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Irish Tax Institute

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ALSO IN THIS EDITION

- Introduction of Pillar Two GloBE Rules in Ireland
- What Does Finance (No. 2) Act 2023 Mean for the Financial Services Industry?
- How Taxpayers Can Prepare for Joint Audits and Increasing Cross-border Tax Controversies
- Finance (No. 2) Act 2023 Measures Updating the R&D Tax Credit
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- Finance (No. 2) Act 2023: Overview of EIIS Measures
- Finance (No. 2) Act 2023: New Capital Gains Tax Angel Investor Relief
- Finance (No. 2) Act 2023: Implications of Changes to Section 664 Relief for Leasing of Farmland

Introduction of Pillar Two GloBE Rules in Ireland Article List

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Policy & Representations Monitor

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

Mark Ludlow

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- In *Revenue Commissioners v Mullglen Limited & Olgary Fishing Company Limited* [2023] IEHC 614 the High Court considered an appeal by Revenue from the decision of the Tax Appeals Commission (TAC) that the appellants were entitled to claim allowances under s291A TCA 1997 (specified intangible assets) in respect of capital expenditure incurred by them on the acquisition of fishing capacity.
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- In *Harber v HMRC* [2023] UKFTT 1007 (TC) the taxpayer's reliance on artificial intelligence (AI) proved to be unreliable in her "reasonable excuse" appeal, leading to her presenting nine fictitious cases to the court.
- In *Delinian Ltd (formerly Euromoney Institutional Investor Plc) v HMRC* [2023] EWCA Civ. 1281 the Court of Appeal upheld the decision of the Upper Tribunal, concluding that the avoidance of liability to tax was a purpose, but not the main purpose or one of the main purposes, of the relevant arrangements, for the purposes of the UK equivalent of s586(3) TCA 1997.
- In *Sabbir Patwary v HMRC* [2024] UKFTT 00053 the First-tier Tribunal found that

a taxpayer provided "little" evidence to demonstrate that he occupied a property as his only or main residence, meaning that his claim for CGT principal private residence relief was denied.

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- The Court of Justice of the European Union (CJEU) has ruled in joined cases C451/21 P and C454/21 P that Luxembourg did not grant State Aid to Engie, a French company.

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  - Five EU Member States have elected to delay application of IIR and UTPR
  - The European Commission has published FAQs on Pillar Two
  - The European Commission has opened infringement proceedings for failure to communicate transposition of Pillar Two
  - The US Department of Treasury and the IRS have issued proposed regulation for foreign tax credit rules for top-up taxes
  - In line with OECD guidelines, Barbados has unveiled reforms to the corporation tax regime
  - Bermuda has enacted its corporate income tax
  - Canada is progressing with implementation of its digital services tax
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  - The OECD's cypto-asset framework comes into force in 2027
  - A review of preferential tax regimes has been published by the Forum on Harmful Tax Practices
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  - The European Parliament adopts opinion proposing amendments to DEBRA
  - Member States must transpose DAC 8 into domestic law by 31 December 2024
  - Several Directives remain under discussion, including FASTER, BEFIT, TP
  - The lower house of the German parliament has approved draft business tax reform
  - A legislative decree containing international tax reform has been published in Italy
  - Luxembourg has implemented a tax credit for investment in digital and green transformation
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- Australia has introduced amendments to its interest limitation rules
- The Democratic Republic of the Congo has joined the Global Forum on Tax Transparency
- Belarus has introduced a corporate tax rate of 25%
- HMRC has published a package of measures to simplify and modernise the tax system

VAT Cases & VAT News

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

VAT Cases

- The Court considered the concept of economic activity in *TP v Administration de l'enregistrement, des domaines et de la TVA* C288/22

» The Opinion of the Advocate-General (AG) in the case of *SC Adient Ltd & Co. KG V Agenția Națională de Administrare Fiscală, Agenția Națională de Administrare Fiscală – Direcția Generală Regională a Finanțelor Publice Ploiești – Administrația Județeană a Finanțelor Publice Argeș* C-533/22 made some interesting comments in relation to the number of cases dealing with the question of fixed establishment, namely, that this case is the fifth request since 2018, whereas there were six comparable requests in a period of more than 40 years (since the Sixth VAT Directive)

» The case of *Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite v 'Valentina Heights' EOOD* C733/22 dealt with the application of the reduced rate of VAT to the provision of accommodation at a holiday complex in Bulgaria

Tax Appeals Commission Determinations

» 02TACD2024 examined the issue of undeclared sales and the burden of proof

» 12TACD2024 considered the VAT rate to be applied to smoothies

Accounting Developments of Interest

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

Legal Monitor

Nicola Corrigan 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.

The Central Register of Beneficial Ownership of Trusts (CRBOT) – Focus on Compliance

This article covers some relevant information for CTAs about CRBOT and compliance obligations to be aware of.

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133 Finance (No. 2) Act 2023: New Capital Gains Tax Angel Investor Relief

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140 Finance (No. 2) Act 2023: Implications of Changes to Section 664 Relief for Leasing of Farmland

Brendan Murphy examines the changes to s664 TCA 1997, which provides for tax relief on leasing farmland, introduced by s33 of Finance (No. 2) Act 2023.

President's Pages

Tom Reynolds
Irish Tax Institute President

Annual Dinner

The Annual Dinner is always the biggest, most stylish and most convivial night in the Institute's calendar, and this year's gathering at the Clayton Hotel on the last Friday night in February did not disappoint. From the get-go, the atmosphere was sparkling as members and their guests poured into the hotel in all their finery. Everyone was in great form and looking forward to catching up with old friends and colleagues. I can verify that the hum of conversation and laughter went on until the small hours of Saturday morning.

It was an unforgettable privilege for me to address the great gathering as President of the Institute, although I have to say that it's a daunting experience to be on a podium looking out at a thousand faces. Thank you to all who attended for being such an attentive audience.

Guest of Honour

Our Guest of Honour was the Minister for Finance, Michael McGrath TD, who rearranged his commitments in Brussels to be with us for the third year in succession. The Minister graciously recognised what he called "the valuable input" of the Institute to Government policy on tax matters and commended us for our advocacy on behalf of members.

Unsurprisingly, much of the media coverage of his speech focussed on his commitment to another substantial income tax package in this year's Budget. We welcome this news because, as Mr McGrath acknowledged, a competitive income tax system is a critical factor in attracting investment. But other, perhaps less eye-catching, messages in the Minister's speech were equally important for tax advisers.

Simplification of the Tax System

The Minister's acknowledgement in his speech at the Annual Dinner of the complexity of the Pillar Two rules and recognition of the importance of bringing "much-needed simplification" to the current corporation tax compliance requirements were reassuring. As I said in my speech, there is substantial agreement between the Institute and the Minister on what needs to be done.

In this regard, it was good to hear that there will be an opportunity for us within the next month to provide feedback on the latest draft of the legislation to allow for the introduction of a participation exemption for foreign-earned dividends, currently being developed in the Department of Finance for publication in this autumn's Finance Bill.

This iterative stakeholder consultation process worked well in the development of the Pillar Two legislation, and it is encouraging to see the same approach being adopted for the legislation required to change our code from the current worldwide system to a territorial system of taxation.

In my speech I called for a foreign branch exemption to be introduced at the same time as the dividend exemption. Officials are only considering responses to the recent public consultation on this matter, and we have made a submission on your behalf.

The Institute has long been calling for reform of our interest deductibility rules, and it was good to get confirmation from the Minister that a review of that particularly tangled web of requirements will start this year, although he warned that it will take "potentially a multi-year timeframe" to complete this work.

From consultation to action

Simplification has clearly moved up the Government's agenda but, as I said in my speech, consultation and reviews must give way to action. It is seven years since the Coffey Review recommended moving to a full territorial system. In a post-Pillar Two world the case for such a move is even more compelling. We should just get on with it.

A properly resourced simplification project, with a clear timetable for the delivery of reforms that would ease compliance, would reduce costs and provide tax certainty to large businesses. In the current, precarious global trading environment, a simple, stable tax system that is easy to administer and comply with would make Ireland a compelling location for investment.

The competition for foreign direct investment is intensifying, and big countries such as Germany and France are joining the fray. If we want to remain, as the Minister put it, “best in class as a location for multinational enterprise”, we need to make decisions and deliver on them quickly and efficiently across all areas of Government.

Pillar Two Implementation

Those of us who work in international tax are grappling with the complexities of what is effectively a new taxing system that sits alongside our domestic corporation tax code. It is an entirely untested system, and as we work out how to apply its new rules, we will need Revenue to be supportive and pragmatic in its approach to compliance as this significant reform beds down.

In fairness, we, at least, have clarity on how the Pillar Two rules will be implemented in Ireland. And thanks to the unprecedented level of engagement that the Institute and other stakeholders had with Department of Finance and Revenue officials during the drafting process, there were no surprises in the legislation, which came into force at the start of the year.

There is much of uncertainty about how Pillar Two will play out internationally. We still do not know how China or India will implement the new rules. More importantly for Ireland, it is still not fully understood how the US rules will ultimately interact with the new rate.

Any divergence in the interpretation of the rules internationally would make disputes and revenue audits inevitable. We need to prepare for this eventuality by putting workable resolution mechanisms in place. Otherwise, businesses could get tied up in lengthy tax legal processes, potentially with multiple tax authorities around the world. That would add further uncertainty to an already difficult trading environment.

Implementing Pillar Two will be expensive. Resources will need to be beefed up, and new systems will have to be built to collect the huge amount of data points required to comply with the new rules.

As I said in my speech, companies are realistic, and they will get on with whatever needs to be done. But, after a decade of upheaval in international tax, they need a break, and they need certainty. They also need space to get on with growing their businesses.

Simplification of SME Supports

Enhancing SME tax measures and making them more accessible to start-ups and small businesses has been a particular focus for Michael McGrath since he was appointed Minister for Finance. In his address at the Annual Dinner, he referred to the work of the TALC Sub-committee, which he has asked to “identify by mid-year any administrative changes that can feasibly be implemented within Revenue to improve access to reliefs while still minimising risk”. He added that any proposals that required legislative change would be considered by his officials in the normal Finance Bill process.

The Institute is working well with the Sub-committee, and let’s hope that progress can be made in simplifying the rules and requirements, as well as the administrative processes involved in availing of these measures, which are intended to encourage innovation and build productivity in the indigenous sector.

Contributors’ Dinner

The first event of the year was the Contributors’ Dinner, which took place in Fallon and Byrne on the last day of January. It is a great time of year to host this lovely, informal event: everyone is delighted to see the back of the dreary month of January and to get out and socialise again. For the Institute, it is a way of saying thank you to the members – and some non-members – without whom we could not perform our important functions in education, advocacy and, of course, serving our members’ needs.

I was delighted to have at my table some of our youngest members and contributors. It is always refreshing to talk to those who are in their early years in the profession, and it gives great hope for the future that they are contributing to the work of the Institute. Long may it continue.

Conclusion

The Institute is busy making the final preparations for the Annual Conference 2024, which takes place on 18-20 April. The focus this year is on real-life client scenarios and tax challenges, and Úna Maguire and her team have assembled an impressive panel of expert speakers who will deliver 11 tax technical sessions designed to put those jigsaw pieces together! I look forward to meeting you all in Galway.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

The start of the year has been busy, with many in-person events running alongside multiple representations made on behalf of you and your clients.

Fantasy Budget

Each year third-level students submit their analysis of three Budget measures and a proposal for a missed opportunity. On 31 January the top teams and their lecturers were welcomed to the Institute for lunch and a prize presentation. It is always enjoyable to mark their achievement and get to know them at the lunch. I hope to see them pursue a career in tax in the future. You can see photos here.

31 January 2024: Institute President, Tom Reynolds, presenting the first-place Fantasy Budget 2024 team from Trinity College Dublin with their prize.

L–R: Tom Reynolds, Institute President, Jovan George Mathew, Jiayu Yang, Anna Coghlan and Ciara Deane, Lecturer.

Contributors' Dinner

Rounding off January nicely, we hosted an evening to mark our appreciation of those who contribute to the Institute's work. This event gives us an opportunity to thank our contributors face to face and acknowledge how their involvement ensures that the Institute's services continue to support your needs. We look forward to working with them again this year and beyond. If you would like to get involved in any of our work, please let us know.

31 January 2024: Institute contributors enjoying the evening with colleagues.

Annual Dinner

The Institute's flagship black-tie event was a great success, with nearly 1,000 members and guests filling up the Clayton Hotel, Burlington Road. For the third year in a row, our Guest of Honour was the Minister for Finance, Michael McGrath TD. We were grateful for his presence and insightful keynote address.

Congratulations to our President, Tom Reynolds, and my team in the Institute on a memorable evening. You can see photos here.

23 February 2024: Institute President, Tom Reynolds, addressing nearly 1,000 guests in the Clayton Hotel, Burlington Road.

23 February 2024: Minister for Finance, Michael McGrath, delivering his keynote address to guests in the Clayton Hotel, Burlington Road.

Career Development

In February we held two in-person events to help our members develop skills that could help them further their careers. At the start of February, we held a Tax Research Skills workshop in the Institute, and it was great to have the building full for an in-person session. It proved to be a very popular session, and that was largely due to the excellent presentations by Noreen Lynch of *PwC* and Vahan Tchrakian of *Matheson.* We hope to schedule another session in the autumn.

On 29 February we welcomed newly qualified CTAs and members of Junior Chambers International (Dublin) to the Institute for a Networking Skills session with Jean Evans, founder of NetworkMe. We were able to use the tips we learned immediately, with everyone coming away with one or two new connections.

In addition to the in-person events, we hosted several CPD webinars, including a complimentary Professional Indemnity Insurance webinar and the second session of the Finance (No. 2) Bill and Act series. Thank you to all of our expert speakers for sharing their knowledge.

Representing Your Concerns

The year 2023 ended with plenty of submission deadlines, keeping our Tax Policy and Representations team busy right up to the Christmas break. And this year started as we left off, with five submissions made to stakeholders at home and abroad in January alone.

In addition to the submissions, we represented your issues at TALC and our own Branch Network meetings with Revenue. In particular, we have been engaging with Revenue on the approaching deadline to enter an arrangement with Revenue for debt warehousing repayments. Look out for our upcoming TaxTalk episode on the same subject.

A Career in Tax

A priority of the Institute is promoting the career in tax among second- and third-level students. We were delighted to attend an Employer in Residence Day at the University of Limerick in early February. To have the opportunity to sit down and chat with the students directly was extremely beneficial.

The Institute of Guidance Counsellors' conference was at the start of March, where we promoted the career and our Third-Level Scholarship, which is open for applications until 15 April 2024. It is for Leaving Cert 2024 students who are interested in tax as a career and need financial support to progress through college.

Best of Luck

Our Autumn courses' lectures have wrapped up, letting the students focus on their upcoming exams. The Institute has given them access to study skills webinars to help with their preparation for the April/May exams. On behalf of the Institute, I would like to wish them all the best of luck over the coming weeks.

Annual Conference

Returning to Galway, we look forward to seeing you at the Annual Conference on 19 and 20 April. With 11 tax technical sessions, the conference is a great opportunity to get tax technical updates from a wide range of speakers and to connect with your fellow CTAs. The programme also features a guest speaker on AI and an option to participate in a Wim Hof Method breathwork session to begin your Saturday morning. The final few places are available to book here.

Get a taste of the Annual Conference here.

New Subscription Year

The 2023 subscription year is coming to an end this week. For you, this means that there a couple of deadlines you need to be aware of, including the CPD filing deadline of 30 April 2024. Keep an eye out for communications from the Institute over the coming weeks with the details of how to renew for 2024 and declare your 2023 CPD.

Policy and Representations Monitor

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

News Alert

EU Minimum Tax Directive: Pillar Two GloBE Rules effective from 31 December 2023

The EU Minimum Tax Directive, which implements into EU law Pillar Two of the *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* of the OECD/G20 Inclusive Framework on BEPS, was required to be transposed into the national law of EU Member States by the end of 2023 and applies for accounting periods beginning on or after 31 December 2023.

Pillar Two primarily consists of two interlinked rules, the income inclusion rule (IIR) and the undertaxed profits rule (UTPR), together referred to as the Global Anti-Base Erosion (GloBE) Rules. These rules require EU Member States to introduce a global minimum effective tax rate of 15% for corporate groups with annual global turnover of at least €750m. This minimum rate will apply in each jurisdiction in which the group operates and will be calculated on an adjusted accounting measure of profit.

Finance (No. 2) Act 2023, which was signed by the President on 18 December 2023, transposed the EU Minimum Tax Directive into Irish law. In a press release welcoming the beginning of the application of the Pillar Two rules in Ireland on 31 December 2023, the Minister for Finance, Michael McGrath TD, confirmed that Ireland will continue to apply the 12.5% corporation tax rate, which has been in effect since 2003, to businesses that are out of scope of the Pillar Two Rules (i.e. businesses with revenues of less than €750m). This means that more than 99% of companies operating in Ireland are outside of the scope of the global minimum effective tax rate of 15%.

On 20 December 2023 Minister McGrath signed SI 675 of 2023 to provide for the Inclusive Framework's December 2023 Administrative Guidance, which supplements the Commentary to the GloBE Model Rules and clarifies their application, to be part of the Irish Pillar Two legislation in s111B of the Taxes Consolidation Act 1997.

At the end of December, the European Commission published FAQs on the EU Minimum Tax Directive. The 43-page document includes a collection of FAQs on the correct interpretation and transposition of the Directive. It represents the outcome of informal reflections of the Commission Services and should not be interpreted as binding on the European Commission and the Member States. (See also article by Harry Harrison, Paul McKenna and Chloe Fox "Introduction of the Pillar 2 GLoBE Rules in Ireland", in this issue.

Institute responds to consultation on introduction of participation exemption to Irish corporation tax

The Institute responded to the Department of Finance's public consultation on the introduction of a participation exemption to Irish corporation tax on 13 December 2023. Minister McGrath published *Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax*, including a technical public consultation to inform ongoing design work, in September 2023.

The roadmap sets out a project timeline for the planned introduction of a participation exemption for foreign-source dividends in

Finance Bill 2024, with an effective date of 1 January 2025. It notes that further examination of the potential benefits and impacts of a foreign branch exemption is merited before a decision is reached on its implementation. This technical consultation builds on the previous public consultation held on a territorial system of taxation, which the Institute responded to in March 2022.

In our response to the technical consultation in December, we highlighted that multinational groups located in Ireland are evaluating the potential impact of Pillar Two on their businesses and making decisions regarding how to structure their operations going forward. We stressed that the absence of a dividend participation exemption and a foreign branch exemption in the Irish corporation tax code is acting as a disincentive for such businesses when determining where to locate future investment and has already impacted certain decisions.

We urged that a dividend participation exemption and a foreign branch exemption be simultaneously introduced in Finance Bill 2024, which would send a strong message to businesses that Ireland is fully committed to ensuring that its corporation tax code is competitive and attractive to business investment.

In our submission we made 39 detailed recommendations in response to the consultation questions and underlined the following key matters that policy-makers should take into account when considering the structural design of a participation exemption for foreign dividends and a foreign branch exemption:

- The rules governing the participation exemption for foreign dividends should be clear and simple with limited exceptions, and it should have a broad territorial scope and not be limited to tax treaty countries.
- The participation exemption for foreign dividends should not be limited to distributions paid out of trading profits of companies as this would add unnecessary complexity and uncertainty for investors regarding the availability of the exemption.
- The participation exemption for foreign dividends should apply automatically, with the option for taxpayers to elect out on a distribution-by-distribution basis.
- In tandem with the introduction of a participation exemption for foreign dividends, Ireland should adopt a foreign branch exemption that would apply automatically, with the option for taxpayers to elect out on a branch-by-branch basis.
- The branch exemption should apply to profits arising in a foreign branch in any jurisdiction outside Ireland and should extend to profits in the nature of income or capital gains arising to the branch.

On 7 February 2024 the Department of Finance published the 17 submissions that it received to the public consultation on the introduction of a participation exemption to Irish corporation tax.

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

Institute responds to consultation on share-based remuneration

The Institute responded to the Department of Finance's public consultation on share-based remuneration on 22 January 2024. The consultation document comprised 27 questions on the following topics:

- rationale for share-based remuneration schemes and related tax supports;
- future of share schemes in Ireland;
- share schemes and their place in the wider economy;
- legislation underpinning the taxation of share schemes;
- Revenue-approved schemes;
- recommendations of the Commission on Taxation and Welfare; and
- other matters.

In our response we outlined detailed recommendations for amendments to the legislation governing both approved and unapproved share schemes in Ireland and

enhancements to the administration of such share schemes.

We highlighted that a key focus for policy-makers must be to make share-based remuneration more accessible for Irish business. We outlined five key legislative amendments to the Key Employee Engagement Programme (KEEP) that are needed to improve the feasibility of the scheme and ensure that it can achieve its policy objective of helping SMEs to attract and retain key employees.

Regarding other types of share-based remuneration, we highlighted the difficulties presented by the upfront tax cost for employees on the exercise of a share option (or receipt of a share award). We emphasised that deferring the tax arising until such time as the employee is permitted to dispose of the shares, similar to the position in several other EU Member States, would mean that the employee is able to fund the tax arising. Alternatively, the removal of the benefit-in-kind charge on employer loans or, at a minimum, reducing the 13.5% interest rate on such loans to a more commercial rate of interest could make share-based remuneration a more viable option for many companies.

We recommended that clear, principle-based guidance on share valuations, including acceptable methodologies and safe harbours, should be provided to support companies that offer share-based remuneration to their employees.

We noted that the broad application of the share buy-back provisions acts as an impediment to companies that wish to incentivise employees using share-based remuneration and suggested that policy-makers consider providing for a disapplication of these provisions in the context of share-based remuneration.

Large private companies often seek to reward key personnel with shares that have certain restrictions or conditions on sale, to prevent dilution or transfer of ownership. We noted that s128D TCA 1997 can be a useful relief for such companies, as it provides a reduction in the taxable value of shares that employees receive where there is a restriction on selling those shares for a certain period. However, we highlighted several limitations of the relief that need to be addressed.

We stressed that a key priority for multinational organisations is to minimise the complexity involved in managing their global share-based remuneration plans across multiple jurisdictions with different tax and reporting rules. We proposed that it should be possible for an employer to report information on share awards to Revenue via a single annual online return to facilitate ease of completion by employers and avoid duplication of reporting. In addition, we advocated for the current filing deadline for employer returns, which is three months after the year-end, to be extended by at least a further month to allow for collation and aggregation of data.

Finally, we recommended that the tax treatment of restricted stock units should be aligned with the rules followed in other OECD countries and the existing Irish tax treatment of share options exercised by non-residents. This would mean that the amount of the benefit taxable in Ireland would be apportioned by reference to any part of the vesting period during which the individual is present in Ireland, rather than the full amount of the reward where the individual is resident on the date of vesting.

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

Institute responds to consultation on pension standard fund threshold

The Institute responded to the Department of Finance's public consultation on the standard fund threshold (SFT) on 26 January 2024. The SFT is the limit or ceiling on the total capital value of tax-relieved pension benefits that an individual can draw down in his or her lifetime from all of that individual's pension arrangements. The SFT was introduced in December 2005 and is currently €2m.

In our response we considered and made recommendations on:

- the level of the SFT;
- options for payment of the chargeable excess tax;
- valuation methodologies for the purpose of the SFT;
- tax expenditure associated with pension provision; and
- making pension documentation available on ROS/myAccount.

We noted the importance of stability in the pension sector for both pensioners and workers saving for retirement so that they understand what their financial position will be in the future. We recommended that the SFT should, at a minimum, be maintained at its current level and index linked going forward to ensure that its value is preserved.

We highlighted that much of the complexity with the SFT regime arises because different rules apply depending on whether the taxpayer is employed in the public or private sector and whether the pension is a defined-benefit scheme or a defined-contribution scheme.

We recommended that similar treatment should apply to all cohorts of taxpayers irrespective of whether they have a defined-benefit scheme or a defined-contribution scheme. We highlighted that applying similar treatment would align with the recommendation of the Commission on Taxation and Welfare (which noted that anomalies in the tax treatment of different retirement arrangements should be eliminated, as far as possible) and would simplify the SFT regime.

The Department of Finance noted that it is intended that the results of this targeted examination of the SFT will be presented to the Minister for Finance by summer 2024 for his consideration.

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

Institute responds to consultation on VAT Modernisation

The Institute responded to Revenue's public consultation on "Modernising Ireland's Administration of VAT – Real-time Digital Reporting and Electronic Invoicing" on 12 January 2024. As a first step in the implementation of VAT Modernisation, or VMOD, Revenue is considering reform of Ireland's domestic VAT business-to-business (B2B) and business-to-government (B2G) reporting, supported by e-invoicing.

In addition to the responses that we submitted to the online consultation questionnaire via Revenue's website, the Institute wrote directly to Revenue to outline the key considerations when modernising the administration of VAT. In our letter we set out nine key considerations for the design and implementation of any new VAT regime, based on members' feedback:

- **Revenue engagement:** Cross-stakeholder engagement involving businesses, tax advisers, and third-party and Revenue software and systems developers at an early stage will be critical, to ensure that the needs of businesses are fully understood before work advances on the design of new software and systems.
- **Phased implementation with an appropriate lead-in time:** Any new VAT regime should be introduced on a phased basis with an appropriate lead-in time (i.e. larger businesses first and then smaller businesses complying at a later date) to allow businesses to test systems and work with system providers, in order to ensure a smoother transition to real-time digital reporting requirements (DRR) and e-invoicing.
- **Make testing available in advance:** Testing should be made available well in advance of implementation of real-time DRR and e-invoicing. The new system implemented for domestic transactions should also work for cross-border transactions to avoid further costs and systems changes down the line.

- **Supports for businesses:** Businesses will need support to adapt technology for mandatory e-invoicing. In particular, smaller companies will need considerable assistance to implement an e-invoice system, and therefore having supports available for smaller businesses to become e-enabled will be an imperative.
- **Flexibility to cater for differing models:** In deciding the timeline for submission of the data, flexibility should be built into any new VAT regime to cater for differing business models, particularly in cases where invoices are slow to issue, which could make real-time reporting difficult.
- **Consideration of B2C transactions:** Revenue should explore the merits of implementing real-time DRR and e-invoicing for business-to-consumer (B2C) transactions when implementing it for B2B and B2G transactions, given that some businesses have a mixture of all three types of transactions. There is a concern that such businesses would, in essence, have to operate two different reporting systems for some time.
- **Learnings from other countries:** We highlighted members' feedback on learnings from other countries that have implemented real-time DRR and e-invoicing.
- **A well-planned communication and support strategy:** We noted that a well-planned strategy for communicating with stakeholders and a package of Revenue supports will be necessary. This communication plan should commence at least one year before the new regime becomes operational.
- **Information prompts:** We outlined members' suggestions on information prompts to be included on the VAT return to help reduce the administrative burden and improve compliance.

The Institute will continue to engage with Revenue constructively at the TALC Indirect Taxes Sub-committee and TALC VMOD Subgroup on the implementation of real-time DRR and e-invoicing.

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

Institute responds to proposal for Directive on BEFIT

The Institute responded to the European Commission's public consultation on a proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) on 24 January 2024. The Commission's BEFIT proposal is intended to build on the OECD's international agreement on a global minimum level of taxation and the EU Pillar Two Minimum Tax Directive, adopted at the end of 2022. BEFIT replaces the Commission's previous proposals for a common corporate tax base (CCTB) and common consolidated corporate tax base (CCCTB). If adopted by the European Council, the BEFIT Directive would be implemented into the national law of Member States by 1 January 2028, with the rules applying from 1 July 2028.

In our response we highlighted that businesses are currently overburdened by the level of effort required to comprehend and comply with the corporate tax reforms agreed as part of the Two-Pillar Solution and, within the EU, the implementation of the Pillar Two Minimum Tax Directive. We recommended that the European Commission defer further consideration of the proposed Directive until the Pillar Two Global Anti-Base Erosion (GloBE) Rules have had sufficient time to operate in practice and any shortcomings or areas of uncertainty in those rules have been identified and addressed.

In our position paper we outlined a number of significant concerns raised by members regarding the proposed BEFIT Directive, including:

- Under the BEFIT proposal it is intended that a transitional allocation rule would pave the way for a permanent mechanism for the allocation of a common tax base that could be based on formulary apportionment. However, as no detail is provided regarding the proposed permanent formulary apportionment method, it is not possible to determine the potential fiscal impact of the

BEFIT proposal on individual Member States beyond the initial seven-year period when the transitional allocation rule applies.

- In line with the principles of subsidiarity and proportionality, it would be important for the European Commission to demonstrate that the aims of the BEFIT Directive cannot be sufficiently addressed by individual Member States and that action at the EU level would provide additional benefits.
- It is only when the detail of the proposed formulary apportionment method is known that the necessary impact assessment could be prepared by the European Commission, with appropriate quantitative and qualitative indicators to allow Member States to assess fully all of the implications of a cross-border proposal of this significance.
- The proposed Directive envisages that tax authorities in Member States would operate three different tax systems in parallel (i.e. their national tax system, the Pillar Two GloBE Rules and the BEFIT regime). This is contrary to the objective of simplifying tax administration and would inevitably increase complexity and administration costs for both tax authorities and taxpayers.
- Although the proposed Directive is intended to provide simplification, it is likely to have the opposite outcome and to add to the complexity faced by in-scope businesses because the BEFIT rules are not aligned with the Pillar Two GloBE Rules in many key aspects.
- The proposed Directive is intended to simplify compliance with transfer pricing rules. However, it is questionable whether the proposed approach offers any meaningful simplification, as MNEs would remain subject to the arm's-length principle regarding transactions outside of the EU. Furthermore, the proposed approach for transactions with associated entities outside of the BEFIT group for low-risk activities does not align with the approach proposed under Amount B of Pillar One of the Two-Pillar Solution.
- The interaction of key aspects of the BEFIT Directive and the Pillar Two GloBE Rules needs to be addressed. For example, the transitional allocation mechanism could result in profits of a BEFIT group member not being taxed in its Member State of residence but being taxed in another Member State. This could result in a GloBE top-up tax liability arising in the Member State of residence, as the effective tax rate for the purpose of the Pillar Two GloBE Rules is calculated on a jurisdictional basis, notwithstanding that such profits would be subject to the required minimum level of taxation in the EU.
- BEFIT would create a further layer of uncertainty for business operating in the EU, making the Single Market a less attractive place in which to do business.

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

Institute responds to proposal for Directive on transfer pricing

The Institute responded to the European Commission's public consultation on a proposal for a Council Directive on Transfer Pricing on 21 December 2023. The objective of the Directive is to increase tax certainty, reduce compliance costs, mitigate the risk of double taxation by harmonising transfer pricing norms within the EU through the incorporation of the arm's-length principle into EU law, and provide clarification on the role and status of the OECD Transfer Pricing Guidelines.

In our position paper we outlined our support for increasing tax certainty and reducing compliance costs for taxpayers in applying transfer pricing rules. However, we noted that the Directive, as currently drafted, is likely to result in a divergence between the transfer pricing rules applying to transactions within the Single Market and the rules that apply to transactions with third countries and, consequently, lead to an increase in transfer pricing disputes with third countries.

We highlighted that two sets of transfer pricing rules operating in parallel would undoubtedly add further complexity, in particular for

multinational enterprises in scope of Pillar Two, as the Global Anti-Base Erosion (GloBE) Rules require intra-group transactions to be priced consistently with the arm's-length principle.

We outlined members' concerns regarding the rules set out in the proposed Directive, including:

- To provide certainty to taxpayers, we stated that it would be important that any newly established principles or concepts developed under the OECD Transfer Pricing Guidelines would apply on a prospective basis only. We also stressed that the adoption of the latest version of the OECD Transfer Pricing Guidelines should take place only after consultation with Member States.
- We noted our preference for the Directive, rather than detailing the transfer pricing rules, simply to make reference to the rules as set out in the OECD Transfer Pricing Guidelines.
- We highlighted that the definition of "associated enterprises" as currently drafted in the Directive is broader than what exists at present in certain Member States, including Ireland, and therefore is likely to result in an increase in the number of transactions that will be subject to transfer pricing rules in such countries.
- We noted that the 25% threshold for "associated enterprises" also establishes a different criterion to define a group from those that are contained in the proposed Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and the Pillar Two GloBE Rules. In so doing, this adds further complexity and compliance costs for business. We recommended that a 50% requirement would be more appropriate to determine the requisite association for transfer pricing rules.
- As the Directive provides that a permanent establishment (PE) shall be considered an associated enterprise of the enterprise of which it is a part, we noted that, given the legal and economic differences between a PE and legally independent enterprises, we consider it essential that the Directive does not seek to equate a PE with an associated enterprise.

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

Institute responds to consultation on proposal for head-office tax system

On 21 December 2023 the Institute responded to the European Commission's public consultation on a proposal for a Council Directive on establishing a head-office tax system for micro, small and medium-sized enterprises, and amending Directive 2011/16/EU (known as the HOT Directive).

In our response we welcomed the proposal to simplify the taxation of SMEs operating cross-border in the EU by providing them with the option to interact with only one tax administration, instead of having to comply with the tax systems in multiple Member States. In principle, a one-stop shop to centralise all filings and disputes through the tax administration of a head office could encourage expansion by SMEs operating cross-border within the EU and would ease the compliance burden for these companies.

However, we outlined that broadening the scope of the simplification framework beyond certain EU-based stand-alone SME entities that operate exclusively through a permanent establishment in one or more Member States to include SMEs that choose to expand their operations by establishing a subsidiary in another Member State would encourage more early-stage businesses to expand cross-border in the EU. The narrow scope of the proposal means that the potential benefits offered by the HOT regime will be extremely limited to companies in the very initial phases of expansion within the EU.

Finally, we highlighted that clarity is needed regarding the tax rules that would apply where a company transitions in and out of the HOT regime.

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

New TALC Sub-committee on Simplification/Modernisation of Business Supports established

During his Budget 2024 speech last October the Minister for Finance announced that Revenue would establish a dedicated subgroup of the Tax Administration Liaison Committee (TALC) to identify any opportunities to simplify and modernise the administration of business supports. This new sub-committee has now been formed by Revenue, with representatives from each of the TALC bodies, including the Institute, attending a first meeting of the group in January to consider its terms of reference.

The sub-committee will invite submissions and consider feedback from other business groups representing Irish small and medium enterprises (SMEs). The recommendations of this sub-committee will be delivered to Main TALC during 2024. We will continue to share members' feedback and insights at this new TALC sub-committee, on the awareness of SMEs of available tax incentives and the administrative barriers that can impact their ability to access such reliefs.

Policy News

Annual draft residential zoned land tax maps published

As outlined in "Policy and Representations Monitor" in the last issue of *Irish Tax Review*, Minister McGrath announced the deferral of the initial liability date for the residential zoned land tax (RZLT) by one year, from 1 February 2024 until 1 February 2025, in his Budget 2024 speech. This deferral will afford landowners an additional opportunity to submit requests to local authorities for a change to the zoning of their land in respect of the mapping process being undertaken as part of the 2024/2025 annual mapping process, ahead of the initial liability date in 2025.

On 1 February all local authorities published their annual draft RZLT maps in connection with the current phase of the mapping process. Landowners whose land is included on the annual draft map can review the map and consider whether their land meets the criteria for inclusion. A residential property is not liable to RZLT if it is subject to the local property tax.

Landowners have until **1 April 2024** to make submissions on whether their land meets the relevant criteria for inclusion as residential zoned and serviced land. Landowners can make submissions to vary the zoning status of their land and have until **31 May 2024** to request their land to be re-categorised. The annual final map will be published on 31 January 2025, and the 2025 RZLT liability date will be based on the annual final map.

Minister for Finance signs Commencement Order for enhanced reporting requirements

On 13 December 2023 Minister McGrath signed the Commencement Order to implement enhanced reporting requirements (ERR) from 1 January 2024. Section 9 of Finance Act 2022 introduced a new s897C to the Taxes Consolidation Act 1997 to provide for the reporting of certain non-taxable payments and benefits made/given by employers to their employees (and directors). The three reportable benefits are:

- those under the small-benefit exemption,
- the remote working daily allowance and
- travel and subsistence expenses paid without deduction of tax.

In a press release on 14 December Revenue acknowledged the significant engagement by stakeholders, including software providers, employers and tax practitioners, during 2023 to prepare for the introduction of the measure. The Institute has had extensive engagement with Revenue at the Main TALC ERR subgroup, where we highlighted members' concerns, particularly the challenges for employers and agents of reporting in real time through software that they have not yet tested, and

emphasised the need for a bedding-in period when employers will need to adapt to the new requirements, if the ERR was commenced from 1 January 2024.

In the press release Revenue noted its understanding that compliance with the new reporting requirements will take a period of time to fully integrate into employers' business processes. Revenue confirmed that a service for compliance approach will be taken until 30 June 2024. This approach will involve supporting employers who are attempting to comply with their reporting obligations. During this period Revenue will not operate any compliance programmes in relation to the ERR and it will not seek to apply any penalties for non-compliance.

The Income Tax (Employments) Regulations 2024, introduced by SI 1 of 2024, published at the beginning of January, amend the Income Tax (Employments) Regulations 2018 and reflect the implementation of ERR from 1 January 2024.

Minister for Finance commences OECD Reporting Standards for Digital Platform Operators

On 20 December 2023 Minister McGrath signed SI 666 of 2023 – Finance Act 2022 (Section 82(1)) Commencement Order 2023 – to commence the OECD Reporting Standards for Digital Platform Operators. Section 82 of Finance Act 2022 inserted a new s891J into Part 38 TCA 1997. Section 891J provides for the transposition of the OECD's *Model Rules for Reporting by Platform Operators with Respect to Sellers in the Sharing and Gig Economy* and the OECD's *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*, known as the Model Rules.

The Model Rules introduce reporting obligations for digital platform operators relating to sales made via digital platforms. The Model Rules are similar to the reporting obligations introduced by DAC7 (which impose reporting obligations within the EU), but the Model Rules can be adopted by jurisdictions globally on a uniform basis to collect information on transactions and income realised by platform sellers. The purpose of the obligations contained in the Model Rules is to ensure that digital platforms have standardised reporting obligations globally. The Commencement Order provides that s82 of Finance Act 2022 will come into operation as and from 1 January 2024.

Ireland applies to host new EU Anti-Money Laundering Authority

The Department of Finance published Ireland's application to host the new EU Anti-Money Laundering Authority (AMLA) in November 2023. The EU AMLA will be established in a Member State of the European Union, and Ireland is one of nine Member States that have submitted an application to the European Commission to host the new authority. The applicant countries are: Belgium (Brussels), Germany (Frankfurt), Ireland (Dublin), Spain (Madrid), France (Paris), Italy (Rome), Latvia (Riga), Lithuania (Vilnius) and Austria (Vienna).

The EU AMLA will be a significant EU institution, tasked with supervision of compliance with rules and standards on anti-money laundering and countering the financing of terrorism. The Authority will supervise entities in the financial services sector in the first instance but eventually also those in the non-financial sector. The institution is due to be established in 2024, although it is not expected to be fully operational until 2026/2027.

On 13 December 2023 the European Council and the European Parliament reached a provisional agreement on creating the new EU AMLA, which will have direct and indirect supervisory powers over high-risk obliged entities in the financial sector, including crypto-asset service providers, if they are considered high-risk or operate across borders. The agreement entrusts the EU AMLA to supervise up to 40 groups and entities in the first selection process. The selected obliged entities will be supervised by joint supervisory teams led by the AMLA, which will carry out assessments and inspections.

The Council and the Parliament have worked together to ensure that the selection process for the location of the AMLA is transparent, fair and equitable to all candidates. It was agreed that joint public hearings would be organised to allow representatives of Member States' candidacies to present their applications. Ireland took part in a hearing at the end of January 2024, along with the other eight applicant countries. The location of the seat resulting from the process will be included in the AMLA Regulation and formally adopted as part of the text.

Provisional agreement on anti-money-laundering package

During January the European Council and European Parliament reached a provisional agreement on parts of the European Commission's package of legislative proposals to strengthen the EU's rules on anti-money laundering and countering the financing of terrorism (AML/CFT).

With the new package, it is proposed that all rules applying to the private sector would be transferred to a new Regulation, while a new Directive would deal with the organisation of institutional AML/CFT systems at national level in the Member State.

AML Regulation

The provisional agreement on an AML Regulation expands the list of obliged entities to new bodies. The new rules will cover most of the crypto sector, compelling all crypto-asset service providers (CASPs) to conduct due diligence on their customers. This means that they will have to verify facts and information about their customers, as well as report suspicious activity. CASPs will need to apply customer due diligence measures when carrying out transactions amounting to €1,000 or more.

Other sectors covered by customer due diligence and reporting obligations will be traders of luxury goods such as precious metals and precious stones, jewellers, horologists and goldsmiths. Traders of luxury cars, aeroplanes and yachts, as well as cultural goods (such as artworks), will also become obliged entities.

The agreement also expands the list of obliged entities to include professional football clubs and agents, with flexibility to remove them from the list if they represent a low risk.

Specific enhanced due diligence measures for cross-border "correspondent relationships" for CASPs will be introduced. Credit and financial institutions will undertake enhanced due diligence measures when business relationships with very wealthy (high net-worth) individuals involve the handling of a large amount of assets.

An EU-wide maximum limit of €10,000 is set for cash payments. Member States will have the flexibility to impose a lower maximum limit if they wish. In addition, obliged entities will need to verify the identity of a person who carries out an occasional transaction in cash of between €3,000 and €10,000.

The provisional agreement makes the rules on beneficial ownership more harmonised and transparent. The agreement clarifies that beneficial ownership is based on two components, ownership and control, which both need to be analysed to identify all of the beneficial owners of that legal entity or across types of entities, including non-EU entities when they do business in the EU or purchase real estate in the EU. The agreement sets the beneficial ownership threshold at 25%. The agreement provides for the registration of the beneficial ownership of all foreign entities that own real estate with retroactivity to 1 January 2014.

Obliged entities will be required to apply enhanced due diligence measures to occasional transactions and business relationships involving high-risk third countries. The Commission will make an assessment of the risk, based on the Financial Action Task Force listings.

AML Directive

The agreement on the Directive will improve the organisation of national AML systems. Information submitted to the central register will need to be verified, and entities or arrangements that are associated with persons

or entities subject to targeted financial sanctions will need to be flagged.

The provisional agreement establishes that, in addition to supervisory and public authorities and obliged entities, members of the public with legitimate interest, including press and civil society, may access the registers.

Each Member State has already established a financial intelligence unit (FIU) to prevent, report and combat money laundering and terrorist financing. According to the agreement, FIUs will have immediate and direct access to financial, administrative and law enforcement information, including tax information; information on funds and other assets frozen pursuant to targeted financial sanctions; information on transfers of funds and crypto-transfers; national motor vehicles, aircraft and watercraft registers; customs data; and national weapons and arms registers, among others.

The agreement sets out a firm framework for FIUs to suspend or withhold consent to a transaction, in order to perform their analyses, assess the suspicion and disseminate the results to the relevant authorities to allow for the adoption of appropriate measures.

Each Member State will ensure that all obliged entities established in its territory are subject to adequate and effective supervision by one or more supervisors. Supervisors will apply a risk-based approach and report to the FIUs instances of suspicions.

Similar to provisions in the AMLA Regulation, new supervisory measures for the non-financial sector, so-called supervisory colleges, are introduced. The AMLA will develop draft regulatory technical standards defining the general conditions that enable the proper functioning of AML/CFT supervisory colleges.

According to the provisional agreement, both EU and national risks assessments remain an important tool. The Commission will conduct an assessment at EU level of the risks of money laundering and terrorist financing and draw up recommendations to Member States on measures that they should follow. Member States will also carry out risk assessments at national level and commit to effectively mitigating the risks identified in the national risk assessment.

Next steps

The texts will now be finalised and presented to the permanent representatives of Member States and the European Parliament for approval. If approved, the Council and the Parliament will have to adopt the texts formally before they are published in the EU's *Official Journal* and enter into force.

European Council adopts twelfth package of sanctions against Russia

On 18 December the European Council adopted a twelfth package of sanctions against Russia. The agreed package includes additional listings of Russian individuals and companies and new import and export bans, such as banning the export of Russian diamonds to the EU. Moreover, the package tightens the implementation of the oil price cap by monitoring more closely how tankers may be used to circumvent the cap. It also includes stricter asset-tracing obligations and tough measures on third-country companies circumventing sanctions.

OECD issues Statement on Pillar One and further Administrative Guidance on Pillar Two

On 18 December 2023 the Inclusive Framework released new information on the *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*.

Multilateral Convention on Amount A of Pillar One

The Inclusive Framework released a Statement updating the timeline to finalise the text of the Multilateral Convention (MLC) on Amount A of Pillar One. The Statement notes that in October 2023 the Inclusive Framework's Task Force on the Digital Economy (TFDE) published a text of the MLC, which reflected the consensus achieved so far among members on the technical architecture of Amount A.

The publication of a text of the MLC was intended to ensure transparency, facilitate the ability of some members to engage in internal processes necessary to enable swift adoption by the TFDE, and to facilitate resolution of remaining differences.

The Statement recognises that the work to resolve the remaining differences will have to go on into next year, including with respect to the stand-still on new digital service taxes and other relevant similar measures. It notes that members of the Inclusive Framework reaffirm their commitment to achieve a consensus-based solution and to finalise the text of the MLC by the end of March 2024, with a view to hold a signing ceremony by the end of June 2024.

Agreed Administrative Guidance for the Pillar Two GloBE Rules

The Inclusive Framework published updated Agreed Administrative Guidance for the Pillar Two GloBE Rules ("the December 2023 Administrative Guidance"), which supplements the Commentary to the Global Anti-Base Erosion (GloBE) Model Rules ("the Commentary") to clarify their application.

The December 2023 Administrative Guidance is the third set of Administrative Guidance released by the Inclusive Framework, the first and second sets of Administrative Guidance having been published in February 2023 and July 2023, respectively. The Administrative Guidance will be incorporated into a revised version of the Commentary that will be released in 2024 (and replace the original version of the Commentary, issued in March 2022).

To assist multinational enterprise (MNE) groups transition to the GloBE Rules, the December 2023 Administrative Guidance includes clarifications on a number of key areas, including:

- the application of the transitional country-by-country reporting (CbCR) safe harbour;
- the definition of revenues for purposes of determining whether an MNE group is within scope of the GloBE Rules;
- applying the GloBE Rules in situations where there are mismatches between fiscal years or financial and tax years of constituent entities;
- transitional relief for filing of the GloBE Information Return and notifications for in-scope MNE groups with short reporting fiscal years;
- allocating taxes arising in a blended CFC (controlled foreign company) tax regime when some constituent entities do not compute their effective tax rate under the GloBE Rules; and
- the simplified calculations safe harbour for non-material constituent entities.
- The Inclusive Framework confirmed that further agreed Administrative Guidance will be released on an ongoing basis in response to stakeholder requests for clarification on various aspects of the GloBE Rules and, where necessary, to address aggressive tax planning that may undermine the integrity of the rules or their application to certain MNE groups.

The Inclusive Framework continues to develop simplifications on key compliance items, including guidance expected in the first half of 2024 on the application of the deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes such as CFC tax regimes.

Finally, the Inclusive Framework confirmed that it will also implement a robust and transparent peer-review process and continue the ongoing work on the administrative framework and dispute-resolution mechanisms with a view to providing a high level of tax certainty to stakeholders in applying the rules.

Recent Revenue eBriefs

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

Revenue e-Briefs Issued from 1 November 2023 to 31 January 2024

No. 234 Part 38-06-01a – ROS Pay and File Useful Tips

Revenue updated the "Revenue Online Service (ROS)" manual (Part 38-06-01), the "ROS Pay and File – Useful Tips" manual (Part 38-06-01a) and the "Return Preparation Facility (RPF)" manual (Part 38-06-01b). The specific updates include:

- The option, when inputting or updating bank account details in ROS for certain tax types, to tick a checkbox in the tax type selection screen to enable the bank account to be used for refunds. If the checkbox is not ticked, then bank details need to be updated separately for both tax payments and tax refunds, and where different bank accounts are used for tax registrations (paragraph 7, Part 38-06-01a, and paragraph 10.4, Part 38-06-01).
- The payment options for taxpayers using myAccount to file IT38 returns are: single debit instruction (SDI) or credit or debit card (paragraph 4, Part 38-06-01a).
- From 1 October 2023 Revenue no longer accepts payment from commercial credit cards. A warning message will be displayed if a commercial credit card number is entered (paragraph 7.1.2, Part 38-06-01a).
- The facility to use the Iris chatbot if experiencing issues logging in to ROS (paragraph 6, Part 38-06-01a, and paragraph 7, Part 38-06-01).
- Phased payment arrangements are now noted as priority messages in the ROS Inbox. Priority messages will be marked and shown at the top of the Revenue Record (paragraph 14, Part 38-06-01).
- In the RPF manual Revenue warns about using commas, dots or other symbols when naming and saving files. Underscores, dashes and spaces are permitted in file names, but do not use commas, dots or other symbols when naming the file as this can result in the system's identifying the return as a different file type that is not a permitted file type. Appendix 1 has information on permitted file types (paragraph 6, Part 38-06-01b). The development of the RPF to replace ROS Offline is referenced in paragraph 8, Part 38-06-01a, and paragraph 9.5, Part 38-06-01.

No. 235 Registration Guidelines for DAC 7 – EU Reporting Platform Operators

Revenue published a new manual, "Registration Guidelines for DAC 7 – EU Reporting Platform Operators". Council Directive 2011/16/EU (known as the DAC) provides for the automatic exchange of information between the tax administrations of EU Member States. The DAC was amended by Council Directive (EU) 2021/514 (known as DAC 7) in 2021 to extend the scope of the DAC provisions.

With effect from 1 January 2024, DAC 7 obliges certain platform operators to collect and automatically report information on certain sellers using their platform to earn consideration. The new manual provides general guidance on how to register for the reporting obligations in Ireland. The DAC 7 registration portal opened on 1 November.

No. 236 The Help to Buy – Summary Guide for Applicants Has Been Updated

Revenue updated the "Help to Buy – Summary Guide for Applicants" to reflect changes to the Help to Buy (HTB) scheme to enhance its compatibility with the Local Authority Affordable Purchase (LAAP) scheme. The changes, which were announced in Budget 2024, are effective from 11 October 2023 and apply to HTB applicants availing of the LAAP scheme who have signed a purchase contract on or after 11 October 2023.

The update includes the addition of new screenshots to demonstrate the steps involved in making a HTB claim.

No. 237 General Medical Service (GMS) Scheme Payments to Medical Practitioners (Part 04-01-15)

Revenue published an updated "General Medical Service (GMS) Scheme Payments to Medical Practitioners" manual to provide guidance on the correct tax treatment of income received by medical practitioners under the GMS contract entered into with the Health Service Executive (HSE). The manual also includes details of transitional arrangements applicable up to the end of 2023.

The eBrief noted that the guidance in the manual does not set out a new tax treatment for such income; instead, it confirms the applicable tax treatment under existing law. The manual confirms Revenue's expectation that, for the tax year 2024 onwards, a general practitioner (GP) who holds a GMS contract:

- is a chargeable person as regards income arising under the contract and should report that income under the self-assessment system; and
- is the specified person for the purposes of Professional Services Withholding Tax (PSWT) and, therefore, is the person who may, where the relevant criteria are met, claim a credit for PSWT deducted from a GMS payment by the HSE.

The general treatment outlined above, which was subject to a proposed legislative amendment, is not affected where a GP mandates the payment of income under a GMS contract to another person (such as a company) or body of persons (such as a partnership). Furthermore, such mandating of payments does not alter who is regarded as the specified person for the purposes of PSWT and, consequently, the person who may claim a credit for PSWT deducted on GMS payments.

The manual notes that in some cases GMS payments belonging to an individual GP may have been mandated to be paid to a medical practice. Requests have been made to Revenue to transfer credit for PSWT deducted from the GMS payments to either the medical practice employing the GP or the partnership in which the GP is a partner; and the employer or the partnership, as the case may be, has treated the credit as being available for an interim refund or set-off against the final liability of the employer or the partners in the partnership.

The manual reiterates Revenue's view that there is no legislative basis for the transfer of a PSWT credit from one person to another and, other than where transitional arrangements apply, requests for transfers of PSWT credits associated with a GP's GMS income to another person will not be facilitated. As the Report Stage amendment to Finance (No. 2) Bill 2023, to treat GMS income of a GP partner as income of a GP partnership in certain circumstances, has been enacted, PSWT applied to in-scope GMS payments may be claimed by the GP partnership. See Revenue eBrief 268/23 outlined below for further update.

Some guiding principles in relation to the deduction of business expenses by GPs is provided in section 4 of the manual.

To allow GPs and GP practices time to make any necessary adjustments to their arrangements to ensure compliance with the correct tax treatment of GMS income, Revenue will implement transitional arrangements up to the end of 2023. Detailed guidance, including examples, on these transitional arrangements, which apply for 2023 and prior years, is set out in section 5 of the manual.

The transitional arrangements apply only where payments belonging to the GP are mandated to be paid to the medical practice where the GP is an employee or a partner, and where the conditions outlined in paragraph 5.4 of the manual are satisfied. The transitional arrangements do not apply where a GP who holds a GMS contract has incorporated his or her medical practice.

The manual confirms that Revenue will not seek to revisit cases where credits were transferred in the past on the basis of bona fide commercial arrangements and where the main objective of entering such arrangements was not to secure a tax advantage.

No. 238 Enhanced Reporting Requirements

Revenue published an updated manual, “Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements”, to include further information on the ERR reporting mechanisms available to employers, i.e. direct reporting through software packages, ROS file uploads and the ROS online form.

In addition, the manual includes some practical examples to illustrate the types of benefits and payments that are in scope for ERR under s897C TCA 1997 and the reporting obligations. The examples cover the three reportable benefits:

- the remote working daily allowance,
- benefits under the small-benefit exemption and
- travel and subsistence expenses paid without deduction of tax.

After an amendment in Finance Act 2022 to s112B TCA 1997, only the first two benefits in a year can qualify for the small-benefit exemption (provided their cumulative value does not exceed €1,000). Further benefits are liable to PAYE, and this is illustrated in the manual. From 1 January 2024, tax-free travel and subsistence expenses are reportable on or before the date when the expenses are reimbursed to the employee/director.

No. 239 PAYE Services – Review Your Tax

Revenue updated the manual “PAYE Services: Review Your Tax” to update screenshots and guidance on the Employment Detail Summary (EDS). During 2023 Revenue amended how the EDS is accessed to facilitate access to the EDS after four years. However, an unintended consequence of this change is that once an EDS is created it is not currently possible to continue to view the individual payslips for that year.

On creation of an EDS, ROS users will be brought directly to a PDF of the EDS in MyDocuments, as illustrated in the manual. Therefore, agents and taxpayers who wish to retain access to the underlying payslip information for a year – for example, to calculate pension top-ups – should **not** create the EDS. Revenue plans to restore the access previously available.

No. 240 Import of Motor Vehicles from the UK

The manual “Importation of Motor Vehicles from the UK” has been updated to reflect the introduction by the UK of the Second-hand Motor Vehicle Payment Scheme (SHMVPS). This new scheme will impact the registration of second-hand vehicles sourced from Great Britain (GB) and Northern Ireland.

In January 2021 the UK introduced significant changes to the VAT margin scheme for used vehicles imported from GB to Northern Ireland. Although the UK has recently introduced the new replacement scheme, SHMVPS, the fact that the VAT margin scheme remains in place until 1 May 2024 means that vehicles first registered in GB and subsequently registered in Northern Ireland after 31 December 2020 are subject to additional requirements if imported to the State.

These additional requirements must be completed before presenting the vehicle for registration at a National Car Test centre. Chapter 10 of the manual provides further details on registering a vehicle from Northern Ireland.

No. 241 Securitisation Regulation: Notification of Investment

The manual "Securitisation Regulation: Notification of Investment" has been amended to reflect the EU list of non-cooperative jurisdictions for tax purposes as of 23 October 2023. The following changes have been made to the manual:

- Section 1.1 and Appendix 1 reflect the changes from the February 2023 list.
- Example 4 reflects the current listing of relevant Annex II jurisdictions.
- Links to the relevant *Official Journals* of the EU have been added.

No. 242 Enhanced Reporting Requirements – Revenue Online Events

Further Revenue webinars will be held to provide employers with an overview of the Enhanced Reporting Requirements (ERR). Revenue issued notices to ROS Inboxes to make employers aware that ERR webinars are being scheduled for November and December 2023 and to outline how to book a ticket to attend a webinar at a date and time that suits them. Each webinar will include a presentation followed by a Q&A.

A recording of the presentation segment of a Revenue ERR webinar is available on the Revenue website.

No. 243 Professional Service Withholding Tax – Treatment of GMS Income

Revenue has updated the manual "Professional Services Withholding Tax (PSWT) General Instructions" to include guidance, in a new part 5, in relation to payments made by the Health Service Executive to general practitioners under the General Medical Service (GMS) scheme and to link to more detailed information included in the manual "General Medical Service (GMS) Scheme Payments to Medical Practitioners". Part 6 of the manual has also been updated to clarify the guidance where professional services are provided by a partnership.

No. 244 New CE Reports Available and Updated Combined Taxes Report for Importer

Revenue updated the Customs and Excise (C&E) TAN reports available on ROS to include two new reports:

- **Postponed VAT Report:** available to importers, detailing the most recent version of all Automated Import System declarations with postponed VAT.
- **Export Report – Period (monthly) details:** Automated Export System declaration list for exporters.

Revenue has also updated the Combined Taxes Report for Importers. The amended declarations in this report will now show a negative/refund amount in the postponed VAT column. Previously, postponed VAT showed in full or as nil. Finally, the Updated Unpaid Declarations Report has been amended to include the date received.

Further information is available in Revenue's manual "C&E TAN Reports Available on Revenue's Online Service (ROS) for C&E Traders". Queries can be sent to Revenue's eCustoms Account Unit at ecustomsaccounts@revenue.ie.

No. 245 Updates to the Horticultural Production Relief Guide

Revenue updated the "Excise Manual – Horticultural Production Relief Guide" to include the new postal address of the Central Repayments Office. Additional minor revisions have been made to the text, including to update the date of the table with rates of repayment to 1 September 2023.

No. 246 Cost Sharing Group

Revenue published a new VAT manual titled "Cost Sharing Group" to provide guidance on the VAT treatment of certain independent groups of persons, i.e. cost-sharing groups, together with illustrative examples. The manual "VAT Treatment on the Exemption for Certain Activities in the Public Interest" has been marked as no longer relevant.

No. 247 Natural Gas Carbon Tax Compliance Procedures: Change of Postal Address

Revenue's manual "Natural Gas Carbon Tax (NGCT) Compliance Procedures" has been amended to update the address for postal registrations for natural gas carbon tax, included in paragraph 3.2.

No. 248 Updates to Accounting for Mineral Oil Tax Manual

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

- Appendix I includes MOT rates with effect from 11 October 2023, and rates up to 1 September 2023 are included with historical rates in Appendix VII.
- References to the Automated Export System throughout the manual and associated matters have been updated to reflect the implementation of Revenue's Automated Import System.
- Paragraph 6.3.2. regarding repayment claimants has been updated to include revised processes for initial claims.
- Miscellaneous minor revisions and corrections to the text have also been made.

No. 249 Exemption of Certain Profits Arising from Production, Maintenance and Repair of Certain Musical Instruments

Revenue published a new manual, "Exemption of Certain Profits arising from Production, Maintenance and Repair of Certain Musical Instruments", relating to the exemption in s216F TCA 1997. Section 216F provides for an exemption of up to €20,000 from income tax for certain profits from the production, maintenance and repair of certain musical instruments. The exemption is available to individuals who are chargeable to income tax in respect of profits arising from the production, maintenance and repair of:

- early Irish harps,
- Irish lever harps and
- uilleann pipes.

This section does not exempt the income from PRSI and USC, which are chargeable in the usual manner.

No. 250 Betting Duty Returns and Payments Compliance Procedures Manual

Revenue updated the manual "Betting Duty Returns and Payments Compliance Procedures" to remove paragraph 1.3, "Cancellation of Instructions", as it referred to outdated information. The manual has also been updated to rearrange the appendices and to make minor revisions to the text and update links where necessary.

No. 251 Research and Development (R&D) Corporation Tax Credit: Appointment of Experts to Assist in Audits

Each year Revenue establishes a panel of experts who may be called on to assist with reviews of R&D tax credit claims. The manual "Research and Development (R&D) Corporation Tax Credit: Appointment of Experts to Assist in Audits" has been updated to:

- reflect the start date of the new independent expert panel on 8 August 2023,
- reflect an increase in the daily rate paid to the independent experts to €1,000 and
- include miscellaneous minor revisions to the text and updates to references.

No. 252 Payment and Receipt of Interest and Royalties Without Deduction of Income Tax

The manual "Payment and Receipt of Interest and Royalties Without Deduction of Income Tax" has been updated to provide guidance in respect of the application of interest withholding tax to interest paid to Irish partnerships and foreign tax-transparent entities, in section 5.3.

The manual has also been updated to refer to the European Stability Mechanism (ESM) and the ESM's acting through a subsidiary body or sub-entity in section 8, "Payments to certain statutorily tax-exempt bodies".

In addition, instructions on how to report availing of the practice for the Form CT1 2021 and Form 11 2021 have been deleted from section 9.

No. 253 VAT Treatment of Portfolio Management Services

Revenue has updated the manual "VAT Treatment of Portfolio Management Services" to provide further guidance.

No. 254 The Small Benefit Exemption

Revenue updated the manual "Chapter 5 – The Small Benefit Exemption (SBE)":

- to provide additional information and examples regarding the Finance Act 2022 changes to this measure; and
- to link to the detailed guidance material on enhanced employer reporting obligations, which (subject to Ministerial Commencement Order) require mandatory reporting to Revenue of the small benefit exemption from 1 January 2024 by employers.

No. 255 Investment Undertakings

Revenue's "Investment Undertakings" manual has been updated to make reference to the pan-European pension product (PEPP) provisions introduced by s21 Finance Act 2022 and to remove references to approved minimum retirement funds (AMRFs), reflecting Finance Act 2021 amendments.

In addition, the following material updates have been made:

- Contact information for Large Corporates Division has been updated on page 7.
- The footnote on page 22 clarifies that s189 TCA 1997 relief does not extend to the estate of an individual upon death who during their lifetime was entitled to s189 relief.
- Guidance detailing Revenue powers of audit/inspection has been removed, as more detailed guidance regarding Revenue compliance interventions can be found on the Code of Practice and Compliance section of the Revenue website.

The following appendices have also been removed:

- Appendix III, "IFSC Funds – Transitional Arrangements", and
- Appendix IV, "Definitions of Intermediary and Residence", which was replaced by the inclusion of links to the appropriate Tax and Duty Manuals providing additional guidance on residence.

No. 256 Exemption of Certain Profits of Microgeneration of Electricity

Revenue has published a new manual titled "Exemption of Certain Profits of Microgeneration of Electricity" to provide guidance on the income tax exemption of certain profits from the microgeneration of electricity by an individual at his or her sole or main residence.

An exemption from Case IV income tax, USC and PRSI for certain profits arising to a qualifying individual from the microgeneration of electricity is provided for in s216D TCA 1997. For the tax years 2022, 2023 and 2024 the exempt amount is €200, and a qualifying individual is not required to declare such profits in an income tax return. Any amount in excess of the exempt limit is required to be declared as income.

Finance Act (No. 2) 2023 amended s216D TCA 1997 to increase the amount of exempt profits from €200 to €400 per year and extend the scheme by one year to the end of 2025. Revenue will update the manual to reflect these changes.

No. 257 Charities VAT Compensation Scheme Update to Guidelines

Revenue updated the manual "Charities VAT Compensation Scheme – Guidelines for Charities" to reflect the increase to the annual capped amount of the Charities VAT Compensation Scheme fund. With effect from 1 January 2024 the annual fund is set at €10m.

No. 258 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 2018 in respect of a transaction, period or part of a period on or after 1 January 2024. 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 29 March 2024**.

No. 259 CESOP Guidelines for Registration and Filing

Revenue published a new manual, "European Cross-Border Payments Reporting (CESOP) Registration Guidelines and Guidance for Filing", providing information for payment service providers (PSPs) who have a CESOP reporting obligation in Ireland with effect from 1 January 2024.

The European Council adopted a legislative package in February 2020 amending the EU VAT Directive and the Regulation on administrative cooperation and combating fraud in the field of VAT by requesting PSPs to transmit information on cross-border payments originating from Member States and on the beneficiary/payee of these cross-border payments from January 2024.

The Central Electronic System of Payment information, known as CESOP, is the European database that will centralise the information reported by PSPs to their local tax authorities, allowing it to be cross-checked with other European databases.

The information in the manual includes:

- detailed guidance on the process and procedures for registration as a resident or non-resident PSP for the purpose of CESOP reporting in Ireland;
- an outline of the process for filing CESOP reports in Ireland; and
- an outline of the technical specifications required for filing CESOP reports in Ireland.

The registration facility for CESOP filers will open in Ireland on 1 February 2024. The registration process will vary depending on whether the PSP or filing entity is resident in Ireland or is non-resident.

All non-resident registrations are subject to a two-stage verification process that incorporates a manual review. To ensure timely completion of the registration process, it is recommended that all non-resident PSPs commence registration for CESOP in Ireland at least one month before the first filing deadline of 30 April 2024.

Once registered, all filing for CESOP will be conducted through ROS. All of the information for PSPs that have a reporting obligation for CESOP is included on Revenue's CESOP webpage.

The manual also includes contact details and MyEnquiries pathways in respect of queries relating to registering a CESOP reporting obligation.

No. 260 Mineral Oil Manual: Marking of Gas Oil and Kerosene

The manual "Mineral Oil Manual: Marking of Gas Oil and Kerosene" has been updated to include the provisions of the Mineral Oil Tax (Prescribed Markers) (Amendment) Regulations 2023 (SI 592 of 2023). The Regulations amend the Mineral Oil Tax Regulations 2012 (SI 231 of 2012), giving effect to the Commission Implementing Decision (EU) 2022/197 of 17 January 2022, which establishes a new common fiscal marker ("Euromarker") for gas oil and kerosene across all Member States.

This amendment provides that, from 19 January 2024, an additional marker, butoxybenzene (ACCUTRACE™ PLUS), must be added to gas oil and kerosene that is subject to a reduced rate of mineral oil tax. The amendment also introduces CAS (Chemical Abstracts Service) numbers to uniquely identify the chemicals that are prescribed as fuel markers.

No. 261 Requests for Transfer Pricing Documentation

Revenue has published a new manual, "Requests for Transfer Pricing Documentation", which documents the operational policy of

the Transfer Pricing Audit Branches of Large Corporates Division for requesting transfer pricing documentation from taxpayers as part of the risk appraisal process. This manual also provides a forum for requesting transfer pricing documentation under the Compliance Intervention Framework, as set out in the Code of Practice for Revenue Compliance Interventions.

No. 262 Taxation of Non-Irish Resident Landlords

Revenue has updated the manual "Taxation of Non-Irish Resident Landlords" as follows:

- the former paragraph 1.1 on residential property lettings and paragraph 1.2 on commercial property lettings have been consolidated into paragraph 1.1;
- the obligations of a person paying rent directly to a non-resident landlord is now outlined in paragraph 1.1, including details of the Non-Resident Landlord Withholding Tax system (NLWT);
- Paragraph 2 has been amended to outline the obligations of a collection agent who remains chargeable and assessable and those of an agent who uses the new NLWT system;
- obsolete information has been removed; and
- the manual has been linked to the newly published "Non-resident Landlord Withholding Tax" manual which contains operational details on the NLWT.

No. 263 The Provision of Free or Subsidised Accommodation

Revenue updated the manual "Chapter 3 – The Provision of Free or Subsidised Accommodation" to include a link to the manual "Removal and Relocation Expenses" in paragraph 3. The content in paragraph 5 relating to the concessional treatment that applied to Covid-19 circumstances has also been updated.

No. 264 Guidelines for Agents or Advisors Acting on Behalf of Taxpayers

Revenue updated the manual "Guidelines for Agents or Advisors Acting on Behalf of Taxpayers" to include an updated introduction in paragraph 1 and updated contact information for Large Corporates Division in paragraph 11 and to introduce a new paragraph 22 about anti-money-laundering legislation, to state that it applies to a number of business sectors, including accountants, financial service businesses, estate agents and solicitors.

The manual also includes a new paragraph 6, "Agent/client link for employer payroll clients", which provides information on agent/client links for employer payroll clients to include links for the Enhanced Reporting Requirements (ERR) and/or global mobility (SARP) agents, and consequential updates in paragraph 17.

The "Revenue Online Service (ROS)" manual has also been updated to provide information on agent/client links for employer payroll clients to include links for ERR and/or global mobility (SARP) agents.

No. 265 Special Assignee Relief Programme (SARP)

Revenue updated the manual "Special Assignee Relief Programme (SARP)" to include a new sub-paragraph 7.1 providing clarification on the calculation of SARP in tax equalisation cases.

In addition, paragraph 15 has been updated to provide details of the new eSARP online portal for employer certification and reporting, which will be launched on ROS on 1 January 2024. The manual includes a link to Revenue's "Guide to the Online SARP 1A and SARP Employer Return (eSARP)", which is also available on Revenue's SARP hub.

No. 266 VAT Notes for Guidance

Revenue published the "Finance (No. 2) Act 2023 VAT Notes for Guidance" on the Revenue website.

No. 267 Registration and Filing Guidelines for DAC 7 – Digital Platform Operators

Revenue's manual "Registration and Filing Guidelines for DAC 7 – Digital Platform Operators", which provides guidance on how to register for a DAC 7 reporting obligation in

Ireland and general guidance on how to file a return, has been updated to include new chapters 5 to 12. The new chapters provide guidance for a taxpayer or agent submitting DAC 7 returns, DAC 7 additional schema guidance and DAC 7 sample files. The filing facility for DAC 7 will open in Ireland in January 2024 for filings in respect of the period 1 January to 31 December 2023. The manual also includes a link to a file test facility.

No. 268 General Medical Service (GMS) Scheme Payments to Medical Practitioners

Revenue's manual "General Medical Service (GMS) Scheme Payments to Medical Practitioners" has been updated to provide guidance on s1008A TCA 1997, which was inserted by Finance (No. 2) Act 2023.

Section 1008A provides that where individual general practitioners (GPs) enter into contracts with the Health Service Executive (HSE) to provide certain medical services and provide those services in the conduct of a partnership profession with other individual GPs, the income can be treated for income tax purposes as that of the partnership, where a joint election is made. The amendment also provides that any Professional Services Withholding Tax (PSWT) credit may be claimed by the medical partnership in such circumstances.

Section 1008A does not operate to treat income of an employee of a partnership as income of the partnership. Nor does it apply in the case of a partnership involving any persons who are not individuals.

A specified medical partnership joint election form must be submitted by the medical partnership through MyEnquiries to avail of the tax treatment under s1008A (paragraph 4.3.1). A joint election will take effect on the later of 1 January 2024 or the date on which it is made.

However, to allow GPs and medical partnerships time to make the necessary arrangements (i.e. the submission of a joint election form and subsequent notification of the medical partnership tax reference number to the HSE), Revenue will accept that relevant income paid in January 2024 and associated PSWT credits may be treated as income/PSWT credits of the medical partnership where a joint election is in place, and the requisite notification is made to the HSE, by 31 January 2024 (paragraph 4.3.3).

No. 269 Universal Social Charge

Revenue's "Universal Social Charge" manual has been updated to reflect Finance (No. 2) Act 2023 changes relating to the universal social charge (USC). These include updates to paragraph 4 to account for the increase in the USC rate thresholds in line with increases to the national minimum wage and the reduction of the 4.5% USC rate to 4%.

The manual has been updated in paragraph 11.5 to reflect that, from 1 January 2024, gains realised by the exercise/assignment/release of a right to acquire shares are treated as notional payments and USC is collected under the PAYE system by the employer.

The following USC-exempt payments provided for in TCA 1997 have been added to the list of exemptions in paragraph 12.2:

- s192JB: Electricity costs emergency benefit and submeter support scheme payments,
- s192O: Clinical Placement Allowance to student nurses and midwives,
- s192P: Allowance for maternity-related administrative support to local authority members and
- s205B: Mother and Baby Institution payments.

Finally, paragraph 13 has been updated to confirm that the reduced rate of USC for medical card holders has been extended for two further years, to the 2025 year of assessment.

No. 270 Vacant Homes Tax – Part 22B-01-01

The "Vacant Homes Tax" manual has been updated in paragraphs 2.3.1 and 4.3 to reflect the increase in the rate of VHT from three times to five times the basic rate of local property tax. This rate change came into effect as a result of the passing of Finance (No. 2) Act 2023

and applies for the chargeable period from 1 November 2023 to 31 October 2024.

No. 271 Defective Concrete Products Levy

Finance (No. 2) Act 2023 amended Part 18E TCA 1997 to remove ready-to-pour concrete utilised in the manufacture of precast concrete products from the charge to the Defective Concrete Products Levy (DCPL) with effect from 1 January 2024, where a declaration is made to the chargeable person by the specified person.

Provision was also made for a refund scheme in respect of a levy paid on ready-to-pour concrete by a specified person in the period from 1 September to 31 December 2023 where that concrete was utilised in the manufacture of precast concrete products. Section 5 of the "Defective Concrete Products Levy" manual details how a specified person may make a claim for repayment and includes a link to the prescribed claim form. A claim must be made within four calendar months of the end of the accounting period 31 December 2023 (i.e. a claim must be submitted on or before 30 April 2024).

The manual has also been updated to provide detailed steps on how to submit a DCPL return and pay a DCPL liability.

No. 272 Stamp Duty Tax and Duty Manual (TDM) – Section 126AB – Further Levy on Certain Financial Institutions

Revenue released a new manual, "Part 9: Section 126AB – Further Levy on Certain Financial Institutions", which provides guidance on the introduction of a revised bank levy. Finance (No. 2) Act 2023 inserted a new s126AB in the Stamp Duties Consolidation Act 1999 (SDCA 1999), which provides for the introduction of this revised bank levy for the year 2024. This replaces the levy that was provided by s126AA SDCA 1999, which has not been extended beyond 31 December 2023.

The revised levy will apply only to certain financial institutions, including Allied Irish Banks plc, EBS DAC, Permanent TSB plc, and the Governor and Company of the Bank of Ireland. The levy will be applied at a rate of 0.122% on an amount equal to the total value of relevant deposits held by the liable financial institutions on 31 December 2022 to the extent that such deposits are "eligible deposits" within the meaning of the European Union (Deposit Guarantee Schemes) Regulations 2015.

Revenue noted that s126AB, as introduced by Finance (No. 2) Act 2023, provides for a lower rate of 0.112% to be applied. However, on 28 November 2023 the Minister for Finance announced that he intended to adjust the rate of the levy from 0.112% to 0.122%. The Minister noted that a technical inconsistency had been identified, which meant that it was necessary to adjust the rate to ensure that the full €200m would be collected in 2024. The relevant legislative change will be made at a future point.

No. 273 EU VAT Regulations – Payment Service Provider Obligations

Revenue published a new manual, "Reporting Requirement for Payment Service Providers on Cross-Border Payments: EU Central Electronic System of Payment Information ('CESOP')", to provide guidance on the new record-keeping and reporting obligations for payment service providers (PSPs) established in the EU that facilitate cross-border payments.

The European Council adopted a legislative package in February 2020 amending the EU VAT Directive and the Regulation on administrative cooperation and combating fraud in the field of VAT by requesting PSPs to transmit information on cross-border payments originating from Member States and on the beneficiary/payee of these cross-border payments from January 2024. The purpose of the initiative is to support the work of tax authorities across the EU in combatting VAT fraud and managing VAT risks.

The manual notes that the EU legislation has been transposed into Irish law under two sets of Regulations, which were signed into law on 20 December 2023 and came into effect on 1 January 2024.

The Central Electronic System of Payment information, also known as CESOP, is the European database that will centralise information reported by PSPs to their local tax authorities, allowing it to be cross-checked with other European databases. Therefore, information reported to Revenue by PSPs will be transmitted to CESOP. The legislative changes for PSPs that have a CESOP reporting obligation in Ireland came into effect on 1 January 2024.

No. 274 Recognised Clearing Systems

Revenue's manual "Recognised Clearing Systems" has been updated to reflect the update to the definition of "recognised clearing system" in Finance (No. 2) Act 2023 and to update Revenue contact details.

No. 275 Local Property Tax: Meaning of a "Residential Property"

Revenue's local property tax (LPT) manual "Meaning of a 'Residential Property'" has been updated at paragraphs 3.1.3 and 8.3 to provide clearer guidance on the treatment of the following:

- certain types of structures that are specifically excluded from the definition of "building" and are not therefore residential properties for the purposes of LPT:
    - structures that are not permanently attached to the ground, e.g. mobile homes, shipping containers fitted out as residential accommodation and tents;
    - vessels, e.g. boats such as ships, yachts, barges and house-boats; and
    - vehicles, whether they are actually mobile or not, e.g. caravans, campervans and vehicles converted for dwelling purposes; and
- derelict houses that are to be demolished and rebuilt for the purpose of the Help to Buy scheme. A link to the "Help to Buy (HTB)" manual has also been included.

No. 276 Part 15-01-11B Mortgage Interest Tax Credit

A new mortgage interest tax credit (MITC) was announced in Budget 2024, which is provided for by a new s473C TCA 1997. Broadly, the MITC is a one-year tax credit for taxpayers who have made mortgage interest payments in respect of a qualifying loan for a principal private residence where a number of conditions are satisfied.

The relief is available to taxpayers with mortgage balances of between €80,000 and €500,000 as of 31 December 2022. The credit is available in respect of the 2023 tax year only and is based on the increase in interest paid in 2023 over interest paid in 2022. The increase will, subject to a cap of €6,250, qualify for relief at the standard rate of income tax of 20%. This equates to a maximum tax credit of €1,250 per property.

The credit is available in respect of qualifying properties being the sole or main residence of the individual, the individual's former or separated spouse or civil partner, or a dependent relative. The definition of qualifying property extends the relief to a residential property used to facilitate the individual's or their spouse's or civil partner's attendance at their trade, profession, employment or office holding.

Revenue's new "Mortgage Interest Tax Credit" manual outlines the conditions relating to the MITC, how to calculate a claim, with worked examples, and the claims process. An income tax return for 2023 must be filed to claim the relief (i.e. Form 12 for PAYE taxpayers or Form 11 for self-assessed taxpayers). It is anticipated that the income tax return to facilitate the MITC claim will be available from late January 2024.

No. 001 Electronic Publications

Revenue's "Electronic Publications" manual has been updated to outline the new zero rate of VAT applicable to e-books and audiobooks from 1 January 2024. In addition, the following VAT manuals have been updated to reflect further Finance (No. 2) Act 2023 amendments:

- "Supply and Installation of Solar Panels",
- "Printing and Printed Matter",
- "Flat-rate Scheme for Farmers" and
- "Sale of Live Animals by Auction (Mart)".

No. 002 Revenue eBrief No. 002/24

Revenue eBrief 002/24 was withdrawn pending further updates. Please see eBrief 004/24 for details.

No. 003 Code of Practice on Determining Employment Status (Employed or Self-Employed)

Revenue has updated its manual "Code of Practice on Determining Employment Status (Employed or Self-Employed)" to refer to the Supreme Court judgment in the case of *Karshan (Midlands) Ltd t/a Domino's Pizza* [2023] IESC 24. Revenue noted that it is working with the Department of Social Protection and the Workplace Relations Commission to update the contents of the joint Code of Practice on Determining Employment Status to reflect the judgement.

Manuals that reference Revenue's manual on this Code have been updated as a result. These are:

- "Part-time Lecturers/Teachers/Trainers",
- "Agency Workers",
- "Individuals Described as 'Locums' Engaged in the Fields of Medicine, Health Care and Pharmacy",
- "Taxation of Exam Setters, Exam Correctors, Exam Attendants, Invigilators, etc.",
- "Relevant Contracts Tax for Principal Contractors",
- "Employers' Guide to PAYE" and
- "National Co-op Farm Relief Service Operators".

The manual also refers to Revenue's press release issued after the judgment, and Revenue will also issue separate guidelines on its implications.

No. 004 Taxation of Couriers

Revenue confirmed that it is reviewing the "Taxation of Couriers" manual as part of the development of detailed guidance on the implications of the Supreme Court judgment in the case of *Karshan (Midlands) Ltd t/a Domino's Pizza* [2023] IESC 24. The manual will be updated and published in conjunction with the detailed guidance relating to the *Karshan* case. Revenue's eBrief No. 002/24, relating to the "Taxation of Couriers" manual, was withdrawn pending further updates.

No. 005 Road Haulier Drivers (Employees) – Subsistence Rates

Revenue's manual "Road Haulier Drivers (Employees) – Subsistence rates" has been updated in paragraph 4 to include guidance regarding the Enhanced Reporting Requirements (ERR). The payment of subsistence allowances free of tax by road haulier firms (employers) to road haulier drivers (employees) falls within the scope of ERR. SI 635 of 2023, Finance Act 2022 (Section 9) (Commencement) Order 2023, provides that ERR came into operation from 1 January 2024, with employers required to report from this date.

In addition, paragraph 5 reflects the increases in the civil service subsistence rates that apply from 14 December 2023.

No. 006 PAYE Regulation 16 – Arrears of Pay Being Paid to an Employee Who Has Left an Employment

Revenue's manual "Regulation 16 – Arrears of Pay Being Paid to an Employee Who Has Left an Employment" has been updated to include the following:

- the definition of Revenue Payroll Notification (RPN) at paragraph 2.1,
- a link to "The Employers' Guide to PAYE with Effect from January 2019" at paragraph 2.2 and
- the removal of material regarding the operation of PAYE on arrears of pay before 2019.

No. 007 Update to Share Scheme Manuals – Chapter 9

Chapter 9 of the "Share Schemes Manual – Key Employee Engagement Programme (KEEP)" has been updated primarily to reflect Finance Act 2022 measures that were commenced in November 2023 after receipt of State Aid approval. On 20 November 2023 the Minister for Finance, Michael McGrath TD, confirmed

that he had signed a Commencement Order in relation to four KEEP amendments after approval from the European Commission:

- the extension of the scheme to the end of 2025;
- to allow shares that were acquired through a company buy-back of shares to qualify for KEEP;
- the increase of the limit on the total market value of issued but unexercised qualifying share options for qualifying companies and qualifying holding companies from €3m to €6m; and
- changes to the type of shares that qualify for KEEP from new ordinary fully paid-up shares to ordinary fully paid-up shares, so that existing shares that a company holds can qualify.

No. 008 Tax and Duty Manual Part 05-01-01k – Chapter 11 – Salary Sacrifice Arrangements

Revenue has updated the manual "Chapter 11 – Salary Sacrifice Arrangements", noting that this is largely to refresh the examples.

No. 009 Stamp Duty Guidance Updated

The Stamp Duty Manuals set out below and the "Notes for Guidance – Stamp Duties Consolidation Act 1999" have been updated to reflect amendments made to the Stamp Duties Consolidation Act 1999 (SDCA 1999) by Finance (No. 2) Act 2023:

- "Part 6: Special Provisions Relating to Uncertificated Securities" includes provision for the electronic transfers of securities (such as shares) to be chargeable with stamp duty. Finance (No. 2) Act 2023 amended Chapter 2 of Part 6 SDCA 1999 to provide for an exemption from stamp duty on certain transfers of Irish shares in the US or Canada. The exemption applies to securities listed on a recognised stock exchange located in the US or Canada, and the trade must be settled through a securities settlement system located in the US or Canada. The amendment has put a Revenue administrative practice on a statutory footing.
- "Part 7: Exemptions and Reliefs from Stamp Duty" reflects the amendment to s101A SDCA 1999 to refer to payment entitlements within the meaning of Regulation (EU) 2021/2115, rather than Regulation (EU) No. 1307/2013. The 2013 Regulation formed part of the Common Agricultural Policy Regulations and was repealed and replaced by the 2021 Regulation.
- "Part 7: Section 81AA – Transfers of Land to Young Trained Farmers" reflects the increase in the maximum amount of relief that may be granted under s81AA SDCA 1999 and s667B (stock relief) and s667D (relief for succession farm partnerships) TCA 1997 to €100,000. Before Finance (No. 2) Act 2023 €70,000 was the maximum amount of relief that could be granted under these provisions.
- "Part 7: Section 81C Farm Consolidation Relief" amends the clawback provision where there is a disposal of land in respect of which relief was claimed to take account of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (to refer to "civil partner" in addition to "spouse").
- "Part 9: Levies" provides detail on the introduction of the revised bank levy, which is provided for by a new s126AB SDCA 1999. Consequential amendments were made to s126B and s126C SDCA 1999 to ensure that the revised bank levy is within the scope of these provisions. Section 126B makes provision for Revenue to make assessments in relation to the duties due on the levies within the scope of Part 9 SDCA 1999 should the need arise. Section 126C provides for a surcharge to be applied on incorrect and late returns. The manual has been updated to reflect these two amendments, to outline the operation of s126B and to include a reference to the new s126AB. A stand-alone Stamp Duty Manual for s126AB has also been published on the Revenue website.
- "Schedule 1: Stamp Duties on Instruments" includes the increase in the annual rent cap from €40,000 to €50,000. Schedule 1 SDCA 1999 provided for an exemption from stamp duty on leases of houses and apartments where the term of the lease was for less

than 35 years, or for an indefinite term, and the annual rent was less than €40,000. The Finance Act increased the annual rent cap from €40,000 to €50,000. The manual also reflects the extension of consanguinity relief, which is provided for by Schedule 1, to 31 December 2028.

No. 010 Property Valuation

Revenue has updated its manual "Valuation of Property – Procedures for Valuing Property for Tax and Duty Purposes" to refer to the revised processes for obtaining independent property valuations for tax and duty purposes, including referral to the Valuation Division of Tailte Éireann.

No. 011 Income Tax (Employments) Regulations 2024 S.I. No. 1 of 2024

Revenue confirmed the publication of the Income Tax (Employments) Regulations 2024, introduced by SI 1 of 2024, which amend the Income Tax (Employments) Regulations 2018 and reflect the implementation of the Enhanced Reporting Requirements (ERR) from 1 January 2024.

Revenue's manual "Income Tax (Employments) Regulations 2018" has been updated to reflect the changes made to the Regulations, which are operational from 4 January 2024:

- Regulation 2(1) is amended to include the following definitions:
  - relevant particulars,
  - remote working daily allowance,
  - reportable benefit,
  - small benefit and
  - travel and subsistence payment.
- Regulation 10(1) is amended to provide that where an employer has sent a prior notification in respect of a reportable benefit, the employment identifier used on that prior notification should be used. In cases where no prior notification has been sent, an employment identifier, being a unique identifier, should be assigned to the employment of the employee where the employee's PPSN is available.
- A new Regulation 10A is inserted providing that on or before the provision of any reportable benefit to an employee, an employer shall send a notification containing the relevant particulars relating to the provision of such a benefit to Revenue.
- The provisions of Regulation 23 are extended to provide that employers must retain all documents and records relating to the provision of a reportable benefit to an employee for a period of six years after the end of the year to which they refer, or for such shorter period as Revenue may authorise, and make such information available to an authorised officer.

No. 012 Content No Longer Relevant – AEP Staff Manual

The "AEP Staff Manual" has been archived as the contents are no longer relevant. The Automated Entry Processing System has been replaced by Automated Import System and Automated Export System.

No. 013 Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements

Revenue's manual "Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements" was updated in paragraph 1 to confirm that SI 635 of 2023, Finance Act 2022 (Section 9) (Commencement) Order 2023, provides that the ERR came into operation from 1 January 2024 and to link to the Revenue press release issued in December about the approach to be taken by Revenue until 30 June 2024.

Paragraph 5 refers to SI 1 of 2024, Income Tax (Employments) Regulations 2024, which prescribes the reporting period, the form, and other particulars or documents that will apply regarding reportable benefits.

No. 014 Guidance on Interest Limitation

Revenue has updated the "Guidance on the Interest Limitation Rule" manual to include a new section 15 on the interaction of the interest limitation rule and foreign currencies.

No. 015 Income Tax Return 2023 – ROS Form 11

Revenue confirmed the income tax return ROS Form 11 2023 has been available since 1 January 2024 and will be updated in early February to facilitate claims for the new mortgage interest tax credit (MITC). Revenue further notes that the Form 11 is updated on an ongoing basis to include additional pre-filled information from third parties.

A number of changes to the Form 11 2023 are outlined in the updated "Income Tax Return Form 2023 – ROS Form 11" manual:

- Information on rental income paid to non-resident landlords in the "Irish Rental Income" panel has been updated in paragraph 4.1. This includes Revenue's intention to pre-fill information from the reporting of Rental Notifications in an updated version of the Form 11 2023, to be released at the end of January. In addition, references to s97(2)K TCA 1997 relating to the claiming of additional relevant interest for the years 2019, 2020 and 2021 have been removed as this provision no longer applies, as set out in paragraph 4.2.
- Updates to the "Foreign Tax" panel are outlined in paragraph 5.4 to include a country drop-down menu where a filer selects the field "Amount of non-refundable foreign tax paid on this income". The manual notes that if "Canada" is selected from the drop-down menu, an additional field, "Amount of federal tax only of non-refundable foreign tax withheld", is presented for completion and must be populated.
- Updates have been made to the "Irish employment/pension/taxable benefits and foreign employment not subject to PAYE" panel to update the field on employments not subject to PAYE to "Income attributable to the performance in the State of the duties of foreign offices and foreign employments on which PAYE has not been withheld and not subject to exemption", as set out in paragraph 6.1. The taxpayer is now required to provide the employer's name, address and tax reference in that jurisdiction.
- A reminder of the amount of expenses that can be claimed as allowable deductions in relation to remote working relief (which is 30% of the broadband or utility cost – not the full amount incurred) has been included in paragraph 6.2.
- Updates to paragraph 6.3, "Social Welfare Payments", advise the following:
  - Updated social welfare payment information for 2023 will be pre-filled on returns from late January. Returns submitted before this information becomes available on the return must still include welfare payments, where received by the taxpayer.
  - Once pre-filled, the annual social welfare payment figure will be shown in a summary table in the return. Filers are reminded to fill in the fields in the return to declare the income and include it in the summary calculation of tax due.
  - The summary table may include cents; however, the social welfare fields are validated to accept whole number values only (no cents), so the figures need to be rounded down.
- An advisory message has been included to highlight new fields to be added to a new "Lump Sums from Relevant (Foreign) Pension Arrangements" panel in relation to s200A TCA 1997 in paragraph 6.4. Section 200A provides for the tax treatment of pension lump sum payments arising from foreign pension arrangements that were not provided for under s790AA. Filers are advised that this panel will be updated at the end of January.
- Confirmation of updates to the "Transborder Relief" panel regarding the drop-down country field is included in paragraph 7.1. The country drop-down list is updated to include UK Scotland, UK England, UK Wales, UK Northern Ireland and UK other.
- Updates to the "Personal Tax Credits" panel are included in paragraph 8 to reflect increased values, as provided for by Finance (No. 2) Act 2023.

No. 016 Exemption of Certain Profits of Microgeneration of Electricity

Finance (No. 2) Act 2023 increased the exempt amount of profits that can arise to a qualifying individual from the microgeneration of electricity from €200 to €400 with effect from 1 January 2024 and extended the scheme to the end of 2025. Revenue's manual "Exemption of Certain Profits of Microgeneration of Electricity" has been updated to reflect this amendment to s216 TCA 1997.

There is no requirement for individuals to include the exempt profits in an income tax return (Form 11 or Form 12). Therefore, where an individual is not already required to file an income tax return, the fact that the individual has exempt profits from the microgeneration of electricity does not necessitate the filing of a tax return. However, where the annual profit on the microgeneration of electricity exceeds the exempt amount, the excess must be declared and will be subject to income tax, USC and PRSI in the usual manner.

No. 017 Accelerated Capital Allowances for Energy-Efficient Equipment

Revenue's manual "Accelerated Capital Allowances for Energy-Efficient Equipment [Section 285A TCA 1997]" has been updated to reflect the extension of the scheme to 31 December 2025, as provided for by Finance (No. 2) Act 2023.

No. 018 VRT Manual Section 5

Revenue's "Vehicle Registration Tax Manual" has been updated to reflect that the National Prosecutions and Seizures Office is now within Investigation, Prosecution and Frontier Management Division.

No. 019 Modernising Ireland's Administration of Value-Added Tax – Public Consultation Extended to 31 January

On 13 October 2023 Revenue announced the launch of a public consultation on modernising Ireland's administration of value-added Tax (VAT). The focus of this initial public consultation is the modernisation of business-to-business (B2B) and business-to-government (B2G) VAT reporting, supported by e-invoicing.

Revenue extended the consultation period from Friday, 12 January, to Wednesday, 31 January 2024, to provide stakeholders with an additional opportunity to share their views, suggestions and possible concerns.

The consultation paper is published on Revenue's website. The ITI made a detailed submission to this consultation, and details can be found on our website.

No. 020 Farming: Tax Treatment of Green, Low-Carbon, Agri-Environmental Scheme (GLAS)

Revenue has updated the manual "Farming: Tax Treatment of Green, Low-Carbon, Agri-Environmental Scheme (GLAS)" to reflect that the scheme ended on 31 December 2022 and the final payments under the scheme commenced in March 2023.

No. 021 Loss Relief for Self-employed Individuals Adversely Impacted by Covid-19 Restrictions

Revenue has updated the manual "Loss Relief for Self-employed Individuals Adversely Impacted by Covid-19 Restrictions" to confirm that a claim for relevant loss relief under s395A TCA 1997 or relevant allowances under s304(3A) TCA 1997 can no longer be made due to the time limits provided for in the legislation. The last possible date by which a final claim could be made under s395A or s304(3A) was the due date for the income tax return Form 11 for 2021, which was 31 October 2022. The manual has also been updated to include references to s1077F TCA 1997 and the Code of Practice for Revenue Compliance Interventions.

No. 022 Anti-hybrid Rules

Revenue has updated the manual "Guidance on the Anti-hybrid Rules" to reflect amendments made by Finance (No. 2) Act 2023.

No. 023 Accelerated Capital Allowances for Farm Safety Equipment

The manual "Accelerated Capital Allowances for Farm Safety Equipment" has been updated:

- to reflect the revised threshold of State Aid received of €10,000, above which there is a requirement to publish details of the recipient, as provided by Finance Act 2023; and
- to reflect the extension of the scheme of accelerated capital allowances available under s285D TCA 1997 to 31 December 2026, as provided by Finance (No. 2) Act 2023.

No. 024 VAT Return of Trading Details

Revenue has published a new "VAT Return of Trading Details" manual to provide assistance to filers submitting the annual VAT RTD. Guidance is included on the sections of the return, amending a VAT RTD and compliance measures and to address specific queries raised about VAT RTD filing.

No. 025 Irish Real Estate Funds (IREF) January 2024 Filing – Updated Form IREF Available

Irish real estate funds (IREFs) with accounting periods ending between 1 January 2023 and 30 June 2023 are required to file a Form IREF on or before 30 January 2024, as provided by s739R(2) TCA 1997.

Revenue has updated its website to include a new version of the Form IREF, which is available on the "Related Forms" panel of the Collective Investment Vehicles webpage. The Notes tab in the Form IREF 2024 has been updated to provide further guidance.

No. 026 Annual Average Exchange Rates

Revenue's "Annual Average Exchange Rates" manual now includes exchange rates for the 2023 calendar year. The Lloyds sterling conversion rates have been removed from this manual as they are no longer relevant.

No. 027 Consolidation of Two of the Manufacturer's Excise Licences into One Licence

Revenue's "Guide to Excise Licences" has been amended to reflect the consolidation of two manufacturers' licences, named "Compounder of Spirits" and "Rectifier of Spirits", into one licence, named the "Manufacturer's Licence – Compounder & Rectifier of Spirits".

No. 028 Farming Taxation Guidance Updated

Revenue has updated a number of manuals relating to the taxation of farming to reflect Finance (No. 2) Act 2023 amendments:

- The "Stock Relief – Young Trained Farmers" manual reflects an increase in the maximum amount of relief that may be granted under s667B (stock relief) and s667D (relief for succession farm partnerships) TCA 1997 and s81AA of the Stamp Duties Consolidation Act 1999 (SDCA 1999) to €100,000.
- The "Taxation Issues for Registered Farm Partnerships" manual reflects an increase to €20,000 in the maximum cash equivalent of relief that a partner is entitled to receive over a three-year period. New content has been included in section 2.1.2. of the manual regarding Regulation (EU) No. 1408/2013, which deals with *de minimus* aid in the agriculture sector and sets out the total *de minimus* aid available to any individual farmer.
- The "Tax Credit for Succession Farm Partnerships" manual has been updated to provide for an increase in the maximum amount of relief that may be granted under s667B and s667D TCA 1997 and under s81AA SDCA to €100,000.

No. 029 Capital Gains Tax (CGT) Farm Restructuring Relief

Revenue has updated the manual "Relief for Farm Restructuring (S.604B)" to reflect the amendment in s3 Finance Act 2023 to extend end of the relevant period in which the initial restructuring transaction must be completed from 30 June 2023 to 31 December 2025.

No. 030 Tax and Duty Manual 04-06-04 – Leasing of Machinery or Plant – General Principles of Taxation

Revenue published an updated manual, "Leasing of Machinery or Plant – General Principles of Taxation", to reflect the general legislative framework applicable when calculating taxable profits and gains related to leases of machinery or plant after the

commencement of Finance (No. 2) Act 2023 on 1 January 2024.

The manual sets out current Revenue guidance on general matters relating to the taxation of leases of machinery or plant, superseding previous guidance on the topic.

No. 031 Enhanced Reporting Requirements – Revenue Online Events

Revenue is holding further online events in February through Eventbrite to give an overview of Enhanced Reporting Requirements (ERR) for expenses/benefits paid without the deduction of tax to employees or directors. Reporting the details of these expenses and benefits applies from 1 January 2024.

To attend one of these events:

- go to www.revenue.ie/err,
- select the link to Revenue's "Eventbrite webpage" and
- follow the on-screen instructions to book a ticket.

A reminder will be sent from Eventbrite on the day the event is to take place.

A recording of the ERR webinar is available on the Revenue website at www.revenue.ie/err, on the overview page.

No. 032 Exchange of Information – Deferral of Filing Deadline for Platform Operators

The first returns under Council Directive (EU) 2021/514 (DAC 7) in respect of the period from 1 January to 31 December 2023 were due to be filed by platform operators by 31 January 2024. Platform operators must also provide a reportable seller with a copy of the information related to them that is included in the DAC 7 return by the same date.

Revenue confirmed that this deadline was deferred by one week to Wednesday, 7 February 2024. This applies to the deadline for both the making of a return to Revenue and the provision of information to reportable sellers. Revenue's customer service team is available to answer queries by email at DAC7@revenue.ie.

No. 033 Stamp Duty Manual – Pre Self-Assessment Is no Longer Relevant

Revenue's "Pre Self-Assessment – Stamp Duty Manual" has been deemed no longer relevant as self-assessment for stamp duty has been in place since 2012.

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

Mark Ludlow
Senior Associate – Tax, RDJ LLP

	Topic	Court
01	**Income Tax: *Siobhan Fahy v The Revenue Commissioners***	High Court
02	**Corporation Tax: *Revenue Commissioners v Mullglen Limited & Olgary Fishing Company Limited***	High Court
03	**Income Tax: *Brendan Thornton v Revenue Commissioners / Paul McDermott v Revenue Commissioners***	Court of Appeal
04	**Corporation Tax: Determination 16TACD2024**	Tax Appeals Commission
05	**Capital Gains Tax: Determination 147TACD2023**	Tax Appeals Commission

01 Income Tax: Siobhan Fahy v The Revenue Commissioners [2023] IEHC 710

In the case of *Siobhan Fahy v The Revenue Commissioners* [2023] IEHC 710 (Quinn J) the High Court considered a taxpayer's appeal against Tax Appeals Commission (TAC) determination 139TACD2022 (which was considered in this article in *Irish Tax Review*, Issue 1 of 2023). The appellant carried on a solicitor's practice (as a sole trader). She had made a payment of €220,000 to a company of which she was the 99% shareholder. The TAC held that the payment was not deductible as an expense of her solicitor's practice. The Commissioner held as a material fact, on the basis of the evidence given by the appellant at the hearing, that "the appellant identified no benefit or gain to the solicitor's trade (Fahy Law) for the expenditure incurred for services provided by MLG" and that the payment had been "motivated by the appellant's desire to provide for and ameliorate her pension"; it followed that the payment was not made wholly and exclusively for the purposes of her trade and so had to be disallowed by s81(2)(a) TCA 1997.

Three questions were stated to the High Court.

- The first concerned the proper construction of s949AG TCA 1997. The appellant argued that, on her reading of s949AG, the Commissioner in making her determination should not have had regard to the evidence that the appellant, herself, gave before the TAC but, rather, should have had regard only to matters that had actually been considered by Revenue at the time that it raised the assessment. The High Court rejected this contention, noting that s949AG requires the TAC to also have regard to matters to which the Revenue Commissioners "may or were required by the Acts to have regard". The High Court accepted that Revenue

could have had regard to the motivations of the appellant had that information been available to it, and therefore the TAC could have regard to the appellant's evidence at the hearing.

- The court held that the second question put to it, and the manner in which it had been argued by the appellant before the court, amounted to no more than a rearguing of the points that had been argued before the TAC and held that this was not a sufficient or an appropriate basis on which to contend that an error of law had occurred.
- The third question before the court concerned whether the TAC had a general jurisdiction to consider the validity of a tax assessment. The appellant argued that the assessment raised on her was invalid on the basis that the assessment had, in error, referred to s959AI and stated that no appeal could be made against the assessment. Revenue accepted that this was a mistake but observed that the appellant had not been prejudiced by this wording as her agents had filed an appeal within the statutory period. The court reviewed s949AK TCA 1997 and the Court of Appeal's decision in *Lee v The Revenue Commissioners* [2021] IECA 18 and rejected the appellant's argument, holding that the TAC had no general jurisdiction to consider the validity of a tax assessment. Therefore the TAC had no jurisdiction to invalidate an assessment that erroneously referred to a non-applicable section (i.e. s959AI) and incorrectly stated on its face that the appellant had no right of appeal.

Accordingly, the court held in favour of Revenue on all three questions and rejected the appellant's appeal.

In his judgment Quinn J took the opportunity to distinguish between the circumstances in which the TAC has jurisdiction to consider the validity of a notice of assessment and those in which it does not. Although the court held that the TAC had no **general** jurisdiction to consider the validity of an assessment (and thus the appellant was unsuccessful in the particular facts), it stated that there are some circumstances in which the TAC has a **limited** jurisdiction to consider the validity of an assessment. In this regard Quinn J noted that s949AK(3) provides that the TAC can consider whether Revenue was precluded from raising an assessment under one of the grounds mentioned in s959AF(2) (which references s959AA, s959AB, s959AC and s959AD, i.e. assessments raised beyond the four-year rule), and in such circumstances the TAC has jurisdiction to determine that an assessment is void.

02 Corporation Tax: Revenue Commissioners v Mullglen Limited & Olgary Fishing Company Limited [2023] IEHC 614

In *Revenue Commissioners v Mullglen Limited & Olgary Fishing Company Limited* [2023] IEHC 614 (Egan J) the High Court considered an appeal by Revenue from the decision of the Tax Appeals Commission (TAC) that the appellants were entitled to claim allowances under s291A TCA 1997 (specified intangible assets) in respect of capital expenditure incurred by them on the acquisition of fishing capacity.

The central issue before the court was whether the TAC was correct to determine that fishing capacity (i.e. a fishing quota) and/or a sea-fishing boat licence was a "specified intangible asset" under s291A(1)(h) on the basis that it was "an authorisation without which it would not be permissible for...a product...of any process...to be sold for any purpose for which it was intended".

The questions before the court were:

- Is the scope of s291A limited to the field of intellectual property and the knowledge economy?

The court, considered each aspect separately and held (rejecting Revenue's arguments on this point) that:

- The definition of "specified intangible asset" in s291A is expressly not limited to intellectual property rights, and after considering the kinds of assets listed, the court noted that they are diverse. The court further noted that both licences and goodwill may qualify. Accordingly, the court concluded that the asset purchased does not need to be "intellectual property".
- The intangible assets do not necessarily need to be confined to the knowledge economy. The court reached this conclusion on the basis that references to "**any** authorisation without which it would not be permissible for...**a** product of **any** design, formula, process or invention to be sold for any purpose for which it was intended [emphasis in the judgment]". Egan J's reasoning was that "[t]he multiple uses of the words "a" and "any" indicate that, insofar as concerns the kinds of authorisations, products, companies and trades in issue, the provision is intended to be reasonably broad in scope."

The court concluded that although the section includes intellectual property and knowledge economy intangible assets (e.g. computer software, formulae, scientific and industrial information), "the section is also capable of covering a significantly broader array of intangible assets".

- May fishing capacity be regarded as an authorisation without which it would not be permissible for a product of any process to be sold for any purpose for which it was intended?The court, allowing Revenue's appeal, held that:
  - For the purposes of s291A(1)(h) the **authorisation** must be in respect of the **product** of "any design, formula, process or invention", and not in respect of a raw material that is subjected to a process.
  - The fishing capacity or sea-fishing boat licence (or both), if it is treated as an authorisation, is not an authorisation in respect of a product **of a** process but, rather, is an authorisation to acquire a raw material (i.e. fish, a living aquatic resource).

03 Income Tax: Brendan Thornton v Revenue Commissioners / Paul McDermott v Revenue Commissioners [2023] IECA 316

Allen J delivered the judgment of the Court of Appeal in *Brendan Thornton v Revenue Commissioners / Paul McDermott v Revenue Commissioners* [2023] IECA 316 on 21 December 2023. The court was composed of Faherty J, Allen J and Butler J.

It heard the taxpayers' joined appeals against Egan J's decision in the High Court ([2022] IEHC 396), which was considered in this article in *Irish Tax Review*, Issue 3 of 2022.

The appellants were two of a number of participants in syndicates that entered into certain financial transactions.

Those transactions were treated by the taxpayers as having amounted to the carrying on of a trade in financial instruments. That trade, they argued, had generated losses (on the basis that certain dividend income that they received should be disregarded as s812 TCA 1997 should deem that income to have been received by another party, rather than them), with the result, the appellants claimed, that the losses should be allowed to shelter their other income and thereby reduce their income tax liabilities. Revenue had disallowed the losses on the basis that the appellants were not engaged in a trade and that the dividend income should be treated as received by them. Revenue had

also treated the appellants' expressions of doubt as insufficient.

The issues before the court were:

1. whether the dividend purchase transactions were part of a trade in financial instruments;
2. whether, per s812, the dividend income received by the appellants should be deemed as not having been received by them; and
3. whether the appellants had made valid expressions of doubt (EOD) in their tax returns.

The High Court had answered these questions as (1) no, (2) yes, (3) no. The taxpayer appealed the High Court's decision on issues (1) and (3). Revenue cross-appealed the decision on issue (2).

The Court of Appeal held, deciding each question in favour of Revenue, the following.

Trade in financial instruments

The High Court was correct to uphold the determination of the Tax Appeals Commission (TAC) that the appellants were not carrying on a trade. The Court of Appeal described the substance of the appellants' arguments in this regard as consisting of the proposition that the appellants' tax avoidance motivations in entering into the transactions ought to have been disregarded entirely by the TAC when considering whether they were carrying on a trade and that the TAC (and the High Court) had erred in considering the appellants' tax avoidance motivations [paras 55–56]. The court noted that at the oral hearing the appellants acknowledged that some weight ought to be given to their motives, but they then argued that the TAC had placed excessive weight on their motives and that the High Court had erred in not overturning the TAC's determination. The Court of Appeal noted that Egan J in the High Court had set out the three considerations that had informed her approach: (a) the court is bound by the TAC's findings of primary fact; (b) the evaluation of whether a transaction is trading is, itself, based on the interplay of a number of factual considerations, which it was not a function of the High Court to revisit; and (c) the assessment of the trading issue is a largely a matter of degree of judgment, which the legislature had vested in the TAC. The Court of Appeal observed that although the appellants had not overtly suggested that Egan J had erred in this approach, any argument regarding the weight to be attached by the TAC to fiscal motive must amount to an implicit argument that the function of the High Court was to second-guess the TAC's assessment of the trading issue. Accordingly, the court rejected this and the appellants' other arguments on the trading status issue.

Dividend income received

The High Court was incorrect to hold that s812 deemed the dividend to not be income of the appellants. The appellants had acquired the right to receive dividends in respect of shares that were owned by a British Virgin Islands (BVI) company. The appellants argued that s812 should apply to deem the dividend to be the income of the BVI company, and not their income, despite the fact that they received the dividends. The Court of Appeal held that the question was not whether s812 deemed the dividends to be income of the BVI company but, rather, whether the section introduced a fiction that the dividends (although received by the appellants) was deemed not to be their income. The court considered the history of the legislation and placed weight on the fact that it had been amended in 2006 by the repeal of s812(2)(a)(iii). Before that amendment, s812(2)(a)(iii) provided that where s812 deemed the dividend to be income of the owner, it "shall not be deemed to be income of any other person". The court held that s812 did not contain a secondary fiction. The appellants had actually received the dividends, and s812 did not deem them not to have received that income (regardless of whether s812 could operate to treat the BVI company as having also been in receipt of the dividend income).

Expressions of doubt

The High Court was correct to uphold the TAC's determination that the appellants had not made valid EODs on their returns. Although the Court of Appeal expressed disagreement with the TAC's determination that the EODs had not been genuine, it agreed with the High Court that an EOD must adequately alert the inspector to the essential issues giving rise to the existence of the relevant doubt (a point that it noted the appellants had not challenged). Although the EODs had referenced s812, they had made no reference to any doubt regarding whether the appellants were carrying on a trade (in respect of the financial transactions). Therefore no valid EOD had been made in respect of the trading status issue.

04 Corporation Tax: TAC Determination 16TACD2024

In this matter the appellant company had sought to amend its corporation tax return for 2020 to increase the amount of research and development (R&D) tax credits claimed. The appellant sought to make this amendment in January 2022, i.e. more than 12 months after the end of its accounting year.

Revenue initially made the amendment requested by the appellant and issued an amended notice of assessment in March 2022. Revenue subsequently issued a second amended assessment to reverse the increased R&D claim, which assessment purported on its face to have been issued under s959U TCA 1997 (and further stated that no appeal could be made against that assessment). In June 2022 Revenue issued a third amended assessment, this time stated as being issued under Part 41A TCA 1997.

The appellant appealed the second and third amended assessments, arguing that the second assessment was invalid as it purported to have been raised under s959U and that Revenue was precluded from raising the third assessment by s932 (which provides "[e]xcept as provided in Part 41A or where otherwise expressly authorised by the Tax Acts, an assessment to income tax or corporation tax shall not be altered before the time for hearing and determining appeals and then only in cases of assessments appealed against and in accordance with such determination…").

On the procedural issues the Tax Appeals Commission (TAC):

- Rejected the appeal against the second amended assessment on the basis that the Court of Appeal's judgment in *Lee v Revenue Commissioners* was clear authority that the TAC had no jurisdiction to determine the validity of the assessment and "[no] power to look behind the statutory provision invoked by the respondent when raising an assessment". Therefore, as the assessment stated that it had been raised under s959U, no appeal to the TAC could be made against that assessment (per s959AG).
- Rejected the appellant's argument that the respondent was precluded by s932 from raising the third amended assessment as s932 was contained in Part 40 and s23 of the Finance (Tax Appeals) Act 2015 provides that "Part 40 shall not apply to an appeal made on or after the commencement date". The Commissioner further stated that even if s932 was operative, then, as there was no (valid) appeal arising from the second amended assessment, the respondent did not breach s932.

On the substantive issue the TAC upheld the third amended assessment, holding that the appellant was precluded from making an R&D claim more than 12 months after the end the accounting period in which it incurred the expenditure.

05 Capital Gains Tax: TAC Determination 147TACD2023

In 1997 the appellant entered into two seven-year leases over farmland. Those leases provided him with an option to purchase the lands for the sum of £91,000 at their expiration. However, the relationship between the appellant and the landowner deteriorated, to the point where, in May 1998, the appellant, while placing his cattle on the leased lands, "heard the discharge of a shotgun and the 'hail fell over the top of his head down the field'… [the landowner] approached him and the farmhand with a sword and a struggle ensued". Therefore the appellant was effectively forced off the land. After the landowner's death the appellant initiated Circuit Court proceedings against the landowner's estate. Those proceedings were ultimately settled with an agreement that the lands would be sold and the appellant would receive 35% of the proceeds. The appellant received €134,375 from the estate in July 2013. His 2012 income tax return disclosed a sum of €134,375 as proceeds from the sale of agricultural lands with a net gain of nil and no reliefs claimed.

On 21 March 2019 Revenue raised a CGT assessment for the tax year 2013 in respect of CGT on the sum of €134,375. That assessment was appealed to the Tax Appeals Commission (TAC) on 19 June 2019 by the appellant's accountant, and the appellant subsequently engaged a solicitor shortly before the hearing of the appeal.

The questions before the TAC were:

- Should the appellant be allowed to make a time-limit argument (that the assessment had been raised beyond the four-year statutory period) as an additional ground of appeal where that ground had not been included in the grounds of appeal on his notice of appeal and raised in correspondence from the appellant's agent only on the eve of the hearing (24 March 2023)?

  On this preliminary issue of the admissibility of the time-limit argument, the TAC referred to High Court's decision in *Thomas McNamara v Revenue Commissioners* [2023] IEHC 15 (which was considered in this article in *Irish Tax Review*, Issue 1 of 2023) and held that "the Commissioner, who must abide by fair procedures for each of the parties in an appeal, is not satisfied that the time-limit issue could not reasonably have been included with the notice. To find in favour of the appellant would disregard the findings in *McNamara* and provide precedent for other appellants before the Commission to engage in the practice of submitting submissions in close proximity to the hearing. Had the appellant's solicitor submitted his request upon appointment, the Commissioner may have reached a different finding, but as he did not the Commissioner is not satisfied that the appellant could not reasonably have included the time-limit as a ground of appeal in the Notice."

- Does a "chose in action" (i.e. the claim against the deceased's estate that the appellant settled) have a base cost by reference to its value at the date it is acquired?

  The TAC rejected the appellant's arguments that he should be attributed a base cost by reference to a percentage of the market value of the lands on the date that he acquired his chose in action (i.e. in May 1998, when he was forced off the lands), noting that there was nothing in s552 TCA 1997 to support the appellant's submission that he was entitled to any notional base cost by reference to the value of the lands. The TAC further noted that the appellant had given no consideration to acquire the chose in action and therefore was subject to CGT on the full proceeds (less any deductions allowed under s552).

The determination notes that the appellant has requested an appeal to the High Court.

Direct Tax Cases: Decisions from the UK and European Courts

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	Topic	Court
01	**Income Tax – Transfer of Assets Abroad**	UK Supreme Court
02	**Capital Gains Tax – AI-Generated Cases**	UK First-tier Tribunal
03	**Capital Gains Tax – Share-for-Share Exchange**	England and Wales Court of Appeal
04	**Capital Gains Tax – PPR Relief**	UK First-tier Tribunal
05	**State Aid – Tax Rulings on Intra-group Financing Transactions**	Court of Justice of the European Union

01 Income Tax – Transfer of Assets Abroad

In ***HMRC v Fisher*** [2023] UKSC 44 the UK Supreme Court found that the transfer of a business to Gibraltar was not subject to the transfer-of-assets abroad (TOAA) rules, as found in the UK equivalent of s806 TCA 1997. The provisions are specifically stipulated to apply to transfers of assets by individuals only.

The Fisher family ran a profitable betting business, Stan James (Abingdon) Limited (SJA). At the time under scrutiny, the shareholders were Anne, Stephen, Dianne and Peter Fisher.

In order to pay lower betting duty rates, a competitor closed its UK telebetting business and relocated to Gibraltar. SJA decided that unless it followed suit and moved to Gibraltar too, the business would not survive. To comply with betting laws, a separate company, Stan James Gibraltar Ltd (SJG), was incorporated in Gibraltar by the Fishers. In February 2000 the business of SJA was transferred to SJG at market value.

HMRC raised assessments against Stephen, Anne and Peter Fisher ("the Fishers") taxing the profits of SJG under the TOAA provisions as found in the UK equivalent of s806 TCA 1997. No assessments were raised on Dianne as she was not a UK resident. The assessments were raised on the basis that:

- There had been a transfer of assets (the business of SJA to SJG).
- Stephen, Anne and Peter had the "power to enjoy" those assets by virtue of their shareholdings.

- The transfer had the purpose of avoiding taxation (betting duty).

The Supreme Court decided that the TOAA provisions are limited to charging individuals who transfer assets abroad. The fact that the Fishers were the shareholders of the transferor business, SJA, did not make them the transferors for the purposes of the TOAA rules. The rules do not apply to an individual in relation to a transfer made by a company in which they are a shareholder, notwithstanding the size of their shareholding. The court decided that the TOAA provisions do not provide any framework for determining when an individual should be treated as controlling a company for the purpose of applying the rules.

The Supreme Court held that the Fishers were not either singly or collectively the transferors of the business that was sold by SJA to SJG and that the TOAA provisions could therefore not apply. The court went on to comment that this did not, as HMRC had claimed, leave a lacuna in the legislation allowing taxpayers to put assets into a company and then get the company to transfer those assets abroad. In support of this finding, the court cited the existence of the UK equivalent of s807A TCA 1997, which provides for non-transferors to be liable where s806 does not apply.

02 Capital Gains Tax – AI-Generated Cases

In ***Harber v HMRC*** [2023] UKFTT 1007 (TC) the taxpayer's reliance on artificial intelligence (AI) proved to be unreliable in her "reasonable excuse" appeal, leading to her presenting nine fictitious cases to the court. The appeal was lost by the taxpayer, who had been penalised for not notifying a CGT liability.

This case involved a taxpayer's appeal against a £3,265 penalty for failure to notify her £16,326 liability to CGT on the disposal of a rental property. HMRC had raised the assessment for the gains when querying her receipt of undeclared rental income. The appellant then claimed "reasonable excuse" due to poor mental health and ignorance of the law. However, it was soon evident that nine case law examples relied on in her arguments had been generated by AI, with no record of these cases to be found anywhere.

Mrs Harber had claimed that the cases relied on in her arguments had been provided to her by "a friend in a solicitor's office". The court accepted that she had not been aware that the cases were not genuine nor did she know how to check their validity.

Unsurprisingly, the fabricated cases that were relied on set out extremely favourable precedents for Harber. On questioning, the appellant admitted that it was "possible" that the cases had been generated by an AI system such as ChatGPT. She argued, however, that she "couldn't see that it made any difference", owing to the fact that there "must have been" other relevant First-tier Tribunal (FTT) cases in which the FTT had decided that ignorance of the law and/or mental health provided a reasonable excuse. She further questioned how the HMRC cases could be taken as definitely genuine. The FTT had a clear response to this, noting that HMRC had full copies of each of the judgments it was relying on rather than simply summaries, further observing that the cases were also available on public record on the various courts websites.

The FTT ultimately rejected Mrs Harber's appeal, citing that her mental health condition was not enough to find that a reasonable person would have been prevented from contacting HMRC in light of her ability to sell the property, liaise with her solicitors and work out an approximate capital gain. The judge noted, however, that the decision would have been the same even if Mrs Harber had not provided the false cases.

03 Capital Gains Tax – Share-for-Share Exchange

In ***Delinian Ltd (formerly Euromoney Institutional Investor Plc) v HMRC*** [2023] EWCA Civ. 1281 the Court of Appeal (CA) upheld the decision of the Upper Tribunal (UT), concluding that the avoidance of liability to tax was a purpose, but not the main purpose or one of the main purposes, of the relevant arrangements, for the purposes of the UK equivalent of s586(3) TCA 1997. The UT's decision was reviewed in "Direct Tax Cases: Decisions from the UK and European Courts", *Irish Tax Review*, 35/3 (2022).

Euromoney disposed of its shareholding in Capital Data Ltd to Diamond Topco Ltd (DTL). The consideration consisted of the issue of ordinary shares and redeemable preference shares in DTL. The original idea had been that the consideration would be a combination of ordinary shares and cash. Euromoney later realised that it would be more tax-efficient if it received the redeemable preference shares in DTL instead of in cash. On that basis, Euromoney would pay no tax when it redeemed the preference shares more than 12 months later. For that reason, Euromoney renegotiated its commercial deal with DTL so that it exchanged its shares in Capital Data for a combination of ordinary and preference shares in DTL. The idea was that the entire transaction would be treated as a share-for-share exchange under the UK equivalent of s586 TCA 1997, with no immediate tax charge. When the preference shares were redeemed, the substantial shareholding exemption would apply to exempt the gain.

Where s586 applies, an exchange of shares is treated as resulting in neither a gain nor a loss. However, as in the UK, s586 will not apply, by virtue of s586(3), unless the exchange is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is the avoidance of tax.

HMRC sought to deny relief under the UK equivalent of s586(3) TCA 1997. It argued that the exchange formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was the avoidance of liability to corporation tax on chargeable gains, with the result that share-for-share relief was disapplied. HMRC amended Euromoney's corporation tax return, increasing the amount of corporation tax payable for the accounting period ended 30 September 2015 by £10,483,731.87. Euromoney appealed.

The CA held that there are plainly two limbs to the statutory test established by the UK equivalent of s586(3) TCA 1997. The first is to ask whether the exchange is effected for bona fide commercial reasons. The second is to ask whether the exchange forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is tax avoidance.

With regard to the first limb, the CA held that the First-tier Tribunal (FTT) should determine whether the exchange transaction was effected for bona fide commercial reasons, according to the natural meaning of those words. The CA stated that it cannot be controversial that parties may enter into a share exchange transaction for bona fide commercial reasons even if that transaction is wholly or partly tax driven. The tax purpose is the subject of inquiry under the second limb, not the first. On the facts of the present case this was not in dispute, as it was common ground that the entire exchange was effected for bona fide commercial reasons.

The CA considered the second limb to be the central issue in the appeal, and the question was whether the exchange formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was tax avoidance. On this issue the CA found that the legislation did not require the FTT to break down an arrangement into its component parts or "to sift through every permutation or combination of the elements of the scheme or arrangements"

to identify a single element with a main purpose of tax avoidance. If that approach were taken, it would effectively make any analysis of whether the tax purpose was a "main purpose" redundant, as once a "tax arrangement" had been identified, it would invariably have such a purpose. The court, therefore, found for the taxpayer.

04 Capital Gains Tax – PPR Relief

In ***Sabbir Patwary v HMRC*** [2024] UKFTT 00053 (TC) the First-tier Tribunal (FTT) found that a taxpayer provided "little" evidence to demonstrate that he occupied a property as his only or main residence, meaning that his claim for CGT principal private residence (PPR) relief was denied.

In 2010 Mr Patwary bought a property in Emmott Close, London. The property was sold in 2016, and a capital gain was realised. Mr Patwary claimed that he lived at the property from 9 April 2010 to 31 October 2013, together with his girlfriend and a tenant, who shared the whole property with them.

Before this Mr Patwary lived at home with his parents. From October 2013 the property was occupied by a tenant. Mr Patwary claimed PPR relief on the disposal of the property, which HMRC denied. He appealed to the FTT.

The FTT held that there was "remarkably little" evidence to demonstrate a period of residence in the property over the three years. The evidence included the following:

- Mr Patwary saw no need to change his address for anything as his father could bring any post to him daily.
- He did not register to vote at his new address as he preferred to vote in the more marginal constituency of his parents' home.
- He did not need a parking permit at his property.
- He did not own a TV and so did not have a TV licence.
- He did not have council tax statements for the property.
- He did not think his payslips had his address on them.
- He could not remember whether his marriage certificate had his address on it.

The FTT noted that the evidence that was produced by the taxpayer was all of the kind that might be properly addressed to an owner, even if someone else was living in the property at the time. It concluded that the appellant had not discharged the burden of proof to show that the assessment was incorrect. The appeal was dismissed.

05 State Aid – Tax Rulings on Intra-group Financing Transactions

The Court of Justice of the European Union (CJEU) has ruled in joined cases **C-451/21 P** and **C-454/21 P** that Luxembourg did not grant State Aid to Engie, a French company. Luxembourg and Engie had appealed the 12 May 2021 decision of the General Court of the European Union, which had concluded that Luxembourg had granted State Aid to Engie. The CJEU ruled that the European Commission had erred in its State Aid analysis of the tax rulings granted to the Engie group.

The Commission's investigation focused on tax rulings issued by the Luxembourg tax authorities between 2008 and 2014, which confirmed the tax treatment of certain mandatorily convertible instruments issued by two Luxembourg group subsidiaries

to two other Luxembourg companies of the group.

The CJEU ruled that the Commission erred in determining the reference system that is the starting point of the comparative analysis to be performed as part of the selectivity assessment, being one of the key conditions to be met for classifying a tax measure as State Aid. The reference system or the “normal” tax regime, or the basis of which the condition relating to selectivity must be analysed, must include the provisions laying down the exemptions that the national tax authorities considered to be applicable to the present case, where those provisions, in so far as they do not manifestly discriminate between undertakings, do not, in themselves, confer a selective advantage within the meaning of EU law. The CJEU held that the Commission could not therefore establish a derogation from a reference framework merely by finding, as it did in the case, that a measure departs from a general objective of taxing all companies resident in the Member State concerned, without taking account of provisions of national law specifying the manner in which that objective is to be implemented.

International Tax Update

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01 BEPS: Pillar One and Pillar Two Recent Developments

02 OECD Tax Developments

03 EU Tax Developments

04 Russia Ratifies Suspension of Certain Provisions in 38 Tax Treaties with "Unfriendly" States

05 Australia: Update on Interest Limitation Rules

06 Democratic Republic of the Congo Joins Global Forum on Tax

07 Belarus Introduces New Corporate Income Tax Rate in 2024

08 UK Tax Simplification Measures

01 BEPS: Pillar One and Pillar Two Recent Developments

Further technical guidance on Pillar Two

Having released the Pillar Two rules in December 2021, guidance to supplement the rules in March 2022 and a safe harbours document in December 2022, the OECD/G20 Inclusive Framework on BEPS released updated guidance in February and July 2023 and further technical guidance in December 2023. The purpose of the latest guidance is to clarify the application of Pillar Two, and it is intended to supplement the rules and pre-existing guidance issued by the OECD.

The December 2023 guidance includes guidance on the transitional country-by-country (CbC) reporting safe harbour and a mechanism for allocating taxes arising in a blended controlled foreign corporation (CFC) tax regime. The guidance provided on the requirement that the business's CbC report must be prepared and filed using qualified financial statements includes:

- The data used in the transitional CbC reporting safe harbour calculations for a country must come from the same qualified financial statements (i.e. the consolidated financial statements of the ultimate parent entity or the separate financial statements of each group entity).
- It is permitted to use data from the consolidated financial statements of the

ultimate parent entity for some countries and data from the separate financial statements of each group entity for other countries.

- Unless explicitly required, adjustments to qualified financial statement data are not permitted.
- Where groups are in scope of the Pillar Two rules but are not required to file CbC reports, they can still be eligible for the transitional CbC reporting safe harbour if they prepare calculations using data from qualified financial statements that would have been included in a CbC report.

Further guidance will be released on an ongoing basis in response to stakeholder requests.

Five EU Member States elect to delay application of IIR and UTPR

The European Commission announced on 12 December 2023 that Estonia, Latvia, Lithuania, Malta and Slovakia notified the Commission of their intention to delay the application of the income inclusion rule (IIR) and the undertaxed profits rule (UTPR) for six fiscal years beginning from 31 December 2023. Each of the five EU Member States has submitted a valid election in accordance with Article 50 of the Pillar Two Directive declaring that no more than 12 ultimate parent entities of groups within the scope of the Directive are located in their respective territories.

European Commission publishes FAQs on Pillar Two Directive

On 22 December 2023 the European Commission published frequently asked questions (FAQs) regarding the correct interpretation and transposition the EU Pillar Two Directive. The Commission noted that the collection of questions represents the outcome of informal reflections that are not to be interpreted as binding.

The FAQs cover some general questions and also address the following:

- general provisions;
- the income inclusion rule and the undertaxed profits rule;
- computation of adjusted covered taxes;
- computation of the qualifying income or loss;
- computation of the effective tax rate and the top-up tax;
- tax neutrality and distribution regimes;
- special rules for corporate restructuring and holding structures;
- transition rules;
- administrative provisions; and
- final provisions.

European Commission opens infringement proceedings for failure to communicate transposition of Pillar Two Directive

The deadline for the transposition of the Pillar Two Directive by Member States was 31 December 2023, which was also the date by which those Member States had to inform the European Commission of that transposition. In late January 2024 the Commission announced that it was opening infringement proceedings against nine EU Member States (Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal and Spain) for their failure to communicate the national measures taken to transpose the EU Pillar Two rules fully into national law by 31 December 2023.

The first step in the infringement procedure is for the Commission to send a “letter of formal notice” to each of the Member States, which then have two months to respond. After review of the response, if the Commission concludes that a Member State is failing to fulfil its obligations under EU law, then it may send the Member State a formal request to comply (a “reasoned opinion”). Thereafter, where a Member State does not comply, the Commission can refer the case to the Court of Justice of the European Union.

US: Notice of intention to issue proposed regulations for foreign tax credit rules for top-up taxes

In December the US Department of Treasury and the Internal Revenue Service issued Notice 2023-80. The notice sets out their intention to issue proposed regulations regarding

foreign tax credit rules and how they could be applied to top-up taxes, which would include the income inclusion rule (IIR), the qualified domestic minimum top-up tax (QDMTT) and the undertaxed profits rule (UTPR) under Pillar Two. The notice also provides guidance on the application of the foreign tax credit rules to the above-mentioned Pillar Two top-up taxes that taxpayers may rely on until proposed regulations are issued.

The notice does not state whether IIRs, QDMTTs and UTPRs are or are not creditable foreign taxes but does provide guidance on the application of the rules related to foreign tax credits to IIRs, QDMTTs and UTPRs that meet the creditability requirements. Therefore, companies will need to analyse these taxes under the creditability rules.

Barbados unveils comprehensive reforms to corporate tax regime in line with OECD guidelines

In late November 2023 Barbados confirmed that corporate income tax reforms will be implemented in 2024 in line with the OECD's Pillar Two rules. Effective from 1 January 2024, the corporate tax rate will increase to 9% for the majority of corporations. Entities generating revenue at or below BBD 2m will be subject to a reduced corporate tax rate of 5.5%. Insurance entities and shipping entities, not falling under Pillar Two regulations, will maintain the existing tax rates of 0% and 5.5%–1%, respectively, with a reassessment scheduled for fiscal year 2025.

Additionally, the introduction of a qualified domestic minimum top-up tax, effective from 1 January 2024, will result in the 15% rate applying to in-scope multinational enterprises whose ultimate parent entity (or constituent entity) is in any jurisdiction that has adopted an income inclusion rule or an undertaxed profits rule (i.e. not all groups within the scope of Pillar Two). It was also announced that two new tax credits would be introduced in the future (details to be given at a later stage) that are intended to be qualifying refundable tax credits under the Pillar Two Model Rules. The refundable tax credits would include:

- a qualified jobs credit for eligible payroll costs for designated activities and sectors, of between 75% and 475% of eligible costs; and
- a research and development (R&D) credit for eligible R&D activities, of up to 50% of eligible costs.

Bermuda: Corporate income tax legislation enacted

On 27 December 2023 Bermuda enacted its Corporate Income Tax 2023, which introduces a 15% corporate income tax, with an effective date of 1 January 2025, on Bermuda businesses that are part of multinational enterprise groups with annual revenue of €750m or more. The new law incorporates key definitions from the GloBE Model Rules, to align with the GloBE rules. There were a few changes compared to the previous version published for consultation. These include:

- the removal of a provision that would have allowed for the inclusion of taxes from controlled foreign corporation (CFC) tax regimes in the allocation of Bermuda adjusted creditable foreign taxes; and
- the addition of an election for the exclusion of a proportionate share of income in 2025 and 2026 from a Bermuda constituent entity treated as a CFC for US tax purposes.

Update on Pillar One timeline

On the same date in December on which the OECD/G20 Inclusive Framework released the technical guidance on Pillar Two, an update to the timeline to finalise the text of the Multilateral Convention (MLC) was also announced. Finalisation of the MLC text is targeted by the end of March 2024, with a view to hold a signing ceremony by the end of June 2024.

Canada's digital services tax

The Canadian Government is moving forward with the implementation of its digital services tax. The Canadian Finance Minister noted in her announcement at the end of November that Canada has a preference for Pillar One but that the intention had always been for Canada

to introduce a digital services tax if Pillar One did not come into force by the end of 2023. The digital services tax will operate as a 3% tax on revenue derived from digital services that rely on Canadian user data and contributions, retroactive to 1 January 2022.

02 OECD Tax Developments

OECD Crypto-Asset Framework to come into force in 2027

On 10 November the OECD Secretary-General welcomed the announcement that 48 countries and jurisdictions have signalled their commitment to adopting the OECD's global tax transparency framework for the reporting and exchange of information with respect to crypto-assets by 2027. After that announcement, on 1 December 2023, an OECD press release included Bermuda, Colombia, the Faroe Islands, Indonesia, Mauritius and Monaco as additional jurisdictions intending to implement the Crypto-Asset Reporting Framework (CARF) by 2027. The CARF is an important development within the International Standards for Automatic Exchange of Information in Tax Matters.

Ongoing work focuses on an implementation package to ensure the consistent application and effective implementation of the CARF. The implementation package will include a framework of bilateral or multilateral competent-authority agreements or arrangements facilitating the automatic exchange of information collected under the CARF, along with IT solutions to facilitate the exchange of information and a more detailed elaboration of the requirements of the CARF.

OECD publishes outcomes of review of preferential tax regimes by Forum on Harmful Tax Practices

After a meeting in October 2023, the OECD announced that the regimes in Hong Kong and the United Arab Emirates were found to be not harmful. This is in the context of the risk that those regimes could pose to the tax bases of other jurisdictions under BEPS Action 5 (harmful tax practices). The OECD noted also that two regimes in Albania and Armenia are now abolished.

The forum issued recommendations for focused monitoring for certain jurisdictions, namely, the Bahamas, Barbados, and the Turks and Caicos Islands. No issues were identified for Bahrain, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey.

The fourth annual monitoring exercise for no- or nominal-tax jurisdictions is due to take place in second half of 2024.

03 EU Tax Developments

Proposed Directive on shell entities

At the end of November the European Council's working group on tax questions discussed the "Unshell" proposal. The European Commission had suggested making the substance criteria a minimum standard, allowing Member States to set stricter standards should they wish to do so. The suggestion did not receive the required support from Member States. The file passes to the Belgian Presidency of the Council, and the way forward on the Unshell proposal remains to be determined.

European Parliament adopts opinion proposing amendments to DEBRA

The plenary of the European Parliament adopted its opinion on the DEBRA (debt–equity bias reduction allowance) proposal on 16 January 2024. The opinion supports the DEBRA proposal but recommends

certain amendments, including changes to the recitals of the draft proposal to provide more context to the articles of the draft proposal to clarify that DEBRA rules should apply differently for SMEs and medium-sized groups compared to large undertakings and large groups and ensure compliance with BEFIT (Business in Europe: Framework for Income Taxation) and the Pillar Two Directive. DEBRA is not included on the programme for the Belgian Presidency of the European Council. It is not expected that there will be much progress on DEBRA in the coming year.

DAC 8 administrative cooperation relating to crypto-assets

EU Member States must transpose the DAC 8 Directive into domestic law by 31 December 2024. The legislative process has not yet started in any Member State for this transposition.

Other Directives

The following remain under negotiation, with progress expected on all during the first half of 2024:

- FASTER – Faster and safer relief of excess withholding taxes Directive,
- BEFIT – Business in Europe: Framework for Income Taxation,
- Transfer pricing (TP) (to harmonise transfer pricing rules within the EU) and
- Head office tax (HOT) system for SMEs (the latter two are part of the BEFIT package, published in September 2023).

The Belgian Presidency will seek to reach agreement on FASTER at the ECOFIN meeting scheduled for April. Progress reports on BEFIT, TP and HOT are expected by the end of June. The Presidency will prioritise measures to curb tax evasion, tax avoidance, aggressive tax planning and harmful tax competition.

Germany: Lower House of Parliament approves draft business tax reform Bill

After the Lower House of the German Parliament approved the business tax reform Bill on 17 November 2023, the Upper House withheld its approval. The Bill was sent to the Conference Committee of the Upper and Lower Houses; however, agreement was not reached before the end of 2023 and will be progressed in 2024. The Bill includes a number of tax measures, including on tax incentives, individual income tax and corporate income tax.

Italy: Legislative decree containing international tax reform measures in force

On 28 December 2023, as part of the ongoing wider Italian tax reform, a legislative decree including international tax measures was published in the Italian official gazette, with the provisions generally effective from 1 January 2024. These include:

- Revised criteria to determine corporate tax residence – “the place of administration” has been replaced with “the place of effective management”, and “the main business purpose” has been replaced with “the place of day-to-day management”.
- Amendments to the controlled foreign company (CFC) provisions to simplify the CFC provisions and align them to the Pillar Two rules.
- A tax incentive to encourage businesses to “reshore” economic activities to Italy – where business activities performed in a non-EU/EEA jurisdiction are relocated to Italy, the income from these activities may be partially exempt from Italian corporate income tax and the regional tax on productive activities, i.e. only 50% of such income would be subject to tax, subject to certain conditions. The incentive would be granted for six years commencing with the fiscal year in which the business activity is relocated to Italy. Recapture of the benefit may arise where the activity is relocated (or partially relocated) outside of Italy to a non-EU/EEA jurisdiction within specified time periods. The incentive is still waiting approval by the European Commission (under the EU State Aid rules in Article 108 of the Treaty on the Functioning of the European Union).
- The introduction of a penalty protection regime for hybrid mismatch assessments.

Luxembourg: Tax credit for investment in digital and green transformation

Effective from 1 January 2024 a new tax credit is available for investments and operational expenses that are incurred during digital transformation or ecological and energy transition. The credit is 18% of the amount incurred during digital transformation or ecological and energy transition.

- Digital transformation is defined as achieving an innovative process or an organisational innovation through the implementation and use of digital technologies and must meet one of a number of stated goals.
- The definition of ecological and energy transition is any change that reduces the environmental impact, from energy production or consumption to use of resources. It must be a significant technical or equipment change and should aim to meet one of a number of stated goals.

The scope of eligible investments and operational expenses is quite broad and includes:

- investments in depreciable assets (with a life longer than three years);
- investments in software or patents (but not including those acquired from an associated enterprise);
- staff costs directly allocated to digital transformation or the company's ecological and energy transition; and
- training expenditure for staff directly involved in digital transformation or the company's ecological and energy transition.

04 Russia Ratifies Suspension of Certain Provisions in 38 Tax Treaties with "Unfriendly" States

After the signing of the Russian decree temporarily suspending specific tax treaty provisions for 38 tax treaties, the President of Russia signed a law on 19 December 2023 ratifying the suspension of certain provisions of international tax treaties. The main consequence of the suspension is the disapplication of reduced treaty rates that apply to dividends, interest and royalty payments by businesses.

05 Australia: Update on Interest Limitation Rules

On 28 November 2023 the Australian Government introduced amendments to its interest limitation rules and an explanatory memorandum. Amendments to the rules included narrowed debt creation provisions (with a general start date of 1 July 2024), the introduction of an excess tax EBITDA amount concept allowing the effective sharing of excess capacity with controlling investors on an entity-agnostic basis, and improvements to the third-party debt test.

However, the amendments were not passed by the Senate in December 2023. Parliament will reconvene in February. The interest limitation rules will replace the existing thin capitalisation law. Until new legislation is passed, the thin capitalisation law remains in operation.

06 Democratic Republic of the Congo Joins Global Forum on Tax Transparency

After the 16th plenary meeting at the Global Forum on Transparency and Exchange of Information for Tax Purposes, on 1 December 2023, the OECD announced that the Democratic Republic of the Congo (DRC) has officially become a member. Joining the Global Forum indicates a commitment by DRC to implement the internationally agreed standards of transparency and exchange of information for tax purposes. With the addition of DRC, the Global Forum now has 170 members.

07 Belarus Introduces New Corporate Income Tax Rate in 2024

Belarus has introduced a corporate tax rate of 25%, which is effective from 1 January 2024 and applies to taxable income exceeding BYN 25m. If the income exceeds the threshold, then all of the taxable income is subject to the 25% rate. The current 20% rate will remain for taxable income that does not exceed BYN 25m. There were also changes to other corporate income tax rates: profits from the sale of certain locally produced hi-tech goods are subject to an increased tax rate of 10% (up from 5%) from 1 January 2024; and profits from the sale of food products for young children manufactured by the taxpayer are subject to corporate income tax at the rate of 5% (previously exempt).

08 UK Tax Simplification Measures

In January HMRC published a package of measures intended to support the UK Government's ambition to simplify and modernise the tax system and to make it "simpler and fairer". With respect to corporation tax, this includes measures on transfer pricing reform, permanent establishments and diverted profits tax. The Government has engaged with stakeholders on these topics through a consultation process in 2023. It will continue that engagement with respect to its proposals and expects to publish draft legislation during 2024.

VAT Cases and VAT News

Gabrielle Dillon
Director – VAT, PwC Ireland

VAT Cases

01 **Economic Activity – Member of Board of Directors of PLC**: CJEU Judgment

02 **Fixed Establishment – Place of Supply of Services**: CJEU Opinion

03 **Reduced Rate of VAT – National Requirements for Categorisation of Hotel Accommodation**: CJEU Judgment

04 **Underdeclared Sales – Burden of proof**: TAC Determination

05 **VAT Rate – Smoothies**: TAC Determination

01 Economic Activity – Directors' Fees: CJEU Judgment

The CJEU judgment in the case of ***TP v Administration de l'enregistrement, des domaines et de la TVA*** C288/22 was delivered on 21 December 2023. The court had to consider the concept of economic activity. It was in the context of the activities of a member of the board of directors of a number of PLCs and whether the fees received were liable to VAT. The Luxembourg tax authority issued a VAT assessment to an individual "TP" in respect of his activity as a member of the board of directors of a number of PLCs in Luxembourg. TP argued that the activity he was engaged in was not an economic activity within the meaning of the VAT Directive and therefore he was not a taxable person. The tax authority argued that the members of the board of directors of a PLC carried on an independent economic activity. Therefore the percentage fees that they received in that regard did not escape the application of VAT.

The provisions of the VAT Directive being interpreted were Articles 2, 9 and 10. Article 2(1)(c) provides that the supply of services for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT. Article 9(1) outlines the meaning of taxable person. Article 10 clarifies that the requirement that the economic activity be conducted "independently", shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

TP carried out many assignments in his role as board member, and the judgment outlined these activities, which included receiving reports of the senior managers or representatives of the companies, discussing

strategic proposals, choosing operational managers and dealing with questions related to the accounts of the PLCs and their subsidiaries, as well as the risks. TP participated in the decision-making process relating to a number of matters – the accounts of the companies, proposals to be submitted to shareholder meetings, risk policy and strategy. TP received fees as a percentage of the profits achieved by the companies.

The first question referred to the court was whether a natural person who is a member of the board of directors of a PLC is carrying on an "economic" activity within the meaning of Article 9 of the VAT Directive and whether percentage fees received by that person are to be regarded as remuneration paid in return for services provided to that company.

The court has stated that an activity can be regarded as an economic activity only where the activity relates to one of the chargeable events outlined in Article 2(1) – services supplied for consideration within the territory of a Member State by a taxable person acting as such is a chargeable event. The court noted that, based on the tasks undertaken by TP, he supplied services within the meaning of Article 2(1)(c). The next issue was whether TP was remunerated for those services, i.e. whether the percentage fees were consideration for a supply of services provided to the PLCs (whether there was a direct link between the supply of services and the consideration actually received).

The court made a number of observations in relation to the remuneration requirement: the remuneration received by the service supplier should constitute the actual consideration for the service supplied to the recipient; the remuneration must remain reasonable in relation to the service supplied; the remuneration may be fixed, and where the price paid is higher or lower than the cost price or the open-market value, this is not relevant to determining whether the transaction was effected for consideration. The court indicated that the direct link between the supply of services and the consideration is broken when the remuneration is awarded in a voluntary and uncertain way where it is practically impossible to determine, or is difficult to quantify, the amount, or the circumstances relating to its calculation are uncertain. There was no written agreement between TP and the PLCs as regards his remuneration, but the remuneration received was on a percentage basis (as awarded at shareholder meetings) or by way of a lump sum. In the case of a lump sum payment that was determined in advance, the court observed that the direct link was established and, even though it was a flat rate and paid annually, that link was not broken. But in the case of the percentage fees, the court observed that where the PLC does not achieve a profit or achieves only a small amount of profit, TP may still be awarded a percentage fee based on other factors; the referring court will have to determine whether that amount is in line with the service provided by TP.

The court stated that establishing the existence of an economic activity is not just about establishing the existence of a supply of services – there are other criteria to be satisfied. An activity is generally considered to be economic where it is permanent and carried out for remuneration (which also has a continuing characteristic), and consideration needs to be given to all of the circumstances of the supply. In this case the term of office, which was renewable for a maximum of six years, would indicate that the activity was carried out on a continuous basis. Therefore, the remuneration received in the form of percentage fees would also be on a continuing basis. For the continuing basis of the remuneration to continue, it would be relevant that the percentage fees are paid in years in which the company does not make a profit. In answer to the first question, the court held that a board member would fall to be treated as carrying on an economic activity where services are supplied for consideration. This is provided that the activity is carried on a continuing basis and the remuneration is received under known procedures.

The second question referred was whether the activity of the board member is carried on independently. In this case TP did not have a casting vote on the boards of directors, he did not have responsibility for the general management of the business and he was not part of the management committee. The court noted that the question of the activity's being carried out independently is to be examined by reference to Article 9 only, as the employer–employee relationship referred to in Article 10 is only one of the criteria to assess whether an economic activity is carried on independently. In assessing whether an employer–employee relationship exists in pursuing the activity, it has to be determined whether the person performs his activities in his own name, on his own behalf and under his own responsibility, and whether he bears the economic risk associated with carrying out those activities. In considering the independence question, the court took into account the absence of an employee–employer relationship and the facts that TP acted on his own account and under his own responsibility, that he could arrange how he carried out his work and that he received the fees.

The court indicated that it would be up to the referring court to ascertain whether TP had the capacity to arrange how he carried out his role and that it is TP who received the remuneration.

The court also examined whether there was an employer–employee relationship and was of the view that such a relationship was absent, as TP was free to submit proposals and advice and to vote as he saw fit. It also considered whether he acted in his own name, on his own account and under his own responsibility and whether he bore the economic risk of his activities. In this regard, the court held that:

> "the activity of a member of the board of directors of a PLC is not carried out independently...despite the fact that that member is free to arrange how he or she performs their work, receives the emoluments making up his or her income, acts in his or her own name and is not subject to an employer–employee relationship – he or she does not act on their own behalf or under their own responsibility and does not bear the economic risk linked to their activity".

Therefore, although TP was considered to be engaged in an economic activity, this activity was not carried out on an independent basis and fell outside the scope of VAT. This case is relevant in determining whether directors' fees are liable to VAT or are outside the scope of the tax; the capacity of a board member and the circumstances in which the board member is acting are factors to be considered.

02 Place of Supply of Services – Fixed Establishment: CJEU Opinion

The Opinion of the Advocate-General (AG) in the case of ***SC Adient Ltd & Co. KG V Agenția Națională de Administrare Fiscală, Agenția Națională de Administrare Fiscală – Direcția Generală Regională a Finanțelor Publice Ploiești – Administrația Județeană a Finanțelor Publice Argeș*** C-533/22 was published on 1 February 2024. At the outset the AG made some interesting comments in relation to the number of cases dealing with the question of fixed establishment, namely, that this case is the fifth request since 2018, whereas there were six comparable requests in a period of more than 40 years (since the Sixth VAT Directive). This highlights the importance of this issue for all entities and corporate groups.

Adient Ltd & Co. KG ("Adient DE") has its place of establishment in Germany and belongs to the Adient group, which has its head office in Europe. The group is a global supplier to manufacturers in the automotive industry. It has a global network of manufacturing and assembly facilities that

supply complete seating systems, modules and components to original equipment manufacturers. Adient DE entered into a contract with SC Adient Automotive România SRL ("Adient RO") to provide a comprehensive service consisting of both the manufacture and the assembly of upholstery components plus ancillary and administrative services ("the services"). Adient RO has two establishments in Romania with responsibility for manufacturing the goods for Adient DE. All expenses incurred by Adient RO are included in the fee invoiced to Adient DE. Adient DE purchases the raw materials, which it sends to Adient RO for treatment. Adient DE is the legal owner of the raw materials, semi-finished products and finished products throughout the treatment process.

Adient DE was directly registered for VAT purposes in Romania, was assigned a VAT number and uses this number both for domestic and intra-Community purchases of goods in Romania and for supplies to its customers of the products manufactured by Adient RO. It supplied its German VAT number when receiving the services supplied by Adient RO. Adient RO considered that the place of supply of its services was the place of establishment of Adient DE, as recipient of the services, namely, Germany, i.e. the reverse charge applied.

The Romanian tax authority argued that Adient RO was required to charge Romanian VAT on the grounds that the place of supply of the services was Romania. It also found that Adient DE had technical and human resources there via the branches of Adient RO, which in its view comprised a fixed establishment. The employees of Adient RO communicate with customers and suppliers; they represent Adient DE vis-à-vis third parties; and they are involved in organising and compiling an annual inventory of assets belonging to Adient DE and in audits requested by customers of Adient DE. The tax authority also considered that the VAT number issued by the German authorities had been improperly used by Adient DE, and it registered it for tax purposes through a fixed establishment located in Romania (same address as one of the Adient RO branches).

Adient DE argued that it does not have a fixed establishment in Romania and that Adient RO fulfils its obligations to it as a manufacturer. The two companies share the same accounting system as they are part of the same corporate group. Adient DE argued that it has no staff in Romania and that employees working in Romania are employed by Adient RO, which agrees their terms of employment and pay conditions. Adient DE has no role in relation to the equipment used by the manufacturer. The supply of the goods from Romania is undertaken by Adient DE. Adient RO carries out some administrative tasks in relation to the supplies, e.g. preparing the goods for loading. Adient RO's employees do not make decisions in relation to the sale or purchase of goods by Adient DE.

The referring court raised eight questions, which the AG categorised into three groups. Under group 1 the issue was whether a taxable transaction actually takes place at all if the facilities and human resources of one group company (Adient RO), which is claimed to be a fixed establishment of the other group company (Adient DE), are used both to provide the service and to receive it. The AG noted that if the relevant services supplied by Adient RO are actually performed through a branch in Romania, which is simultaneously a fixed establishment of Adient DE, then the supplier is also Adient DE. This means that a fixed establishment of Adient DE would be "supplying" a service to a fixed establishment of Adient DE – the supplier of the service and the recipient of the service would be the same, resulting in a non-taxable internal transaction within the company. Such a transaction is not taxable as there is no supply to another person. The AG noted that the CJEU has previously held that the same means cannot be used both to provide and to receive the same services. As an interim conclusion the AG was of the opinion that, even if the court found that a fixed establishment existed, Romanian

VAT did not arise as there was no taxable transaction.

Under group 2 the questions referred related to how a fixed establishment (regarded as the recipient of a service) is to be defined within a group, such that the place of supply of services is determined by reference to the location of the fixed establishment and not by reference to the location of the HQ. The AG stated that it is not sufficient to rely on connections recognised under company law to find that a fixed establishment exists. So a controlled but legally independent company cannot be regarded as being, at the same time, a fixed establishment of a different group company. It was noted that the mere fact that a company in another Member State and a domestic company happen to belong to the same corporate group cannot support a finding that a fixed establishment exists. Other criteria must be fulfilled for there to be a fixed establishment, and in this regard a number of previous CJEU judgments were reviewed and considered.

Although a company may provide human and technical resources to another company, in determining whether that creates a fixed establishment for the recipient, you have to examine whether the resources are of sufficient quality and quantity rather than assessing whether the companies are part of the same group. The AG also indicated that the place-of-supply question is independent of the question of whether an output transaction is a supply of goods or services. The AG concluded that:

> “an independent group company (in another Member State) is not to be regarded as a fixed establishment of a different group company on the sole basis of a link recognised under company law. Even a complex contract for the supply of services does not mean, in principle, that the supplier is effecting a taxable transaction in favour of a fixed establishment of the service recipient formed on the basis of that contract. In that regard, the place of supply of those services depends neither on the nature of the output transactions (supply of goods or services) of the service recipient, nor on the place of ‘consumption’ of the specific manufacturing services.”

The group 3 category of questions sought to establish whether Adient DE is to be regarded as a resident person or a non-resident person in Romania. This question presupposes that Adient DE has a fixed establishment in Romania. It was noted that the place of supply of services is determined, in the first instance, by the place where the business is established. If this gives rise to a conflict or an irrational result, then another establishment may be considered. The AG noted then that the question of a fixed establishment’s always having human **and** technical resources at the same time is of secondary importance. The AG concluded that:

> “a fixed establishment exists only if it substitutes for a head office located within the territory of another Member State. Consequently, a contract entered into with a supplier of services can be capable of constituting a fixed establishment only if that contract does not relate solely to the provision of services to goods belonging to the recipient of the services. Instead, it must be aimed at provision of the human and/or technical resources that are necessary to ensure that the recipient can supply goods or services on site (that is, at the place of the fixed establishment) that are similar to those provided at a head office”.

As noted above, the number of VAT cases dealing with the concept of fixed establishment has increased in the last number of years and as corporate structures change and expand and as differing supply chains are put in place, the principles enunciated by the Court in these cases are highly relevant.

03 Reduced Rate of VAT – National Requirements for Categorisation of Hotel Accommodation: CJEU Judgment

The CJEU delivered its judgment in the case of ***Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite v 'Valentina Heights' EOOD*** C733/22 on 8 February 2024. This case dealt with the application of the reduced rate of VAT to the provision of accommodation at a holiday complex in Bulgaria. The court was required to provide an interpretation of Article 98(2) of the VAT Directive and point 12 of Annex III thereto. Valentina Heights EOOD is a Bulgarian company involved in the provision of tourism, catering, hotel and tour operating activities. It managed the holiday complex in Bankso (Bulgaria), provided accommodation to tourists and for a period of time did not hold a valid categorisation certificate for that facility. It applied the reduced rate of VAT of 9% to its income, and the income was recorded by means of electronic cash registers connected to the Bulgarian tax authority and by bank transfer. Under Bulgarian VAT law, the reduced rate applied where the supplier held a categorisation certificate for the tourist establishment, and under its Law on Tourism, hotel and catering activities can be carried on only in tourist establishments categorised under that law. Valentina Heights EOOD held a certificate until March 2019, when it was withdrawn, and it made a new application, in respect of which it received provisional certificates in September 2020. The tax authority took the view that the standard rate should have applied during the periods when Valentina Heights EOOD did not hold the requisite certificate.

The question referred to the court was whether national legislation was precluded from requiring that an establishment hold a categorisation certificate or a provisional one for the purposes of qualifying for the reduced rate of VAT under Article 98(2) and Annex III, point 12. Under point 12 of Annex III to the VAT Directive, Member States may apply a reduced rate of VAT to "accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites". Under the exemption for the letting of property, an exclusion applies to accommodation in the hotel sector etc. "as defined in the laws of the Member State".

In Bulgaria this was defined by reference to the requirement to have a categorisation certificate. The court noted that previous case law has provided that Member States enjoy a margin of discretion in defining the classes of provision of accommodation that are to be taxed. The tax authority took the view that the services were taxable at the standard rate even though they were not categorised under the Law on Tourism (as opposed to exemption's applying). The court observed that where Member States apply the reduced rate selectively to the supplies under point 12 of Annex III, they are subject to two conditions – they isolate only concrete and specific aspects of the category of supply, and the principle of fiscal neutrality is complied with.

With regard to the first condition, the court considered whether accommodation in categorised establishments involved a service that is identifiable separately from other services in that category. Under the Law on Tourism there were a number of obligations to be complied with for all accommodation facilities to be certified. In the absence of the certification, they cannot carry on their business in a lawful manner. However, this would not be treated as another type of supply but as accommodation that did not comply with the national legislation and would give rise to penalties. As the Law on Tourism applies to all establishments, the court noted that the Bulgarian legislation could not be regarded as limiting the reduced rate to concrete and specific aspects of that category. This was because it covered all services in that category,

and it will be for the referring court to make this determination.

It will also be for the referring court to determine whether the principle of fiscal neutrality (goods or services that are similar cannot be treated differently for VAT purposes) is infringed where the reduced rate is applied only to those facilities that are certified. The court noted that:

> “goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one or the other of those goods or services”.

Hence the perspective of the typical consumer would need to be factored in – whether the presence or absence of a categorisation certificate creates a difference in the eyes of the consumer. The referring court should also consider the fact that Valentina Heights EOOD had carried on the same activity for a number of years, had operated under the control of the tax authority (by virtue of the fact that the cash registers were linked to the tax authority) and had applied for a renewal before the previous certificate had expired. The court held that Article 98(2), together with point 12 in Annex III, precluded national legislation:

> “under which the reduced rate of VAT for accommodation provided in hotels and similar establishments is subject to a requirement that such an establishment hold a categorisation certificate or a provisional categorisation certificate, in so far as that legislation does not limit the application of the reduced rate of VAT to concrete and specific aspects of the category of provision of accommodation provided in hotels and similar establishments or, in the event that it limits the application of that rate to those concrete and specific aspects, it does not comply with the principle of fiscal neutrality”.

This case provides some guidance on how to interpret the meaning of accommodation provided in hotels and similar establishments and highlights the factors to be considered in applying the principle of fiscal neutrality.

04 Underdeclared Sales – Burden of Proof: TAC Determination

The appellant in **02TACD2024** operated a fast-food business from a rented premises for a number of years but ceased to trade in 2011. The respondent raised assessments for income tax and VAT for the years 2005–2008 after an audit (which was preceded by a cold-call visit by Revenue officers). The main portion of the business related to takeaway sales, but deliveries were also made. The case related to an under-declaration of sales and a possible under-declaration of purchases. Although the determination details the facts and evidence presented, one of the key issues here was where the burden of proof lay in establishing the accuracy of the assessments raised.

The appellant had argued that the burden of proof rested with the respondent to demonstrate that the assessments were accurate. However, the Commissioner, by reference to case law, clearly outlined that the burden of proof rests with the appellant in appeals of assessments or estimates and that it is the appellant that is required to be in a position to establish by reference to supporting documentary material what their tax liability should be. In this case the burden of proof has not been met by the appellant, and the assessments were affirmed.

05 VAT Rate – Smoothies: TAC Determination

The appellant in **12TACD2024** was engaged in the retail sale of takeaway juices, milkshakes and smoothies (based on frozen yoghurt and fruit) from a kiosk in a shopping centre. The standard rate of VAT was accounted for on juices, and the zero rate was applied to milkshakes and smoothies. The appellant argued that as the smoothies comprised thawed frozen yoghurt, they were a yoghurt drink and, as such, should qualify for the zero rate of VAT, similar to other, comparable yoghurt drinks. The appellant's argument centred around the submission that the smoothie product consisted of more than 50% milk or yoghurt content. The VAT legislation (Part 2, Schedule 2, VATCA 2010) provides that the zero rate applies to "milk and preparations and extracts derived from milk". In correspondence issued by the respondent to traders, it stated that "yoghurt comes within the definition of milk and preparations and extracts derived from milk, however, frozen yoghurts...are excluded from the zero-rate".

Submissions were made by both parties in support of each claim, which centred around the meaning of milk, the difference between yoghurt and frozen yoghurt, the composition of the smoothies and the preparation and presentation of the smoothies. The Commissioner found, in the first instance, that the smoothie drink was not milk and that, although it originated from milk (through the frozen yoghurt content) and contained an element of milk, it was not considered to be a preparation and extract derived from milk. The Commissioner found that although the smoothie drink contains an element of milk, as that element is contained in the frozen yoghurt ingredient of the final smoothie product, the milk component of the smoothie originates from a product used for the preparation of the smoothie and not the smoothie itself. It was then held that by definition it is ineligible for entitlement to zero rating.

VAT News

Ireland

Revenue eBrief 235/23, published on 6 November 2023 related to the registration guidelines for DAC 7 (EU reporting platform operators). Under DAC 7 certain platform operators are obliged to collect and automatically report information on certain sellers using their platform to earn consideration with effect from 1 January 2024. A new Tax and Duty Manual (TDM) has issued that provides general guidance on the registration procedures to be followed to comply with the reporting obligations.

Revenue eBrief 246/23, released on 27 November 2023, highlighted the publication of a new TDM on cost-sharing groups. VAT exemption is provided for certain independent groups of persons, commonly called cost-sharing groups, and the new TDM sets out guidance on the conditions to be satisfied for exemption to apply.

Revenue eBrief 253/23 was published on 29 November 2023 in relation to updates to the TDM on the "VAT Treatment of Portfolio Management Services". The guidance sets out the VAT treatment of these services in light of the decision of the Court of Justice of the European Union in the *Deutsche Bank* case.

Revenue eBrief 266/23, released on 20 December 2023, highlighted the availability of

the "VAT Notes for Guidance: Finance (No. 2) Act 2023", and a further eBrief, 001/24, was issued in relation to a number of TDMs that were updated as a result of that Act.

Revenue eBrief 273/23 was published on 29 December 2023 to outline the release of a new TDM on CESOP, "Reporting Requirement for Payment Service Providers on Cross-Border Payments – EU Central Electronic System of Payment Information". There are new record-keeping and reporting obligations for payment service providers, and the TDM provides guidance on the new VAT legislation, which comes into effect from 1 January 2024.

Revenue eBrief 019/24, released on 11 January 2024, highlighted the extension to 31 January 2024 of the consultation period in relation to VAT Modernisation. In October 2023 Revenue launched a public consultation on modernising the administration of VAT in Ireland, with a specific focus on business-to-business and business-to-government VAT reporting (including e-invoicing). The consultation paper on this important issue is available on Revenue's website. [The ITI made a detailed submission to the consultation, and details can be found on its website].

Revenue eBrief 024/24 was published on 16 January 2024 and highlighted the release of the TDM on the annual VAT Return of Trading Details. This guidance explains how the various boxes on the RTD are to be completed.

EU

The EU Commission published a press release on 1 January 2024 in relation to the Central Electronic System of Payment (CESOP) information which came into force on this date. It indicates that the new rules will provide tax authorities in the EU Member States with payment information allowing them to detect VAT fraud more easily, particularly in the e-commerce space. From 1 January, Payment Service Providers (PSPs) are required to monitor the payees of cross-border payments and file quarterly returns (from 1 April). All information in CESOP will then be made available to Member States via Eurofisc. This will enable Member States to analyse data and identify online sellers who do not comply with VAT obligations, including businesses that are not located in the EU. In Ireland, registration for CESOP opened on 1 February 2024 and registrations will be done through the Revenue Online Service (ROS) or the Non-Residents Registration (NRR) application.

Accounting Developments of Interest

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Insurance Accounting

The Financial Reporting Council (FRC) has published a thematic review of companies' first-time application of IFRS 17: Insurance Contracts. This is the accounting used by companies such as Irish Life, not the accounting used by insurance brokers.

Issues Arising from Audit Monitoring of Financial Statement Disclosures

The Irish Auditing and Accounting Standards Authority (IAASA) published a review of its findings and recommendations related to the quality of audit evidence and audit procedures performed on financial statement disclosures over the last few years of its monitoring. The review identified non-compliance with ISA 330: The Auditor's Response to Assessed Risks in 62% of all cases – by far the most cited auditing standard not being complied with. Paragraph 18 of ISA 330 was quoted: "Irrespective of the assessed risks of material misstatement, the auditor shall design and perform substantive procedures for each material class of transactions, account balance, and disclosure."

It would appear that the IAASA is finding that a potential disclosure matter is not being sufficiently audited because the auditor has deemed the balance to be not material or the risk of material misstatement of the balance to be not material. The IAASA found that the auditor has not considered both the qualitative and the quantitative impact of the non-disclosures. An example that it gave is goodwill where the balance, itself, may have been audited but there was insufficient assessment of the required disclosures in the financial statements related to goodwill.

Proposed Revision of ISA 505: External Confirmations

The Irish Auditing and Accounting Standards Authority proposes to amend ISA 505 for periods beginning on or after 15 December 2024, with early adoption permitted. The amendments do not substantively change the standard but clarify the role of the use of electronic external confirmation (through web portals, software interfaces or other digital means) and ban the use of negative confirmations.

The proposed revised standard can be found here.

Audit Sampling

Depending on where an auditor trained, their approach to audit sampling can vary quite widely. This is because the requirements in ISA 530 are not particularly prescriptive in terms of the

methodology to be used. The Financial Reporting Council in the UK has produced a Thematic Review of audit sampling, which provides useful guidance in this area. Some of the high-level findings are:

- Audit firms are still testing controls even with the advent of data analytic tools.
- There is substantial variation in firms' methodologies.
- The different methodologies do not indicate that one method is better than another.
- Professional judgement continues to be key.
- Monitors are finding that there is insufficient evidencing of the key professional judgements made when determining sample sizes.

Overall, the report finds that there were "no significant deficiencies in meeting the objectives of ISA 530, Audit Sampling". The report notes that most firms' sampling methodologies are based on the Audit Sampling Guide of the American Institute of Certified Public Accountants, although it should be noted that ISA 530 does not require the use of this guide.

Many of the firms use a spreadsheet-based approach where the total population and materiality is input, along with assessments of risk and details of evidence obtained about the balance elsewhere, such as from control testing or other audit tests. This indicates a sample size, which the audit team then select themselves, or in some firms the sample is automatically selected.

Audit Materiality

The Irish Auditing and Accounting Standards Authority has published a report on audit materiality. The report sets out recommendations for auditors to consider when performing their materiality assessment. It sets out the benchmarks for materiality calculation used by auditors in the larger firms in Ireland as follows.

	Used this benchmark	Materiality applied
Total equity or net assets	70%	0.4–3%
Revenue	13%	0.9–1%
Average profit before tax (2–4 years)	3%	5%
Profit before tax	5%	5%
Total assets	3%	0.4%

The report identified that performance materiality was generally a percentage of overall materiality, with nearly 60% of audits using 75% of overall materiality to determine performance materiality. The full table of percentages used is set out below.

Percentage used to set performance materiality (% of overall materiality)	Occurrence
50%	12.5%
65%	2.5%
70%	2.5%
75%	57.5%
80%	17.5%
90%	7.5%

To determine the performance materiality level, firms used the history of error; the likelihood and effects of misstatements; understanding of, and effectiveness of, the internal control environment; and consideration of the impact of any changes in circumstances for the entity, including turnover of senior management or key financial reporting personnel, on the entity's operations. The vast majority of auditors determined that 5% of materiality was their "clearly trivial threshold". About half of the auditors revised materiality during their audit.

The commercial audit work programmes used by most small and medium-sized practices include guides for calculating materiality of:

- gross assets: 2–4% (one programme uses 1 to 2%);
- turnover: 0.5–2%; and
- profit before tax: 5–10%.

The commercial audit programmes are therefore reasonably consistent with what is being used by the bigger firms.

Sustainability Reporting Standards Formally Adopted by EU

The European Sustainability Reporting Standards (ESRSs) were published in the Official Journal of the EU on 22 December 2023. This means that the 12 main ESRSs are now a legal requirement in the EU, and they are applicable to large quoted companies from 1 January 2024 and large unquoted companies from 2025, with other companies coming in scope over time on a phased basis. The European Financial Reporting Advisory Group (EFRAG) has issued three separate guidance documents to help with the implementation of the 12 ESRSs:

- Draft EFRAG IG 1 provides guidance on the materiality assessment.
- Draft EFRAG IG 2 deals with the value-chain requirements of the ESRS.
- Draft EFRAG IG 3 contains the detailed ESRS data points as a Microsoft Excel workbook with an accompanying explanatory note.

The documents and more details are available on the EFRAG website.

Audit Compliance Officers' Comments on Issues Arising from Audit of Completeness

There are audit issues arising from assessing management's assertion that all business events to which the company was subjected were recorded; that all reported asset, liability and equity balances have been fully reported; and that all transactions that should be disclosed have been disclosed. This is more commonly referred to as the audit of completeness. The observations include a description of the poor practices observed and suggestions on how the work could be improved.

Financial Statements Disclosures

The Irish Auditing and Accounting Standards Authority (IAASA) has issued a summary of its examination of financial reports completed in 2023. The examination identified that the reporting of the impact of climate change and climate impact mitigation initiatives under European Sustainability Reporting Standards will have a major impact from 2025. The report also concludes that there continues to be strong disclosure compliance by companies in the scope of IAASA supervision.

Legal Monitor

Nicola Corrigan
Senior Associate, William Fry Tax Advisors

Selected Acts Signed into Law from 1 November 2023 to 31 January 2024

No. 29 of 2023: Electricity Costs (Emergency Measures) Domestic Accounts Act 2023

This Act provides for the establishment of two schemes – the Electricity Costs Emergency Benefit Scheme III and the Submeter Support Scheme – to provide relief from high energy prices. The Act also provides for the amendment of the Taxes Consolidation Act 1997 by the insertion of s192JB, which provides that Electricity Costs Emergency Benefit payments and Submeter Support Scheme payments are exempt from income tax where they are made on or after 1 December 2023 and on or before 31 December 2024.

No. 36 of 2023: Health Insurance (Amendment) Act 2023

This Act makes certain amendments to the Health Insurance Act 1994, including the specification of the amount of premium to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons from 1 April 2024. The Act also amends the definition of "specified rate" in s125A of the Stamp Duties Consolidation Act 1999. Section 125A provides for the collection of a levy on health insurance companies based on the number of persons covered by policies underwritten by them.

No. 39 of 2023: Finance (No. 2) Act 2023

This Act aims to give effect to the measures set out in Budget 2024. The Act includes targeted measures to assist with cost-of-living pressures, including an increase in the higher income tax rate threshold to €42,000, changes to USC and increases to various tax credits. The Act also includes measures to support enterprise, including enhancements to the R&D tax credit regime and a new "qualifying financing company" regime. The Act also implements international measures that Ireland committed to at EU and OECD level, including the introduction of a new minimum effective rate of tax for companies/groups with annual global revenues exceeding €750m and the introduction of measures relating to payments to associated entities in certain low- or no-tax jurisdictions. This legislation was enacted on 18 December 2023.

Selected Bills Initiated from 1 November 2023 to 31 January 2024

No. 98 of 2023: Charities Amendment Bill 2023

This Bill aims to make certain amendments to the Charities Act 2009, the Charities Act 1961 and the Taxes Consolidation Act 1997 (TCA 1997). In the context of TCA 1997, the proposed amendment relates to confidentiality of taxpayer information. In particular, the Bill aims to amend s851A(8)(f), which deals with the circumstances when a Revenue Officer may disclose information in relation to a charity.

No. 5 of 2024: Health (Miscellaneous Provisions) Bill 2024

This Bill aims to amend the Health Act 1970 to provide for a disregard of up to €14,000,

or other yearly limit subsequently set by Revenue, for persons who have income that is eligible for Rent-a-Room relief such that the income will not be within the scope of the medical card assessment process. The Bill also aims to amend certain provisions of the Irish Medicines Board Act 1995.

Selected Statutory Instruments from 1 November 2023 to 31 January 2024

No. 555 of 2023: Finance Act 2022 (Section 16(1)) Commencement Order

This Order provides for the commencement, as of 20 November 2023, of sub-section (1) of s16 of the Finance Act 2022, which makes certain amendments to the Key Employee Engagement Programme (KEEP), after the receipt of State Aid approval from the European Commission. These amendments include:

- the extension of the scheme to the end of 2025;
- a provision that shares acquired through company buy-back of shares can qualify for the KEEP;
- an increase of the lifetime company limit for KEEP shares from €3m to €6m; and
- changes to the types of shares that qualify for the KEEP.

No. 635 of 2023: Finance Act 2022 (Section 9) Commencement Order

This Order provides for the commencement, as of 1 January 2024, of sub-sections (1) and (2) of s9 of the Finance Act 2022. These sub-sections bring into effect the Enhanced Reporting Requirements, mandating employers to provide information to Revenue regarding reportable benefits in an electronic format approved by Revenue.

No. 646 of 2023: Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2023

This Order extends the interim period under s12A of the Companies Act 2014, which, among other measures, extends the Covid-19 incorporeal meeting provisions under the Companies Act 2014 until 31 December 2024.

No. 650 of 2023: European Union (Value-Added Tax) Regulations 2023

These Regulations transpose Council Regulation (EU) 2020/284 into Irish law by inserting a number of new sections – s85A, s85B, s85C, s85D, s85E and s85F – into the Value-Added Tax Consolidation Act 2010. The effective date of these Regulations is 1 January 2024, and the new provisions oblige payment service providers who provide services within the EU to carry out certain record-keeping and reporting obligations as regards certain cross-border payments. The obligations arise if the payment service provider provides payment services in respect of more than 25 cross-border payments to the same payee in the course of a calendar year.

No. 651 of 2023: European Union (Value-Added Tax) (No. 2) Regulations 2023

These Regulations transpose Council Regulation (EU) 2020/283 into Irish law by inserting two new sections – s85G and s85H – into the Value-Added Tax Consolidation Act 2010. The effective date of these Regulations is 1 January 2024. The new provisions relate to the way in which payment service providers are required to report information about certain cross-border payments. The Regulations also include provisions regarding the retention and transmission of the reported information by Revenue.

No. 666 of 2023: Finance Act 2022 (Section 82(1)) Commencement Order

This Order provides for the commencement, as of 1 January 2024, of sub-section (1) of s82 of the Finance Act 2022, which provides for the transposition of the OECD's (i) Model Rules for Reporting by Platform Operators with Respect to Sellers in the Sharing and Gig Economy and

(ii) Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods.

No. 673 of 2023: Mandatory Automatic Exchange of Information (Platform Operators) in the Field of Taxation (Amendment) Regulation 2023

These Regulations came into effect on 1 January 2024 and provide for the amendment and substitution of certain Regulations within the Mandatory Automatic Exchange of Information (Platform Operators) in the Field of Taxation Regulations 2022 in accordance with s891I of the Taxes Consolidation Act 1997.

No. 674 of 2023: Return of Certain Information by Reporting Platform Operators Regulations 2023

These Regulations came into effect on 1 January 2024 and set out certain additional requirements concerning the return of certain information by reporting platform operators in accordance with s891J of the Taxes Consolidation Act 1997.

No. 675 of 2023: Taxes Consolidation Act 1997 (Section 111B(3)) Order 2023

This Order provides for the designation of the document entitled *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023* (Paris: OECD/G20 Inclusive Framework on BEPS, OECD), published by the OECD on 18 December 2023, as being comprised in the OECD Pillar Two guidance, within the meaning of s111B of the Taxes Consolidation Act 1997.

No. 700 of 2023: USC Regulations 2023

These Regulations amend the Universal Social Charge Regulations 2018, which prescribe how the deduction of tax from salaries and wages under the PAYE system as it applies to USC operates. These amendments came into operation on 1 January 2024.

A new Regulation 21A is also inserted, with an effective date of 21 December 2023. This Regulation provides that in certain circumstances an employer may make a repayment of USC to an employee during the last income tax month of the year to enable the employee to benefit from any unused rates and bands at the end of the year under the cumulative PAYE system.

No. 1 of 2024: Income Tax (Employments) Regulations 2024

These Regulations amend the Income Tax (Employments) Regulations 2018. The latter prescribe the way in which the deduction of tax from salaries and wages under the PAYE system operates. The new Regulations are made in accordance with s986 Taxes Consolidation Act 1997 (TCA 1997), which provides for the making of Regulations that prescribe the reporting period, the form, and other particulars or documents that will apply with regard to “reportable benefits” as defined in s897C TCA 1997. The Regulations came into operation on 4 January 2024.

Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

Tax Appeals Commission Determinations Published from 1 November 2023 to 31 January 2024

Income Tax

146TACD2023

Appeal against an amended notice of assessment to income tax on foot of the exercise by the applicant of employee share options

s128 TCA 1997, s128B TCA 1997

Case stated requested: Yes

152TACD2023

Appeal regarding a refusal to waive a tax liability as incorrectly jointly assessed after death of spouse

s949U TCA 1997

Case stated requested: Unknown

154TACD2023

Appeal regarding the application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

160TACD2023

Appeal regarding the treatment of artist's employment income

s195 TCA 1997

Case stated requested: Unknown

165TACD2023

Appeal regarding liability to income tax on discovery of untaxed income

s906A TCA 1997

Case stated requested: Unknown

03TACD2024

Appeal regarding the application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

18TACD2024

Appeal regarding a significant understatement of profits from a business and resulting income tax assessment

s18 TCA 1997, s65 TCA 1997, s81 TCA 1997, s886 TCA 1997

Case stated requested: Unknown

Income Tax and Relevant Contracts Tax

01TACD2024

Appeal regarding the transfer of RCT credit from a dissolved company

s530E TCA 1997, s530O TCA 1997, s530P TCA 1997

Case stated requested: Unknown

Income Tax and VAT

02TACD2024

Appeal regarding a discrepancy in reported income

s886 TCA 1997

Case stated requested: Unknown

Income Tax and Capital Acquisitions Tax

14TACD2024

Appeal regarding a liability to income tax and CAT as issued by the Criminal Assets Bureau

s959A TCA 1997, s922 TCA 1997, s959AC TCA 1997, s58 TCA 1997, s6 CATCA 2003, s46 CATCA 2003, s49 CATCA 2003, s53A CATCA 2003, s58 CATCA 2003, s69 CATCA 2003

Case stated requested: Unknown

Income Tax and Local Property Tax

15TACD2024

Appeal regarding the offset an overpayment of income tax against arrears of local property tax and underpayments of income tax

s960H TCA 1997, s1017 TCA 1997, s1018 TCA 1997

Case stated requested: Unknown

Income Tax and Dividend Withholding Tax

161TACD2023

Appeal regarding an assessment to DWT following a series of transactions involving a transfer of shares and loan agreements.

s10 TCA 1997, s130 TCA 1997, s549 TCA 1997

Case stated requested: Unknown

Corporation Tax

151TACD2023

Appeal relating to a previous determination, 99TACD2023, on whether a payment was remuneration or a preferential loan.

s81 TCA 1997, s112 TCA 1997, s122 TCA 1997

Case stated requested: Unknown

162TACD2023

Appeal regarding the application of R&D credit to animal breeding

s766 TCA 1997

Case stated requested: Unknown

16TACD2024

Appeal regarding a refusal of a claim for an R&D tax credit as it was made out of time.

s766 TCA 1997

Case stated requested: Unknown

Capital Gains Tax

147TACD2023

Appeal that included a preliminary issue regarding the validity of a time limit for a ground of appeal. The substantive issue was whether the appellant was entitled to deduct, in the calculation of his CGT liability, an amount in respect of the options granted to him on the acquisition of the leases or at such later stage when he was displaced from the leased lands. (See also article by Mark Ludlow "Direct Tax Cases: Decisions from the Irish Courts and Tax Appeals Commission Determinations", in this issue)

s949I TCA 1997, s552 TCA 1997, s536 TCA 1997

Case stated requested: Yes

06TACD2024

Appeal regarding the application of the four-year statutory limitation period.

s865 TCA 1997

Case stated requested: Unknown

Capital Acquisitions Tax

04TACD2024

Appeal regarding the aggregate of many small cash gifts falling outside the Group A CAT threshold.

s2, s4, s5, s69 CATCA 2003

Case stated requested: Yes

VAT

12TACD2024

Appeal regarding the interpretation of VAT rules for fruit and yoghurt smoothies as being liable to the standard rate of VAT rather than the zero rate of VAT. (See also article by Gabrielle Dillon “VAT Cases and VAT News”, in this issue)

Sch. 2 VATCA 2010, Article 10 VAT Directive

Case stated requested: Unknown

Covid Restrictions Support Scheme

149TACD2023

Appeal regarding the eligibility criteria to avail of the Covid Restrictions Support Scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

156TACD2023

Appeal regarding the eligibility criteria to avail of the Covid Restrictions Support Scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

Artists’ Exemption

148TACD2023

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Unknown

153TACD2023

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Unknown

163TACD2023

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Unknown

05TACD2024

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Yes

08TACD2024

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Unknown

10TACD2024

Appeal regarding the application of the artists’ exemption.

s195 TCA 1997

Case stated requested: Unknown

17TACD2024

Appeal regarding the application of the artists' exemption.

s195 TCA 1997

Case stated requested: Unknown

19TACD2024

Appeal regarding the application of the artists' exemption.

s195 TCA 1997

Case stated requested: Unknown

20TACD2024

Appeal regarding the application of the artists' exemption.

s195 TCA 1997

Case stated requested: Unknown

Help to Buy Scheme

157TACD2023

Appeal regarding the application of clawback relief under the Help to Buy scheme.

s477C TCA 1997

Case stated requested: Unknown

158TACD2023

Appeal regarding the definition of first-time purchaser as part of the Help to Buy scheme.

s477C TCA 1997

Case stated requested: Unknown

09TACD2024

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

s477C TCA 1997

Case stated requested: Unknown

13TACD2024

Appeal regarding qualifying property for the Help to Buy scheme .

s477C TCA 1997

Case stated requested: Unknown

PAYE, PRSI, USC

159TACD2023

Appeal regarding the treatment of certain travel expenses by directors and a spouse where inadequate records were kept.

s114 TCA 1997

Case stated requested: Unknown

PREM

155TACD2023

Appeal regarding the treatment of income and expenses of a locum consultant operating through a company.

s114 TCA1997, s117 TCA 1997

Case stated requested: Unknown

Vehicle Registration Tax

164TACD2023

Appeal regarding the open-market selling price in respect of the calculation of VRT

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

11TACD2024

Appeal regarding the open-market selling price in respect of the calculation of VRT

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

Environmental Levy

150TACD2023

Appeal regarding the interpretation of "excepted bags" when applying the single-use plastic bag levy

s2, s72 Waste Management Act 1996, Article 3(1) Waste Management (Environmental Levy) (Plastic Bags) Regulations 2001 (SI 605 of 2001), Article 5 Waste Management (Environmental Levy)

(Plastic Bags) Regulations 2001 (S.I. 605/2001)

Case stated requested: Yes

Single Person Child Carer Credit

07TACD2024

Appeal regarding liability to income tax after withdrawal of the Single Person Child Carer Credit where the recipient was cohabitating

s462B TCA 1997

Case stated requested: Unknown

Revenue Commissioners' Update: The Central Register of Beneficial Ownership of Trusts (CRBOT) - Focus on Compliance

The Central Register of Beneficial Ownership of Trusts (CRBOT) was established in 2021 to help prevent money laundering and terrorist financing, by improving transparency on who ultimately owns and controls Irish trusts. Practitioners should be aware that trustees of relevant trusts are obliged to:

- maintain an internal trust register,
- submit information from the internal trust register to the CRBOT, and
- keep both their internal register and the information on the CRBOT accurate.

These are important obligations for trustees under Anti-Money Laundering and Terrorist Financing legislation.

Under section 35 (3A) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 Act, Designated Persons are required to ascertain that a trust's beneficial ownership details are entered in the trust's beneficial ownership internal register or in the CRBOT, prior to the establishment of a business relationship with that trust. Designated Persons include practitioners, solicitors, auditors and external accountants.

The CRBOT portal can be accessed via Revenue's online services on both ROS and MyAccount. Trustees of relevant trusts established up to and including 23 April 2021 were required to submit information via the CRBOT portal before 23 October 2021. Trustees of trusts created after this date have six months from the date of creation to submit their details via the portal.

A Designated Person can gain access to a trust's registration on the CRBOT by obtaining an access number and the trust's registration number from the trustee. Designated Persons have an obligation to notify the Registrar of the CRBOT where there is a discrepancy between the particulars of a trust's internal register and the CRBOT.

A Designated Person who fails to notify the Registrar of a discrepancy is committing an offence and shall be liable, on summary conviction, to a class A fine. The CRBOT team at Revenue has been carrying out quality checks and engaging with trustees and service providers to remind them of their obligations to register. During 2024, the Registrar will be taking actions to tackle instances of non-registration, as part of the increased focus on compliance.

Further information, including a detailed guide on accessing the register and submitting a discrepancy notice form, can be found on the CRBOT section of the Revenue website[1].

1 https://www.revenue.ie/en/crbot/inspecting-the-crbot/when-can-the-crbot-be-accessed.aspx

Revenue Commissioners' Update: Engaging with Revenue on the Debt Warehousing Scheme

The Debt Warehousing Scheme (DWS) was introduced in May 2020 to provide a vital liquidity support to businesses, at the outset of the COVID-19 pandemic. The scheme allowed businesses to temporarily defer eligible taxes on an interest-free basis until the end of December 2022, or until the end of April 2023 for those businesses in the extended scheme.

At the end of January 2024, a total of €1.71 billion was warehoused for 57,244 taxpayers, with 70% of these taxpayers having outstanding liabilities of less than €5,000. The overall debt had decreased substantially since January 2022 when almost €3.2 billion was warehoused for 105,000 customers.

On 5 February 2024, Minister McGrath announced that the interest rate of 3% applicable to warehoused debt is now reduced to 0%. If a business has already paid warehoused debt which was subject to interest at 3%, it will get a refund of that interest.

Following a previous extension of the scheme, businesses have until 1 May 2024 to make arrangements to address their warehoused debt. It is important to note that businesses do not have to pay all of their warehoused debt by this date. All that is required is for businesses to proactively engage with Revenue and make arrangements to pay the debt over a period of time, based on their individual circumstances and capacity to pay.

Flexible Repayment Options

Revenue is taking a flexible approach to payment of warehoused debt for viable businesses and will facilitate tailored payment arrangements that are appropriate to particular business circumstances. Payment arrangements can be activated now in advance of 1 May 2024. A minimal down payment will activate the arrangement and monthly repayments can be scheduled to commence from May 2024 onwards. If a business has a change in circumstances during the term of the payment arrangement, a number of additional flexibilities are available to address any payment difficulties that may arise. These include options to take a payment break, defer the next payment due, amend the payment date and amend the monthly payment amounts.

This flexibility is subject to the key requirement of the DWS that current tax liabilities are filed and paid on time. Where taxpayers are finding it difficult to meet their current tax payment obligations, the advice remains to engage with Revenue as soon as these difficulties start to arise so that a solution can be found and agreed.

Revenue is engaging with businesses across multiple settings to maintain their awareness of their payment options and to encourage

businesses to set up their DWS payment plans. This engagement includes a direct outreach campaign and a webinar series for business representative bodies and sectoral groups. In advance of 1 May 2024, Revenue will again write to all customers with debt in the warehouse to advise them of their debt position and their payment options.

Actions for Taxpayers

All taxpayers with warehoused debt should take the following actions:

- Log onto ROS and initiate an application for a Phased Payment Arrangement (PPA) to address warehoused debt. This should be done immediately and certainly before 1 May 2024.
- If taxpayers do not wish to commence repayments of warehoused debt immediately, they can apply for a payment break until after 1 May 2024.
- If a taxpayer needs support or assistance, they should contact Revenue through MyEnquiries or by telephone to 01 7383663.

It is important that taxpayers engage with Revenue before May 2024. Any debt warehouse customer who has not applied for a PPA, or otherwise engaged with Revenue by that date, will have their debt warehouse status revoked. This means that all their outstanding debt will be subject to immediate collection and enforcement action and interest at the standard rate of 10% from the date the tax was originally due will apply. Therefore, businesses are strongly advised to get ready now and engage with Revenue before 1 May to make arrangements to address their warehoused debt.

Further guidance is available at https://www.revenue.ie/en/starting-a-business/paying-your-tax/debt-warehousing/index.aspx

Harry Harrison
Tax Partner, PwC Ireland
Paul McKenna
Tax Director, PwC Ireland
Chloe Fox *(not pictured)*
Tax Director, PwC Ireland

Introduction of Pillar Two GloBE Rules in Ireland

Introduction

The Pillar Two GloBE (Global Anti-Base Erosion) rules were implemented into the Irish Taxes Consolidation Act 1997 via a new Part 4A on the recent signing of Finance (No. 2) Act 2023.[1] The GloBE rules represent a fundamental change to how international profits of large multinational and domestic groups will be taxed. This article provides an overview of the GloBE rules as implemented in Finance (No. 2) Act 2023.

Background and Road to Implementation

The overriding objective of the GloBE rules is to ensure that large corporate groups pay a minimum effective tax rate of 15% on income arising in all jurisdictions in which they operate. A top-up tax will be payable on any excess profits of companies that fall short of this 15% effective rate.

1 Finance (No. 2) Act 2023, available via this link.

The GloBE rules were originally proposed by the OECD Inclusive Framework and were agreed by its members in December 2021. More than 140 jurisdictions signed up to these rules, which are generally referred to as the OECD Model Rules.[2] Shortly after the OECD Model Rules were published, the European Commission published the EU Minimum Taxation Directive, which provided a basis for the EU Member States to apply the OECD Model Rules with some modifications to ensure compatibility with EU law.[3] The EU Directive required Member States to transpose the rules into local law by 31 December 2023. After extensive negotiations throughout 2022, the Council of the EU received unanimous votes of support from all of the Member States for the EU Minimum Tax Directive in December 2022.

Throughout 2022 and 2023 the OECD Inclusive Framework published Commentary, Examples and Agreed Administrative Guidance (collectively referred to as "administrative guidance" hereafter) to clarify the application of the GloBE rules to specific aspects and supplement the rules through the provision of several temporary and permanent safe harbours. The OECD has stated an intention to publish further guidance to deal with interpretation matters after 1 January 2024 as needed. In October 2023 the European Commission stated its view that this OECD administrative guidance is compatible with the EU Minimum Tax Directive.

Ireland was required under the EU Directive to implement the rules no later than 31 December 2023. After extensive consultation with stakeholders, the Irish GloBE rules were published through Finance (No. 2) Bill 2023 as a new Part 4A (ss111A–111AAAE inclusive) to be inserted into the Taxes Consolidation Act 1997 (TCA 1997).

The Irish rules align with the EU Directive but also give effect to the OECD administrative guidance in s111B TCA 1997 (including the most recently released administrative guidance of December 2023). Any future OECD administrative guidance can be given legal effect by Ministerial Order.

The rules take effect for fiscal years beginning on or after 31 December 2023. This is by reference to the accounting period for which the ultimate parent entity (UPE) of the group prepares consolidated financial statements.

Scope of the GloBE Rules: s111C

The rules apply to groups (both multinational and large-scale domestic groups) whose annual revenue was €750m or more in the UPE's consolidated financial statements in at least two of the four fiscal years immediately before the tested fiscal year (the tested fiscal year being the first period in which the group is in scope of the GloBE rules). For example, the rules should apply for the fiscal year 31 December 2024 should there be annual revenue of €750m or more included in UPE's consolidated financial statements in at least two of the four fiscal years from 2020–2023. Groups meeting this threshold are referred to as "in-scope groups" for the purposes of this article.

If a "constituent entity" forms part of an in-scope group, then it will be subject to the GloBE rules. Whether a constituent entity is part of an in-scope group will depend on whether the entity has been treated as a consolidated entity (on a line-by-line basis) in the UPE's consolidated financial statements for that period. This is based on accounting principles, and careful consideration is needed in identifying whether an entity is so consolidated.

Certain constituent entities are treated as "excluded entities", and although their annual revenues count towards the €750m threshold, the GloBE rules are not applied

2 OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* (Paris: OECD Publishing, 2021), available via this link.
3 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, available via this link.

to such entities. A governmental entity, a non-profit organisation, a pension fund or an investment fund that is a UPE are all examples of excluded entities for the purposes of the GloBE rules.

There are specific rules applicable to entities that are not wholly owned by the in-scope group - for example, rules specific to joint ventures, minority-owned constituent entities, etc. There are also rules that apply where the in-scope group prepares accounts using a functional currency other than Euro, where the group's fiscal year is more or less than 12 months, and where the group has been involved in a merger/demerger or entities have joined or left the group.

GloBE Income: ss111O–111S

The GloBE rules require taxpayers to compute a specific tax base, using the accounting profits from the consolidated financial statements as a basis and with a number of specific adjustments to be made, which will result in a GloBE "income or loss amount". The GloBE income or loss amount will be calculated on a jurisdictional basis.

Typically, the income or loss amount will be computed using the data from the consolidated financial statements (following the financial reporting standard used in those accounts). However, in certain instances it will be necessary to use the constituent entity's statutory financial statements prepared under the local accounting standard. This applies where the qualified domestic top-up tax (QDTT) is the collection mechanism for any top-up tax in respect of Irish constituent entities.

The starting point for calculating the GloBE income or loss is the profit after tax taken from the relevant set of financial accounts (known as the financial accounting net income or loss, or FANIL). A number of specific adjustments are made to the FANIL to arrive at GloBE income or loss. Some adjustments will be required for almost all entities – for example, adding back or subtracting the net taxes expense. Others will be required depending on the nature of the constituent entity – for example, there are specific adjustments for insurance and insurance investment entities.

It is not possible in this article to provide a comprehensive overview of the various adjustments, but it should be noted that significant analysis will be needed to determine the quantum of a specific adjustment. Below is an overview of the various adjustments required and the relevant section of the legislation.

Net Taxes Expense s.111P(2)(a)	Excluded Dividends s.111P(2)(b)	Excluded Equity Gain or Loss s.111P(2)(c)	Included Revaluation Method Gain or Loss s.111P(2)(d)
Gain or loss on assets (excluded under s.111AN) s.111P(2)(e)	Asymmetric Foreign Currency Gains or Losses s.111P(2)(f)	Policy Disallowed Expenses s.111P(2)(g)	Prior Period Errors and Changes in Accounting Principles s.111P(2)(h)
Accrued Pension Expenses s.111P(2)(i)	Equity Investment Exclusion s.111P(2)(j)	Stock based compensation s.111P(3)	Arms Length Adjustments s.111P(4)
Refundable Tax Credits / Marketable Transferable Credits s.111P(5)	Fair Value Election s.111P(6)	Disposals of tangible assets (use of losses) s.111P(7)	Intra-Group Financing Expenses s.111P(8)

Consolidated accounting treatment s.111P(9)	Insurance returns to policyholders s.111P(10)	Movement in Equity due to Additional Tier One Capital s.111P(11)	Recognition of financial instruments between two parties s.111P(12)
FX Gains or Losses on hedging or in OCI s.111P(13)	Portfolio Shareholdings s.111P(14)	Insurance Reserves s.111P(15)	Loan Write-offs s.111P(16) & (17)
International Shipping Income s.111Q	Equity Investment Inclusion / FTE benefits s.111W	Income/Loss Impact of a post-filing adj / rate change s.111AB	Income/Loss Impact of CEs joining/leaving group s.111AM
Income/Loss Impact of transfer of assets / liabilities s.111AN	UPE as a FTE s.111AQ Or UPE subject to Deductible Dividend Regime s.111AR	Taxable Distribution Method s.111AV	Treatment of DTAs, DTLs and transferred assets on Transition s.111AW

Areas that have to date proved particularly difficult to quantify include asymmetric foreign exchange gains and losses and intra-group financing expenses.

There are also rules set out in ss111R and 111S regarding the allocation of income and loss (for example, in respect of permanent establishments vs head offices and dealing with flow-through entities).

Adjusted Covered Taxes: ss111T–111AB

Similar to the requirement to prepare a GloBE income or loss, in-scope groups will also need to compute "adjusted covered tax" amounts, which will then be required to be divided by the GloBE income or loss to determine the effective tax rate. This effective tax rate determines whether the minimum effective tax of 15% has been reached or exceeded.

The adjusted covered tax amount comprises both current and deferred taxes. It is based on the tax amount as reported in the financial statements but, again, subject to specific adjustments as set out in the rules.

At its simplest, adjusted covered taxes are calculated as current covered taxes per the accounts +/– adjustments to current covered taxes +/– total deferred tax adjustment amount (using the deferred tax number from the accounts but making specific adjustments). The inputs to this equation provide a good example of where businesses will need to gather data and document the supporting basis for amounts that may not be currently tracked.

It is not possible to provide an explanation of each and every adjustment required to either the current or the deferred taxes in this article. However, it is worth noting the new concept of a "recaptured deferred tax liability", whereby certain deferred tax liabilities that do not reverse within five years of creation must be reversed in the year in which they were originally recorded – this is a new concept, and businesses will not likely maintain a record of such deferred tax liabilities.

Similarly, in certain cases, the amount of a deferred tax attribute will need to be recast for GloBE purposes from the rate at which the attribute is carried in the financial statements to a deferred tax asset or liability based on a rate of 15% – this information is not tracked currently, and businesses will need to start maintaining a record of such attributes.

Another data point that will not be tracked currently is the values of attributes subject to valuation allowances (which are ignored

for GloBE purposes). A final example to illustrate the complexity of adjusted covered tax computations is the allocating of a foreign CFC tax payable on behalf of an Irish constituent entity.

The provisions concerning to which entity an amount of adjusted covered tax is allocated are detailed, with additional clarifications provided in the OECD administrative guidance. At the time of writing, questions remain with respect to the allocation of deferred taxes, and it is hoped that further administrative guidance will be issued covering this area in early 2024.

Calculating the Top-up Tax: ss111AC–111AD and 111AF

The following steps are required to determine any top-up tax amount. As noted above, these steps need to be performed on a jurisdictional basis, unless there is only one constituent entity in a jurisdiction, in which case an entity-level approach can be adopted.

Step 1 – Calculate the GloBE income or loss of the jurisdiction.

Step 2 – Determine the adjusted covered taxes of the jurisdiction.

Step 3 – Divide the adjusted covered taxes by the GloBE income or loss (expressed as a %). This is the jurisdictional effective tax rate.

Step 4 – If less than 15%, subtract the jurisdictional effective tax rate from 15% to provide the jurisdiction’s top-up tax percentage.

Step 5 – Compute the excess profits as the GloBE income or loss of the jurisdiction less the substance-based income exclusion.

Step 6 – Multiply the excess profits by the jurisdiction’s top-up tax percentage (Step 5 x Step 4) to determine the jurisdiction’s top-up tax amount.

Substance-Based Income Exclusion (Substance Carve-out): s111AE

The substance-based income exclusion recognises that in-scope groups may have significant substance in a given jurisdiction and that this substance should be taken account of in applying a top-up tax to that jurisdiction. The substance-based income exclusion operates by allowing an additional deduction from excess profits, i.e. the carve-out amount is deducted from the GloBE income before the income is multiplied by the top-up tax percentage. The carve-out should, accordingly, reduce the overall amount of top-up tax payable.

The substance-based income exclusion is calculated by taking a percentage of the jurisdiction’s payroll expenses (10% to begin with, reducing to 5% by 2034) and a percentage of the tangible assets net book value (8% to begin with, reducing to 5% by 2034). The aggregate of these two amounts is treated as the deduction. This carve-out is particularly beneficial for groups with significant capital outlays or high employee costs. There are a number of limitations, for example, regarding mobile assets, non-recognition of intangible assets, etc.

Collection Mechanisms: ss111E–111N, 111AAA–111AAE

The top-up tax liability is collected through three different mechanisms: the qualified domestic top-up tax (QDTT), the income inclusion rule (IIR) and the undertaxed profits rule (UTPR).

The GloBE rules allow countries to introduce a QDTT based on the GloBE mechanics into their own domestic law. Where a QDTT is introduced, it ensures that a jurisdiction has the primary right of taxation over its own income.

If the jurisdiction where the low-taxed constituent entity is located does not introduce a QDTT, then any top-up tax should be collected through the IIR. Under the IIR,

the top-up tax is paid at the level of the parent entity, in proportion to its ownership interests in those entities for which the top-up tax has arisen. Generally, the IIR is applied at the level of the UPE, but it may apply further down the ownership chain (collected by an intermediate parent entity) if the UPE is not subject to an IIR.

A backstop rule, the UTPR allows the top-up tax to be collected by another entity in the group if top-up tax would not be collected in any jurisdiction under the QDTT or IIR rule. This could be the case where the various jurisdictions represented through the ownership chain have not implemented the IIR.

Ireland has introduced these three collection mechanisms in Finance (No.2) Act 2023; however, the UTPR will in most cases apply only from 1 January 2025.

There are some differences in the calculation of GloBE income and adjusted covered taxes for the QDTT in comparison to the IIR and UTPR. However, the six-step calculation methodology above to determine the effective tax rate and the potential top-up tax applies irrespective of whether the top-up tax is being charged under the QDTT, the IIR or the UTPR.

One key aspect of the Irish QDTT is that, where certain conditions are met, the QDTT is calculated using a local financial accounting standard and financial statements, rather than the UPE's financial accounting standard used in the consolidated financial statements.

Broadly, this applies where all of the entities in the State have financial statements prepared in accordance with an acceptable or authorised local accounting standard, the accounting period of all such accounts is the same as the fiscal year of the consolidated financial statements of the MNE group and such accounts are used to determine the entities' liability to tax or are subject to external audit. This is different from the IIR and UTPR, where the calculation is generally performed using the UPE's financial accounting standard.

Transitional CbCR Safe Harbour: s111AJ

Finance (No. 2) Act 2023 introduces the transitional CbCR (country-by-country reporting) safe harbour, which was agreed by the Inclusive Framework with a view to reducing the complexity of performing detailed calculations and meeting burdensome compliance obligations under the GloBE rules for low-risk jurisdictions in the first three years of implementation. The transitional CbCR safe harbour is temporary (it covers all fiscal years beginning on or before 31 December 2026 but not including a fiscal year that ends after 30 June 2028); however, the OECD has indicated that further work will be undertaken to establish a permanent safe harbour regime.

The safe harbour reduces an in-scope group's top-up tax for a particular jurisdiction to zero where one of three criteria is met:

- *De minimus* test: The jurisdiction has total CbCR revenue of less than €10m, and the CbCR profit (loss) before income tax is less than €1m (including a loss).
- Simplified ETR test: The jurisdiction has an effective tax rate (ETR) that is equal to or greater than the "transition rate" in the jurisdiction for the fiscal year. The "simplified ETR" is calculated by dividing the simplified covered taxes (income tax expense reported in the group's financial statements minus any taxes that are not covered taxes or taxes relating to uncertain tax positions) by the profit or loss before tax reported in the group's CbCR. The transition rate is 15%, rising to 16% for fiscal years beginning in 2025 and 17% for fiscal years beginning in 2026.
- Routine profits test: The tested jurisdiction's profit or loss before income tax per the CbCR is equal to or less than the substance-based income exclusion for constituent entities resident in that jurisdiction, as calculated under the GloBE rules.

For an MNE to apply the transitional CbCR safe harbour, it must prepare a qualified CbC report, which broadly means that the CbC report

must be prepared using consolidated financial statements of the UPE or separate financial accounts of each constituent entity. The OECD has released detailed guidance in respect of the application of the transitional CbCR safe harbour and what constitutes a qualified CbC report.

Qualified Domestic Minimum Top-up Tax Safe Harbour: s111AI

This simplification regime operates by setting the top-up tax to zero for a jurisdiction when an in-scope group qualifies for the safe harbour in that jurisdiction. A jurisdiction with an applicable top-up tax would collect that top-up tax from the in-scope group via its domestic top-up tax. Ireland has provided for the application of the QDMTT safe harbour in respect of constituent entities in other jurisdictions (in other words, Ireland will respect the primary taxing rights being claimed through foreign QDMTTs and will consider any IIR or UTPR top-up taxes reduced to nil for such jurisdictions). The OECD has set out three standards for a QDMTT to be considered a QDMTT safe harbour regime: the consistency standard, the administration standard and the accounting standard.

Transitional UTPR Safe Harbour: s111AK

This UTPR safe harbour applies with respect to UPE jurisdictions. If an in-scope group is to avail of this safe harbour, the UPE jurisdiction must have a statutory corporate tax rate greater than 20%. This safe harbour results in a one-year delay in the application of the UTPR for the UPE jurisdiction. The safe harbour applies for fiscal years that are no more than 12 months in duration, beginning on or before 31 December 2025 and ending on or before 31 December 2026. Jurisdictions availing of the transitional UTPR safe harbour may not also access the transitional CbCR safe harbour.

Corporate Restructurings: ss111AL–111AO

Finance Act (No. 2) Act 2023 contains special rules that deal with corporate restructurings, including mergers, acquisitions and demergers. The rules explain how the consolidated revenue threshold is applied after a merger and a demerger. They also deal with cases where an entity joins or leaves an MNE group, as well as situations in which the assets and liabilities of an entity are disposed of or acquired from entities in the same in-scope group, including by way of a GloBE reorganisation. The Finance Act also outlines special rules for situations where a group holds interests in a joint venture.

Transition Rules: ss111AW–111AY

Transitional rules are included in ss111AW–111AY, which outline the tax treatment of deferred tax attributes and transferred assets on transition into the GloBE regime. The transition rules allow existing deferred tax accounting attributes (including deferred tax assets resulting from prior-year losses) to be used in the calculation of the ETR to prevent distortions upon entry of a constituent entity into the GloBE regime.

These rules also provide a limitation on intra-group asset transfers before application of the GloBE rules. If an asset is transferred between constituent entities in the same in-scope group in the transition period (from 30 November 2021 until the start of the fiscal year in which a group falls within the scope of the rules), then the asset must be recorded at its historical carrying value for GloBE purposes to limit the ability to step up the basis in such assets without including the resulting gain in the computation of GloBE income or loss. Items of deferred tax expense relating to such transactions will be recorded for GloBE purposes with respect to the carrying value of the assets transferred. Note that these GloBE-specific adjustments will not be reflected in the balance sheet.

There is also a provision for the exclusion from the IIR and the UTPR of MNE groups and large-scale domestic groups that are in the first five years of the initial phase of international activity. A group shall be considered to be in the initial phase of its international activity if it has constituent entities in no more than six jurisdictions and the sum of the net book value of the tangible assets of all of the entities

located in jurisdictions other than the reference jurisdiction (broadly defined as the jurisdiction in which the group has the highest total value of tangible assets) does not exceed €50m. Note that the exclusion may not apply to all entities of the in-scope group even if the conditions are met.

Compliance and Administration: ss111AAF–111AAAD

The GloBE rules give rise to new registration and filing obligations for constituent entities under the self-assessment system. Broadly, Irish constituent entities will need to register for GloBE taxes within 12 months of the end of the first accounting period for which the group comes within the scope of the GloBE rules.

Each entity will need to file a GloBE Information Return (GIR) within 15 months of the end of the relevant year. Alternatively, if another entity has been designated to file on its behalf, it needs to file a notification of filer by this date. The deadline is extended to 18 months in the year in which the GloBE rules first apply. For example, for a group that has a 31 December 2024 fiscal year end, the deadline for the GIR filing would be June 2026. For the year ended 31 December 2025 the deadline for the GIR filing would be March 2027.

The Finance (No. 2) Act 2023 also introduces the transitional simplified jurisdictional reporting framework. This was introduced by the OECD to give groups time to develop suitable systems to facilitate constituent-entity-level reporting. Where the necessary conditions are met, in-scope groups with Irish constituent entities can elect to report on a jurisdictional level for fiscal years ending on or before 30 June 2030.

There are also separate IIR, UTPR and QDTT returns to be filed by the same deadlines, depending on which collection mechanism is relevant to the particular entity, and top-up taxes are due to be paid by the same date. There is an option for a UTPR or a QDTT group filer to be appointed that would take responsibility for filing these returns for the Irish group, and the relevant taxes would become chargeable on that group filer.

Conclusion

Compliance with the GloBE rules is undoubtedly going to bring challenges for in-scope groups, and they need to start planning and assessing their GloBE-readiness now. In particular, in-scope businesses will need to understand the technical aspects of the rules, identify the data points needed to perform the calculations and build in-house tax and accounting teams that are GloBE-ready.

These GloBE rules are in effect from 1 January 2024. The provisions as described above are complex and very different from the existing Irish corporate tax laws. Therefore, all transactions from now on will need to be considered from a Pillar Two perspective. It will be important for advisers to understand the impact of the new rules, the nuances and the complexity that they bring.

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What Does Finance (No. 2) Act 2023 Mean for the Financial Services Industry?

Introduction

Finance (No. 2) Act 2023 ("the Act") contains a comprehensive body of legislation that introduces significant changes to the Irish tax code. In terms of global tax reform, the Act provides for the transposition of the EU Minimum Tax Directive, which introduced the OECD's Pillar Two rules to Irish tax law from 31 December 2023. In addition, legislation providing for new tax measures applying to certain outbound payments of interest, royalties and distributions is included in the Act.

As well as the above, there were a number of other changes that could have a significant impact on financial services taxpayers, particularly those engaged in leasing activities. The Act was signed into law on 18 December 2023, and summarised below are its key measures from a financial services perspective.

Stamp Duty Measures

Bank levy

As was announced on Budget Day, a revised bank levy has been introduced for 2024. The revised levy will apply to AIB, Bank of Ireland,

EBS and PTSB and will be applied at the rate of 0.112% of the value of the deposits held by each bank on 31 December 2022.

Corporate Tax Measures

Pillar Two

The new Pillar Two rules apply for accounting periods commencing on or after 31 December 2023. Broadly, Pillar Two applies to multinational enterprises with annual consolidated revenues in excess of €750m in at least two of the immediately preceding four years and seeks to ensure that large multinational enterprises are subject to a minimum level of tax (15%) on the income/profits arising in each of the jurisdictions where they operate.

Financial services groups should be actively assessing the impact of the new rules, including the application of the safe harbour provisions, to identify jurisdictions where top-up tax is expected. This will, in turn, feed into relevant accounting disclosures that need to be included in the FY2023 financial statements in terms of qualitative and quantitative information pertaining to the future exposure to additional Pillar Two taxes. (See also article by Harry Harrison, Chloe Fox, Paul McKenna "Introduction of Pillar Two GloBE Rules in Ireland" in this issue.)

Taxation of outbound payments

After a public consultation in summer 2023, Finance (No. 2) Act 2023 introduced outbound payment legislation. The legislation includes new measures to apply to outbound payments of interest, royalties and distributions (including dividends) made to associated entities in jurisdictions on the EU list of non-cooperative jurisdictions or in zero-tax jurisdictions. "Associated entities" are specifically defined in the new legislation.

At a high level, where an outbound payment of interest, royalties or distributions falls within these rules, it could result in a withholding tax exemption ceasing to apply. Exemptions are available where the interest payment is made on a quoted Eurobond or wholesale debt instrument, subject to the satisfaction of a number of conditions. However, such exemptions would not apply where the company is aware that any portion of the interest payment is made to an associated entity.

The legislation shall apply to a payment of interest or royalties or the making of a distribution on or after 1 April 2024. However, a grandfathering provision has been introduced whereby if the arrangement is in place on or before 19 October 2023, in respect of a payment of interest or royalties or the making of a distribution, the legislation shall apply to such payments made on or after 1 January 2025.

Taxation of certain qualifying finance companies

Section 40 of the Finance (No. 2) Act 2023 introduced a new section to Irish tax legislation, s76E of the Taxes Consolidation Act (TCA 1997). This section provides for an interest deduction for a "qualifying financing company" where certain conditions are met.

To avail of this provision, the company must be a "qualifying financing company", meaning a company that it:

(a) holds a direct ownership of 75% or more of the ordinary share capital of one or more than one qualifying subsidiary, or intermediate holding company, as the case may be;

(b) borrows money for the purposes of on-lending that money by way of the making of relevant loans to one or more than one qualifying subsidiary, or indirect qualifying subsidiary, as the case may be; and

(c) apart from activities ancillary to those specified in (a) or (b), carries on no other activities.

For the purposes of the above, the following definitions are of particular relevance:

- "qualifying subsidiary", means a company:
  - that exists wholly or mainly for the purpose of carrying on any trade or trades,

  - that is tax resident in an EU Member State/EEA State or a territory with which Ireland has a double taxation agreement and
  - in which a qualifying financing company holds a direct ownership of 75% or more of the ordinary share capital of the company;
- "indirect qualifying subsidiary" means a company that would be a qualifying subsidiary but for the fact that 75% or more of its ordinary share capital is held directly by an intermediate holding company;
- "intermediate holding company" means a company 75% or more of the ordinary share capital of which is held directly by a qualifying financing company and whose business consists wholly of the holding of ordinary share capital in one or more than one indirect qualifying subsidiary of that qualifying financing company.

Broadly, a relevant loan is a loan entered into by way of bargain made at arm's length that is advanced by a qualifying financing company to a qualifying subsidiary or an indirect qualifying subsidiary and that is used by the qualifying subsidiary or indirect qualifying subsidiary wholly and exclusively for the purposes of carrying on a trade or trades and not for the redemption of or subscription for shares, or any other payments relating to shares or the capital structure of any company.

For the purposes of computing profits chargeable under Case III or Case IV in respect of each relevant loan, at a high level, the qualifying financing company should be entitled to deduct the amount of external interest paid by that company, to the extent that the external loan matches the relevant loan. There are a number of further provisions that detail the deductibility position where such a loan is repaid or a replacement loan is made. This section is also subject to strict anti-avoidance rules, which would need to be considered in detail.

The Irish anti-debt pushdown provisions in s840A TCA 1997 are also disapplied in the case of interest payable to a qualifying financing company.

The above provision is likely to have wide application and may act as an alternative to the interest-as-a-charge provision contained in s247 TCA 1997.

Leasing-specific changes

There has been extensive industry interaction with Revenue and the Department of Finance in recent times in respect of leasing matters generally and historical practices in particular. In the course of these discussions Revenue signalled its intention to withdraw many of their historical leasing practices from 31 December 2023. Finance (No. 2) Act 2023 codifies some of these practices and has introduced some measures that should mitigate the loss of others.

Capital allowances for leased assets

In general, only the owner of plant and machinery can claim capital allowances; however, there are rules providing that where the plant or machinery is finance leased and the lessee bears the burden of wear and tear, the lessor and lessee can jointly elect for the lessee to claim the allowances instead under s299 TCA 1997.

The Act removes the elective provision from these rules except where the lessee is an individual (making the rules compulsory in all other cases). The Act amends s299 TCA 1997 such that it will apply only to "relevant leases". Relevant leases include finance leases but also include operating leases where:

- the discounted present value of the lease payments that are payable during the lease term amounts to 80% or more of the fair value of the leased asset where the payments are discounted at the relevant rate;
- the lease term is greater than or equal to 65% of the predictable useful life (within the meaning of s80A TCA 1997) of the leased asset; and

- the lease is granted on such terms that the use and enjoyment of the leased asset is obtained by the lessee for a period at the end of which it is considered likely that the leased asset will pass to the lessee.

Finance (No. 2) Act 2023 also introduced additional conditions that must be satisfied for a lessee to be entitled to claim capital allowances on an asset that is leased under a relevant lease:

(1) the leased asset must belong to the lessor immediately before the entering into the relevant lease and throughout the relevant lease term;
(2) the lease must be a relevant lease;
(3) the lessor must have acquired the leased asset by way of a bargain made at arm's length;
(4) the leased asset must not be a replacement asset for the purposes of s290 TCA 1997;
(5) the relevant lease must have been entered into by way of a bargain made at arm's length;
(6) where the lessee is not Irish tax resident, it must be reasonable to consider that the deductible lease expenditure incurred by the lessee for foreign tax purposes is similar to that calculated under the equivalent Irish rules (essentially, an amount equivalent to the financing margin of the lease rentals and not the gross lease rental expense); and
(7) it must be reasonable to consider that the relevant lease has been entered into 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 the avoidance of tax.

In an aviation leasing context, for example, condition (1) above is particularly relevant in the case of new aircraft – it will be important to be able to demonstrate that the aircraft was owned by the lessor before being placed on lease to the lessee. Typically, in such transactions the purchase agreement and lease agreement may be signed simultaneously, and therefore careful management of the transaction timing may be required to ensure that condition (1) above is met.

In addition, where the lessee and the lessor are both Irish tax resident, a joint election must be submitted to Revenue at the commencement of a lease confirming that the burden of wear and tear of the asset under the relevant lease will be borne by the lessee. Helpfully from a lessor perspective, where a lease is a relevant lease and the above conditions are met, the lessor is taxed based on the financing return arising on the lease, which in the case of a finance lease should equate to the interest income recognised in the profit and loss account of the lessor. This codifies in legislation the long-standing practice whereby a finance lessor that did not claim capital allowances on the asset was taxed only on the financing return and not on the entire lease income.

In making a claim for this treatment, the lessor is obliged to provide extensive information in relation to the lessee and the leased asset.

The Act also introduces a change to the balancing allowances and charges rules. These provide that an event giving rise to a balancing allowance or charge can occur for the lessor when entering into a relevant lease and, similarly, for a lessee on the conclusion of the relevant lease where the asset returns to the lessor rather than ownership transferring to the lessee. For the purposes of calculating the resulting balancing allowance or charge, the amount to be regarded as being received by the lessor should be the higher of the open-market value of the asset and the discounted present value of the lease payment. For the lessee the amount received on the balancing event should be calculated as the higher of the open market price and the amount payable under a residual value guarantee in respect of the asset that forms part of a lease for accounting purposes at the end of the lease term.

There are also technical related amendments to the rules, which provide for a restriction of losses by reference to capital allowances and to an exemption from capital gains tax that applies to certain tangible moveable property.

Taxation of lease income

The general rule that a company should compute its taxable profits based on its accounting results is modified in the case of a company that leases assets under a finance lease. Under these modified rules, to date, such a company was subject to tax on the gross amount of rents receivable by it. This treatment is a corollary of the fact that a lessor may be entitled to claim capital allowances on the leased asset and ensures that the commercial profits that the company earns are ultimately subject to corporation tax.

However, as noted above, there are situations where a lessee may be entitled to claim capital allowances on a leased asset. Where this occurs, the lessor is not entitled to allowances and, as also noted above, will be effectively taxed on the finance margin. By long-standing practice, Revenue had agreed that such lessors could be taxed on their finance margin (effectively, in line with their accounting results) where the lessee is the party claiming the allowances. Thus, Finance (No. 2) Act 2023 puts this arrangement on a statutory footing and provides further clarification in relation to the taxation treatment of lease payments for both the recipient and the payer.

The Act introduces amendments confirming that in calculating the profits of a trade, the income from a finance lease (in the case of a lessor) and in the case of a lessee the lease rentals payable in respect of any lease (i.e. finance and operating leases) to be included in the tax computation, subject to the application of s299 TCA 1997, are the gross payments under the lease (and not just the amounts recorded in the company's profit and loss account). However, these amounts are to be spread evenly over the life of the lease irrespective of how the transaction is recorded in the company's accounts.

For finance leases using FRS 101 or FRS 102 the accounting results should generally align with this new spreading requirement. Finance (No. 2) Bill 2023 originally included amendments to the treatment of operating leases, but these were not included in the Act, which is a welcome development as they may have given rise to new obligations to model and spread the lease income.

This treatment is modified in the case of "relevant leases" (as described above): the lessor is to be taxed on the financing margin recorded in its financial statements (or, in the case of a lease that is not a finance lease, the amount that would be so recorded if it were a finance lease). However, to qualify for this treatment, the lessor must satisfy the conditions enumerated above and the lessee must satisfy the conditions to claim capital allowances.

The Act introduces provision for non-trading lessors to carry forward their losses in their functional currency (which would not be the case under general principles). In addition, it includes an amendment to s77 TCA 1997 to codify the long-standing practice of allowing non-trading lessors to deduct interest incurred in their leasing activities.

Leasing ring-fence

Under Irish tax legislation, excess capital allowances on leased plant and machinery may be set off only against income from the leased asset or, where the lessor is a company carrying on a trade of leasing, the profits from that trade. This is referred to as the "leasing ring-fence".

The following categories of income are currently treated as income from a trade of leasing in the context of the leasing ring-fence:

- income from the leasing of machinery or plant;
- income from the provision of loans to fund the purchase of machinery or plant;
- income from the provision of machinery- or plant-leasing expertise;

- income from the disposal of leased machinery or plant; and
- income from activities that are ancillary to those set out above.

Excess capital allowances that are not utilised in the relevant accounting period may be carried forward indefinitely for set off against future income from the trade of leasing. They can also be surrendered (by way of group relief) to other members of the same leasing group to shelter profits from their trade of leasing.

Finance (No. 2) Act 2023 introduces a new term, "lease adjacent activities", which refers to the activities listed above.

There are currently two different configurations of groups that can constitute a leasing group:

- a company and all companies of which it is a 75% subsidiary and all companies that are its 75% subsidiary; or
- a company and all companies resident in the same territory of the company of which it is a 75% subsidiary or that are its 75% subsidiaries.

Finance (No. 2) Act 2023 expands this definition of a leasing group to include those members of a group of companies that are members of the same corporation tax loss group. These are welcome amendments, as previously a leasing group could comprise only companies within the vertical ownership chain – the amendments now allow sister companies to form a leasing group.

Finance (No. 2) Act 2023 also widens the range of the activities that come within the ring-fence to include:

- the provision of intra-group finance and guarantees via intermediate financing companies;
- the disposal of the contractual right to acquire machinery or plant of a type that is similar to the type of machinery or plant leased by the leasing business group where, at the time that the contract was entered into, it was intended that the asset was to be acquired and leased by the leasing business group; and
- the disposal of any part of an item of plant or machinery, where that plant or machinery was in use for leasing purposes.

The broadened range of activities that come within the ring-fence is now referred to as a leasing business, and any company that carries on leasing business will form a leasing business group with any entity that forms part of the group.

As the existing rules on the use of ring-fenced leasing losses allow them to be used only to shelter income form a trade of leasing, the Act modifies these rules to allow their use against passive leasing ring-fence income (on a value basis), both within the company itself and by means of surrendering group relief. For those lessors engaged in financing activities, the new qualifying financing company regime discussed above may be of relevance,

The Act introduces additional detailed reporting requirements for the tax returns of companies that are within the leasing ring-fence. The disclosures primarily relate to details on how specified capital allowances or losses generated from the leasing activity are utilised by the company itself or surrendered to other members of the leasing business group.

Other "leasing" matters

As noted above, Revenue said that it intended to withdraw many of its historical leasing practices at the end of 2023. There may be a requirement for some lessors to evaluate their trading position with reference to general Case I trading principles. The long-awaited updates to the Leasing Tax and Duty Manual should provide guidance on this point. The qualifying financing company regime may be of benefit to a leasing financing entity that may not have qualified as a treasury trading company, for example, under general Case I principles, and specific

guidance provided by Revenue in relation to the trading status of financing companies more generally.

Although the Act included a number of leasing-specific amendments, further guidance and important updates are expected to be released in the coming weeks in the updated Leasing Tax and Duty Manual, which will be of significant importance.

In summary, the Act contained a number of significant changes. While the introduction of Pillar Two will have a significant impact on all companies within the scope, including financial services entities, the Act also contained some significant legislative changes which will be of relevance to those operating in the leasing industry. Impacted companies should be considering what these changes mean for them and their groups.

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How Taxpayers Can Prepare for Joint Audits and Increasing Cross-border Tax Controversies

Introduction

Section 88 of the Finance (No. 2) Act 2023 introduces a new s891L to the Taxes Consolidation Act 1997 (TCA 1997), which transposes Article 12a of EU Directive 2021/514,[1] also known as DAC7 ("the Directive"). For the first time, it provides a legal basis for Revenue and other EU tax authorities to conduct joint audits in Ireland for periods beginning on or after 1 January 2024. This means that, from this date, Revenue will have to facilitate other EU Member States in conducting joint audits.

Joint audits will be a game-changer for both tax authorities and taxpayers. Taxpayers must ensure that they are ready for an increase in cross-border interventions, which will present various procedural complexities and require

1 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

a review of how the organisation currently manages tax controversy.

In this article we outline cross-border tax authority collaboration to date, explain the new provisions relating to joint audits, examine the available cross-border tax dispute-resolution mechanisms and, finally, explore how taxpayers can best prepare for joint audits by managing tax risk in the organisation and preparing for tax controversies should they arise.

Cross-border Tax Disputes

Cross-border tax disputes are on the increase globally, driven by various factors such as increasing complexity in tax legislation; global and regional initiatives to shape fair, effective and efficient tax systems, led by the OECD and the EU; pressure on the Exchequer to increase tax receipts in an uncertain economic environment; and the emergence of tax transparency initiatives driven by external stakeholders such as shareholders and civil society. At the same time, taxpayers' business models are becoming more complex, with changing supply chains, digitalisation and increased compliance requirements. These drivers, discussed further below, have created a complex tax controversy environment in which taxpayers will need to formulate an approach to managing tax risk or face difficult, lengthy and costly tax disputes.

Collaboration Among Tax Authorities

Joint audits are part of the further evolution of continued cooperation among tax authorities in the EU in scrutinising the tax affairs of groups. This includes various exchange-of-information (EOI) initiatives,[2] which facilitate the sharing of information such as cross-border tax rulings, country-by-country reports and cross-border tax arrangements. Tax authorities are increasingly coming together to make enquiries on a mutual area of identified tax risk. By coordinating in this manner, it is envisaged that the joint audit process will be more efficient and conclude in a timelier manner.

The EU's stated aim for the introduction of the joint audit provisions in the Directive was to "improve the existing framework for exchange of information and administrative cooperation in the EU"[3]. Before the introduction of the Directive, Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC) provided for foreign tax officials to be present in other Member States during administrative enquiries and allowed them to interview individuals and to examine records.[4] DAC also contained a provision relating to "simultaneous controls", which facilitated simultaneous parallel tax audits and interventions in two or more Member States. However, there was no explicit or defined legal framework for the conduct of a joint audit, how the joint audit would progress or what the taxpayer's rights and obligations might be under the joint audit process. Consequently, in our experience, joint audits had been undertaken among Member States without a clearly defined legal framework and were based on varying domestic legislation, agreements or memorandums of understanding between the tax authorities, with the consent of the taxpayer, while leveraging existing EOI mechanisms.

With increasing collaboration and exchange of information among tax authorities and a large swathe of data becoming available to tax authorities as a result of country-by-country reporting (CbCR) and DAC 6,[5] it can be expected that EU tax authorities will be keen to test and use the new powers under this new legal framework to carry out joint audits.

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2 Exchange of information under Council Directive 2011/16/EU, Ireland's double taxation agreements and tax information exchange agreements, and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. EOI can be automatic, by request and/or spontaneous.
3 Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 15 July 2020.
4 Article 11 of DAC was transposed into Irish law by way of s82 Finance Act 2022 with the introduction of the new s891K TCA 1997.
5 EU Council Directive 2018/822.

Joint Audits

What is a joint audit?

A joint audit is an administrative enquiry conducted by Revenue and the competent authority (typically, the tax authority) of another EU Member State linked to one or more persons of common or complementary interest to the two tax authorities. All companies could be subject to a joint audit, but the likelihood is that the targets will be groups with a global footprint. Irish companies that are likely to be of most interest to EU tax authorities are Irish-headquartered companies or those Irish companies operating as an entrepreneur.[6]

How will joint audits work?

Under the new s891L TCA 1997, Revenue must respond to a joint audit request from an EU Member State tax authority within 60 days. Revenue can reject the request where there are justified grounds for doing so. Neither the legislation nor the Directive indicates what those justified grounds might be. It remains to be seen whether, for example, a lack of resources on the part of Revenue might justify a refusal to agree to such a request from another Member State.

If the request is accepted by Revenue, Revenue can authorise a foreign tax official to be a "nominated officer". The nominated officer can accompany Revenue officers during the joint audit, interview individuals and examine records. Revenue must appoint an authorised officer from Revenue to supervise and coordinate the joint audit in Ireland. Agreement will be reached in advance between Revenue and the foreign tax authority in respect of matters such as linguistic arrangements.

As many joint audits will likely cover cross-border inter-company transactions between an Irish entity and a foreign entity, it is expected that transfer pricing will be the primary focus. This would mean that, for example, transfer pricing documentation would be included in the records to be examined as part of a joint audit. Taxpayers should consider their transfer pricing documentation obligations under s835G TCA 1997 as outlined in the recently published Revenue Tax and Duty Manual, Part 35A-01-05, "Requests for Transfer Pricing Documentation".

During the joint audit, Revenue and the foreign tax authority must endeavour to agree on:

- the relevant facts and circumstances and
- the tax position of the taxpayer based on the results of the joint audit.

On conclusion of the joint audit, Revenue's authorised officer and the nominated officer must prepare a final report detailing their findings and the issues on which they agree. A copy of this final report must be furnished to the taxpayer within 60 days of its issue.

At the time of writing, it remains to be seen precisely how the day-to-day business of joint audits will operate, and further guidance is expected from Revenue. For example, it is not yet clear whether a new chapter will be included in Revenue's Code of Practice for Revenue Compliance Interventions and/or a new Tax and Duty Manual will be published covering the operation of joint audits. It is also unclear how joint audits will intersect with Revenue's Compliance Intervention Framework and the Co-operative Compliance Framework (CCF), which broadly provides participants with protection from audits.

Are taxpayers' rights different under a joint audit?

The applicable procedural law for all officials involved in a joint audit is the law of the country in which the audit takes place. This means that, with respect to rights concerning complaints, reviews and appeals, and confidentiality of information, a taxpayer subject to a joint audit has the same rights and obligations as they would in the case of an audit carried out by Revenue only.

6 For example, an Irish entity owning key assets such as the intellectual property within a global group.

The nominated officer cannot perform any function that exceeds the scope of their functions under the laws of the Member State that requested the joint audit. Accordingly, the nominated officer must comply with whichever are the stricter, the rules and limits imposed by Irish law or the laws of the requesting Member State.

The written authorisation provided by Revenue to the foreign tax official must be made available by the nominated officer on request from the taxpayer and is limited to the duration of the authorisation only.

As part of joint audits, a taxpayer's right to assert privilege over professional advice of a confidential nature given by a professional to a client, legal professional privilege and privilege over medical information is expressly recognised.

What will be the outcome of a joint audit?

Although the Irish and foreign tax authorities will endeavour to agree on the facts and issues arising from a joint audit and set this out in the final report, they are not obligated to agree on the issues raised during a joint audit. Furthermore, there is no obligation for the tax authorities to include in the final joint audit report the points on which they did not agree. This may mean that, at the end of a joint audit, both tax authorities need to consider the issues raised during the joint audit further at a domestic level.

In deciding any actions to be taken as a result of the joint audit, the new provisions state that Revenue shall take into account the matters agreed on during the joint audit. If either tax authority decides that an underpayment of tax has occurred for the relevant period, after the conclusion of the joint audit, the relevant tax authority will issue a separate assessment in accordance with the relevant legislation in its jurisdiction.

Should Revenue issue a notice of assessment after the conclusion of a joint audit, the same right of appeal applies to such an assessment as if the audit was conducted by Revenue only (i.e. a notice of appeal must be filed to the Tax Appeals Commission (TAC) no later than 30 days from the date on the notice of assessment). If the other EU tax authority also raises an assessment on foot of the joint audit, the applicable right of appeal relevant in that Member State applies.

Double taxation

Where double taxation arises as a result of the assessment(s) raised on foot of the joint audit, consideration should be given to cross-border dispute-resolution mechanisms, such as:

- A Mutual Agreement Procedure (MAP) application under the Regulations implementing the European Union's Directive on tax dispute-resolution mechanisms ((EU) 2017/1852 of 10 October 2017)[7] ("the Regulations"), which apply to a dispute involving income or capital earned in a tax year commencing on or after 1 January 2018;
- The MAP provision in the relevant double taxation agreement between the jurisdictions (if applicable); and
- An application under the EU Arbitration Convention.[8]

Depending on the relevant domestic legislation, an application for correlative relief in the jurisdiction in which the double taxation was suffered may also be possible. This is a unilateral application dealt with by the tax authority in that jurisdiction, with minimal contact made between the tax authorities (there may be some verifications required on the tax suffered in the auditing jurisdiction).

When assessing which cross-border tax dispute-resolution mechanism to avail of, consideration should be given to the merits of each option. For example, it should be

7 European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (SI 306 of 2019) and European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations (SI 673 of 2020).
8 Convention 90/436/EEC.

noted that a mandatory binding arbitration mechanism applies under the Regulations, meaning that the competent authorities must ultimately reach a resolution in respect of the double taxation at hand. Under the EU Arbitration Convention, there is no such requirement. Furthermore, time limits apply to each stage of the process under the Regulations, meaning that the competent authorities are required to issue acknowledgements and reach decisions within certain time periods.

As noted above, a taxpayer may appeal the assessment issuing on foot of a joint audit. It should be noted that the taxpayer can submit a MAP application to the Irish competent authority while judicial or administrative proceedings are ongoing. In such cases the competent authority will generally request that the taxpayer agrees to the suspension of its judicial or administrative remedies pending the outcome of the MAP.[9]

What Will This Mean for Taxpayers?

These new provisions provide a legal framework for joint audits for the first time in Ireland. This is likely to lead to an increase in cross-border audit activity. Taxpayers should prepare now for this significant shift in how EU Member States will collaborate in future to manage tax audit activity.

The key to managing, and preparing for, joint audits is to ensure that the organisation is managing cross-border tax risk in a coordinated and consistent manner. This can be achieved in several ways, as outlined below.

Preparing for a joint audit

Review existing audit activity

A review of existing audit activity across EU jurisdictions should be undertaken to establish whether any of the facts would lend themselves to a joint audit request by another Member State to Revenue. If such a set of facts is identified, it would be prudent to prepare for the commencement of a joint audit between Revenue and the tax authority of the other Member State. This review may involve considering the tax treatment of inter-company transactions between the Irish entity and the EU counterpart to identify any risks and discussing with the local tax team and advisers the progress of the ongoing audit in the other Member State. If the audit is progressing to the point that the EU tax authority is seeking information in relation to the Irish entity, a "common or complementary interest" may be emerging between Revenue and the other tax authority. This may indicate that a joint audit request may issue to Revenue in due course, and it would be prudent for the taxpayer to make preparations.

Understand your rights and obligations

At the outset of a joint audit, careful consideration should be given to the powers of the foreign nominated officer. This would involve a review of the authorisation provided by Revenue to the nominated officer and the duration of the authorisation. It would also involve considering any requests for records under the joint audit to ensure that they comply with the stricter of the rules and limits imposed by Irish law or the laws of the requesting Member State. For example, consideration should be given to the relevant statute of limitations in respect of the documents being requested. These considerations are important to ensure that the correct process is followed by each tax authority during the audit and that taxpayer rights are protected.

After the conclusion of the audit, if double taxation arises, timelines for any MAP application should also be monitored so that applications are made by the taxpayer within the applicable deadlines and the right to avail of the dispute-resolution mechanisms is protected.

9 Revenue Tax and Duty Manual, Part 35-02-08, "Guidelines for Requesting Mutual Agreement Procedure ('MAP') Assistance in Ireland", paragraph 2.6.

Tax risk prevention and management

More broadly, consideration should be given to how tax risk is managed in the organisation with a view to preventing tax controversies such as joint audits arising and, if they do, minimising the repercussions and resource drain for the organisation.

Tax control framework

A tax control framework (TCF) is recognised by both tax authorities and taxpayers as crucial to the management of tax risk locally, regionally and (if applicable) globally. The TCF comprises various structures, arrangements and tax process controls to support a taxpayer in managing its tax affairs. In particular, the TCF assists an organisation in identifying and mitigating tax risk. Key areas to consider when developing a TCF include:

- the tax governance and control environment in an organisation;
- the development of a global or local tax strategy document;
- the adequacy of, and expertise within, the tax function (see further below);
- how tax risks and controls for those tax risks are identified and managed;
- the monitoring and testing of tax risk in the organisation; and
- how assurance in relation to tax risk is provided to key stakeholders such as the board, shareholders and tax authorities.

A strong TCF can prevent tax controversies arising by ensuring that tax risk is managed, tested and monitored contemporaneously by the organisation. Across jurisdictions, the ability to demonstrate good governance through having a documented TCF in place will go towards minimising the impact of tax audits by providing assurance to tax authorities upfront regarding how the organisation manages tax risk. This leads to the mitigation of penalties and possible criminal sanctions resulting from tax controversies such as joint audits.

Conclusion

Taxpayers with a cross-border EU footprint should anticipate an increase in cross-border collaboration between EU tax authorities leveraging this new joint audit framework. An organisation can prepare for future joint audits by managing and preventing tax risk emerging. Investing time and resources now in documenting and developing tax governance and tax risk controls will provide assurance to tax authorities upfront and go towards minimising the impact of such disputes from a time, resource and cost perspective.

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Finance (No. 2) Act 2023 Measures Updating the R&D Tax Credit

Introduction

The international tax landscape has been altered substantially by changes introduced through the OECD BEPS Pillar Two, which will lead to many companies' falling within a new minimum effective corporation tax rate of 15%. Therefore, the significance of Ireland's 12.5% corporation tax rate, which has been one of the pillars in Ireland's offering as a location for foreign direct investment, may be reduced for many multinational companies. What this will mean is that the R&D incentives that Ireland offers will take on more significance and will play a greater role in attracting R&D investment from the world's largest companies in the future.

The need for a best-in-class R&D tax credit regime is more pronounced in Ireland. Larger economies have many more resources available to them, as well as larger universities and deeper talent pools, all of which position them well for R&D activities. Ireland's R&D tax credit must therefore be better to address the inherent disadvantages that we face as a smaller economy.

This is evidenced by the EU's 2023 European Innovation Scoreboard (EIS), an annual survey of each country's relative strengths and weaknesses in the research, development and innovation (RD&I) space. On the one hand, the EIS listed Ireland as a "strong innovator" with an overall score above the EU average. On the other hand, it noted that Ireland's performance lead over the EU is becoming smaller and flagged a decrease in government funding for business's R&D since 2016.

Critical changes to Ireland's R&D tax credit regime were introduced by Finance Act 2022 (see our article "Finance Act Measures Updating R&D Tax Credit, KDB and Digital Games Tax Credit", *Irish Tax Review* 2023, Issue 1) to align the R&D tax credit with international tax reforms and to ensure that the credit remains an important and relevant incentive for all claimant companies. The changes brought in by Finance Act 2022 have safeguarded the Irish R&D tax credit by ensuring that it meets the Pillar Two definitions of a "qualified refundable tax credit", meaning that it does not reduce the effective rate of corporation tax for companies that are within the scope of Pillar Two.

Building on the changes brought in by Finance Act 2022, two important enhancements to the R&D tax credit were announced by the Minister for Finance, Michael McGrath TD, as part of Budget 2024, with further details now outlined in Finance (No. 2) Act 2023:

- the increase in the R&D tax credit rate from 25% to 30% and
- the doubling of the amount of R&D tax credit available to be refunded as a first-year R&D tax credit instalment (from €25,000 to €50,000).

In this article we discuss these enhancements and their impact on companies claiming the R&D tax credit in Ireland, as well as other updates to the R&D tax credit contained in Finance (No. 2) Act 2023.

Changes to R&D Tax Credit Regime: Finance (No. 2) Act 2023

Increasing the R&D tax credit

The first and most significant enhancement to the R&D tax credit regime is an increase in the rate of the tax credit from 25% to 30%, which is available to all claimants, regardless of size. This change, which builds on the important enhancements relating to how the credit is utilised by claimants that were introduced in Finance Act 2022, is one of the most consequential changes made to the R&D tax credit in the last 15 years. The increase in R&D tax credit rate to 30% will apply for accounting periods starting on or after 1 January 2024; therefore the positive impact will be seen in R&D tax credit claims that are filed in 2025.

As noted by the Minister for Finance in his Budget speech, there is a dual purpose to the increase in the R&D tax credit rate. On the one hand, it is designed to maintain the net value of the existing credit for those businesses subject to the new 15% minimum effective tax rate resulting from BEPS Pillar Two. On the other hand, it will deliver a substantial benefit to SMEs and those companies outside the remit of Pillar Two.

The increase in the rate has been received very positively across the business community, both by the SME sector, which can now avail of an additional 5% benefit, and by the multinational sector, where it will help to preserve Ireland's competitiveness when aligning with international tax reform. It is worth bearing in mind that the R&D tax credit is in addition to the normal 12.5% trading deduction available for R&D expenditure incurred by companies carrying on R&D activities, resulting in an effective tax deduction of 42.5% from 2024.

The positive impact of this increase can be seen if we apply it to a typical example of an R&D tax credit claim. The average R&D tax credit claimed by companies in 2021 (the latest year for which there are Revenue statistics) was €462,000 (based on 1,629 companies claiming

the credit in 2021, with a total cost to the Exchequer of €753m). If we take a company that is claiming this average amount as its R&D tax credit (at the 25% rate), its R&D tax credit if the new, 30%, rate is applied to the same level of R&D expenditure would be €554,400 – a significant increase of 20% in the overall value of the R&D tax credit to be claimed by the company.

In respect of companies that come within the scope of Pillar Two, guidance released in July 2023 states that qualifying R&D tax credits (which the Irish R&D tax credit is considered to be after the changes brought about by Finance Act 2022) should be included in GloBE income in calculating the effective tax rate. The effective tax rate of a company must then be topped up to the required 15% minimum rate.

If we take a simplified example, including the qualifying R&D tax credit in GloBE income means that a company receives the R&D tax credit benefit but the top-up tax due under Pillar Two is increased by 15% of the R&D tax credit – this means that there is a net benefit of 85% of the R&D tax credit for companies that are within the scope of Pillar Two. The increase in the R&D tax credit to 30% essentially compensates companies for this increase in top-up tax.

As another example, before the implementation of Pillar Two and where the 25% R&D tax credit rate is in effect, a company with qualifying R&D expenditure of €1m would receive an R&D tax credit of €250,000 – this would be the net benefit received by the company. After the implementation of Pillar Two and the application of the new R&D tax credit rate of 30%, a company within the scope of Pillar Two and with qualifying R&D expenditure €1m would receive an R&D tax credit of €300,000. However, as the €300,000 tax credit is now included in GloBE income, there will be a top-up tax cost of 15% of the €300,000 credit, equalling €45,000. This means that the net benefit for the company after the implementation of Pillar Two and the introduction of the 30% R&D tax credit rate is €255,000 (i.e. €300,000 R&D tax credit less €45,000 top-up tax). As can be seen, the value of the R&D tax credit has been maintained (with a small net benefit) for companies that come within the scope of Pillar Two.

It is worth noting that this is the first increase in the R&D tax credit rate since Finance (No. 2) Act 2008 increased it from 20% to 25% (and also introduced the cash refund mechanism, allowing companies at the time to claim a refundable tax credit over three years). The positive impact that the previous increase in the rate of R&D tax credit had can be seen in the fact that the number of companies claiming the credit doubled from *c.* 600 to *c.* 1200 within two years of the rate increase from 20% to 25%. Although we are unlikely to see the number of companies claiming the credit double in the short term after the latest rate increase (the total number of claimants in 2021 was 1,621), it will be interesting to see the impact that the 5% increase in the headline rate of the R&D tax credit has on the number of companies claiming it.

Doubling first-year payment

The second enhancement of the R&D tax credit regime is a doubling of the amount of the credit available to be refunded to a company as part of its first-year instalment. This has increased from €25,000 to €50,000.

As a reminder, claimants of the R&D tax credit have the option either to offset the credit against their tax liabilities in three instalments over a three-year period or to have the credit repaid in the form of refundable instalments over the same three-year period. Many loss-making companies will continue to opt for refundable instalments, serving as a crucial source of funding for their R&D activities.

The refundable instalments will now be payable as follows:

- The first instalment is the greater of:
  - €50,000 (or the credit due, if lower), or
  - 50% of the credit claimed.

- The second instalment will continue to be based on three-fifths (30%) of any balance of the remaining R&D tax credit.
- The third instalment will continue to be any balance of the R&D tax credit remaining (20%), being the credit claimed less the first and second instalment amounts already claimed.

This change is designed to provide quicker access to funding for SMEs with R&D tax credit claims of less than €100,000. This cohort of claimants generally makes up two-thirds of the total R&D tax credit claims filed each year. Coupled with the increase in the rate of the credit to 30%, the acceleration of the repayment of the R&D tax credit will no doubt have a significant beneficial cash-flow impact on the indigenous SME sector.

The increase in the amount available as part of the first-year R&D tax credit instalment will apply for accounting periods starting on or after 1 January 2024.

"Pre-notification" requirement

In addition to the enhancements discussed above, Finance (No. 2) Act 2023 introduces a "pre-notification" requirement for new R&D tax credit claimant companies or companies that have not made an R&D tax credit claim in the three previous accounting periods. Where applicable, the following details must be provided to Revenue within a period of 90 days before the R&D tax credit claim is made:

- the name, address and corporation tax number of the company;
- a description of the R&D activities carried out by the company;
- the number of employees carrying on R&D activities; and
- details of expenditure incurred by the company on R&D activities that has been, or is to be, met directly or indirectly by grant assistance or any other assistance.

In addition to the information listed above, as part of the pre-notification process, Revenue may require the company to provide further information and provide any assistance that may reasonably be required for the purpose of Revenue's inspection of the R&D tax credit claim information.

Practically, this update will mean that companies coming within the above rules will need to commence the R&D tax credit claim preparation earlier to ensure that the relevant details of the R&D activities and associated expenditure are collated in the manner required by Revenue and are available 90 days before the R&D claim is made. For a new R&D tax credit claimant company with a 31 December accounting period, under the existing R&D tax credit rules, its deadline for filing its 2024 R&D tax credit claim would be 31 December 2025. However, the pre-notification rules provide that the relevant details need to be submitted to Revenue before 2 October 2025. If the intention is to file an R&D claim in the tax return on 23 September 2025, the relevant details will need to be submitted to Revenue on approximately 23 June 2025, in effect bringing forward claim preparation by a full three months.

It is unclear at this stage what Revenue will do with this information on receipt and whether it will provide some kind of "approval" before the claim is submitted. The Minister for Finance, Michael McGrath, explained at the Committee Stage of the Finance Bill that "the purpose of this pre-notification is to enable resource planning in Revenue to facilitate efficient processing of claims".

It is important to note that based on the current changes implemented by Finance (No. 2) Act 2023, the pre-notification requirement applies independently to claims for the R&D tax credit on buildings expenditure under s766D Taxes Consolidation Act 1997 ("TCA 1997") i.e. if no credit on buildings expenditure has been claimed within the prior three accounting periods, a notification will be required for such, regardless of whether any other kind of expenditure (i.e. a non-buildings R&D tax credit) has been claimed within the same timeline.

Although the pre-notification requirement is new to the Irish R&D tax credit regime, it has been introduced in the UK, where for accounting periods starting on or after 1 April 2023 there will be a requirement to notify HMRC of an intention to claim within six months of the end of the relevant accounting periods.

We will have to wait and see how the notification process operates in practice under the Irish regime, and whether the absence of notification, or of notification within 90 days, will deny entitlement to claim the R&D tax credit. Although at this point in time there is no provision in legislation for penalising companies that do not make a pre-notification, it is important that companies monitor this situation and are aware of this update to avoid any potential loss of R&D tax credit amounts due to the failure to adhere to the updated pre-notification deadline. We understand that guidance and information in respect of the reporting mechanism for the pre-notification will be released in due course.

Additional amendments

A number of technical amendments are also introduced in Finance (No. 2) Act 2023, to rectify some oversights in the "new" R&D tax credit rules introduced in Finance Act 2022. These include legislating for the inclusion of the following provisions in the "new" R&D tax credit rules:

- a plant and machinery R&D apportionment provision and
- the ability for unused R&D tax credits to transfer with a trade transfer in certain group restructures.

These technical amendments were previously provided for in the context of the "old" R&D tax credit rules and now apply to the "new" R&D tax credit rules, so in effect these updates are just maintaining the status quo.

Conclusion

The amendments included in Finance (No. 2) Act 2023 build on the positive changes introduced in Finance Act 2022 to make the Irish R&D tax credit regime a fully payable credit regime and to abolish the maximum limit on an R&D tax credit that can be monetised. The amendments also endorse the importance of the R&D tax credit regime in anchoring and stimulating investment and high-quality employment in R&D activities in Ireland.

The increase in the headline R&D tax credit rate will ensure that no negative impact results from the taxation of the credit under the Pillar Two GloBE rules. It should, in fact, result in a net benefit for companies.

In summary, what we have seen over the last two years in both Finance Act 2022 and Finance (No. 2) Act 2023 is Ireland taking steps to make sure that it is well placed to continue to compete for international investment in RD&I and will ensure that businesses investing in R&D in Ireland can continue to benefit fully from the credit notwithstanding the application of the Pillar Two rules. Tax incentives such as the R&D tax credit will play a greater role in companies' future decision making, given the harmonisation of corporate tax rates. Ireland will need to be alive to this as a country and continue to incrementally improve its RD&I incentive offering, as we have done over the last 20 years.

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Digital Games Tax Credit: Recent Changes

Introduction

The digital games corporation tax credit (DGTC) was launched on 22 November 2022 after approval from the European Commission and provides for a 32% cash refundable tax credit for qualifying expenditure incurred by a digital games development company on the design, production and testing of a digital game.

The relief is intended to grow the games development industry in Ireland and, if attractive enough, could be the stepping-stone to make Ireland a leading location of choice to develop digital games. The DGTC offers companies engaged in games development the ability not only to reduce the financial burden of developing digital games but also to contribute to Ireland's creative tapestry.

With a number of changes introduced in the latest Finance Act, it is expected that the credit will help to drive growth of the industry in Ireland. Similar to the film tax

credit and the growth of the film industry in Ireland, it is hoped that the DGTC will improve Ireland's ability to tap into the thriving global gaming sector.

Recent Changes

Finance Act (No. 2) 2023 introduced a number of changes to the DGTC. The main updates to the regime were brought in to ensure that the incentive is a "qualifying refundable tax credit" for the purposes of the Pillar Two rules in order to maintain the benefit for companies subject to the GloBE (Global Anti-Base Erosion) provisions. The new DGTC regulations can be divided into changes applicable to accounting periods commencing on or after 1 January 2024 and those applicable from 1 January 2024.

Updates applicable to accounting periods commencing on or after 1 January 2024

The company will be required to be carrying on a trade of developing digital games for at least 12 months

Previous regulations prevented a company from making a claim for the DGTC if the company had not delivered a corporation tax return for the period in question, and a claim could be made only by amending the return already filed. The new regulations stipulate that the company wishing to claim the DGTC must have carried on a trade of developing digital games for at least 12 months before making a claim.

This is a welcome change that clarifies and simplifies the process of claiming the credit. One point to note is what happens if the first trading period of a company is shorter than 12 months. As the specified return date for corporation tax returns falls on the 23rd day of the ninth month from the end of the accounting period, it is expected that most companies would meet the 12-month requirement at that time. In cases where the 12-month trading period is not yet met at the specified return date, one would expect that once the company fulfils the requirement to carry on the trade of developing digital games for 12 months, it could amend the return for the short period to include a claim for the interim tax credit.

The DGTC will be fully refundable regardless of the tax profile of the company

Previously, the DGTC must have been first offset against the company's corporation tax before any cash refund could be obtained. Finance Act (No.2) 2023 introduced the option for companies to decide whether to receive the credit as cash or to offset it against other tax liabilities (not only corporation tax). This change was introduced specifically for the Pillar Two rules and mirrors changes introduced to the R&D tax credit in Finance Act 2022. It is important to note that receiving the credit as cash may have implications for preliminary tax, as outlined below.

Requirement for a valid claim

Another update to ensure that the credit is compliant with the Pillar Two rules, is the period within which the credit must be repaid/offset by Revenue and sets this timeframe at 48 months from when a valid claim is made. Again, this change mirrors updates to the R&D tax credit regime, and it defines a valid claim to be a claim made in accordance with s481A TCA 1997 and:

> "*in respect of which all information which the Revenue Commissioners may reasonably require to enable them to determine if, and to what extent, the credit is due to a digital games development company in respect of an accounting period, has been furnished by that company*".

We expect that, in practice, Revenue might process the refunds and potentially inquire into/audit the claim within the statutory limits (i.e. four years from the end of the accounting period in which the claim was made). This is supported by an additional clause introduced to s481A, stating that payment of the credit does not prevent Revenue from examining the claim.

Claiming the credit as a cash refund will have an impact on preliminary tax calculations

Where a company decides to claim the credit as a cash refund, the amount claimed will not be considered as reducing the corporation tax liability of the company and therefore cannot be factored in to the computation of any future preliminary tax liabilities. Where a company decides to use some or all of the credit against its corporation tax liability, that amount will be considered as reducing the liability for preliminary tax purposes, so this will be worth factoring in to any cash-flow forecasts from a preliminary tax perspective.

Updates applicable from 1 January 2024

Interactions with grants

This change states that expenditure met or to be met by grants or other, similar assistance awarded by the Irish Government, another EU Government or the European Union (via one of their agencies) should not be included in DGTC claims. Again, this aligns the incentive with provisions included in the R&D tax credit regime.

Extension for claiming the credit after the company receives the final cultural certification

Although the claim for a DGTC must be made within 12 months from the end of the accounting period in which the last of the expenditure was incurred on developing the game, the legislation now provides that this period can be extended for up to three months based on the date on which the final certificate is received. This applies only when the final certification is received in the last three months of the 12-month period, and therefore this extension gives companies more flexibility to manage their claims' process.

What Else Could Be Done To Enhance the Attractiveness of the DGTC Regime?

Interim cultural certificate

If development of a game is expected to last for more than three years, companies may decide to hold off claiming the interim credit until the completion date is more certain and within the next three years. This is due to the expiry of the interim cultural certification before the game is completed. The current rules stipulate that only one interim cultural certificate can be obtained per game, and this interim certificate is valid for three years. On the expiration of the interim certificate, provided that an application for a final certificate was not submitted, the interim certificate is treated as never having had effect. In this situation, the company would be required to repay the interim credit received to date, as the claims would be subject to withdrawal. Such provisions (i.e. withdrawal of the credit if application for final certification is not made before the expiry of the interim certificate) could deter companies from claiming the interim credit. Although many games can be completed within three years, the development of the biggest productions could last in excess of five years (Grand Theft Auto VI has apparently been in production since the release of the fifth instalment of the game back in 2014). For smaller studios, their production cycle could also take a significant amount of time, and so offering some flexibility around the expiration of the interim certificate would be welcome.

To accommodate the above, one could see an option of applying for an extension to the interim cultural certificate (up to a certain limit, perhaps). This would provide companies with a greater level of certainty and flexibility around the availability of the incentive in case of any delays in the production of the digital game.

With all of the above, it is important to note that once the final credit is claimed after the completion of the game, expenditure from previous interim claims that have been withdrawn by Revenue can still be included in the calculations, meaning that the claiming company would not lose out on the qualifying expenditure incurred on the design, production and testing of a digital game that has not yet been claimed by the company. However, any interest paid to Revenue after the withdrawal of the interim claim(s) would not be recoverable.

Games as a service

In its current state the DGTC is geared more towards the traditional games and type of development cycle, where a game is not further enhanced after it has been released (excluding standard bug fixing and "quality of life" changes). In recent years we have seen an emergence of games that are constantly updated and enhanced for a number of years after release, with more creative content being added on a regular basis. In such cases the cost of development is spread between pre- and post-launch, often with the bulk of the costs incurred on the post-launch additional content.

It would be beneficial to recognise the ever-changing landscape of the digital games development industry and consider introducing some form of incentive for these types of games, perhaps allowing expenditure incurred on further development carried out post-launch as eligible up to the per-game limit of €25m.

Developed and completed by the company looking to claim the credit

The requirement for the claiming company to be the "principal" developer restricts the potential growth of smaller studios. In the current environment many digital games developers outsource some of the work to smaller and/or more specialised studios with experience in particular aspects of the game (e.g. creating an open world, developing multiplayer mode/features). Such studios would be prevented from claiming the DGTC as they do not carry out the substantial portion of the work. This significantly limits the competitiveness of such companies in Ireland.

It would be worth considering whether the incentive could be enhanced to cover sub-contracting engagements, whereby a game would meet the qualifying criteria if it was developed by the sub-contractor looking to claim the credit. As only one cultural certificate is allowed per game, it would remove the possibility of any risk of "double dipping".

Conclusion

The introduction of the digital games corporation tax credit was a great move, filling the gap in tax incentives available in Ireland for creative and innovative work (with the film credit and R&D tax credit already in place). It cannot be stressed enough how important it is for companies to be able to reduce the costs of developing a game in the current environment, where uncertainty around the commercial success of a game plays a big part in the decision-making process regarding where to locate future development efforts.

With gaming industry revenue estimated to be US$406bn in 2023 (and projected to surpass US$600bn in 2028)[1] and tens of thousands of game-developing studios worldwide, the DGTC is a valuable incentive to develop digital games in Ireland in this fiercely competitive global market. With the continuous evolution of technology, games developers must stay on the cutting edge to meet the expectations of an ever-demanding audience. The race to adopt emerging technologies, such as virtual reality and augmented reality, further intensifies competition. Additionally, global markets amplify the need for cultural relevance, pushing developers to create content that resonates with diverse player bases.

The most recent changes ensure that the DGTC incentive remains viable for the largest game-developing companies looking to develop digital games in Ireland and falling under the GloBE provisions. This should in turn bolster the increase in the talent pool available in Ireland and the number of companies undertaking digital games development in Ireland.

The regime is still relatively new, and there is plenty that can still be done to improve it, but there is no doubt that it has set Ireland on the "path to glory" in the gaming industry. It will be exciting to watch how the gaming landscape in Ireland changes and the role that the DGTC will play in this journey.

1 See https://www.statista.com/statistics/1344668/revenue-video-game-worldwide/.

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Finance (No. 2) Act 2023: Retirement Relief – Mind the Cap!

Introduction

Finance (No. 2) Act 2023 ("the Act") has introduced certain amendments to the retirement relief provisions contained in s598 and s599 TCA 1997. The changes, discussed in more detail below, largely focus on amending the limits in relation to the relief under both sections and increasing the age limit for the more restrictive limits.

There is, however, a fundamental change brought about in relation to disposals within the family in that there is for the first time a limit being placed on the gain that will be relieved for individuals aged under 66 years. The rationale for this change is to implement recommendations from the Report of the Commission on Taxation and Welfare[1] to introduce a limit on retirement relief for disposals of business assets to children.[2]

This article outlines the changes in the Act to the retirement relief provisions with an analysis of the full effect of the changes on disposals and, in relation to the new limits on disposals within families, comments on the approach and the impact on family businesses that will fall to be considered by practitioners. Before addressing these amendments, however, it is worth restating some of the rules of the retirement relief provisions under s598 and s599 TCA 1997 before the amendments have effect (which will be from 1 January 2025) and commenting on what is behind the substantive changes, particularly those to s599.

1 *Foundations for the Future: Report of the Commission on Taxation and Welfare* (Dublin: Government Publications, 2022), https://www.gov.ie/pdf/?file=https://assets.gov.ie/234316/b4db38b0-1daa-4f7a-a309-fcce4811828c.pdf#page=null
2 From the Minister's speech during the Second Stage of the Bill, 24 October 2023.

Retirement Relief Under s598 and s599 TCA 1997

Section 598: Current rules

The title of s598 TCA 1997 indicates that it is to apply to "disposals of business or farm on 'retirement'". As is well known to practitioners, individuals claiming relief under the section are not required to retire, and entitlement to the relief is tied to the nature of the assets disposed of (and whether they are "qualifying assets"), the period of ownership of these assets, the consideration received for these assets and the age at which the individual makes the disposal.

As a practitioner who has been regularly obliged to step carefully through this provision, it is my experience that the terms of s598 are cumbersome, technical and in need of simplication, such are the number of amendments made through the years. The views expressed by the Minister on the need for simplification of the tax code for business taxes would certainly be supported following a review of this provision.

Although the relief available under s598, itself, has been rendered less relevant owing to the limits on the consideration qualifying for relief (see below), the real relevance of the section is that the conditions in it dictate the qualification criteria for relief under s599 TCA 1997, which applies to disposals of "qualifying assets" to children.

In relation to the relief available under s598, itself, s598(2) provides for relief on disposals of "qualifying assets" as follows:

- For individuals aged at least 55 and under 66, if the consideration arising from the disposal of "qualifying assets" does not exceed €750,000, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets". Where the consideration exceeds €750,000, marginal relief applies to limit the CGT to 50% of the excess consideration arising from the "qualifying assets".
- For individuals aged 66 and over, if the consideration arising from the disposal of "qualifying assets" does not exceed €500,000, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets". Where the consideration exceeds €500,000, marginal relief applies to limit the CGT to 50% of the excess consideration arising from the "qualifying assets".[3]

The quantum of relief under s598 is therefore based on limits on the consideration (not the chargeable gains or quantum of CGT to be relieved) from "qualifying assets" and the age of the individual at the time of the disposal. The relief, however, is given as a reduction in the CGT arising on the gain on the disposal of such "qualifying assets".

Due to the low levels of the consideration limits and the limited value of the marginal relief – which limits the CGT to 50% of the actual consideration from "qualifying assets" where the consideration exceeds the limits of €500,000 and €750,000 (a level that has not increased in 17 years) – it would be fair to say that the benefit of the relief under s598 has gradually been eroded over time.

Section 599 TCA 1997: Current rules

Outline

The heading of s599 states that it deals with "disposals within family of business or farm". This might be viewed as meaning that this is the only section that can apply where there is a disposal of "qualifying assets" within a family. This is not strictly accurate, as the terms of s598 can also apply to a disposal within a family and, indeed, a disposal to a child (to which s599 can apply).[4]

Although the conditions for relief in s598 – such as "qualifying assets", period of ownership and terms of use – apply for the purposes of

3 The lower limit of €500,000 was introduced for disposals of "qualifying assets" occurring on or after 1 January 2014. The stated objective in the introduction of the reduced limit was to incentivise early transfers of business and farm assets.

4 This dual coverage of relief was confirmed in the Tax Appeals Commission determination 140TACD2020.

s599, s599 additionally requires that the disposal of the “qualifying assets” is to a “child”.[5]

Extent of relief/cap

- For individuals aged at least 55 and under 66, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the “qualifying assets”.
- For individuals aged 66 or over, if the market value of the “qualifying assets” is €3m or less, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the “qualifying assets”.
- For individuals aged 66 or over, if the market value of the “qualifying assets” is more than €3m, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the “qualifying assets” as if the consideration on the disposal were €3m.[6]

The practical effect of these provisions is that once the individual is under 66 (and at least 55), there is no limit on the value of the “qualifying assets” that can qualify for retirement relief. Where, however, the individual is 66 or over, a cap on the value of the “qualifying assets” that qualify for relief is applied based on a consideration of €3m.

Since the introduction of the cap of €3m, a number of outcomes have been noted anecdotally by this writer:

- The introduction of the cap has encouraged many owners of businesses to consider and effect proper succession planning for businesses well before reaching 66. In this, the introduction of the age-based cap has met its stated objective. Indeed, the experience has been to see a much greater commercial approach to succession planning, and it is occurring at a time when the business owner has the capacity to generate a result that is best for the family and the business and employees concerned.
- Where the cap has impacted on transactions in the case of business owners who have not been able to effect a succession planning strategy in time, it has resulted in such business owners’ taking decisions to forgo a lifetime transfer of the business and to deal with the handing over of control on death or without conceding controlling equity interests. This is due to the fact that the handing over of shares or business assets will normally not constitute a liquidity event for the business owner, and a charge to CGT therefore represents a “dry charge” to tax (i.e. no funds to pay it). This delay in passing control is, in the case of most businesses, highly detrimental to the enthusiasm of the next generation to drive on a business, where the business may or may not pass to them by will and the viability of the business is accordingly threatened. Simply put, devolution of business property by will is not consistent with a coherent business succession strategy.

In summary, and based on personal experience, the cap has therefore not generated additional revenues for the Exchequer but has, in driving succession to occur earlier and with an incentive to plan ahead in sufficient time, achieved its original objective – to encourage succession in viable businesses at an earlier time. Experience would indicate that this has led to a more considered approach to succession planning, with a time deadline being very useful to focus minds.

By contrast, it is also clear that where the succession plan has not been effected early enough, and the cap has had application, succession planning to ensure the continued viability of a business is a challenge, as the handover of shares will necessarily be deferred.

Aggregation rules

The terms of sub-section (2) provide for the aggregation of proceeds from the disposal of “qualifying assets” from 1 January 2014 by

5 This definition includes a child of a deceased child, a nephew/ niece who worked full-time on the farm or in the business for five years and certain foster/dependent individuals.
6 These caps apply to disposals of qualifying assets on or after 1 January 2014. Again, they were introduced to encourage the early transfer of business assets through the introduction of a lifetime cap.

individuals aged 66 or over (where falling under sub-paragraph (iii) of sub-section (1)(b)) for the purposes of the €3m cap.

Separately, although the default position – as outlined in sub-section (5) – is that consideration for disposals under s599(1) is not aggregated for the purposes of s598(3), there is an exception to this in the somewhat oddly worded terms of sub-section (7). That sub-section provides that where there is a disposal of qualifying assets by an individual aged 66 or older and there is also a disposal of shares or securities in a family company by the same individual to a company controlled by his or her child, the consideration is deemed to be aggregated for the purposes of s598(3). This aggregation rule does not currently extend to disposals of qualifying assets by individuals aged under 66.

What Were the Recommendations in the Report by the Commission on Taxation and Welfare?

The Report of the Commission on Taxation and Welfare ("the Report") was published in September 2022. In relation to retirement relief from CGT, it highlighted the unlimited nature of relief under s599 TCA 1997 for individuals aged under 66 (and at least 55), commenting:

> "From a fiscal sustainability and equity perspective, the Commission is not in favour of unlimited tax expenditures and supports the introduction of a cap for all disposals to children that qualify for Retirement Relief."

A cap was therefore recommended in the Report, but no recommendation was made on the quantum of the cap. The Report, however, contained the following considered language, which was not generally reported:

> "The Commission is also cognisant that Retirement Relief helps to maintain the viability of businesses and farms, by eliminating the tax cost arising from intergenerational transfers. Therefore, any cap would need to be high enough to prevent the breaking up of smaller family farms and businesses in order to pay a tax liability. It should also be designed so that it does not unduly restrict the transfer of productive small and medium-sized family businesses and farms. **Furthermore, where a business or farm is transferred between generations, it is important that the payment of an appropriate and fair level of tax does not undermine the viability of the enterprise. There are several ways to achieve this objective, including through the introduction of deferral arrangements or long payment schedules that give rise to minimal or no interest** [emphasis added]."

What can be taken from this is that although the introduction of a cap was recommended in the Report, it was recommended that it should be high enough so as not to result in the break-up of smaller (this was undefined) farms and businesses and, where introduced, should be designed so as not to impact the viability of a business and not unduly restrict the transfer of productive small and medium-sized family businesses. The reference to not unduly restricting the transfer of productive small and medium businesses was clear recognition of the impact of a "dry charge" to CGT on transfers of interests in businesses.

So, what has happened in the Act? I will look first at the changes to s598 TCA 1997, but the main changes that practitioners should note are the changes to s599 TCA 1997, addressed below.

Amendments to s598 TCA 1997 Introduced by s49 of the Act

Section 49 introduces the following amendments to s598 TCA 1997:

- The definition of "payment entitlement" has been amended to reflect the updated 2021 EU Regulation applicable.[7] This is

7 Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021.

simply updating the reference to the correct Regulation and has no substantive effect.

- A new definition of "**relevant year of assessment**" has been introduced, to refer to the year in which the disposal giving rise to the relief claim is made, along with a new sub-section (9) to provide that a claim for relief is to be made in the return of income and gains for that "relevant year of assessment". These two amendments are to confirm the requirement to claim the relief in a return of income and gains to be filed for the year in which the disposal occurs.
- The current terms of sub-section (2) that tie the quantum of consideration to the ages of 55–65 and 66 upwards are to apply to disposals occurring **on or before 31 December 2024**. This is to continue the application of the current age bands (and relevant limits of consideration) to disposals occurring before that date.
- New sub-paragraphs (ca) and (cb) are introduced to sub-section (2) to confirm that for disposals of "qualifying assets" occurring **on or after 1 January 2025**, relief in relation to those disposals will apply as follows:
  - For individuals aged at least 55 and **under 70**, if the consideration arising from the disposal of "qualifying assets" does not exceed €750,000, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets". Where the consideration exceeds €750,000, marginal relief applies to limit the CGT to 50% of the excess consideration arising from the "qualifying assets".
  - For individuals aged **70 or over**, if the consideration arising from the disposal of "qualifying assets" does not exceed €500,000, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets". Where the consideration exceeds €500,000, marginal relief applies to limit the CGT to 50% of the excess consideration arising from the "qualifying assets".
- Certain technical amendments are made to sub-sections (3A) and (3B) consequential to the introduction of the new sub-paragraphs (ca) and (cb) to sub-section (2).

In effect, the only substantive amendment introduced by s49 is the change that will apply from 1 January 2025 that will allow individuals then aged 66–69 to avail of the higher consideration limit of €750,000 rather than the €500,000 limit.

Commentary on changes

Although the increase in the age limit to qualify for the higher consideration limit of €750,000 is welcome, it is disappointing that this is to apply only to disposals occurring on or after 1 January 2025. There would appear to be no rationale for this delay other than that the timing aligns with the introduction of changes to s599 – see below. Therefore, individuals currently aged over 65 (and who will be under 70 for part or all of 2025) who wish to benefit from the higher, €750,000 consideration limit will have to wait until 2025 to do so.

Also disappointing is that the higher consideration limit of €750,000 remains unchanged some 17 years after its first introduction. This failure to increase the limit makes retirement relief under s598 increasingly redundant in practice, having regard to the limited value of marginal relief.

Amendments to s599 TCA 1997 Introduced by s50 of the Act

Section 50 introduces the following amendments to s599 TCA 1997.

Cap

The existing provisions governing the position from 1 January 2014 for transferors aged 55–65 and those aged over 65 are to apply only to disposals of qualifying assets occurring on or before 31 December 2024.

Amendments are made to sub-paragraphs (1)(b) of s599 to provide for the following caps on consideration that will apply **to disposals of qualifying assets on or after 1 January 2025**:

- For individuals aged at least 55 and under 70, if the market value of the "qualifying assets" is €10m or less, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets".
- For individuals aged at least 55 and under 70, if the market value of the "qualifying assets" is greater than €10m, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets" as if the consideration on the disposal were €10m.
- For individuals aged 70 or over, if the market value of the "qualifying assets" is €3m or less, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets".
- For individuals aged 70 or over, if the market value of the "qualifying assets" is more than €3m, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets" as if the consideration on the disposal were €3m.[8]

Aggregation for cap purposes

Amendments are made to sub-section (2) to introduce and tighten up aggregation rules for the purposes of the application of the caps. These changes can be summarised as follows:

- Where an individual **who has attained 66** disposes of "qualifying assets" in the period from 1 January 2014 to 31 December 2024, the consideration **for each disposal** shall be aggregated for the purposes of the €3m cap.
- Where an individual **who has attained 66** disposes of "qualifying assets" in the period from 1 January 2014 to 31 December 2024 **and on or after 1 January 2025**, the consideration **for each disposal** shall be aggregated for the purposes of either the €10m cap or the €3m cap (with a maximum aggregation of €3m for disposals occurring before 31 December 2024).
- Where an individual **who has attained 55** disposes of "qualifying assets" in the period commencing **on or after 1 January 2025**, the consideration **for each disposal** shall be aggregated for the purposes of either the €10m cap or the €3m, whichever is relevant.

Aggregation for purposes of s598(3)

Sub-section (7) is amended significantly, first to repeat largely (with some cross-reference changes) the pre-existing position that where there is a disposal of qualifying assets by an individual aged 66 or older and there is also a disposal of shares or securities in a family company by the same individual to a company controlled by his or her child, the consideration is deemed to be aggregated for the purposes of s598(3). This will be the case for disposals up to 31 December 2024 and afterwards.

However, this special aggregation rule under sub-section (7) will now apply to disposals falling under s599 made by an individual aged 55 or older on or after 1 January 2025. This is an entirely new aggregation rule that will need to be monitored carefully. It is a change that was not flagged in the Explanatory Memorandum.

Commentary on changes

Introduction of cap of €10m

As the Minister outlined in the Second Stage debates, the introduction of the cap of €10m is to give effect to the recommendations of the Report of the Commission on Taxation and Welfare. Similar to the famed backbone of German industry – the *Mittelstand*[9] – the largely equivalent Irish SME sector has significant and growing structural importance in the Irish economy, and this has increased through greater business sophistication. The sector delivers 68.4% of total employment in the private business economy and, indeed, 66.7% of total employment in Irish-owned industrial

8 This essentially continues the cap of €3m but moves its first application from age 66 to age 70.
9 This term is used to describe the small and medium-sized largely family-owned enterprises that together comprise the country's biggest employer.

enterprises.[10] In 2020 the sector delivered 41.9% of total turnover in the business economy and 34.5% of gross value added.[11] The value of businesses in the sector has grown significantly in recent years, and although a cap of €10m would appear generous, it is likely from 2025 to adversely impact business and family successions within medium-sized companies, where values will be significantly higher. It is this cohort of the sector, in particular – where high-value employments are created and held and business innovation is demonstrated – that requires managed and effective succession while the founders are alive and in control. The cap is likely to have a significant impact on this cohort, where ownership would normally pass within the family. The outcome may be a deferred succession or the alternative of a third-party sale, neither of which may be in the better interests of companies and employees in this space.

In my view, the introduction of the cap without the safeguards to address the difficulty of securing payment of the CGT, as recommended by the Report of the Commission on Taxation and Welfare, is problematic. As highlighted above, business ownership succession that creates a CGT cost does so usually in a "dry tax" manner, as there will generally be no liquidity with which to pay tax. The Report identified the need for measures to address this, but the new legislation does not follow this part of the recommendations. This may hopefully be a temporary oversight.

The introduction of the cap for 2025 and onwards requires practitioners to engage with clients with larger indigenous businesses to assess the impact of the cap on any proposed succession plans and, where there is an impact, work on succession plans that are commercially appropriate and viable. Although the cap will not apply for some months, practitioners should note that a coherent and viable succession plan takes time to put together, even before the implementation phase arrives.

Aggregation: Sub-section (7)

The basis for sub-section (7) was never entirely clear. It was introduced at Committee Stage with a number of anti-avoidance amendments to s597AA and s598 TCA 1997 and received no attention or debate.

It may have had its origin in the belief that the claiming of relief under s598 and also s599 by an individual aged over 65 who was subject to the €3m cap under s599 might represent a form of avoidance of the cap. Whether one agrees with this or not in the context of shares being largely gifted by an individual who worked in the business to build it up, the special aggregation rules formerly applied only to individuals aged over 65.

The amendment to sub-section (7) will result in all disposals by individuals aged 55 or older being within the remit of these aggregation rules. The rationale for this is, again, unclear, but it should be noted.

Conclusion

Finance (No. 2) Act 2023 introduces quite significant changes to the capital tax regime for lifetime succession, particularly for larger companies in the SME sector. The main change is a lifetime cap that will now limit retirement relief from CGT for succession within the family. Although the measure is one that follows a recommendation of the Commission on Taxation and Welfare, the cap is not accompanied by important safeguards also recommended by the Commission to ensure the viability of affected businesses. Even with such safeguards, practitioners and their clients must pay heed to these changes and take action, as appropriate, sooner rather than later.

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10 Jim Power Economics, *Significance of the SME Sector in the Irish Economy: A Report Prepared for the Local Jobs Alliance* (May 2020), https://isme.ie/wp-content/uploads/2020/05/LOCAL-JOBS-ALLIANCE-REPORT-May-20-2020.pdf

11 Central Statistics Office, Business in Ireland 2020, Small and Medium Enterprises, https://www.cso.ie/en/releasesandpublications/ep/p-bii/businessinireland2020/smallandmediumenterprises/

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Impact of Changes to Capital Acquisitions Tax in Finance (No. 2) Act 2023

Introduction

A new filing requirement for loans between close relatives, updates regarding agricultural and business relief and a welcome change to the tax treatment of gifts and inheritances within foster care families were the main updates in Finance (No. 2) Act 2023 ("the Act") to the capital acquisitions tax legislation. Although some changes may, on the face of them, appear minor, they are in fact significant in the context of the operation of agricultural and business relief. This article seeks to explain and examine these changes.

Close-Relative Loans

The flip-flopping of the legislature in recent years regarding changes to s40 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) has culminated in a new reporting requirement for certain loans

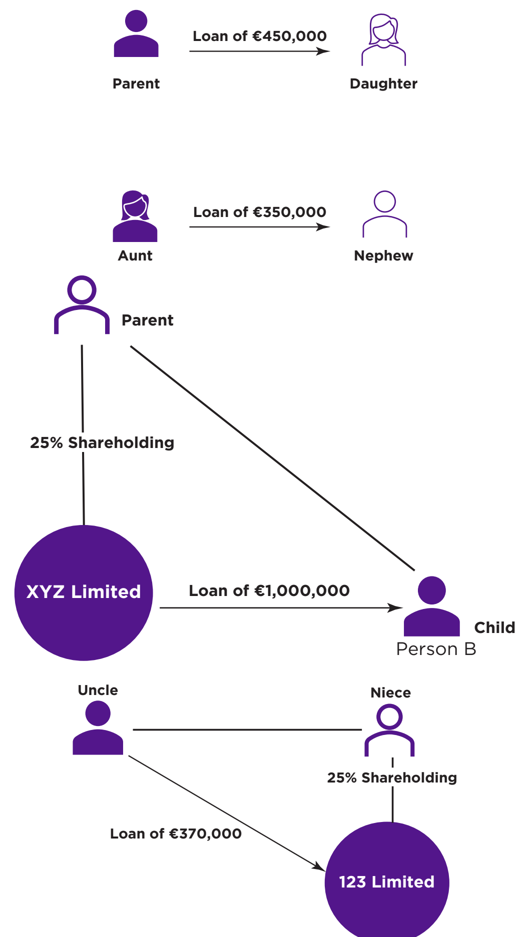
between close relatives. A person is deemed to take a gift in each year ending on 31 December if they have the free use, occupation or enjoyment of such property for less than full consideration. This includes interest-free loans and results in the interest-free element's being a deemed gift on an annual basis. Such a gift is calculated by reference to the "best price obtainable in the open market for such use".

Practitioners may recall the proposed amendment in Finance Bill 2021 that would have changed the way the free use of money is taxed; however, this provision was withdrawn at the last minute. Although the changes in Finance (No. 2) Act 2023 do not change the calculation methodology, they impose a requirement to file a return for loans within the scope of s40(2). This is the case even if there is no tax payable in respect of the benefit – for example, if the interest-free element was covered by the small-gift exemption or tax-free threshold.

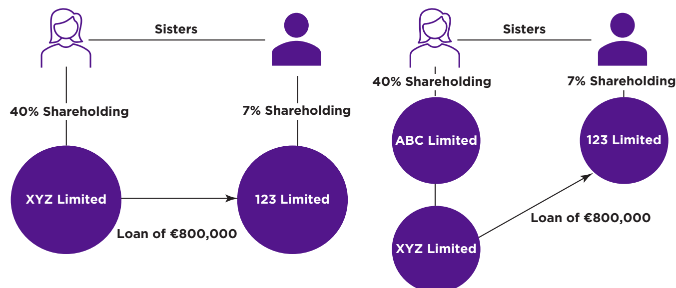
The reporting requirements will apply to such loans made to a close relative where no interest has been paid within six months from 31 December 2023 and the balance of the outstanding loan together with any other "close relative" loans exceeds €335,000 for at least one day during the year. To determine whether a loan must be reported, it is important to understand which loans are in the scope of the legislation.

The first question is whether the loan is a "specified loan". The definition includes:

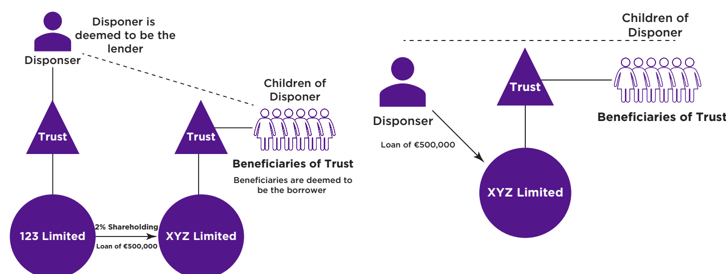
- A loan made to a person by a close relative (in relation to that person, this includes their parent, parent's civil partner, lineal ancestor, lineal descendant, brother or sister, parent's brother or sister and parent's civil partner's brother or sister).
- A loan by a company to the person where a beneficial owner of the company is a close relative of that person. A beneficial owner in relation to a company means any person that is a beneficial owner of the shares in the company or entitlements under any liability incurred by the company (otherwise than for the purposes of the business of the company, wholly and exclusively). Note that there is no *de minimus* in terms of how many shares a beneficial owner needs to have for a loan from such a company to be within the definition.
- A loan to a company where the person is a beneficial owner of the company and the person making the loan is a close relative of that person.



- A loan by a company to another company where the person is beneficial owner of the second company and a beneficial owner of the first company is a close relative of that person. It should be noted that where a beneficial owner of a company is a company, you "look through" to the actual beneficial owner of the ultimate company.



- Where the shares or entitlements of a company are held in trust and there are no ascertainable beneficial owners, a loan made by a company is deemed to be made by the disponer of the trust under which the shares/ entitlements are held and a loan made to such a company is deemed to be made to the beneficiaries of a trust, as outlined in the Fig. 5.



After determining that a loan is a "specified loan", the question is whether such a loan is reportable. Reporting is required only if all of the following three conditions are met:

- a person is deemed under s40(2) to have taken a gift in respect of the use or enjoyment of a loan, i.e. has an interest-free loan or a loan with an interest rate that is less than market deposit rates for a loan on similar terms in the 12 months to 31 December;
- within six months of end of the year, no interest has been paid in respect of the specified loan; and
- the balance outstanding on the specified loan (when aggregated with other outstanding specified loans) exceeds €335,000 on a least one day in the relevant period.

If the specified loan is reportable, certain information will need to be supplied to Revenue, to include the name, address and tax reference number of the person who made the loan, the balance outstanding on the loan and any other information that Revenue may require.

It is useful to note that the Revenue website has been recently updated in respect of the filing requirement and states that you will have to file a CAT return for such loans. This is an annual requirement where the legislation applies, so for loans where no liability to tax arises, there will still be an annual filing requirement.

Although the way in which the deemed gift is calculated has not changed, the reporting requirement will give Revenue further oversight of the level of loans that exist among families. This is a change from the historic position

where most of these benefits did not have to be returned or reported as the charge to tax on the benefit was covered by the beneficiary's available tax-free threshold.

Agricultural Relief/Business Relief: Changes to Clawback

There were a number of changes to the provisions relating to agricultural relief and business relief that are worth considering.

Agricultural relief

Where agricultural relief has been claimed in relation to a gift or inheritance, a clawback of the relief claimed will arise if any part of the agricultural property (other than crops, trees and underwood) is disposed of or compulsorily acquired within six years of the date of the gift/inheritance (ten years in the case of development land). The period has now been updated to run from the valuation date, as opposed to the date of the gift/inheritance. In the case of a gift, the valuation date would generally be the same date as the date of the gift, but for inheritances the valuation date, which is generally the date of the grant of probate, could be as much as two years after the date of the inheritance (generally, the date of death), or longer in the context of complex estates.

A practical impact of this change must be considered in the context of Revenue's power to make enquiries. As set out in s46(7A) CATCA 2003, the four-year time period in which Revenue can make enquiries, where certain conditions attaching to a relief must be satisfied, commences on the latest date on which all of the conditions were required to be satisfied. In the case of inheritances, particularly, the valuation date on which the clawback period now commences may not arise until a number of years after the date of death. For example, if the valuation date is three years after the date of death, the clawback period then commences for six years, and it is only at the end of that period (nine years after the death) that the four-year time period commences. This will put a considerable burden on taxpayers to ensure that full records are retained to deal with Revenue enquiries. The impact of the change should be considered further.

In the case of a gift or inheritance of cash to invest in agricultural property, the Act clarifies that the six-year clawback period commences on the date when the cash is invested in the agricultural property.

A significant change arises in how the clawback is calculated. The legislation provided that a clawback of the relief would arise if the agricultural property was "disposed of" or compulsorily acquired. The meaning of "disposal" is broader than a sale and would capture, for example, a gift or an exchange. However, the clawback calculation in the legislation before Finance (No. 2) Act 2023 did not technically give rise to a clawback where no consideration was paid on the basis that the formula was linked to "the amount of proceeds from the disposal or the compulsory acquisition". Revenue's CAT Manual at paragraph 11.7.4 also confirmed that a gift for no consideration would not give rise to a clawback.

The amendments in the Act will completely change that going forward, with the inclusion of a new sub-paragraph:

> *"(ii) the proceeds from a disposal –*
>
> *(I) shall include an amount equal to the market value of the consideration (not being cash) received for the disposal, where full consideration is received for the disposal, or*
>
> *(II) shall be an amount equal to the market value of the agricultural property immediately before the disposal, where less than full consideration is received for the disposal."*

Therefore, where property that was the subject of a claim for agricultural relief is subsequently gifted, a clawback will now arise, which is calculated by reference to the market value of the agricultural property immediately before the disposal.

Business relief

The Act also provides for a change to the clawback provisions relating to business relief. Before the change, a clawback would arise if the relevant business property, or any property that replaced it, ceased to qualify as relevant business property or was **sold, redeemed or compulsorily acquired**. The change in the Act now means that a clawback will arise if the property either ceases to qualify as relevant business property or **is disposed of** in whole or in part and is not replaced within 12 months of the disposal. The prior wording was very specific to a sale, redemption or compulsory acquisition. A gift of the same property did not trigger a clawback. The use of the term "disposed of" now aligns the clawback provisions with agricultural relief. A disposal is broader than a sale, redemption or compulsory acquisition and could now also capture gifts and exchanges. Where the donee or successor dies during the clawback period, a clawback will not arise as this is already specifically provided for in the legislation.

A similar update to the clawback periods was included for business relief to ensure that the six-year period runs from the valuation date for disposals of relevant business property rather than the date of the gift/inheritance.

CAT returns where clawback arises

For either relief, where a clawback event is triggered, the original CAT return in respect of the gift/inheritance will be rendered defective, and there is now an obligation to file a new return with Revenue. This new return will be due for filing and the outstanding CAT due for payment within three months of the taxpayer's becoming aware of the defect. The legislation seeks to clarify the obligation of the taxpayer to file an amended tax return when a clawback arises and, consequently, from when the tax would be paid.

Foster Care Families

The legislation currently provides that persons who have been in foster care (whether in a formal or an informal arrangement) can claim the Group A CAT threshold in relation to a gift or inheritance received from the person providing such care. The recent amendment helpfully extends this treatment to gifts and inheritances received from the wider family members of the foster parent, i.e. the foster parent's siblings, children or parents. The amendment will enable a beneficiary of a gift or inheritance received from these persons to avail of the Group B CAT threshold when computing the CAT payable. Furthermore, where two or more persons are in the same foster care, they will be deemed to bear the relationship of brother or sister for CAT purposes.

Incorrect Birth Registrations: Affected Persons

The CAT provisions for persons affected by incorrect birth registrations included in Finance Act 2022 were updated in this Finance Act to ensure that the relationship between such a person and his or her social mother and social father (i.e. the person named on the register on the births register) is to be treated as the same as the relationship between the person and his or her birth mother and father for CAT purposes. There were recent amendments to the Succession Act 1965 providing for succession rights of those affected in relation to their birth parents and "social" parents. The update is to ensure that the provisions brought through in Finance Act 2022 will operate as intended.

Conclusion

Although the CAT changes in Finance (No. 2) Act 2023 may appear minor at first glance, it is important to understand the practical consequences arising from the updates to the agricultural and business relief clawback periods and the breadth of events that can give rise to a clawback. Furthermore, the impact of the new reporting requirement for close-relative loans should also be considered and reviewed. It is likely to give rise to more filing requirements for the taxpayer every year and in most cases yield no additional tax to Revenue.

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Finance (No. 2) Act 2023: Overview of EIIS Measures

Introduction

For relief under Part 16 TCA 1997 (Relief for Investment in Corporate Trades) to be available for shares issued after 15 October 2015, the relief must comply with the EU State Aid General Block Exemption Regulation (GBER). In June 2023 the GBER was amended, and the amendments were to be reflected in domestic legislation within six months. This article provides an overview of changes introduced by Finance (No. 2) Act 2023 to conform with the GBER amendments.

Overview of Relief for Investment in Corporate Trades: EII/SCI/SURE

Part 16 TCA 1997 provides income tax relief for investments by individuals in a qualifying company. Three types of relief are provided for:

- Employment and Investment Incentive Scheme (EIIS) – this provides for relief claimed by external investors in a qualifying company. The EII scheme does not permit the investor or his/her associate (including a relative) to hold any shares in the company before making the EII investment. An individual is connected with a company if that individual or an associate is a partner, director or employee of the company or of any company in the RICT group. A RICT group comprises all of the company's linked and partner businesses.[1]
- Start-up Capital Incentive (SCI) – this is a form of EII relief for individuals who are connected to the founder of the company and who are early-stage investors and subscribe for shares on or after 1 January 2019 in a micro enterprise.[2] A company can raise a maximum of €500,000 that will qualify for the relief.
- Start-up Relief for Entrepreneurs (SURE) – this relief is available to people who have recently left employment and incorporate a company to carry on a new qualifying trade.

1 Annex I of the GBER (Commission Regulation (EU) No. 651/2014) defines linked and partner businesses.
2 A micro enterprise has fewer than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2m.

An individual can invest up to €700,000 and claim relief of up to €100,000 p.a. in the year of investment and in each of the previous six years.

In relation to the EII, for eligible shares issued after 8 October 2019, full relief is available for the investment made in the qualifying company. For shares issued before 9 October 2019, 30/40ths of the investment is available for relief in the year of investment, with the balance of 10/40ths being claimed as second-stage relief. For the tax year 2020 and subsequent years, the maximum amount of relief that can be claimed is:

- €250,000 where the relevant holding period is four years. Full relief (subject to the cap of €250,000) can be claimed in the year of investment, and
- A limit of €500,000 applies to investments in qualifying companies where the shares will be held for at least seven years. Again, relief is allowable on the full investment (subject to the limit) in the year of investment.

Investors can invest directly in a qualifying company or indirectly via a designated investment fund or a qualifying investment fund. A designated investment fund must be established under an irrevocable trust for the sole purpose of investing in qualifying companies. Qualifying investment funds are investment limited partnerships (authorised in accordance with the Investment Limited Partnerships Act 1994) and limited partnerships (registered in accordance with the Limited Partnerships Act 1907).

Key Amendments Made by Finance (No. 2) Act 2023 to EIIS

Rate of tax relief, investment limit and minimum holding period for investors

For investments in eligible shares issued on or before 31 December 2023, income tax relief is available at the marginal rate of 40% where the individual has sufficient income taxable at that rate to absorb the relief. Finance (No. 2) Act 2023 has introduced a tiered rate of tax relief dependent on the type of risk finance investment being raised and made amendments to the conditions for risk finance investments to conform with GBER amendments.

Risk finance investment

For an investment in a qualifying company to qualify for EII relief, the investment must fall into one of three categories of risk finance investment and the company must have included the risk finance investments in a business plan. The business plan is a written plan that has details of products, sales and profitability development, establishing ex-ante financial viability, and that includes both quantitative and qualitative details of the activities the investment is sought to support. The categories of risk finance investment are outlined below.

Initial risk finance investment

This is the first issue of eligible shares other than an expansion risk finance investment. An initial risk finance investment will be a qualifying investment only where each company in the RICT group at the time the eligible shares are issued:

- has not been operating in any market or
- has been operating in any market for:
  - less than ten years following its date of incorporation or
  - less than seven years after its first commercial sale.

Provision is made to encompass in seven- and ten-year timelines the operations of any companies acquired by the RICT group or that form part of the merged RICT group. The operations of the acquired or merged businesses may be ignored in establishing the seven- and ten-year timelines if certain turnover thresholds are satisfied.

The Finance (No. 2) Act 2023 amendment expands the definition of initial risk finance. Previously, the RICT group that issued the eligible shares must have made its first commercial sale less than seven years before the initial risk finance investment.

Expansion risk finance investment

An expansion risk finance investment will be a qualifying investment only where, based on a business plan prepared in view of a "new economic activity", the amount to be raised through the issue of those shares is:

- greater than 50% of the RICT group's average annual turnover in the preceding five years or
- greater than 30% of the RICT group's average annual turnover in the preceding five years where the investment significantly improves the environmental performance of the activities of the company[3] or constitutes an environmentally sustainable investment[4] or is aimed at increasing capacity for the extraction, separation, refining, processing or recycling of certain critical raw materials.[5]

Finance (No. 2) Act 2023 amended the above criteria for an expansion risk finance investment as follows:

- Previously, the investment must have been used to put a new product on the market or enter a new geographic market. The investment must now be used for a broadened "new economic activity".
- The 30% test has been introduced in addition to the existing 50% test.

An expansion risk finance investment can be the RICT group's first issue of eligible shares, where the RICT group has been operating for more than seven years. Equally, expansion risk finance investment can be raised within the first seven years of trading, even if the RICT group previously raised an initial risk finance investment.

Follow-on risk finance investment

A follow-on risk finance investment means the issue of eligible shares subsequent to an initial risk finance investment or an expansion risk finance investment. A follow-on risk finance investment will be a qualifying investment only if the initial or expansion risk finance involved the issue of eligible shares on or after 6 April 1984 in respect of which relief was available under Part 16 (relief under Part 16 refers to the EIIS/SURE/SCI and the forerunner to the EIIS, the Business Expansion Scheme (BES)).

Also, the possibility of the follow-on risk finance investment must be "provided for" (previously, "foreseen") in the business plan on which the initial or expansion risk finance, as the case may be, was based. The change represents a more prescriptive requirement to reflect the follow-on investment in the earlier business plan.

Rates of relief

As noted above, a tiered system of tax relief has been introduced by Finance (No. 2) Act 2023.

Investment	Amount of investment that will qualify for relief (A)	Effective rate of tax relief* (40% of A)
Initial risk finance: "not operating in any market"	125%	50%
Initial risk finance: seven-/ten-year rule	87.5%	35%
Expansion risk finance	50%	20%
Follow-on investment	50%	20%
Investment via qualifying investment fund	75%	30%

*This assumes that the individual has sufficient income taxable at the marginal rate to absorb the investment in full.

3 Significant improvement of the environmental performance is defined in Article 36(2) of the GBER.
4 Environmentally sustainable investment is defined in Article 2(1) of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020.
5 Critical raw materials are listed in Annex IV of the GBER.

The following table summarises the amount of the investment made by an individual that qualifies for relief and the effect on the effective rate of tax relief.

Investment limit and minimum holding period for individuals

For the tax year 2024 and subsequent years, the maximum amount that an individual can invest in a tax year on which relief can be claimed is €500,000. The minimum holding period for a clawback of relief not to arise is now standardised at four years for all investments.

Limits on amounts that a RICT group can raise

Finance (No. 2) Act 2023 has increased the amounts that a RICT group can raise on eligible shares:

- from €5m to €5.5m in any 12-month period and
- from €15m to €16.5m in total in respect of the issue of eligible shares.

If the limits are breached, the excess will not be treated as a qualifying investment. The disallowed amount will be divided between investors proportionate to the amounts that they subscribed for the eligible shares.

The €16.5m limit on the amount of risk finance investment that may be raised by a RICT group applies to the cumulative amount of risk finance investment raised under both Part 16 and the new "relief for investment in innovative enterprises" (commonly referred to as CGT angel investor relief) under Chapter 6A of Part 19 TCA 1997.

Eligible shares

Eligible shares are new shares forming part of the company's share capital. Before Finance (No. 2) Act 2023 it was possible for shares issued after 1 January 2019 to carry a right to preferential rights to a dividend or to repayment of capital on a winding-up. The shares could also be redeemable.

Finance (No. 2) Act 2023 now provides that although the shares can be redeemable, they can no longer have any preferential rights to dividends or repayment of capital on a winding-up.

Summary

The Finance (No. 2) Act 2023 amendments to the EIIS have been introduced to comply with GBER requirements. Although the broadening of conditions associated with risk finance investments is welcome, the introduction of a tiered tax relief for investments by individuals is a significant change. In particular, the reduction of tax relief for expansion and follow-on risk finance investments to an effective 20% rate, along with the removal from qualification of shares carrying preferential rights to dividends or assets on a winding-up, may prove a disincentive to investment.

Finally, the Minister for Finance noted in his Budget 2024 speech that there will be a further review of the EIIS in early 2024, which will focus on the potential for more simplification of the scheme, while taking account of the conditionality imposed by the EU GBER. Simplification of the scheme would be welcome, and we look forward to seeing what Finance Act 2024 brings!

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Finance (No. 2) Act 2023: New Capital Gains Tax Angel Investor Relief

Introduction

Finance (No. 2) Act 2023 introduced a new CGT relief, "relief for investment in innovative enterprises", more commonly termed "angel investor relief". The objective of this CGT relief is to encourage investment in innovative start-up businesses that are small- and medium-sized entities (SMEs). As noted in Revenue's "Notes for Guidance: Taxes Consolidation Act 1997, Finance Act 2023", issued in December 2023, "The relief aims to assist SMEs in attracting investment and to make Ireland a more attractive location for angel investors".

The relief is governed under Part 19, Chapter 6A, s600B–s600R, of the Taxes Consolidation Act 1997 (TCA 1997). The new targeted CGT relief applies a CGT rate of 16% (or 18% in the case of an investment through a partnership) on qualifying gains of up to twice the value

of the initial investment in innovative SMEs. The relief applies specifically to investments in the form of fully paid-up, newly issued shares that cost a minimum of €10,000 and that constitute between 5% and 49% of the total ordinary issued share capital of the company. Similar to other CGT reliefs, there is a lifetime limit on gains to which the reduced rate of CGT will apply, and in the case of this relief the lifetime limit is €3m. Effectively, this means that disposals of up to €6m could potentially qualify in full for this relief. In addition, the scheme will include a certification process by Enterprise Ireland and will be subject to the EU General Block Exemption Regulation (GBER). For the relief to apply, there are several conditions that need to be satisfied.

Section 600M TCA 1997 provides that relief will apply where a qualifying investor disposes of a qualifying investment in a qualifying company. The following key components of the legislative provision will be covered below:

- qualifying company,
- qualifying investment,
- qualifying investor,
- application of relief,
- qualifying partnership and
- anti-avoidance.

Qualifying Company

A company must satisfy the requirements of s600C and s600F TCA 1997 to be deemed a "qualifying company" for the purposes of the relief. Section 600C provides that a qualifying company must hold certificates of qualification. The criteria governing certificates of qualification are provided for under s600F.

A company that is seeking to raise investments from a qualifying investor, or a qualifying partnership must obtain a "certificate of going concern" and a "certificate of commercial innovation" from Revenue. The company seeking investment should provide the following information in its application for these certificates:

- A business plan for the company that is seeking investment.
- Details of each of the shareholders, and their shareholding or ownership interests in linked businesses or partner businesses. A linked business and a partnership business have the same meaning as in Part 16 TCA 1997, taken from Annex I of the GBER. In summation, businesses are linked where one business has control over the other business, and businesses are partners where one has at least a 25% interest in the other.
- Other information as may be requested by Revenue for the purposes of making a determination that the company meets the conditions to be considered a "qualifying company".

Before making an application for the qualification certificates, the company should be satisfied that it meets the following conditions:

- The applicant is a company that is incorporated and tax resident in Ireland, another EEA State or the UK.
- The company carries on, or intends to carry on, certain trading activities in Ireland.
- The company holds a tax clearance certificate.
- The company controls only certain types of subsidiaries[1] and is not controlled by another company (other than NAMA).

1 A qualifying subsidiary is a company that is an unquoted company resident in the State, the UK or an EEA State and that carries on relevant trading activities from a fixed place of business in the State. In addition, the subsidiary must be a 51% subsidiary of the qualifying company, no other person must have control of the subsidiary and arrangements must not exist whereby these conditions could cease to apply.

- The company exists wholly for the purpose of carrying on relevant trading activities[2] or holding shares in certain subsidiaries.
- The company is an innovative enterprise. An innovative enterprise has the meaning given to it by Article 2(80) of the GBER, that is, an enterprise:
  - that can demonstrate, by means of an evaluation carried out by an external expert, that it will in the foreseeable future develop products, services or processes that are new or substantially improved compared to the state of the art in its industry, and that carry a risk of technological or industrial failure; or
  - the research and development costs of which represent at least 10% of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.
- It is reasonable to consider that the company intends to, and has sufficient expertise and experience to, implement the business plan.

In addition to these conditions, it is important to note that each company that is a member of the group that qualifies for the relevant CGT relief should be unlisted and there should be no arrangements in place for the company to become a listed company.

Furthermore, each company in the CGT group must have all of its issued shares fully paid up.

Finally, the relief group of which the applicant company is a member must be an SME and not an undertaking in difficulty. The meaning of an "undertaking in difficulty" is set out in s600B TCA 1997:

> "*'undertaking in difficulty' has the same meaning as in the General Block Exemption Regulation; There are a number of tests to establish whether a business is an undertaking in difficulty. An undertaking is considered to be in difficulty when without intervention, it will almost certainly be condemned to going out of business in the short or medium term.*"

Qualifying Investment

From the company's perspective, the terms of a qualifying investment are set out under s600E TCA 1997:

- An investment must be based on a business plan. A business plan has the same meaning as in s493 TCA 1997, which provides that it is "a written business plan which contains details of products, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the investment is sought to support".
- An investment shall not be a qualifying investment if it is an expansion risk finance investment or a follow-on risk finance investment. As a comparative point, income tax relief for investors may be available for expansion risk finance investment or

2 The definition of relevant trading activities is provided for in Part 16 TCA 1997, whereby they must be activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D. However, certain activities, as outlined in Part 16, are excluded from the definition:

- adventures or concerns in the nature of trade;
- dealing in commodities or futures or in shares, securities or other financial assets,
- financing activities;
- the provision of professional services (within the meaning of s128F(1));
- dealing in or developing land;
- the occupation of woodlands within the meaning of s232;
- operating or managing hotels, guest houses, self-catering accommodation or comparable establishments or managing property used as a hotel, guest house, self-catering accommodation or comparable establishment, except where such activity is a tourist traffic undertaking (within the meaning of s491);
- operations carried on in the coal industry or in the steel and shipbuilding sectors; and
- the production of a film (within the meaning of s481).

a follow-on risk finance investment under the EII (Part 16 TCA 1997, Income Tax Relief for Investment in Corporate Trades – Employment and Investment Incentive and Seed Capital Scheme).

- Furthermore, the qualifying company must provide a copy of the certificates of qualification to the qualifying investor or qualifying partnership, as the case may be, for the investment to be considered a qualifying investment.

The conditions of a qualifying investment from the investor's perspective are provided for in s600J TCA 1997:

- The eligible shares have been held for a period of at least three years from the date of investment. "Eligible shares" has the same meaning as in s494 TCA 1997 and relates to the issuance of new shares, including redeemable and preference share capital.
- The value of the shares at the date of investment is:
  - at least €20,000 or
  - at least €10,000, and at the time of investment:
    - the eligible shares held by the individual represent not less than 5% of the qualifying company's ordinary share capital,
    - the eligible shares entitle the individual to not less than 5% of the profits available for distribution, the voting rights and the assets available for distribution and
    - no arrangements exist that could cause the individual's holding of eligible shares to fall below 5% or could reduce individual's entitlements to the profits available for distribution, the voting rights and the assets available for distribution below 5%.

Interestingly, the 5% *de minimus* shareholding threshold does not apply where the investment amount is €20,000 or more.

Furthermore, to avail of the relief, throughout the entirety of the period in which the eligible shares were held, the total shares, including the eligible shares, held by the individual in the qualifying company or any company that is a member of the relief group must represent not more than 49% of the company's ordinary share capital and not entitle the individual to more than 49% of the profits available for distribution, the voting rights and the assets available for distribution.

In addition, the investor is required to retain a copy of the certificates of qualification in respect of the qualifying company that were valid on the date of investment.

Qualifying Investor

To avail of this relief, the acquisition of shares must be carried out by a "qualifying investor". Section 600H TCA 1997 provides for the conditions that need to be satisfied in this regard.

Eligible shares

In the first instance, an individual is required to subscribe for eligible shares in a qualifying company. The meaning of eligible shares has been discussed above.

Connected with a company

For the purpose of this relief, an individual or an associate of the individual shall not be connected with the relevant company or any other company that is a member of the relief group. In this context, an individual may be connected with a company by way of their role as partner, director or employee or having an interest in the capital of the company or any company that is a member of the relief group.

Interest in a company

An individual shall have an interest in the capital of the company, including a member of the relief group, if they or any of their associates directly or indirectly possess or are entitled to acquire:

- any of the issued share capital,
- any of the loan capital,
- any of the voting power or
- any of the rights to the assets on a winding-up.

The above reference to loan capital includes any debt incurred by the company, excluding bank overdrafts (arising in the ordinary course of business). In relation to rights to an asset, any entitlement to acquire such rights will be deemed an interest in the capital of the company.

Finally, and also relating to the provisions of a qualifying investor, s600G TCA 1997 requires an individual to subscribe for shares in a company and that such shares be issued by the company:

- for consideration consisting wholly of cash,
- for bona fide commercial reasons and not as part of an arrangement that it is reasonable to consider the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person and
- by way of a bargain at arm's length.

Application of Relief

Section 600M TCA 1997 outlines the application of CGT angel investor relief. In particular, it indicates that a qualifying investor who disposes of a qualifying investment in a qualifying company shall be entitled to claim relief; however, it is important to note that the relief will not apply to a disposal by way of a redemption, repayment or repurchase of shares. Furthermore, the relief does not apply to part-disposals.

If an investment qualifies for the relief, CGT will be applied at a rate of 16% for an individual investor. This is referred to in the legislation as the standard CGT rate of 33% less 17%.

Relief is available on the lowest of the following:

- the chargeable gain,
- twice the amount of the qualifying investment in the eligible shares disposed of, or
- the €3m lifetime limit less chargeable gains from all claims under this section.

For example, and for the purpose only of illustrating the above, a qualifying individual investor makes a qualifying investment of €1m in a qualifying company. After holding the shares in the company for a period of more than three years and meeting the angel investor relief criteria (Part 19, Chapter 6A, s600B–s600R, TCA 1997), the investor disposes of their shareholding for cash consideration of €5m. The reduced CGT rate of 16% would then be applied to the lowest of:

- the chargeable gain – €4m;
- twice the amount of the qualifying investment in the eligible shares disposed of – €2m; and
- the €3m lifetime limit less chargeable gains from all claims under this section – €3m (on the assumption that there were no previous claims).

Therefore, the qualifying individual investor would be subject to CGT of €320,000 on the sale of the shares in question (16% of €2m).

As noted in Revenue's "Notes for Guidance: Taxes Consolidation Act 1997, Finance Act 2023", issued in December 2023, the restriction of twice the amount of the qualifying investment in the eligible shares disposed of is the prescribed limit under Article 21a of the GBER, which restricts the benefit that an individual investor may obtain under the GBER.

As with other reliefs from CGT, the individual is required to file a tax return. In the case of this relief, as well as the standard details for CGT, the return will need to include the name and address of the qualifying company that issued the shares, the date on which the investment was made, the value and the number of shares subscribed for as part of the qualifying investment and the unique, sequential certificate identification number of the certificate of commercial innovation assigned by Revenue.

Currently, the relief is applicable to the disposal of eligible shares issued on or before 31 December 2026.

It should also be noted, in relation to the interaction of the new angel investor relief with other CGT reliefs, that where relief is more favourable by availing of either revised entrepreneur relief (s597AA TCA 1997) or retirement relief (s598 or s599 TCA 1997), relief under those reliefs shall take priority. For the avoidance of doubt, revised entrepreneur relief and retirement relief cannot be used in conjunction with the new angel investor relief. Lastly, an investor cannot avail of angel investor relief if they have made or intend to make a claim for EII relief in respect of the eligible shares.

Qualifying Partnership

Section 600N TCA 1997 outlines the conditions for a partnership to be considered a "qualifying partnership" for the purpose of this relief. The section provides that a qualifying partnership is a partnership where an individual is a partner and has contributed a minimum of €20,000 to the partnership before the date of investment by the partnership in a qualifying company.

The partnership must also be established under a partnership agreement. The partnership agreement should include that the partnership's principal business is the investment of its funds in accordance with a defined investment policy for the benefit of its investors and that the funds to be invested in eligible shares are invested without delay. Additionally, audited accounts of the partnership need to be prepared annually and submitted to Revenue.

Where a partnership meets the criteria above and makes an investment of at least €20,000 in eligible shares in a qualifying company, relief should apply apportionable to each partner based on their share in the partnership. In this case, a CGT rate of 18% will apply to the gain (as opposed to the CGT rate of 16% that applies to a qualifying individual investor).

With respect to the application of the relief to a qualifying partnership, the shares do not have to make up 5% of the qualifying company's ordinary share capital, unlike the minimum threshold that applies to a qualifying individual investor, discussed above. In addition, there is no requirement for there to be at least 5% of the profits available for distribution, the voting rights of the company or the assets of the company available for distribution to a qualifying partnership (unlike the rules discussed above relating to a qualifying individual investor).

Anti-avoidance

A number of anti-avoidance measures have been incorporated in the new CGT angel investor relief and are aimed at targeting certain scenarios envisaged by the tax legislature.

Section 600I TCA 1997 seeks to combat the disguising of certain arrangements that might lead to an investor's falling within the scope of the definition of being connected to a company. In particular, it provides that an individual will be treated as connected with a company if that individual subscribes for shares in a company as part of a scheme or arrangement that allows another individual to subscribe for shares in a company to which the first-mentioned individual is connected.

Section 600K TCA 1997 is anti-avoidance provision with respect to shares in a qualifying investment. The relevant relief will be denied where any agreement exists that aims to reduce the risks associated with the shares or with distributions associated with those shares.

Finally, s600L TCA 1997 is an anti-avoidance provision with respect to the investor's perspective, which sets out to deny an investment from being a qualifying investment where, at any point in the three years from the date of the investment, the company or its qualifying subsidiary carries on a business previously carried on by an investor (or their associates) and includes any business that the

relevant investor (or their associates) had more than a 50% interest in.

Conclusion

The new angel investor relief is a targeted measure to provide financial support to start-ups and SMEs located in Ireland. One would expect the new relief to be appealing to angel investors generally, as a reduced CGT rate of 16% (or 18% in the case of an investment through a partnership), compared to the standard rate of 33%, on gains of up to twice the value of the investment made by the investor is a very attractive proposition and a very welcome legislative update. We expect that angel investor relief will encourage investment in Irish innovative start-ups and growing businesses, which can often find it difficult to access traditional sources of finance in the earlier years. Like all new legislative provisions, it will be interesting to monitor the practical uptake of this relief and whether its intended purpose will be achieved.

Brendan Murphy
Tax Partner, Roberts Nathan

Finance (No. 2) Act 2023: Implications of Changes to Section 664 Relief for Leasing of Farmland

Introduction

During his Budget 2024 speech on 10 October 2023, Minister Michael McGrath TD noted that the land-leasing income tax relief would be amended to provide that the land will need to be owned for seven years before the exemption can apply. The Finance Bill, which was released the following week, did not include any details of this amendment. However, the Committee Stage amendments inserted a new s33 in Finance (No. 2) Act 2023, which made the legislative amendments to s664 TCA 1997.

Background

Section 664 TCA 1997 currently allows for a relief from income tax for rent received from renting farmland. The level of relief is directly linked to the length of the lease and can vary from €18,000 to €40,000 per annum, depending on the life of the lease. The lease must be for a minimum of five years and made on an arm's-length basis. The scale of relief is highlighted in Table 1.

Table 1: Maximum relief available under s664 TCA 1997.

Lease term	Entered between 1 January 2007 and 31 December 2014	Entered on or after 1 January 2015
5–7 years	€12,000	€18,000
7–10 years	€15,000	€22,500
10–15 years	€20,000	€30,000
15 years or more	€20,000	€40,000

The relief is provided by way of a deduction from rental profit arising from the qualifying lease in calculating the net Case V taxable income. Where the farmer leases both the land and the accompanying land entitlements, the entire amount received can qualify for the relief.

There are currently anti-avoidance provisions to disallow relief where the land is leased to a person connected to the owner, with connected taking the meaning attributed to it in s10 TCA 1997.

Amendments

Section 33 has included an additional condition in the definition of a qualifying lessor. A qualifying lessor is currently one who has not leased the land from a connected person under a lease that would not be regarded to be at arm's length. The new condition inserted by Finance (No. 2) Act 2023 states that the lessor must have owned the land for a period of seven years before entering the lease. This takes effect for contracts to purchase land entered from 1 January 2024. Leases entered or signed before 31 December 2024 will not have this condition imposed on the lessor.

The new provisions also include a clause to deem that entering a lease of 50 years or more will now be considered purchasing the land for the purposes of this section. Therefore, if the lessor does not own the land but has leased it on terms exceeding 50 years, the land will be deemed to have been purchased for the purposes of this section.

The new seven-year holding requirement will apply only in situations where the land was purchased under a contract for market value. This is a welcome piece of specific wording, as it allows transfers made by way of gift or inheritance to fall outside that seven-year requirement. When the amendment was first referenced in the Budget speech there was much concern among agricultural groups that land transferred via gift or inheritance would have been impacted by the changes. Minister McGrath specifically stated in the Dáil that the "requirement to own the farmland for seven years prior to letting it out under a qualifying lease will not apply to individuals who have acquired the land other than by way of purchase".

However, this specific wording could have led to manipulation of the definition by transferring land between connected people at under-value. Therefore, anti-avoidance measures in new sub-sections (1A) to (1D) have been included to avoid this situation. In broad terms, the anti-avoidance sub-sections state that:

- If within seven years of purchase the land is transferred to a connected person other than by way of a purchase at arm's length and the main purpose was to fall outside the seven-year holding requirement, then a deemed disposal at market value is considered to have occurred at the date of that transfer. On this basis, a new seven-year holding requirement would begin.
- Farmland acquired from a connected person other than at market value on or after 1 January 2024 where the main purpose

is to avoid the seven-year holding requirement is deemed to have been acquired at market value at the date of purchase. On this basis, a new seven-year holding requirement would begin.

- Land purchased from an unconnected person for more or less than market value, or through a land swap, is deemed to have been acquired at market value at the date of contract. On this basis, a new seven-year holding requirement would begin.
- The seven-year holding period will not be a requirement where a married couple/ civil partners jointly own the land and a lease is entered by reason of the death of either partner.

Conclusion

Overall, the changes appear to be aimed at solving an issue for active farmers whereby land prices have been driven up by investors who regarded farmland as a solid investment that could be leased at a favourable effective tax rate, given the relief under this section.
It will be interesting to see how the anti-avoidance measures dealing with transfers not at market value work in practice and where it can be defended that such a transfer is not done with the main purpose of falling outside the seven-year hold requirement. It would seem likely that this is a subjective condition that could lead to disputes between Revenue and lessors.

News & Moves

Grant Thornton appoints Robert Fitzgerald as new Tax Partner

Grant Thornton Ireland has appointed **Robert Fitzgerald** as a new tax partner. With over 15 years of experience, Robert brings a wealth of expertise to the firm and will play a critical role in expanding its asset management and financial services tax practice. Robert's appointment builds on the growth of the firm's tax offering, led by 12 partners and supported by a team of over 300 dedicated tax professionals. Last month, the firm announced the appointment of six new partners across its audit and advisory practices.

Robert, a Grant Thornton alumnus, rejoins the firm with extensive experience of advising on investment vehicles, real estate, financing, securitization, mergers and acquisitions, and cross-border transactions.

Robert is a Chartered Tax Adviser (CTA) and a Fellow of Chartered Accountants Ireland.

Matheson adds five new Partners including one new Tax Partner

Matheson LLP has promoted five lawyers to partner across three different practice areas. The new partners, who have already taken up their positions, have been appointed in the following practice areas: Corporate M&A; Litigations and Tax. The appointments bring the total number of partners and tax principals in the firm to 122.

Raphael Clancy (Tax)

Currently based in the firm's London office, Raphael practices in Matheson's tax department, focusing on the financial sector, which includes asset management, aviation leasing and capital markets. Raphael is an experienced adviser on the tax aspects of establishing and operating Irish private equity and private credit fund structures.

Matheson Appoints Head of Tax Policy

Matheson LLP is pleased to announce the appointment of **Olivia Long** as Head of Tax Policy within Matheson's Tax Department.

Olivia re-joins Matheson from the OECD in Paris, where she spent a number of years working with the Tax Treaty Unit. During her time at the OECD, Olivia was heavily involved in the development of the Two Pillar Solution, the OECD's flagship project.

Shane Hogan, Head of Tax Department with Olivia Long, Head of Tax Policy at Matheson.

Azets Ireland welcomes PKF O'Connor, Leddy & Holmes

Azets Ireland are delighted to announce that they recently agreed a merger with **PKF O'Connor, Leddy & Holmes**, which will bring the firms together under the Azets brand.

They are excited to combine their expertise and talented teams to create a newly combined firm of national scale that is uniquely positioned to meet the needs of Ireland's entrepreneurial, owner-managed, and family-owned businesses.

L-R: Donal O'Leary, Chairman & Tax Partner; Susan Wylie, Partner; Neil Hughes, CEO and Alma O'Brien, Partner & Head of Tax

Simmons & Simmons Welcomes New Tax Counsel

International law firm Simmons & Simmons is pleased to announce the strengthening of its Tax team in Dublin with the appointment of **Brian Duffy** as Counsel.

Brian, a Lawyer and Chartered Tax Adviser (CTA), joins from William Fry where he spent over 20 years advising domestic and multinational corporations on complex tax matters and successfully navigating tax regulations. During this time, he earned a reputation for his expertise in tax controversy matters and dedication to client service. Brian will be focussing on tax controversy, M&A tax and real estate tax matters.

Top 20 accountancy firm Walsh O'Brien Harnett is delighted to announce the appointment of Bryan Farrell as Partner

Leading the tax team, **Byran Farrell** specialises in the provision of tax services to family and owner-managed businesses and private clients, as well as the tax compliance and planning requirements of the practice's international clients, particularly when establishing in Ireland.

Bryan has extensive experience across a number of practice areas, including family business succession planning; company and group reorganisations; property and debt restructuring; R&D tax credit claims; Revenue audits; and VAT on property.

Bryan is a graduate of University College Dublin and a Chartered Tax Adviser.

L-R: Managing Partner Frank Walsh with Tax Partner Bryan Farrell.

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