiring financial institutions to report accounts held by non-residents, these regimes facilitate the transmission of information to the account-holder's home jurisdiction. Collectively, these measures have materially elevated transparency and established new expectations for compliance, disclosure and international cooperation on tax matters.

While much progress has been made, the financial market is evolving rapidly. To keep pace with emerging asset classes and increasingly complex financial products, the OECD has expanded the global framework for the automatic exchange of information to reflect the rise of crypto-assets and related e-money products. The intention of this expansion is to enhance transparency as financial activity migrates from traditional intermediaries towards decentralised and tokenised forms of value.

This expansion has given rise to a new standard, the Crypto-Asset Reporting Framework (CARF), focused on transaction-level reporting for crypto-assets. Additionally, the CRS has been amended, with the updated version referred to as CRS 2.0.[1] The updates are designed to capture emerging financial assets and products that serve as alternatives to traditional offerings and to bring additional entities within the scope of the CRS. The measures also aim to enhance the information being reported under the CRS while avoiding overlap with the information reported under the CARF.

In the EU these changes are implemented through Council Directive (EU) 2023/2226[2] (DAC 8). Member States had until 31 December 2025 to implement DAC 8 in national legislation. Finance Act 2025 transposed DAC 8 into Irish law with effect from 1 January 2026, with the first reporting due to take place by 2027. In this article we outline the impact of the CARF and CRS 2.0 changes, their scope and timelines, and look ahead at the area of tax transparency and information reporting in the upcoming future.

The Crypto-Asset Reporting Framework

The CARF establishes a global, transaction-level system for the automatic exchange of information on crypto-assets, addressing transparency gaps as activity moves beyond traditional intermediaries. Under the CARF the reporting obligation will sit with "reporting crypto-asset service providers" (RCASPs). Both individuals and entities can be viewed as RCASPs where, in the course of business, they provide services that facilitate exchange transactions for or on behalf of customers in respect of relevant crypto-assets.

The definition is deliberately broad and extends to centralised and certain decentralised exchanges, operators of crypto ATMs, and crypto-asset brokers, dealers and market makers, whether acting as intermediaries or as principals.

The CARF defines "crypto-assets" broadly as digital representations of value that rely on cryptographically secured distributed ledgers or similar technologies to validate and secure transactions. This encompasses crypto-currencies, stablecoins, derivatives issued as crypto-assets, and certain non-fungible tokens (NFTs) that represent rights to value, membership, or property. Although the definition is intentionally broad to keep pace with the rapidly developing market, not all crypto-assets fall within the CARF's scope. Specifically, three categories are excluded:

- crypto-assets not used for payment or investment purposes (such as certain collectible NFTs and utility tokens),
- central bank digital currencies and
- specified e-money products.

Some of these excluded assets will instead fall under the scope of the CRS, as discussed below.

Under the CARF three categories of transactions are reportable:

- exchanges between relevant crypto-assets and fiat currencies,
- exchanges between relevant crypto-assets and
- transfers (including reportable retail payment transactions).

1 OECD, *International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 Update to the Common Reporting Standard* (Paris: OECD Publishing, 2023), https://doi.org/10.1787/896d79d1-en.
2 Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

For example, an individual purchasing Ethereum in exchange for a currency such as Euro or in exchange for another crypto-asset, such as Bitcoin, will be a reportable crypto-asset user, and this transaction will be reported by the RCASP for CARF purposes.

Where is the correct jurisdiction for filing?

Acknowledging that RCASPs may have a presence in multiple jurisdictions, the CARF nexus rules were developed to determine the country in which an RCASP has reporting obligations. RCASPs are in scope when they are: (1) tax resident in, (2) both incorporated in and possessing legal personality or subject to a tax return/reporting obligation in, (3) managed from, (4) having a regular place of business in or (5) effectuating relevant transactions through a branch in a jurisdiction that has adopted the CARF. The hierarchy is designed to mitigate duplicative reporting where multiple connections exist. Notification rules apply where the same nexus arises in more than one partner jurisdiction or where branches report locally.

OECD FAQs clarify the scenario where an RCASP has only a branch in a CARF-implementing country and does not have a higher nexus in another CARF-implementing jurisdiction. The FAQs confirm that such an RCASP must carry out due diligence and reporting for all relevant transactions undertaken by the RCASP, not only those effected by the branch. Transitional provisions may apply (unless a particular implementing country provides otherwise) so that, during the early years of staggered implementation, an RCASP may report only for the branch and subsequently complete reporting for all relevant transactions once the higher-nexus country has implemented the CARF. For this provision to be relied on, the higher-nexus country must be committed to implementing the CARF by a specified date.

Helpfully, the FAQs also confirm that merely having a customer base in a CARF-implementing jurisdiction does not, by itself, create nexus in that jurisdiction.

Managing due diligence and reporting obligations

The CARF places specific due diligence obligations on RCASPs. These requirements are intended to enable RCASPs to identify the crypto-asset user, establish their tax residence and, in certain cases, identify any controlling persons. The OECD is expected to publish a sample self-certification that RCASPs can use to collect this information. This will not be a mandatory template, and RCASPs may instead integrate CARF-aligned questions in their own on-boarding materials or adapt the sample template to suit their processes.

If a crypto-asset user (other than an excluded person) does not provide the requested due diligence information within 60 days of a second reminder, the RCASP must suspend the user's transactions. This is consistent with DAC 8 and requires RCASPs subject to the CARF in the EU to monitor timelines closely. In practice, firms should consider automating reminders and transaction blocks to prevent non-compliance, while individuals and companies engaging in crypto-asset activity should respond promptly to information requests to ensure continued access to trading.

In line with these requirements, individuals and entities transacting in crypto-assets should anticipate receiving a self-certification or equivalent form to confirm key details, including tax residency. Broadly, reportable persons should expect that their name and address, tax residency and tax identification number, and information on crypto-asset transactions, such as gross amounts paid or received, will be reportable.

Per Finance Act 2025, in-scope entities and individuals are expected to begin collecting required information from 1 January 2026. RCASPs must register with Revenue by 31 December 2026 (or by 31 December of the first year in which they become an RCASP). The first CARF reporting for the 2026 period is due to be submitted to Revenue by 31 May 2027.

The Finance Act 2025 introduces CARF non-compliance penalties aligned with the FATCA/CRS. A fixed penalty of €19,045 applies for failure to comply, with an additional daily penalty of €2,535 for ongoing breaches. This underscores the expectation that RCASPs implement fit-for-purpose controls, governance and reporting infrastructure ahead of reporting go-live, including procedures for validating self-certifications, monitoring changes of circumstances and remediating data quality issues before filing.

Common Reporting Standard 2.0

Under the CRS, financial institutions are required to identify account-holders' tax residencies, collect specified account and entity information, and report it to their local tax authority, which then shares the data annually with counterpart tax authorities. The regime applies broadly across banks, custodians, certain investment entities and some insurance providers.

CRS 2.0 represents the first substantive overhaul of the CRS since its implementation (effective in Ireland from 2016), expanding the framework to capture alternative and emerging financial instruments while minimising overlap with the CARF. The amendments refine key definitions, expand the population of reporting financial institutions, strengthen due diligence and increase reporting requirements to improve matching and compliance outcomes.

The definition of a depository institution now expressly includes specified electronic money products and central bank digital currencies. As a result, any entity that holds e-money or specified electronic money products on behalf of customers will be treated as a reporting financial institution for CRS purposes, subject to some narrow exclusions. These amendments ensure that assets outside the scope of the CARF are reported under the CRS. The OECD FAQs also helpfully set out that tokenised assets that can be held and transferred only via traditional financial intermediaries should be within the scope of CRS reporting and should not fall within the definition of a "crypto-asset" reportable under the CARF. This clarification helps to avoid duplicate reporting of the same assets under both the CARF and the CRS.

In addition, the definition of financial assets is expanded to bring relevant crypto-asset derivatives within scope, and the "investment entity" definition is widened to include relevant crypto-assets. In parallel, the non-reporting financial institution category has been extended to encompass genuine charities.

CRS 2.0 also clarifies and reinforces due diligence obligations. Financial institutions should now carry out additional diligence where an account-holder claims sole residency in a jurisdiction that offers high-risk citizenship-by-investment or residence-by-investment programmes ("CBI/RBI schemes"). These programmes allow individuals to obtain citizenship or residency through an investment or a flat fee. Schemes are categorised by the OECD as being potentially high risk where they provide access to low personal income tax rates on offshore financial assets and do not require the individual to spend a meaningful amount of time in the jurisdiction offering the scheme. For CRS purposes, there is a risk that an individual may hold multiple tax residencies but disclose only the high-risk CBI/RBI jurisdiction. Per the updated rules, reliance cannot be placed on the self-certification where a high-risk CBI/RBI jurisdiction is the sole residency disclosed, and additional questions should be raised.

For the identification of "controlling persons", reporting financial institutions may rely on anti-money laundering/"know your customer" information, provided procedures align with the 2012 Financial Action Task Force Recommendations.

Additionally, a helpful update has been made confirming that in exceptional circumstances where a self-certification cannot be obtained for a new account in time to meet due diligence and reporting obligations for the relevant period, due diligence obligations for pre-existing accounts can be applied until the

self-certification is obtained and validated. These are simplified obligations and allow a financial institution to report financial accounts based on relevant indicia while proactively chasing outstanding self-certifications.

Furthermore, although the CRS does not require financial institutions to confirm the format of the tax identification number (TIN), CRS 2.0 notes that such institutions may choose to do so to enhance the quality of the information collected. An EU TIN checker resource is helpful in verifying the format of EU TINs. The missing-TIN point has been an area of focus for Revenue (and other tax authorities), with a large number of missing TINs raising the risk profile of a financial institution.

Reporting changes and deadlines at a glance

As well as the above amendments, several changes to the reporting obligations have been introduced. Financial institutions are now required to collect and report additional information, including:

- whether the account-holder provided a valid self-certification;
- whether the account is a joint account and the number of joint holders;
- whether the account is pre-existing or new;
- the account category (depository, custodial, debt or equity interest, or cash-value insurance);
- the role(s) of a reportable person holding an equity interest in an investment entity that is a legal entity (such as a trust); and
- the role of controlling persons for a passive non-financial entity.

The first filings under CRS 2.0 fall due on 30 June 2027 in respect of the 2026 reporting period. Financial institutions should therefore be positioned to capture the expanded data set and apply the enhanced diligence from 1 January 2026.

Looking Ahead

The CARF and CRS 2.0 are not one-off legislative changes but a fundamental shift in tax transparency. They widen the tax information reporting framework to cover new products and service providers and will demand more agile operations, stronger data governance and technology-led reporting. As financial institutions broaden their product offering, it is likely that we will see businesses with filing obligations under both the CRS and CARF. Governance frameworks will need to be reviewed to accommodate both reporting frameworks in such situations. With data collection starting on 1 January 2026 and first filings due in 2027, in-scope organisations and individuals (for the CARF only) should now address gaps in on-boarding, due diligence, and data collection and mapping. Even where the required data is already collected, it should be structured so that it can be streamlined for reporting, avoiding complex mapping exercises in 2027.

The policy trajectory is also clear: ongoing refinement, harmonisation and digitisation of automatic information exchange. The EU's review of the Directive on Administrative Cooperation[3] finds the framework effective and efficient, while signalling targeted enhancements. These include exploring an EU-level taxpayer identifier and digital solutions that could deliver a single access point for exchange and reporting. Such changes would amount to a significant update for those within the scope of the CRS and CARF, potentially requiring a re-documentation exercise (if an EU-wide TIN is adopted) and adjustments to reporting processes where a single access point is implemented. Stakeholders subject to these regimes should closely monitor developments in these areas.

In parallel, tax authorities across a growing coalition of jurisdictions, including Ireland, plan to automatically exchange readily available

3 European Commission, "Report from the Commission to the European Parliament and the Council on the evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation", COM(2025) 695 final.

data on immovable property to improve cross-border compliance, with first exchanges expected in 2030. Although the framework will evolve, the direction of travel is clearly toward greater transparency for non-financial assets, as well as financial accounts.

Organisations that invest early in data collection and processes and in scalable technology will be best placed to meet compliance obligations and to adapt as the frameworks continue to evolve. In addition, although many entities and individuals may fall outside the scope of the CARF or CRS reporting, they may be considered reportable persons or users and should remain up to date on their due diligence obligations.


Gráinne Boyle
Partner – International Business Group, Matheson LLP
Monika Saukscіute
Associate – International Business Group, Matheson LLP

Irish Corporate Law Considerations for Declaring Distributions

Introduction

This article examines the key corporate law considerations that arise in the context of the declaration of dividends/distributions, and the related distributable reserves requirements, pursuant to the Companies Act 2014 ("the Act"). Understanding the corporate law framework is essential, as failure to comply with the requirements can result in transactions' being void and unenforceable and/or potentially give rise to criminal liability.

These requirements are particularly relevant where transactions involve inter-company transfers, share capital reductions, debt waivers or share buy-backs/redemptions. This is an area where early engagement with a client's accounting team and advisers is critical. Many of the requirements are set out under Irish law, but they are, in turn, determined by technical accounting standards. In this article it is assumed that the Irish company involved is a private company limited by shares. Different considerations apply for different company types, including unlimited companies and public companies.

The Distribution Rules

For a company to declare a distribution:

- its directors must have the authority to do so under the constitution of the company (and any related agreements, such as shareholder agreements);
- the company must have sufficient profits available for distribution to cover the amount of the distribution, in compliance with the requirements of Chapter 7 of Part 3 of the Act ("the Companies Act Rules");
- the distribution must not amount to a return of capital at common law ("the Common Law Rules"); and
- the decision to make the distribution should be taken by the directors having regard to their fiduciary duties, including their duties to act in good faith in what they consider to be in the best interests of the company, to act lawfully and to exercise reasonable care, skill and diligence. The directors' fiduciary duties require them to consider and be satisfied with, on a reasonably foreseeable basis, the continuing ability of the company to pay its debts and other liabilities (including prospective and contingent liabilities) as they fall due after the making of the distribution.

The Distribution Rules: the Companies Act Rules

The distribution rules for private companies limited by shares in Ireland are primarily governed by Part 3, Chapter 7 of the Act. Section 117(1) sets out the fundamental principle that "a company shall not make a distribution except out of profits available for the purpose". Section 121(2) contains the detailed rules for determining what constitutes "profits available for distribution", requiring reference to the company's relevant financial statements. Section 117 will be treated as contravened unless the company follows all the requirements in section 121 regarding those financial statements. It is important to note that, the definition of "distribution" under Irish law is extremely wide, encompassing, pursuant to s123(1), "every description of distribution of a company's assets to members of the company, whether in cash or otherwise". However, when considering a distribution, the Act should be considered in its entirety and in the context of the particular circumstances of the distribution.

Profits available for distribution are defined as "accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made" (s117(2)), as determined under Irish GAAP or IFRS, as applicable. This means that a company must have sufficient reserves to make any distribution, whether by way of dividend or any other transaction that constitutes a distribution.

It is important to note that not all profits or reserves may be distributable. By way of example, generally gains arising from the revaluation of assets are not "realised" and are not distributable. However, quantifying the extent of a company's reserves is primarily an accounting matter. On that basis, both the company's auditors and its accounting advisers should always be consulted at the earliest possible opportunity.

The question of whether a "distribution" can be made without contravening Irish company law and, if so, the amount of any such distribution "shall be determined by reference to the relevant items as stated in the relevant entity financial statements" (s121(1)). The "relevant items" to be taken into account in determining whether a distribution may properly be made are profits, losses, assets, liabilities, provisions, share capital and reserves.

The level of reserves is determined by the "relevant entity financial statements" of the company ("the Accounts"), which are generally:

- the last set of audited financial statements; and/or
- where the company's reserves as derived from the last set of audited financial

statements do not justify the proposed "distribution", interim accounts (which do not need to be audited nor to be in any prescribed form but should (1) detail the profits, losses, assets, liabilities, provisions, share capital and reserves of the company, (2) be prepared in accordance with the company's usual accounting policies and (3) be made up to a date as close as possible to when the distribution is considered by the board of directors of the company.

The Accounts must enable the directors to make a reasonable judgement (1) as to the reserves available to declare the distribution and (2) that after payment of the proceeds of the distribution the company will remain solvent.

The Distribution Rules: the Common Law Rules

The Common Law Rules (i.e. the legal principles established through judicial decisions and case law, rather than through statutory legislation) augment the distribution rules under the Act by providing that a company cannot make a distribution out of capital. The Common Law Rules focus on the financial position of the company at the time that the distribution is made (whereas the rules under the Act permit distributions to be evaluated by reference to the Accounts, which may be prepared to a past date). For the purposes of the Common Law Rules, in determining the sufficiency of the profits available for distribution, regard also has to be had to events occurring since the date up to which the Accounts are prepared, to assess whether any of the distributable profits shown in such Accounts have been eroded or depleted by trading losses, impairments or other post-balance sheet events. The English case (persuasive in Ireland) of *Macdougall v Jersey Imperial Hotel Company Limited* [1864] 71 E.R. 568, where it was established that dividends can only be paid out of profits and not out of capital, illustrates this.

Deemed Distributions

Some distributions are clearly identifiable, such as the declaration of a dividend or an outright transfer of assets to a member in exchange for no consideration. However, some transactions constitute distributions without being immediately recognised as such. These are considered "deemed distributions" and, as a result, the distribution rules apply to these transactions also. Practitioners must be particularly alert to transactions that may constitute deemed distributions. These can include transfers of assets at undervalue, interest-free arrangements, releases of debt and certain share buy-back arrangements.

Share Premium

The share premium account represents the excess of the issue price of shares over their nominal value. Under Irish law, share premium is treated as capital and is not considered a distributable reserve. However, share premium may be used in specific circumstances, including writing off preliminary expenses and issuing bonus shares. It may also be possible to reduce a company's share premium to increase its reserve position. This is a common form of reduction and involves converting share premium (which forms part of "company capital") into a distributable reserve. This involves a two-step process: first, the reduction creates the distributable reserve; second, the directors may then declare and pay a dividend from the newly created distributable profits.

Capital Redemption Reserve

A capital redemption reserve fund is generally created when shares are redeemed or purchased out of distributable profits. Although this reserve is generally not considered distributable by accounting advisers, it may be possible in certain circumstances to convert it to a distributable reserve by capitalising this reserve and subsequently completing a share capital reduction.

Other Reserves

Subject to input from the accounting advisers, other non-distributable reserves (e.g. merger reserve) can potentially also be capitalised and subsequently reduced by way of share capital reduction to increase a company's reserve.

Share Capital Reductions

Where a company lacks reserves, it may be possible to reduce the company's share capital and share premium accounts (collectively called "Company Capital") to increase its reserves. There are two methods by which the company can approve a reduction of company capital:

- via a statutory approval procedure known as the summary approval procedure (SAP) or
- by way of an Irish High Court order.

As it is significantly more efficient in terms of cost and timing, the SAP is invariably used by Irish private limited companies to reduce capital.

The SAP process involves the following steps:

- the holding of a board meeting where at least a majority of the directors would approve the reduction of company capital and sign a declaration affirming that the company will remain solvent for a period of at least 12 months after the reduction;
- obtaining a report from the company's auditors that said directors' declaration is not unreasonable;
- obtaining shareholder approval of the reduction of capital; and
- completing public filings (including the directors' declaration and the auditor's report) with the Companies Registration Office (CRO).

The directors' declaration must contain the following:

- the circumstances in which the transaction or arrangement is to be entered into;
- the nature of the transaction or arrangement;
- the person(s) to or from whom the transaction is to be made;
- the purpose for which the company is entering into the transaction or arrangement;
- the nature of the benefit that will accrue to the company directly or indirectly; and
- the declarants have made full inquiry into the affairs of the company and having done so, have formed the opinion that the company, having entered into the restricted activity, will be able to pay or discharge its debts as they fall due for the 12 months after the date of the restricted activity.

Directors should be acutely aware that the Act imposes potential personal liability where a solvency declaration is made in support of a SAP without reasonable grounds for the opinion expressed. This liability mechanism is triggered in circumstances where the company becomes insolvent within the 12-month period following the declaration. Specifically, if the company is wound up within 12 months of the date of the declaration, and its debts are not discharged or provided for in full within that period, a statutory presumption arises that the director did not have reasonable grounds for the opinion provided in the declaration. The evidential burden therefore shifts to the director to demonstrate that reasonable grounds did exist at the time the declaration was made. In practice, a company's finance team will provide detailed financial information, including cash flow projections as part of the consideration of the declaration.

With respect to the auditor's report, the auditors should be engaged as soon as possible as there will be a separate audit-focused timeline imposed in order to prepare this report. This report cannot be prepared internally by the client – it must be provided by an individual eligible to act as the client's statutory auditor.

The overall timing of the process depends on the nature/substance of the company's activities and the ability to agree the declaration and get assurance from the company's auditors in terms of obtaining the required report. There are no waiting periods or publication requirements (other than the public CRO filings) as part of the SAP process. However, the cost of the provision of the auditor's report should also be borne in mind when utilising a SAP.

Unlawful Distributions

If a company makes an unlawful distribution (i.e. a distribution contrary to the requirements of the Act), any director who is a party to a decision to pay such an unlawful dividend exposes himself or herself to potential liability (including potential personal liability) for breach of fiduciary duty to the company. Directors' liability in the context of unlawful distributions needs to be considered from a variety of perspectives, including:

- Employee claims – directors have a standing duty to have regard to employees' interests, but this duty is owed to the company alone and is not directly enforceable by employees. Therefore the employees themselves could not bring a claim against the directors of a company for any such breach of duty owing to the unlawful dividend, and instead this would need to be brought by the company (s224).
- Shareholder claims – similarly, directors have a standing duty to have regard to shareholders' interests, and again this duty is owed to the company, meaning that usually the company itself would need to bring the claim against the directors (s228(h)).
- Third-party creditor claims – this is particularly relevant in the context of where the company making the distribution later becomes insolvent. In such circumstances directors risk exposing themselves to personal liability for breach of their duties. Under the Act, directors have a general duty to consider creditors' interests if they believe that the company is likely to be unable to pay its debts or if they are aware of the company's insolvency (s224A and s228). However, this duty is owed to the company alone (s227(1)), and this means that creditors do not have a right of action against the directors for breach of their duties. Rather it is the company, potentially acting through a court-appointed liquidator, that can hold the directors to account for any loss or damage to creditors resulting from a breach of this duty.

If a director is found to have breached these duties, and where their acts are considered to amount to reckless or fraudulent trading, they could be (1) personally liable for company debts that cannot be met from existing assets of the company on an insolvent liquidation, (2) subject to a five-year restriction from acting as a director, (3) disqualified from acting as a director and/or: (4) subject to a summary conviction (up to 12 months' imprisonment) or fine of €5,000 (or both)/conviction on indictment (up to 10 years' imprisonment) or fine of €500,000 (or both).

Additionally, where a company makes an unlawful distribution to its member(s) in contravention of s117 of the Act and "where at the time of the distribution a member beneficiary knows or has reasonable grounds for believing that it is so made, that member shall by s122(1) of the Act be liable to repay what s/he/they receive to the company" (i.e. the distribution amount).[1]

Practical Considerations and Best Practices

When advising on transactions, practitioners should consider the following at an early stage:

- Does the company have sufficient reserves to support any distributions or deemed distributions?
- If not, is it possible to increase the reserves, and will any such steps require the completion of the SAP or necessitate a High Court order?
- Are there any restrictions/additional requirements in the company's constitution or shareholders' agreements?
- For regulated businesses, are additional approvals required?

Best practices include:

- early engagement between legal, tax and accounting advisers to identify potential issues;

1 T.B. Courtney, "Liability of members for unlawful distributions", *The Law of Companies* (Bloomsbury Professional, 4th ed., 2016).

- comprehensive reserve analysis before finalising transaction structures;
- ensuring that directors fully understand their obligations when making any statutory declarations and are briefed on the transactions in advance; and
- maintaining detailed documentation of all approvals obtained and procedures followed.

Conclusion

The reserves position is often the critical factor in determining the feasibility of transactions. By understanding the rules governing distributions and the pitfalls that can arise, tax practitioners can work effectively with legal and accounting advisers to deliver successful outcomes for clients.

Joanne Clarke
Partner, Indirect Tax, Deloitte Ireland LLP

VAT Modernisation in Ireland: Guidance, Implications and Practical Readiness

Introduction – Revenue's October 2025 VAT Modernisation Guidance

On 8 October 2025, the Revenue Commissioners published VAT Modernisation – Implementation of eInvoicing in Ireland (hereafter referred to as to the "Guidance"), its first official guidance setting out how domestic Business to Business ("B2B") eInvoicing and real-time VAT reporting will be introduced in Ireland. Revenue's Guidance uses the term "real-time reporting". In practice, this may operate on a near real-time basis, recognising that technical specifications could permit a very short delay between invoice issuance and reporting (whereas true real time would involve no delay). As the Guidance states, "real-time reporting refers to sending a subset of relevant data from the eInvoice to the tax authority" as part of normal business processes.

Issued following the Minister for Finance's Budget 2026 announcement and the formal adoption of the European Union's ("EU") VAT in the Digital Age ("ViDA") Directive in March 2025, this guidance represents a first insight into Ireland's approach to changing its VAT administration.

For the first time, businesses will have visibility on Revenue's proposed domestic B2B model,

the phased implementation timeline, and the expectations that will be placed on taxpayers well in advance of the EU-wide ViDA deadline of 1 July 2030. From a tax practitioner's perspective, the guidance confirms that domestic eInvoicing is not merely a preparatory exercise for EU compliance, but a fundamental redesign of how VAT data will be generated, transmitted and analysed within Ireland.

VAT in the Digital Age and Ireland's response

The shift towards domestic eInvoicing in Ireland should be viewed within the wider context of evolving VAT administration across the EU and globally. Traditionally, VAT reporting, including Ireland', had depended on periodic, retrospective reporting of aggregated transaction data. However, as business models grow more complex and transaction volumes and cross-border trade increase, there is a clear need to replace the traditional VAT reporting model with a more modern approach. The recurring issue of the 'VAT Gap' (i.e. the difference between expected VAT revenues and the amount collected by Governments) is a key driver for this change. A 2025 European Commission report highlighted the scale of this challenge, revealing that Member States lost an estimated €128 billion in VAT revenues in 2023 alone.

At EU level, this evolution is demonstrated in the adoption of the ViDA package by the Council of the European Union on 11 March 2025. ViDA introduces mandatory structured electronic invoicing and near real-time digital reporting for cross-border B2B transactions within the EU with effect from 1 July 2030. Importantly, compliance with these digital reporting obligations will be a condition for the application of the VAT zero-rate to intra-EU supplies.

Although ViDA primarily targets EU cross-border transactions, it explicitly permits Member States to implement domestic eInvoicing requirements. Several EU countries, such as Belgium, France, and Italy, have already introduced these measures—either mandatorily or voluntarily. Many have used their domestic regimes not only to prepare businesses and tax authorities for the shift to EU-wide digital reporting but also to modernise VAT reporting processes and more effectively combat domestic VAT fraud.

Ireland's approach, as set out in Revenue's Guidance, mirrors this broader European trend. By implementing domestic eInvoicing in phased stages ahead of the ViDA deadline, Ireland aims to give businesses sufficient time to adapt their systems and processes, while aligning its VAT framework with evolving EU standards. In this way, Irish domestic eInvoicing is both a response to EU-level reforms and a desire to join the growing number of domestic eInvoicing regimes.

Revenue's October 2025 Guidance

Revenue's Guidance marks the transition from policy intent to a practical operational framework. For Irish taxpayers and advisors, its value lies less in confirming the introduction of mandatory domestic B2B eInvoicing—which was largely anticipated—and more in clearly outlining Revenue's expectations for how businesses should engage with the new system over the coming years. Importantly, Revenue is seeking to foster cooperation with businesses rather than adopt a punitive stance, actively reaching out through consultations and dialogue to support a smooth transition.

This collaborative approach was evidenced late last year by Revenue's industry consultation, the "VAT Modernisation and eInvoicing Survey", which targeted all VAT-registered businesses within its Large Corporates Division and closed on 12 December 2025. The survey was designed to help Revenue gain key insights into current invoicing practices, specific business needs, and potential concerns. While the formal results of this survey have yet to be published, the feedback gathered is intended to directly shape the implementation of the new eInvoicing framework, demonstrating a firm commitment to actively engaging with businesses to support a smooth transition.

Revenue appears to position domestic eInvoicing as a VAT administration reform rather than a change in tax policy. The Guidance does not alter VAT rates, liability rules, or payment procedures; instead, it focuses on redesigning information flows to better align VAT compliance with modern digital business processes.

This distinction is crucial. Organisations that view eInvoicing solely as a compliance obligation risk underestimate its operational impact. Revenue's language makes clear that eInvoicing is intended to become an integral part of "normal business processes" [the normal course of business], rather than an additional compliance step applied retrospectively.

What is an eInvoice?

The Guidance is unambiguous on a point that continues to cause confusion in the market: an electronic document is not, of itself, an eInvoice. PDF invoices, scanned documents and email attachments will not meet the requirements of either the domestic regime or the ViDA Directive.

Instead, Revenue adopts the EU definition of eInvoicing as the issuance, transmission and receipt of invoices in a structured electronic format that enables automated processing end to end. The European standard EN 16931 will form the technical baseline, ensuring interoperability within Ireland and across the EU.

From a systems perspective, businesses must be capable not only of generating structured invoice data, but also of receiving, validating and integrating it into downstream processes such as accounts payable, VAT determination and reporting.

The consequence of near Real-time reporting

A central feature of Revenue's guidance is the integration of real-time (or near real-time) reporting into the invoicing process. Key data fields from each eInvoice will be transmitted to Revenue as transactions occur, replacing the current reliance on periodic, aggregated returns.

While Revenue has yet to publish an exhaustive technical specification at this stage, the direction of travel is clear. Transaction-level VAT data will become the primary dataset through which Revenue monitors compliance, assesses risk, determines audits and, over time, delivers administrative efficiencies such as faster VAT repayments and earlier issue resolution.

For businesses, this reinforces the importance of data accuracy at source. Errors that might previously have been identified and corrected during VAT returns preparation may now be immediately visible, placing greater emphasis on putting in place controls and robust data governance.

What is Revenue's proposed timeline?

Alike many of its EU peers, Ireland is proposing to introduce domestic eInvoicing in a phased approach as follows:

Phase 1 – Large corporates (November 2028)

Revenue's latest press release on 10 February 2026 confirmed that, from 1 November 2028, VAT registered 'large corporates' (i.e., those managed by Revenue's Large Corporates Division and established in, or with a fixed establishment in, Ireland) must issue eInvoices and report key data for domestic B2B transactions. From the same date, all businesses in Ireland must be able to receive structured eInvoices, even if they are not yet mandated to issue them. This cohort has been selected due to its scale, systems maturity and prior exposure to eInvoicing in other jurisdictions.

From a practical perspective, many multinational groups already operate eInvoicing solutions for EU countries such as Italy, Spain or recently Belgium. However, Irish-specific requirements, integration with Revenue systems and alignment with local VAT rules will still require careful configuration.

Phase 2 – Intra-EU traders (November 2029)

Phase 2 extends the domestic obligation to all VAT-registered businesses engaged in intra-EU B2B trade. This phase is explicitly designed

as a preparatory step for ViDA, ensuring that businesses reliant on intra-EU VAT zero-rating are operationally ready before the EU mandate takes effect.

At this stage, domestic eInvoicing becomes relevant to a much broader segment of the business community, including mid-sized groups and internationally active SMEs.

Phase 3 – Full ViDA implementation (July 2030)

From 1 July 2030, structured eInvoicing and digital reporting will be mandatory for all intra-EU B2B transactions. By this point, Irish businesses should already be operating compliant systems domestically, significantly reducing the incremental impact of ViDA.

It is important to note that while the rollout is phased, the ultimate objective is for the Irish eInvoicing mandate to include all VAT-registered businesses. Unlike some other tax regimes, there is no proposed de minimis threshold based on turnover, meaning that eventually, businesses of all sizes will be brought within the scope of mandatory eInvoicing and digital reporting.

Practical Implications for Businesses

Systems and data readiness

Perhaps the most significant challenge posed by domestic eInvoicing is the requirement for high-quality, standardised data at source. In many organisations, VAT-relevant data is fragmented across ERP systems, billing platforms and manual processes. Legacy workarounds that were manageable in a periodic reporting environment may no longer be fit for purpose under real-time scrutiny.

Businesses will need to assess whether their existing systems can generate EN 16931-compliant invoices, whether master data is complete and accurate, and validate how VAT determination logic is applied across different transaction types. This complexity is amplified for businesses trading with the UK, particularly Northern Ireland. While Ireland moves towards a mandatory regime aligned with the EU, the UK has only recently launched a consultation on promoting voluntary eInvoicing. The UK government's Budget 2025 consultation response signals an intention to introduce mandatory e-invoicing, with an ambition for 2029, subject to further consultation and legislation. This divergence could create a dual-compliance burden for businesses in Northern Ireland, which must adhere to EU rules for trade in goods while operating within the UK's broader VAT system.

Process redesign and internal controls

EInvoicing will also require a rethink of invoicing and approval processes. The commercial consequences of non-compliance will be both immediate and significant. From a sales standpoint, customers' automated accounts payable systems will reject any invoice that is not a valid eInvoice, leading directly to payment delays. On the procurement side, the ability to recover VAT on purchases will be dependent on receiving a compliant eInvoice from suppliers, placing a direct risk on a business's input tax deduction.

As previously noted, errors that might previously have been manually corrected before inclusion in a VAT return may now be immediately visible placing a need to establish preemptive controls, automated validations and clear governance.

From a tax risk perspective, organisations should consider how eInvoicing data will be monitored internally, how exceptions will be handled, and how responsibility for data accuracy is allocated between tax, finance and IT functions. For a successful implementation, e-invoicing must be treated as a major change initiative, not simply a tax compliance exercise. This requires establishing a cross-functional working group, drawing on expertise from Tax, Finance, IT, and core business units to ensure a coordinated and effective delivery.

Application to VAT Groups

An area requiring further clarification from Revenue is the application of eInvoicing to

VAT groups. While the majority of transactions between group members are disregarded for VAT purposes, individual members still trade with third parties. It is anticipated that the obligation to issue and receive eInvoices will apply at the individual entity level for these external supplies, even if reporting is consolidated.

Businesses operating within a VAT group will need to carefully consider how their systems will manage this requirement across different legal entities. While Revenue's materials to date do not address VAT groups specifically, in Phase One a member that meets the "large corporate" criteria will be in scope to issue and report structured eInvoices for domestic B2B transactions from 1 November 2028. Centralised invoicing via a shared service centre would not remove the legal entity's obligations, and all members of the VAT group in Ireland must be able to receive structured eInvoices from the same date.

From Phases 2/3, group members engaging in intra-EU trade may also come within scope, making accurate entity-level VAT identification and master data alignment particularly important to support zero-rating and minimise mismatches in digital reporting.

What about current VAT reporting obligations?

In the medium term, domestic eInvoicing is expected to reduce or eliminate certain existing reporting obligations, such as VIES returns. However, during the transition period, businesses should expect parallel reporting requirements and increased complexity. Clear documentation, training and change management will be essential to avoid disruption.

What Strategies Should your Business be Considering?

While much of the discussion around eInvoicing centres on managing tax compliance risk, businesses should also recognise the significant strategic advantages it offers.

Beyond compliance, automated invoicing and data standardisation can drive operational efficiencies, including faster billing cycles, improved cash flow management, reduced reliance on manual processes, and enhanced data accuracy. These improvements enable organisations to streamline their financial operations and free up resources for higher-value activities. Additionally, standardised data generated through eInvoicing supports advanced analytics, providing valuable insights that can inform strategic decision-making and improve overall business performance.

For multinational groups operating across multiple jurisdictions, adopting a harmonised eInvoicing framework can be a powerful enabler of cross-border efficiency. It simplifies compliance with varying local requirements, reduces administrative complexity, and supports broader digital transformation initiatives aimed at integrating and automating business processes on a global scale. This harmonisation can also enhance supply chain visibility and collaboration, further strengthening competitive advantage.

From Revenue's perspective, the availability of high-quality, real-time data facilitates a shift towards risk-based compliance. This approach will hopefully allow tax authorities to focus their resources on higher-risk cases, potentially reducing the audit burden and compliance costs for low-risk, compliant taxpayers. Ultimately, eInvoicing represents not only a compliance tool but also a strategic opportunity for businesses to modernise their operations and build resilience in an increasingly digital economy.

Preparing for the transition – a roadmap for businesses

In order to prepare for this transformative change to VAT compliance, large and mid-sized organisations, must prepare for eInvoicing. This will typically involve some of the below four stages:

- **Impact assessment:** mapping affected transaction flows, systems and entities

against the phased timeline. This assessment must extend beyond a company's own obligations. For instance, a business not mandated until a later phase may find its key suppliers are caught by Phase 1. This means the business must be ready to receive and process eInvoices from its vendors to ensure a smooth procure-to-pay process and protect its VAT recovery.

- **Data and systems review:** assessing invoice content, master data quality and system capabilities.
- **Solution design and implementation:** selecting and configuring eInvoicing solutions, often leveraging existing ERP functionality or third-party platforms. Businesses generally have three main options: leveraging native modules within their existing ERP systems (like SAP or Oracle), which offer deep integration but may lack multi-jurisdictional flexibility; adopting specialised third-party middleware that connects to the ERP and manages compliance across various countries; or fully outsourcing the process to a managed service provider. The choice depends on the organisation's scale, existing IT landscape, and global footprint.
- **Governance and change management:** embedding controls, training stakeholders and aligning tax and IT strategies.

Early engagement is critical. While the first mandatory phase may appear distant, system transformation projects of this scale routinely require multi-year lead times. Typically, such projects can take between 12 to 24 months, encompassing everything from initial scoping and vendor selection to system integration, user acceptance testing, and company-wide change management.

What Should Tax Advisors and Practitioners Consider?

Revenue has acknowledged that implementing eInvoicing represents a significant change for businesses and has committed to providing comprehensive support and ongoing engagement with businesses, industry and professional bodies, software providers and other stakeholders during the transition. Given the scale of this reform, effective implementation will depend on close collaboration between Revenue, businesses and advisors. From a tax advisor's perspective, this requires an integrated advisory approach where traditional VAT expertise is complemented by a deep understanding of ERP systems, data architecture, and business processes.

Key's areas where tax practitioners will need to focus going forward will be:

- *Translating Guidance*: Advisors must convert high-level policy into a practical implementation roadmap. This involves helping clients understand the technical requirements for structured e-invoices (EN 16931), the need to move away from PDFs, and the likely use of the Peppol network. PEPPOL is a secure, standardised network for exchanging electronic business documents across organisations. It has been used by Irish public bodies for B2G eInvoicing since 2019. Revenue, working with the Office of Government Procurement (Ireland's PEPPOL Authority), expects wider use of the PEPPOL framework as businesses adopt eInvoicing for domestic and intra-EU transactions, supporting interoperability and scalable connectivity.
- *Facilitating Collaborative Engagement:* Acting as a crucial link, advisors should encourage clients to engage with Revenue through stakeholder forums and the Tax Administration Liaison Committee. This ensures clients' specific challenges are heard and they remain informed as the technical framework is finalised.
- *Driving Strategic Value Beyond Compliance*: A key role for the advisor is to frame this change not just as a compliance task, but as a strategic opportunity. By highlighting the business case for digitalisation—such as automated processes, improved data quality, and accelerated VAT repayments—advisors can help clients manage risks while building a more efficient and resilient operation.

Conclusion

Domestic eInvoicing represents a significant evolution in the Irish VAT framework. The publication of Revenue's October 2025 guidance provides welcome clarity on the direction, sequencing and underlying design principles of the domestic regime, while also confirming the close alignment between Ireland's approach and the EU's ViDA agenda.

For businesses, the key challenge is not the introduction of new VAT rules, but the transition to a compliance environment in which transaction-level data is generated and shared in near real time. This has implications that extend beyond the tax function, touching finance operations, IT systems, data governance and internal controls.

While the first mandatory phase does not commence until November 2028, the scale of the change should not be underestimated. Experience from other jurisdictions suggests that organisations that engage early, assess their data and systems critically, and treat eInvoicing as a transformation project rather than a discrete compliance task are best placed to manage risk and avoid disruption.

From a broader perspective, domestic eInvoicing marks a decisive step in Ireland's transition towards a digital VAT administration model. As further guidance emerges and the technical framework develops, continued engagement between Revenue, businesses and advisors will be essential to ensuring that the regime is effective, proportionate and workable in practice.

News & Moves

Ruth Maloney Appointed as Director in BDO's VAT Practice

Ruth Maloney (CTA), who was recently appointed as a Director in BDO's VAT practice, has more than 13 years' experience advising on complex VAT issues for Irish and international clients. She specialises in real estate transactions and investment structures, alongside cross-border supply chain, financial services and the VAT treatment of technology/e-commerce supplies.

Grant Thornton Ireland Appoints New Partners Including 5 New Tax Partners

Caption: *From left to right: Zeno Kelly, Clare Fitzgerald (standing),* ***Julia Considine (CTA)****, Liam Naughton, Paul McSavage,* ***Mark O'Sullivan (CTA)****, Steve Tennant (Managing Partner), Sinéad Barrett, Shane Quinn (standing), David Mac Curtain, John Botha, David Carroll and Nikita Lynn*

Julia Considine, Partner, Tax (CTA)
Julia joins Grant Thornton as a tax partner, leading the firm's private client practice. She brings over 17 years' experience advising high net worth individuals, families, and businesses on tax and succession planning. Julia supports clients in minimising tax exposure on the transfer of wealth and designing tailored succession plans. She has written and lectured extensively on capital acquisitions tax and is coauthor of The Taxation of Gifts and Inheritances (Finance Act 2024). Julia is a qualified solicitor in both Ireland and the UK, as well as a Chartered Tax Adviser (CTA). She is also a member of the Society of Trust and Estate Practitioners and holds a Bachelor of Commerce (B Comm) from the National University of Ireland, Galway.

Mark O'Sullivan, Partner, Tax (CTA)
Mark is a tax partner and Head of Incentives in Grant Thornton, with over 14 years' experience advising clients on R&D tax credits, government grants, the patent box/KDB regime, video games tax relief and capital allowances. His background is uniquely multidisciplinary, combining engineering, science, computer science and tax. He is a Chartered Tax Adviser (CTA) and holds advanced engineering, physics and computer science qualifications.

Clare Fitzgerald has been appointed as a tax partner in Grant Thornton's corporate tax team. She brings over 18 years of experience advising privately owned businesses and SMEss. Clare is a member of the Northern Ireland Tax Committee and a Fellow of Chartered Accountants Ireland. She also holds an honours degree in accounting and a postgraduate diploma in Advanced Accounting from Ulster University Jordanstown (UUJ).

Paul McSavage has joined Grant Thornton as an international tax partner leading the Irish transfer pricing practice. Paul holds a Bachelor of Arts (BA) in Economics from the University of Manchester. **Liam Naughton** has been appointed tax partner with the firm, specialising in wealth advisory. Liam is a Certified Financial Planner and holds a Master's degree in Financial Services from University College Dublin and a Bachelor of Business Studies from the University of Limerick (UL).

Matheson Welcomes Nine Partners Across Nine Practice Areas Including One New Tax Partner

Matheson LLP recently announced the appointment of nine new partners across nine different practice areas, effective from 1 January. The appointments - eight internal promotions and one external hire - bring the total number of partners and tax principals at the firm to 128, reflecting the firm's continued investment in its client service capabilities.

Anna Crowley (Tax) (CTA) advises multinational corporations doing business in and from Ireland, and has a particular interest in transfer pricing, cross-border tax planning and tax controversy matters. She advises on a broad range of tax issues relating to domestic and cross border tax disputes, intellectual property structuring and advising on the application of EU State aid principles in the context of Irish taxation matters.

Sabios Now Operates as WTS Ireland

Sabios is now **WTS Ireland**, an independent tax firm, with no changes to service offering. As the exclusive member firm of **WTS Global** in Ireland, Sabios is now part of the world's largest non-audit tax practice, represented in more than 100 countries. Through WTS Global, multinational groups are provided with access to fully integrated tax advisory, tax compliance, and tax digital services, supported by shared intellectual capital, global connectivity, and consistent quality standards across jurisdictions.

Aidan García, Managing Director, WTS Ireland; Minister Robert Troy, TD; Fritz Esterer, CEO and founder of WTS; and Karsten Gnuschke - WTS Board Member

We are proud to be **B Corp Certified.**

Helping you to find Tax Leaders for better.

Certified B Corporation

BARDEN