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Irish Tax Institute

Irish Tax Review

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ALSO IN THIS EDITION

- An Overview of Country-by-Country Reporting in Ireland
- Key Considerations for the Corporation Tax 2023 Cycle
- VAT Registrations: Practical Challenges and Pitfalls
- Registering a New Charity with the Charities Regulator
- Pensions: The Standard Fund Threshold – Taxes Consolidation Act 1997
- Application of Entrepreneur Relief & Retirement Relief on Share Disposals
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- UK Abolishes Remittance Basis Tax Regime – Reform of Inheritance Tax to Follow
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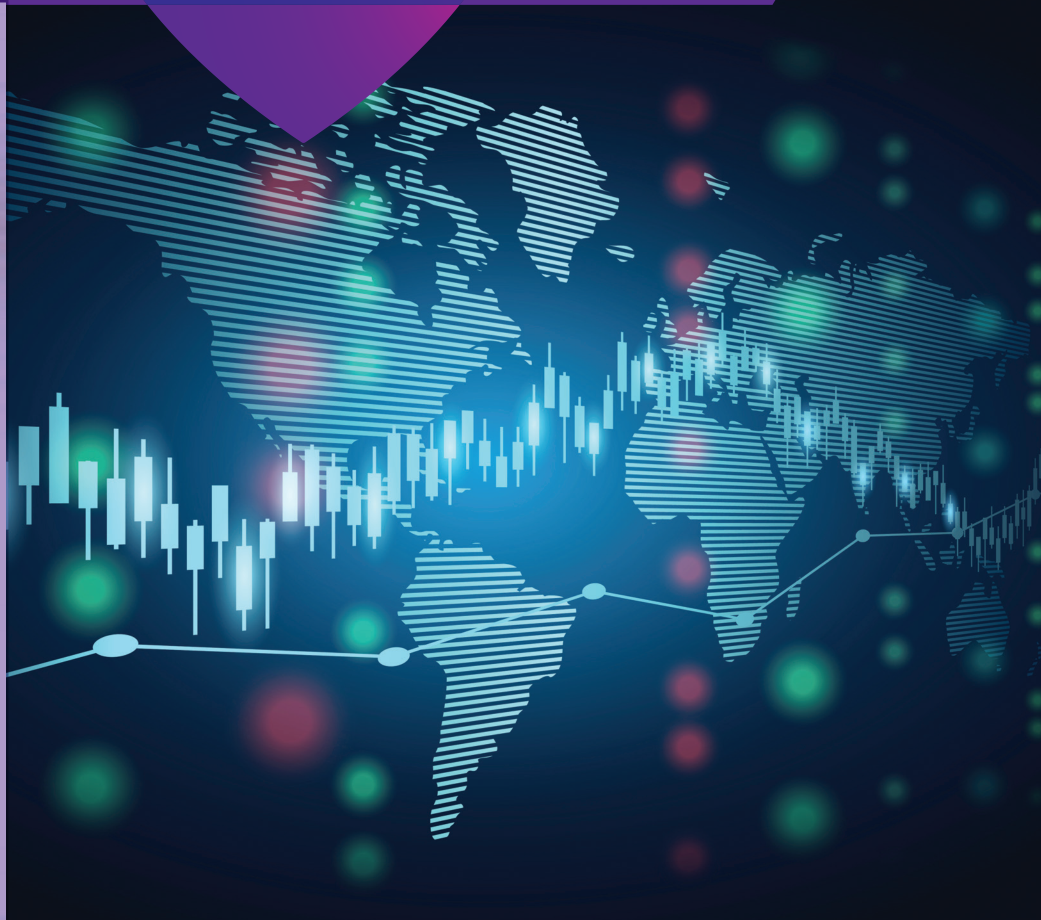

An Overview of Country-by-Country Reporting in Ireland

Irish Tax Institute

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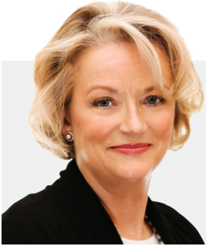

Editor's Pages

Julie Burke
Editor

Regular Articles

Policy & Representations Monitor

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

Recent Revenue eBriefs

Lorraine Sheegar lists all Revenue eBriefs issued between 1 February to 30 April 2024.

Direct Tax Cases: Decisions from the Irish Courts

Mark Ludlow

» In *Adnan Ahmad Siddiqi v The Revenue Commissioners* [2024] IEHC 195, the High Court considered an appeal against a TAC determination. The court considered the tax treatment of rental income and the tax treatment of an ex gratia sum from an employer

» In *The Revenue Commissioners v Dermot Tobin* [2024] IEHC 196, the High Court considered the scope of the obligation on a taxpayer to make a full and true disclosure of all material facts in a tax return

» In *Sean Flaherty v The Revenue Commissioners* [2024] IEHC 764, the High Court considered the date of disposal for CGT purposes

» In *John McMahon v The Revenue Commissioners* [2024] IEHC 85, the High Court considered cross-appeals from a TAC determination concerning assessments to CGT raised under s579A and s590 TCA 1997

Direct Tax Cases: Decisions from the UK and European Courts

Stephen Ruane and **Patrick Lawless**

UK Cases

» In *Hargreaves Property Holdings Ltd v Revenue and Customs* [2024] EWCA Civ. 365, the England and Wales Court of Appeal rejected the taxpayer's appeal, determining that the UK's withholding tax rules applied to debt financing provided to the company

» In *M Stolkin and Ors v HMRC* [2024] UKFTT 160 (TC), the UK First-tier Tribunal rejected the taxpayers' appeal, determining that entrepreneurs' relief was not available in relation to a disposal of shares in a company because the company was not trading

» In *A D Bly Groundworks and Civil Engineering Ltd and another v HMRC* [2024] UKUT 104 (TCC), the UK Upper Tribunal rejected the companies' appeals against a decision of the Frist-tier Tribunal that a trading deduction was not allowable in respect of provisions for future payments under an unfunded unapproved retirement benefit scheme (UURBS)

» In *Beard v HMRC* [2024] UKUT 73 (TCC), the Upper Tribunal upheld the decision of the First-tier Tribunal, concluding that distributions received by a taxpayer were dividends for UK tax purposes but not dividends of a capital nature

» In *J Cooke v HMRC* [2024] UKFTT 272 (TC), the First-tier Tribunal determined that the taxpayer was entitled to claim entrepreneurs' relief on a disposal of

his entire shareholding in a company, notwithstanding the fact he held less than 5% of the ordinary share capital

European Case

- The Advocate-General of the Court of Justice of the European Union delivered his opinion in *X BV v Staatssecretaris van Financiën* C-585/22. The case concerned the compatibility of the Dutch interest deduction limitation anti-profit-shifting rule with EU law

International Tax Update

Louise Kelly and **Claire McCarrick** summarise recent international developments

- BEPS Developments
  - OECD publishes Pillar One amount B report
  - OECD plans to publish final Pillar One treat text soon
  - The US Joint Committee on Taxation has issued a report on the impact of Pillar One
  - The OECD has released consolidated commentary to GloBE Model Rules that include illustrative examples
  - The Bahamian government has announced plans to implement the 15% tax rate
  - The UK Treasury has confirmed that it will introduce anti-abuse rules for Pillar Two safe harbour
  - The Greek parliament has enacted Pillar Two
  - The Polish Ministry of Finance has submitted a Pillar Two bill for public consultation
  - Czechia has proposed amending legislation to implement Pillar Two
  - The OECD released the latest peer-review report assessing jurisdictions' efforts to prevent tax treaty shopping and other forms of treaty abuse under Action 6
- OECD Tax Developments
  - Update to commentary on Article 26 of Model Tax Treaty approved
- EU Tax Developments
  - EU removed four jurisdictions from blacklist
  - The European Parliament Subcommittee on Tax has recommended simplifying tax systems
  - Italy: Introduction of penalty protection regime for hybrid mismatches and implementation of rules for investment management exemption from creation of PE
  - European Parliament has adopted its opinion on the FASTER proposal with some amendments
  - The European Commission has launched its consultation on rules governing tax dispute resolution
  - Belgium: Draft law would amend investment deduction regime to support "green" transition
  - Germany: The Upper House of parliament has approved a business tax reform bill
  - Poland: Council of ministers has adopted a Bill on DAC7 transposition
  - European Parliament has adopted the proposal for Head Office Tax Directive
  - European Parliament has approved the roll-out of the Transfer Pricing Directive
- The Inland Revenue Authority of Singapore has listed the reportable jurisdictions for CRS information for 2023
- Singapore's Budget 2024 was delivered in February
- The UK Chancellor of the Exchequer delivered the 2024 Spring Budget in March 2024

- Belarus has temporarily suspended certain provisions of 27 tax treaties with "unfriendly" States
- The UAE Federal Tax Authority has released guidance on qualifying group relief for corporate tax
- Australia has launched its own Country-by-Country reporting regime

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 of Justice of the European Union delivered its judgment in the case of *Finanzamt X v Y KG* C-207/23 which related to the interpretation of Articles 16 and 74 of the VAT Directive in the context of the imposition of VAT by Finanzamt X on supplies made free of charge by Y KG
- The judgment of the CJEU in the case of *Companhia União de Crédito Popular SA v Autoridade Tributária e Aduaneira* C-89/23 was published on 18 April 2024 in relation to the interpretation of Article 135(1)(b) of the VAT Directive (which provides that the granting and the negotiation of credit and the management of credit by the person granting it are exempt from VAT) in the context of transactions relating to the sale by auction of pledged goods relating to a pawnbroker loan
- The CJEU delivered its decision in the case of *M-GbR v Finanzamt O* C-68/23 in relation to the classification of marketing of pre-paid cards/voucher codes used to purchase digital content in an online shop as single-purpose vouchers (SPVs) or multi-purpose vouchers (MPVs)

Tax Appeals Commission Determinations

- 27TACD2024 examined the refusal of a VAT refund on the basis that the claim was not made in accordance with the provisions of s101 VATCA 2010 (which deals with-intra-Community refunds of tax)

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.

UK and Northern Ireland Tax Update – Summer 2024

Marie Farrell covers recent changes to and developments in UK tax law and practice and key areas of interest to CTAs are highlighted.

Customs Update – Summer 2024

Nick Koolen and **John O'Loughlin** explain the high-level customs valuation principles, common pitfalls and what Irish traders should be looking out for when importing goods to Ireland.

Revenue Commissioners' Update: Revenue's Compliance Approach Related to the Exchange of Financial Account Information

Aaron Snoddy provides an update on Automatic Exchange of information (AEOI).

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113 Key Considerations for the Corporation Tax 2023 Cycle

Kelly Caffrey explains the key considerations for companies heading into the busy tax filing season.

119 VAT Registrations: Practical Challenges and Pitfalls

James Fox and **Ray Smyth** outline how Irish VAT registration, once straightforward, now presents greater complexity, with increased documentation and scrutiny to combat fraud, affecting both domestic entities and foreign companies and challenging timely access to the tax system.

125 Registering a New Charity with the Charities Regulator

Emma Lawrence summarises the process by which a new organisation can be established, register as a charity and apply for a charitable tax exemption.

130 Pensions: The Standard Fund Threshold – Taxes Consolidation Act 1997

Tony Gilhawley examines the standard fund threshold, including the underlying policy objectives and the implications for both public and private sector pensions.

139 Application of Entrepreneur Relief & Retirement Relief on Share Disposals

Alan Heuston and **Ian Hanrahan** review the operation of entrepreneur relief and retirement relief in the context of a disposal of shares and outline the interaction of the two reliefs in practice.

144 Understanding the Capital Goods Scheme: Navigating Complexities

Mairéad Hennessy discusses the workings of the VAT-on-property Capital Goods Scheme, providing examples that illustrate the application of the rules in certain scenarios and discussing practical challenges in operating the regime.

152 Possible Impact of Anti-Avoidance Measures on Business Decisions

Conor Kennedy, in a two-part series of articles, considers the steps that practitioners should take to satisfy Revenue of the commercial legitimacy of any impugned transactions where tax avoidance is not the primary motivation.

158 UK Abolishes Remittance Basis Tax Regime – Reform of Inheritance Tax to Follow

Caitríona Moran outlines the UK Budget announcement of the abolition of the "non-domiciled " remittance-based tax regime and its replacement with a four-year Foreign Income and Gains residency regime, due to take effect from 6 April 2025.

164 High Court Considers Limited Reopening of Old Cases in *The Revenue Commissioners v Tobin*

Dearbhla Cunningham considers a recent High Court case concerning the meaning of "full and true disclosure" in the context of the four-year time limit on Revenue's power to raise assessments.

President's Pages

Tom Reynolds
Irish Tax Institute President

Introduction

The highlight of Q2 was undoubtedly our Annual Conference, which took place, as usual, in the Galmont in Galway on 19 and 20 April. It was superbly well organised and zipped along without a hitch, delivering 11 tax technical sessions over the two days. We had a packed house for the event, and it didn't rain – always a plus in the West of Ireland!

Client Scenarios

The focus over the two days on current tax challenges and their application to real-life client scenarios was very well judged. Tax will always be dynamic: every Budget and Finance Act brings some level of change. But, as I said in my opening speech, the pace and complexity of the tax changes we have seen over the last decade have been unprecedented, and they put huge pressure on all parts of the profession.

So the practical, client scenario-based approach of the presentations was exactly what members needed. I chaired the Friday morning session and saw the audience listening with rapt attention: lots of note-taking and assiduous underlining. That's the mark of a good conference.

It was also great fun. The hotel was very good, and the after-dinner socialising went on into the wee hours of Saturday morning – I can personally attest to that!

One thing that was striking was the large number of excellent women speakers across the two days. This is no surprise, of course: women now account for slightly more than half of the Institute's membership. But it is certainly worthy of celebration.

Tax Debt Warehousing Scheme

From the start of the year there had been much foreboding about the winding-up of the tax debt warehousing scheme on 1 May. Dire warnings of a tsunami of liquidations were sounded before the deadline. Fears were somewhat soothed when, in February, the Minister for Finance, Michael McGrath TD, announced that the debt was to be zero rated. Revenue also undertook to be flexible in its approach to businesses struggling with cost pressures that had debt in the warehouse.

But speculation continued throughout the spring that a significant portion of the €1.7bn that remained in the warehouse would never be collected. In the end, and with the benefit of a few grace days beyond the 1 May deadline, almost 90% of the outstanding debt was either repaid in full or secured under phased payment arrangements. All told, not a bad result.

Revenue ran a highly effective information campaign in the run-up to the deadline. The Institute also played its part through extensive updates in TaxFax, as well as a *Tax Talk* podcast on the options for taxpayers who had yet to engage with Revenue.

Credit goes to my Council colleague, Stephen Gahan, his fellow panellists Davena Lyons and Maureen Marray, both from the Collector General's Office, and David Broderick from the Small Firms Association for their excellent contributions to the public information campaign.

Participation Exemption for Foreign Dividends

In mid-May the Institute responded to the consultation on the Department of Finance's "Strawman Proposal" for the introduction of a participation exemption for foreign dividends. Although we welcomed many elements of the proposal, we recommended some amendments to the proposed geographic scope of the exemption, as well as to the timing and qualification for the regime.

To give certainty to business it is essential that the rules around the participation exemption regime are clear and simple, with limited exceptions and a broad territorial scope. Further consultation

during the drafting process will help to minimise complexity and make for ease of administration and implementation. In this context we welcome the formation of a dedicated sub-group of the Business Tax Stakeholder Forum to facilitate technical discussions with stakeholders. We are actively participating in this subgroup and look forward to further engagement in the months ahead.

Pre-Finance Bill Submission

The Institute's Policy and Representations team is in the thick of it right now, with submissions in advance of the forthcoming Budget and Finance Bill. The latter submission went to the Minister on 24 May, and on the following Monday Anne Gunnell discussed our main recommendations when she attended the National Economic Dialogue in Dublin Castle.

The broad theme of the submission is competitiveness, and in the case of our indigenous sector that means building innovation and productivity. In this regard we have recommended a number of specific enhancements to existing SME tax reliefs. Minister McGrath made some welcome changes to these measures in last year's Budget, but more can and should be done to maximise their beneficial impact on small businesses.In terms of maintaining our attractiveness for inward investment we recommend that the Minister move quickly to introduce a foreign branch exemption and to reform our interest deductibility regime. We also recommend that reducing the marginal cost of employment for employers and workers should continue to be a key objective.

As the larger economies in Europe join the increasingly competitive battle for foreign direct investment, it is essential that the Government does all that it can – and at speed – to ensure that our tax code presents no barrier to inward investment in a post-Pillar Two world.

Diversity Podcast

I was delighted to participate in the latest episode of our Tax Talk podcast, which focusses on diversity in the workplace. As the world becomes more polarised, the progress that we have made in fostering inclusive and ever more diverse work environments could be challenged. We have come a long way in the last 20 years, and we must all play our part in protecting the culturally diverse, tolerant and open country that we have become.

Conclusion

This is my last contribution as President to *Irish Tax Review*, and I want to take the opportunity to thank all of our members for their support during my term.

We are very fortunate to have such a committed and active membership. I've always been impressed by the generosity of those members who contribute to the work of the Institute. Without their time and expertise the Institute could not function. I want to acknowledge the debt that the profession owes them.

I am grateful to my fellow Council members and the Officer Board for their support and friendship during the year. I will pass the baton on to Aoife Lavan, the current Deputy President, in September. I wish her the best during her term of office.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

First, I want to thank you for renewing your subscriptions and submitting your CPD declarations.

We also contacted you seeking your feedback on the services we provide, which has informed the development of our strategic priorities until 2027. We look forward to actioning them to enhance your experience with your Institute.

Leading Through Tax Education

In April and May our students sat their exams online, and they recently received their results. Well done to all! We look forward to continuing to support you on the next part of your professional journey. We also wish the best to the CTA Part 3 students, who receive their results in early July.

The summer courses are well under way now, with the students sitting their exams in August. I hope that the learning and studying are going well so far.

Registration for our autumn programmes will open in the coming months. If you or a colleague would like to be notified when registration goes live for CTA, Tax Technician or Diploma in Tax, you can express your interest here.

Annual Conference 2024

Tom Reynolds, Institute President, welcomes more than 370 delegates to Galway for Annual Conference 2024.

In April more than 370 delegates gathered in Galway for Annual Conference 2024, where they heard from our panel of expert speakers, who pieced together the tax challenges and client scenarios for a range of topical tax issues. There was a fantastic atmosphere over the two days, with delegates networking and reconnecting with each other while absorbing first-class technical presentations. With the rise of generative AI, we also welcomed a guest speaker who gave an engaging and eye-opening session on Friday afternoon. Some delegates began Saturday with an early-morning Wim Hof breathwork session to get them ready for their day.

Mary Fahey, of Chill with Mary, introducing the delegates to the Wim Hof method at Annual Conference 2024.

Thank you to all of our speakers, the delegates and the Institute team on a very successful event.

Publications

Our eagerly awaited consolidated tax legislation titles were published last month. Thank you to the editors for their detailed work in consolidating and updating this year's legislation: David Fennell, *Direct Tax Acts*; Maria Reade, *Law of Value-Added Tax*; and Aileen Keogan and Emmet Scully, *Law of Capital Acquisitions Tax, Stamp Duty and Local Property Tax*. Your essential legislation titles can be ordered from our website or by contacting Michelle Byrne (mbyrne@taxinstitute.ie).

A new edition of *Value-Added Tax and VAT on Property* was published in April. Thank you to our authors – Gabrielle Dillon, Seán Brodie and Donal Kennedy – for the expertly written commentary alongside a plethora of worked examples. This is available to order on our website.

Irish Tax Review

At the Annual Conference we were delighted to acknowledge one of our 2023 *Irish Tax Review* authors. The Norman Bale Irish Tax Review Article of the Year Award 2023 was presented to Pat O'Brien for his article *100 Years of "The Fullest Fiscal Freedom": The Creation of the Irish Tax System in 1923.* Congratulations, once again, on the well-deserved award.

Pat O'Brien receiving the Normal Bale Irish Tax Review Article of the Year Award 2023 at Annual Conference 2024. L–R: Tom Reynolds, Institute President; Pat O'Brien, BDO; and Julie Burke, Irish Tax Review Editor.

After 23 outstanding years of stewardship, our *Irish Tax Review* Editor, Julie Burke, is stepping down from her role later this summer. Thank you, Julie, for steering this publication to new heights with great skill and expertise over the last two decades. We wish you well in your future endeavours.

Amanda-Jayne Comyn has left her role on our Council to take up the reigns as Editor of *Irish Tax Review*. We look forward to working with her in this new role and are excited to see where she will take Ireland's leading tax journal.

Also retiring from the *Irish Tax Review* Editorial Board is Carol Hogan, who for the past 13 years was a key member of the Board helping to surface new ideas for articles and identify new authors.

Representations

The Institute submitted its Pre-Finance Bill Submission to the Minister for Finance before the National Economic Dialogue. The submission included a range of recommendations; such as:

- the implementation of a foreign branch exemption in tandem with the participation exemption for dividends;
- the reform of SME incentives;
- targeted tax measures to promote the green agenda and sustainability for businesses seeking to reduce their carbon emissions; and
- proportionate sanctions for administrative errors.

The debt warehousing scheme (DWS), a vital support during the Covid-19 pandemic, entered its last phase at the start of May – the deadline to avail of the 0% interest rate. Members were kept up to date with all of the developments and requirements in TaxFax and on LinkedIn in the lead-up to the deadline. We also recorded a Tax Talk episode with our new host, Donal O'Donovan of the *Irish Independent*, who was joined by Maureen Marray and Davena Lyons from the Collector General's Division of Revenue, Stephan Gahan of ODG Advisory and Institute Council Member, and David Broderick of the Small Firms Association to discuss the DWS. It was an insightful conversation and informed listeners of what they needed to do and what they could expect when engaging with Revenue.

L–R: Donal O'Donovan, Tax Talk host; Maureen Marray, Revenue; Stephen Gahan, ODG Advisory and Council Member; David Broderick, Small Firms Association; and Davena Lyons, Revenue.

The Tax Policy and Representations team has been busy engaging with external stakeholders on important tax policy and administration issues for members. Their work included a submission in response to the Department of Finance Feedback Statement on the Strawman

Proposal for a participation exemption. We highlighted some elements we believe should be reconsidered, including the geographic scope, qualification for the regime, anti-avoidance and the timing.

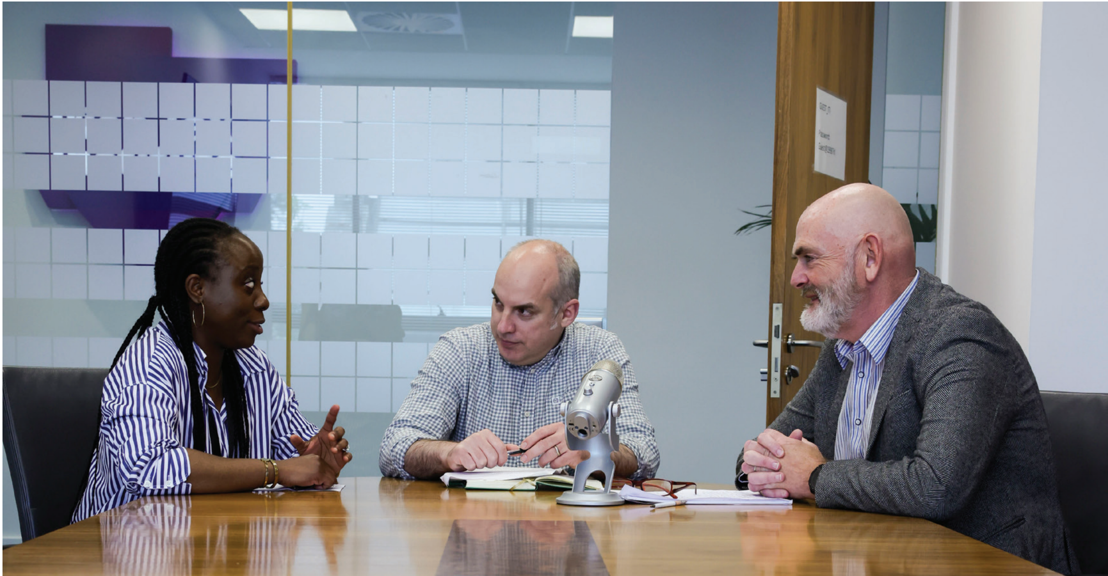
With the enforcement of real-time Enhanced Reporting Requirements coming into effect at the end of this month, the team has been busy engaging with Revenue at TALC and the Branch Network to make sure that members have as much information as possible so they can brief their clients.

In the coming weeks the Institute will meet the Minister for Finance to discuss its Pre-Budget 2025 Submission, which is being finalised as I write.

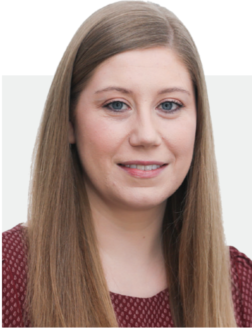
Tax Talk

The latest episode of *Tax Talk* looks at diversity and inclusion in the tax profession and workplace. Bringing their own unique experiences to the discussion are:

- Tom Reynolds, Institute President, who started his career when his sexual orientation was a criminal offence;
- Opeyemi Osunsan, PwC, who moved to Ireland two years ago from Lagos, Nigeria, where she worked in a Big 4 firm for 12 years; and
- Sandra Healy, founder of Inclusio, who brings the insight of a business owner into how to curate an inclusive environment and attract a diverse workforce.



L–R: Opeyemi Osunsan, PwC; Donal O'Donovan, Tax Talk host; and Tom Reynolds, Institute President. Not pictured: Sandra Healy, Inclusio.



Policy and Representations Monitor

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

News Alert

Institute responds to Feedback Statement on participation exemption for foreign dividends

The Institute responded to the Department of Finance's "Feedback Statement on a Participation Exemption for Foreign Dividends" on 8 May. The Minister for Finance, Michael McGrath TD, committed in a roadmap, in September 2023, to introducing a participation exemption for foreign dividends in Finance Bill 2024, which would come into effect from 1 January 2025. In our response we identified a number of elements of the "Strawman Proposal" for a participation exemption, which was set out in the Feedback Statement, that we believe should be reconsidered. These included the following.

Geographic scope

Regarding the geographic scope of the participation exemption, we highlighted that the proposal to restrict the exemption to dividends received from companies resident in the EU/EEA or jurisdictions with which Ireland has a double taxation agreement (DTA) is too restrictive, as it would mean that dividends received from companies that are resident in some of Ireland's key trading partners would not qualify for the exemption.

We advocated for the participation exemption to apply on a global basis with appropriate safeguards included where necessary. To allay any concerns that policy-makers may have regarding the potential for double non-taxation, for companies that are not in scope of Pillar Two, we recommended that policy-makers consider the application of a subject-to-tax test, applied on a jurisdictional basis, for dividends received from non-EU/EEA or non-DTA jurisdictions.

However, to ensure that the participation exemption would operate as straightforwardly as possible, we highlighted that any subject-to-tax test should not apply to dividends received from companies that are resident in the EU/EEA or in jurisdictions with which Ireland has a DTA.

Qualification for the regime

We emphasised that the participation exemption should apply automatically where the necessary conditions are satisfied, similar to s626B TCA 1997, but with an option to elect out for an accounting period.

We recommended that the taxpayer should have the option to elect out of the participation exemption for each accounting period and that the provisions of s959V TCA 1997 should apply in the usual manner so that it is possible for a taxpayer to amend the election, if necessary.

Anti-avoidance

Given the extensive existing base-erosion protections in the Irish tax code, we underlined that including the proposed general anti-avoidance provision in the specific legislation governing the participation exemption is unnecessary and would introduce complexity and uncertainty to the regime.

Timing

We stressed that the participation exemption should apply in respect of any dividends received on or after 1 January 2025 rather than granting the relief in respect of dividends received in accounting periods commencing on or after 1 January 2025, as suggested in the "Strawman Proposal".

Next steps

As work on drafting the legislation progresses, we emphasised that an iterative process of consulting with stakeholders will help to minimise the complexity involved in the participation exemption to the greatest extent possible and ensure that the exemption can achieve its objective of providing much-needed administrative simplification and greater certainty for businesses.

Noting the Department of Finance's confirmation that a second Feedback Statement will be published in mid-2024, we urged that this timeframe be adhered to so that stakeholders have sufficient time to consider fully the impact of the proposed legislative provisions.

Finally, we highlighted that if Ireland is to remain an attractive location for foreign direct investment, a foreign branch exemption should be introduced in Finance Bill 2024 in tandem with the participation exemption for foreign dividends.

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

Institute responds to consultation on tax dispute resolution mechanisms

The Institute responded to the European Commission's consultation on Council Directive (EU) 2017/1852 on Tax Dispute Resolution Mechanisms on 10 May. The consultation is part of the Commission's review of the implementation of the Directive on tax dispute resolution mechanisms in the EU, in accordance with Article 21 of the Directive.

The Directive sets out a framework for the resolution of tax disputes between two or more Member States arising from the interpretation or application of double taxation agreements and the EU Arbitration Convention. It builds on existing dispute resolution mechanisms and provides for a more streamlined approach. Taxpayers can request the application of the procedures available under the Directive to complaints submitted from 1 July 2019 and related to income or capital earned in a tax year commencing on or after 1 July 2018.

In our response to the consultation we highlighted that although the Directive should be helpful for taxpayers, many of the cross-border disputes that are currently ongoing are not within its scope. This is because it usually takes several years from when the tax return for a particular period is filed for disputes to emerge and evolve to the point where a taxpayer would seek to avail of the dispute resolution mechanisms under the Directive. For this reason there has been limited experience so far of the procedures available under the Directive.

In addition, we highlighted that although the additional rights provided for taxpayers under the Directive are welcome, the involvement of the taxpayer in the underlying dispute resolution process is limited. We stressed that permitting more meaningful participation by the taxpayer in the dispute resolution process would increase tax certainty and the trust of taxpayers in the dispute resolution procedures.

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

Member States issue Reasoned Opinions on proposed Directive on BEFIT

EU countries had until 16 February to send Reasoned Opinions to the European Commission on the proposed draft Council Directive on Business in Europe: Framework for Income Taxation (BEFIT). As part of its responsibility for scrutiny of proposed EU legislation in the area of finance, the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach issued a Reasoned Opinion on the draft Council Directive on BEFIT at the end of January.

During its review the Committee sought the Institute's views on the draft Directive, which we outlined in a written submission to the Committee on 26 January; this is available on our website, www.taxinstitute.ie.

It is the Opinion of the Committee that the draft Directive on BEFIT does not comply with the principle of subsidiarity under Article 5(3) of the Treaty on the European Union. Article 5(3) requires the European Commission to demonstrate that the objective of a proposal cannot be sufficiently achieved by individual Member States and that the proposed action at EU level would provide additional benefits.

The following reasons were noted by the Committee for its Opinion:

- The Committee supports efforts to simplify taxation systems and reduce the complexity of doing business in Europe. However, such proposals must bring benefits that outweigh the cost and complexity of introducing them and be balanced with the need to retain the competence of individual Member States in the area of taxation and the ability of Member States to determine their own tax base.
- The Committee emphasises that Ireland's position remains that matters of direct taxation are a Member State competence under the treaties, and tax harmonisation is contrary to that principle.
- It does not appear clear to the Committee that the overall effect of this proposal would lead to simplification for businesses, and indeed it may lead ultimately to greater complexity. In particular, the proposed Directive could lead to considerable complexity for tax administrations and businesses already grappling with the implementation of the OECD/G20 *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. The Committee considers that these factors call into question the case for the proposal, and its accordance with the principle of subsidiarity.
- The Committee notes that Ireland's position has consistently been that tax competition is an important policy tool, particularly for smaller Member States, provided that competition is fair and based on substance.
- The proposed BEFIT Directive would appear to replace a large part of domestic tax laws with an EU corporate tax system over which individual Member States would have only very limited control.
- The Committee observes that formulary apportionment of profits, if introduced, would also likely lead to a considerable redistribution of corporate tax revenues across the EU and would be likely to benefit larger Member States at the expense of smaller ones, such as Ireland. However, this remains difficult to assess as no specific approach has been put forward as part of the proposal.

The Dáil and the Seanad approved the Committee's Report and Reasoned Opinion, which was sent, together with a copy of the resolution from the Houses of the Oireachtas, to the Presidents of the European Parliament, the Council and the Commission.

In addition to Ireland, the Swedish Parliament submitted a Reasoned Opinion in January, and on 15 February Malta's House of Representatives submitted a Reasoned Opinion and the Polish Senate's EU Affairs Committee submitted a Simple Opinion.

Minister McGrath signs Commencement Orders to enhance film relief

On 27 March Minister McGrath signed two Commencement Orders, SI 125 and 126 of 2024, related to the s481 TCA 1997 film tax credit after European Commission State Aid approval was received.

Finance (No. 2) Act 2023 amended s481 to increase the cap for film relief from €70m to €125m; however, the increase was subject to a Ministerial Commencement Order because it required EU State Aid approval. The Commencement Order provides that

s41 Finance (No. 2) Act 2023 will come into operation as and from 28 March 2024.

Finance Act 2022 amended s481 to extend film relief to 31 December 2028 in recognition of the long production cycle for audio-visual productions. However, this was also subject to a Ministerial Commencement Order as it required EU State Aid approval. The Commencement Order provides that s41 Finance Act 2022 will come into operation as and from 28 March 2024.

Guidelines for designated persons supervised by the Anti-Money Laundering Compliance Unit published

On 28 March the Department of Justice published the "Anti-Money Laundering & Countering the Financing of Terrorism – Guidelines for Designated Persons Supervised by the Anti-Money Laundering Compliance Unit (AMCLU)". The purpose of the guidelines is to assist designated persons supervised by the AMLCU to understand and meet their obligations regarding anti-money laundering and countering the financing of terrorism under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended and related Statutory Instruments. Section 1 of the guidelines provides general guidance for designated persons who are supervised by the AMLCU. Section 2 contains additional guidance for specific categories of designated persons, with Chapter 14 dealing with external accountants and tax advisers.

The AMLCU welcomes feedback on these guidelines, and comments or suggestions can be sent by email to antimoneylaundering@justice.ie. Feedback received before 30 June 2024 will be considered as part of its first review process, which will be completed within one year after initial publication of the guidelines.

Government agrees measures to support SMEs

On 15 May the Government agreed a range of measures intended to reduce costs for small and medium-sized enterprises (SMEs). Two of the key measures announced relate to the Increased Cost of Business (ICOB) Scheme.

ICOB Scheme

The registration portal for the ICOB Scheme was reopened for 14 days, until 29 May, to allow businesses that did not register by the previous 1 May registration deadline to avail of the scheme. The grant is intended as a one-time financial aid to help businesses with increased costs associated with running a business.

The grant value for a qualifying business is calculated based on the 2023 rates bill for its property. Businesses with a 2023 rates bill for their property of up to €10,000 will receive a grant that equates to half of their bill. For those with a 2023 rates bill ranging from €10,000 to €30,000, a fixed grant of €5,000 will be provided. Businesses with a 2023 rates bill of more than €30,000 do not qualify for the ICOB grant. A second grant payment for the retail and hospitality sectors is also available under the ICOB, which will be the same amount as the initial grant.

Other measures

Other measures announced include:

- doubling the Innovation Grant Scheme to €10,000;
- increasing the maximum amount available under the Energy Efficiency Grant Scheme to €10,000 and reducing the business contribution rate from 50% to 25%;
- widening the eligibility for the Trading Online Voucher, extending it to all sectors with up to 50 employees, modernising eligible expenditure and doubling the grant to €5,000;
- increasing the lending limit for Microfinance Ireland loans to €50,000 from €25,000;
- widening the eligibility for the Digital for Business Consultancy Scheme and extending it to all sectors with up to 50 employees;
- launching a new Ireland's Best Entrepreneur Programme to encourage entrepreneurship and start-ups in under-represented groups;

- launching the new online National Enterprise Hub for SMEs to access information on the wide range of Government business supports, https://www.neh.gov.ie/;
- implementing an enhanced "SME Test" by the Department of Enterprise, Trade and Employment in conjunction with the Department of the Taoiseach;
- reviewing the research by the Economic and Social Research Institute on the impact of statutory sick leave before deciding on any further increases;
- reviewing the proposed Roadmap for Increasing Minimum Annual Remuneration Thresholds for Employment Permits;
- increasing the employer PRSI threshold from €441 to €496 with effect from 1 October 2024 – this will ensure that employers with employees working full-time on the national minimum wage will not be required to pay the higher rate of employer PRSI of 11.05% and will instead pay the lower rate of 8.8%;
- developing proposals for the effective and sustainable use of the €1.5bn surplus in the National Training Fund to future-proof workforce skills in SMEs and ensure that workers in SMEs can readily access lifelong learning opportunities; and
- issuing a circular letter to local authorities to inform them that no fees shall be charged or levied for tables and chairs for the purpose of outdoor dining up to 31 December 2024 – this is expected to save €125 per table for hotels, restaurants, public houses or other establishments where food is sold for consumption on the premises.

Policy News

Future Ireland Fund and Infrastructure, Climate and Nature Fund Bill 2024 published

In April the Future Ireland Fund and Infrastructure, Climate and Nature Fund Bill 2024 was published, after the publication of the General Scheme of the Bill on 12 October 2023 and the announcement in Budget 2024 of the intent to establish two new funds – the Future Ireland Fund and the Infrastructure, Climate and Nature Fund.

- The Future Ireland Fund is a long-term savings fund to deal with recognised expenditure pressures including ageing, climate and the digital transitions. Contributions will be made to the fund until 2035, when a decision can be made on further contributions after a Dáil resolution. The level of contribution was agreed in the context of Budget 2024, with 0.8% of GDP to be invested in the fund for each year from 2024 to 2035. The fund has the capacity to grow to €100bn by 2035. The contributions may be reduced or halted in the following year, where the Minister is satisfied, after an assessment, that there is or is likely to be a deterioration or a significant deterioration in the economic or fiscal position of the State.
- The Infrastructure, Climate and Nature Fund will make resources available in a future downturn to support expenditure through the economic and fiscal cycle. It is intended that €2bn will be invested in this fund each year from 2024 to 2030. The fund will be released to support counter-cyclical expenditure where the Minister is satisfied, after an assessment, that there is or is likely to be a "significant deterioration" in the fiscal or economic position of the State, and where the Government and Dáil Éireann have decided to halt the payments to the Future Ireland Fund and the Infrastructure, Climate and Nature Fund. Up to 25% of the value of the fund as at the end of the previous year may be drawn down for this purpose.

The Committee Stage amendments to the Bill were published on 30 April and debated by the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach.

Automatic Enrolment Retirement Savings System Bill 2024 published

On 5 April the Minister for Social Protection, Heather Humphreys TD, published the Automatic Enrolment Retirement Savings System Bill 2024. The Bill will bring around 800,000 workers into a retirement savings scheme for the first time.

When the Bill is enacted, employees who are aged between 23 and 60 years old, who earn more than €20,000 per year and who are not already paying into a pension scheme will be automatically enrolled. Contributions made by the employee will be matched by the employer and topped up by the State. In practice, for every €3 put in by the employee, the employer will also contribute €3 and the State will contribute €1.

Contribution rates will be phased in gradually over a period of 10 years. Starting in 2025, employees will contribute 1.5% of their gross earnings, which will be matched by their employer and topped up by the State. These rates will gradually increase every three years to reach a maximum contribution rate of 6% per employee, 6% per employer and 2% from the State from 2034.

Participants will be allowed to opt out or suspend their contributions after a mandatory six-month participation period. They will be brought back into the system again after two years unless they have an alternative pension arrangement.

The Bill provides for the establishment of a new State body, the National Automatic Enrolment Retirement Savings Authority, to administer the scheme. The Authority will act in the best interests of participants, collect contributions, arrange for the investment of contributions, manage participant accounts that will be accessible through an online portal, and facilitate the payment of savings at retirement.

The Committee Stage amendments to the Bill were published on 7 May and debated by the Select Committee on Social Protection, Community and Rural Development and The Islands. The Report Stage amendments to the Bill were published on 21 May.

Commission requests Ireland to transpose correctly the fifth Anti-Money Laundering Directive

In April the European Commission opened an infringement procedure by sending letters of formal notice to Ireland, France and Latvia for having incorrectly transposed the fifth Anti-Money Laundering (AML) Directive (EU) 2018/843. The three countries had notified a complete transposition of the Directive; however, the Commission has identified several instances of incorrect transposition of the Directive into national law.

In respect of Ireland, the Commission states that “the failure refers to the current system not guaranteeing the adequacy and completeness of the information held in the Beneficial Ownership register of trusts as well as regards the accessibility of its information”.

Ireland, France and Latvia have two months to respond and address the matters raised by the Commission. The Commission may then decide to issue a Reasoned Opinion if it determines that the response is not satisfactory.

The fourth and fifth AML Directives require each Member State to establish a Central Register of Beneficial Ownership of Trusts (CRBOT). The Irish CRBOT was established in 2021 in accordance with SI 194 of 2021 and the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021.

European Council updates EU list of non-cooperative jurisdictions

At a meeting on 20 February the Council of the European Union approved conclusions on the revision of the EU list of non-cooperative jurisdictions for tax purposes. Bahamas, Belize, Seychelles, and Turks and Caicos Islands were removed from Annex I (“the EU list”). With these updates, the EU list consists of 12 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

The Council also approved the state-of-play document (Annex II), which reflects the EU's ongoing cooperation with its international partners and the commitments of these countries to reform their legislation to adhere to agreed tax good-governance standards.

Two jurisdictions, Albania and Hong Kong, fulfilled their commitments by amending a harmful tax regime and will be removed from the state-of-play document. Aruba and Israel also fulfilled all of their pending commitments related to the automatic exchange of financial account information in the framework of the Common Reporting Standard. In addition, the OECD Global Forum gave Botswana and Dominica positive ratings with regard to the exchange of information on request, resulting in the deletion of the reference to these jurisdictions in the relevant section.

Ten jurisdictions now feature in Annex II, based on commitments that they have taken to improve their tax good governance: Armenia, Belize, British Virgin Islands, Costa Rica, Curacao, Eswatini, Malaysia, Seychelles, Türkiye and Vietnam.

The next revision of the list is scheduled for October 2024.

Commission evaluation of Directive on Administrative Cooperation

The European Commission has launched a call for evidence and consultation questionnaire on the evaluation of Directive 2011/16/EU (Directive on Administrative Cooperation, or DAC). The DAC establishes a system for secure administrative cooperation between the national tax authorities of EU countries and lays down rules and procedures for exchanging information.

This evaluation will assess the extent to which the DAC:

- is effective in fulfilling expectations and meeting its objectives;
- is efficient in terms of cost-effectiveness and proportionality of actual costs to benefits;
- is relevant to current and emerging needs;
- is coherent both internally (coherence between different DAC amendments) and externally (coherence between the DAC and EU and international legal frameworks); and
- has EU added value, i.e. produces results beyond what would have been achieved by Member States acting alone. In line with the Commission's efforts to simplify reporting requirements for companies and administrations, a special focus will be given to this aspect to inform potential proposals to reduce the reporting burden for the stakeholders involved.

The evaluation covers the functioning of the DAC in the period from 2018 to 2022. Therefore, DAC7 and DAC8 are not covered in the evaluation, as they were not yet implemented. The deadline to respond to the Commission's call for evidence and consultation questionnaire is Tuesday, 30 July 2024.

European Council reaches agreement on FASTER proposal

At the Economic and Financial Affairs Council (ECOFIN) meeting on 14 May the European Council reached an agreement (general approach) on the proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER). The FASTER initiative aims to make withholding tax procedures in the EU safer and more efficient for cross-border investors, national tax authorities and financial intermediaries, such as banks and investment platforms.

In the Institute's representations to the European Commission regarding a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes, we highlighted the burdensome withholding tax refund procedures faced by cross-border investors in the EU, with the recovery of withholding tax on dividends from listed companies being particularly problematic.

Some key elements of the FASTER Directive are a common EU digital tax residence certificate, or eTRC; two fast-track procedures

complementing the existing standard refund procedure for withholding tax; and setting a standardised reporting obligation for financial intermediaries, such as banks and investment platforms.

The agreed text will go through a legal linguistic check, and the Directive must then be formally adopted by the Council before being published in the *Official Journal* and entering into force. Member States will be required to transpose the Directive into national legislation by 31 December 2028, with the national rules to become applicable from 1 January 2030.

UK Spring Budget published

On 6 March the UK Chancellor of the Exchequer, Jeremy Hunt MP, delivered his Spring Budget. A summary of the key tax measures announced in the Spring Budget 2024 is given below.

Corporation tax

- In relation to capital allowances, draft legislation on the extension of full expensing to assets provided for leasing will be published shortly. The UK Government aims to implement full expensing on assets for leasing "when fiscal conditions allow".
- A new UK independent film tax credit will be introduced at a rate of 53% on qualifying film production expenditure for films with budgets of under £15m that meet the conditions of a new British Film Institute test. In addition, the UK Government announced:
  - a 40% relief on gross business rates for eligible film studios in England, until 2034;
  - a 5% increase in tax relief for UK visual effects costs in film and high-end TV, under the audio-visual expenditure credit (AVEC) – UK visual effects costs will be exempt from the AVEC's 80% cap on qualifying expenditure; and
  - from 1 April 2025 the rates of theatre tax relief, orchestra tax relief and museums and galleries exhibitions tax relief (MGETR) will be permanently set at 40% for non-touring productions and 45% for touring productions and all orchestra productions – the sunset clause for MGETR will be removed.

Capital gains tax

- The higher rate of CGT for chargeable gains on the disposal of residential property was reduced from 28% to 24% from 6 April 2024. The lower rate remains at 18% for any gains that fall within an individual's basic rate band.

VAT

- The VAT registration threshold was increased from £85,000 to £90,000 from 1 April 2024.

Personal tax

- The current tax regime for non-UK-domiciled individuals ("non-doms") will be abolished and replaced with a residence-based regime:
  - Under the new regime individuals who have been tax resident in the UK for more than four years will pay UK tax on their foreign income and gains.
  - Individuals will not pay UK tax on any foreign income and gains arising in their first four years of tax residence, provided they have been non-tax resident for the last ten years. Eligible employees will also be able to claim overseas workday relief in their first three years of tax residence for income from employment duties carried out overseas.
  - Transitional arrangements for existing non-doms claiming the remittance basis will include an option to rebase the value of capital assets to 5 April 2019 and a temporary 50% exemption for the taxation of foreign income for the first year of the new regime (2025–6).
  - There will be a two-year Temporary Repatriation Facility for individuals who have paid tax on the remittance basis before 6 April 2025 to bring previously accrued foreign income and gains into the UK at a 12% rate of tax.
- The main rate of Class 1 Employee National Insurance Contributions (NICs) was reduced from 10% to 8% from 6 April 2024.

- The main rate of Class 4 NICs for the self-employed was reduced from 8% to 6% from 6 April 2024.
- The UK Government stated that it would launch a consultation later this year to deliver its commitment to abolish fully Class 2 NICs. This follows the announcement in the Autumn Statement 2023 that from April 2024 no self-employed person will be required to pay Class 2, while those who pay voluntarily will continue to be able to do so to build entitlement to contributory benefits.
- The High Income Child Benefit Charge (HICBC) threshold, at which child benefit begins to be withdrawn, was increased from £50,000 to £60,000 from April 2024. In addition, the rate of the charge will be halved so that child benefit will not be fully withdrawn until individuals earn £80,000 or more, instead of £60,000 now. The HICBC will be administered on a household rather than an individual basis by April 2026, with a consultation in due course.

Inheritance tax

- The UK Government announced the intention to move to a residence-based regime for inheritance tax and will consult in due course on the best way to achieve this. No changes to inheritance tax will take effect before 6 April 2025.
- From 1 April 2024 personal representatives of estates will no longer need to have sought commercial loans to pay inheritance tax before applying to obtain a "grant on credit" from HMRC.

Other

- The main rates of fuel duty will be frozen until March 2025. The temporary 5p cut in fuel duty rates will be extended until March 2025, and the planned inflation increase for 2024–5 will not take place.
- The six-month alcohol duty freeze announced in the 2023 Autumn Statement will be extended until 1 February 2025.
- The energy profits levy sunset clause will be extended from March 2028 to March 2029, but legislation in the Finance Bill will abolish the levy if market prices fall to their historical norm sooner than expected.
- A new duty on vaping products will be introduced from October 2026, alongside a one-off increase in tobacco duty.
- There will be a one-off adjustment to rates of air passenger duty (APD) on non-economy passengers to account for high inflation in recent years and help to maintain the value of APD in real terms. The 2025–6 APD rates for economy passengers will increase in line with the forecast Retail Price Index.
- After a review by HMRC, the Alcohol Duty Stamps scheme will be removed. The UK Government will publish legislation later this year for an "orderly wind-down" of the scheme.
- The furnished holiday lettings (FHL) tax regime will be abolished from 6 April 2025, meaning that short-term and long-term lets will be treated the same for tax purposes. Individuals with FHL and non-FHL properties will no longer need to calculate and report income separately.
- A Carbon Border Adjustment Mechanism will be introduced from 1 January 2027. It will apply to relevant goods imported in the aluminium, cement, ceramics, fertiliser, glass, hydrogen, and iron and steel sectors. The details will be subject to public consultation later in 2024.
- Access to HMRC digital services for income tax self-assessment taxpayers will be simplified for those who want to pay in instalments in advance via a Budget Payment Plan or in arrears via a Time to Pay Arrangement from September 2025.

President Biden announces Budget for FY2025

On 11 March the US President, Joe Biden, announced his Budget for the fiscal year 2025. After the announcement the US Department of the Treasury released the General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals, or "Greenbook", to explain the revenue proposals included in President Biden's Budget.

Key business tax proposals in the Greenbook include:

- increase the US corporate income tax rate from 21% to 28%;
- increase the corporate alternative minimum tax rate to 21%;
- increase the effective global intangible low-taxed income (GILTI) rate to 21%;
- repeal the deduction for foreign-derived intangible income (FDII);
- adopt an undertaxed-payments rule;
- raise the tax rate on corporate stock buybacks from 1% to 4%; and
- deny corporate tax deductions for employee compensation in excess of $1m paid to any employee by both publicly and privately owned C corporations.

Countries extend agreement on transition of existing digital services taxes to Pillar One global solution

On 15 February Austria, France, Italy, Spain, the UK and the US agreed in a Joint Statement to extend the terms of their Unilateral Measures Compromise ("the 21 October 2021 Joint Statement") on the transition from existing digital services taxes (DSTs) to Pillar One of the OECD's *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*. Considering the revised timeline for adoption and signature of the Multilateral Convention (MLC) for Pillar One, the six countries have decided to extend the political compromise set forth in the 21 October 2021 Joint Statement until **30 June 2024**.

The Unilateral Measures Compromise will apply during an interim period from 1 January 2022 to 30 June 2024. The original interim period ended on 31 December 2023. The Joint Statement includes an annex illustrating the application of the provisions of the pact to an in-scope corporate taxpayer.

To the extent that taxes that accrue to Austria, France, Italy, Spain and the UK with respect to existing Unilateral Measures during a defined period after political agreement is reached, and before Pillar One takes effect, exceed an amount equivalent to the tax due under Pillar One in the first full year of Pillar One implementation (pro-rated to achieve proportionality to the length of the interim period), such excess will be creditable against the portion of the corporate income tax liability associated with Amount A, as computed under Pillar One in these countries.

As part of the Unilateral Measures Compromise the US agrees to terminate proposed trade actions and commit not to impose further trade actions against Austria, France, Italy, Spain and the UK with respect to their existing DSTs until the end of the interim period.

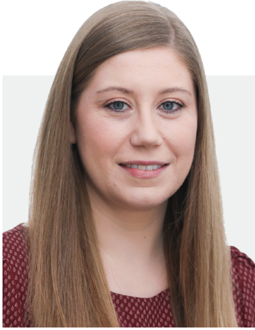
On 22 November 2021 the US and Türkiye decided that the same terms that apply under the Unilateral Measures Compromise would apply between the US and Türkiye with respect to Türkiye's DST and the US trade actions regarding the DST ("the 22 November 2021 Joint Statement"). In light of the revised timeline for adoption and signature of the Pillar One MLC, the US and Türkiye announced on 12 March an extension of the political compromise set out in the 22 November 2022 Joint Statement to 30 June 2024, consistent with the revised timeline above.

The OECD/G20 Inclusive Framework on BEPS is working to finalise the text of the MLC for implementing Pillar One Amount A rules. A signing ceremony for the MLC is expected by the end of June 2024.

United Nations Framework Convention on International Tax Cooperation

The meeting of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation took place in New York from 26 April to 8 May 2024. The Ad Hoc Committee, which was established in December 2023, is mandated to develop draft terms of reference for a UN Framework Convention on International Tax Cooperation, with a view to finalising its work by August 2024.

The Chair of the Committee invited Member States and other stakeholders to provide input to the work of the Committee, with reference to the substantive items on the provisional agenda for its First Session, to inform the provisional organisation of work. The submission from Ireland to the Committee notes that consistency with ongoing work and consensus achieved in the OECD and other international fora (such as the Inclusive Framework on BEPS and the Global Forum on Transparency and Exchange of Information for Tax Purposes) "should be a guiding principle, aiming to build on these strengths and engage in effective cooperation to ensure a synergistic approach to global tax challenges". The submission also states that the convention should seek "to avoid duplication of work and unnecessary extra budget claims, advocating for a decision-making process that strives for consensus".



Recent Revenue eBriefs

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

Revenue eBriefs Issued from 1 February to 30 April 2024

No. 034 Part 15-01-26 Amended

Revenue has updated the manual titled "Income Tax Credits and Reliefs for Individuals Over 65 and Individuals Caring for Those Over 65", largely to reflect information pertaining to the 2024 year of assessment.

No. 035 Universal Social Charge Regulations (USC) 2023 (S.I. No. 700 of 2023)

Revenue has updated the manual "Universal Social Charge Regulations 2018" to reflect the changes made to these Regulations as a result of the Universal Social Charge Regulations 2023 (SI 700 of 2023).

The Regulations are updated at Regulations 2 and 4 and by the insertion of a new Regulation 21A. In addition, the table in the manual has been updated at Regulations 4 and 21A.

Broadly, the definition of "notional payment" for USC purposes in Regulation 2 has been amended to reflect the change in the treatment of share option gains arising from 1 January 2024. Regulation 4 has been updated for the amendment to s531AOA TCA 1997, which provides for a four-year time limit in respect of USC refunds.

The new Regulation 21A provides that, in certain circumstances and where no payment of emoluments is made during the last income tax month of the year, an employer may make a repayment of USC to an employee during the last income tax month of the year so that the employee can benefit from any unused rates and bands at the end of the year under the cumulative PAYE system.

No. 036 Introduction to Stamp Duty Tax and Duty Manual Updated

The "Introduction to Stamp Duties" manual has been updated to provide additional information on the categories of stamp duty charges – in particular, how stamp duty is applied where a sale of stocks or marketable securities is effected by electronic means, such that no instrument of transfer is created. The manual has also been restructured to make it easier to follow. Contact details and hyperlinks have been updated throughout the manual.

No. 037 A Guide to Self-Assessment

Revenue has updated the manual titled "A Guide to Self-Assessment" at paragraph 1 to reflect the amendment in Finance (No. 2) Act 2023 to alter the collection mechanism for tax arising on gains realised on unapproved share options. From 1 January 2024, employers are responsible for accounting for the income tax, USC and employee PRSI arising on gains realised on the exercise, assignment or release of a right to acquire shares or other assets, as part of the payroll process.

Gains arising on or before 31 December 2023 remain subject to self-assessment. The obligation to register for relevant tax on share options (RTSO) and meet the tax obligations in respect of gains realised before 1 January 2024 as a result of exercising, assigning or releasing rights to acquire shares or other assets remains in place.

No. 038 Revenue Documentation to Verify Personal Addresses for Non-Revenue Purposes

Revenue has updated the manual "Revenue Documentation to Verify Personal Addresses for Non-Revenue Purposes" to provide further information on updating personal name or address details in myAccount to appear on Revenue documentation, at paragraph 2.2, regarding the Employment Detail Summary, and at paragraph 2.3, regarding the Summary of Pay and Tax Details.

No. 039 Stamp Duty Manual: "Part 6: Special Provisions Relating to Uncertificated Securities" Has Been Updated

Revenue has updated the Stamp Duty Manual titled "Part 6: Special Provisions Relating to Uncertificated Securities", which provides general guidance on the application of Part 6 of the Stamp Duties Consolidation Act 1999 (SDCA 1999). Part 6 SDCA 1999 provides for stamp duty to be charged by deeming the transfer order that effects the transfer of an interest in securities to be an executed instrument of conveyance or transfer of the securities concerned.

The manual has been restructured to make it easier to follow, and further guidance has been added:

- A new Section 2 provides general guidance on the circumstances in which a conveyance or transfer of securities is chargeable with stamp duty.
- Section 3.3.1 includes new guidance on who the accountable person is in relation to a transfer order.
- Section 7 includes new guidance to clarify that where a transfer order effects the transfer of an interest in securities outside a relevant system, the obligation to retain records does not apply in relation to a central securities depository. It also states that Revenue accepts that the obligation to retain records does not apply in respect of any transfer order that is excluded from the scope of s78B SDCA 1999, by virtue of sub-section (4) of that section.

No. 040 Stamp Duty Manual Part 7 – Section 80 – Reconstructions or Amalgamations of Companies Updated

The Stamp Duty Manual "Part 7: Section 80 – Reconstructions or Amalgamations of Companies" provides general guidance on the application of s80 of the Stamp Duties Consolidation Act 1999 (SDCA 1999). This section provides for a stamp duty exemption to apply on the transfer of certain property in connection with a scheme for the bona fide reconstruction of a company, an amalgamation of companies or a merger of companies undertaken in accordance with Chapter 3 of Part 9 or Chapter 16 of Part 17 of the Companies Act 2014. The manual has been revised and refreshed to include more comprehensive guidance on the application of the section.

No. 041 Taxation of Credit Union Dividends and Interest – No Longer Relevant

Revenue has archived the manual "Taxation of Credit Union Dividends and Interest" as its contents are no longer relevant. Special Medium Term Share Accounts and Special Long Term Share Accounts cannot be opened since 16 October 2013.

No. 042 Remote Working Relief

Revenue has updated the manual "Remote Working Relief" as follows:

- Paragraph 4 confirms that the remote working daily allowance applies in the case of directors, including proprietary directors, where the director has incurred and defrayed relevant expenses "out of the emoluments" of the office or employment of profit that are subject to tax under the PAYE system. The relevant expenses must be "out of" the relevant emoluments, and all other conditions must be met.
- Paragraph 5 reflects the requirement for employers to report payments of a remote working daily allowance of up to €3.20 under the Enhanced Reporting Requirements introduced with effect from 1 January 2024.

No. 043 Repair and Leasing Scheme

The manual "Payments to Property Owners Under the Repair and Leasing Scheme: Tax Treatment and Related Matters" has been updated to clarify that the scheme includes both a direct lease agreement and a rental availability agreement and that, although both a local authority and an approved housing body can enter into a direct lease agreement, only a local authority can enter into a rental availability agreement.

Additional clarifications are also provided in relation to the amounts that may be reimbursed under the scheme. References to the Home Renovation Incentive have been removed from the manual.

No. 044 Tax and Duty Manual Part 15-01-07 – Employee (PAYE) Tax Credit

The manual "Employee (PAYE) Tax Credit – Section 472 of the Taxes Consolidation Act 1997" now reflects the increase in the credit to €1,875 for 2024, as provided by Finance (No. 2) Act 2023. A new table has been inserted in paragraph 1 to show the credit amount for each year since 2021.

No. 045 Charitable Tax Exemption

The manual "Charitable Tax Exemption" has been updated as follows:

- Paragraph 4 confirms that, as provided in Finance (No. 2) Act 2023, Revenue will withdraw the charitable tax exemption from the date on which the charity is no longer eligible and that Revenue will notify the Charities Regulator of cases where the exemption is withdrawn.
- Paragraph 6 confirms that Finance (No. 2) Act 2023 extended the tax exemption under s208 TCA 1997 to include professional services income of a charity.
- A new paragraph 7 has been inserted to cover applications under s208A TCA 1997 by overseas charities for the charitable tax exemption.
- A new paragraph 8 has been inserted to cover certain bodies for the promotion of human rights mentioned in s209 TCA 1997, which are eligible to apply for the charitable tax exemption.

No. 046 Stamp Duty Manual "Part 7: Section 81AA – Transfers of Land to Young Trained Farmers" Updated

Revenue's Stamp Duty Manual "Part 7: Section 81AA – Transfers of Land to Young Trained Farmers" provides guidance on the application of s81AA of the Stamp Duties Consolidation Act 1999. This manual has been revised to clarify the circumstances in which the relief from stamp duty can apply where the land is conveyed or transferred into joint ownership. Revised material is included in sections 2.2 and 3.3. In addition, amendments have been made to the examples in the manual of the operation of the €100,000 limit (in section 3.3.4) to delete Example 3 and revise Example 6.

No. 047 Capital Acquisitions Tax Manual – Part 23 Exemptions from Capital Acquisitions Tax (CAT)

Revenue's manual "Part 23 – Exemptions from Capital Acquisitions Tax (CAT)" has been updated as follows:

- Paragraph 23.2, "Exemption of small gifts", is expanded to clarify that the exemption is available where a gift becomes an inheritance by reason of the death of the disponer within two years of the date of the gift.
- Paragraph 23.4, "Exemption for certain policies of insurance", is amended to follow the structure of the legislation.
- Paragraph 23.8, "Exemption of heritage property", is updated to clarify that a claim must be made to Revenue to avail of the exemption in respect of houses and gardens in the State not held for the purposes of trading.
- Paragraph 23.9, "Exemption of certain inheritances taken by parents", is updated to clarify that payments made for the "support, maintenance or education" of a minor child are not gifts or inheritances for

CAT purposes under s82(2) of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) and are therefore not a "non-exempt gift" for the purposes of s79 CATCA 2003. The existing example has been updated.

- Paragraph 23.11, "Exemption of certain securities", is expanded to give further detail on the qualifying conditions for the exemption.
- Paragraph 23.12, "Exemption of certain receipts", is amended to follow the structure of the legislation.
- Paragraph 23.15, "Exemption relating to retirement benefits", has been updated to include a reference to pan-European pension products (PEPPs).

No. 048 Part 41A-05-04 Full Self-Assessment Time Limits for Making Enquiries and Making or Amending Assessments

The manual "Full Self-Assessment: Time Limits for Making Enquiries and Making or Amending Assessments" has been updated, at paragraph 4, to refer to an amendment in Finance Act 2022 to s959AA(2A) TCA 1997, which explicitly provides that assessments may be amended outside of the normal four-year time limit as a result of a mutual agreement procedure (MAP) determination.

The manual also outlines that tax returns may be amended outside of the four-year time limit to account for the knock-on effects of a MAP or correlative adjustment, even if the company whose return is amended was not directly a party to the MAP or correlative adjustment.

In addition, paragraph 3, which outlines exceptions to the four-year limit for making enquiries, and paragraph 4, which outlines the time periods for making or amending assessments, have been amended for ease of understanding.

No. 049 Certain Benefits Payable Under Social Welfare Acts – Increase for Qualified Adult

Revenue's manual "Certain Benefits Payable Under Social Welfare Acts – Increase for Qualified Adult" has been updated to clarify the tax treatment of the increase in the State Pension in respect of a qualified adult for the tax year 2014 and subsequent years, and for tax years up to and including 2013.

The text largely reflects the previous guidance in the manual on these topics. Section 126(2B) TCA 1997, as inserted by s12 of Finance (No. 2) Act 2013, provides that for the tax year 2014 and onwards the State Pension, together with any "increase" for a qualified adult, is deemed to be emoluments of the person beneficially entitled to the pension (i.e. both the pension and the increase constitute a unitary amount, notwithstanding situations where the increase is paid to the qualified adult).

Therefore, from 1 January 2014, the increase for a qualified adult does not represent a separate source of income for the qualified adult. Consequently, the PAYE employee tax credit and increased rate band are not available in respect of the increase for a qualified adult.

Regarding the tax treatment of the "increase" for a qualified adult for tax years up to and including 2013, the High Court in the case of *Michael O'Neill v The Revenue Commissioners* [2018] IEHC 388 concluded that the qualified adult was the beneficial owner, in his or her own right, of the amount of the "increase" and therefore was entitled to the PAYE employee tax credit and increased rate band. This judgment dealt with the legislation applicable before the enactment of Finance (No. 2) Act 2013 (i.e. it applies only to pensions and any associated "increase" for a qualifying adult received up to 31 December 2013).

No. 050 Capital Acquisitions Tax Consolidation Act 2003 – Notes for Guidance Updated

Revenue has released up-to-date Notes for Guidance on the Capital Acquisitions Tax Consolidation Act 2003 (as amended by

subsequent Acts up to and including Finance (No. 2) Act 2023).

No. 051 Tax Exemption and Marginal Relief

Revenue has updated the manual "Tax Exemption and Marginal Relief" primarily to include an update to the example in paragraph 2.1 in relation to the PRSI change applicable from 1 January 2024 and to reflect the increased standard rate band and tax credits for 2024 in other examples.

No. 052 Part 15-02A-05 High-Income Individuals' Restriction Tax Year 2010 Onwards

Revenue has updated the manual "High-Income Individuals' Restriction: Tax Year 2010 Onwards" to refresh examples and to reflect the increased standard rate bands applicable for 2024.

No. 053 Tax and Duty Manual Part 15-01-14 – Income Tax Relief for Medical and/or Dental Insurance

Revenue's manual "Income Tax Relief for Medical and/or Dental Insurance" has been updated to reflect an update to the list of authorised dental insurers included in Appendix 1 and to reflect that the administration of tax relief at source for authorised insurers has moved from the Collector General's Division to Large Corporates Division.

No. 054 Home Renovation Incentive (HRI)

The "Home Renovation Incentive (HRI)" manual has been updated to remove the operational aspects of the manual, as 2019 was the latest tax year in which the relief could be claimed. This content has been removed because it is no longer relevant.

The HRI was a scheme that enabled homeowners, landlords and local authority tenants to claim tax relief on repairs, renovations or improvement work carried out on their main home or rental property. The works must have been completed by a tax-compliant contractor and subject to VAT at the reduced rate of 13.5%. The relief can be carried forward until fully utilised, and the manual covers this aspect of the relief.

No. 055 Sea Going Naval Personnel Tax Credit

Revenue has updated the manual "Sea-Going Naval Personnel Tax Credit" to reflect the extension of this credit to 2024 by Finance (No. 2) Act 2023. Updates have also been made to some of the examples.

No. 056 Pension Manual Chapter 14 Amended

Revenue has updated chapter 14 of the Pensions Manual titled "Discontinuance of Schemes" to add a new paragraph 8, which contains contact details for the Pensions Branch in Large Cases – High Wealth Individuals Division.

No. 057 Interpretation of Corporation Tax Acts

Revenue has updated the "Interpretation of Corporation Tax Acts" manual to reflect two Finance (No. 2) Act 2023 amendments:

- the extension of the tax exemption under s208 TCA 1997 to include professional services income of a charity, e.g. income from providing counselling services; and
- the insertion of a definition of sport in s235 TCA 1997 that includes both competitive and recreational sport. Section 235 provides for a tax exemption for certain income of a relevant body established for the promotion of athletic or amateur games or sports.

No. 058 Securitisation Regulation: Notification of Investment

Revenue has updated the manual "Securitisation Regulation: Notification of Investment" at section 1.1 and Appendix 1 to refer to the updated EU list of non-cooperative jurisdictions for tax purposes of 26 February 2024 (instead of referring to the October 2023 EU list). Example 4 in the manual has also been updated to reflect the current listing of Annex II jurisdictions.

No. 059 VAT Treatment of Negotiation Services

Revenue published a new manual to provide guidance on the VAT treatment of negotiation services in respect of financial services.

No. 060 VAT Treatment of Construction Services

Revenue published a new manual titled "VAT Treatment of Construction Services" to provide guidance on this topic. The manual also includes a clarification that where a connected person of the owner of land carries out construction work for the landowner, the connected person is not regarded as developing such land in the course of a business of developing immovable goods. Rather, the connected person is regarded as providing a construction service to the landowner. An example has been included. This clarification was previously available on a Revenue webpage.

The VAT manual "Reverse Charge Construction" has been marked as no longer relevant, as the detail from this manual is now included in the "VAT Treatment of Construction Services" manual.

In addition, a new "VAT Treatment of Fixtures and Fittings" manual has been published and reflects material that is available on the VAT Rates Database. The VAT Rates Database will be updated to remove the information now reflected in the new manual.

The "Supply of Property" VAT manual has been updated to provided further clarity in relation to taxable supplies of property.

No. 061 Finance Bill (No. 2) 2023 Changes to Rights to Acquire Shares or Other Assets

Revenue updated "Chapter 3 – Unapproved Share Options" of the Share Schemes Manual to reflect Finance (No. 2) Act 2023 amendments. The Finance Act amended the collection mechanism for tax on gains arising on the exercise, assignment or release of a right to acquire shares or other assets (s128 TCA 1997) so that the gains are no longer subject to self-assessment but are taxed under the PAYE system.

In respect of gains realised from 1 January 2024, employers are responsible for accounting for the income tax, USC and employee PRSI as part of the payroll process. Gains arising on or before 31 December 2023 remain subject to self-assessment. A consequential amendment was made to the Social Welfare Act with regard to the collection of PRSI by employers.

Section 3.6 of Chapter 3 covers pertinent information for employers on the operation of payroll taxes in relation to share option gains realised on or after 1 January 2024. The application of double taxation relief on or after 1 January 2024 is addressed in paragraph 3.9.7.

A new paragraph 3.4.5.2 outlines Revenue's position that any commission or deductions incurred by the employee or the director as a result of a "sell-to-buy" mechanism or any other arrangement are not deductible expenses for the purpose of calculating the chargeable income tax gain arising on the exercise, assignment or release of a right chargeable under s128 TCA 1997.

No. 062 Stamp Duty Manual Section 80 'Company Reconstructions and Amalgamations' Has Been Updated

Revenue has updated the Stamp Duty Manual "Part 7: Section 80 – Reconstructions or Amalgamations of Companies" at section 1.1, "Undertakings", to delete the following paragraph, which was amended at the beginning of February:

> "In certain circumstances, the holding of an investment may constitute an undertaking, if there is active (as opposed to passive) ownership of the investment concerned. In this regard, Revenue will generally accept that a 100% shareholding may constitute an undertaking for the purposes of section 80."

The following paragraph has replaced the deleted paragraph:

> "Revenue accepts that the transfer of a 100% shareholding of a company carrying on a business in its own right constitutes the transfer of an undertaking."

No. 063 Capital Acquisitions Tax Manual CAT Part 02 – Statement of Affairs (Probate) Form SA.2

Revenue updated the manual "Statement of Affairs (Probate) Form SA.2 – Capital Acquisitions Tax Manual Part 2" to include a guide and screenshots for applicants for clearance under s48(10) Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) who are submitting their request through MyAccount.

Section 4, "Appointing an Irish resident agent where beneficiaries are non-resident", has been redrafted to bring the content more in line with the applicable sections in CATCA 2003.

No. 064 Tax and Duty Manual for Section 126AA Stamp Duties Consolidation Act 1999 – Bank Levy – Updated

Revenue has updated the Stamp Duty Manual "Part 9 – Bank Levy" to reflect that the levy provided for in s126AA of the Stamp Duties Consolidation Act 1999 (SDCA 1999) has not been extended beyond 31 December 2023.

Section 126AA SDCA 1999 provided for a levy on certain financial institutions (known as the bank levy) up until 31 December 2023. Finance (No. 2) Act 2023 inserted a new s126AB in SDCA 1999, which provides for a revised bank levy for the year 2024. This revised levy replaces the levy that was provided for by s126AA SDCA 1999.

No. 065 Domestic Employers and the Taxation of Domestic Employees

Revenue's manual "Domestic Employers and the Taxation of Domestic Employees" has been updated mainly to include a new paragraph 4, which provides clarity on how domestic employees declare income from the domestic employer. The bank account details for the Department of Social Protection are also updated at Appendix 2.

No. 066 Part 05-02-06 Schedule E Deductions for Employed Consultants and Non-Consultant Hospital Doctors (NCHDs)

Revenue has updated the manual "Schedule E Expense Deductions for Employed Consultants and Non-Consultant Hospital Doctors (NCHDs)" to include information in paragraph 2 on how to claim a current-year flat-rate expense deduction.

No. 067 Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements (ERR)

The manual "Returns by Employers in Relation to Reportable Benefits – Enhanced Reporting Requirements" has been updated to include a new paragraph 4.2.1, "Advance travel and subsistence payments and ERR". This provides guidance on an optional new administrative practice in relation to advance payments for travel and subsistence.

An advance payment is subject to tax and therefore would not fall within the scope of ERR because the payment does not relate to travel or subsistence expenses incurred by the office holder or employee and the payment is subject to tax, via the payroll, when it is paid. However, an adjustment to payroll may be required when the office holder or employee submits a claim to their employer for the related travel and subsistence expense and the employer wishes to avail of the s114 TCA 1997 administrative practice. At this point the travel and subsistence expense incurred would be subject to ERR. To simplify administration, the manual notes that Revenue will implement an optional administrative practice in respect of advance travel and subsistence payments.

Under this administrative practice an advance travel and subsistence payment may be treated, in certain circumstances, as not being subject to tax via the payroll when paid but treated as a payment where no tax is deducted in respect of travel and subsistence and thus subject to

ERR at the time of payment. Then, when the expense is incurred and the claim is submitted by the employee/director, the employer will be required to update its ERR submission to Revenue to reflect the actual travel and subsistence expense amount in respect of that employee/director.

Paragraph 4.2.1 sets out the conditions that must be satisfied for this administrative practice to apply. The functionality in the ERR system for advance travel and subsistence payments is currently being developed.

No. 068 07-03-08 Games and Sports Bodies Exemption

The "Games and Sports Bodies Exemption" manual has been updated at paragraph 1 to reflect the definition of "sport" inserted in s235 TCA 1997 by Finance (No. 2) Act 2023, to mirror the definitions in the Sport Ireland Act 2015 and include both competitive and recreational sport.

Paragraph 6 of the manual has also been updated to include a summary of the High Court case *Listowel Racing Company Ltd v Revenue* [2022] IEHC 253 concerning the sole-purpose test in s235(1) TCA 1997.

No. 069 Share Schemes Manual – Chapter 6 Forfeitable Shares

Revenue has updated the examples in the Share Schemes Manual "Chapter 6 – Forfeitable Shares".

No. 070 Part 15-01-29 Home Carer's Tax Credit

The "Home Carer Tax Credit" manual has been updated to reflect the Finance (No. 2) Act 2023 amendment to increase the tax credit from €1,700 to €1,800 for 2024 and subsequent years. The associated income thresholds and examples have been updated to reflect this change.

No. 071 Part 15-01-20 Employed Person Taking Care of an Incapacitated Individual Amended

The manual "Employed Person Taking Care of an Incapacitated Individual" has been updated to reflect refreshed examples.

No. 072 PAYE/USC Regulations – Emergency Tax

The manual "PAYE/USC Regulations – Emergency Tax" has been updated to reflect the increase in tax bands introduced by Finance (No. 2) Act 2023. In addition, examples throughout the manual have been updated to include relevant references to information on the Revenue website.

No. 073 Help to Buy (HTB)

The "Help to Buy (HTB)" manual has been updated to reflect the extension of the enhanced HTB relief to 31 December 2025. A new paragraph 9.1, "Registering as a Qualifying Contractor", has been inserted, which sets out the criteria to become a registered qualifying contractor for the purposes of HTB. A contractor must be VAT registered; have, and maintain, an RCT (relevant contracts tax) rate of 0% or 20%; and have, and maintain, tax clearance. The paragraph also links to guidance on how to become a qualifying contractor. In addition, paragraph 16, "Raising an Assessment for Help to Buy", has been amended for clarity purposes.

No. 074 Part 36-00-14 Donations to Approved Bodies

The "Donations to Approved Sports Bodies" manual has been updated at paragraph 2 to reflect the definition of "sport" inserted in s235 TCA 1997 by Finance (No. 2) Act 2023, to mirror the definitions in the Sport Ireland Act 2015 and include both competitive and recreational sport.

No. 075 Part 15-01-05 Incapacitated Child Tax Credit Amended

The "Incapacitated Child Tax Credit" manual has been updated to reflect the Finance (No. 2) Act 2023 amendment to increase the tax credit from €3,300 to €3,500 for 2024 and subsequent years. The manual includes a new table in section 1 to reflect the applicable credit for prior years.

No. 076 Part 15-01-36 Tax Relief on Retirement of Certain Income of Certain Sportspersons Amended

The manual "Tax Relief on Retirement for Certain Income of Certain Sportspersons" has been updated to refresh the examples throughout.

No. 077 Online Payments of Tax

The manual "Using Online Methods to Make a Payment to Revenue" has been amended at Table A to update the information on relevant tax on share options (RTSO) and reflect that for gains on exercise realised on or after 1 January 2024 individuals are no longer required to submit payment of RTSO within 30 days of exercising the option. The employer is obliged to remit taxes on the gain to Revenue under the PAYE system (PREM).

No. 078 Part 15-01-44 Earned Income Tax Credit Amended

The "Earned Income Tax Credit" manual has been updated to reflect the Finance (No. 2) Act 2023 amendment to increase the earned income tax credit from €1,775 to €1,875 for 2024 and subsequent years and updated examples.

No. 079 CESOP Guidelines for Registration and Filing – Non-Resident PSP Registration

The Central Electronic System of Payment information (CESOP) is the European database that will centralise the information reported by payment service providers (PSPs) to their local tax authorities, allowing it to be cross-checked with other European databases. The first filing deadline for CESOP filers in Ireland was Tuesday, 30 April 2024.

The registration facility for CESOP filers opened in ROS on 1 February 2024. Non-resident CESOP filers are required to complete a two-step verification process when registering for CESOP in Ireland. To allow sufficient time to complete this process, all non-resident PSPs were advised to commence ROS registration at least one month before the first filing deadline, 30 April.

PSPs that register for CESOP reporting in Ireland may use the ROS process to certify agents or service providers to file CESOP reports on their behalf. Revenue's manual "European Cross-Border Payments Reporting (CESOP) Registration Guidelines and Guidance for Filing" provides the following information for PSPs that have a CESOP reporting obligation in Ireland:

- 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.

Agents of PSPs that operate non-resident subsidiaries, branches or franchises that may fall within the scope of CESOP reporting in Ireland should notify their clients of the two-step verification process when registering for CESOP in Ireland and the reporting information available in the CESOP manual.

No. 080 EU Mandatory Disclosure of Reportable Cross-Border Arrangements Part 33-03-03

The manual "EU Mandatory Disclosure Rules (Entry into Force on 25 June 2018)", which provided details on the introduction of DAC6, is no longer relevant and has been archived. The manual "EU Mandatory Disclosure of Reportable Cross-Border Arrangements" provides comprehensive guidance on the operation of DAC6.

No. 081 Foreign Accounts

The manual "Returns in Relation to Foreign Accounts – Section 895 TCA 1997" provides guidance on the reporting obligations under s895 TCA 1997 for Irish-resident individuals and companies who open a foreign account and for an agent or financial intermediary who facilitates the opening of a foreign account by an Irish-resident individual or company. The manual has been updated to incorporate the information previously contained in the manual "Accounts Liable to DIRT, Company, Pension Scheme and PEPP Provider Deposits", which has also been updated accordingly.

No. 082 The Directive on Administrative Cooperation in the Field of Taxation

Revenue has published a new manual, "The Directive on Administrative Cooperation in the Field of Taxation (DAC)", which provides a roadmap to the Irish transposition of Council Directive 2011/16/EU (DAC) and general guidance on the scope and application of the DAC and the amendments to it.

The DAC provides for the automatic exchange of information between the tax administrations of EU Member States and has been amended numerous times since its introduction.

No. 083 Import of Motor Vehicles from the UK

The manual "Importation of Motor Vehicles from the UK" has been updated to provide clarity on the requirements for registering a vehicle in the State that was first brought into Northern Ireland before 30 April 2024.

No. 084 Vehicle Registration Tax Manual Section 1C

"Vehicle Registration Tax Manual Section 1C – Conversions" has been updated at section 6, "Post Registration Conversions (including those previously registered in another jurisdiction)", to remove the reference to Suitably Qualified Individuals on the list of Approved Test Centres, as this is set out in more detail in section 6.2.

No. 085 Avian Influenza

Revenue has updated "Customs – Prohibitions and Restrictions Manual: Safeguard Measures Due to the Risk of Avian Influenza" to update legislative references in paragraph 2 and include updated advice for trade on the importation of live birds and poultry in paragraph 3. The manual also includes updated instructions for staff dealing with the importation of live birds and poultry.

No. 086 Issue of Tax Credit Certificates on a Week 1/Month 1 Basis

Revenue has updated the manual "Issue of Tax Credit Certificates on a Week 1/Month 1 Basis" at paragraph 1 to include three additional reasons for the issue of a Week 1/Month 1 Tax Credit Certificate. These reasons, outlined in d) to f), relate to a transfer of credits and/or cut-off points between spouses/civil partners that will result in an underpayment of tax for either the taxpayer or their spouse/civil partner; a large reduction in tax credits; and income that has not previously been taxed. Paragraph 4 has been updated to advise that additional information can be found on the Revenue website.

No. 087 Capital Acquisitions Tax Manual CAT Part 03 – The Self-Assessment Return (Form IT38)

Revenue's CAT Manual "Part 3 The Self-Assessment Return (Form IT38)" has been revised throughout to add hyperlinks and make the content clearer. In addition, section 3.1, "Introduction", has been updated to include changes made by Finance (No. 2) Act 2023 regarding an individual's obligation to file a CAT return when they are in receipt of certain interest-free loans from close relatives.

No. 088 Denatured and Undenatured Alcohol Products Manual

Revenue published a new "Denatured and Undenatured Alcohol Products" manual to provide information and guidance on the receipt and use of denatured and undenatured alcohol products without the payment of alcohol products tax (APT); the applicable authorisation, control and compliance procedures, previously contained in the "Alcohol Products Tax" manual; and the denaturing of alcohol products.

The manual consolidates relevant information previously contained in the "Alcohol Products Tax and Reliefs" manual and in Notice No. 1887 – Procedures relating to (a) Receipt and use of denatured and undenatured alcohol products without payment of APT and (b) The denaturing of alcohol products. Notice No. 1887 has been withdrawn on publication of this new manual.

No. 089 Revisions to Alcohol Products Tax (APT) and Reliefs Manual

Revenue's manual "Alcohol Products Tax and Reliefs (Incorporating Notice No. 1886 on Alcohol Products Tax)" has been revised to include the contents of Notice No. 1886 on alcohol products tax (APT), which is withdrawn on publication of this revised manual.

The revisions to this manual are set out below:

- The following paragraphs and appendices of the May 2023 edition of the manual have been removed and are now available in the new "Denatured and Undenatured Alcohol Products" manual:
  - 3.2.1 – Cooking Wine and Cooking Cognac,
  - 3.2.3 – Flavours for the preparation either of Foodstuffs or Beverages not exceeding 1.2%,
  - 3.4 – Denatured and Undenatured Alcohol Products,
  - 3.5 – Trader: Approvals and Security,
  - 3.6 – Bond/Financial Security,
  - 3.7 – Applications for Authorisation to Receive or Distribute Tax-relieved Alcohol Products (Denatured and Undenatured),
  - 3.8 – Issue of Authorisations,
  - 3.9 – Record of Authorisations issued,
  - 3.10 – Requirements,
  - 3.11 – Requisition, Delivery and Receipt Procedures (Denatured and Undenatured),
  - Appendix 5 – Standard Conditions applicable to persons who receive tax-relieved alcohol and
  - Appendix 6 – Standard Conditions applicable to facilitation warehouses; involved in end-use manufacture or scientific research.
- Paragraph 3.14 – Restriction on Use, referring to s2(1) of the Immature Spirits (Restriction) Act 1947, has been removed as it is superseded by more recent legislation.
- Paragraph 2.1.1 – EU Law is updated with references to (i) Commission Implementing Regulation (EU) 2023/157 regarding the electronic Simple Administrative Document and (ii) Commission Implementing Regulation (EU) 2024/355 on the reference to the certificate for independent small producers of alcoholic beverages and the self-certification of those producers in the administrative documents.
- The rates of APT in Appendix 2 are updated to reflect adjustments made under s54 of the Finance (No. 2) Act 2023 to the rates charged on cider or perry over 8.5%, with effect from 1 January 2024.
- The Automated Import System codes, replacing Excise Reference Numbers, for product movements from third countries are included in Appendix 5 and replaced, as appropriate, throughout the manual.

No. 090 Vehicle Registration Tax Manual Section 3

"Vehicle Registration Tax Manual Section 3 – Repayment Schemes and Procedures for Processing Repayment Claims" has been updated at section 2, "Vehicles for People with Disabilities Tax Relief Scheme", to reflect changes to fuel grant rates under SI 665 of 2023. Section 3.4, "Electric vehicles including motorcycles", has also been updated to reflect the extension of vehicle registration tax relief to 31 December 2025 provided in Finance (No. 2) Act 2023.

No. 091 C&E TAN Reports Available on ROS

Revenue has updated the manual "C&E TAN Reports Available on Revenue's Online Service (ROS) for C&E Traders" to include Combined Taxes Report for Importers and Payers Excise Duty Entries (EDE) declarations. Further information has also been included on amended declaration versions.

No. 092 Import Payment Methods

Revenue has updated the "Import Payment Methods" manual to include postponed VAT contact details for related queries; VRT payment methods to include a link to the manual "Vehicle Registration Tax (VRT) Online Payments in ROS and myAccount"; and a link to

C&E reports available in ROS, along with some other minor text changes.

No. 093 Recovery of VAT on Motor Vehicles

Revenue has updated the "Recovery of VAT on Motor Vehicles" manual to provide further information on vehicle conversions.

No. 094 Mineral Oil Tax (MOT) Rate Changes

The manual "Energy Products and Electricity Taxes – Excise Duty Rates" has been updated to reflect increases in mineral oil tax rates for certain mineral oils. The rate increases are effective from 1 April 2024. Relevant changes have also been made to the manual "Budget 2024 Excise Duty Rates".

No. 095 Guidelines for CESOP Registration and Filing

Revenue has updated the manual "European Cross-Border Payments Reporting (CESOP): Registration and Filing Guidelines" to include detailed guidance on the process for filing EU Cross-Border Payments (CESOP) reports in ROS. This information will be of assistance to payment service providers (PSPs) or their designated filing intermediaries who may have a CESOP reporting obligation in Ireland. The manual now provides guidance on CESOP reporting in Ireland, including:

- detailed guidance on the process for registration as a resident or non-resident PSP for the purpose of CESOP reporting,
- detailed guidance on the process for filing CESOP reports and
- details of the technical specifications required for filing CESOP reports.

The registration facility for CESOP filers opened in Ireland on 1 February 2024. The filing facility for CESOP in ROS opened on 1 April 2024.

No. 096 Outbound Payments Defensive Measures Guidance

Revenue has published a new manual, "Outbound Payments Defensive Measures", dealing with the implementation of the defensive measures introduced by Finance (No. 2) Act 2023. Part 33 TCA 1997 provides for the implementation of the defensive measures, by way of withholding taxes on outbound payments of interest and royalties and on the making of distributions, in certain circumstances. The measures apply to payments or distributions by Irish-resident companies, or payments by Irish branches of non-resident companies, to associated entities that are resident, or situated, in specified territories. The aim of these defensive measures is to prevent double non-taxation.

The measures contained in Chapter 5 of Part 33 remove certain exclusions from the obligation to deduct withholding taxes on outbound payments of interest and royalties, and on the making of distributions, to an associated entity that is resident, or situated, in certain territories.

This is coupled with the disapplication of exclusions from the charge to income tax for the non-Irish-resident associated entity that receives the payment or distribution. In the case of the payments of royalties, the underlying charge to income tax for those payments, in the hands of recipients, has been expanded to match the withholding tax measure.

The territories within the scope of the measures are those included in Annex I of the EU list of non-cooperative jurisdictions for tax purposes and "no-tax" and "zero-tax" territories (together referred to as "specified territories").

No. 097 Tax and Duty Manual on Customs Export Procedures

The "Customs Export Procedures Manual" has been updated to clarify the export of goods under a Single Transport Contract. There are also some minor text changes removing duplicated instructions regarding the introduction of the Automated Export System in 2023.

No. 098 Tax Treatment of Ukrainian Citizens Who Work Remotely in the State for Ukrainian Employers

Revenue has extended the concessional tax treatment of Ukrainian citizens who work

remotely in the State for Ukrainian employers to the tax year 2024, given the continuation of the war in Ukraine and the ongoing humanitarian crisis.

In April 2022 Revenue issued eBrief No. 090/22, outlining Revenue's concessional treatment of Ukrainians who came to the State because of the war in their country and continued to be employed by their Ukrainian employer while performing the duties of their employment remotely from Ireland. The concession provided that in relation to Ukrainian employment income:

- these Irish-based employees of Ukrainian employers were treated as not being liable to Irish income tax and USC on Ukrainian employment income that was attributable to the performance of duties in the State and
- the Ukrainian employers were not required to operate the PAYE system on such employment income.

This concession applied solely to employment income paid to the Irish-based employees by their Ukrainian employer for the tax year 2022.

Revenue also disregarded the presence of these employees in Ireland for corporation tax purposes in respect of any company resident in Ukraine where the employee, director, service provider or agent would have continued to be present in Ukraine but for the war.

On 7 February 2023 Revenue confirmed in eBrief No. 028/23 that the concessional treatments outlined above would also apply for the tax year 2023.

This eBrief confirms that the concessional treatments will apply for the tax year 2024, subject to the qualifying conditions, which are outlined in eBrief No. 090/22. Any individual or relevant entity that avails of these concessional treatments should continue to retain evidence to support compliance with the qualifying conditions.

The eBrief notes that these concessional treatments will cease with effect from 1 January 2025. From this date, the Irish-based employee and the Ukrainian employer will be required to comply with the Irish tax requirements arising from the exercise of the duties of the Ukrainian employment in Ireland.

No. 099 Controlled Foreign Company Rules

Revenue has updated chapter 11 of the "Controlled Foreign Company Rules" manual, which refers to s835YA TCA 1997 and concerns Irish defensive measures in respect of the CFC rules, to reflect an amendment introduced by Finance (No. 2) Act 2023. The amendment refers to the updated October 2023 EU list of non-cooperative jurisdictions for tax purposes.

This manual will also be updated in due course to reflect Pillar Two-related consequential amendments made to the CFC rules in Finance (No. 2) Act 2023.

No. 100 Updates to Accounting for Mineral Oil Tax Manual

The "Accounting for Mineral Oil Tax" manual has been updated as follows:

- for reference purposes only, links to non-statutory consolidated versions of the Finance Acts 1999 and 2001 are provided;
- "Secondary Law" is updated to include the Control of Excisable Products Regulation 2024;
- Appendix I is updated with mineral oil tax rates with effect from 1 April 2024, and rates from 11 October 2023 are included with historical rates in Appendix VII; and
- miscellaneous minor revisions.

No. 101 Deposit Return Scheme

Revenue has published a new manual titled "Deposit Return Scheme", which outlines the VAT treatment appropriate to Deposit Return Scheme (DRS) deposits, as provided by s92A of the Value-Added Tax Consolidation Act 2010, which was inserted by Finance (No. 2) Act 2023, and the VAT (Regulation 34B) (Amendment) Regulations 2024.

The DRS came into operation on 1 February 2024 under environmental law and provides for a small refundable deposit on drink products supplied in plastic bottles and aluminium or steel cans. The deposit is refunded to a person who returns an empty container to the DRS for recycling or reuse.

For supplies of drink products in the supply chain, e.g. by manufacturer or importer, wholesaler, or retailer, no VAT arises on the DRS deposit. VAT on the deposit arises only where the container is not returned under the DRS, and it is the scheme operator for the DRS who is liable to account for and pay the tax.

No. 102 Update to VRT Tax Manual Section 1B – Administration and Payments by Traders

"Vehicle Registration Tax Manual Section 1B – Administration and Payments by Traders" has been updated at section 3, "Communications and Lodgements", to reflect the fact that payments by electronic funds transfer have been discontinued.

No. 103 Payment and Receipt of Interest and Royalties Without Deduction of Income Tax

Revenue has updated the manual "Payment and Receipt of Interest and Royalties Without Deduction of Income Tax" as follows:

- In section 1.3, to reflect the introduction of the outbound payments defensive measures contained in Chapter 5 of Part 33 TCA 1997.
- In section 5.3, to provide additional guidance on the application of interest withholding tax to interest paid to Irish partnerships and foreign tax-transparent entities.
- In section 9.1.1, to provide additional guidance on payments of interest to tax-transparent entities where members of those entities may avail of the rate of withholding tax provided for under the terms of a double taxation agreement.

No. 104 Standard for Automatic Exchange of Financial Account Information in Tax Matters – The Common Reporting Standard (CRS)

Revenue has updated the manual "Standard for Automatic Exchange of Financial Account Information in Tax Matters – The Common Reporting Standard (CRS)", which provides guidance on domestic implementation issues relating to the CRS. Question 16 in the manual has been updated to provide further detail on what is required as part of the reasonableness test of self-certificates. Question 19 has been inserted to address the date of deregistration from CRS for Irish regulated funds.

No. 105 Updates to End Use Operational Instructions

Revenue has updated the "Instruction Manual on End-Use Procedure" at section 3.4, "Application for authorisation based on a customs declaration (simplified authorisation)", to add a bullet point regarding restriction on the number of times that Simplified End Use may be used. Updated information on the timeframe for submitting Bills of Discharge, including examples of monthly Bills of Discharge, has been included in section 7.2, "Bill of Discharge".

No. 106 Guidelines for Phased Payment – Instalment Arrangements

Revenue has updated "Collection Manual: Guidelines for Phased Payment Arrangements" throughout to improve ease of reference and user experience and to cater for recent changes.

An updated section 1, "Key Messages for Debt Warehouse Customers", and section 5, "Debt Warehouse PPA", have been added to the manual to reflect amendments to the debt warehousing scheme (DWS), as announced by the Minister for Finance on 5 February 2024. These sections highlight the necessity for taxpayers in the DWS either to pay their liability or to submit an application for a phased payment arrangement (PPA) on ROS by 1 May 2024 to avail of the reduced interest rate of 0%.

An updated section 6, "Key features of a PPA", has been added, which includes information previously contained in the summary section. All sections have been updated to reflect Revenue flexibility in terms of a PPA, including reduced downpayments, longer repayment periods and the option to take a payment break.

The reference to all PPAs' requiring a minimum required downpayment of 25% or 40% (if tax clearance is required) has been removed. Instead, the manual notes that Revenue will be flexible on the amount of an initial downpayment but taxpayers should strive to maximise the downpayment amount as a higher downpayment reduces interest and impacts the value of the monthly instalment. The manual further advises that if a taxpayer is seeking a PPA to obtain tax clearance, Revenue will seek a reasonable downpayment. However, Revenue has a range of flexibilities available, depending on the circumstances of the case.

Regarding the term of a PPA, the guidance clarifies that although a short-term PPA is most desirable, long-term arrangements may be facilitated. However, the taxpayer will need to provide a business case for why the extended term is necessary, and there must be sufficient evidence that the business can sustain and support the arrangement for its duration.

The guidance also reiterates the critical importance of timely compliance with current taxes, noting that a key indicator of a viable business is the ability to maintain its current taxes as they fall due. Before the submission and approval of a PPA, taxpayers and caseworkers should ensure the business has the capacity to meet all tax obligations both for the PPA and for current taxes. Failure to honour direct debit payments can result in the cancellation of a PPA. (The guidance points to the flexibilities available to taxpayers if payment difficulties arise to mitigate the risk of cancellation of a PPA.)

No. 107 Single Person Child Carer Tax Credit

The "Single Person Child Carer Tax Credit" manual has been updated to reflect the Finance (No. 2) Act 2023 amendment that increased the tax credit by €100 from €1,650 to €1,750 for the 2024 year of assessment and subsequent years. In addition, a new table has been included on page 3 to provide an overview of the tax credit amount for 2023 and prior years, and examples have been updated.

No. 108 Defective Concrete Products Levy

The "Defective Concrete Products Levy" manual has been updated to include a simplification measure that applies where the price of the supply of ready-to-pour concrete includes both the open-market price of the product and related delivery and haulage costs.

Revenue is willing to accept that, for the purposes of determining the levy due in respect of a supply of ready-to-pour concrete, a chargeable person may apply a fixed average percentage rate to calculate the portion of the cost that relates to delivery and haulage (being the portion of the cost that is not subject to the levy).

Each chargeable person must maintain evidence for the basis of the cost apportionment between the ready-to-pour concrete product and the related haulage and delivery costs. The percentage applied to the haulage and delivery costs may not, in general, exceed 25% of the overall cost.

No. 109 Pensions Manuals Amended

Revenue has updated several chapters of Pensions Manual to reflect the Finance (No. 2) Act 2023 amendment that inserted a new s790F in TCA 1997. This new section requires that from 1 January 2024, in order for retirement benefit schemes and approved retirement funds (ARFs) to avail of an exemption from income tax or capital gains tax for rents receivable from a qualifying lease, the tenancy must be registered under Part 7 of the Residential Tenancies Act 2004.

The following chapters have been updated to reflect this amendment and other amendments made in Finance (No. 2) Act 2023:

- "Chapter 1 – Introduction" includes details of the insertion of s790F TCA 1997.

- "Chapter 5 – Funding and Investments" includes details of the insertion of s790F TCA 1997 in paragraph 5.4. This paragraph is also updated to include cases where assets of an ARF are used as a loan or as security for a loan to a close company where the ARF owner or any person connected with the ARF owner is a participator.
- "Chapter 15 – Tax Treatment of Approved Occupational Schemes" has been updated at paragraph 15.3 to include details of the insertion of s790F TCA 1997.
- "Chapter 19 – Small Self-Administered Pension Schemes" reflects details of the insertion of s790F TCA 1997 in paragraph 4. This paragraph has also been updated under "(vi) Transactions deemed to be pensions in payment (s779A TCA 1997)" to include cases where assets of an ARF are used as a loan or as security for a loan to a close company where the ARF owner or any person connected with the ARF owner is a participator.
- "Chapter 21 – Retirement Annuity Contracts" states in paragraph 21.1 that Revenue will no longer approve any applications for new RACs from 1 January 2024, except where an application has been made to Revenue for approval under this section before this date. A new paragraph 21.9 includes details of the insertion of s790F TCA 1997.
- "Chapter 23 – Approved Retirement Funds (ARFs)" highlights in paragraph 6 that deemed distributions include cases where assets of an ARF are used as a loan or as security for a loan to a close company where the ARF owner or any person connected with the ARF owner is a participator. This paragraph has also been updated to insert a new sub-paragraph 6.1, which relates to the exemption for rental income and gains of ARF assets and its dependency on registration with the Residential Tenancies Board. Paragraph 13 has been updated under the heading "Application of DTAs to non-Irish resident owners of ARFs, vested PRSAs and AMRFs" to clarify that it is the income that arises from the unit, or from disposal of the units, that constitutes a distribution.
- "Chapter 24 – Personal Retirement Saving Accounts (PRSAs)" provides new guidance in paragraph 24.5 on when benefits can be taken from a PRSA. The upper age limit of 75 was removed by Finance (No. 2) Act 2023. There is now no upper restriction on when benefits must be taken, with PRSA holders aged 75 and older having full access to drawdown from their funds, as they wish. The lower age limit of 60 is still in place. Paragraph 24.14 includes guidance that the upper age limit of 75 for drawdowns no longer applies to vested PRSAs. In addition, a new paragraph 24.15 includes details of the insertion of s790F TCA 1997.
- "Chapter 25 – Limit on Tax Relieved Pension Funds" clarifies in paragraph 4 that foreign pension lump sums are not considered a benefit crystallisation event and are also not subject to the standard fund threshold.
- "Chapter 28 – Imputed Distributions from Approved Retirement Funds and Vested Personal Retirement Savings Accounts and Vested PEPPs" has been updated in paragraph 28.2 to include guidance that the upper age limit of 75 for drawdowns no longer applies to vested PRSAs.
- "Chapter 31 – Pan-European Personal Pension Product (PEPP)" includes a new paragraph 31.16 outlining details of the insertion of s790F TCA 1997.

No. 110 Capital Acquisitions Tax Manual CAT Part 01

The CAT Manual "Part 1 – Introduction to Capital Acquisitions Tax" has been revised throughout to add hyperlinks and make the content clearer. Changes have also been made in the following sections:

- Section 1.2.3, "Tax-free thresholds for Gift and Inheritance Tax", has been updated to include changes made in Finance (No. 2) Act 2023 regarding additional relationships now covered under the Group B threshold. (The changes were made to ensure that foster children can avail of the threshold in respect of gifts and inheritances received from the wider family members of the

person providing foster care, based on their relationship to their foster parent).

- Section 1.2.6, "Calculation of Gift and Inheritance Tax", has been updated to include an example to explain the CAT aggregation rules.
- Section 1.2.7, "Administration of Gift and Inheritance Tax", has been updated to include changes made in Finance (No. 2) Act 2023 regarding an individual's obligation to file a CAT return when they are in receipt of certain interest-free loans.

No. 111 Manual on the Movement of Firearms and Ammunition

The "Manual on the Movement (into/out of the State) of Firearms, Ammunition, Offensive Weapons, Explosives, Explosive Substances and Military Goods" has been updated as follows:

- paragraphs 1, 2, 4 and 5, and Annexes 1 and 2, to remove all references to humane killers;
- paragraphs 3 and 4 include updated contact details for the Department of Justice;
- paragraph 4 includes a reference to the Automated Export System;
- paragraphs 4 and 5 include updated contacts for Customs;
- Annex 2 has been updated with new definitions of explosives and pyrotechnics; and
- Annex 3 includes new legislative references.

No. 112 Section 125A Health Insurance Levy

Revenue has updated the Stamp Duty Manual "Part 9: Section 125A – Levy on Authorised Insurers" to provide more comprehensive guidance on the operation of the health insurance levy. Section 125A of the Stamp Duties Consolidation Act 1999 provides for stamp duty to be levied on certain health insurance contracts entered into between health insurers and their customers.

No. 113 Importation of Motor Vehicles from the UK

The "Importation of Motor Vehicles from the UK" manual has been updated to reflect the extension, by the UK, of the VAT second-hand car margin scheme deadline. Changes have been made in sections 10, 10.1, 10.2 and 10.3 and in Appendices 1.2 and 1.3.

No. 114 myAccount: User Manual

Revenue has updated the "myAccount User Manual", at paragraph 5.4, to include updated guidance on the "timeout pop-up message". After 25 minutes of inactivity in myAccount, a timeout message appears, which alerts the taxpayer that they will be logged out in 5 minutes if their inactivity continues and prompts them to save their work or move to another page to reset the timer. Clicking "Continue" on the pop-up message does not reset the timer. By moving to a new screen, the taxpayer can reset the timer and prevent the automatic log-out when the notified 5-minute time runs out.

The timeout pop-up message is in place to align with Web Content Accessibility Guidelines in section 2.2.6 on timeout.

No. 115 Tax Clearance SIPO Applicants

Revenue has updated the manual "Tax Clearance for Standards in Public Office Applicants" to reflect a legislative change to judicial appointments regarding the specific timeframe for Statutory Declarations. As reflected in paragraph 7, in the case of judicial appointments, the Statutory Declaration must be made not more than three months before the recommendation for appointment and be furnished to the Judicial Appointments Board before the recommendation.

No. 116 ROS – Extension of Pay & File Deadline for ROS Customers for 2024

Revenue announced that Thursday, 14 November 2024, will be the 2024 ROS pay and file income tax deadline for self-assessed taxpayers who both pay and file through ROS. The extended deadline will also apply to capital acquisitions tax returns and payments made through ROS for gifts or inheritances with valuation dates in the year ended 31 August 2024.

No. 117 ROS – Return Preparation Facility (RPF)

The manual "ROS – Return Preparation Facility (RPF)" has been updated to include the following:

- in paragraph 2, a note confirming that the RPF is available when ROS is unavailable during upgrades – a link to the RPF is accessible from the ROS "site down" message; and
- at Appendix 1, information on two additional forms available in the RPF:
  - Capital Acquisitions Tax Form IT38 and
  - Excise Licence ROM1 Form.

The Form IT38 for the period 1 September 2023 to 31 August 2024 was released on the RPF on 26 February. Prior periods are now available.

If the RPF screen is inactive for 30 minutes or longer, the timeout will be triggered and any unsaved work will be lost. The timer is reset when the "Save As" or "Save" buttons are clicked or by moving between tabs in the form.

Taxpayers can save a link to the RPF in their browser favourites or bookmarks for ease of access. The RPF can also be accessed through the ROS log-in screen. Forms prepared using the RPF must be uploaded to ROS to sign and submit the return. Over time, the RPF will replace the ROS Offline application for most forms.

Appendix 1 contains information on the specified form types available in the RPF. Work is ongoing to develop additional forms in the RPF, in line with the regular annual or periodic update of such forms.

No. 118 TDM 47-00-01 Mitigation and Application of Fines and Penalties

Revenue has amended the manual "Mitigation and Application of Fines and Penalties" to update the list of taxes to which s1065 TCA 1997 applies (by virtue of s1077A TCA 1997). In addition, some obsolete material has been removed.

No. 119 Tax and Duty Manual Revisions – Outbound Payment Defensive Measures

In March Revenue published a new "Outbound Payments Defensive Measures" manual, dealing with the implementation of the defensive measures introduced by Finance (No. 2) Act 2023, which are intended to prevent double non-taxation.

Part 33 TCA 1997 provides for the implementation of the defensive measures, by way of withholding taxes on outbound payments of interest and royalties, and on the making of distributions, in certain circumstances. The measures apply to payments or distributions by Irish-resident companies, or payments by Irish branches of non-resident companies, to associated entities that are resident, or situated, in specified territories.

After the implementation of the defensive measures, Revenue has revised and updated the following manuals to reflect the new measures:

- Corporation Tax: General Background – Dividends and Portfolio Investors,
- Distributions Out of Certain Exempt Profits or Gains or Out of Certain Relieved Income,
- Dividend Withholding Tax (DWT) – Details of Scheme,
- Technical Guidance Notes in Relation to the Operation of Dividend Withholding Tax and
- Treatment of Certain Patent Royalties Paid to Companies Resident Outside the State.

No. 120 Importation of Motor Vehicles from the UK

The "Importation of Motor Vehicles from the UK" manual has been updated to reflect the extension, by the UK, of the VAT second-hand car margin scheme deadline. Changes have been made in sections 10, 10.1, 10.2 and 10.3 and in Appendices 1.2 and 1.3.

No. 121 Capital Acquisitions Tax Manual – Part 9 Powers of Appointment

Revenue's CAT Manual "Part 9 Powers of Appointment" has been revised and refreshed throughout to provide clearer and more comprehensive guidance on the application of the rules that apply for CAT purposes where a person receives a benefit as a result of the exercise of, the failure to exercise or the release of a power of appointment.

No. 122 Online Applications for Charities and Sports Bodies Has Been Amended

Revenue's manual "Charities and Sports Bodies On-line Applications for Tax Exemption Guidelines" has been updated at paragraph 7.2 to take account of an increase to the value threshold requirement for audited accounts for charities, from €100,000 to €250,000.

No. 123 Enhanced Reporting Requirements – Online Events

Revenue is holding further online events in April and May through Eventbrite to give an overview of ERR for expenses/benefits paid without the deduction of tax to employees or directors.

Revenue issued a notice to the ROS inboxes of employers and agents about these ERR webinars (scheduled for 18 April and 21 May). The final webinar in the series is expected to be scheduled in June. Revenue committed to adopting a service-for-compliance approach to ERR until 30 June 2024. In addition to outlining the reporting requirements, the webinars cover common questions raised to date and provide an opportunity to raise queries on the day.

No. 124 Deduction of Tax from Interest Payments by Certain Deposit Takers

Revenue has updated the manual "Deduction of Tax from Interest Payments by Certain Deposit Takers (DIRT)" to provide that deposit interest arising on the following deposits can be paid without deduction of DIRT:

- a deposit that is solely in respect of a general payment, and work-related payment if applicable, under the Mother and Baby Institutions Payment Scheme; and
- a deposit that is solely in respect of monies that are beneficially owned by a pan-European pension product (PEPP).

No. 125 Instruction Manual on Inward Processing

Revenue has updated the "Instruction Manual on Inward Processing" at section 2.6 to update the title to "Application for an authorisation based on a customs declaration (simplified authorisation) (Article 163 (1) & (2) DA)" and to include an additional bullet point regarding the restriction on the number of times that simplified inward processing may be used.

The manual has also been amended at section 5.3, "Bill of discharge", to update information regarding the timeframe for submitting the bill of discharge and to include graphs showing examples of monthly and quarterly bills of discharge.

No. 126 Excise Duty Rate Changes on Energy Products

Revenue's manual "Excise Duty Rates – Energy Products and Electricity Taxes" has been updated to reflect carbon tax increases effective from 1 May 2024, impacting rates of:

- mineral oil tax
- natural gas carbon tax and
- solid fuel carbon tax.

Additional detail on the calculation of carbon tax rates is also included in the manual.

No. 127 Bilateral Advance Pricing Agreement Guidelines

Revenue has updated the manual "Bilateral Advance Pricing Agreement Guidelines", which considers international best practice in relation to bilateral advance pricing agreements (APA) as identified by the OECD. The main changes relate to:

- In part 3.3, including prospective years in an APA term in situations where most of the years proposed to be covered by an APA have passed by the time that an agreement is reached between the competent authorities.
- In part 4, the position to be adopted by a taxpayer in corporation tax returns filed in the period from when an APA application is submitted to Revenue until the APA is concluded.
- In part 4.2, the timeframe for Revenue to make a decision in relation to the acceptance of an APA application into the APA programme.
- In part 4.5, annual reporting requirements and the timeframe for a taxpayer to notify Revenue in situations where it ceases to apply the terms of an APA.
- In part 5, amendment by a taxpayer, where necessary, of previously filed tax returns after the revision, revocation or cancellation of an APA.
- In part 6, the relationship between a transfer pricing audit and the APA process.
- In part 8, electronic submission of APA applications (this is also referred to in part 4.2).

No. 128 Natural Gas Carbon Tax Horticultural Production and Mushroom Cultivation Relief Guide

Revenue published a new "Excise Manual – Natural Gas Carbon Tax Horticultural Production and Mushroom Cultivation Relief Guide", providing guidance on a new natural gas carbon tax (NGCT) relief for horticultural production and mushroom cultivation.

Natural gas supplied from 1 April 2024 and used for qualifying horticultural production and/or mushroom cultivation is eligible for full relief from NGCT. The relief operates by way of repayment to natural gas users. Qualifying uses of natural gas include:

- heating glasshouses (minimum area 1,011 square metres) for growing horticultural produce,
- heating tunnels or buildings (minimum area 278 square metres) for cultivating mushrooms,
- producing steam for sterilising glasshouses and buildings/structures used for cultivating mushrooms,
- heating and sterilising earth or other growing medium and
- producing carbon dioxide.

Direct Tax Cases: Decisions from the Irish Courts

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	Topic	Court
01	**Income Tax: *Adnan Ahmad Siddiqi v The Revenue Commissioners***	High Court
02	**Income Tax: *The Revenue Commissioners v Dermot Tobin***	High Court
03	**Capital Gains Tax: *Sean Flaherty v The Revenue Commissioners***	High Court
04	**Capital Gains Tax: *John McMahon v The Revenue Commissioners***	High Court
05	**Income Tax: *Revenue Commissioners v Hennessy & Anor***	High Court

01 Income Tax: Adnan Ahmad Siddiqi v The Revenue Commissioners [2024] IEHC 195

The High Court heard an appeal from a taxpayer against determination 51TACD2022 of the Tax Appeals Commission (TAC). The two questions before Mr Justice Oisín Quinn were:

(a) Could the appellant deduct the cost of rent paid to house himself and his family from rental income that he received from letting out his former family home in circumstances where he was forced to leave his family home owing to racial harassment from the local community?

(b) Should a settlement payment that he received from his employer be treated as an *ex gratia* termination payment taxable under s123 TCA 1997 (subject to the exemptions contained in s201 TCA 1997), or was it (as the appellant contended) entirely exempt under s192A TCA 1997?

In respect of the first question, the High Court held that the TAC had been correct to determine that the appellant was not entitled to deduct his personal rental costs from his rental income. Although the court noted that it was unsatisfactory that the appellant and his family were forced to leave their home, it cited Charleton J's statement from *Menolly Homes Ltd* [2010] IEHC 49 that "revenue law has no equity". Accordingly, the court rejected the appellant's argument that the failure by the Gardaí and the State to protect him from the racial harassment entitled the appellant to "construct his own form of set off as against Revenue, being as he saw it another arm of the State".

In respect of the second question, the facts were that the appellant had brought a claim against his employer to the Equality Tribunal, claiming compensation for racial harassment and discrimination, and also contended that he intended to issue further proceedings for personal injuries arising from the same

facts. Pursuant to a compromise agreement, the appellant agreed to waive such claims in consideration of receiving a sum of €65,000 net of tax. The compromise agreement further set out the parties' understanding that the payment would be subject to tax and that the grossed-up amount would be €84,903.76. The appellant also received an additional sum in respect of redundancy. The employer made the payment and deducted the tax. The appellant subsequently contended that the payment should have been exempt under s192A and sought a refund from Revenue of the *c.* €20,000 tax deducted.

The taxpayer had been unsuccessful before the TAC, which had held that the payment was made "consequent to the termination of his employment". The court held, in allowing the taxpayer's appeal on the second question, that the TAC had erred in its interpretation of the compromise agreement. It stated that, notwithstanding the fact that the comprise agreement expressly described the *ex gratia* payment as a "termination payment", it was insufficient to look merely at the wording of the document but, rather, "[i]t is necessary for an objective analysis of the background context or 'matrix of fact' to be carried out" and to determine whether those facts fall within the exemption set out in s192A.

The court noted that the compromise agreement led to the withdrawal of the equality proceedings and that s192A(4) provides for a payment to be exempt from tax once certain conditions are satisfied, which, it formed the view, the appellant had satisfied.

In examining one of the conditions of s192A (being whether the claim would have been likely to have led to an award in favour of the appellant if it had not been settled), the court acknowledged Revenue's argument that the burden of proof was on the taxpayer but tempered that by noting that s192A specifically empowered Revenue to seek records from the employer. The court commented that:

> "while it is correct to observe (and somewhat unexplained) that the appellant has not been clear about the precise nature and detail of his claim of racial discrimination to the Equality Tribunal, the provisions of section 192A(4) make it clear that the focus of the Revenue should be on the true substantive reason for the payment and that same is to be gleaned by an examination of both the 'agreement' (in this case the Compromise Agreement) and what is called the 'statement of claim' of the employee".

The court went on to consider Revenue's Tax and Duty Manual on the interpretation of "statement of claim". Although the judgment is silent on the point, the clear inference is that the court was of the view that any perceived failings on the part of the appellant to discharge his burden of proof in respect of the criterion that his claim would have been "likely to succeed" before the Equality Tribunal ought to be balanced by Revenue's own failure to exercise its express power to obtain the necessary records from the employer that would have allowed that point to be determined.

Finally, the court addressed Revenue's arguments concerning the agreement's having described the payment of €65,000 to the appellant as a "net payment" and having been expressly labelled as a "termination" payment. Returning to the dicta of Charleton J in *Menolly Homes* that "revenue law has no equity", the court noted that this is a:

> "double-edged sword for the Revenue. It cuts both ways. If the payment of approximately €85,000 was in substance a payment of the type covered by section 192A(4) to settle a claim of racial discrimination to the Equality Tribunal (as in truth all of the contextual evidence suggests) then it is exempt from tax even if that means the appellant gets a higher net payment than envisaged".

The decision warrants careful consideration by practitioners, partly because it runs contrary to a series of TAC decisions on these issues and partly because of the practical consequences

for employers. Employers often settle matters to avoid the risk of reputational damage that might arise if an award were to be made against them by the Equality Tribunal. In this matter, the employer paid €105,000 to the appellant and his advisers, presumably with a view to settling the matter privately. Yet because the appellant took a tax appeal to the High Court, the employer (although not named in the judgment) is readily identifiable (given the other information stated in the judgment, i.e. the appellant's full name, job title, industry and dates of employment).

02 Income Tax: The Revenue Commissioners v Dermot Tobin [2024] IEHC 196

In this case Mr Justice Rory Mulcahy in the High Court considered the scope of the obligation imposed on a taxpayer to make a "full and true disclosure of all material facts" in his tax return under the self-assessment procedures contained in Part 41 TCA 1997 (which have since been repealed and replaced with the provisions in Part 41A).

The facts of the case were that Mr Tobin, a farmer, had transferred his farming business to a company in June 2011. However, he was not able to transfer the entitlement to receive Single Payment Scheme (SPS) payments to the company until 2012, as the Department of Agriculture, Food and the Marine (DAFM) set a May cut-off date for notification of such transfers. Therefore the DAFM continued to make SPS payments directly to Mr Tobin in 2011, which he then immediately transferred to the company's bank account. In 2011 the SPS payments were not returned as income on Mr Tobin's personal income tax return but were returned on the company's tax return. In April 2017 Revenue raised an amended assessment on Mr Tobin in respect of the 2011 SPS payments, which was beyond the four-year time limit (which expired on 31 December 2016).

The TAC determined that Mr Tobin had made a full and true disclosure of all material facts and that therefore the Revenue assessment was void as it had been raised beyond the four-year time limit set out in s955(2) TCA 1997. Revenue appealed the TAC's decision to the High Court. The questions before Mulcahy J were essentially:

a) Did the Commissioner err in importing a subjective element (i.e. the taxpayer's opinion) to the determination of whether the taxpayer's return was "full and true"?

b) If the determination of whether a return is "full and true" involves some element of a taxpayer's subjective belief, then did the Commissioner err in concluding that the taxpayer believed that he had made a "full and true" return, given that his notice of appeal appeared to concede that at least a portion of the SPS payments ought to have been included in his return?

The High Court rejected the taxpayer's contention that "true" in s955(2) means "genuinely believed to be true". The court noted that a plain reading of the section implied an objective assessment of whether the return was true and full rather than a consideration of the subjective belief of the taxpayer. The court expressed the view that this interpretation is strengthened by the fact that other provisions (such as the expression-of-doubt provisions in s955(4)) contain an express subjective element: "the use of those concepts in the most proximate statutory provision [i.e. s955(4)] strongly suggests that there was no intention to incorporate any subjective element in that section [i.e. s955(2)]."

The court acknowledged that such an interpretation of the section significantly limited its operation:

> "It would appear, therefore, that the time limit would or could only apply to prevent Revenue simply changing its mind as to the appropriate treatment of some matter in the return, or where Revenue had made an error of law in assessing the tax to be paid."

However, it concluded that it was compelled to adopt that interpretation, given the plain meaning of the words. Given the answer to the first question, the matter was to be remitted back to the TAC for a determination on the substantive point of whether the SPS payments were income of the taxpayer.

03 Capital Gains Tax: Sean Flaherty v The Revenue Commissioners [2023] IEHC 764

In this case, the appellant had entered into a memorandum of agreement on 21 October 2015 to dispose of his fishing vessel and related capacity-tonnage. He formed the view that the agreement was subject to a number of conditions, the last of which was satisfied only on 11 January 2016. Therefore he treated the date of disposal for CGT purposes as occurring in 2016, with the result that he was entitled to claim entrepreneur relief under s597AA TCA 1997 on the disposal (entrepreneur relief was introduced for disposals occurring after 1 January 2016).

The appellant's contention was that the agreement was conditional because it was a completion condition that a "confirmation of fishing entitlements" was to be provided to the buyer, and this document was obtained from the relevant licensing authority only on 11 January 2016. He was unsuccessful before the TAC, which held that the contract was concluded in 2015 and that therefore he was not entitled to claim entrepreneur relief.

The taxpayer appealed to the High Court. The question before Mr Justice David Nolan concerned the date of disposal for CGT purposes and whether the agreement was a conditional contract such that the provisions of s542(1)(b) TCA 1997 applied to treat it as being concluded in 2016. The court held, in dismissing the appeal, that:

- the agreement contained no language expressing conditionality;
- the appellant's "business efficacy" arguments were to be rejected, the court instead citing with approval the decision of Baker J in *Murphy v O'Toole & Sons Ltd & Anor* [2014] IEHC 486, which expressed the principle that a court should not imply conditionality into a contract where the contract is perfectly capable of being made without such a term and that any such term must be expressly stated in the agreement; and
- the agreement had been concluded in 2015, notwithstanding that it provided for the parties to perform obligations that were not satisfied until 2016.

04 Capital Gains Tax: John McMahon v The Revenue Commissioners [2024] IEHC 85

Mr Justice Mark Sanfey in the High Court considered cross-appeals from the taxpayer and Revenue from a TAC determination. The matter concerned assessments to CGT raised under s579A (attribution of gains to beneficiaries) and s590 (attribution of gains of non-resident companies to participators) TCA 1997.

The appellant had received a payment on 7 April 1999 from a non-resident discretionary trust. At that time the appellant was advised

that the payment was outside the scope of Irish tax. In 2014, as part of a broader investigation into offshore bank accounts, Revenue obtained information regarding the payment from financial institutions after a court order was granted pursuant to s908 TCA 1997. In 2016 Revenue raised alternative assessments to CGT under ss590 and 579A.

The questions before the High Court were:

(a) Did the proceedings issued by Revenue under s908 (i.e. to order financial institutions to disclose details of certain offshore payments) constitute the "making of enquiries" for the purposes of s956 TCA 1997 (which would have been prohibited unless Revenue had "reasonable grounds" to believe that the taxpayer's return had been completed in a fraudulent or negligent manner)?

    In respect of this point the court upheld the TAC's conclusion that the two provisions were separate and acted independently of each other, such that "'enquiries and actions' prohibited in the case of an individual chargeable person under s.956 are not intended to include an application for orders under s.908 which give rise to the discovery of information regarding a taxpayer".

(b) Did the payment fall within the scope of s579A, given the commencement date of that section, the dates that the gain arose to the trustees and the date the payment was made to the appellant?

    In respect of this point the court considered the wording of s579A(4); it agreed with the appellant's interpretation and concluded that the section required that "[t]he capital payments from the trustees to the beneficiaries must have been received in the same year as assessment of the trust gains, or in any earlier year of assessment". Here the payment was received in the year of assessment **after** the year of assessment in which the gain arose to the trustees, and so the court held that s579A did not apply to the capital payment.

(c) The court also briefly considered the alternative assessment raised by Revenue under s590.

    In this regard the court noted that the TAC had found, as a matter of primary fact, that there was insufficient evidence that the appellant had been the beneficial owner of certain shares and, furthermore, that Revenue had not contested that finding. Therefore, the court upheld the TAC's decision to overturn the s590 assessment.

(d) Having disposed of the substantive issues of the cross-appeals, the court declined to consider the other points of appeal (which had included questions regarding whether it was permissible for Revenue to raise two contradictory assessments on an alternative basis).

05 Income Tax: Revenue Commissioners v Hennessy & Anor [2024] IEHC 245

Mr Justice Oisín Quinn in the High Court considered Revenue's appeal against a TAC determination (92TACD2023, which was summarised in "Direct Tax Cases", *Irish Tax Review*, Issue 3 of 2023) that two individuals were each not a "proprietary director" within the meaning of s472(1)(a) TCA 1997.

The share capital of a company consisted of ordinary shares (which were voting) and A ordinary shares (which were non-voting). Neither class of shares carried any right to a dividend at a fixed rate. The TAC had determined that (1) the "ordinary share capital" of the company consisted of the ordinary

shares and the A ordinary shares, (2) neither of the taxpayers held more than 15% of the ordinary share capital and (3) although the taxpayers controlled the company (through their voting ordinary shares), they did not control the "ordinary share capital" (which consisted of both ordinary shares and A ordinary shares) of the company.

Revenue appealed that determination, arguing that the taxpayers, two brothers, were each a "proprietary director" because they held all of the (voting) ordinary shares in a company and therefore controlled the company.

The court dismissed Revenue's appeal. Upholding the TAC's interpretation of s479 TCA 1997, it noted that adopting Revenue's contention would run contrary to the wording of the section:

"This would have the effect of rewriting the statutory definition to one focused on control of shares with voting rights, as opposed to control of 'ordinary share capital'."

Direct Tax Cases: Decisions from the UK and European Courts

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	Topic	Court
01	**Corporation Tax – Yearly Interest**	England and Wales Court of Appeal
02	**Capital Gains Tax – Trading Status**	UK First-tier Tribunal
03	**Corporation Tax – Deductibility of Pension Provisions**	UK Upper Tribunal
04	**Corporation Tax – Receipts from Overseas Companies**	UK UpperTribunal
05	**Capital Gains Tax – Entrepreneurs' Relief**	UK First-tier Tribunal
06	**Advocate-General Opinion – Dutch Interest Limitation Rules**	Court of Justice of the European Union

01 Corporation Tax – Yearly Interest

In ***Hargreaves Property Holdings Ltd v Revenue and Customs*** [2024] EWCA Civ. 365 the England and Wales Court of Appeal rejected the taxpayer's appeal, determining that the UK's withholding tax (WHT) rules applied to debt financing provided to the company. The Upper Tribunal's decision was reviewed in "Direct Tax Cases: Decisions from the UK and European Courts", *Irish Tax Review*, 36/3 (2023).

Hargreaves Property received several interest-bearing loans from related parties. These loans were meant to be short-term and were repaid within a year of being granted or shortly thereafter. They were also documented in a manner to substantiate the position that the interest did not have a UK source.

Although the taxpayer did not challenge the findings of both the First-tier Tribunal (FTT) and the Upper Tribunal (UT) that the interest had a UK source, it argued that the interest could not be considered "yearly interest", to which the UK's equivalent of s246 TCA 1997 applies. The taxpayer separately argued that a WHT exemption (s933 of the UK's Income Tax Act 2007) applied to a portion of the interest on the basis that a UK entity was "beneficially entitled" to the interest.

In relation to the "yearly interest" point, the FTT had determined that the interest from the loans should be classified as yearly interest, as opposed to short interest, even though the loans were repaid at approximately the one-year point. This was primarily because the loans were frequently rolled over by the lender and were part of a series of loans that collectively served as the business's fixed capital. The FTT observed that each lender consistently offered financing over an extended period. The UT confirmed this finding.

The Court of Appeal concurred with the methodology of the FTT and UT. It found no fault in the conclusion that the interest should be treated as yearly interest. This was owing to the loans' essentially providing long-term finance, being considered by the lenders as an investment, and contributing to the business's capital in a way that suggested a lasting nature, despite their outward short-term appearance. The duration of any single loan being less than a year was irrelevant. When assessed from a "business-like approach", the loans could not be regarded as isolated short-term loans. In reality, as the FTT had concluded, the lenders provided attractive long-term funding in the nature of an investment.

Furthermore, the Court of Appeal held that the relevant UK entity company was not "beneficially entitled" to the interest for s933 purposes. The right to receive the interest had been assigned by a Guernsey entity to the UK entity (Houmet) but with an obligation on the UK entity to pay an amount, which was very similar to the interest paid by the taxpayer, to a Guernsey entity. The Court of Appeal concluded that there was "no evidence to suggest that Houmet [the UK-tax resident] could have used the funds received for any other purpose, or that it could benefit from them in any other manner". Houmet's involvement not only had no commercial purpose but also had no practical or real effect. There was no indication that it derived any meaningful margin or other profit from its participation in the arrangements. Furthermore, Houmet's involvement was entirely ephemeral, being confined to successive assignments of interest very shortly before the loans in question were repaid.

Accordingly, the taxpayer's appeal was dismissed.

02 Capital Gains Tax – Trading Status

In ***M Stolkin and Ors v HMRC*** [2024] UKFTT 160 (TC) the UK First-tier Tribunal (FTT) rejected the taxpayers' appeal, determining that entrepreneurs' relief was not available in relation to a disposal of shares in a company because the company was not trading.

This case considered whether a company (Stolkin Greenford Limited, or SGL) that had acquired a substantial parcel of land in west London as a fixed capital asset of its investment business subsequently began to carry on a trade in relation to a part of that land. Although the piece of land was initially classified in SGL's accounts as an investment, the land was purportedly appropriated to trading stock in the accounts, as a result of the local authority relaxing planning restrictions over the site. The land was subsequently sold. Not long after the sale, SGL went into liquidation, with the taxpayers' claiming entrepreneurs' relief on the distributions received. HMRC disputed the claim, arguing that entrepreneurs' relief did not apply on the basis of the company's never having been a trading company.

The FTT held that although land dealing may be a trade, it is clear that land may be acquired, held and disposed of as an investment or by way of speculation. Furthermore, in any given case, determining whether certain activities amount to trading involves a multifactorial evaluation. The FTT considered the "badges of trade" to be a "useful starting point" that should be "applied critically in a manner appropriate to the context".

The FTT found that SGL was investing in land rather than dealing in land. SGL was not a trading company because:

- It was not going to carry out a development or do anything that would make a significant change to the site.
- The real changes in planning status and value came from the (unsolicited by SGL) policy shift on planning permission and an unsolicited sale to a third party.
- Merely deciding to sell an asset does not convert a fixed asset into trading stock.

- Appropriating the site to trading stock in the accounts cannot have any tax significance if SGL was not carrying on a trade.
- "Sheer weight of authority" dictated that SGL needed to do something more decisive to escape the fetters of the past (i.e. investment status) than simply decide to sell the asset and then do no more than take steps to enhance the asset's value before sale.

The tribunal held that SGL was neither carrying on a trade nor preparing to carry one on. Accordingly, the taxpayers' appeals were dismissed.

03 Corporation Tax – Deductibility of Pension Provisions

In ***A D Bly Groundworks and Civil Engineering Ltd and another v HMRC*** [2024] UKUT 104 (TCC) the UK Upper Tribunal (UT) rejected the companies' appeals against a decision of the First-tier Tribunal (FTT) that a trading deduction was not allowable in respect of provisions for future payments under an unfunded unapproved retirement benefit scheme (UURBS). The FTT's decision was reviewed in "Direct Tax Cases: Decisions from the UK Courts and Other International Cases", *Irish Tax Review*, 35/1 (2022).

The taxpayers engaged their accountants to set up a UURBS, under which the taxpayers promised to provide directors and some key employees with a pension in the future. The pensions were calculated by reference to the estimated profits for the relevant year. In each case the aggregate amount of the pensions was set at 80% or 100% of the estimated profits before tax. Both companies made provisions in their accounts in respect of their liability to make pension payments to employees in the future. Each taxpayer claimed a deduction in calculating its profits to reflect that provision. The UURBS was notified to HMRC under the DOTAS provisions, which mandate the disclosure of tax-avoidance schemes.

The FTT had rejected the taxpayers' appeals against HMRC's decision to disallow the provisions. The companies appealed to the UT. The primary issue for the UT was whether the liabilities had been incurred wholly and exclusively for the purposes of the companies' trades. The UT rejected all of the companies' arguments on this point. In particular, the companies had contended that securing a tax advantage was not a separate and non-trading purpose. The UT held that the case law did not support this proposition; there was no rationale for excluding a non-trading purpose simply because it related to tax.

The UT also rejected the taxpayers' argument that, as a payment of remuneration, the provision was necessarily allowable on that basis. The tribunal concurred that payments of remuneration would be very likely to be deductible, because in most cases the tax effect of the payments would be an effect and not a purpose. However, in this case, the FTT had found that the companies' primary purpose was to reduce tax without incurring actual expenditure.

Although this was sufficient for the UT to dismiss the appeal, it also considered HMRC's cross-appeal that the provision should be disallowed under UK legislation that allows deductions only for employee benefit contributions that are actually paid in the accounting period or within nine months from the end of it. The UT upheld the decision of the FTT that the provisions did not fall within the meaning of "employee benefit contributions", resulting in the UK legislation's not applying.

In any event, the taxpayers' appeal was dismissed.

04 Corporation Tax – Receipts from Overseas Companies

In ***Beard v HMRC*** [2024] UKUT 73 (TCC) the Upper Tribunal (UT) upheld the decision of the First-tier Tribunal (FTT), concluding that distributions received by a taxpayer were dividends for UK tax purposes but not dividends of a capital nature.

The taxpayer, Alexander Beard, was a UK-resident shareholder in Glencore, a publicly listed company incorporated in Jersey and domiciled in Switzerland, and in that capacity received distributions in each of the tax years 2011–12 to 2015–16 ("the distributions"). In each case the distributions paid were derived from the share premium account of the company. That share premium arose as the result of a corporate restructuring in which certificates in a Swiss subsidiary of Glencore were exchanged for Glencore shares. The distributions included one made by way of an *in specie* distribution paid in the 2015–16 tax year. The Swiss tax authorities did not apply any withholding tax on the distributions.

The taxpayer claimed that the distributions paid were capital receipts, not dividends, and in the alternative, if they were dividends, they were capital dividends. HMRC assessed the taxpayer to income tax on the distributions.

The FTT held that the payments were dividends because the company had made the payments using the local Jersey law mechanism for paying dividends. The FTT also concluded that the dividends were not capital in nature notwithstanding the source of the distribution, i.e. share premium. The critical question that determines the character of a payment from a company to its shareholders is the mechanism by which the payment is made.

The UT confirmed the "impressive judgment" of the FTT. Following the decision in *HMRC v First Nationwide* [2012] EWCA Civ. 278, the UT confirmed that it is necessary to consider the meaning of dividend as a matter of ordinary usage for English law purposes and then look at the foreign law governing the relevant payment. In this case the distributions were paid pursuant to Part 17 of the Companies (Jersey) Law 1991 (CJL 1991). It was common ground that this is the mechanism in the CJL 1991 enabling the payment of dividends out of trading profits. The UT agreed that comparisons to the *First Nationwide* case were appropriate, although *First Nationwide* concerned Cayman law. Accordingly, the UT confirmed that the distributions fell within the meaning of a dividend as a matter of ordinary usage for English law purposes.

The UT further confirmed that the distributions were not dividends of a capital nature. Again, it followed the principles set out in the Court of Appeal's judgment in *First Nationwide*, that it is the machinery employed for the distribution of the assets, and not the source of those assets, that determines whether they are received as capital or income. Jersey law did not "assimilate" share premium to capital. In Jersey, funds in a share premium account are distributable in the same way as funds in any other non-capital account. The distributions therefore constituted payments of income.

The taxpayer's appeal was dismissed.

05 Capital Gains Tax – Entrepreneurs' Relief

In ***J Cooke v HMRC*** [2024] UKFTT 272 (TC) the First-tier Tribunal (FTT) determined that the taxpayer was entitled to claim entrepreneurs' relief on a disposal of his entire shareholding in a company, notwithstanding the fact he held less than 5% of the ordinary share capital.

The taxpayer had made an agreement with the founders to buy 5% of the business for

£500,000. He explained that he had invested in two previous small businesses and had qualified for entrepreneurs' relief on both of those exits. Therefore he knew that he wanted at least 5% of the business in order to qualify for entrepreneurs' relief. He had also requested an anti-dilution clause to be included in the documents so that his shareholding would not fall below 5%. When the shares were sold, Mr Cooke declared on his tax return that the sale qualified for entrepreneurs' relief. Upon enquiry by HMRC, he became aware for the first time that his holding of 245,802 D shares was one share short of 5% of the ordinary share capital of the company. The mistake occurred because a spreadsheet was used to calculate the number of shares in question and this rounded the percentages to two decimal places.

HMRC rejected his claim for relief. Mr Cooke appealed to the FTT, arguing, first, that if appropriate proceedings were brought in the High Court, it would order the rectification of certain documents in such a way as to secure that during the year preceding the disposal he held at least 5% of the ordinary share capital in the company. Second, the FTT should proceed as if such rectification had been ordered. In this regard the taxpayer relied, in particular, on the decision of the Upper Tribunal in *Lobler v Revenue and Customs Commissioners* [2015] UKUT 152 (TCC).

HMRC argued that the parties only ever intended that the taxpayer would receive "about" 5% of the ordinary share capital. The FTT rejected this argument. The oral evidence from all parties was that a minimum of 5% was a clear "red line" for the taxpayer because he wanted to qualify for entrepreneurs' relief. The fact that he asked for (and received) an anti-dilution clause in the shareholders' agreement further points to this fact. The sellers were clear that although they did not want to transfer more than 5%, they would not consider the transfer of one additional share each to be any more than giving effect to what they believed was their agreement.

The FTT determined that the High Court would treat the matter as one that is capable of rectification. It considered the requirements for rectification derived from the *Lobler* case, holding that there was a common continuing intention to transfer a minimum of 5%. The FTT confirmed that the instruments that did not reflect this intention were the redesignation documents, the stock transfer agreement and the share certificate.

The FTT concluded that the High Court would have ordered rectification and found in favour of the taxpayer.

06 Advocate-General Opinion – Dutch Interest Limitation Rules

On 14 March 2024 Advocate-General (AG) Nicholas Emiliou of the Court of Justice of the European Union (CJEU) delivered his opinion in ***X BV v Staatssecretaris van Financiën*** C-585/22. The case concerned the compatibility of the Dutch interest deduction limitation anti-profit-shifting rule with EU law.

The taxpayer, a company resident in the Netherlands, bought a company using finance from another group company resident in Belgium. The Dutch tax authority denied an interest deduction on the group financing. The Dutch taxpayer argued that the denial of a deduction constituted a restriction of the freedom of establishment.

The AG first had to determine which EU fundamental freedom was potentially infringed. Referencing established case law of the CJEU,

he held that national rules relating to intra-group structures principally affected the freedom of establishment. Accordingly, the Dutch rules had to be examined in the context of Article 49 of the Treaty on the Functioning of the European Union (i.e. freedom of establishment).

The AG then considered whether the Dutch rules constituted a restriction of the freedom of establishment. He concluded that the rules indeed constituted a restriction as they impacted cross-border structures more than purely internal ones, given how the domestic provisions are applied.

The AG then considered whether the restriction could be justified by an overriding reason in the public interest and whether it was appropriate to ensuring the attainment of the legitimate objective that it pursues. Finally, he had to consider whether the restriction did not go beyond what is necessary to achieve the objective pursued.

The AG contended that the limitations imposed on the freedom of establishment were justifiable on grounds relating to the fight against abusive tax avoidance. Additionally, he observed that the restriction in question was appropriate as a deduction would not be denied where the interest is taxed at a reasonable rate in the other Member State. The AG further maintained that the restriction did not go beyond what is necessary to achieve its legitimate objective because the application of the provisions is limited to wholly artificial arrangements and the consequences stemming from a transaction's being characterised as such are not excessive.

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 Singapore: Budget 2024

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06 Belarus Temporarily Suspends Certain Provisions of 27 Tax Treaties with "Unfriendly" States

07 United Arab Emirates: Corporate Tax Guidance Published on Qualifying Group Relief

08 Australia Launches Its Own Public Country-by-Country Reporting Regime

01 BEPS: Pillar One and Pillar Two Recent Developments

OECD publishes Pillar One Amount B report

The OECD/G20 Inclusive Framework on BEPS released its report on *Pillar One – Amount B* and a *Reader's Guide* on 19 February 2024. The report outlines a simplified and streamlined approach to the application of the arm's-length principle to baseline marketing and distribution activities and focuses on the needs of low-capacity countries.

The rules have been incorporated into the OECD transfer pricing guidelines. The rules are optional for countries, and therefore countries may choose to apply Amount B to in-scope transactions for fiscal years beginning on or after 1 January 2025. Two options are available to countries:

- allow businesses that are resident in the country to elect to apply the simplified and streamlined approach or
- require businesses to apply the simplified and streamlined approach where the scoping criteria are met.

Work is being done to identify the countries that will apply Amount B and whether they will apply it in line with option 1 or 2 above. It is not clear whether there is alignment across all members of the Inclusive Framework. For

example, although India has been an active member of the Inclusive Framework, it has recorded a number of reservations with respect to the report on Amount B and does not intend to make a political commitment to applying Amount B.

Separately, further work on the interdependence of Amounts A and B under Pillar One is to be undertaken before the signing and entry into force of the Multilateral Convention.

OECD hopes to deliver final Pillar One treaty text soon

Despite the Inclusive Framework's missing the deadline of 31 March to finalise the text of the Multilateral Convention (MLC) and wrap up work on Amount B, the OECD remains optimistic about the prospect of a deal. Work on reaching agreement continued while Inclusive Framework members have objected to aspects of both the MLC and Amount B.

US report on Pillar One

The US Joint Committee on Taxation (JCT) has issued a report providing a general overview and analysis of the impact of Pillar One. The report has four parts:

- Part I: Overview of Select Issues of US Taxation of Cross-Border Activities;
- Part II: Organization of Economic Cooperation and Development (OECD) Two-Pillar Solution;
- Part III: Economic Considerations Related to Pillar One; and
- Part IV: Economic Analysis of Pillar One Amount A.

Part IV notes that the effect on US Federal receipts of Pillar One will remain uncertain owing to the complexity involved. The JCT states that "existing reporting regimes presently provide insufficient information for generating precise revenue estimates, and individual companies may have substantial leeway in reporting the financial information that ultimately determines any reallocation under Pillar One". The report includes four major sources of uncertainty in estimating the effect of Pillar One on US Federal receipts:

- sourcing of sales;
- lack of data necessary for underlying calculations;
- potential response of multinational entities; and
- interactions with jurisdictional corporate income tax rules and the implementation of Pillar Two.

OECD Pillar Two releases Consolidated Commentary to GloBE Model Rules, updated examples

The OECD/G20 Inclusive Framework on BEPS released the *Consolidated Commentary to the Global Anti-Base Erosion Model Rules* under Pillar Two on 25 April 2024, which incorporates the various Agreed Administrative Guidance documents approved by the Inclusive Framework since the original Commentary's publication on 14 March 2022. The Consolidated Commentary's release follows the publication of Agreed Administrative Guidance in February, July and December 2023, which introduced safe harbours and provided clarification and guidance on the interpretation and application of the GloBE Rules for multinational enterprise groups and tax administrations. This guidance is now integrated into the new Consolidated Commentary. Although there is no new guidance included in the consolidated document, new examples are provided.

The OECD anticipates publishing further administrative guidance in the coming months for the global minimum tax rules under Pillar Two.

Bahamas introduces corporate tax regime in response to Pillar Two

In response to the OECD's two-pillar international tax reform, the Bahamian Government announced plans to implement a 15% corporate income tax on 21 February 2024. The Bahamian Prime Minister and Minister of Finance stated that the regime will address only large multinational enterprises under Pillar

Two and that a broader corporate income tax regime would be implemented only if it were equitable for Bahamian businesses.

UK: Treasury provides update on implementation of OECD guidance on Pillar Two safe harbour

In March HM Treasury released a statement confirming that the UK will introduce anti-abuse rules for the Pillar Two transitional country-by-country (CbC) reporting safe harbour. These will be in line with the latest administrative guidance from the OECD, published in December 2023, which dealt with certain transaction-based potential tax-avoidance mechanisms. The intention is for the rules to apply from 14 March 2024.

Greece: Government enacts Pillar Two

The Greek Parliament passed legislation on 2 April 2024 providing for the transposition of the EU Pillar Two Directive into domestic law. The law was published in the Official Gazette on 5 April 2024 and is effective from 1 January 2024.

Poland submits Pillar Two Bill for public consultation

The Polish Ministry of Finance submitted a draft Bill implementing the EU Minimum Taxation Directive (Pillar Two Directive) for public consultation on 25 April 2024, with the deadline for feedback being 17 May 2024. The draft Bill provides for the income inclusion rule, the undertaxed profits rule (UTPR) and a qualified domestic minimum top-up tax (QDMTT). The QDMTT will be computed based on Polish GAAP; however, the Bill contains a transitional provision that will allow for a temporary calculation based on the ultimate parent entity's accounting standard. In line with Pillar Two rules, the Bill implements the QDMTT safe harbour rule, the transitional UTPR safe harbour rule, the country-by country reporting transitional safe harbour rule and the simplified calculations safe harbour rule. The law is expected to come into effect from 1 January 2025.

Czechia proposes to amend law implementing Minimum Taxation Directive

Czechia has published a draft Bill to amend the legislation that implemented the EU Pillar Two Directive into domestic law. The amendments are in order to incorporate the OECD administrative guidance into the domestic legislation. For the draft Bill to become law, it must be approved by both chambers of the parliament, signed by the President and published in the Official Gazette.

Steady progress in implementation of BEPS Action 6 minimum standard: latest peer-review results

Steady progress continues to be made in the implementation of the BEPS package to tackle international tax avoidance, with the OECD's releasing the latest peer-review report assessing jurisdictions' efforts to prevent tax treaty shopping and other forms of treaty abuse under Action 6. The sixth peer-review report reveals that most agreements concluded between members of the Inclusive Framework either are already compliant with the Action 6 minimum standard or will shortly come into compliance.

02 OECD Tax Developments

Update to Commentary on Article 26 of Model Tax Treaty approved

The OECD Council approved an update to the Commentary on Article 26 of the Model Tax Treaty on 19 February 2024. The update relates to the exchange of information, with the OECD stating that it "clarifies that information received through administrative assistance can be used for tax matters concerning persons other than those in respect of which the information was initially received. It also provides interpretative guidance on

confidentiality, in particular regarding the access of taxpayers to information exchanged when such information has a bearing on their tax situation and regarding reflective non-taxpayer specific information, including statistical data, about or generated on the basis of exchanged information."

03 EU Tax Developments

EU removes four jurisdictions from blacklist

On 20 February the Council of the European Union removed the Bahamas, Belize, the Seychelles and the Turks and Caicos Islands from the list of non-cooperative jurisdictions for tax purposes. After their removal, the list consists of 12 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu. The next revision of the list is scheduled for October 2024. In addition to the list of non-cooperative tax jurisdictions, the Council approved the usual state-of-play document (Annex II), removing Albania and Hong Kong from the document. Annex II covers jurisdictions that do not yet comply with all international tax standards but have committed to implement tax good-governance principles.

EU experts recommend simplifying tax systems

On 13 February 2024, at a public hearing of the European Parliament's Subcommittee on Tax, experts recommended simplifying tax systems to improve competitiveness in the internal market. MEPs focused on which tax barriers should be addressed by Single Market legislators, how to improve enforcement, the best approach to get Member States to agree to significant EU tax reform and the need to simplify the rules.

Italy: Introduction of penalty protection regime for hybrid mismatches

Italy has introduced legislation concerning the set of documentation to be prepared for hybrid mismatch cases with new rules, including a penalty protection regime. Under the new penalty protection regime, taxpayers that prepare a specific set of documentation can avoid the application of administrative penalties in the event of tax assessments involving hybrid mismatches.

Italy: Implementing rules provided for investment management exemption from creation of permanent establishment

Italy's Minister of Economy and Finance published a ministerial decree in the Official Gazette on 4 March 2024 containing rules for the implementation of the "investment management exemption" regime. Provided that certain conditions are met, the regime allows for an asset manager or advisory company that carries on activities in Italy for a non-resident investment vehicle to be treated as an independent agent that does not give rise to an Italian permanent establishment of the investment vehicle. The asset manager or advisory company must receive arm's-length remuneration supported by appropriate transfer pricing documentation; specific transfer pricing guidelines for this were released at the end of February.

European Parliament adopts opinion supporting FASTER, with amendments

The European Parliament adopted its opinion on the FASTER proposal on 28 February 2024; however, recommended amendments and clarifications on the scope, as well as the reporting obligations, are contained in the proposal. Some of the amendments recommended are:

- ensuring smooth interaction between FASTER and the Unshell proposal;
- identifying the beneficial owner of the dividend/interest income by application of the rules of the source Member State or those of the applicable tax treaty;

- continuing the fight against illegal withholding tax (WHT) reclaim procedures by introducing cooperation and mutual assistance on the exchange of information among the relevant parties; and
- reviewing the actual application of the FASTER rules and examining possible measures to facilitate self-processed WHT claims for small investors.

European Commission launches consultation on rules governing tax dispute resolution

The European Commission has launched a consultation giving stakeholders the opportunity to give feedback on the EU's framework to help resolve cross-border tax disputes for businesses and citizens in relation to double taxation issues. The Directive, which came into force on 1 July 2019, introduced clearer rules and more stringent deadlines to resolve such cross-border tax disputes. The deadline for submissions to this consultation was 10 May 2024.

Belgium: Draft law would amend investment deduction regime to support "green" transition

The Belgian Parliament has approved tax legislation introducing significant amendments to the investment deduction regime. Currently, there are three categories of deduction: a basic deduction of 10% for SMEs, an increased deduction of 40% for SMEs (30% for other companies) and a technology deduction of 13.5%. The reforms aim to simplify claims for deduction and update the list of eligible investments to encourage investment in "green" technologies. The law, if approved, would take effect for investments from 1 January 2025.

Germany: Upper House of Parliament approves business tax reform Bill

On 22 March 2024 the Upper House of the German Parliament approved the business tax reform Bill, which includes amendments to the transfer pricing rules for cross-border financing arrangements and to the minimum taxation rules regarding the use of net operating loss carry-forwards. The Bill includes technical amendments with regard to the interest deduction limitation rules and real estate transfer tax. The aim of the Bill is to introduce additional tax incentives to strengthen the competitiveness of Germany as a business location.

Poland: Council of Ministers adopts Bill on DAC7 transposition

On 9 April 2024 the Polish Council of Ministers adopted a Bill to transpose the DAC7 Directive into domestic legislation. The law is expected to come into force on 1 July 2024 and, in line with the DAC7 Directive, will require operators of digital platforms to collect, verify and report information on sellers who use their platforms for commercial activities that include the rental of immovable property, provision of personal services, sale of goods and rental of any mode of transport.

European Parliament adopts opinion supporting head office tax system, with amendments

In April the European Parliament adopted the proposal for the Head Office Tax Directive. The Parliament, while supportive of the proposal, recommended a number of changes, including establishing a cooperation obligation between Member States' tax authorities and accelerating adoption so that measures would apply from 1 January 2025. The Parliament passed these to the Council, and if passed, the proposal would be subject to adoption by the Member States. Although the Parliament's opinion is not binding on the Council, it must consider the opinion when debating the Directive.

European Parliament advocates for 2025 roll-out of Transfer Pricing Directive

In April the European Parliament approved the proposal for the introduction of the Transfer Pricing Directive. The Parliament recommended some changes to the proposal and stressed alignment with international guidance, the OECD transfer pricing guidelines. The Parliament passed these to the Council, and if passed, the proposal would be subject to adoption by the Member States.

04 Singapore

List of reportable jurisdictions for CRS purposes updated for 2023 reporting year

The Inland Revenue Authority of Singapore published the latest list of reportable jurisdictions for Common Reporting Standard (CRS) information for 2023 on 1 February 2024. The list includes five new reportable jurisdictions: Aruba, Bulgaria, Kenya, Saint Kitts and Nevis, and Thailand. A reportable jurisdiction is a jurisdiction with which an agreement is in place pursuant to which there is an obligation to provide the information specified in section I of the CRS and that is identified in a published list.

The list of participating jurisdictions was also updated on 1 February 2024, with Kenya and Thailand added and Niue removed. The list of participating jurisdictions is relevant to the extent that a professionally managed investment entity that is not resident in a participating jurisdiction is treated as a passive non-financial entity rather than a financial entity for due diligence and reporting purposes.

Singapore: Budget 2024

Singapore's Budget 2024 was delivered in February. Two of the most significant elements are the introduction of Pillar Two rules and the introduction of a refundable investment credit (RIC) to attract investment in emerging growth and strategic sectors.

Pillar Two

As expected, Singapore announced the introduction of the income inclusion rule and the domestic top-up tax for in-scope groups for accounting periods starting on or after 1 January 2025. No decision has yet been taken on the introduction of the undertaxed profits rule.

Refundable investment credit

Given Pillar Two's minimum effective rate of 15%, Singapore's tax incentives may not be as attractive in the future. Recognising this, Singapore is proposing the introduction of the RIC, to be awarded on an approval basis through the Economic Development Board (EDB) and Enterprise Singapore (ESG), to support high-value and substantive economic activities such as:

- investing in new productive capacity (e.g. new manufacturing plant, production of low-carbon energy);
- expanding or establishing headquarter activities or centres of excellence;
- carrying out R&D and innovation activities;
- expanding or establishing the scope of activities in digital services, professional services and supply chain management;
- setting up or expanding of activities by commodity-trading firms; and
- implementing solutions with decarbonisation objectives.

The RIC would be awarded based on up to 50% of the qualifying expenditure (e.g. capital expenditure and employee costs) incurred by a company in respect of a qualifying project during a qualifying period. Each RIC award would have a qualifying period of up to 10 years.

The EDB and the ESG will provide more information by the third quarter of 2024.

05 UK: Spring Budget 2024

Key measures for foreign-owned groups in Spring Budget

On 6 March 2024 the UK Chancellor of the Exchequer, Jeremy Hunt MP, delivered the 2024 Spring Budget, outlining the Government's tax and spending plans. From a business tax perspective, the Government intends to consult on including leasing assets within the "full expensing" of capital allowances regime and the extension of the freeport tax relief scheme for a further five years.

The Government also announced tax reliefs for UK creative industries, together with additional support for the sector, including:

- a UK independent film tax credit, which will apply to expenditure incurred from 1 April 2024, for films that commence principal photography on or after 1 April 2024 (claims can be made from 1 April 2025);
- increasing the generosity of the audio-visual expenditure credit for visual effects costs (1 April 2025);
- permanent extension of higher rates of tax relief for theatres, orchestras, museums and galleries (1 April 2025);
- 40% relief from business rates for eligible film studios in England for the next 10 years (from 1 April 2025); and
- £26m of funding to upgrade the National Theatre's stages and infrastructure.

Investment zones and green freeport tax site regulations published

New investment zone regulations to designate seven areas as special tax sites with effect from 8 April 2024 have been published by HM Treasury. The designation will allow for special rates of structures and buildings allowances, plant and machinery capital allowances, stamp duty land tax and Class 1 employer National Insurance contributions to apply to qualifying activities in these sites. Maps of these investment zones and their tax sites have been published by HM Revenue and Customs. The areas are located in the Liverpool City Region, North East and West Midlands investment zones. HM Treasury also published regulations to designate five tax sites with similar reliefs within Scotland's first green freeport, at Inverness and Cromarty Firth.

06 Belarus Temporarily Suspends Certain Provisions of 27 Tax Treaties with "Unfriendly" States

The National Legal Internet Portal of Belarus published Decision No. 164 of the Belarusian Council of Ministers on 13 March 2024, introducing the following tax changes targeting companies from "unfriendly" states:

- increased dividend tax of 25% on dividends and similar income paid to foreign companies (from "unfriendly" states) without a permanent establishment in Belarus from 1 April 2024 to 31 December 2026; and
- suspension of tax treaties with specific countries, including Ireland, from 1 June 2024 until 31 December 2026. The suspension could be reversed under certain circumstances. The Ministry of Foreign Affairs will notify relevant parties about the treaty suspensions.

07 United Arab Emirates: Corporate Tax Guidance Published on Qualifying Group Relief

In April the United Arab Emirates' Federal Tax Authority released guidance on qualifying group relief for corporate tax to assist with the understanding of certain group relief provisions. The guidance provides clarification on the conditions required for group relief to be available and on the application of group relief.

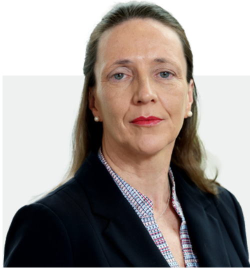
08 Australia Launches Its Own Public Country-by-Country Reporting Regime

The Australian Treasury is preparing to launch its own public country-by-country (CbC) reporting regime for accounting periods starting on or after 1 July 2024 and recently held a public consultation on same. The most recent proposal seeks to have greater alignment between the Australian public CbC reporting requirements and the EU equivalent compared to the April 2023 Exposure Draft ("the April 2023 ED"). The most noteworthy changes compared to the previous version include:

- the removal of certain jurisdictional disclosure requirements proposed in the April 2023 ED, such as on international related-party expenses, list of tangible and intangible assets, book value of intangible assets (but not tangible assets) and effective tax rate;
- the introduction of a *de minimus* threshold such that the measures apply only if the aggregated turnover a relevant entity (the CbC reporting entity, not an Australian-resident entity) includes Australian-sourced income of AUD 10m or more; and
- the introduction of jurisdictional-based country-specific reporting for Australia and certain specified jurisdictions (of which there are currently proposed to be 41) and aggregated reporting for all other jurisdictions.

However, there are still a number of differences between the Australian proposals and the EU Directive, including that the proposed list of 41 jurisdictions for which data is required to be published on a jurisdiction-by-jurisdiction basis (in addition to Australia) differs from the EU list of non-cooperative jurisdictions for tax purposes (as of 17 October 2023) and includes Hong Kong SAR, Singapore and Switzerland, which are jurisdictions in which Australian entities regularly operate; this will therefore likely increase the amount of information to be reported.

The responses to a public consultation on the proposal were recently published and illustrated that the business community would like the Government to address issues such as reporting exemptions and confidentiality safeguards.



VAT Cases and VAT News

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VAT Cases

01 Supplies Free of Charge – Supply of Goods for Consideration: CJEU Judgment C-207/23

02 Exemption for Granting and Negotiation of Credit – Commission Payments: CJEU Judgment C-89/23

03 Vouchers – Single Purpose or Multi-Purpose: CJEU Judgment C-68/23

04 Time Limits for VAT Refunds – EVR: TAC Determination 27TACD2024

01 Supplies of Goods Free of Charge: CJEU Judgment

The Court of Justice of the European Union (CJEU) delivered its judgment in the case of ***Finanzamt X v Y KG*** C-207/23 on 25 April 2024, which related to the interpretation of Articles 16 and 74 of the VAT Directive in the context of the imposition of VAT by Finanzamt X on supplies made free of charge by Y KG. Article 16 outlines the self-supply rule for goods where goods forming part of the business assets are applied to a private use or disposed of free of charge (but there is an exception where the goods are used as business samples or gifts of small value). Article 73 of the VAT Directive sets out the general rule for the taxable amount, and Article 74 provides that where a taxable person applies or disposes of goods forming part of his business assets the taxable amount is the purchase price of the goods (or of similar goods) or, in the absence of a purchase price, the cost price, which is determined at the time when the application or disposal takes place.

Y KG operates a plant producing biogas from biomass, and the biogas produced was used in 2008 for the decentralised production of electricity and heat. The majority of the electricity generated in this way by Y KG was supplied to the general electricity grid and paid for by the grid operator. The heat generated during that operation was partly reused in Y's production process, but the majority of it was transferred under contract on a free-of-charge basis to two contractors. Contractor A used the heat to dry wood in containers, and Contractor B used the heat to heat its asparagus fields.

Both contracts specified that the amount of the payment was to be determined on an individual basis according to the economic situation of the user of the heat, but the payment amount was not specified in the contracts. Y KG received minimum feed-in fees from the electricity grid operator, together with a rebate, which was paid as the electricity was produced by cogeneration, and Y KG accounted for VAT

in respect of these taxable transactions. Y KG did not invoice for the heat transferred to the two contractors, and the tax authority took the view that the heat was applied free of charge for the benefit of the two contractors and calculated the taxable amount on the basis of the cost price of that heat.

The first question posed by the referring court was whether Article 16 is to be interpreted to mean that the transfer, free of charge of the heat produced by a taxable person to other taxable persons for the purposes of their economic activities constitutes an application of goods forming part of his business assets in the form of a disposal free of charge is to be treated as a supply of goods for consideration. The second part of this question was whether the fact that those other taxable persons use that heat for transactions giving them a right to deduct VAT is relevant in determining if there was a supply of goods for consideration.

In considering the wording of Article 16, the court noted that the application by a taxable person of goods forming part of his business assets is treated as a supply of goods for consideration where two conditions are satisfied: it gives rise to a disposal free of charge, and the input VAT on the goods was wholly or partly deductible to the benefit of that taxable person. The provision, however, does not make reference to the VAT status of the recipient or whether the goods were used by the recipient for taxable purposes. In this case Y KG applied heat (tangible property) that formed part of its business assets and transferred it free of charge to the two contractors. Y KG was entitled to deduct input VAT on its cogeneration installation, which produced the electricity, as its outputs were liable to VAT, and the same installation was used to produce the heat supplied free of charge.

The court noted that Article 16 is intended to avoid situations of untaxed final consumption, and therefore the disposal free of charge of the goods applied must be subject to subsequent taxation, irrespective of the recipient's status (final consumer or taxable person using them for economic activity). It noted that the only exception to the imposition of VAT on the application of goods disposed of free of charge is in relation to transactions comprising the giving of gifts of small value and samples. However, in this case the heat applied and disposed of could not be considered to be a gift of small value or a sample. The court indicated that the tax status of the recipient is irrelevant to the application of Article 16. The earlier case of *Mitteldeutsche Hartstein-Industrie* C528/19 was not relevant here, as there was no indication that Y KG had also used the heat that was produced (in case C-528/19 the works benefited the taxable person making the disposal and had a direct and immediate link with its overall economic activity, and the cost of the input services received and linked to those works formed part of the cost elements of that taxable person's output transactions).

Therefore, the court held that the transfer of heat free of charge is a supply of goods for consideration and that the use to which the recipient put the heat was not relevant in determining the application of Article 16.

The other questions raised related to the meaning of cost price in the context of Article 74, whether the cost price includes not only direct manufacturing or production costs but also indirectly attributable costs, such as financing costs, and whether only the costs subject to input VAT must be included in the calculation of that price.

In previous cases the court has said that Article 74 is a derogation from the general rule laid down in Article 73, and under Article 74 it is only in the absence of a purchase price (which is the residual value of the goods at the time of allocation) for the goods or similar goods that the taxable amount will be the "cost price". It noted that it will be up to the tax authority to determine the cost price, taking into account all relevant factors, which is to include a detailed examination of the value elements that indicate that price (determined at the time that the application was made). It noted that

the wording of Article 74 does not indicate what items are to be included in or excluded from the taxable amount. The court therefore held that it is only if the purchase price of the goods/similar goods is not available that the taxable amount is based on cost price (which should be as close as possible to the purchase price), and this should include both direct and indirect costs irrespective of whether those costs were liable to VAT. This case is relevant in the context of considering the self-supply rules where goods are supplied free of charge, particularly the commentary around the status of the recipient. Also of importance is the comparison with the decision in *Mitteldeutsche Hartstein-Industrie* C-528/19 in relation to the benefit obtained by the taxable person and the link to the overall economic activity.

02 Exemption for Granting and Negotiation of Credit – Commission Payments: CJEU Judgment C-89/23

The judgment of the CJEU in the case of ***Companhia União de Crédito Popular SA v Autoridade Tributária e Aduaneira*** C-89/23 was published on 18 April 2024 in relation to the interpretation of Article 135(1)(b) of the VAT Directive (which provides that the granting and the negotiation of credit and the management of credit by the person granting it are exempt from VAT) in the context of transactions relating to the sale by auction of pledged goods relating to a pawnbroker loan.

Companhia União de Crédito Popular (CUCP) is a Portuguese company that carries on the activity of a pawnbroker, i.e. it provides loans guaranteed by movable property. Those activities are exempt from VAT as they relate to the granting and negotiation of credit. CUCP holds an auction of the pledged goods if the borrowers do not reclaim the pledged goods or are late by more than three months in reimbursing the amount borrowed or paying the relevant interest. CUCP earns a sales commission equal to 11% of the auction price of the goods, and this is borne by the borrower. CUCP had not charged VAT on sales commissions, and the tax authority was of the view that the commissions were payment for a transaction that was separate from the granting of credit rather than for a supply ancillary to the pawnbroker agreement.

The question referred was whether Article 135(1)(b) is to be interpreted as meaning that the supplies relating to the organisation of a sale by auction of goods that were provided as a pledge are ancillary to the principal supplies relating to the granting of credit secured by a pledge so that they share the tax treatment of those principal supplies in relation to VAT. The court reiterated the principles applicable in determining whether a supply is a composite or a multiple supply and highlighted the criterion that is also to be taken into account – the absence of a distinct purpose of the supply from the perspective of the average consumer. Thus, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.

The court also reiterated the point that the expression “the granting and the negotiating of credit” is to be interpreted broadly so that its scope cannot be limited to loans and credits granted by banking and financial institutions only, and although remuneration for making capital available in the context of granting credit is, as a rule, ensured through the payment of interest, other forms of consideration cannot prevent a transaction from being classified as the granting of credit within the meaning of Article 135(1)(b).

It indicated that the sale by auction of pledged goods, after a period of three months has elapsed during which the borrower has not met his or her contractual obligations, on the one hand, and the granting of the pawnbroker loan, on the other hand, constitute distinct and independent supplies under

Article 135(1)(b). The court outlined the reasons for this conclusion:

- The supplies do not depend either substantively or procedurally on one another.
- The sale by auction of pledged goods cannot be considered as amounting to the usual outcome of granting a pawnbroker loan – hence the sale cannot be treated as being inseparable from the granting of the loan.
- The sale by auction of pledged goods has a distinct purpose compared to the granting of a pawnbroker loan – the sale is an end in itself.
- The requirement to interpret the expression in the exemption strictly is fulfilled when assessing the sale by auction as a distinct and independent supply.

The court held that it appears, subject to verification by the referring court, that the 11% commission is not consideration, in the form of a fee, for a public service but is intended only to compensate the lender for organising and completing the sale by auction of pledged goods. This case is relevant when considering whether a transaction comes under the composite- or multiple-supply rules and the weight attached to the perception of the customer.

03 Vouchers – Single-Purpose or Multi-Purpose: CJEU Judgment C-68/23

The CJEU delivered its decision in the case of ***M-GbR v Finanzamt O*** C-68/23 on 18 April 2024 in relation to the classification of marketing of pre-paid cards/voucher codes used to purchase digital content in an online shop as single-purpose vouchers (SPVs) or multi-purpose vouchers (MPVs). Articles 30a and 30b of the VAT Directive set out the definitions for each type of voucher and the relevant VAT treatment at the time of sale. Under Article 30a an SPV means a voucher where the place of supply of the goods or services to which the voucher relates and the VAT due on those goods or services are known at the time of issue of the voucher. An MPV means a voucher other than an SPV. The issue of an SPV and each subsequent transfer of an SPV are subject to VAT at the time of sale. The issue of an MPV is not liable to VAT at the time of sale – VAT arises when the MPV is redeemed for goods and/or services.

M-GbR, a German non-trading company, marketed, via its online shop, prepaid cards or voucher codes (“X cards”) enabling user accounts to be loaded for the purchase of digital content in online shop X (“shop X”). The X cards enabled purchasers to load accounts enabling them to use shop X (“X user account”) with a certain nominal value in euros. When setting up the user account, the customer is required to provide accurate information on their place of residence. Once the account was loaded, the account holder could purchase digital content from shop X.

Customers could activate credits intended only for the country corresponding to their X user account. Shop X was managed by Company Y (UK company). Company Y issued X cards and marketed them in the EU, with different “country” codes, through various intermediaries. X cards with the “country” code DE were intended exclusively for customers based in Germany and a German X user account.

M-GbR purchased X cards, issued by Y, through suppliers, L 1 and L 2, established in Member States other than Germany and the UK and treated them as MPVs (on the basis that the customer’s place of residence was not known with certainty as the country identifier assigned by Company Y was insufficient in determining the place of supply). When user accounts were opened and used, customer data was not checked by Company Y. Customers living outside Germany also opened German X user

accounts and purchased cards from M-GbR with the "country" code DE. The German tax authority took the view that the X cards comprised SPVs on the basis that they could be used only by German residents with German X user accounts, i.e. the place of supply was Germany. Company Y and the intermediaries had also treated the X cards as SPVs.

The referring court sought clarification on the interpretation of Articles 30a and 30b in the context of a supply via a chain of taxable persons established in different Member States. The first question was whether the voucher was classified as an SPV based on the fact that, at the time of issue, the place of the supply of services to end consumers to which that voucher relates is known, even though successive transfers occur between intermediaries established in Member States other than that in which those end consumers are situated? Do the successive transfers give rise to supplies of services carried out in the territory of those other Member States?

The court indicated that the first question referred for a preliminary ruling is based on the premise that the prepaid X cards issued by Y meet the definition of a voucher. In considering whether an instrument is an SPV or an MPV, you have first to determine whether it is an SPV (i.e. place of supply and VAT rate is known so that the VAT treatment is known at the time of issue). If this is not known, then the voucher cannot be classified as an SPV. Each transfer of an SPV is treated as a supply of goods or services, and the handing over of the goods or provision of the services is disregarded.

The court noted that although it is for the referring court to determine the classification of the voucher, it can elicit the criteria from the legislation that the referring court may or must apply. In this regard, the first condition is to determine the place of supply, and the court indicated that it appears that at the time of issue of the voucher the place where the digital content is supplied to the end consumer in exchange for the X cards sold by M-GbR is in Germany. This is on the basis of the conditions attaching to the use of the X card, particularly the affixed identifier of the Member State where the X cards are to be used. It appears, then, that the place of supply is known at the time of issue of the X card.

Even though consumers could circumvent the conditions of use, this could not be taken into account in determining the place of supply, as classification of a transaction cannot depend on abusive practices. Another condition that was considered, related to the VAT payable, the court noted that, from the information provided, it was not possible to assess whether, at the time of issue of the X cards, the VAT payable on the various items of digital content in return for the X cards is known. It will be for the referring court to determine whether this condition is satisfied.

The court indicated that if it is assumed that the services supplied are subject to the same basis of assessment and the same rate of VAT in Germany, then, irrespective of the digital content obtained, the referring court should be able to determine that the second condition is satisfied and therefore that the X card is classified as an SPV. The condition that the place of supply of services to end consumers must be known at the time of the issue of the voucher applies irrespective of the fact that the voucher is the subject of transfers between intermediaries in other Member States (other than that in which those end consumers are located).

The second question was raised in circumstances where the X card is determined to be an MPV. In such cases VAT is charged on the redemption of the voucher rather than on transfers of the voucher before it is redeemed by the end customer. This is on the basis that the nature of the goods or services and the VAT payable thereon are not known at the time the voucher is issued. Even though a transfer of an MPV is not subject to VAT, the question was whether VAT could be payable on another basis where the MPV is transferred in a distribution chain across different Member States – in other words, whether the consideration received in respect of each transfer is consideration for a service independent of the redemption of the voucher.

In considering this question the court noted that Article 30b(2) (second paragraph) provides that where a transfer of an MPV is made by a taxable person other than the supplier of the goods or services to the end consumer, any supply of services that can be identified, such as distribution or promotion services, is to be subject to VAT. In addition, Article 73a provides that the taxable amount of the supply of services provided in respect of an MPV shall be equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on the MPV itself or in the related documentation, less the amount of VAT relating to the services supplied. This ensures that the profit margin is subject to VAT.

If X cards are classified as MPVs, the court noted, when M-GbR is reselling the vouchers it could be carrying out an independent supply of services, which may be subject to VAT, e.g. a supply of distribution or promotion services for the benefit of the taxable person who actually provides digital content to the end consumer. It indicated that it will be for the referring court to determine whether M-GbR's transactions should be classified as such for VAT purposes. This decision is helpful in understanding the conditions to be satisfied in classifying vouchers as SPVs or MPVs, particularly where resellers are involved across the EU.

04 Time Limits for VAT Refunds – EVR: TAC Determination 27TACD2024

This case related to an appeal against a refusal by the Revenue Commissioners to issue a VAT refund to the appellant in the amount of €1,403 for 2020 on the basis that the claim was not made in accordance with the provisions of s101 VATCA 2010 (which deals with intra-Community refunds of tax). The case was determined on the basis of the statement of case submitted by both parties. The time period of the claim and the timelines coincided with Brexit and the changes to the filing deadline.

The appellant submitted its VAT reclaim on 21 October 2021 for the calendar year 2020. The appellant originally thought that the claim for 2020 was to be filed by 30 September 2021. The respondent contended that the appellant's application for a refund of tax paid was late and refused it on that basis. The respondent indicated that "under the Brexit Withdrawal Agreement between the UK and the EU the EVR portal would not be available to mainland UK and NI claimants for 2020 claims after 31st March 2021", but "in certain circumstances, IE Revenue accepted VAT 60 OEC's for 2020 claims up to and including 30th September 2021 on the basis that the VAT was suffered during 2020 while the UK was fully part of the EU and the Single Market". The usual deadline is six months after calendar year-end. HMRC had advised on its website that EVR would not be available to file 2020 EVR claims after 31 March 2021.

The appellant included the following reasons for the late filing of the claim: the impact of Covid-19 restrictions, Brexit, the tax accountant's leaving the company, leading to delays in preparing and filing claims, and a delay in issuing certificates of taxable status by HMRC.

The Commissioner indicated that the applicable legislation provides that the respondent shall make a refund of tax paid when a full and correct refund application is made electronically and lodged on or before 30 September in the calendar year following the refund period. In the circumstances, and based on a review of the facts and a consideration of the submissions provided by both parties, the Commissioner determined that the appellant had not shown that the respondent was incorrect in its decision to refuse the claim for the refund of VAT for the year 2020.

VAT News

Ireland

Revenue eBrief 101/24, issued on 28 March 2024, was in relation to the Deposit Return Scheme ("the Scheme") and the availability of a new Tax and Duty Manual (TDM). The Scheme came into operation on 1 February 2024 and provides for a refundable deposit on drink products supplied in plastic bottles and aluminium or steel cans that are returned for recycling or reuse. From a VAT point of view, the TDM outlines the VAT treatment appropriate to Scheme deposits. For supplies of drink products in the supply chain (e.g. by manufacturer or importer, wholesaler, retailer) no VAT arises on the Scheme deposit. VAT on the deposit arises only where the container is not returned under the Scheme, and in this case it is the Scheme operator who is liable to account for and pay the tax.

Revenue eBrief 95/24, which was issued on 26 March 2024, concerned the guidelines for CESOP registration and filing. The registration facility for CESOP filers opened in Ireland on 1 February 2024. The filing facility for CESOP in ROS opened on 1 April 2024. The TDM "CESOP Registration Guidelines and Guidance for Filing" has been updated to take account of guidance on the process for registration as a resident or non-resident payment service provider and on the process for filing CESOP reports in Ireland and includes details of the technical specifications required for filing CESOP reports.

Revenue eBrief 93/24, issued on 25 March 2024, concerned the TDM "Recovery of VAT on Motor Vehicles". The TDM has been updated to take account of information relating to converted motor vehicles.

Revenue eBrief 60/24, released on 4 March 2024, highlights the publication of two new TDMs and an update to the TDM "Supply of Property". A new TDM on "VAT Treatment of Construction Services" has been published, providing guidance on areas such as registration, VAT rates, the two-thirds rule, the reverse charge and connected persons. The "Reverse Charge Construction" TDM is now marked as no longer relevant. In addition, a new TDM, "Fixtures and Fittings", has been published to provide guidance on the VAT treatment of fixtures and fittings – the meaning of each and the appropriate rate of VAT (solar panels are dealt with in a separate TDM). In addition, the TDM "Supply of Property" has been updated to provide further clarity in relation to taxable supplies of property.

Revenue eBrief 59/24, published on 4 March 2024, highlights the release of a new TDM on "VAT Treatment of Negotiation Services in Respect of Financial Services". The TDM outlines the VAT treatment of negotiation or agency services (as per paragraph 7 of Schedule 1 to VATCA 2010) in respect of financial services specified in paragraph 6(1) of Schedule 1.

UK

HMRC published a new policy paper on the application of the Tour Operators' Margin Scheme (TOMS) to wholesale business-to-business (B2B) supplies (Revenue and Customs Brief 5 of 2024). This brief clarifies HMRC's technical position on the inclusion of B2B wholesale supplies within TOMS. As a result, Revenue and Customs Brief 5 from 2014 has been withdrawn and VAT Notice 709/5 has been amended. HMRC reviewed its approach and guidance on the correct treatment of B2B wholesale supplies after recent Tribunal cases (*Bolt Services* and *Golf Holidays Worldwide*). After the review, it concluded that B2B wholesale supplies are within the scope of TOMS and by concession tour operators may opt B2B wholesale supplies out of TOMS.

HMRC published a policy paper on 9 May 2024 in relation to the VAT treatment of voluntary carbon credits (Revenue and Customs Brief 7 of

2024). The updated guidance will be effective from 1 September 2024 and will apply to transactions involving voluntary carbon credits on or after that date. Voluntary carbon credits are currently treated as outside the scope of UK VAT. However, with effect from 1 September, the sale of voluntary carbon credits will be subject to VAT where the place of supply is in the UK.

EU

The ECOFIN meeting of 14 May 2024 debated the updated draft ViDA (VAT in the Digital Age) package that had been released by the European Commission earlier in the month. Two pillars of the proposal were accepted – those relating to digital real-time reporting (including e-invoicing) and single VAT registration – but the pillar relating to the extension of digital platform rules to the supply of short-term accommodation rental and passenger transport by road was not accepted owing to concerns raised by one Member State. The next meeting of ECOFIN will be held on 21 June 2024, and it may be debated again, as the Belgian Presidency would like to have the proposal finalised before the end of its term on 30 June 2024.

Accounting Developments of Interest

Aidan Clifford
Advisory Services Manager, ACCA Ireland

Audit Exemption Turnover Limit for Charities Increases to €250,000

Charites are legally entitled to audit exemption on the same basis as a normal, for-profit company – that is, if they qualify as “small” under the Companies Act 2014 limits. However, to obtain and retain a charity tax registration number, Revenue required that the charity have an audit once its turnover exceeded €100,000. A recent amendment to Revenue’s Charities and Sports Bodies On-line Applications for Tax Exemption manual notes that “The latest financial accounts must be signed by two trustees if the annual income is less than €250,000 and must be audited and signed by the body’s external auditor if the annual income is greater than €250,000”. Some charities may need to change their constitution to avail of audit exemption at the higher limit because the €100,000 limit is included in the constitution.

FRS 102 Has Been Updated

The Financial Reporting Council announced that FRS 102 has been updated –. The main changes, which generally take effect for accounting periods beginning on or after 1 January 2026, will be to lease accounting, whereby almost all operating leases will become finance leases. Short-term leases and low-value leases can continue to be treated as operating leases. Another main change is to revenue recognition, whereby FRS 102 now matches the five-step model from IFRS 15. For most simple businesses the change to revenue recognition will make no difference, but it will make a difference to those with complicated sales. There have also been minor changes to fair-value measurement, the statement of cash-flows, share-based payment, income tax and specialist activities.

The capitalisation of operating leases as finance leases and the inclusion of “right to use assets” on the balance sheet could substantially increase a company’s gross assets and consequently affect its audit exemption status. This might happen where the company has a long lease on a building or a large number of motor vehicles that were previously on an operating lease. UK Cross-Border Insolvencies

ACCA has developed new guidance for insolvency practitioners dealing with Ireland. UK cross-border corporate insolvencies. Cross-border insolvency involving the UK has become particularly complex since Brexit, and this document discusses the options for liquidators in addressing some of those difficulties.

Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024

This proposed legislation will allow a business to be late with its annual return once every five years and not lose audit exemption. It will also provide for virtual/hybrid company meetings on a permanent basis. There are a number of additional enforcement measures, including strike-off if the company has not provided information to the Register of Beneficial Ownership. Receivers' fees will also be more transparent, and liquidators will have enhanced requirements in respect of restriction of directors. The Corporate Enforcement Authority's powers will also be enhanced. However, as with all legislation, the Bill will fall if the Dáil falls. It will then be up to the next Government to reintroduce the legislation, and any new Government may have different priorities.

Anti-Money-Laundering Process Weaknesses

The UK Financial Conduct Authority recently issued guidance on common control failings identified in anti-money-laundering compliance monitoring. The letter was issued to entities providing payment services.

Central Bank of Ireland's Regulatory & Supervisory Outlook

Published in February 2024, the Central Bank of Ireland: Regulatory & Supervisory Outlook discusses the Central Bank's view of the global macro environment and the risk outlook. The report outlines supervisory priorities and provides a summary of key regulatory initiatives for 2024. It considers each of the various sectors separately and includes a section on artificial intelligence and a spotlight on financial crime.

Cybercrime Risks and Prevention Tips

Some companies in the US make opening a malicious email gross misconduct resulting in instant employment termination; it very effectively focuses employees' minds on cyber-security. Irish companies generally do not go that far; but many will test employees with spoof cyber-attacks, and opening the spoof email brings the employee to an enrolment page for the company's online security course – attendance is compulsory, even if it is the second or third time taking the course. But still every day more people are caught by more sophisticated and personalised attacks. The Garda National Cyber Crime Bureau recently produced a booklet, Cybercrime Risks and Prevention Tips, which aims to enhance awareness of this type of crime. The booklet explains the more common frauds, such as CEO fraud, update popups, Flubot virus, and fake refunds or fines. It also covers "evil twin attacks", "sniffing" and "man in the middle", which can occur on public Wi-Fi networks.

Guidelines for Designated Persons Supervised by Anti-Money Laundering Compliance Unit

Accounting practices are AML-supervised by their professional accounting body, and accountants who are not a member of one of the accounting bodies are monitored by the Department of Justice (DoJ). The DoJ has just published guidelines for such persons, who are "designated

persons" supervised by its Anti-Money Laundering Compliance Unit. The guidelines provide assistance to those persons in understanding and meeting their obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended.

Sustainability Assurance

From early 2025 for very large quoted companies and early 2026 for large quoted and unquoted companies, Sustainability Assurance Service Providers (SASPs) will be providing assurance over financial statement disclosures under European Sustainability Reporting Standards. The European Commission has indicated that it intends to adopt a European assurance standard by October 2026, but that is too late for the SASPs who will be reporting in 2025 and early 2026. The Irish Auditing and Accounting Supervisory Authority (IAASA) has identified three options for a sustainability assurance standard in Ireland pending the finalisation of the European standard: the proposed International Standard on Sustainability Assurance 5000, the extant International Standard on Assurance Engagements 3000 or a local standard. The IAASA has issued a consultation document seeking views on which option it should adopt.

Audit File Reviews

ISQM (Ireland) 1 requires that firms establish policies or procedures addressing engagement quality reviews in accordance with ISQM 2, including setting criteria for eligibility to be appointed as an engagement quality reviewer. The Irish Auditing and Accounting Supervisory Authority has undertaken a review of compliance with this requirement, and a summary of the outcomes of the review is available at this link.

When Is a Not-for-Profit not a Charity?

Although charities are "not-for-profit" organisations, not all "not-for-profit" organisations are charities under the Charities Act 2009. The Charities Regulator has issued guidance on this issue, with clarification, for example, that a political party or a trade union cannot be a charity. A charity must also provide a public benefit; for example, a charity cannot be set up solely for a GoFundMe page to help one individual who suffers from a medical issue or needs to be repatriated from abroad. It is an offence for an organisation wrongfully to describe itself or its activities as a charity/ charitable or to cause people reasonably to believe that the organisation is a charity.

Phishing for Accounting Practices

All of the accounting bodies maintain a public database of members holding a practising certificate. For many small and medium-sized practices it is a source of new-client referrals. However, in the case of one professional body the data was scraped, and email contact addresses were used to fake an email purporting to be from the professional body and including a copy of the member's practising certificate that was to be clicked to download and print. The email was fraudulent, and clicking on the document downloaded remote-access software. Some accountants clicked on the link and reported that "nothing happened". without realising that the remote-access software was now installed discreetly on their computer and waiting for an activation code from the hackers. The remote-access software is typically used as a precursor to a full-scale malware or

ransom attack. The email was almost perfectly spoofed, even down to the use of a real employee name in the signature. The "From" address was made to look like it came from the professional body; however, hovering over the field showed that the email actually came from a totally different address, one created in a social media application.

Accountants can remove their email addresses from their online practice contact details or set up a dedicated email box for regulatory contact from their professional body and not share that email elsewhere. Most accountants use fairly easy-to-guess email addresses, usually something like firstname.secondname@firmname.ie. The only protection is a good spam filter and vigilance.

HMRC to Raise Standards in Tax Advice Market

In the UK there are proposals to try to raise standards for people providing tax advice or filing with HMRC. The three options to allow for a registration system for tax agents being proposed are:

- mandatory membership of a recognised professional body,
- joint HMRC and industry enforcement and
- regulation by a separate statutory Government body.

The consultation is at this link.

Considering Sustainability When Undertaking M&A Work

ACCA has produced a guide on how to incorporate sustainability assessments into merger and acquisition (M&A) activities. The value of a business will increase or decrease due to sustainability factors, from simple matters such as asbestos in the company's buildings to the possible loss of access to scarce or unsustainable raw material. The research includes checklists of matters to consider during the M&A process.

Anti-Money Laundering Authority

The Irish Government bid to be the host country for the EU Anti-Money Laundering Authority (AMLA) was unsuccessful. Had it been successful, it was predicted to bring *c.* 3,000 jobs to Ireland. However, the competition was won by Germany. The bids were decided on jointly by the Council and the Parliament, and Germany had sufficient support in the Council to make the Parliament vote almost irrelevant.

The AMLA will produce a single EU AML rulebook, and a common rulebook will facilitate the creation of more shared services for centralised AML functions in the large financial institutions. Ireland has the international linkages to be the location of a centre of excellence for anti-money laundering. It is English speaking and closely linked to the UK and the US while being a member of the EU; we also have a strong AML infrastructure and the talent "bench strength" to host the AML shared service for large international banks. Germany may have won the AMLA competition, but there are still opportunities for accountants in Ireland in AML compliance roles.

Objective, Reasonable and Informed Third Party

The UK and Irish ethical standards for auditors require an auditor to consider what, in certain situations, would be the opinion of an "objective, reasonable and informed third party" (ORITP). For example, the ethical standards require that although the auditor may feel, themselves, fully independent and objective in a particular circumstance, they need to assess whether an ORITP would share that view. Stepping into the shoes of a hypothetical person is not always easy, and the Financial Reporting Council (FRC) in the UK has issued guidance on how this might be done.

The FRC has also published an update to its Ethical Standard for auditors, effective from 15 December 2024. The main matter of concern is a new targeted restriction on fees from entities related by a single controlling party (i.e. not necessarily in a group but owned by one person). The existing 10% and 15% rules will now also apply to "a collection of entities with the same beneficial owner or controlling party", having previously applied only to the entity and its subsidiaries. Both the guidance and the revisions to the Ethical Standard are expected to be adopted by the Irish Auditing and Accounting Supervisory Authority in due course.

Sustainability Reporting for SMEs

The European Financial Reporting Advisory Group has launched a public consultation on two sustainability reporting standards for SMEs: ESRS LSME (ESRS for listed SMEs) and ESRS VSME (ESRS for SMEs that voluntarily make sustainability disclosures). It is intended that the listed-SME standards will be effective from 1 January 2026 (with a two-year opt-out). The voluntary non-listed-SME standards are intended to support SMEs in accessing sustainable finance and in responding to requests for sustainability information that they receive from business counterparts (i.e. banks, investors or larger companies for which they are suppliers) in an efficient and proportionate manner. Currently, many large corporate procurement departments are looking for different sustainability information from their SME suppliers, and the standard should serve to harmonise the data requests and reduce the SME disclosure workload.

Sustainability Assurance and Audit

In addition to the ISSA 5000 sustainability assurance standard, the International Ethics Standards Board for Accountants has launched two exposure drafts on ethical considerations in sustainability reporting and assurance.

Legal Monitor

Nicola Corrigan
Senior Associate, William Fry Tax Advisors

Selected Acts Signed into Law from 1 February to 30 April 2024

No Acts of note were signed into law during this period.

Selected Bills Initiated from 1 February to 30 April 2024

No. 6 of 2024: Protection of Employees (Trade Union Subscriptions) Bill 2024

This Bill aims to impose an obligation on employers, when requested in writing by an employee, to make deductions from the wages of such employee and to remit the amount deducted to the relevant trade union that is specified in the written request. The Bill also sets a 21 day timeline within which remittances of trade union subscriptions must be made and outlines the requisite information to be included in such remittance.

No. 13 of 2024: Law Reform (Contracts) Bill 2024

This Bill aims to provide for:

- third party rights in relation to enforcement and performance of contracts;
- orderly consequences of discharge of a contract due to frustration; and
- related matters.

The purpose of this Bill is to provide greater clarity in the area of contract law in order to facilitate the smoother and fairer administration of justice.

No. 20 of 2024: Maternity Protection (Amendment) Bill 2024

This Bill aims to amend and extend the Maternity Protection Act 1994 and to provide for the postponement of maternity leave where a mother has been diagnosed with cancer or other serious illness during pregnancy. The Bill also aims to provide for certain related matters.

No. 21 of 2024: Future Ireland Fund and Infrastructure, Climate and Nature Fund Bill 2024

Further to the announcement made in Budget 2024, this Bill aims to provide for:

- the establishment of the Future Ireland Fund with the purpose of supporting State expenditure from 2041 onwards;
- the establishment of the Infrastructure, Climate and Nature Fund with the purpose of:
  - supporting State expenditure from 2026 onwards where there is a deterioration in the economic or fiscal position of the State and
  - supporting State expenditure on certain environmental projects between 2026 and 2030;
- the control and management of those funds by the National Treasury Management Agency;
- the transfer of certain assets to the above-mentioned funds;
- the dissolution of the National Surplus (Exceptional Contingencies) Reserve Fund

and the transfer of the assets of that fund to the above-mentioned funds; and

- various related matters.

This Bill also aims to amend various miscellaneous provisions of the Taxes Consolidation Act 1997 and the Stamp Duties Consolidation Act 1999 in the context of the establishment of the Future Ireland Fund and the Infrastructure, Climate and Nature Fund.

No. 22 of 2024: Automatic Enrolment Retirement Savings System Bill 2024

This Bill aims to provide:

- for the establishment of a body to be known as An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir;
- that An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir will establish, maintain and administer an automatic enrolment retirement savings system for employees in employment not covered by qualifying schemes;
- for automatic enrolment and re-enrolment of participants in that system and for opting into and out of the system;
- for the payment of contributions by participants, their employers and the State, the investment of contributions, and the payment of retirement savings out of participants' accounts; and
- for consequential amendments to certain enactments and related matters.

This Bill contains various references to definitions and other provisions of the Taxes Consolidation Act 1997.

Selected Statutory Instruments from 1 February to 30 April 2024

No. 31 of 2024: Value-Added Tax Regulations 2010 (Regulation 34B)(Amendment) Regulations 2024

These Regulations came into effect on 1 February 2024 and amend the Value-Added Tax Regulations 2010 by introducing a new Regulation 34B. In the context of s92A of the Value-Added Tax Consolidation Act 2010, Regulation 34B identifies the method to be used for the calculation of VAT on deposits relating to containers and bottles that are not returned under the Deposit Return Scheme.

No. 36 of 2024: Control of Excisable Products Regulations 2024

These Regulations came into effect on 1 February 2024 and, in accordance with Council Directive (EU) 2020/262, prescribe:

- procedures for the movement of excisable products between Member States of the European Union; and
- certain requirements for traders involved in such movements.

No. 92 of 2024: Work Life Balance and Miscellaneous Provisions Act 2023 (Workplace Relations Commission Code of Practice on the Right to Request Flexible Working and the Right to Request Remote Working) Order 2024

This Order declares that the code of practice set out in the Schedule to this Order shall be an approved code of practice for the purposes of Part 3 of the Work Life Balance and Miscellaneous Provisions Act 2023 (SI 8 of 2023) and Part IIA of the Parental Leave Act 1998 (SI 30 of 1998). The code of practice contains practical guidance for employers, employees and others with regard to various matters, including requests for flexible working arrangements, requests for remote working arrangements, how to address possible income tax implications if an employee works outside the country for more than 183 days and how remote working might affect an employee's tax liabilities.

No. 101 of 2024: Finance Act 2022 (Section 46(1)) (Commencement) Order

This Order provides for the commencement, as of 1 April 2024, of sub-section (1) of s46 of the Finance Act 2022, which provides for the amendment of certain sections in Chapter 2 (Natural Gas Carbon Tax) of Part 3 (Customs and Excise) of Finance Act 2010.

No. 125 of 2024: Finance (No. 2) Act 2023 (Section 41) (Commencement) Order 2024

This Order provides for the commencement, as of 28 March 2024, of s41 of the Finance (No. 2) Act 2023. Sub-section (1) of s41 of the Finance (No. 2) Act 2023 provides for the substitution of "€125,000,000" for "€70,000,000" in paragraph (c) of the definition of "film corporation tax credit" in sub-section (1) of s481 of the Taxes Consolidation Act 1997 (TCA 1997). Sub-section (2) of s41 of the Finance (No. 2) Act 2023 provides that sub-section (1) of that section shall apply to a qualifying film (within the meaning of s481 of TCA 1997) in respect of which the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media issues a certificate (within the meaning of s481 of TCA 1997).

No. 126 of 2024: Finance Act 2022 (Section 41(1)) (Commencement) Order 2024

This Order provides for the commencement, as of 28 March 2024, of sub-section (1) of s41 of the Finance Act 2022, which provides for the substitution of "31 December 2028" for "31 December 2024" in sub-section (3C) of s481 of the Taxes Consolidation Act 1997.

Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

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

Income Tax

24TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

26TACD2024

Appeal regarding validity of appeal after assessment to tax issued by the Criminal Assets Bureau

s949N TCA 1997

Case stated requested: Yes

29TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

30TACD2024

Appeal regarding the application of s248 TCA 1997 interest relief for the part-time director requirement under s250 TCA 1997. A previous appeal was brought involving one of 31 appellants involved in similar transactions that were previously deemed to contravene anti-avoidance rules Ruling applied as in 47TACD2019.

s250 TCA 1997, s817A TCA 1997

Case stated requested: Unknown

34TACD2024

Appeal regarding treatment of a loss as a "trading" loss rather than as a "capital" loss and whether a transaction was properly identified as a "financing trade" as opposed to a "property financing trade"

s381 TCA 1997, s381C TCA 1997

Case stated requested: Unknown

35TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

36TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

42TACD2024

Appeal regarding an assessment to income tax in respect of liquidation proceeds received from a fund which was not tax resident in Ireland

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Yes

44TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

49TACD2024

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

s865 TCA 1997

Case stated requested: Unknown

52TACD2024

Appeal regarding income tax liability on income continuation benefit payments from a South African policy which was not an-approved "Permanent Health Benefit Scheme"

s125 TCA 1997, s471 TCA 1997, s730 TCA 1997

Case stated requested: Yes

Income Tax and USC

43TACD2024

Appeal regarding the incorrect application of USC by Revenue on a Statement of Liability

s531AN TCA 1997

Case stated requested: Unknown

Corporation Tax

47TACD2024

Appeal regarding the deductibility of Royalty Withholding Tax

s76A TCA 1997, s77 TCA 1997, s81 TCA 1997, s836 TCA 1997, Sch. 24 TCA 1997

Case stated requested: Yes

48TACD2024

Appeal regarding the treatment of expenses incurred during a potential change in ownership as expenses of management

s83 TCA 1997

Case stated requested: Unknown

Capital Gains Tax

38TACD2024

Appeal regarding the refusal of an application for CGT exemption on a gift of a site to a child when in excess of allowed size

s603A TCA 1997

Case stated requested: Unknown

Capital Gains Tax and Income Tax

53TACD2024

Appeal regarding an assessment to tax raised by the Criminal Assets Bureau

s922 TCA 1997, s959AC TCA 1997, Part 41A TCA 1997

Case stated requested: Unknown

VAT

27TACD2024

Appeal regarding a refund of VAT that had been refused under the provisions governing intra-Community tax refunds

s101(2) VATCA 2010, Article 51 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

Case stated requested: Unknown

Covid Relief Support Scheme

31TACD2024

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

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

32TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

33TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

37TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

39TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

40TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

41TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

46TACD2024

Appeal regarding the eligibility criteria to avail of the Covid Relief Support Scheme and the meaning of "qualifying person" under the scheme

s484 TCA 1997, s485 TCA 1997

Case stated requested: Unknown

Artists' Exemption

25TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

51TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

Vehicle Registration Tax

21TACD2024

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

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

22TACD2024

Appeal regarding the application of transfer-of-residence relief for VRT

s134(1)(a) Finance Act 1992 (as amended), Vehicle Registration Tax (Permanent Reliefs) Regulations 1993

Case stated requested: Unknown

45TACD2024

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

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

Employment Wage Subsidy Scheme

28TACD2024

Appeal regarding the application of the Employment Wage Subsidy Scheme and the requirement that a business would experience a 30% reduction in turnover or customer orders during the relevant period

s28B Emergency Measures in the Public Interest (Covid-19) Act 2020

Case stated requested: Yes

Stamp Duty

23TACD2024

Appeal regarding the application of farm consolidation relief where lands were sold and purchased outside the 24-month time period during Covid-19 pandemic

s81C SDCA 1999

Case stated requested: Unknown

50TACD2024

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

s159A SDCA 1999

Case stated requested: Unknown

Customs and Excise

54TACD2024

Appeal regarding liability to pay mineral oil tax on hydrocarbon oil in the form of unmarked diesel

s95 Finance Act 1999

Case stated requested: Unknown

UK and Northern Ireland Tax Update – Summer 2024

Marie Farrell
Tax Director, KPMG Ireland (Belfast Office)

Introduction

In March the Chancellor of the Exchequer, Jeremy Hunt MP, delivered Spring Budget 2024, which has provided the main UK tax law developments since my last update, at the end of 2023. The Budget certainly ticked all of the boxes of an election-year budget, with a focus on personal taxes and putting income in people's pockets, including a 2p reduction to National Insurance Contributions. The abolition of the "non-dom" tax regime, one of the Labour Party's flagship policies, and the announcement of a new residence-based regime for foreign income and gains have also been the focus of much debate and discussion.

An overview of these measures, other notable tax measures in the Spring Budget and some developments in UK tax law outside of those announced in the Budget is given below.

Key Spring Budget Announcements

National Insurance Contributions

In addition to the previously announced NIC reductions in the 2023 Autumn Statement, which took effect from 6 January 2024, a reduction in the main rate of Class 1 Primary NIC from 10% to 8% has now taken effect. For the self-employed the main rate of Class 4 NIC has also reduced by 2 percentage points, from 8% to 6%, and self-employed people are no longer required to pay Class 2.

Although these changes provide a small but welcomed increase in take-home pay, the decision to leave the personal allowance and other tax thresholds unchanged will, in effect, represent a significant stealth tax on earnings that increases over time. Thus, for both the employed and the self-employed, who have been dealing with the effects of inflationary cost pressures, the cuts in NIC rates may not have much impact on their personal finances.

Taxation of non-domiciled individuals

From 6 April 2025 the current remittance basis of taxation will be abolished for UK-resident and non-domiciled individuals and replaced with a new four-year "Foreign Income and Gains" (FIG) regime. UK-resident and non-domiciled individuals who are not eligible for the FIG regime should generally be subject to UK tax on worldwide income and gains from 6 April 2025 onward.

The main measures in the new FIG regime are:

- The regime allows FIG arising in the first four years to be remitted with no additional UK taxes.
- Individuals who on 6 April 2025 have been tax resident in the UK for less than four years (after ten years of non-UK tax residence) will be able to use the new regime for the remainder of those four years.
- Individuals who move from the remittance basis to the arising basis on 6 April 2025 and are not eligible for the four-year FIG regime will, for 2025–6 only, pay tax on 50% of their foreign income. This reduction applies to foreign income only; it does not apply to foreign chargeable gains. For 2026–7 onward, tax will be due on all worldwide income in the normal way.
- From 6 April 2025, individuals who have been taxed on the remittance basis will be

able to elect to pay tax at a reduced rate of 12% on remittances of pre-6 April 2025 FIG under a new Temporary Repatriation Facility (TRF) that will be available for tax years 2025–6 and 2026–7 only. The TRF will not apply to pre-6 April 2025 FIG generated within offshore trust structures.

- From 6 April 2025, an individual who is not, or who later ceases to be, eligible for the four-year FIG regime will be taxed on foreign gains in the normal way. Transitionally, individuals who have claimed the remittance basis will, on a disposal of an asset held personally at 5 April 2019, be able to elect for UK CGT purposes to rebase that asset to its value as at that date.
- From 6 April 2025, the protection from UK taxation on future income and gains as they arise within trust structures (whenever established) will be removed for all current non-domiciled and deemed domiciled individuals who do not qualify for the four-year FIG regime.
- FIG arising in non-resident settlor-interested trust structures from 6 April 2025 will be taxed on the settlor (if they have been UK resident for more than four years) on an arising basis. FIG that arose in the trust or trust structure before 6 April 2025 will be taxed on settlors or beneficiaries if they are matched to worldwide trust distributions.

However, it is important to note that draft legislation for the FIG regime has not yet been published, and the Labour Party has indicated that it will change the current proposals if elected to Government. Specifically, it plans to remove the 50% reduction in foreign income subject to UK tax in 2025–6. Given that a UK general election must be held no later than January 2025, it is not certain that the FIG regime as announced will ever become law. Those who may be impacted by the change in rules and their advisers should monitor developments and prepare to react quickly once there is more certainty in terms of both the timing and the extent of reform.

Other Budget Announcements

The Chancellor made a number of other announcements:

- significant future changes to the scope of UK inheritance tax were signposted, to include moving from a domiciled-based system to a residence-based system;an increase in the VAT registration threshold from £85,000 to £90,000 from 1 April 2024;the abolition of the furnished holiday lettings tax regime from 6 April 2025;a reduction in the top rate of capital gains tax from 28% to 24% for disposals of any residential property, other than a taxpayer's main home, from 6 April 2024;changes to the High Income Child Benefit Charge to include an increase in the starting threshold for clawback from £50,000 to £60,000 from 6 April 2024;the abolition of multiple dwellings relief, a relief from stamp duty land tax for purchasers acquiring more than one residential property, from 1 June 2024;the extension of the energy profits levy, the windfall tax on UK oil and gas profits, by a year to 31 March 2029; andthe introduction of a new UK ISA, with an additional allowance of up to £5,000 for investment in UK assets.

Other Developments

National Minimum Wage: review of salaried workers recommended

The significant increases in the NMW rates from April 2024 mean that the buffer in hourly pay above the NMW is likely to reduce for many businesses, resulting in a greater risk of an inadvertent breach. Many employers who breach the NMW rules actually pay at least the NMW as an hourly pay rate but fall foul of technicalities in the legislation. It is recommended that businesses conduct a full review of salaried workers, to include higher-paid employees, whom employers typically assume present no NMW compliance risk and do not therefore monitor as closely as those employees whose hourly pay rate is close to the NMW. Of key importance is ensuring that working hours are monitored across the "calculation year", and not just each "pay

period" in isolation, as NMW compliance is assessed over the course of the salaried worker's "calculation year". This is because although most salaried workers will not be identified as breaching the NMW for each pay period in which additional hours are worked, the breach may occur when taking a view of the full year.

Carbon Border Adjustment Mechanism

In December 2023 the UK Government announced that it would implement a Carbon Border Adjustment Mechanism (CBAM) to account for the carbon cost of producing imported goods, with the ultimate aim of reducing greenhouse gas emissions and supporting global progress towards net zero. The CBAM aims to ensure equal treatment of domestic and imported goods by applying a charge to carbon emitted during the production of imported carbon-intensive goods, such as aluminium, cement, iron and steel. A joint HM Revenue & Customs/HM Treasury consultation opened on 21 March 2024 and runs until 13 June 2024. Based on the UK Government's announcements, the UK CBAM will be similar to the EU CBAM, but there will be differences in terms of timescale and scope. There also remains uncertainty regarding how the EU CBAM will apply to Northern Ireland under the Windsor Framework. Although the CBAM is not expected to apply until January 2027, businesses that operate in the impacted industries and import carbon-intensive goods to the UK should be aware of and plan for this additional charge coming down the track.

Customs Update – Summer 2024

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Introduction

In the post-Brexit world, Irish traders have been substantially exposed to the world of customs and trade obligations. The latest annual report from Revenue[1] showed a significant increase in the number of import declarations filed, from 40.2 million in 2022 to 50.3 million in 2023. In an even starker contrast, the number of import declarations filed in 2020 (before the UK left the European Union on 1 January 2021) was just over 1 million.[2]

This means that Irish traders have needed not only to familiarise themselves with but also to have a deep understanding of customs and trade regulations. This is of significant relevance on the importation side, where there is a direct financial impact as customs duties may be payable.

Customs duty is payable on import and is calculated on the basis of a number of factors – namely, origin (preferential and non-preferential), tariff classification and the customs value of the imported goods. We refer to these areas as the three "customs duty drivers". In practice, the price on the commercial invoice relating to the sale between the seller, often based in a third country, such as the US, and the Irish-based buyer is often used as the customs value of the imported goods. Although this is a starting point, there are other important factors that importers should consider when valuing their goods.

Customs valuation is one of the most complex areas in international trade, and it has a direct financial impact on importers. Therefore, this article will guide you through the high-level customs valuation principles, common pitfalls and what Irish traders should be looking out for when importing goods to Ireland.

General Customs Valuation Principles

The global rules on customs valuation are contained in the World Trade Organization's Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ("the WTO Customs Valuation Agreement") and have been adopted by most trading nations. Under the WTO Customs Valuation Agreement the primary rule for determining the customs value of imported goods is generally the **transaction value**, which is the price paid or payable for the goods when they are sold for export to the importing country.[3]

Where there is no "transaction value" or where the transaction value is not appropriate (for example, supplies for which there is no payment, supplies provided free of charge), alternative methods of valuation must be employed to calculate the appropriate customs value.

These **alternative, or secondary, customs valuation methods** are set out in the WTO

1 See https://www.revenue.ie/en/corporate/press-office/annual-report/2023/ar-2023.pdf.
2 See https://www.revenue.ie/en/corporate/press-office/annual-report/2021/ar-2021.pdf.
3 WTO Customs Valuation Agreement, Article 1.

Customs Valuation Agreement.[4] It must be determined in sequential order whether each valuation method can be applied.[5] If a method can be used, it must be used, before proceeding to the next alternative method. The methods are:

- transaction value of identical goods,
- transaction value of similar goods,
- deductive method (resale minus),[6]
- computed method (cost plus) and
- use of reasonable means.

These customs valuation methods are applicable globally, including in the EU, as they have been transposed into EU customs legislation, namely, the Union Customs Code (UCC).[7]

Of all customs valuation methods, the transaction value is the one that is most commonly applied, and it is estimated that 90–95% of global trade is valued on the basis of the transaction value.

Transaction Value

The transaction value is the primary method for determining the customs value of imported goods. The transaction value is defined as **"the price actually paid or payable for the goods when sold for export to the customs territory of the EU, adjusted, where necessary"**.[8] The transaction value also includes any other payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or to a third party– for example, to satisfy an obligation of the seller.[9]

The transaction value method, pursuant to the provisions of Article 70(1) and (2) of the UCC, needs to be applied where there is a sale of goods for export to the EU's customs territory. However, certain conditions need to be met for the transaction value to apply:[10]

- There are no restrictions imposed on the buyer regarding the disposal or use of the goods that they acquire.
- The sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued.
- No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made.
- The buyer and seller are not related, or where they are related, the relationship did not influence the price of the products.

In practice, and for the vast majority of imports to Ireland, the basis of the transaction value will be the price of the goods as included in the commercial invoice for those goods. It is a legal requirement for the importer to keep the commercial invoices related to the imported goods in their records.[11]

Related-Party Transactions

The transaction value is typically the most straightforward valuation method, as it is based on the price of the goods, adjusted as necessary for elements that need to be

4 WTO Customs Valuation Agreement, Articles 2–7.

5 It is mandatory to determine whether the first valuation method can be applied before analysing the second, etc. If, for example, it is established that "identical goods" cannot be applied, only then should "similar goods" be considered.

6 Although the "deductive value" method would be the next valuation method in order after "similar goods", an importer can request to apply the "computed value" method instead.

7 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast).

8 Article 70(1) UCC.

9 Article 129(1) UCC Implementing Act (UCC IA), Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

10 Article 70(3) UCC.

11 Article 145 UCC IA.

included or that can be excluded. These elements are addressed later in the article.

It is, however, important to note that where goods are sold between two related entities (i.e. inter-company sales) the transaction value can only be used where the importer can show that the price of the imported goods has not been influenced by the relationship between the buyer and the seller. This is to avoid prices being artificially reduced to lower the amount of customs duties payable. An importer that purchases goods from a related seller will thus need to ensure that the price is not influenced by the relationship.

Transfer pricing

One way that an importer could provide evidence that the price has not been influenced is by undertaking a transfer pricing study and having a transfer pricing policy in place.[12] The practice of transfer pricing is looking to establish the price to be paid for assets, goods or services for related-party dealings within a multinational group.

More specifically, transfer pricing is aimed at pricing related-party transactions between affiliated companies in a multinational group as they would be priced if those transactions were conducted with third parties. This means, in effect, that the price that related parties charge each other should be "at arm's length". A transfer pricing study is typically undertaken to benchmark and establish what the pricing range of identical or similar products (or services) would be in the same sector between third parties.

It is common where a transfer price is being used for inter-company sales that periodic, retroactive transfer pricing adjustments are being made (e.g. on a quarterly basis or after a year-end). Such adjustments could mean that the seller has to make a payment to the buyer, or vice versa, thus effectively amending the initial price that was paid by the buyer to the seller. Where a transfer price is used as the basis for the customs value for goods that were imported to the EU, the question can arise of how related retroactive transfer pricing adjustments impact the customs value declared at the moment the goods were imported.

Hamamatsu

In a 2017 case before the Court of Justice of the European Union (CJEU) this was the question that was referred by a German court. The ***Hamamatsu* case** was a significant ruling by the CJEU[13] and primarily dealt with the question of whether a transfer price subject to retroactive price adjustments can be used as the basis for the transaction value method to determine the customs value. The case focussed on whether it is allowed to use a transaction value that consists of the amount initially invoiced and declared at import, which after an accounting period is adjusted downwards or upwards, depending on the transfer pricing agreement in place.

The main considerations of the CJEU were that the customs legislation in force at the time, the Community Customs Code (CCC),[14] did not impose any obligation on importers to apply for adjustment of the transaction value where it is subsequently adjusted upwards and it does not contain any provision enabling the customs authorities to safeguard against the risk that those undertakings apply only for downward adjustments (which would lead to refund requests).

In those circumstances the CJEU ruled that "the customs legislation does not allow account to be taken of a subsequent adjustment of the transaction value, such as that at issue in the main proceedings". As a result, the CJEU concluded that the CCC:

12 See, for example, World Customs Organization Case Study 14.1, https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/case-study/case-study-14_1-en.pdf?db=web.

13 *Hamamatsu Photonics Deutschland GmbH v Hauptzollamt München* C-529/16, 20 December 2017.

14 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code – the EU customs legislation in effect before the UCC.

"does not permit an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, without it being possible to know at the end of the accounting period whether that adjustment would be made up or down".

This judgment was issued on the basis of the provisions of the CCC, which ceased to apply as of 1 May 2016, when the UCC entered into effect. However, transfer prices subject to retroactive adjustments are still being used by importers as the basis of the customs value under the transaction value method. The practice between EU Member States' customs authorities in terms of applying the outcome of the *Hamamatsu* cases differs greatly. Certain Member States no longer allow such transfer prices to be used as the basis of the transaction value and thus require importers to apply a secondary customs valuation method, whereas others still allow such transfer prices to be used as the basis for the translation value method. In Ireland a transfer price can be used as the basis for the customs value under the transaction value.

Elements to Consider When Applying the Transaction Value Method

When there is a sale for export to the EU and the transaction value method can be applied, certain additions will need to be included in the transaction value insofar as applicable.[15] Similarly, certain elements should be excluded from the transaction value.[16]

Additions to the transaction value

There are a number of additions that need to be considered when the transaction value is applied, which are listed in Article 71 UCC. It is important to note that no additions other than those listed in that article will need to be made to the price actually paid or payable.[17] Some of the more common additions are set out below.

The first and most obvious addition to include in the transaction value is the cost of **transport and insurance**[18] up to the place where goods are brought into the EU's customs territory.[19] This means that any transport and insurance costs that relate to the post-importation transport of the goods within the EU do not need to be included in the transaction value.

Second, an addition that is not always considered is **royalties and licence fees**[20] related to the goods being valued that the buyer must pay as a condition of sale of the goods. Often an importer will have entered into an agreement with the seller or a third party to pay, for example, a licence fee for the use of intellectual property rights, which could sit with the seller or another party. Insofar as such licence fees relate to the goods being imported **and** are a condition of sale, i.e. the seller would not have sold the goods to the importer **without** payment of such licence fees, these fees would need to be included in the transaction value. However, where, for example, on the basis of the contract between the buyer and the seller the payment of such fees is not a condition of sale, even though the fee relates to the imported goods, it does not need to be added: the seller would sell the goods to the buyer even when the payment of such a licence fee is not made.

Last, it is worth noting that the value of certain goods or services that were provided by the buyer to the seller **free of charge** (or at a reduced cost) and were used in the production and sale for export of the imported goods will need to be added to the transaction value, i.e.

15 Article 71 UCC.

16 Article 72 UCC.

17 Article 71(3) UCC.

18 Articles 137 and 138 UCC IA.

19 Almost every country has adopted the custom valuation methods as set out in the WTO Valuation Agreement. On the basis of this agreement, costs for transport and insurance are not mandatorily included in the transaction value. Instead, it is up to each WTO member to decide whether transport and insurance costs should be included in the transaction value when goods are imported to its customs territory. For example, in the United States the transaction value does not need to include transport and insurance costs.

20 Article 136 UCC IA.

"**assists**". Such assists include tools and moulds but also certain artwork, designs, and plans and sketches.[21]

Elements not to be included in the transaction value

Article 72 UCC provides for the elements that shall not be included in the transaction value, such as the cost of transport of the imported goods after their entry to the EU and charges for construction, erection, assembly, maintenance or technical assistance undertaken after entry of the goods to the EU (e.g. industrial plants or equipment).

A very important excludable element to note is payments made by the buyer for the **right to distribute or resell the goods**. Such payments can generally be excluded from the transaction value, **unless they are a condition of the sale for export of the goods**. Based on established CJEU case law,[22] a payment is such a "condition of sale" of the goods being valued where, in the course of the contractual relations between the seller, or the person related to the seller, and the buyer, **that payment is so important to the seller that without it the seller would not have concluded the sales contract**.

It is therefore vital for an importer to consider all payments that might be made for the importation of the goods and review the contracts where the payments are further described to ascertain whether a payment needs to be included or can be excluded from the transaction value.

No Sale for Export to the EU

The majority of imports to the EU and Ireland will be based on an underlying sale, and as a result, the transaction value is the most applied customs valuation method. There will, however, be instances where there is no sale based on which the goods are imported to the EU – for example, when an importer imports its own goods for internal use, when goods are imported free of charge or when at the moment of import there is no sale yet but there will be sale after the goods have been imported. In those cases the importer will need to review whether an alternative valuation method can be applied, in sequential order.

Secondary Valuation Methods

Where the transaction value cannot be applied, the importer will need to consider an alternative valuation method, starting with the "transaction value of identical goods".

Identical goods

"Identical goods" are goods that are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical. Note that the use to which otherwise identical goods are put does not prevent them from being considered "identical". Furthermore, the goods must be produced in the same country as the goods being valued and produced by the producer of the goods being valued. Last, the goods must be sold for export to the same country of importation and exported at or about the same time as the goods being valued. Application of the "identical goods" valuation method means that the customs value shall be the transaction value of the "identical" goods.

Similar goods

If products shipped to the country of import do not meet any of the conditions to qualify as "identical goods" and that valuation method cannot be applied, it must be considered whether they qualify for the "similar goods" valuation method. This method describes "similar goods" as being goods that, although not alike in all respects, have like characteristics and like component materials, which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark

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21 As long as these plans and sketches were undertaken elsewhere than in the EU and necessary for the production of the imported goods.

22 For example, *5th Avenue Products Trading GmbH v Hauptzollamt Singen* C-775/19, 19 November 2020, and *GE Healthcare GmbH v Hauptzollamt Düsseldorf* C-173/15, 9 March 2017.

are among the factors to be considered in determining whether goods are similar.

Similar goods are goods closely resembling the goods being valued in terms of component materials and characteristics, goods that are capable of performing the same functions and are commercially interchangeable with the goods being valued. For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued. Last, the goods must be produced in the same country as the goods being valued and by the producer of the goods being valued.

If these conditions are met, the customs valuation is based on the "transaction value" for the similar goods. If it is established that the "similar goods" valuation method cannot be applied, the "deductive value" method or "computed value" method must be considered.

Deductive value method

As per Article 74(2)(c) UCC, if the imported goods, or identical or similar imported goods, are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this article shall be based on the unit price at which the imported goods, or identical or similar imported goods, are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to certain allowable deductions. Such deductions include:

- either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
- the usual costs of transport and insurance and associated costs incurred within the country of importation and to the port or place of importation; and
- the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

Computed value method

Although the "deductive value" method would be the next valuation method in order after "similar goods", an importer can request to apply the "computed value" method instead. This is because the "deductive value" method requires a domestic sale of similar or identical goods. In cases of, for example, free-of-charge supplies, there would not be such a sale at hand. Therefore, the "deductive value" method would be discounted.

The "computed value" method would entail building up an appropriate customs valuation, consisting of at least:

- the fair market value (FMV) for the cost of production of the product (including materials, processing, packaging, labour and other overheads);
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued that are made by producers in the country of exportation for export to the country of importation, which includes:
  - FMV expenses (including certain R&D expenses);
  - an allocation for profit in line with the profit in sales of goods produced in the same country for export to the country of import that could be characterised as being in the same class or kind as the goods being valued; and
  - transport and insurance costs.

Fall-back method ("reasonable means")

If the customs value of the imported goods cannot be determined under the provisions of the aforementioned customs valuation methods, the customs value shall be determined using reasonable means consistent with the principles and general provisions of the WTO Customs Valuation Agreement, of

Article VII of GATT 1994 and of the UCC, and on the basis of data available in the country of importation. In practice this comes down to re-evaluating the application of the previous valuation methods in a more flexible way – for example, for "identical" or "similar" goods, a country other than the country where the goods have been manufactured and exported from can be taken into consideration.

Areas of Focus for Importers

In practice there are a number of areas of focus that Irish importers should be aware of:

- **Related-party transactions:** Especially for Irish importers that are part of a larger, multinational network and particularly post-Brexit, related-party transactions should be scrutinised, and it should be ensured that the price paid by the buyer is not influenced by the relationship between the buyer and the seller. A transfer price study can help with this.
- **Additions to the transaction value:** Importers should review all payments that are being made or that are included in the contracts that they conclude with suppliers to ensure that they are aware of the treatment of each payment and whether it should be included in or excluded from the transaction value and ensure that substantial information to back this up is in place.
  - Especially where the importer makes payments for royalties, whether to the seller or to a third party, as a condition of sale for the imported goods, the contracts underlying these payments should be reviewed to establish whether the payments need to be included in the transaction value.
- **Chain of sales:** Where there is a chain of sales before the entry of the goods to the EU, the transaction value should be based on the sale occurring immediately before the goods are brought into the EU's customs territory
- **A value of €0 is never allowed:** For example, in the case of free-of-charge supplies, a customs value of higher than €0 must be determined in accordance with the aforementioned customs valuation methods.
- **Documentation:** Importers should maintain all records related to their imports, especially supply, royalty, licence and distribution contracts; commercial invoices; transfer pricing policies or studies; and any customs valuation declarations.[23] This is essential, for example, in the case of Revenue audits.

More generally, customs valuation is dynamic, and importers should review their customs valuation periodically to ensure that a proper valuation is assigned to their imported products.

Recent CJEU Cases on Customs Valuation

Because of the complexity around customs valuation, courts of the EU Member States often refer cases to the CJEU for preliminary rulings. Some recent cases are summarised below:

- The ***FAWKES Kft.*** case[24] related to the determination of the transaction value of identical or similar goods for customs valuation, considering databases set up and managed by the national customs authority and other EU services.
- The ***'Baltic Master' UAB*** case[25] related to the determination of the customs value and the concept of "related persons". It also discussed the use of information from a national database for determining the customs value.

23 A valuation declaration (also called a "DV1" or, in Ireland, "G563") is required to be submitted to the EU customs authorities at the country of import where the value of a (commercial) consignment of goods exceeds €20,000 and customs duties are payable. In Ireland this declaration is submitted through the Automated Import System under data element 4/13. Traders can obtain a G563 authorisation from Revenue for continuous shipments by the same seller to the same buyer under the same commercial conditions.

24 *FAWKES Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* C-187/21, 9 June 2022.

25 *'Baltic Master' UAB v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos* C-599/20, 9 June 2022.

- The CJEU confirmed in ***5th Avenue***[26] that payments for certain exclusive distribution rights should be added to the transaction value.
- In ***BMW Bayerische Motorenwerke AG***[27] the CJEU confirmed the possibility that the economic value of software designed in the EU and made available free of charge by the buyer to the seller, established in a third country, can be added to the transaction value of imported goods.

Valuation Orders and Binding Valuation Decisions

Valuation orders

In Ireland traders can apply for and obtain so-called valuation orders from Revenue. Valuation orders lay down the valuation methods by which customs values should be determined in certain cases. According to Revenue guidance, in many instances where valuation orders are used, the customs value will be determined by an adjustment to the price paid (e.g. invoice price plus x%), but alternative methods of determining the customs value can also be used.

Where a valuation order is in place, the importer must declare the customs value based on the terms of the valuation order. The valuation order applies only to goods supplied by the seller named in the valuation order. The importer may also be importing goods from other suppliers where there is no relationship and where the price paid or payable is an acceptable basis for customs valuation.

Binding valuation decisions

The European Commission has published new proposed amendments to the Union Customs Code, which introduce Binding Valuation Information (BVI) decisions. A BVI decision allows importers to obtain certainty around the customs valuation of their goods, which is the basis for the calculation of customs duties.

In addition, these amendments provide for the implementation of an online database for all binding customs information. This would include, in addition to BVI decisions, Binding Tariff Information (BTI) and Binding Origin Information (BOI). Currently, only an online database for BTI exists.[28] A BTI can be applied for with the customs authorities to obtain certainty around the tariff classification of the goods imported. A BOI could provide certainty around the origin (whether preferential or non-preferential) of goods imported. Both tariff classification and origin have a direct impact on the customs duty payable on import, and both BTIs and BOIs have been available for traders for many years.

These amendments are expected to come into effect as of 1 December 2027.

Conclusion

Customs valuation is one of the most complex areas in international trade. Post-Brexit, more importers in Ireland have been exposed to customs and trade obligations. As customs valuation is one of the three customs duty drivers (alongside origin and tariff classification), importers should familiarise themselves with the customs valuation aspects and how their goods are valued on importation.

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26 C-775/19, 19 November 2020.

27 *BMW Bayerische Motorenwerke AG v Hauptzollamt München* C–509/19, 10 September 2020.

28 See https://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en.

Revenue Commissioners' Update: Revenue's Compliance Approach Related to the Exchange of Financial Account Information

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Introduction

Automatic Exchange of information (AEOI) is the cross-border sharing of information by tax administrations including Revenue, under agreements between jurisdictions. The exchange of financial account information is an important element of AEOI globally and includes details of financial accounts and investments held by non-residents in financial institutions, including, but not limited to, banks, building societies and investment companies.

Entities providing financial services are required to assess their classification with respect to AEOI legislation and understand their AEOI obligations. Depending on the classification status of an entity, it may be considered a Financial Institution ("FI") under the frameworks described below with ongoing regulatory obligations. Non-compliance can result in legal and financial consequences.

FIs operating in Ireland provide Revenue with information on customers who are reportable due to their tax residence or citizenship being outside Ireland. Revenue shares this information with the relevant jurisdictions under the appropriate legal framework. Revenue in turn receives information from other jurisdictions in which Irish tax residents hold financial accounts and investments.

Ireland has AEOI agreements in place to exchange financial account information under two significant frameworks:

- The Foreign Account Tax Compliance Act (FATCA) is a bilateral information-sharing agreement between Ireland and the US, agreed in 2012, for the exchange of financial account information supplied by Irish and US FIs.

- The Common Reporting Standard (CRS) is the agreed global standard for the exchange of financial information, approved by the Organisation for Economic Co-operation and Development (OECD) in 2014, and to which Ireland and over 100 other jurisdictions have signed up. An amendment to the EU Directive for Administrative Cooperation (DAC) made CRS mandatory for all EU Member States, so this framework is often described as DAC2-CRS.

In recent years, there have been significant changes in the international tax landscape, and tax authorities are working more closely than ever before to ensure that the information exchanged via FATCA and DAC2-CRS is accurate and reliable for the receiving jurisdiction, including for example:

- Revenue is subject to ongoing peer reviews to ensure that effective measures are in place to deal with Irish FIs' compliance with their due diligence and reporting obligations;

- Revenue engages in international fora convened by the OECD, the European Commission and the Intra-European Organisation of Tax Administrations (IOTA), and contributes to the formulation of best practice in FATCA and DAC2-CRS compliance checks.

These reviews and ongoing engagement require Revenue's AEOI compliance approach to be agile, as we continue to incorporate a risk-centred focus to our compliance activities and adapt to the changing expectations of our international colleagues. Consequently, Revenue has increased the extent of AEOI compliance checks, resulting in an additional level of scrutiny associated with such interventions.

This article sets out FIs' obligations and Revenue's current compliance approach related to the exchange of financial account information, which will be of interest to tax practitioners, including those whose companies or clients whose financial accounts may fall within the scope of FATCA or DAC2-CRS, as well as to FIs themselves and FATCA/DAC2-CRS Agents.

Obligations of Financial Institutions

Irish financial institutions play a crucial role in global efforts to combat tax evasion and ensure transparency in financial transactions and digital economies. Ultimately, this helps to ensure that global tax evasion can be tackled more efficiently and effectively.

The onus is on each Irish financial institution to conduct a self-review to determine whether they are, in fact, a 'Financial Institution' ('FI'), for the purposes of FATCA and DAC2-CRS. Both FATCA and DAC2-CRS have specific definitions setting out when an entity is considered an FI. These definitions are split into subcategories, custodial institutions, depository institutions, investment entities and specified insurance companies. Irish legislation provides for the entity classification rules for DAC2-CRS and FATCA, with full details of FI classifications explained in the OECD standard[1] for DAC2-CRS and in the Intergovernmental Agreement (IGA) for FATCA[2]. FIs should ensure that their classifications and self-reviews stand up to scrutiny, as Revenue may request the self-review analysis and supporting evidence as part of a compliance intervention.

FIs should use Revenue Online Service (ROS)[3] to register for FATCA and/or DAC2-CRS reporting obligations. If registering for a FATCA reporting obligation, the FI must first obtain a Global Intermediary Identification Number (GIIN) with the US Internal Revenue Service (IRS)[4].

The completion of the required due diligence procedures by FIs at account opening is an integral part of the reporting framework. For all new accounts, the account holder's status for DAC2-CRS and FATCA must be established and verified, and self-certifications obtained where required. The account holder's foreign

1 OECD (2018), *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* - Second Edition, OECD, Paris, link: https://www.revenue.ie/en/companies-and-charities/documents/aeoi/common-reporting-standard-crs.pdf

2 Revenue Commissioners, Agreement Between the Government of Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA. Available at: https://www.revenue.ie/en/companies-and-charities/documents/aeoi/fatca-intergovernmental-agreement.pdf

3 Link to Revenue website detailing how to register for DAC2-CRS and FATCA: https://www.revenue.ie/en/companies-and-charities/international-tax/aeoi/fatca/how-to.aspx

4 Link to IRS FATCA information & GIIN registration: https://www.irs.gov/businesses/corporations/fatca-foreign-financial-institution-registration-system

Tax Identification Number (TIN) must be collected at the time of account opening. For all new accounts, the account should not become operational until the self-certification has been properly validated. Failure to comply with this requirement may lead to the imposition of penalties.

Irish FIs that are registered for a FATCA and/or DAC2-CRS reporting obligation should file the respective returns annually using ROS, by the 30 June deadline for the previous calendar year. Under FATCA, Irish FIs are obliged to identify and report accounts held by US persons to Revenue, and this data is then exchanged with the IRS. This reporting involves FIs conducting due diligence checks to ascertain whether an account holder is a US person and reporting relevant information, such as account balances and income. Similarly, under DAC2-CRS, Irish FIs are required to collect and report financial information of account holders who are tax resident in any jurisdiction other than Ireland and the US. This information includes account balances, interest, dividends and other relevant details.

Revenue's Compliance Approach

Revenue conducts rigorous compliance reviews through Quality Assurance Checks (QACs) on Irish FIs to ensure adherence to FATCA and DAC2-CRS reporting obligations. Furthermore, Revenue is committed to ensuring good quality data is provided to our peers in other jurisdictions under these reporting regimes.

The purpose of QACs is to ensure that FIs adhere to their obligations, while also validating the accuracy and completeness of the reported data. Under FATCA guidelines and policy, QACs are also a method of ensuring that the FI's due diligence procedures are robust and that any Standard Operating Procedures (SOPs) in place meet the criteria outlined. In the context of DAC2-CRS, QACs follow the same procedure as those carried out for FATCA and focus on verifying the DAC2-CRS procedures followed by an FI. The QAC also ensures that the reported data aligns with established international standards. For those FIs that file returns for both FATCA and DAC2-CRS, the QAC will examine the FI's adherence to their obligations under both frameworks simultaneously.

QACs conducted by Revenue involve a comprehensive assessment of the internal controls, systems and processes implemented by FIs to comply with FATCA and DAC2-CRS. FIs should establish robust mechanisms for data collection, validation and reporting. QACs scrutinise these mechanisms to identify any gaps or weaknesses that could compromise the accuracy and integrity of the reported information. Each QAC examines:

- Data Quality
- Governance and due diligence procedures
- Correct Identification of Entities and Products.

Given the rigour of Revenue's approach, QACs also act as an outreach tool and provide a mechanism for Revenue to identify and communicate any recurring FATCA and DAC2-CRS compliance issues so that they can be rectified promptly.

Revenue's overall compliance approach for FATCA and DAC2-CRS also includes activities related to:

- Non-filer Interventions and
- Unregistered FIs

Data Quality

Complete and accurate information must be extracted by FIs to prepare reports and returns in accordance with DAC2-CRS and FATCA XML schemas and user guides. Filing guidelines are available in the Revenue Tax and Duty Manuals (TDMs):

- Filing Guidelines for Foreign Account Tax Compliance Act (FATCA)[5] - Part 38-03-25 and
- Filing Guidelines for DAC2-Common Reporting Standard (CRS)[6] – Part 38-03-26.

Information collected for reporting must be properly safeguarded and accessible to Revenue for review purposes, whether it is collected electronically, manually or by a third-party service provider. FIs should be prepared to respond to Revenue in relation to the following questions:

- What procedures are in place to ensure that the extraction of the information is performed correctly and in a manner that ensures complete and accurate reporting?
- What steps are taken (for example, analytical reviews, exception testing, and so on) to ensure the completeness and accuracy of the DAC2-CRS and FATCA report/return?
- Have Tax Identification Numbers (TINs) been validated through due diligence procedures and checked for accuracy?
- What procedures are in place to ensure that the format of the reports/returns conform with the most up-to-date DAC2-CRS and FATCA schemas?
- Are policies and procedures in place to ensure records are kept up to date and that validation checks are performed to reconcile accounts and submit nil reports/returns?

Governance and Due Diligence Procedures

FIs must ensure that they have established and documented clear procedures and controls for collecting and reporting data, in compliance with FATCA and DAC2-CRS guidelines. This is a central feature of effective due diligence procedures. As part of the QAC process, FIs should expect to be asked to provide supporting documentation that sets out these procedures. This documentation can be in the form of checklists, manuals, internal correspondence, and so on. FIs should be prepared to explain and demonstrate these processes, showing clear oversight and adherence to all procedures, for example:

- To ensure successful implementation and ongoing compliance of DAC2-CRS and FATCA, the FI should have a written or documented project plan in place involving key stakeholders within the FI that have oversight and responsibility for all aspects of DAC2-CRS and FATCA implementation, compliance and maintenance. Stakeholders may include, but are not limited to, tax departments, legal counsel, Responsible Officer and external service providers.
- The FI should have documentation of its collaboration with internal stakeholders for initial DAC2-CRS and FATCA implementation.
- The FI's DAC2-CRS and FATCA training schedule, timelines and materials should be assessed and updated regularly.
- The FI should have robust documentation describing and supporting its implementation plan and efforts.

Correct Identification of Entities and Products

A non-exhaustive illustration of the potential areas which may be assessed by Revenue on the FI's classifications of entities, services and products is as follows:

- FIs should have systems and processes to identify which due diligence procedures should be applied to a particular account.
- FIs should be able to demonstrate that the only accounts that they have excluded from

5 https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-38/38-03-25.pdf
6 https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-38/38-03-26.pdf

due diligence and reporting are those that meet the definitions and/or requirements of Excluded Accounts as set out in domestic law.

- A change in circumstances should trigger certain due diligence processes. FIs should be prepared to provide a demonstration of how such changes are tracked and how these processes are triggered.

- Self-certification should be obtained in the case of all New Entity Accounts. This self-certification should determine whether the entity is a Reportable Person, and whether the entity is a Passive Non-Financial Entity (NFE)[7] with one or more Controlling Person that is a Reportable Person.

QACs are carried out as Level 1 *Profile Interviews* or *Compliance Contacts* under Revenue's Compliance Intervention Framework (CIF). Prior to the intervention or interview, FIs will be required to provide a suite of information and documentation in support of their due diligence procedures to confirm the accuracy of their submitted returns. An *Initial Information Request* may be issued along with the contact letter to request additional information and documentation on specific accounts or total account listings. Revenue will flag a request for total account listings at an early stage in the QAC process and will advise the FI of the level of detail required. FIs with a large number of accounts, such as commercial banks, may require the assistance of their IT support staff.

Although the due diligence and reporting process may be outsourced to third-party service providers, FATCA and DAC2-CRS legislation confirms that the FIs themselves maintain overall responsibility for the process. FIs must therefore ensure oversight controls are in place and that FATCA/DAC2-CRS teams are aware of their responsibilities. FIs must also ensure that they have an assigned *Responsible Officer* for FATCA and DAC2-CRS compliance. This officer should lead the Revenue caseworkers through the various queries levelled as part of the QAC. Entities registered for DAC2-CRS and FATCA are obliged to ensure that the contact details provided to Revenue for the entity and the Responsible Officer are correct to avoid any delays in contacts.

Non-filer Interventions

Irish FIs should be aware of the annual FATCA/DAC2-CRS filing deadline. The respective returns should be filed annually using ROS by 30 June for the previous calendar year. Revenue issues non-filer reminder notice letters to Irish FIs that are registered for FATCA and/or DAC2-CRS reporting obligations through ROS but did not file a return for the corresponding reporting period. This is part of an annual process to ensure compliance with FATCA and DAC2-CRS filing requirements. Where Revenue records indicate that a return remains outstanding for the reporting period, a Level 1 Compliance Contact Intervention will be initiated, and further correspondence will be issued to the FI. Revenue strongly encourages prompt engagement to address any issues concerning outstanding returns, as matters may be escalated further and/or penalties may be applied for non-compliance.

Revenue has identified the following common issues in relation to previous non-filer compliance programmes.

- Errors in Registration: This can occur where an FI has registered for a FATCA and/or DAC2-CRS reporting obligation in error. If FIs are unsure of their reporting obligations, they should review their business model to ascertain if they fall into one of the four categories of a Reportable FI, as per the definitions in the FATCA/CRS guidelines.

- Duplicate Registrations: FIs should ensure that FATCA/DAC2-CRS returns are filed under the same Tax Reference Number as previous years, particularly in cases where

7 Under the CRS, a *Passive NFE* means any NFE that is not an Active NFE.

there is a change in the FATCA/DAC2-CRS Agent.

- FIs and FATCA/DAC2-CRS Agents should be aware of the XML schema requirements as per Annex 3 of the Common Reporting Standard User Guide (DAC2-CRS)[8] and the FATCA XML Schema v2.0 User Guide[9]. Guidance on using XML schema to file FATCA[10] and DAC2-CRS[11] returns on ROS can also be found on the Revenue website.

Identifying Unregistered FIs

Tax authorities' maintenance of a comprehensive and up-to-date register of FIs with a DAC2-CRS and/or FATCA reporting obligation is critical to ensuring the effective functioning of the DAC, CRS and FATCA Intergovernmental Agreement. Unregistered entities are entities that have failed to register for DAC2-CRS and/or FATCA, despite meeting all the requirements of a Reporting Financial Institution. Therefore, in addition to the non-filer compliance programme, Revenue completes risk evaluation of Irish FIs to determine any omissions or failures to register a reporting obligation for DAC2-CRS and/or FATCA.

The key focus of this compliance activity is to request additional information from the entity, relevant to their decision not to register for DAC2-CRS and/or FATCA. Interventions identified are handled in the same way as non-filer compliance cases.

Common Issues and Errors

In conducting compliance activities related to FATCA and DAC2-CRS, including QACs, Non-filer Interventions and Identifying Unregistered FIs, Revenue has identified the following common issues and errors.

- Undocumented accounts – The undocumented account procedure only applies to DAC2-CRS and there is no equivalent under FATCA regulations. FIs should be aware that an account can only be marked as an undocumented account if it is a pre-existing individual account. A pre-existing account for DAC2-CRS is:

  - An account opened on or before 31 December 2015;
  - Where there is only a *hold mail* instruction or an *in care of address* associated with the account; and
  - Where the indicia search results in no indicia being identified.

  There is an obligation in the DAC2-CRS on tax authorities to follow up on all undocumented accounts reported.

- Non-reportable accounts – FIs have included non-reportable accounts in their returns in error. These could relate to another FI, for example.

- Errors in registration –FIs have registered for a reporting obligation in error, despite not meeting the criteria to be considered a reportable FI as outlined by the standards.

- Payments out – Payments out must be included in AEOI submissions. While reviewing unregistered FIs, Revenue has identified FIs that have excluded some payments out on policies. This is mainly due to an incorrect interpretation of the schema that the reporting of such payments is optional. Reporting of these payments is not optional.

8 OECD (2018), *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* - Second Edition, OECD, Paris, link: https://www.revenue.ie/en/companies-and-charities/documents/aeoi/common-reporting-standard-crs.pdf

9 https://www.irs.gov/pub/irs-pdf/p5124.pdf

10 FATCA: https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-38/38-03-25.pdf

11 DAC2-CRS: https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-38/38-03-26.pdf

- Missing TINs – Valid TINs should be included in reporting of new accounts. Invalid or missing TINs could be indicative of weak due diligence procedures. FIs must ensure that TINs are correctly sourced and included in all relevant submissions.

- Corrections – Difficulties with making corrections appears to be the most common issue for FIs. Correction files must be linked to the original DOCREFID and additional corrections must be linked to the correction file.

- Incomplete returns – When carrying out sample checks, Revenue may ask for copies of account opening forms and any other correspondence received in relation to specific account numbers. Revenue has identified many cases of FIs omitting TINs, dates of birth, valid or new addresses, and so on from the return even in cases where an FI has such information to hand. This could be an indicator of poor oversight procedures and results in submitted returns not being wholly accurate.

- Lack of engagement – When a query is sent in relation to DAC2-CRS or FATCA, some FIs have not responded or engaged promptly with Revenue. This slows down proceedings significantly and can lead to penalties for non-compliance.

Penalties for Non-Compliance

Non-compliance with FATCA and DAC2-CRS reporting obligations can result in financial penalties and reputational damage. Under Section 898O of the Taxes Consolidation Act, 1997, an FI shall be liable to a fixed penalty of €19,045 if it:

- Files an incorrect or incomplete return, or

- Fails, without reasonable excuse, to make a return.

The penalty for failure without reasonable excuse to file a return also applies to FIs making a Nil return.

Section 898O, as applied for the purposes of DAC2-CRS and FATCA, also provides that where an FI is liable to the penalty of €19,045 and the failure to make the required return continues, it will be liable to a further penalty of €2,535 for each day that failure continues.

Separately, a penalty of €1,265 applies where:

- An FI does not comply with the relevant Regulations (be it the DAC2-CRS[12] or FATCA Regulations[13]), or

- Does not comply with the requirements of a Revenue officer in the performance of the officer's duties under the Regulations.

The requirements of the Regulations also include the carrying out of due-diligence procedures and maintaining records for a period of six years.

12 DAC2-CRS S.I. No. 609 of 2015 & S.I. No. 583 of 2015

13 FATCA S.I. 292 of 2014

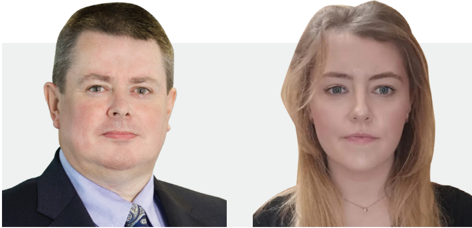
Conclusion

The duties and obligations of FIs in the context of FATCA and DAC2-CRS are pivotal to maintaining the integrity of the global financial system. Through careful adherence to reporting standards and robust internal controls, FIs contribute to the overarching goal of fostering transparency and preventing tax evasion internationally. FIs benefit from a strengthened reputation and reduced risk exposure, thereby bolstering consumer and investor confidence in their services.

For tax authorities, the streamlined exchange of information enables effective risk analysis and interventions, ensuring that tax liabilities are met and risk levels lowered. QACs play a vital part in this and provide for a structured engagement between FIs and Revenue. Revenue's AEOI compliance approach is continuing to evolve and the strengthening of the QAC process reflects this.

Extensive information on the obligations of FIs under FATCA and DAC2-CRS is available on Revenue's website, www.revenue.ie, including links to detailed Tax and Duty Manuals. FIs can also contact Revenue via ROS MyEnquiries[14] with queries on their AEOI compliance, filing obligations and reportable status.

14 Please use the secure 'MyEnquiries' service and select AEOI (Automatic Exchange of Information).



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An Overview of Country-by-Country Reporting in Ireland

Background

In 2013, to address the rising global challenge of base erosion and profit shifting (BEPS), countries in the Organisation for Economic Co-Operation and Development (OECD) and the G20 adopted a 15-point action plan aimed at neutralising BEPS strategies, improving transparency and aligning taxation with substance. The report on one of those actions, *Transfer Pricing Documentation and Country-by-Country Reporting: Action 13 Final Report* (the "BEPS Action 13 report"), was issued in October 2015. The BEPS Action 13 report recommended that large multinational enterprises (MNEs) with turnover of €750m or more should annually prepare a country-by-country (CbC) report, to include aggregated data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions in which they operate.

Although all OECD and G20 countries have committed to the implementation of CbC reporting, it was recognised that some jurisdictions might need additional time to make adjustments to their domestic legislation. As of September 2023, more than 110 jurisdictions, including Ireland, have introduced

legislation to impose such a filing obligation on MNE groups.[1]

In an effort to increase transparency further, the European Union (EU) introduced the Public CbC Reporting Directive ("the Directive"), which entered into force on 21 December 2021. This Directive outlines that multinational groups operating in the EU that earned consolidated revenue of €750m or more in each of the two preceding consecutive financial years must publicly disclose specific information in relation to their activities and financial figures.

EU Member States had until 22 June 2023 to transpose the Directive into national law. The public CbC reporting requirements will apply for all financial years beginning on or after 22 June 2024 but could potentially apply from an earlier date, depending on the timeline of implementation in each country.

Below, we outline first the requirements in respect of the CbC reporting for MNE groups and then the requirements as regards the EU initiative on public CbC reporting.

CbC Reporting in Ireland

CbC reporting was introduced in Ireland as part of Finance Act 2015 and applies for periods commencing on or after 1 January 2016. CbC reporting applies only to MNE groups with annual consolidated group revenue of €750m or more in the preceding fiscal year.

Where the turnover threshold is exceeded, consideration is needed of the reporting entity in the MNE, which could be any one of the following group members:

- an Irish-tax-resident ultimate parent entity (UPE) of an MNE group,
- an Irish-tax-resident surrogate parent entity of an MNE group and
- an Irish-tax-resident EU-designated entity of an MNE group.

CbC reports should be filed in the tax jurisdiction of the reporting entity from the list above and as a result will be shared between tax administrations in different jurisdictions through an automatic exchange of information. CbC reports must be filed within 12 months of the end of the fiscal year to which the report relates.

It should also be noted, although it is outside the scope of this article, that CbC reporting provides the basis of the data required for a "qualifying" CbC report for conducting a Pillar Two analysis. A qualifying CbC report is based on data obtained from the group consolidated financial statements (or amalgamated individual-legal-entity statements) provided they are prepared using accepted financial reporting standards in accordance with the GloBE (Global Anti-Base Erosion) rules.

What Information Is Disclosed in a CbC Report?

CbC reporting requires the UPE of MNE groups (or the surrogate parent entity or designated entity of the group) that meet the revenue threshold to file a CbC report annually. CbC reports should include the results of the UPE and all entities that are included in the consolidated financial statements of the UPE. The OECD recommends that CbC reports should be prepared in the functional currency of the UPE. The information disclosed in CbC reports is collated into three tables.[2]

Table 1

The following information is disclosed in Table 1:

- the amount of revenue (related-party, unrelated-party and total), profit/loss before income tax, and income tax paid and accrued by the group for each tax jurisdiction in which it operates; and
- the number of employees, stated capital, accumulated earnings and tangible assets of the group in each jurisdiction.

1 See https://www.oecd.org/tax/beps/progress-continues-in-strengthening-tax-transparency-through-country-by-country-reporting.htm.
2 OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (Paris: OECD Publishing, 2022), Annex III to Chapter V.

Table 1: Overview of allocation of income, taxes and business acticities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency:											
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2

Table 2 reflects details of each constituent entity in the group doing business in a particular tax jurisdiction and provides an indication of the potential business activities engaged in from a list of 13 options:

- research and development;
- holding/managing intellectual property;
- purchasing or procurement;
- manufacturing or production;
- sales, marketing or distribution;
- administrative, management or support services;
- provision of services to unrelated parties;
- internal group finance;
- regulated financial services;
- insurance;
- holding shares or other equity instruments;
- dormant; and
- other.

Table 2: List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:															
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)												
			Research and Development	Holding/managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other[2]
	1.														
	2.														
	3.														
	4.														
	5.														

Table 3

Table 3 provides the MNE with the opportunity to include any further relevant information or explanation that would facilitate tax authorities' understanding of the CbC report. Information that might be included in Table 3 is:

- the nature of the constituent entities' business activities where "other" is selected as the main business activity in Table 2;
- a brief description of the sources of data used in preparing the report;
- whether the amounts reported are according to local GAAP or IFRS;
- the presentation currency of the CbC report and the foreign exchange rates used;
- if a change in the source of data used is made from year to year, an explanation of why it was changed; and
- where a CbC report is being filed for a fiscal period that does not match the calendar year, the fiscal period to which the report relates.

Table 3: Additional information

Name of the MNE group: **Fiscal year concerned:**
Please include any further brief information or explanation you consider nesessary or that would facilitate the under standing of the compulsory information provided in the country-by-country report.

How to File a CbC Report

CbC reports are required to be prepared and filed electronically in XML format in accordance with the OECD CbC Reporting XML Schema. Each CbC data element currently has to be reported in the CbC XML Schema v. 2.0. The OECD has published a user guide[3] explaining the information to be included in each CbC data element.

When preparing the CbC report, the reporting entity must follow a specified format to create the data file containing the required information. The XML schema is used to verify whether the XML file prepared by the reporting entity conforms to the specifications for submission of the required information. This requires a process whereby the XML file is compared to the input template to ensure that the characters contained in both are identical. Care needs to be taken with this process; if errors are found, the report cannot be filed until the two data files match. Errors can be caused by incorrect file preparation or inaccurate record information.

Example

The XML file will be presented in a different format from the input template file. For example, a portion of Table 1 may be presented as follows in the input file:

Tax jurisdiction	Unrelated-party revenue	Related-party revenue	Total revenue
Australia	AUD 105,000	AUD 320,000	AUD 425,000

3 OECD, *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations* (Paris: OECD Publishing, 2019).

This information will be presented as follows in the XML file:


```
<cbc:ResCountryCode>AU</cbc:ResCountryCode>

<cbc:Summary>

  <cbc:Revenues>

    <cbc:Unrelated currCode="AUD">105000</cbc:Unrelated>

    <cbc:Related currCode="AUD">320000</cbc:Related>

    <cbc:Total currCode="AUD">425000</cbc:Total>

  </cbc:Revenues>
```


Although they are presented in a different way, the two formats contain the same information and the characters should match exactly.

Automatic Exchange of Information

The tax administration with which the CbC report of the UPE is filed can, through the Multilateral Competent Authority Agreement (MCAA) on the Exchange of Country-by-Country Reports, share the information contained in the report with the requesting tax authorities of the other jurisdictions in which the group operates.

CbC reports can be shared between authorities where the relevant jurisdictions are party to an agreement in respect of the exchange of reports. Such agreements include the MCAA on the Exchange of Country-by-Country Reports, which 103 countries have signed as of 30 April 2024.[4] Exchanges also occur between EU Member States under EU Council Directive 2016/881/EU and between signatories to bilateral competent-authority agreements.

Where a CbC report is filed in Ireland, Revenue can expect to receive various requests from overseas revenue authorities to share the relevant information with them via the MCAA mechanism. Where a CbC report is filed outside Ireland and there is an information-exchange agreement with that jurisdiction, Revenue in Ireland would seek the appropriate information from the overseas revenue authority via the same MCAA mechanism.

Penalties

Under Irish legislation, where an MNE group fails to file a CbC report, it will be charged with a penalty of €19,045 plus €2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC report is €19,045.

Supporting records must be kept on file by the reporting entity for six years beginning after the end of the fiscal year to which the CbC report relates.

CbCR Notification

When an Irish entity forms part of an MNE group that is required to file a CbC report but the obligation to file the CbC report does not lie with the Irish entity, the Irish entity must notify Revenue of the name and tax jurisdiction of the reporting entity. If there is more than one Irish entity in the MNE group, one entity can submit the notification on behalf of all Irish entities. Entities should submit the notification via ROS (Revenue Online Service). Entities (or agents of these entities) will be required to register for CbC reporting before filing the notification.

4 See https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf.

Information required for filing a notification includes:

- the status of the notifying entity, i.e. whether it is a UPE, a surrogate reporting entity or a domestic constituent entity;
- the start and end dates of the reporting period to which the notification relates;
- the name and jurisdiction of tax residence of the reporting entity;
- the status of the reporting entity, i.e. whether it is a UPE, a surrogate reporting entity or a domestic constituent entity; and
- the exact names and corporate tax reference numbers of any other Irish domestic constituent entities.

This notification must be filed no later than the last day of the fiscal year to which the CbC report relates.

Although it was a new concept and process when established in 2015, MNEs have developed procedures to prepare and submit CbC reports and notifications annually, and the OECD periodically addresses specific CbC reporting issues seen by taxing authorities by issuing guidance, supporting MNEs and taxing authorities as the process evolves.

We turn now to public CbC reporting as the most significant evolution of the CbC reporting process.

Public CbC Reporting

In a further move toward greater transparency, the EU has introduced public CbC reporting (public CbCR) in an effort to enable public scrutiny of multinational companies' tax strategies. The EU Public CbCR Directive came into force on 21 December 2021 and introduced a timeline for the adoption of public CbCR rules for certain MNEs operating in the EU. EU Member States had until 22 June 2023 to transpose this Directive into domestic legislation. Public CbCR was implemented into Irish law on 22 June 2023 with the signing of the Irish statutory instrument titled European Union (Disclosure of income tax information by certain undertakings and branches) Regulations 2023 ("the Public CbCR Regulations").

To Whom Does Public CbCR Apply?

The Public CbCR Regulations require MNE groups operating in EU Member States with consolidated revenue in excess of €750m in each of the preceding two consecutive financial years to disclose specific financial information, as well as information in relation to the activities carried out in each jurisdiction in which they operate.

Public CbC reporting obligations will not apply to the following instances:

- groups operating solely within a single EU Member State;
- foreign parent groups with an Irish subsidiary that is not a medium-sized or large undertaking; and
- Irish branches whose net turnover does not exceed €12m for the last two consecutive financial years.

To be considered either medium-sized or large, a company must exceed two of the following criteria:

- net turnover of €8m (up to €12m, depending on the Member State) — please note that for branches, turnover is the sole size criterion;
- balance sheet of €4m (up to €6m, depending on the Member State); and
- 50 employees on average.

Public CbCR will apply to the first financial year commencing on or after 22 June 2024. For MNEs with a financial year-end of 31 December, 2025 will be the first year they are required to report CbCR information publicly. A report will be required to be published within 12 months of the date of the balance sheet for the relevant financial year (i.e. by 31 December 2026 for calendar year-end companies).

Published Reports

The information contained in this report is broadly based on the OECD CbC report prepared and filed with the tax authorities. Public CbC reports aim to capture specific information split by individual EU Member States and any non-cooperative jurisdictions in which the group operates, with the remainder of jurisdictions being reported on an aggregate basis as "rest of world".

The EU list of non-cooperative jurisdictions, which was first adopted on 5 December 2017, lists jurisdictions that do not conform to the current screening criteria, which are based on tax transparency, fair taxation and the implementation of OECD anti-BEPS measures. As of 20 February 2024 the following 12 jurisdictions were on the list:[5]

- American Samoa,
- Anguilla,
- Antigua and Barbuda,
- Fiji,
- Guam,
- Palau,
- Panama,
- Russian Federation,
- Samoa,
- Trinidad and Tobago,
- US Virgin Islands and
- Vanuatu.

The report must be published on the reporting entity's website or be made available on the website of the Companies Registration Office, in which case the reporting entity must reference this on its own website and provide information on where the report can be found. It must be made publicly available, free of charge, and remain available for at least five years from the date of publication.

The public CbC report should disclose a brief description of business activities performed by the reporting entity and each related entity in the UPE's consolidated financial statements for the relevant financial year. It must also include the following information:

- total revenue;
- profit or loss before tax;
- income taxes (paid and current tax accrued) for each jurisdiction;
- accumulated earnings;
- number of full-time employees;
- name of UPE;
- list of all affiliated undertakings of the MNE group and activities;
- the financial year to which the report relates; and
- the currency of financial information presented.

This information must be disclosed separately based on tax residence for each country in the EU where there are business activities, as well as for each country on the EU list of non-cooperative jurisdictions in which the group has business activities. For all other countries the information in the report can be presented in aggregate as "rest of world".

It is possible to exclude information (for a period of five years) that an entity believes would seriously impact its competitive position. Strict requirements must be met in this situation, including a detailed explanation for non-disclosure of such commercially sensitive information. Omitted information must be published in a subsequent report within five years of the original omission. It is not possible to omit any information relating to entities operating in non-cooperative jurisdictions.

5 See https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#countries.

Public CbCR Obligations on Directors and Statutory Auditors

The collective responsibility for ensuring compliance with the public CbCR obligations lies with the reporting entity's administrative, management and supervisory bodies. Relevant persons who fail to comply with the Public CbCR Regulations shall be guilty of a category 3 offence, which essentially means a fine of up to €5,000 and/or up to six months' imprisonment.

Where the reporting entity's financial statements are audited, the audit report must state whether the entity was in scope of the Public CbCR Regulations in the **preceding** financial year and whether the CbC report was published.

Additional Considerations

There are additional factors that MNE groups will need to take into consideration with the introduction of public CbCR. For many groups, particularly privately held companies, it represents the first time that the required information will be made publicly available. Although there are deferrals available in situations where publishing this information may impact the group's competitive position, as noted above, there are strict conditions attached to these exemptions.

MNE groups will need to consider how the published information could be interpreted by the public, including competitors, customers and tax administrations. It may be beneficial for them to include additional explanatory narrative to accompany the numbers presented.

Although EU Member States had until 22 June 2023 to adopt public CbCR into domestic law, some countries opted for early adoption of the rules. Romania was the first EU Member State to introduce public CbCR legislation in 2022, with Spain, Croatia and Germany following. In Romania public CbCR applies to MNE groups with a financial year commencing on or after 1 January 2023, meaning that a report must be published by companies with a calendar year-end by 31 December 2024. At time of writing only Austria, Cyprus, Finland, Italy, Malta, and Slovenia have yet to transpose the EU directive into their own domestic legislation.

It should be noted that where an EU-headquartered MNE operates in early-adopter countries, it is permitted to follow the position in the jurisdiction in which its headquarters is located. This means that it is not obliged to publish a report by the date set in the early-adopter country and can wait until the later date set by the jurisdiction in which its headquarters is located to make its disclosure. However, where a non-EU-headquartered MNE operates in early-adopter countries, it is required to publish in accordance with the earliest submission timeline applicable to the group.

Conclusion

The implementation of CbC reporting has assisted tax administrations in meeting their aim of enhanced transparency, and the introduction of public CbCR by the EU has taken this a step further. In essence, it represents the first time that the general public will have access to information that previously was not required to be made public and places obligations on entity management, supervisory bodies and auditors to confirm the publication and compliance with the EU requirements. MNEs can expect additional scrutiny by, and interactions with, the general public or civil societal organisations. It represents another step on the journey toward further harmonisation and transparency by EU countries in the coming years.

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Key Considerations for the Corporation Tax 2023 Cycle

Introduction

As we approach the busy season for corporation tax compliance, it is timely to look at the key considerations for the 2023 compliance cycle. The majority of Irish companies have a 31 December year-end, which results in a corporation tax filing deadline of 23 September, falling on a Monday this year.

Changes in Legislation relevant to 2023 compliance

Patent rights

Section 757 TCA 1997 was updated by FA 2022 effective for accounting periods commencing on or after 1 January 2023. Previously, proceeds from the sale of patent rights were treated as Case IV income and fell outside capital gains tax provisions; there was also no relief allowed under s617 TCA 1997. FA 2022 inserted sub-section (4A) in s757 TCA 1997 to allow s617 to extend to the transfer of patent rights.

In addition, there is a new sub-section (6), which clarifies that s757 does not apply to a sale whereby the purchaser is entitled to have their title as applicant for the patent registered in the Register of Patents under the Patents Act 1992 (or similar law in any other jurisdiction). In this situation, capital gains tax should apply, clarifying previous Revenue confirmation that the outright sale of a patent should be subject to capital gains tax rather than the sale of rights under the patent for a capital sum which is taxable as income.

Research and development credit

FA 2022 inserted s766C and s766D in TCA 1997, changing the manner in which an R&D tax credit is paid in respect of expenditure

on R&D and expenditure on buildings and structures, respectively. Some amendments were made in Finance (No.2) Act 2023, however, the FA 2022 rules are relevant for the 2023 compliance cycle. Under the rules introduced by FA 2022 the R&D credit is claimed in three instalments:

- The first instalment is the greater of the full credit to a maximum of €25,000 and 50% of the credit. This instalment arises in the year the claim is made.
- The second instalment is three-fifths of the remainder after utilising instalment 1. This instalment arises in the year after the claim is made.
- The third instalment is the balance after using instalment 1 and 2. This instalment arises two years after the claim is made.

The claimant can choose to have an instalment repaid or treated as a payment on account in respect of the period under review. The new rules are beneficial for companies with small claims but may impact the cash-flow of companies with larger claims and large corporation tax liabilities as the possibility to utilise the full credit against their corporation tax liability no longer exists.

The amendment to the legislation also includes a reference to a “valid claim” being made and states that “[n]o amount of the credit shall be paid or offset unless a valid claim has been made to the Revenue Commissioners”. A valid claim is a new concept and requires the claimant to furnish “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 company in respect of an accounting period”.

Companies with accounting periods commencing before 1 January 2023 have the option to claim under either the old or the new rules.

The previously included restriction on the amount of tax credit that can be refunded being linked to corporation tax paid by the company in the prior 10 years or the payroll taxes remitted by the company has been removed. This restriction was removed for new claims in a tax return due to be filed on or after 23 September 2023 and second and third instalments included in accounting periods commencing from 1 January 2022.

Interest limitation rules

FA 2022 contained some updates to the interest limitation rules (ILR), comprising largely amendments to certain definitions and providing some additional clarification on this legislation. In addition, there are amendments to the calculation of relevant profit and loss relating to group relief claims.

Relief for investment in digital games

There were some technical amendments to the definition of digital games development company and qualifying expenditure requirements. The statutory instrument bringing the digital games credit regulations into effect was passed on 22 November 2022 and effective from this date.

Non-cooperative jurisdictions

FA 2022 included an amendment to the denial of specific exemptions (namely, low profit margin, low accounting profits and effective tax rate) where a controlled foreign company (CFC) is resident in a non-cooperative jurisdiction, with a revised EU list of non-cooperative jurisdictions effective from 1 January 2023.

Pre-letting expenditure

FA 2022 amended s97A TCA 1997 relating to pre-letting expenditure in respect of vacant premises. The limit for allowable pre-letting expenses has increased from €5,000 to €10,000, and the vacancy period for eligibility has been reduced from 12 months to 6 months. Both of these changes are effective from 1 January 2023.

Changes to Form CT1

This year there are limited amendments to the Form CT1, itself, the main change being the insertion of additional R&D tax credit information.

Company details panel

Multinational group

Questions with regard to the multinational group have been brought up to the top of the company details panel, having previously been included as part of the transfer pricing section.

Irish investment and other income

Patent rights – transactions involving capital sums (section 757)

A new section has been included under the Irish Investment and Other Income tab of the Form CT1. With the change in legislation mentioned above, the patent rights section of the Form CT1 captures details in relation to patent rights, elections under s617(4) TCA 1997 and details on the amounts chargeable under s757 TCA 1997 in the current period.

Digital games tax credit

The 2023 Form CT1 includes a new section on the digital games tax credit. This is split into three parts:

- Digital games interim corporation tax credit under s481A(19) – where the Minister has issued an interim certificate and the relevant conditions have been met, an interest claim can be made in this section.
- Digital games corporation tax credit under s481A(20) – where the Minister has issued a final certificate and the provisions of the legislation have been complied with, a company may make a claim under this section less an interim claim already made.
- Clawback of unauthorised amounts of either the interim digital games corporation tax credit or the digital games corporation tax credit under s481A(26) – where a company makes either an interim or a final claim in respect of the digital games corporation tax credit and it is subsequently found that it is not an authorised claim under the provisions of the relevant legislation, such clawback of a claim previously made should be included here.

The statutory instrument relating to the digital games tax credit was enacted on 22 November 2022, with the regulations coming into effect from that date.

Research and development credit

Research and development credit and allowances

With the specified return being introduced for periods ending in the 2022 financial year, in December 2023 Revenue updated the Research and Development section of the return for 2023 period ends. Broadly, the Research and Development Credit and Allowances panel on the Form CT1 for 2023 is split into a claim under each relevant section – s766, s766A, s766C and s766D TCA 1997.

A claim under s766 TCA 1997 can be made only in respect of accounting periods that commenced before 1 January 2023. Relevant details in relation to the claim must be included in the s766 panel of the Form CT1. Where relevant, a claim for repayment of R&D credit relevant instalments can be made under the old rules or the transitional rules, with the option to claim under each now included in the Form CT1.

A claim under s766A TCA 1997 is also available only in respect of accounting periods that commenced before 1 January 2023. Relevant details in relation to the claim must be included in the s766A panel of the Form CT1. Where relevant, a claim for repayment of R&D credit relevant instalments can be made under the old rules or the transitional rules, with the option to claim under each now included in the Form CT1. There is also some additional information requested, such as disclosures relating to group R&D claims.

The section relating to s766C TCA 1997 is new for 2023, albeit that some of this detail was included in the specified return for 2022 period ends. The claim for s766C is somewhat more detailed than the equivalent s766 claim under the old rules. The Form CT1 requires a breakdown of the expenditure attributable to R&D. There is also an element of catch-up to capture the data that was included in

specified returns in 2022 in the Form CT1 for 2023 and future instalments. Taxpayers are also required to advise Revenue of the amount of the current-year s766C credit that they wish to be treated as an overpayment of tax and the amount that they wish to be refunded by Revenue under the provisions of the legislation.

Similarly, s766D TCA 1997 brings the relevant claim for buildings and structures under the new rules. Much of the same detail as for s766C TCA 1997 claims is required. There is a section to capture the data that was included in specified returns in 2022 in the Form CT1 for 2023 and future instalments. Taxpayers are also required to advise Revenue of the amount of the current-year s766D credit that they wish to be treated as an overpayment of tax and the amount that they wish to be refunded by Revenue under the provisions of the legislation.

With regard to grant income received in respect of R&D activity, the Form CT1 for 2023 requires taxpayers to identify amounts received from various grant sources.

In March this year Revenue provided an update in relation to R&D tax credit claims.[1] Having completed a high-level review of a sample of 2023 Form CT1s submitted with R&D claims included, Revenue noted some of the main errors, as being[2]:

- Expenditure breakdown not provided on the s766C panel – the provision of the breakdown between plant and machinery, emoluments and the sum of the remaining qualifying expenditure is a legislative requirement. Failure to provide this information will result in an invalid claim.
- The R&D credit claim under s766C should equate to 25% of the sum of the expenditure included in the boxes for the “amount of the expenditure attributable to research and development activities”.
- Some claims are being made under the incorrect section of the legislation. Claims under s766 or s766A cannot be made for accounting periods commencing on or after 1 January 2023. Claims for such accounting periods must be made under s766C or s766D, as appropriate, and included in these panels in the Form CT1.
- For the s766 claim to feed correctly into the tax calculation, there is a requirement to tick the s766A box and click the two “calculate” buttons in the s766A panel when completing returns in the return preparation facility or an online Form CT1 directly on ROS.
- Revenue also notes that taxpayers must specify the amount that should be treated as an overpayment of tax and the amount that should be paid to the company within the relevant 12-month time limit for making R&D claims and that this specification cannot be amended once the 12-month time limit has expired.

It is critical that a valid claim is made within the 12-month limit or there is a risk that the claim will be considered incomplete and therefore the taxpayer will not be granted the R&D tax credit.

Timing of Reliefs/Claims

It is always worth bearing in mind that there are certain time limits on reliefs that companies may wish to claim.

Loss relief

Where a company has trading losses in a period, these can be offset against other trading income of the same period or trading income of the immediately preceding accounting period (of the same length) on a euro-for-euro basis, or against non-trading income on a value basis. A claim for loss relief must be made **within two years** of the end of the accounting period in which the loss is incurred. Unused losses can be carried forward

1 https://taxinstitute.ie/wp-content/uploads/2024/03/RD-Corporation-Tax-Credit-Update.pdf.
2 Tax Fax (15 March, 2024).

indefinitely against trading income of the same trade for future periods.

Group relief

For corporation tax purposes, companies form a group if one is a 75% subsidiary of another or both are 75% subsidiaries of a third company. Losses can be surrendered in part or in full to another member of the group in respect of the same accounting period only. Such losses can be used to offset trading or non-trading losses in the recipient company. All claims for group relief must be made **within two years** of the end of the surrendering company's accounting period to which the claim relates.

Section 291 TCA 1997 IP allowances

Where a company is claiming s291A TCA 1997 allowances in respect of capital expenditure relating to specified intangible assets, any such claim must be made **within 12 months** of the end of the accounting period in which the capital expenditure giving rise to the claim is incurred. This is particularly important if the intangible assets have not been brought into use in the accounting period in which they were acquired and the allowances will not be effective until a future period, in which case Revenue must be notified of the intention to claim such allowances within 12 months of the end of the period in which the capital expenditure was incurred to avail of the Revenue concession in respect of same.

R&D credit

A claim in respect of R&D credits must be made **within 12 months** of the end of the accounting period in which the expenditure was incurred.

Section 626B TCA 1997 claim

Where an election is required under s626B TCA 1997 (providing for an exemption from tax in respect of certain capital gains arising from the disposal of holdings in subsidiaries), this should be made on the Form CT1.

Close company considerations

Where a company is a close company (broadly, a company that is under the control of five or fewer participators or any number of directors), a surcharge may apply to undistributed estate and investment income (and the professional income of a "services" company, where applicable) where a distribution is not made in respect of such income **within 18 months** of the end of the accounting period, subject to company law requirements. The surcharge payable with 2023 returns will broadly relate to surchargeable income arising in the 2021 financial period. A distribution to the shareholders of the company can be made within 18 months to avoid the surcharge. It is worth reviewing in a timely manner whether such a distribution is advisable.

Where two companies wish to elect jointly, under s434(3A) TCA 1997, for a dividend to be disregarded and not treated as a distribution for close company purposes, such election must be made on the Form CT1 of both companies making the joint election.

Other Returns/Submissions Required

Section 891A TCA 1997 returns

Taxpayers are required to make a return providing information relating to interest paid to non-residents **within nine months** of the end of an accounting period. This relates to interest paid to a non-resident where there was no withholding tax due on the interest by virtue only of a double taxation agreement that Ireland has entered into with the jurisdiction to where the interest is paid.

iXBRL

A corporation tax return is deemed incomplete where it is not accompanied by iXBRL financial statements if the exemption criteria for iXBRL filing are not met. Legislatively, iXBRL financial statements are due to be filed at the same time as the corporation tax return (i.e. nine months after the accounting period end and no later than the 23rd day of the month). However,

by Revenue concession, companies have an additional three months in which to file the iXBRL financial statements.

Form 46G

Form 46G is due for filing nine months after the end of the accounting period in question. Revenue updated its Tax and Duty Manual relating to the Form 46G to include information on change in accounting period. The Form 46G is considered a "linked return" by Revenue, and therefore it must have the same accounting period as the Form CT1. This is something to be considered by companies with changing accounting periods to ensure that there are no issues when it comes to filing the Form 46G.

Country-by-country report filing

Where a company is part of a multinational enterprise group (broadly, a group with annual consolidated turnover in excess of €750m in the immediately preceding fiscal year), it has country-by-country (CbC) reporting and notification requirements. Generally, the parent company of the group will have responsibility for filing the CbC report for the group, and other members of the group have a requirement to file a CbC notification, with the relevant tax authority – in our case, the Revenue Commissioners.

The CbC report must be filed with Revenue no later than one year after the last day of the fiscal period to which the report relates. However, the CbC notification must be filed with Revenue no later than the last day of the fiscal period to which the CbC report of the group relates.

Dividend withholding tax returns

Where a company pays a dividend, a DWT return must be filed with Revenue by the 14th day of the month after the payment of the dividend.

Preliminary Tax

For large companies (i.e. companies that had a corporation tax liability of €200,000 or more in the previous tax period, pro rata for a period of less than 12 months), preliminary tax is due and payable in two instalments. The first instalment is due within six months of the start of the accounting period and no later than the 23rd day of that sixth month. The second instalment is due one month before the end of the accounting period and no later than the 23rd day of that month. The first instalment must equal 50% of the final liability of the prior year or at least 45% of the current-year liability. The second instalment must bring the amount of preliminary tax paid to at least 90% of the current-year liability.

For small companies (i.e. companies that had a corporation tax liability of less than €200,000 in the preceding tax period, pro rata for a period of under 12 months), preliminary tax must be paid one month before the end of the accounting period and no later than the 23rd day of that month. This can be based on 100% of the prior-period liability or 90% of the current-period liability. Where no preliminary tax is due, a nil preliminary tax slip should be filed with Revenue.

Acceleration of due dates for payment may result where preliminary tax obligations have not been met and interest may be applied by Revenue on the underpayment of preliminary tax.

Implications of Late Filing

Where a corporation tax return is filed late, a company must include the relevant surcharge in the return. The surcharge amounts to 5% of the tax due to a maximum of €12,695 if filed within two months of the filing date, or 10% of the tax due to a maximum of €63,485 if filed more than two months after the filing date. Where a return is being filed late, the restrictions on certain claims for relief under s1085 TCA 1997 should also be considered and applied, as relevant.

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VAT Registrations: Practical Challenges and Pitfalls

Introduction

What has happened the humble VAT registration? Once a “simple” procedural matter, it has now become a significant administrative and practical challenge for businesses. The “why?” this article will seek to explore and determine, but in simple terms a VAT registration has value, both for businesses and for Revenue. The process of obtaining a VAT registration and the supporting documentation needed provide value in building a profile about a particular business that may shape future engagements between the entity and Revenue.

How Have We Got Here?

The tax registration process is generally the first interaction that businesses have with Revenue, as it is the registration process that permits businesses “into the tax system”. The tax registration application forms cover a range of taxes, but it is fair to say that the tax that invites the most scrutiny from Revenue is VAT.

A clear theme is emerging from Revenue in relation to the granting of Irish VAT registrations insofar as the onus is on the applicant to substantiate clearly to Revenue that it is an "accountable person" (ss5 and 9 of the Value-Added Tax Consolidation Act 2010 (VATCA 2010)) from a VAT perspective and, as such, is required to register for Irish VAT. This is, however, not just a matter of Revenue's adding red tape to what should be a relatively straightforward application process. Unfortunately, VAT registration numbers are sometimes being used in "carousel" or "missing trader" fraudulent schemes. These schemes are operated by traders who fraudulently use VAT numbers to purchase goods that are subject to Irish VAT and then create fictitious zero-rated cross-border supplies of the goods. This enables the traders to generate VAT refunds on their purchases through their VAT returns, and after receiving the VAT refund the traders will "disappear". It is estimated that the "VAT gap", or VAT cost of carousel or missing trader schemes to tax authorities, runs into billons of euro annually across the EU. Revenue therefore has a duty both to the Irish Exchequer and to the other members of the EU to ensure that VAT numbers issued are validly used.

There are several circumstances where a "taxable person" (s2 VATCA 2010), i.e. a person that is engaged in an economic activity in the State or elsewhere, should be considered an "accountable person" (a person obliged to register for VAT). The activities that require a taxable person to register for Irish VAT are:

- The taxable person makes a supply of goods or services within the State in the course or furtherance of a business and the value of its supplies exceeds or is expected to exceed the VAT registration threshold (€40,000 for services and €80,000 for goods – s2 VATCA 2010) in any 12-month period.
- The taxable person receives goods and/or services in the State from abroad and is required to self-account for VAT.
- The taxable person makes a supply of goods and/or services from the State to an EU VAT-registered business, and it is required to report the net amount of the supplies in the statistical "E" boxes in its Irish VAT return and to submit VIES or Intrastat returns.

Registration Process

There are two types of Irish VAT registrations that a taxable person may apply for:

- a "domestic" VAT registration, which is issued to applicants who will engage in domestic supplies of goods and services only; and
- an "intra-EU" VAT registration, which relates to taxpayers who will engage in domestic transactions and have cross-border transactions in relation to either the sale or the purchase of goods or services.

The VAT application process, itself, is relatively straightforward. The registration is applied for by completing a single form, which covers all taxes. There are 21 general questions on the form, which provide background information on the applicant, with a further 11 questions devoted to VAT (two to intra-Community trade). Along with the VAT registration application, it can help to provide Revenue with a more detailed letter giving further context regarding the applicant and the reason why VAT registration is being applied for.

In many cases this will be sufficient for Revenue to allow the application and issue the VAT number. However, if Revenue has queries or requires further documentation, it will sometimes issue a further questionnaire. The completion of this process should lead to the registration's being permitted, but in practice businesses are facing many challenges in substantiating to Revenue the rationale for why a VAT registration is warranted.

Depending on the responses to the questions, Revenue will issue a "domestic only" VAT registration number or a registration number that is linked to intra-EU trade. Although this process runs smoothly for many registrations, there are some areas that can delay the registration process, which we outline below.

What Are the Issues Faced by Entities Seeking to Register for Irish VAT?

Domestic suppliers of goods and services only

In general, the domestic VAT registration process runs smoothly where it is an Irish-established business that has Irish directors, an Irish-established partnership or an Irish-established sole trader that makes a supply of goods or services in the course or furtherance of a business and the value of its supplies exceeds or is expected to exceed the VAT registration threshold in any 12-month period. This is on the basis that it is usually clear in these circumstances that the applicants are established and in business in Ireland.

However, where domestic VAT registration challenges typically arise is where newly incorporated Irish entities are in start-up phase or have an intention to trade. This has become more prevalent in Ireland since Brexit, as a significant number of foreign companies are seeking to incorporate separate legal entities in Ireland to make domestic supplies of goods or services in Ireland.

A foreign-owned Irish company seeking to trade in Ireland seems to invite additional scrutiny from Revenue in relation to VAT registrations. In some instances these entities can face significant challenges in obtaining domestic and intra-EU VAT registrations. This usually occurs where the entity seeking to register for Irish VAT either is in a start-up phase or is an intended trader and has been Irish incorporated with the Companies Registration Office but there is little else in terms of substance in Ireland, e.g. direct employees or office space where the day-to-day business function of the company is performed. Consequently, Revenue may seek substantive evidence to support Irish-established entities' seeking to register for Irish VAT in terms of whether the entity is properly "established" in Ireland for VAT purposes in respect of the receipt of services and/or to apply VAT postponed accounting on the import of goods from "third countries".

Although the jurisprudence of the Court of Justice of the European Union (*Rompelman v Minister van Financiën* C-268/83, *Inzo v Belgische Staat* C-110/94) specifies that traders in start-up situations are entitled to recover the VAT incurred on their costs before commencing trading and, by implication, are entitled to a VAT number, it is also stipulated that tax authorities are entitled to seek proof that trading will commence. Revenue will therefore very often seek draft contracts with customers or suppliers as evidence that a trade will commence. We would point out that intending to trade does not always imply that customers are in place. There can be a long lead-in time before any sales are generated, and we believe that, although these cases perhaps merit greater attention, they should be looked at in the whole context of the trader's activities.

Foreign companies registering for VAT in Ireland

Generally, a foreign entity applying for an Irish VAT number may encounter some delays. The issues outlined above for domestic intending-trader applications also apply where the trader is seeking an "intra-EU" VAT registration but will not commence operations for some time.

In addition, if a foreign entity is registering for VAT, issues may arise in relation to whether it has sufficient substance in Ireland to constitute a VAT establishment. This is especially relevant to service providers, particularly if the service provider operating from an Irish establishment is engaging in cross-border supplies. Where an entity is applying for an Irish VAT registration to self-account for VAT on an acquisition of services from abroad, Revenue may seek not only a copy of the invoice but also a copy of the underlying agreements between the parties and proof that the invoice was paid from the applicant's bank account. In some instances Revenue case managers have visited the registered business addresses of the applicants to determine the level of substance present in Ireland that is capable of actually receiving the services from abroad. Similarly, Revenue will seek substantive evidence to support a basis

for an intra-EU VAT registration where the applicant intends to purchase goods or services from another EU business.

The extent to which Revenue has challenged VAT registration applications is highlighted in a determination by the Tax Appeals Commission (TAC), 115TACD2023, where the TAC was asked to consider whether a VAT registration applicant had provided sufficient evidence that he was a taxable person engaged in economic activity. Revenue sought information from the applicant, which included a detailed description of the VATable activity being carried out by the business, confirmation of the correct business address and evidence that the business is currently trading. An agreement was submitted to Revenue evidencing that the applicant was engaged in a consultancy project, but some queries had not been responded to, and Revenue sought additional documentation to evidence the place of business and banking details to substantiate the commencement of activity. Revenue also visited the address provided by the applicant and was of the view that the address was used only as a virtual office for postal deliveries and that the business is not being operated from this premises, and it rejected the application. Ultimately, the TAC agreed with Revenue and found that the applicant failed to prove that he is a taxable person or that the economic activity that he indicates he wishes to carry out will be carried out from within the territory of the State.

There are other challenges to VAT registration applications where foreign traders are seeking to register for Irish VAT as non-established entities to move goods from outside the EU to Ireland in order to make domestic supplies of goods either to non-business customers or to Irish-established businesses. The difficulties faced by non-established traders seeking to register for Irish VAT in these circumstances are as follows.

- Where there is a supply of goods to non-business customers, Revenue may seek that the trader account for VAT through an Import One-Stop Shop (IOSS) scheme rather than through a domestic Irish VAT registration. At a high level the IOSS allows a taxable person to register in a single Member State to declare and pay import VAT; however, it is not compulsory for such taxable persons to obtain an IOSS registration. The requirement to appoint an EU-established intermediary on behalf of the foreign trader can act as a barrier in relation to the IOSS scheme, and therefore the foreign trader's preference may be to register for EU domestic VAT registrations, including acquiring a VAT registration in Ireland.
- Where there is an intention to move goods from abroad and to make an onward domestic supply of the goods to an Irish business customer, Revenue may seek supporting evidence such as import documents and contracts with the Irish customer to substantiate the foreign trader's basis to register for Irish VAT. This may be problematic where the logistics provider is not prepared to act as an indirect representative in relation to the import of goods under the duty delivery paid (DDP) Incoterms because joint and several liability applies. In such cases the import documentation (Single Administrative Document) is completed by the logistics providers in a manner that does not support a basis for the foreign trader to register for Irish VAT, e.g. the Incoterm is not DDP or the incorrect entity is stated as the importer of record. This can result in what feels like a "chicken and egg" scenario. A trader cannot show proof of import without a VAT registration number but cannot get a VAT registration number without proof of import.

How to Address the Issues Faced by Entities Seeking to Register for Irish VAT

Whether an entity is seeking to register for Irish VAT as an established or a non-established trader, it is crucial to demonstrate to Revenue that the applicant is an

accountable person from a VAT perspective. In this context the entity making a VAT registration application should be in a position to provide Revenue with evidence of an intention to trade or current trading activity in Ireland. The evidence of trade can typically be substantiated by providing a contract, a service agreement or a sales invoice relating to trade carried out in Ireland by the applicant.

In certain instances newly incorporated businesses may provide a generic business registration address when submitting a VAT registration, whereas they should be in a position to provide confirmation that the physical or technical resources of the applicant are based in Ireland. This could be evidenced by a providing a copy of a lease for office space, the hiring of employees and the operation of an Irish payroll. Furthermore, where the business is in start-up phase or is seeking to register for VAT as an intending trader, it should provide Revenue with confirmation of who is carrying out the business activities (if there are no employees) and give the location of where company is managed and controlled.

Where an entity seeks to register for Irish VAT to self-account for VAT on the acquisition of a service from abroad, it should be in a position to provide Revenue with:

- evidence that it has a sufficient level of substance in Ireland to receive the service in its own right, e.g. employees on an Irish payroll and office space where the day-to-day running of the business is performed;
- an invoice from the foreign supplier (if this can be obtained);
- proof of payment of the invoice from the applicant's bank account;
- a copy of the underlying contract between the supplier and the customer.

Where a non-established trader seeks to register for Irish VAT on the basis that it intends to move goods from abroad to Ireland and to make an onward VATable supply, it should provide Revenue with the following information:

- the type, volume and value of goods to be imported from outside the EU;
- the location of the storage of any goods imported from the EU or outside the EU – this should be supported with a copy of the contract with the warehouse provider;
- a copy of the contract with a courier company to deliver the goods to the place of storage;
- details of the supplier of any goods to be imported from outside the EU and the terms and conditions of said supply;
- proof that it has in place a facility relating to the import of goods from outside the EU and the address at which the facility can be accessed;
- who owns the business premises from which the company will operate and what specific element of the trade happens from that address (whether it is where admin is carried out/it is a showroom/warehouse etc.).

Conclusion

There has been a notable change in Revenue's approach to granting Irish VAT registration in recent years, which has resulted in challenges for tax advisers and applicants obtaining Irish VAT numbers. It is crucial for businesses that are seeking to register for Irish VAT to be in a position to demonstrate and substantiate to Revenue that they are an accountable person from a VAT perspective. At a recent meeting of the TALC Indirect Taxes Sub-committee, personnel from Revenue's National Business Tax Registration Unit gave a presentation on VAT registrations[1]. As outlined in TaxFax[2] the presentation included common issues in disallowed applications for intending traders and tips for successful applications and some other common registration issues. A key

1 Revenue's National Business Tax Registration Unit gave a presentation on VAT registrations at TALC Indirect Taxes Sub-committee: https://taxinstitute.ie/wp-content/uploads/2024/03/Indirect-TALC-VAT-Registrations-Presentation-External-Version.pdf

2 Tax Fax (15 March, 2024)

takeaway is that it is unlikely that merely completing a VAT registration application form and submitting it to Revenue will be sufficient to obtain an Irish VAT registration where the registration is not a straightforward domestic registration.

Although Revenue has issued clear published guidance on how VAT registration applications will be handled (the Tax and Duty Manual titled “Guidance for VAT Registrations”), there can be inconsistencies in practice in the application of the rules., Our final point to businesses would be to build in appropriate lead-in time, where possible, and that collaboration with Revenue in terms of demonstrating sufficient supporting evidence will be key to a smooth outcome. VAT registrations – who would have thought they could be so complex? We hope that the above sheds some light on this evolving area and that, as we move forward.

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Registering a New Charity with the Charities Regulator

Introduction

The Charities Act 2009 ("the 2009 Act") sets out the statutory regime for registration as a charity in Ireland. Registration as a charity with the Charities Regulator is not a choice. Any organisation that meets the definition of a "charitable organisation" under the 2009 Act and that operates or carries on activities in Ireland is required to register as a charity with the Charities Regulator.

An organisation that meets the definition of a "charitable organisation" but is not registered as a charity risks the commission of a criminal offence if it carries out certain activities (including advertising on behalf of the organisation and inviting members of the public to give money or property to the organisation). Therefore it is very important, when establishing a new organisation that might meet the definition of a "charitable organisation", that consideration is given to that definition. If the organisation meets the definition, the charity registration process must be completed before commencing activities.

This article summarises the steps involved in establishing a new organisation, registering it as a charity with the Charities Regulator and applying for a charitable tax exemption from the Revenue Commissioners.

What Is a "Charitable Organisation"?

A "charitable organisation" is an organisation that meets the following criteria, set out in the 2009 Act:

- The organisation promotes a charitable purpose only. Specified charitable purposes under the 2009 Act are:

  - the prevention or relief of poverty or economic hardship,
  - the advancement of education,
  - the advancement of religion and
  - any other purpose that is of benefit to the community – the 2009 Act includes a non-exhaustive list of purposes that fall within this category, such as the promotion of health, the protection of the natural environment and the advancement of the arts, culture, heritage or sciences;
- The purpose pursued by the organisation is for the public benefit. This means that it must benefit the public or a section of the public.
- The governing document of the organisation requires it to apply all of its property towards its charitable purpose.

When establishing a new organisation, it should be carefully considered whether the organisation will meet these criteria. If the organisation will meet the definition, and if it is intended that the organisation will operate or carry on activities in Ireland, it must register as a charity with the Charities Regulator.

It is important to bear in mind that there is no definition of what "operating" or "carrying on activities" means, and there is no *minimum* level of activity set out in the 2009 Act. Therefore, a charitable organisation carrying out any activity in Ireland will be captured by the statutory requirements. This is particularly relevant for organisations that are registered as charities abroad but that might carry out activities in Ireland. Further information about non-resident charities is included below.

There are some purposes that are considered to be "charitable" purposes in other jurisdictions but not in Ireland. These include the promotion of sport and the advancement of human rights – which are not charitable purposes under Irish law at present. In relation to human rights, the Charities (Amendment) Bill 2023, which is making its way through the legislative process, seeks to add the advancement of human rights as a specified charitable purpose. This is something that organisations (in particular, organisations that advance human rights) should keep an eye on over the coming months.

Legal Structure

Another consideration when establishing a new charity is to determine which legal form is most suitable for the organisation. Typically, charities take one of the following forms:

- Unincorporated association – This is a collection of individuals with a common purpose. An unincorporated association has no legal existence or "personality" separate from its members. Often, unincorporated associations are governed by their own set of rules.
- Trust – This is an arrangement where certain people (trustees) hold property on behalf of particular objects or people. Trusts are typically governed by trust deeds and are subject to trust law.
- Company – A company is a formal legal structure that is separate from its members. The most common company type chosen by charities is the company limited by guarantee. This is a company that does not have shares. Rather, its members guarantee to pay a nominal sum (usually €1) in the event of the winding up of the company. The inability of a member to make a profit from their membership of this type of company, because their membership interest is fixed, has resulted in this company type being the most suitable for charities. A company limited by guarantee is governed by a constitution (known as the company's "memorandum and articles of association").

Choosing and establishing the legal structure of the new organisation is an important step in setting up a new charity. Typically, this choice will be made based on the degree of formality that the organisation wishes to have and the types of activities that it anticipates it will carry out. An organisation's proposed funders may also have specifications in relation to the legal structure of the organisation, so this is something that should be checked in advance.

If the organisation is going to take the form of a company, the Charities Regulator will commence considering a charity registration application in relation to the company only once the company has been incorporated.

As part of establishing a new organisation, certain decisions will need to be made, including who will govern and control the organisation. These individuals will be the "charity trustees" of the organisation. If the chosen legal structure for the charity is a company, the directors (and other officers of the company) will be the charity trustees.

There must be at least three unrelated and independent charity trustees of a registered charity. If the charity intends to apply for a charitable tax exemption (described in further detail below), a majority of the charity trustees must be resident in Ireland. Charity trustees are not permitted to receive remuneration from the charity, although they are allowed to receive certain, limited payments, such as reasonable out-of-pocket expenses.

A governing document must be put in place to set out the rules of the organisation. If the organisation is a company, it will be constrained by the provisions of company law in relation to how it drafts its memorandum and articles of association, which will be publicly available from the Companies Registration Office.

The governing document of every charity must include "standard clauses" that are required by the Charities Regulator. These include provisions confirming that:

- the income and property of the charity will not be distributed to the members or the charity trustees, except in certain limited circumstances;
- any remaining property of the charity on a winding up will not be distributed to the members but will be given to another charity with similar objects; and
- the approval of the Charities Regulator will be obtained if certain amendments are being made to the charity's governing document.

Charity Registration Process

The charity registration process involves the submission of information and documentation to the Charities Regulator via an online questionnaire. As an initial step, an organisation must set up an online account with the Charities Regulator. Once that account has been set up, the registration questionnaire can be populated online and submitted. That online account will be the principal way of communicating with the Charities Regulator throughout the registration process and, once the organisation has been registered as a charity, will be the way in which the charity accesses all of its online filings.

The charity registration questionnaire seeks detailed information about the proposed charity's purpose/objects, charity trustees and resources. It also requires the submission of documentation, including the governing document of the charity, the charity's beneficiary selection policy (if applicable), a business plan, the charity's conflict-of-interest policy and safeguarding documentation.

At the initial stage of review the Charities Regulator will check whether the application is complete and may request additional information. At the next stage of review it will carefully consider whether the organisation meets the definition of a "charitable organisation". The Charities Regulator will review each part of the definition of a "charitable organisation", as set out above, and will particularly consider:

- whether the organisation promotes a charitable purpose only, or it will also pursue purposes that are not charitable; and
- whether that charitable purpose has a public benefit. In reviewing this part of the test, the Charities Regulator will consider, among other things, whether the organisation proposes to charge a fee for its services and whether there are any limits on the people who can benefit from the organisation's proposed services.

The question often arises of whether an organisation that exists to benefit or fundraise for one particular person (for example, to provide for a person's medical expenses) could constitute a charity. These types of organisations do not meet the "public benefit" test and so do not fall within the definition of a "charitable organisation".

If the Charities Regulator is satisfied that the statutory definition of a "charitable organisation" has been met, it will ask further questions about the proposed operations, activities and resources of the organisation. It is common to receive several sets of requests from the Charities Regulator seeking additional information and documentation before completion of the registration process. It is important that any queries raised by the Charities Regulator are addressed efficiently. This approach reduces delays and assists in progressing the application.

At the end of the process (which can take a number of months to complete), if the Charities Regulator is satisfied with the responses provided, it will confirm the admittance of the organisation to the public register of charities and issue a Registered Charity Number (RCN). This will then facilitate the commencement of activities by the charity.

The Charities Regulator has published a number of guidance documents and templates to assist with the charity registration process and the ongoing obligations on charity trustees once a charity has been registered. These are available on its website.

Some organisations carry out the charity registration process directly themselves, with limited legal input – as there are numerous steps, including the Charities Regulator application, that can be undertaken directly by individuals. Other organisations request professional assistance throughout the entire process. The choice of approach for an organisation will very much depend on the time and resources available to it.

Applying for a Charitable Tax Exemption from Revenue

Once a charity has obtained its RCN, it can apply for a charitable tax exemption (CHY number) from the Revenue Commissioners. This is an optional step; however, having the benefit of a CHY number is often viewed as one of the main benefits of being a registered charity. A CHY number grants a charity an exemption from a number of taxes, including income tax/corporation tax, capital gains tax, capital acquisitions tax and stamp duty.

To apply for a CHY number the charity must first have applied for, and received, a tax reference number. Once that number is obtained, the application for a CHY number is submitted by way of an online application to Revenue via the Revenue Online Service (ROS). That application requests certain high-level information about the charity, copies of its financial statements or financial plans, a statement of its activities and a copy of its governing document. An application for a CHY number typically concludes within a few weeks.

A charity holding a CHY number should bear in mind that Revenue has certain conditions for retaining the CHY number. These include that the charity:

- remains tax compliant.
- continues to maintain its charitable status with the Charities Regulator; and
- seeks the approval of Revenue if it intends to accumulate funds for more than two years.

Once a charity has held a CHY number for two years, it will be entitled to apply for s848A donations relief, which entitles the charity to tax relief on certain donations. The benefit of donations relief for charities is that if an individual donates €250 or more in a year to a charity that holds donations relief, the charity can claim a refund of the tax paid on that donation. In contrast, if a company makes a similar donation to a charity, it is the company that receives the benefit (in the form of a tax deduction), rather than the charity.

Non-resident Charities

This article focuses on a new charitable organisation that intends to establish itself in Ireland. However, as noted above, the charity law regime in Ireland applies to any "charitable organisation" that carries out activities in Ireland, even if that organisation is established in another jurisdiction. This is something that non-resident organisations should be conscious of.

It is possible (and, indeed, often a requirement) for non-resident charities to register as charities with the Charities Regulator. For charities that are also subject to the laws of another jurisdiction, registration in Ireland with the Charities Regulator, and compliance with Irish legal requirements for charities, can bring its own hurdles.

Charities that have been established in an EEA/EFTA State or in the UK can apply for a similar tax exemption to the CHY number, which is known as a "DCHY number".

Conclusion

The process of establishing a new charity in Ireland involves a number of steps, including choosing a suitable legal structure, registering as a charity with the Charities Regulator and, if considered of benefit, submitting an application to Revenue for a CHY number. Often, it is helpful at the outset of the process to prepare a step-plan, which sets out the chronology of steps and the timelines involved, so that the process can be kept progressing swiftly and smoothly.

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Pensions: The Standard Fund Threshold – Taxes Consolidation Act 1997

Introduction

Chapter 2C, Part 30, TCA 1997 imposes a ring-fenced Schedule D, Case IV, tax charge ("chargeable excess tax", or CET), at the higher rate income tax, on the crystallisation of benefits from Irish approved pension arrangements in excess of a limit called the standard fund threshold, which is currently €2m. The tax is paid by the retiree's retirement benefits being "reduced so as to fully reflect the amount of tax so paid" (s787Q(5) TCA 1997). How this reduction happens varies between private and public sector pension arrangements, as we shall see later. The effect of Chapter 2C is to claw back at retirement the notional higher-rate tax relief granted on pensions that are deemed to have benefited from excessive pension tax relief. Chapter 2C is therefore titled "Limits on Tax-Relieved Pension Funds". The Minister for Finance has commissioned a review of the standard fund threshold, which is expected by summer 2024.

Original Policy Objective

The introduction of Chapter 2C, Part 30, on 7 December 2005 (s14(1)(d) Finance Act 2006) followed a Department of Finance Budget 2006 review. See Section G of the Department's "Budget 2006: Review of Tax Schemes. Volume III – Internal Review of Certain Tax Schemes" ("the Review"), which examined pension tax reliefs. The Review followed the introduction in 1999 of an option ("the ARF option") under which an accumulated defined-contribution (DC) retirement fund can be retained in retirement in a personally held fund, called an approved retirement fund (ARF), instead of the retiree being compelled, as before 1999, to purchase an annuity from a life assurance company.

The Review concluded, at page G2, that the ARF option "may be encouraging the build-up of very substantial pension funds with a view to availing of the long-term tax-exempt environment of the ARF where there are no distributions from the ARF". It also found a significant growth in proprietary director employer pension funding after the introduction of the ARF option in 1999, with the majority of the *c.* 2,500 new Small Seff Administered Pension Schemes (SSAS) then in existence having been established after 1999. A Revenue review found two SSASs with €100m in funds that had accumulated since 1999. The Review stated that "the question must be posed in these cases as to whether the legislature ever intended that tax relief and funding rules be used to provide such significant pension benefits".

The two main measures introduced in Finance Act 2006 in response to the Review were imputed distributions from ARFs (only 6% of ARF holders were taking a regular withdrawal at that time) and the application of the standard fund threshold ("the threshold") to the value of retirement benefits crystallised after 7 December 2005 from Irish approved pension arrangements, above which a chargeable excess tax charge would apply to reduce the benefits. The initial value of the threshold was set at €5m, with compulsory change each year in line with an earnings adjustment factor.

You can therefore draw a straight line from the introduction of the ARF option in 1999 to the introduction of the threshold in December 2005. The original policy objective of the threshold was to deter discretionary overfunding in the private sector DC area, particularly by companies for owner-controller directors. The deterrence arises from the double taxing of benefits crystallised in excess of the threshold, i.e. first chargeable excess tax at 40% is taken, and then the residual excess benefits are taxed again under PAYE as ARF withdrawals – a combined tax rate of *c.* 70% on the benefits over the threshold.

Public sector retirement benefits, although nominally in the threshold system at its introduction in 2005, were in effect outside it, as with a threshold of €5m and pensions valued at 20:1, a public sector employee with maximum reckonable service would have to have remuneration in excess of €435,000 at retirement to trigger a chargeable excess tax liability. Likewise, few in private sector defined-benefit (DB) schemes had to worry at that time about a €5m threshold.

The €5m threshold was indexed twice in line with earnings to reach €5.4m by 2008.

Change in Policy Objectives

After the Celtic Tiger crash, the threshold was reduced to €2.3m on 7 December 2010 and the previous compulsory annual indexation of the threshold was abolished. Those with accumulated funds on that date in excess of €2.3m could protect those funds with a personal fund threshold, to a maximum of €5.4m.

From 1 January 2011 a credit against chargeable excess tax was introduced for standard-rate tax deducted from pension lump sums taxed under s790AA TCA 1997 as an "excess lump sum". This was to prevent double taxation of such lump sums by way of standard-rate income tax under s790AA and chargeable excess tax under Chapter 2C, Part 30.

The policy objectives behind the reduction in the threshold to €2.3m were cited in the National Recovery Plan 2011–2014, p. 94, as equity and raising tax revenues at a time of severe pressure on Exchequer finances. After the reduction in the threshold to €2.3m on 7 December 2010 a public sector employee with maximum reckonable service would have to have remuneration in excess of €200,000 at retirement to trigger a chargeable excess tax liability.

In 2011 Fine Gael published a manifesto that committed to reducing the threshold to €1.5m, increasing the notional annuity cost of DB pensions from the then 20:1 at all ages, within an overall objective of capping "taxpayer contributions to existing public and private

sector schemes that deliver pensions of greater than €60,000 in retirement”.[1]

These policy objectives were partially implemented by the reduction of the threshold to its current €2m on 1 January 2014 and the prescribing of higher age-related factors to value DB pensions accruing after that date, 30:1 at age 60, reducing to 22 at age 70. The €2m threshold is loosely deemed to be linked to the €60,000 target pension limit x 30 (the new, post-2014 factor at age 60) + €200,000 (tax-free lump sum limit) = €2m.

Those with accumulated funds on 1 January 2014 in excess of €2m could protect those funds with a personal fund threshold, to a maximum of €2.3m.

A public service employee who entered service before 1 January 2013 and had maximum reckonable service by retirement at age 60 would in 2014 have to have had remuneration at retirement of between €174,000 and €121,000 to have a CET liability on their benefits, depending on the mix of their pre- and post-1 January 2014 accrued pension. Remember, when the threshold was introduced, in 2005, a public service employee with maximum service would have to have had remuneration at retirement exceeding €434,700 to have a CET liability.

This is the system that we currently have. Although the legislation since 2014 gives the Minister for Finance the power to adjust the threshold annually by an “earnings adjustment factor”,[2] the Minister has not done so. If the threshold had been increased in line with average earnings growth since 2014, it would currently be *c.* €2.6m.[3]

Inequities

In reality the threshold system has evolved into three different versions, varying by the nature of the retirement benefits:

- private sector DC,
- public sector, which is all DB, and
- private sector DB.

Each group feels, with some justification, that it is treated more harshly by the threshold than the other groups!

The problems stem from the change in the original 2006 objective of the threshold, of deterring large discretionary company DC contributions for proprietary directors in the private sector, to one designed to limit pension tax relief to the equivalent of providing a pension of €60,000 per annum (in 2011 terms?), with no increase since then.

Private Sector DC

The threshold system operates in a relatively simple manner for DC benefits. If an individual crystallises DC benefits in excess of the threshold, the excess benefits are subject to an immediate CET deduction of 40%, less a credit for any standard-rate tax deducted from pension lump sums. Where an individual takes a pension lump sum of €500,000, since 7 December 2005, in effect the threshold is €2.15m before CET applies, when allowance is made for the lump sum tax credit.

The benefit crystallisation event (BCE) value of crystallised benefits is determined by Schedule 23B, paragraph 3, and for DC benefits is the market value of the benefits provided based on the value of assets used to provide those benefits at the time of crystallisation.

The main complaints of private sector DC clients and their advisers in relation to the current threshold limit system are as follows.

- There has been a failure to increase the threshold since 2014, despite the strong economic recovery and improvement in Government finances, and growth in earnings

1 Fine Gael, “Let’s Get Ireland Working” manifesto (2011), p. 67.
2 See factor B in the definition of standard fund threshold in s787(1) TCA 1997.
3 Using the CSO EHQ08 index of average earnings, with the threshold increased each year from 2015 by the increase in average earnings over the preceding 12 months.

and investment returns since then. The threshold applies to the combined effect of investment growth and contributions, so that, with strong investment returns over the last decade, DC retirees can go over the threshold through investment growth and not deliberate overfunding.

- This leads to the ultimately self-defeating (for both the individual and the Exchequer) outcome of an individual's deliberately de-risking the investment of their DC fund as it approaches the threshold in order to achieve lower or nil investment returns to reduce their CET exposure.
- The threshold uses mark-to-market value valuations of DC benefits at the time of crystallisation, and the CET is taken from the DC fund at that time in one sum, with no later refund on death shortly afterward or after a significant and permanent fall in ARF values, i.e. no refund where emerging retirement benefits from the DC fund turn out to be lower than their value assessed for the threshold at the time of crystallisation. The private sector points to the option provided in s787Q(8) TCA 1997 to public service retirees with a CET liability on their public service benefits to pay the tax over 20 years by annual deduction from their gross pension, with no interest added for delayed payment, whereby on death within the 20 year period any outstanding instalments are written off and there is no reduction in spouse's death-in-retirement benefits.
- Public sector employees who also have private DC benefits, in addition to their public service benefits, can in certain circumstances encash them under s787TA TCA 1997 when over age 60 and still in public service, subject to a current fixed tax charge of 42%. The DC benefits so encashed do not count as a BCE for the threshold, and so leave the full threshold available for public service benefits. Private sector DC clients and their advisers wonder why the private sector does not have a similar cash-out option for DC benefits projected to be in excess of the threshold limit, particularly if the excess is caused by investment growth. Why is this option confined to the public service?
- The €2m threshold, because it is applied to the market value of DC benefits, is lower in real terms than the same monetary limit applied to DB pensions, where an artificial fixed factor (below current annuity rates) is used to value the DB pension. For example, a public service employee currently retiring at 65 will have their DB pension valued for the threshold at between 20 and 26, depending on the mix of their pension between that accrued before and after 1 January 2014. But current (April 2024) open-market annuity rates for a public service-type pension at age 65 would place a value of *c*. 32:1 or higher, depending on the assumed rate of pension increase, on such a pension. Private sector employees with DC benefits cannot secure the same actuarial **value** of retirement benefits with the €2m threshold as those in the public sector can because public sector DB pensions are currently undervalued relative to the open-market valuations of such pensions.

Public Sector

But the public sector also feels harshly treated by the threshold.

- It is a condition of their employment that they accrue superannuation benefits at a predetermined rate set out in their terms and conditions of employment; they have no right to opt out of future accrual of superannuation benefits to avoid CET. Therefore the "deterrence" objective of the threshold cannot work with them. They can point to the Department of Finance's "Budget 2014: Changes to the Standard Fund Threshold Regime (SFT)" presentation, which, in referring to the reduction in the threshold to €2m from 1 January 2014, states that:

> "It would be expected that those higher-earning individuals affected by the changes to the SFT regime will (provided their pension scheme allows them to do so) cease contributing to pension savings or accruing additional pension entitlements in order to avoid exceeding the revised €2m SFT or a PFT, as appropriate."

But public service employees cannot do that.

- The State offers a contract of employment with set superannuation terms, depending on the employee's date of entry into service. But at retirement the threshold then tells some that their superannuation benefits are "excessive". They can consequently lose a significant part of the pension that they were led to believe all along[4] they would receive at retirement. For some higher-paid public service employees the pension promise provided at the start of employment is not delivered at retirement.
- A system originally designed in 2005 to deal with deliberate pension overfunding of a few individuals in the private sector is now being applied to reduce public service pensions, significantly in some cases.

Take Medical Consultants employed in the public service, as an example. Currently, about 1,500 have switched to the new public-only consultant contract (POCC 23), whereby in return for a higher salary they commit to working full-time in the provision of public health services. A big attraction, particularly to older consultants, of POCC 23 is the higher pension that will arise at retirement from a higher salary. The maximum, point 6, POCC 23 salary at 1 June 2026, after the recent public service pay deal, will be €286,151 with a fixed annual allowance of €11,348, or total pensionable remuneration of €297,500.

However, what is not obvious to many Medical Consultants making the switch to POCC 23 is the potential impact of CET on their pension when they retire, and that those with the maximum 40 years' reckonable service by retirement will not get a pension of 50% of earnings at retirement, as they expect to.

Take a POCC 23 Medical Consultant (who entered service before April 1995) retiring after June 2026 at age 65 on anticipated pensionable remuneration of €297,500. (It is assumed that the Consultant has not crystallised any prior private benefits or has encashed them fully under s787TA TCA 1997.)

Table 1: Medical Consultant on POCC 23 contract retiring at 65.

Pensionable earnings at retirement	€297,500
Pension (50%) before CET	€148,750
Lump sum (3 x pension)	€446,250
Tax on lump sum	€49,250
BCE value of benefits	€4,013,750*
Less threshold	€2,000,000
Excess	€2,013,750
Tax at 40%	€805,500
Less credit for lump sum tax	€49,250
Chargeable excess tax (CET)	€756,250
Reduction in pension in first 20 years to pay CET	€37,813
Pension (first 20 years) after CET	€110,938
Pension (first 20 years) after CET as % of earnings at retirement	37.3%

* I assumed that the accrued pension amount on 1 January 2014 was €50,000.

4 Public service superannuation projections given to current employees do not show the potential impact of the chargeable excess reduction on benefits at retirement.

In this example, based on the assumptions stated, the Medical Consultant is projected to lose 25.4% of their prospective initial pension for the first 20 years of retirement in CET, so that their initial pension is 37.3% of earnings at retirement and not their anticipated 50%.

They still get a better pension in monetary terms by transferring to POCC 23 than if they stayed on a lower salary, but about half of the resulting increase in pension from the higher salary is lost to CET, depending on when they retire. Table 2 shows the pre- and post-CET benefits arising from accrual of an additional €1,000 public service pension and €3,000 gratuity over the threshold.

In broad terms, when the value of a public service employee's accrued superannuation benefits passes through the threshold during their working life, thereafter they accrue additional pension at about half their previous rate, when allowance is made for CET, assuming that they retire at between 65 and 70.

Because of the very complex way of calculating the BCE value of their benefits for the purposes of the threshold and the resulting impact on their pension,[5] higher-paid public service employees are generally in the dark about when they may pass through the threshold and the potential impact on their pension at retirement of doing so. This is compounded by the fact that public service employers do not generally provide superannuation projections to their employees allowing for CET.

Private sector DC employees can, at least, see the value of their DC fund and determine whether they are likely to be above or below the threshold at retirement.

Private Sector DB

The problem for those with high private sector-funded DB pensions, likely to cause a CET liability at retirement, is the means of paying the tax. Schemes will typically offer to commute DB pensions to provide cash to pay CET only at the normal rates at which they allow members to commute to provide a lump sum at retirement. In some schemes this can be as low as 9:1 or 12:1. By contrast, public service retirees can, in effect, pay tax by commuting their pensions at 20:1.

Table 2: Public Sector Pre- and post-CET benefits by retirement age when threshold is breached.

	Retirement at		
	60	65	70
Before CET			
Additional pension	€1,000	€1,000	€1,000
Additional lump sum	€3,000	€3,000	€3,000
CET	€12,600	€11,000	€9,400
Reduction in pension to pay CET	€630	€550	€470
After CET			
Pension (first 20 years)	€370	€450	€530
Lump sum (after tax)	€2,400	€2,400	€2,400

5 Their pension is split between the part accrued by 1 January 2014 and the part accrued after that date, and a different valuation factor is applied to each part to arrive at a capital value for the threshold limit; the resulting chargeable excess tax can be paid by a reduction in pension over 20 years.

The accrual of additional private sector DB pension over the threshold can, therefore, in some cases be loss making for the individual or only marginally beneficial, depending on the commutation rate allowed by the scheme rules and when they retire.

Table 3 shows the effect of the accrual of an additional €1,000 of private sector DB pension over the threshold and compares the "net", after-CET, benefits, using different commutation rates allowed by the scheme on retirement at 65.

In this example of a 65-year-old retiring with a private sector DB pension the retiree will lose all of their €1,000 additional pension accrued over the threshold in CET, unless the commutation rate allowed by the scheme to commute pension to cash to pay the CET is higher than about 12:1. Schemes will defend low commutation rates on the basis that it is the uniform rate allowed for all commutation of pension by all members, for whatever purpose. It is not surprising, therefore, that many higher-earning private sector DB members are encouraged to opt out of future DB accrual in return for additional, taxed remuneration.

The Future

On 14 December 2023 the Minister for Finance announced the start of a targeted review of the standard fund threshold led by an independent expert, Dr Donal de Buitléir, with support from the Department of Finance. A public consultation ran until 26 January 2024, and the results of the review are expected to be provided to the Minster by summer 2024.

Table 3: Private sector DB additional pension of €1,000 accrued over the threshold, retirement at 65.

	Commutation factor allowed by scheme			
	9	12	15	20
Before CET				
Additional pension	€1,000	€1,000	€1,000	€1,000
Pension commuted to provide lump sum	€250	€188	€150	€113
Lump sum	€2,250	€2,250	€2,250	€2,250
Residual pension	€750	€813	€850	€888
CET*	€9,950	€9,950	€9,950	€9,950
Reduction in pension to pay CET	€750	€813	€663	€498
CET recovered from lump sum	€3,200	€200	€0	€0
After CET				
Additional pension	€0	€0	€187	€390
Additional lump sum (after tax)	-€1,400	€1,600	€1,800	€1,800

* Based on the €1,000 additional pension before commutation, and not on the actual benefits taken of a lump sum and a lower pension, because Schedule 23, Article 3(a), TCA 1997 provides that the benefit to be valued must assume "no commutation of pension for a lump sum".

This review follows Recommendation 8.5 of the Taxation and Social Welfare Commission's report of 2022, *Foundations for the Future*, in relation to the threshold of "the periodic benchmarking of the Standard Fund Threshold to an appropriate and fair level of estimated retirement income", without specifying what level of income would currently be appropriate and fair.

If the conclusion is to retain the threshold system, there may be four policy objectives in amending it:

- establish a formal link between the threshold and a specified maximum level of tax relief-assisted pension, as recommended by the Taxation and Social Welfare Commission's report;
- provide greater equity between public and private sector;
- make the system simpler; and
- ameliorate the impact of the threshold to facilitate recruitment and retention of higher-paid specialists in the public sector and to allow higher-paid private sector workers to make adequate provision for retirement, relative to their earnings.

Some options are:

- Increase the threshold to reflect some or all of past average earnings growth since 2014.
- Set a maximum level of tax relief-assisted private pension at the State Pension age, which in turn would determine the threshold amount, e.g. a fixed multiple of the State Contributory Pension (SPC) or average earnings?
- Commit to indexing the threshold in the future in line with average earnings growth or the SPC, as the case may be.
- Provide, in certain circumstances, a superannuation opt-out option for higher-paid public service employees in return for additional remuneration.
- Reduce the current DB post-1 January 2014 age-related factors to reflect higher bond yields, after a period of ultra-low interest rates.
- Revert the current DB valuation factors to 20:1 at all ages, as applied before 1 January 2014.
- If age-related DB valuation factors are retained, align the maximum period over which public service retirees can repay CET with the relevant age-related factor, e.g. a public service retiree at 65 could opt to repay CET over 26 years rather than the current maximum of 20 years.
- Provide a similar option to the private sector as is provided to the public sector, to pay CET in instalments in retirement as benefits are received; or, alternatively, provide a discount on the CET paid on private sector benefits to reflect upfront payment in full at retirement.
- Extend the s787TA TCA 1997 encashment option over private sector DC benefits, currently available only to public sector employees, to the private sector, subject to some conditions.

It will be very challenging to come up with a revised threshold system that satisfies all policy objectives, given that the system operates differently for public sector DB, private sector DC and private sector DB benefits.

For example, the option of a reversion to the use of the uniform 20:1 valuation factor to value DB pensions at all ages would:

- make the system simpler to operate and understand for those with DB benefits;
- be beneficial to those in the public service who retire typically at 60 or earlier (e.g. higher grades in the Gardaí) but be of limited value to other public service employees, such as members of the judiciary, who typically retire at 70 (where the current factor is 22:1);
- be of limited value to those with private sector DB pensions, where the main problem lies in the poor commutation terms allowed by schemes for the payment of CET;

- have no relevance to those with private sector DC benefits, for whom only an increase in the threshold would provide any relief from CET; and
- would increase inequity between the valuation of DB and DC benefits.

Conclusion

It is clear to me that retention of the current threshold system and its €2m value will have an increasingly negative impact on the State's ability to retain the higher-paid specialists and grades that it needs to run the State and its services and will also increasingly prevent higher-paid private sector workers providing adequately for their retirement. The current threshold system has "drifted" a long way from its initial 2005 design and policy objective and needs a substantial overhaul. But it will not be easy to do this as there may be conflicting objectives.

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Application of Entrepreneur Relief & Retirement Relief on Share Disposals

Introduction

Revised entrepreneur relief (provided for in s597AA of the Taxes Consolidation Act 1997 (TCA 1997) and hereinafter simply referred to as entrepreneur relief) and retirement relief (provided for in ss598 and 599 TCA 1997) are two important reliefs to founders and investors, in particular those involved with small and medium-sized enterprises. This article focuses on how the reliefs operate in the context of a disposal of shares, looks at the interaction between the two reliefs and highlights some common pitfalls that arise in practice.

Entrepreneur Relief – Qualifying Conditions

Entrepreneur relief provides for a reduced rate of capital gains tax (CGT) of 10%. When compared with the standard rate of CGT, this represents a maximum potential tax saving of €230,000 (i.e. in respect of a gain of €1m or more). The relief is subject to a lifetime limit of €1m on chargeable gains on disposals of qualifying assets since 1 January 2016. In the context of a share disposal, the relief applies where the following conditions are met.

Minimum shareholding requirement

The seller must have owned at least 5% of the ordinary shares for a continuous period of at least three years at any time before the disposal of the shares. It is unclear why the legislation refers to "ordinary shares" rather than "ordinary share capital" (as defined in s2 TCA 1997); however, Revenue guidance on entrepreneur relief makes specific reference to "a holding of at least 5% of the ordinary share capital".[1] Therefore, it appears that Revenue's view is that the minimum shareholding requirement is determined by reference to "ordinary share capital", which is defined in s2 TCA 1997 as "all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits".

It is also unclear from the legislation whether the 5% threshold should be calculated by reference to the nominal value of shares or the number of shares in issue; however, Revenue guidance clarifies that "it is the nominal value of the ordinary shares issued rather than the number of such shares that is relevant".[2]

Qualifying business requirement

The business of the target company must consist wholly or mainly of the carrying on of a "qualifying business". This is a broad definition and encompasses almost all businesses other than those involved in (a) the holding of securities or other assets as investments, (b) the holding of development land or (c) the development or letting of land.

One of the key definitions in the section, which is of particular importance where a holding company structure is implemented, is the definition of a "qualifying group", which is "a group, the business of each 51 per cent subsidiary (other than a holding company) in which consists wholly or mainly of the carrying on of a qualifying business". A "group" is defined as a holding company and all companies that are 51% subsidiaries of the holding company. This effectively narrows the focus of the relief to the holding company and any 51% subsidiaries (i.e. any minority shareholdings in other entities would not be taken into account for the purposes of the relief). Before the implementation of the Finance (No. 2) Act 2023 a "holding company" was defined as a "company whose business consists wholly or mainly of the holding of shares of all companies which are its 51 per cent subsidiaries". Again, the use of the words "wholly or mainly" suggested that the holding company could have held other assets without interfering with the relief and could also be interpreted as allowing minority shareholdings (i.e. companies that are not 51% subsidiaries). The Finance (No. 2) Act 2023 amended the definition of "holding company" to provide that for the purpose of the relief all subsidiaries of a holding company must be at least 51% subsidiaries and the business of that holding company must consist wholly or mainly of holding shares in those subsidiaries. In light of these amendments, the presence of a minority shareholding in a subsidiary company would appear to invalidate the relief, as would the presence of a non-trading dormant company. However, the wording in the legislation suggests that this is a point-in-time test, and therefore if there was a non-trading or dormant company in the target group, provided that this was dissolved or removed from the group before the sale of the shares, the relief should still be available.

1 Paragraph 2b.1, Revenue Tax and Duty Manual Part 19-06-02b, "Revised Entrepreneur Relief (S.597AA)".
2 Paragraph 2b.4, Revenue Tax and Duty Manual Part 19-06-02b, "Revised Entrepreneur Relief (S.597AA)".

Working time requirement

The seller must have been an employee or director of the target company (or companies in a qualifying group) and spent at least 50% of their working time "in the service of that company (or those companies) in a managerial or technical capacity".

Retirement Relief – Qualifying Conditions

Retirement relief is provided for in s598 (in the context of disposals to third parties) and s599 (in respect of disposals to a "child" (within the meaning of that section)). Where all of the conditions are met, retirement relief relieves the amount of CGT payable on the disposal.

In the context of a disposal to third parties (i.e. where s598 applies), where the seller is between the ages of 55 and 65, relief is available on the full amount of CGT payable on the disposal, provided that the consideration (deemed or actual) does not exceed €750,000 (or, where the seller is aged 66 or older, provided that the consideration does not exceed €500,000). Marginal relief is available where the consideration exceeds these thresholds and limits the CGT payable to half of the consideration over the relevant limits.

Currently, where the disposal is to a "child", full relief is available from CGT where the seller is between the ages of 55 and 65 (i.e. there is no limit on the consideration for the purposes of the relief). However, where the seller is aged 66 or older, a limit of €3m applies on the amount of consideration in respect of the disposal. If the consideration exceeds this threshold, the relief is calculated based on a notional €3m consideration amount and applied accordingly.

Importantly, the Finance (No. 2) Act 2023 has introduced two substantial changes to the operation of retirement relief, which will come into effect in respect of disposals made on or after 1 January 2025:

- Age limits: The upper age limits have been extended from 66 years to 70 years. Therefore, in the context of a disposal to a third party, the €750,000 threshold will apply in respect of disposals by individuals aged between 55 and 69, and the €500,000 threshold will apply for disposals by individuals aged 70 or older.
- Limit on disposals to a "child": The same age limits will also apply to disposals to a child (i.e. the €3m threshold will apply where the seller is 70 or older); however, a new limit of €10m will apply to disposals to a "child" made by sellers aged between 55 and 69.

In the context of a share disposal, the relief applies where the following conditions are met.

Shareholding requirement

The seller must have owned the shares for a period of at least ten years ending on the date of disposal. In addition, the shares must be shares in a "family company" (see below) that is also either a trading company or a farming company. For the purposes of the relief, a trading company is defined as "a company whose business consists wholly or mainly of the carrying on of one or more trades or professions". Notably, there is no definition of what constitutes a farming company; however, it would be reasonable to assume that a farming company is one whose business consists wholly or mainly of the carrying on of a farming trade.

The relief can also apply in respect of a disposal of a holding company, provided that (a) the holding company is the seller's family company and (b) it is a member of a "trading group". A trading group is defined as "a group of companies consisting of the holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions".

It is important to note that the company must have been a trading/farming company (or a trading group) and a family company for a period of at least ten years ending on the date of disposal.

Family company requirement

A family company is a company in which the seller holds (a) at least 25% of the voting rights or (b) at least 10% of the voting rights and the seller's "family" holds at least 75% of the voting rights. For the purposes of limb (b), family means the spouse or civil partner of the seller and any brother, sister, ancestor or lineal descendant of either the seller or their spouse/ civil partner. As mentioned above, for the relief to apply, the shareholdings must be maintained for a period of at least ten years ending on the date of disposal.

Working time requirement

The seller must have been a working director of the company for at least ten years, during which time they must have been a full-time working director (i.e. required to devote substantially the whole of their time to the service of the company in a managerial or technical capacity) for at least five years.

The relief is also subject to a bona fide test and will not be available where it is used for tax-avoidance purposes.

Clawback provisions

There are two specific clawback provisions that apply to retirement relief that one should be aware of. First, the above limits on the consideration received (or deemed to be received) in respect of any disposals to which retirement relief applies are aggregate limits (i.e. for individuals who are under 66 years of age, the relief would be limited to €750,000 for all qualifying disposals to persons other than a child). Therefore, if a seller who has previously claimed retirement relief makes a subsequent disposal that results in the aggregate consideration limit's being exceeded, this can result in the relief's being withdrawn.

Second, in the case of a disposal to a child, if the assets transferred to the child (e.g. shares) are subsequently disposed of by that child within six years, the relief claimed by the initial seller (i.e. the parent) is withdrawn. The clawback is effected by way of an assessment on the child disposing of the shares (not the parent who claimed the relief) and is calculated based on the amount of tax that would have been payable had the relief under s599 not applied in respect of the original transfer.

Interaction Between the Two Reliefs

There are a number of differences between the reliefs – for example, entrepreneur relief is not subject to any clawback provisions and it also applies to smaller shareholdings in companies (i.e. 5%, rather than the 25% (or 10% in certain instances) shareholding required for retirement relief). There is a much longer working time requirement to be satisfied before retirement relief applies, and it is also subject to a minimum age requirement. Importantly, both reliefs have lifetime limits – entrepreneur relief imposes a limit on chargeable gains, whereas retirement relief is limited based on the consideration paid.

Although both reliefs have mandatory application, the interaction between s597AA and ss598/599 is not set out in TCA 1997. Entrepreneur relief operates to reduce the rate of CGT to 10% on the first €1m of chargeable gains, whereas retirement relief relieves the amount of CGT payable; however, the key point is that neither relief removes the gain from the scope of CGT. Although there are subtle differences between the qualifying conditions for the two reliefs, it is entirely possible that a disposal of shares could qualify for both reliefs. This can lead to unanticipated results – for example, where a prior disposal (in respect of which retirement relief applied) reduces the amount of entrepreneur relief available, as outlined in the example below.

Example

John, aged 56, has owned 100% of the issued share capital of a trading company for 20 years. He intends to retire in the next five years, and in the interim period he has agreed to sell 50% of his shares to Mary, a key employee in the business, who will ultimately acquire the balance of John's shares when he retires. The current value

of the company is €1.5m. His shares have a nominal base cost.

With regard to the initial disposal of 50% of the shares, a charge to CGT under entrepreneur relief in the amount of €75,000 but as John is over the age of 55, retirement relief will apply to provide a full exemption from tax. Therefore, there are no issues with regard to the initial disposal; however, when John retires and sells his remaining shares, he will already be deemed to have disposed of qualifying assets for the purposes of entrepreneur relief, and €750,000 of the €1m lifetime limit will be deemed to have been utilised. In addition, assuming that the value of the company remains the same, the subsequent disposal of €750,000 will mean that the aggregate consideration limit for retirement relief has been exceeded, and therefore the relief claimed on the initial disposal may be withdrawn. However, in these circumstances marginal relief should be available.

The main risk here is that s597AA does not specify that the lifetime limit of €1m for entrepreneur relief applies only to the extent that the gain was not otherwise relieved. One obvious way for an individual to maximise the reliefs available is to structure the disposals so that the first disposal occurs before they reach 55 years of age (in which case entrepreneur relief would apply) and the subsequent disposal occurs after they have turned 55 (enabling them to avail of retirement relief on the subsequent disposal).

Conclusion

The availability of both entrepreneur relief and retirement relief should not be assumed. Ideally, founders and their advisers should have an exit strategy for their business to allow for adequate structuring to be put in place to ensure that the proper reliefs are available on the ultimate disposal. Advisers should also ensure that they are aware of any prior disposals of business assets by their client. Although this article has focussed on the conditions applying in the context of a share disposal, the reliefs also apply to certain qualifying transfers of business assets, which could impact the availability of the reliefs.

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Understanding the Capital Goods Scheme: Navigating Complexities

Introduction

The Capital Goods Scheme (CGS) was introduced as part of the new Irish VAT-on-property regime that took effect on 1 July 2008. Despite the fact that the CGS has been a fundamental component of the VAT-on-property rules for the past 16 years, it continues to cause confusion among practitioners and property owners. The CGS applies where a taxable person has been charged VAT on the acquisition or development of a property. It also applies to owners of transitional properties. A person to whom the CGS applies is referred to as a "capital good owner" in CGS terminology.

Why Is the CGS Needed?

Central to the operation of our VAT system is the principle that an accountable person may deduct VAT paid on goods and services that are purchased in the course or furtherance of a taxable business. This principle of "deductibility" in the context of VAT paid on property is governed by the CGS. Given that a property is likely to have a long life, changes often occur in the taxable use to which it is put during that useful life.

The CGS is made up of detailed rules that are provided for in ss63 and 64 of the Value-Added

Tax Consolidation Act 2010 (VATCA 2010). These rules regulate the deductibility of VAT paid on property over this useful life, referred to as its “VAT life” or the “adjustment period”. The scheme provides that any capital good in respect of which VAT is incurred has a VAT life of either 20 years (for newly developed property) or 10 years (for refurbished property). Under the CGS, annual adjustments may be made throughout the property’s VAT life to reflect correctly the actual use of the property for VAT purposes compared with the intended use at the time the VAT was paid. This requirement to continually review how the property is being used can make it challenging for property owners to apply the scheme correctly.

How Does the CGS Operate?

When VAT is paid on the acquisition or development of a property, the normal rules for reclaiming VAT on the acquisition or development of a property are followed. This is based on the principle of “deductibility”, referred to above. Therefore, where a business pays VAT on the purchase or development of a property, it can reclaim all of the VAT paid if the property is to be used for the purpose of making fully taxable supplies. However, where a property is intended to be used partly for taxable purposes, the owner is entitled to reclaim the portion of VAT paid that corresponds to the intended proportion of taxable use of the property. Thereafter the capital good owner reviews annually the actual use to which the property is put from a VAT perspective.

The CGS divides the adjustment period of a property into “intervals”, which are specific periods of time during which adjustments to deductible VAT may be required in respect of the property. There are 20 intervals for a new property and 10 intervals in the case of property refurbishments. At the end of each CGS interval the capital good owner is obliged to review and, if necessary, adjust the amount of VAT reclaimed based on the actual use of the property compared to its intended use at the time of acquisition or completion.

The CGS intervals may be categorised as follows:

- initial interval,
- second interval and
- subsequent intervals.

It is important that capital good owners understand the meaning of these key terms.

Initial interval

Under the CGS the “initial interval” refers to the first 12 months after the acquisition or completion of a property. This period is crucial to determining the initial use of the property and setting the baseline for future VAT adjustments under the CGS.

At the end of the initial interval the property owner is obliged to undertake a review of the amount of VAT reclaimed. This is to ensure that the VAT reclaimed reflects the actual use of the property for VAT purposes. If there is a difference, the owner must make a VAT adjustment. This is best explained by way of example.

Example 1

On 1 June 2020 XYZ Limited purchased a property and reclaimed all of the VAT paid. This was on the basis that it intended to use all of the property for the purposes of its taxable manufacturing trade. The acquisition cost of the property was €5m plus VAT of €675K (at 13.5%). The company’s annual accounting year-end is 31 December. In this case the “initial interval” of the property purchased is the period from 1 June 2020 to 31 May 2021. During this period XYZ Limited used the property solely for the purposes of its manufacturing trade. Therefore, no VAT adjustment was required under the CGS at the end of the initial interval.

Second interval

Under the CGS the “second interval” begins on the day after the initial interval ends and concludes at the end of the property owner’s

accounting year in which the initial interval ends. The purpose of the second interval is to align any adjustments that may be required under the CGS with the property owner's accounting year-end. This is intended to facilitate easier integration of the CGS adjustments into regular financial reporting and VAT return processes.

If we continue our example above, the second interval in respect of the property that XYZ Limited purchased on 1 June 2020 refers to the period from 1 June 2021 until 31 December 2021. Where the company continues to use the property solely for the purposes of its taxable manufacturing trade, no adjustment is required in respect of the purchase VAT reclaimed in June 2020.

Subsequent intervals

After the first and second intervals the CGS requires an annual review of the use to which the capital good is put over its remaining VAT life. As previously noted, this is to ensure that the amount of VAT reclaimed reflects the actual use of the property throughout the adjustment period.

If there is a change in the proportion of the property that its used for taxable purposes in any year compared to the use during the initial interval, an adjustment of a proportion of the VAT reclaimed will be required. This means that if the property is used more or less for taxable activities than initially expected, the amount of VAT that can be reclaimed needs to be adjusted as either a payment of overclaimed VAT or a refund of underclaimed VAT.

Where the adjustment period is 20 years, each annual review should consider 1/20th of the VAT initially recovered. In our example above, 1/20th of the VAT recovered is €33,750 (i.e. €675,000 x 1/20th).

Example 2

In January 2024 XYZ Limited entered into a lease to rent out 30% of the floor area of the property that it purchased in June 2020 under a VAT-exempt lease.

XYZ Limited is therefore obliged to repay VAT of €10,125 to Revenue each year throughout the term of the exempt letting, calculated as follows:

Total purchase VAT reclaimed (being 100% of VAT paid)	€675,000
Amount of VAT subject to annual review (1/20th)	€33,750
% of property applied to exempt use	30%
Amount of VAT repayable to Revenue for the interval	€10,125 (€33,750 x 30%)

Similarly, where the adjustment period is 10 years, in the case of a refurbishment of an existing property, the annual review will consider 1/10th of the VAT initially reclaimed.

Big-swing adjustment

Special rules apply where the VAT-deductible use for an interval differs by more than 50 percentage points from the VAT-deductible use for the initial interval. Because of the major "swing" in taxable use, a full adjustment is required, and the adjustment is not based on 1/20th of the VAT paid (or 1/10th of the VAT paid, in the case of refurbishments) (ss63(2) and 64(2) VATCA 2010). The adjustment is based on the full VAT incurred at the initial interval reduced by the number of intervals that have already expired in the adjustment period.

After a big-swing adjustment there is a rebalancing of the benchmark figure, and this revised benchmark figure is then used for all remaining intervals in the property's VAT life after the interval in which the big swing occurs. Consistent with the CGS overall, the purpose of the big-swing adjustment is to ensure that the VAT recovery on a capital good accurately reflects its use over time, particularly when there is a significant change in how the property is used in terms of taxable versus exempt activities. The big-swing adjustment may be illustrated by way of examples.

Example 3

ABC Limited bought a building in 2020, in respect of which it paid VAT of €500,000. During the first year after the property purchase, the property was put to fully taxable use by the company, which, accordingly, recovered all €500,000 of the VAT paid in its VAT return for the period in which the purchase took place. Therefore, in each of the following 19 intervals, the potential annual VAT adjustment is €25,000 (being €500,000 ÷ 20). This is referred to as the reference deduction amount.

At the beginning of interval 5 the company rented out 65% of the property under a VAT-exempt lease, meaning that only 35% of the property was being used for taxable purposes. Therefore, there has been a "big swing" in use of more than 50 percentage points in interval 5 compared with the initial interval. In this scenario the adjustment required is with respect to the entire remainder of the VAT life of the property, calculated as follows.

Initial details	
Reference deduction amount (C) (i.e. VAT amount initially deducted when the property was used for fully taxable purpose)	€25,000
Interval deduction amount (D) (i.e. VAT amount deductible in the current interval after the change in use, which is now 35% owing to the exempt lease on 65% of the property)	€8,750
Number of full intervals remaining (N) (this includes the current interval as the change in use occurred at the beginning of interval 5)	16

The formula to calculate the big-swing adjustment is:

$$C - D \times N,$$

i.e. (€25,000 – €8,750) x 16 = €260,000

In this scenario ABC Limited must repay €260,000 to Revenue in interval 5, so that in every future interval the base amount against which recovery is calculated is a recovery of 35%, i.e. €8,750.

CGS and Property Sales

The CGS is very relevant to property sales, and its exact application depends on:

- the VAT treatment of the sale itself, i.e. whether the property sale is taxable or exempt or transfer-of-business (TOB) relief applies, and
- whether the property is a capital good with intervals remaining in its adjustment period.

Taxable sales during the adjustment period

Where a property sale is taxable, the vendor's VAT position depends on its VAT recovery entitlement at the time of acquisition or development of the property. The CGS adjustment will depend on whether the vendor was fully entitled, partially entitled or not entitled to VAT recovery on the initial acquisition or development costs. Indeed, the vendor may be eligible for further VAT recovery based on the taxable use of the property during the adjustment period up to the date of sale.

Example 4

In 2022 D Limited acquired a commercial property for €1m plus VAT at 13.5% (€135,000). However, the company was entitled to reclaim only 50% of the VAT paid as input credit because the property was used for both taxable and exempt purposes. Therefore, the input VAT credit claimed was €67,500. D Limited has a 31 December year-end.

In February 2024 D Limited sold the property for €1.2m and charged VAT of €162,000 on the sale. D Limited is entitled to get back some of the VAT that it did not recover when it purchased the property, as calculated by the formula:

$$\frac{E \times N}{T}$$

where:

E = non-deductible VAT incurred on property acquisition

N = number of intervals remaining plus 1

T = total number of intervals

Applying this formula to the facts in our example:

Original VAT paid	€135,000
VAT credit claimed initially	€67,500
Remaining VAT credit (E)	€67,500
Adjustment period (T)	20 years
Intervals remaining plus 1 (N)	17 + 1 = 18

$$\frac{€67{,}500 \times 18}{20} = €60{,}750$$

D Limited is entitled to a VAT deduction of €60,750, which may be included as input VAT in its January/February 2024 VAT return.

The property now becomes a capital good for the purchaser, and the new CGS commences. The VAT paid on the purchase of the property becomes the purchaser's total tax incurred, and the adjustment period/VAT life will be 20 intervals starting on the date of purchase.

Exempt sale during the adjustment period

If the property is sold and the sale is exempt from VAT, clawback provisions of the CGS will apply. This means that if the vendor had previously recovered VAT on the acquisition or development of the property, a portion of this VAT will need to be repaid to Revenue where the exempt sale takes place during the adjustment period.

Sales subject to transfer-of-business relief

Where a property is sold under the TOB provisions, the CGS implications must be carefully considered TOB relief refers to the VAT relief that mandatorily applies where there is a transfer of goods (including capital goods) to an accountable person and such transfer constitutes transferring the totality or a part of the assets of an undertaking that is capable of being operated on an independent basis. Where the relief applies, the transfer is deemed not to be a supply for VAT purposes and no VAT is chargeable.

A property sale will come within the TOB provisions if the property being transferred is subject to an existing letting agreement, an agreement to lease or a licence to occupy. This is on the basis that such agreements, together with the property, constitute an undertaking that is capable of being operated on an independent basis.

The CGS implications of a property sale that is within the scope of the TOB provisions depend on whether the sale would be taxable or exempt in the absence of the TOB provisions' applying. Where the sale would have been taxable in the absence of TOB relief, the vendor is treated as having used the property for fully taxable purposes for the remaining intervals of the property's VAT life. In such a scenario the purchaser is deemed to have been charged the VAT that would have been charged on the sale. Therefore, the property becomes a new capital good of the purchaser, and if the purchaser is not entitled to recover this VAT cost, the VAT must be paid by the purchaser to Revenue in the period in which the sale took place.

By contrast, where the sale would have been exempt from VAT in the absence of the TOB provisions' applying, the vendor will not incur a clawback of VAT that was recovered on acquisition or development as the vendor's CGS obligations are transferred to the purchaser. To enable the purchaser to meet this obligation, the vendor is required to provide a CGS record to the purchaser, including the following information:

- Capital Goods Records – the vendor is obliged to provide the purchaser with the CGS records related to the property being

transferred (details of the information required in these records are set out below);

- details of the VAT treatment of the property up to the date of transfer – this includes information on any VAT charged or reclaimed on the property during the vendor's ownership;
- a waiver of exemption (if relevant) – if a waiver of exemption was in place for the vendor, details of this should be provided to the purchaser; and
- any binding contractual arrangements that were in place before the sale that might affect the VAT treatment should be disclosed.

Emergency Accommodation

As noted previously, when a property's use changes from taxable or partly taxable to fully exempt, it necessitates a CGS adjustment. This adjustment is needed to account for the change in the taxable use of the property, calculated on a time-apportioned basis.

This is a matter that is very pertinent in the case of hotels and similar businesses that are providing buildings for the provision of emergency accommodation where the buildings were previously used for taxable purposes. In this context the provision of emergency accommodation refers to accommodation in a hotel or guesthouse when contracted to a State agency to be provided exclusively as emergency accommodation and not available as guest or hotel accommodation to the general public, which is regarded as an exempt supply of emergency accommodation. The supply of accommodation for the purposes of Direct Provision also constitutes a VAT-exempt supply of emergency accommodation.

For completeness, it should be noted that the option to tax rents is not permitted where property is used for emergency residential accommodation.

Also, services such as laundry of bedlinen, security, reception and administration that are included in the cost of emergency accommodation are considered to be ancillary supplies and, hence, are also VAT exempt. However, catering services are not considered ancillary to the supply of emergency accommodation.

Development by a Tenant

Where a property is leased and the tenant carries out development on the property, it is important that both the landlord and the tenant are aware of the potential CGS considerations. Where the tenant is entitled to reclaim some or all of the VAT paid on the refurbishment works, the tenant creates a new capital good arising from the work on the property. This capital good is separate from the underlying property and has an adjustment period of 10 years. Importantly, the tenant is regarded as the owner of this capital good and has the following obligations in respect of the capital good:

- The tenant is obliged to monitor and adjust for any changes to the VAT use of the capital good throughout the 10-year adjustment period.
- The tenant is required to make annual adjustments based on the actual use of the capital good compared with the intended use declared at the outset. This is part of the normal CGS obligations and involves adjusting the VAT recovery if the use of the capital good changes.
- If a tenant assigns or surrenders the lease of a property within the 10-year adjustment period, then the tenant must ensure that the CGS obligations are passed to the landlord or new tenant, as relevant. This means that:
  - The tenant may be required to pay to Revenue a portion of the VAT recovered on the development.
  - If there is full VAT recovery by the tenant on the refurbishment costs, the tenant and the landlord can agree that the landlord takes over the tenant's capital good and related obligations. This agreement must be in writing, and the tenant must provide the Capital Goods Record.

Compliance with these obligations is crucial for tenants to avoid potential clawbacks of VAT reclaimed and to ensure a smooth transition of CGS responsibilities in case of lease assignment or surrender. The following example sets out the operation of the CGS in relation to refurbishment work by a tenant on a leasehold property.

Example 5

On 1 June 2022 LM Limited entered into a lease on a property and undertook development work to prepare the unit for trading. The total cost of this work was €600,000 plus VAT @ 13.5% of €81,000. LM Limited reclaimed 90% of this VAT (being €72,900), on the basis that the property was to be used for 90% taxable activities.

The development work was completed on 23 July 2022, and the initial interval for the capital good commenced on that day. After the end of the initial interval LM Limited realised that the property was in fact being used for 100% taxable activities, contrary to the initial expectation of 90%.

In this situation the CGS adjustment for LM Limited is:

Total VAT incurred: €81,000

Base VAT amount: €8,100 (i.e. €81,000 ÷ 10)

Initial reclaimed VAT: €72,900 (i.e. 90% of €81,000)

Revised reclaimable VAT: €81,000

On the basis that the actual taxable use of the property is higher than initially anticipated, LM Limited is entitled to reclaim the additional VAT that was not initially reclaimed, calculated as follows:

€81,000 – €72,900 = €8,100

LM Limited can apply for a refund of VAT of €8,100 as a result of this CGS adjustment, reflecting the increased proportion of taxable use of the property by LM Limited, the capital good owner.

Transitional Properties

In the context of the VAT-on-property rules a transitional property refers to properties that were in existence on 1 July 2008 and includes properties that were held on that date but were not completed. A transitional property may be a freehold interest or under a lease of 10 years or more that was subject to VAT when it was created (a so-called legacy lease under the pre-July 2008 VAT-on-property rules).

There are specific CGS rules in relation to transitional properties, which recognise their status at the time of the change in the VAT-on-property rules on 1 July 2008. The following are key points regarding the operation of the CGS in relation to transitional properties:

- The normal CGS requirement to make annual adjustments based on the proportion of taxable use versus exempt use does not apply to transitional properties.
- The big-swing adjustment rule applies only where the property is used for the first time or there is a change in taxable use of more than 50 percentage points on or after 23 February 2010.
- The normal adjustment on the exercise and termination of the landlord's option to tax a letting of a transitional property does not apply. However, where the owner makes an exempt letting of such a property, a deductibility adjustment independent of the CGS is required.
- If a transitional property is sold during the adjustment period and the sale is VAT exempt, the CGS clawback provisions in relation to exempt supplies apply.
- If a transitional property is sold during the adjustment period and the sale is taxable, the additional CGS input credit provisions in relation to taxable supplies apply.

Capital Goods Record

A capital good owner is obliged to maintain a Capital Goods Record (CGR) of a property capital good that the owner has acquired or developed from 1 July 2008. To ensure

accurate tax reporting and compliance, the CGR should contain:

- the amount of the total tax incurred on its acquisition or development,
- the amount of the total tax incurred that is deductible,
- the date on which the adjustment period begins,
- the number of intervals in the adjustment period,
- the initial interval proportion of deductible use,
- the total reviewed deductible amount,
- the proportion of deductible use for each interval,
- details of any adjustment required to be made in accordance with s64 VATCA 2010 (big-swing rules) and
- details of any sale or transfer of the capital good or details of any assignment or surrender of a lease where responsibility for the tenant's refurbishment is assumed by the assignee or landlord.

The purpose of the CGR is to track the adjustment period of the capital good, which is essential to determining the VAT adjustments required based on the use of the property. It is used to calculate the required adjustments during the adjustment period, including changes to the use of the property that might impact the proportion of deductible VAT.

Also, as noted above, where a property is transferred under TOB rules, the vendor must provide the purchaser with the CGR. This is to ensure that the purchaser has the information needed to continue complying with the CGS in respect of its newly acquired property.

Practical Issues

Unsurprisingly, practical issues often arise, which reflect the complexity and detailed nature of the CGS:

- Correctly identifying the initial interval and subsequent intervals for CGS adjustments, and understanding the obligations at the end of each interval, can be intricate.
- Maintaining detailed records, by way of the CGR, over the lengthy adjustment period of a property can be challenging.
- The requirement to make a big-swing adjustment when the taxable use of a property changes by more than 50 percentage points can be complex. Identifying such swings and understanding when and how to apply the adjustment can be problematic.
- Understanding how the CGS applies to transitional properties can be challenging.
- Difficulties can arise for property purchasers where TOB relief applies to the transfer. Obtaining sufficient CGRs can be challenging, particularly in the case of sales by a receiver or liquidator.

Conclusion

This article discusses the key challenges and obligations of capital good owners in respect of the CGS. The scheme is a complex set of rules that regulate the deductibility of VAT paid on property over its VAT life and it can be challenging to apply correctly. By way of guidance for capital good owners, the following steps are recommended:

- Understand the key terms and their obligations under the CGS, including adjustment period, intervals and the big-swing adjustment rule;
- Maintain detailed records by way of the CGR over the lengthy adjustment period of the property;
- Continually review the use of the property and make necessary adjustments to reflect the actual use of the property for VAT purposes;
- Seek professional advice when necessary to ensure compliance with the complex set of rules that regulate the deductibility of VAT paid on property over its VAT life.

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Possible Impact of Anti-Avoidance Measures on Business Decisions

Introduction

There are more than 60 specific provisions in the Tax Acts to challenge a "primarily tax-motivated non-bona fide commercial transaction". The omnipresent threat of the general anti-avoidance provision, s811C of the Taxes Consolidation Act 1997 (TCA 1997), also lurks in the undergrowth to catch any other perceived abuses of the tax system. Furthermore, certain other provisions, such as s817 TCA 1997, which seeks to counteract any transactions involving the disposal of shares without a significant reduction in the interest in a business, could apply where there has been **any** tax motivation.

Although the Irish courts have yet to consider the meaning of the concept of a mainly tax-driven non-genuine commercial transaction, recent Supreme Court and Court of Appeal decisions in England and Wales provide some judicial clarification. Such authorities, although not binding, are persuasive in this jurisdiction,

specifically where similar statutory wording is under consideration.

In a series of two articles I will review the assortment of recent judicial authorities and highlight the crucial role that evidence plays in satisfying the Revenue Commissioners, the Tax Appeals Commission and the courts of the commercial legitimacy of any impugned transaction where tax avoidance is not the primary motivation.

Tax Planning v. Tax Avoidance

The earliest known instance of tax avoidance/planning in this jurisdiction involved window tax, or the "daylight robbery" tax, which was introduced in 1169 and repealed in 1851. The tax was based on the number of windows in the residential property. To avoid the tax, the Irish either blocked up windows (tax avoidance, arguably) or used split doors (tax planning), which allowed the top half to be opened for light and air while the bottom half remained closed for security.

Tax avoidance has been described as a course of action designed to conflict with or defeat the evident intention of the legislators. Accordingly, it is not enough for a taxpayer to point to the existence of a relieving provision and claim the entitlement whatever the circumstances. The taxpayer must therefore use, rather than abuse, a relieving provision in a way that is consistent with the intention of the Oireachtas as discerned from the wording of the statute.

Tax avoidance can include strategies that are designed to lower the tax burden without violating the letter of the law, by using contrived or artificial transactions that serve little or no purpose other than to give rise to a tax advantage.

It is important to distinguish tax avoidance from tax planning. In the first consideration of a general anti-avoidance provision by the Supreme Court, *Revenue Commissioners v O'Flynn Construction Company Limited, John O'Flynn and Michael O'Flynn* [2011] IESC 47, O'Donnell J, as he was then, at paragraph 65 distinguished acceptable tax planning from tax avoidance as the difference "between legitimate tax mitigation of a genuine commercial transaction on the one hand, and a transaction undertaken or arranged primarily for the purposes of giving rise to a tax advantage".

Specific Anti-Avoidance Measures

Specific tax-avoidance provisions are bespoke measures targeted against a particular issue, transaction, classification of persons or set of circumstances and provide Revenue with the statutory authority to challenge, modify or deny an entitlement to a relief, allowance or deduction. The specific anti-avoidance measures cover transactions such as company reconstructions, amalgamations, share disposals, company groups, transfer pricing, retirements, interest deductions and an assortment of investment opportunities.

Most of the specific anti-avoidance provisions require that the transaction be undertaken "for bona fide commercial reasons and...not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax". This is a dual test requiring the bona fide commercial credentials be established in circumstances where the primary objective does not involve the avoidance of tax.

A regularly cited definition of a "bona fide commercial transaction" is taken from *Carvill v Inland Revenue Commissioners* [2000] STC (SCD) 143 at paragraph 87: it is "any genuine transaction which implements or facilitates a business end" and is "in furtherance of commerce, i.e. a trade or business".

In the absence of any Irish judicial clarification of what constitutes a bona fide commercial transaction, the principles of statutory interpretation should be applied. In the recent judgment of the Supreme Court in *Heather Hill Management Company CLG v An Bord Pleanala* [2022] IESC 43, Murray J confirmed at paragraph 115 that:

> “the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.”

Therefore the meaning of “bona fide commercial reasons”, in its normal context, is a legal and business term that refers to genuine and commercial business purposes. As the case law highlights, a business decision made for bona fide commercial reasons requires the production of evidence in support of sound business principles and objectives. Evidentially supported business objectives are less amenable to challenge unless a tax benefit was the primary motivation.

Tax Appeals Commission

As noted above, there has been no judicial consideration of the non-primarily tax-motivated bona fide commercial transaction in this jurisdiction; however, there have been several decisions from the Tax Appeals Commission on the concept.

Determination **93TACD2021** considered the claiming of interest relief by an individual who borrowed money to invest in two private companies. The main question was whether the interest relief was disallowed under the anti-avoidance provision of s817A TCA 1997, which seeks to deny relief for interest paid on a loan where a scheme has been effected or arrangements have been made such that the sole or main benefit expected to accrue to the borrower from the transaction under which the interest is paid is a reduction in liability to tax.

The scheme employed by the appellant involved borrowing in a high-interest-rate currency hedged by forward contracts and a spread bet, the gain from which was exempt from tax. In considering s817A TCA 1997, the Commissioner, having appraised the evidence, compared the value of the tax benefit with the value of the shares acquired, which constituted the immediate benefit of the loan, and found that the tax benefit was roughly 12% of the value of the asset. The Commissioner was also satisfied that there was an expected benefit “to accrue…from the transaction” over and above the immediate benefit. It was therefore concluded that tax relief could not be considered to have been the main benefit of the transaction and that s817A could have no application.

In determination **127TACD2022** it was held that as the taxpayer continued to have an involvement in the business and retained financial and strategic control, there was an absence of evidence to justify the bona fide commercial reasons and therefore there was no entitlement to retirement relief, under s598 TCA 1997, on the disposal of the shares.

The appellant in determination **48TACD2023** sought to be assessed under capital gains tax rules on the disposal of her majority interest in a company to a company owned by her husband. The consideration for the disposal was funded by providing a loan from the appellant’s company to her husband’s company. Relying on s817 TCA 1997, Revenue raised an assessment to income tax on the basis that the disposal of the shares was a distribution subject to income tax rather than a capital disposal subject to capital gains tax. In considering whether the disposal was for “bona fide commercial reasons” and therefore outside of s817, the Commissioner observed that there were assertions made in the submissions that the “borrowings with a third party…necessitated the raising of funds in the same amount as the consideration she received” and therefore a bona fide commercial reason could exist. At paragraph 97 the Commissioner ruled against the appellant on the basis that he:

> “heard no evidence whatever about the Appellant’s reasons for selling her shares. Whether it was because she had debts

> that needed to be paid or was for some other reason cannot be ascertained in the absence of evidence. A bald statement in written argument does not constitute evidence."

Accordingly, the income tax assessment was confirmed.

England and Wales Decisions

Brebner

In *Inland Revenue Commissioners v Brebner* [1967] 1 All ER 779 Mr Brebner and his associates ("the principal shareholders"), to avoid a hostile takeover of their company, Aberdeen Coal and Shipping Co Ltd, made a counter-offer to the other shareholders, which was accepted. To fund the acquisition the principal shareholders borrowed £108,000 from a bank with a commitment for early repayment. To fulfil this obligation the company engaged in a scheme of reconstruction whereby the capital of the company was increased to £135,000 by capitalising the available cash reserves of £75,000. The company made a subsequent capital distribution to the principal shareholders of an equivalent amount. This return of capital was thereafter used to reduce the loans that funded the purchase of the shares of the minority shareholders.

The Commissioners of Inland Revenue raised an assessment to counteract the tax advantage, asserting that the liability to surtax for the year 1960–1 should be computed on the basis of treating a certain part of the sum received as the net amount of a dividend payable under deduction of tax at the date of receipt.

As observed by the House of Lords, the Special Commissioners found that the primary concern of the principal shareholders was the acquisition of additional shares for the purpose of protecting the ongoing viability of the company, a business that had good prospects of continuing profitably. At page 783 the court referred to the following conclusion of the Special Commissioners:

> "On a consideration of all the evidence before us we found that the transactions in question had been entered into for bona fide commercial reasons. We also found that though admittedly a tax advantage had been obtained this advantage was an ancillary result of the main object, which was a bona fide commercial one, and that the transactions in question did not have as their main object, or one of their main objects, to enable tax advantages to be obtained."

The matter was ultimately determined by the House of Lords, which held that the issue of whether one of the main objects was to obtain a tax advantage was a question of subjective intent. It was a question for the Commissioners to decide on consideration of the relevant evidence before them. As the Special Commissioners reached a reasonable conclusion on the evidence, the court did not interfere.

Fisher

A case that had a long journey through the UK tribunals, the Court of Appeal, the Supreme Court and even the Court of Justice of the European Union was *Fisher v HMRC* [2023] UKSC 44. The case concerned Stan James (Abingdon) Limited ("SJA"), which was owned by the Fisher family. The Fishers, who were directors and shareholders, agreed to the transfer of the gambling business from SJA to Stan James Gibraltar Limited ("SJG"), a company resident in Gibraltar. The purpose of the transfer was to take advantage of a significantly lower rate of betting duty in Gibraltar. Competitors had relocated their operations outside the UK and did not have to charge UK betting duty to their customers. SJA could not absorb the cost of the UK betting duty and was losing customers to those competitors. Therefore, as observed by the First-tier Tribunal (FTT) at paragraph 458 of its judgment, a decision was taken to transfer the betting business to SJG "to make sure the business survived".

Evidence was adduced to support the assertion that the purpose of the transfer was not to avoid income tax but to stay in business, as the UK betting duty was a significant cost. Although it appears that the betting duty was successfully avoided, what happened next was not foreseen, as the Fisher family was assessed to income tax on the profits of SJG from 2000 to 2008 under the Irish equivalent of s806 TCA 1997, transfer-of-assets-abroad (TOAA) provisions. Those provisions impose a charge to income tax on an individual who transferred assets and who, by virtue of or in consequence of that transfer, either alone or in conjunction with associated operations, had power to enjoy any income of a person resident or domiciled outside the State that would be chargeable to income tax if it were received by the person in the State.

The measure does not apply where, *inter alia*, “the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation”, in accordance with the UK equivalent of s806(8)(b) TCA 1997, the “motive” defence.

The FTT held that the Fishers were the “quasi-transferors” of the business sold by SJA to SJG and that the TOAA provisions applied. Furthermore, the use of the term “prevention” in the equivalent of s806(3) TCA 1997 suggested that although the avoidance had not yet happened, the purpose of the provision was to stop it before it did. Thus, there was nothing on the face of the legislation that required that income tax had been avoided. The FTT, relying on *IRC v McGuckian* [1997] STC 908, held that the actual avoidance of income tax was not a prerequisite to the application of a charge to income tax. Furthermore, as the avoidance of tax (betting duty) was the main purpose of the transfer, the motive defence was not available.

The Upper Tribunal (UT) disagreed with the reasoning of the FTT and held that the transfer was made by SJA and not by any of its individual shareholders or directors, as “there is no basis for treating any of them as the ‘real’ Transferor and SJA as merely an instrument by which they effected the transfer of assets”. It allowed the appeal, ruling that the TOAA code was not applicable. It also concluded at paragraph 146 that:

> “SJA’s business was clearly doomed unless it followed its competitors. Therefore, to the extent betting duty avoidance was involved in the transactions, it was simply the means of achieving the main purpose of saving the business, for which main purpose the transactions were designed.”

The Court of Appeal reversed the decision of the UT and agreed with the decision of the FTT by confirming that individuals who cause a company to make the relevant transfer can be taxed as transferors. It also concluded that although the avoidance of corporation tax or other income tax was not a purpose of the transfer, saving the business and avoiding betting duty went together and were inseparable. Therefore, although the transfer was for bona fide commercial operations, the Fishers could not avail of the “motive” defence as the transfer was to avoid liability to betting duty, which was considered to be a tax, based on a liberal interpretation.

The Supreme Court issued its judgment on 21 November 2023, overturning the Court of Appeal’s judgment by finding that the Fishers were not either singly or collectively the transferors of the business and that therefore the TOAA provisions did not apply. The Supreme Court, at paragraph 78 of its judgment, agreed with the UT that the term “quasi-transferor” does not appear in the statute and that “to be the transferor of assets transferred by that company suggests strongly to me that [the TOAA provisions were] not intended to apply to transfers by companies”.

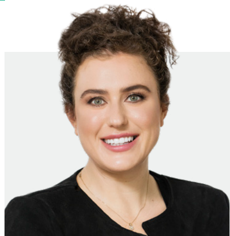
In its well-reasoned judgment the Supreme Court limited its deliberations to a consideration of whether the TOAA provisions applied in the first instance, and there was no detailed consideration of the motive defence. It is

therefore unfortunate that the Court of Appeal's judgment is the last judicial pronouncement on the "motive" defence.

Interestingly, during the proceedings an application was made to the Court of Justice of the European Union (CJEU) on the question of whether, for the purposes of Article 49 (freedom of establishment) and Article 63 (free movement of capital) of the Treaty on the Functioning of the European Union (TFEU), Gibraltar should be seen as part of the same Member State as the UK. Relying on settled law, the CJEU confirmed that Gibraltar is part of the UK for the purposes of the TFEU and therefore the transfer of the business from SJA to SJG was treated as a transaction within a single state. Therefore, although Gibraltar was considered part of the UK for the TFEU, for TOAA purposes it was considered to be outside the UK.

Follow-up Article

The follow-on article will review the jurisprudence and provide examples of expenditure that should satisfy the "bona fide commercial reason" test. The article concludes with recommendations to mitigate the possibility of Revenue's challenging the commercial legitimacy of business transactions.



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UK Abolishes Remittance Basis Tax Regime – Reform of Inheritance Tax to Follow

Introduction

UK Chancellor Jeremy Hunt's election-year Budget of 6 March 2024 ("the Budget") announced radical changes for UK-resident non-UK-domiciled individuals ("non-doms"). The changes are intended to take effect from 6 April 2025, being the start of the next UK tax year.

Currently, UK-resident non-doms may elect to be taxed on the remittance basis. Broadly, this means that (provided they make the relevant election and, where necessary, pay an annual charge) a non-dom will be subject to UK tax only on offshore income and gains that are remitted (or brought) to the UK. The Budget, however, confirmed that the Conservative Party intends to abolish this system (referred to as the "non-dom regime"). It plans to replace the non-dom regime with a four-year Foreign Income and Gains (FIG) residency regime under which eligible taxpayers will receive a complete tax exemption on non-UK income and gains for a period of four years (**regardless of whether these are remitted to the UK**). Key transitional measures for non-doms currently availing of the remittance basis were also announced, as well

as a consultation process regarding changes to inheritance tax (IHT).

At the time of writing, draft legislation implementing the changes and confirming how they will fully operate in practice is still awaited. The update below is based on the Budget Day announcement and HM Treasury's Technical Note entitled "Changes to the Taxation of Non-UK Domiciled Individuals". Accordingly, it is important to note that the changes set out below are not in final form and are subject to the underlying legislation and additionally the outcome of the 4 July 2024 general election.

Domicile

A detailed analysis of the concept of domicile is outside the scope of this article. In short, domicile currently determines an individual's exposure to income tax, capital gains tax (CGT) and IHT. The concept of domicile, originally implemented to protect the aristocracy from paying UK tax on their properties in British colonies, has been a feature of UK tax law since Britain's introduction of income tax in 1799. Domicile is distinct from tax residence and nationality and, although part of the tax code, the concept is not defined in UK or Irish legislation. An individual's domicile status is not always clear-cut, and many cases have required court determination.

Under English law there are four types of domicile. In addition to the principles surrounding (1) domicile of origin, (2) domicile of dependence and (3) domicile of choice, the UK tax code includes the concept of (4) "deemed domicile".

2017 changes to domicile criteria

In certain circumstances taxpayers may be deemed domiciled even though they are domiciled elsewhere under general law. In 2017 the UK Government made a number of changes to the application of deemed domicile via the Finance (No. 2) Act 2017 (F(2)A 17).

Deemed domicile had been a feature of IHT before 6 April 2017; however, F(2)A 17 changed the term of residency required to become deemed domiciled in the UK for IHT purposes from 17 to 15 years. More notably, F(2)A 17 also introduced deemed domicile to income tax and CGT for the first time. As a result, since 6 April 2017 UK tax-resident non-doms have been deemed to be UK domiciled for UK income tax and CGT purposes if they have been UK tax resident for 15 out of the last 20 UK tax years. In other words, non-doms are considered to be UK domiciled for income, CGT and IHT purposes from the start of their 16th year of UK residence.

In addition, F(2)A 17 introduced a "formerly domiciled resident" rule. From 6 April 2017 individuals born in the UK holding a UK domicile of origin who acquire a domicile of choice outside the UK cannot benefit from non-domiciled status while they are UK resident. Instead, they are treated as UK domiciled for all UK tax purposes on their return to the UK. There is a one-year grace period before their worldwide assets become subject to IHT. This means that such individuals captured by the "formerly domiciled resident" rule cannot utilise the remittance basis for income tax and CGT. They are also prevented from availing of any of the transitional arrangements/concessions announced in the Budget that are discussed further below or the "protected settlements" regime.

The Remittance Basis

The provisions of F(2)A 17 on deemed domicile were introduced to limit the timeframe for which UK-resident individuals could benefit from the remittance basis.

Many countries provide competitive tax rules in respect of personal taxation. Irish practitioners will be familiar with the remittance basis, which is currently a central element of the UK regime. Similarly to the Irish regime, the UK remittance basis provides that non-doms are subject to UK tax only on non-UK income and gains remitted or brought to the UK. It should be noted, however, that the definition of what constitutes a remittance can be construed broadly (a full analysis of this is outside the scope of this article). Eligible non-doms may claim the remittance basis through self-assessment and can choose from one tax year

to the next whether they wish to be taxed on the remittance basis for that period.

A distinction between the Irish and current UK remittance basis is that the UK remittance basis is subject to an annual remittance charge. Since 6 April 2017 the rate of charge is:

- £30,000 for non-domiciled individuals who have been resident in the UK for at least 7 of the previous 9 tax years immediately before the relevant tax year; or
- £60,000 for non-domiciled individuals who have been resident in the UK for at least 12 of the previous 14 tax years immediately before the relevant tax year.

This remittance basis charge is payable in addition to any UK tax due on actual remittances of income and gains. Accordingly, in practice, the remittance basis in the UK is advantageous only for individuals with very large foreign incomes or gains in a particular tax year.

Business investment relief is another distinguishing feature of the UK system. This relief deems foreign income and gains (chargeable on the remittance basis) to be not remitted where they are used to make qualifying investments in the UK. A detailed outline of the relief is outside the scope of this article, but it is raised to highlight an interesting distinction between the Irish and UK regimes and a relief that will continue to apply under the new regime.

Background to Budget Changes

The remittance basis has been subject to significant scrutiny for some time. Various Chancellors have threatened to overhaul or abolish the non-dom regime/remittance basis. The system has been reformed over the years, particularly by the introduction of deemed-domicile provisions set out above. However, pressure to reform further or abolish entirely the remittance basis and the favourable taxation of non-doms has been building in recent years, particularly after coverage of various politicians' previous use of the remittance basis.

Before the Budget, the Labour Party had announced its intention to abolish the non-dom regime, but it had not been a part of the Conservative Party's policy platform. The Conservatives' U-turn on reform/abolition was largely unexpected and, for the most part, has been seen as a political move before the upcoming general election, as a way of "beating Labour to it".

FIG Regime

The legislative proposals outlined in the Budget would abolish the current tax rules in respect of income and gains for non-UK-domiciled individuals, i.e. the remittance basis of taxation. They would be replaced with a new, residence-based, FIG regime. This represents a fundamental change to the UK tax code.

UK statutory residence

As the criterion for FIG is expected to be based solely on residence, there should, in theory, be no scope for ambiguity. The statutory residence test (SRT) will be used to determine tax residence for FIG. Interestingly, the statutory residence test was introduced in the UK by Finance Act 2013. Practitioners should be aware that the UK SRT is more complex than the Irish test for tax residence, set out in s819 Taxes Consolidation Act 1997. The SRT contains: (1) certain "automatic overseas", i.e. non-resident tests; (2) "automatic residence" tests; and (3) a "sufficient ties" test, which applies to individuals who are neither automatically non-resident nor automatically resident. Noting that "ordinary residence" was generally abolished in the UK from 6 April 2013, the SRT also distinguishes between the treatment of "leavers" (those who have been resident in one or more of the previous three tax years) and "arrivers" (those who have not been UK resident in any of the previous three tax years).

In general, an individual will automatically become UK tax resident if they spend more than 183 days in the UK in any tax year. If an

individual spends more than 46 days in the UK in a tax year, they may become tax resident depending on other connections with the UK, such as having property or close family in the UK and days spent in the UK in previous years. For the purposes of the SRT, generally, a day will be counted as a day spent in the UK where the individual is present in the UK at midnight. This is known as the "midnight rule", nicknamed the "Cinderella rule" in Ireland before its removal from Irish tax legislation by Finance (No. 2) Act 2008.

The FIG regime

Draft legislation is still awaited; however, based on the Government's announcements, it appears that the FIG regime will be available to individuals who have been non-tax resident for the last 10 years. Under the FIG regime (which is intended to have effect from 6 April 2025) individuals who opt in will not pay UK tax on any foreign income and gains arising in their first four years of UK tax residence (**regardless of whether these are remitted to the UK**). However, availing taxpayers will lose the benefit of the tax-free personal allowance and CGT annual exempt amount (as is the case under the current remittance basis). Eligible taxpayers will be able to choose whether to opt in to the new regime for each applicable tax year, and it appears that an annual charge will not be payable to avail of this new regime.

Non-doms who are already UK resident will be eligible for the FIG regime if, and for so long as, they are within their first four years of UK residence. However, a non-dom who commenced UK residence in or before the 2021–2 tax year will be subject to UK taxation on their worldwide FIG from 6 April 2025. They will therefore be taxed in the same way as standard UK taxpayers in respect of income and gains, i.e. taxable on their worldwide income and gains, subject to double taxation relief, where applicable. Interestingly, as the new system is entirely based on tax residence, it appears that the new FIG regime will apply equally to returning UK domiciliaries.

FIG that has arisen to a remittance-basis user before 6 April 2025 will continue to be taxed if remitted on or after 6 April 2026. This is subject to the transitional arrangements set out below and, in particular, the Temporary Repatriation Facility, a facility to remit FIG during tax years 2025–6 and 2026–7 at a 12% rate of tax. Business investment relief (mentioned above) will continue to be available for qualifying investments of pre-6 April 2025 FIG made on or after 6 April 2025.

Overseas workday relief

The Government has also announced reform and simplification of overseas workday relief (OWR). OWR provides income tax (but not national insurance) relief on earnings for employment duties performed outside the UK.

Currently, subject to satisfaction of relevant criteria, the relief operates to treat relevant earnings from a UK employment wholly or partly performed abroad as foreign-source income subject to the remittance basis during an individual's first three tax years of UK tax residency. It is anticipated that, after reform, eligible employees may still claim OWR income tax relief (for the first three years of tax residence) on UK earnings for employment duties carried out overseas but with current restrictions on remitting these earnings removed. HMRC's technical note advises that, from 6 April 2015, OWR eligibility will be based on an employee's residence and whether they opt to use the new FIG regime. The notable change is that income tax relief will apply whether or not these earnings are remitted/brought to the UK.

Transitional Arrangements

The Government has advised that the following transitional arrangements will be put in place for non-doms currently claiming the remittance basis:

- an option to rebase the value of capital assets to 5 April 2019;
- a temporary 50% exemption for the taxation of foreign income for the first year of the new regime (2025–6) – this 50% exemption/reduction applies to foreign income only and

not to foreign chargeable gains (although the Labour Party has indicated that it will remove this transitional concession); and

- a two-year Temporary Repatriation Facility (TRF) to bring previously accrued foreign income and gains into the UK at a 12% rate of tax. HMRC's Technical Note advises that there will be some relaxation of the mixed-fund ordering rules to make it easier for individuals to take advantage of the TRF.

Draft legislation confirming how the proposed changes and transitional arrangements will fully operate in practice will be published later this year.

Trust Protections

Changes will also be implemented in respect of the taxation of income and gains within trusts settled by non-doms that currently hold "protected settlement" status. A protected settlement is a trust created by an individual before they acquired a UK deemed domicile. Settlors of protected settlements are currently protected from the attribution-of-income and attribution-of-gains rules. Income and gains within protected settlements are not subject to UK tax on an arising basis but are taxed when a UK-resident beneficiary benefits from the trust. This protection will be abolished from 6 April 2025, including for trusts created before that date. Going forward, FIG within a trust settled by a non-dom will be taxed on the same basis as a UK-domiciled person, unless the settlor is within the four-year FIG regime, described above. This will be the case regardless of when that trust was established. UK-resident and -domiciled settlors are taxable on income and gains within a trust where that trust is "settlor-interested", i.e. where the settlor, their children and grandchildren (and the spouses/civil partners of each individual) are not excluded.

UK-resident beneficiaries of pre-2025 protected settlements will continue to be subject to UK tax on benefits received from the trust by reference to pre-2025 FIG within the trust. They will, however, no longer be able to claim the remittance basis on such sums. From 6 April 2025 UK-resident beneficiaries who are eligible for the four-year rule can receive trust benefits free of UK tax, regardless of whether those benefits are remitted to the UK. However, the guidance indicates that benefits received by UK-resident beneficiaries subject to FIG will not be matched to trust income and gains and therefore will not "wash out" trust income and gains for distributions to other beneficiaries.

Existing protected settlements should therefore be reviewed in light of the new regime. Trustees should consider making distributions before 6 April 2025 to UK-resident beneficiaries who are currently eligible for the remittance basis but who will not qualify for the four-year rule. In many cases, despite these changes, it may remain beneficial to retain a pre-existing settlement for other estate-planning reasons.

Inheritance Tax

In addition to its current application in respect of income and gains, a taxpayer's domicile status determines their estate's exposure to IHT. For UK non-dom/non-deemed-domiciled deceased, in broad terms, IHT generally applies only to UK assets and certain non-UK assets that derive their value from UK residential property.

Subject to consultation, the UK Government has announced an intention to move to a residence-based regime for IHT. The consultation document has not yet been published; however, it is envisaged that the proposed changes will include:

- worldwide IHT exposure after ten years of UK residence (i.e. five years less than under the current deemed-domicile provisions); and
- conversely, worldwide exposure to IHT would cease after ten years of non-UK residence. This is particularly significant, as under the current "tail-provision" a UK-deemed-domiciled individual can lose their worldwide IHT exposure from the start of their fourth year of non-UK residence.

That said, the Technical Note outlines that the consultation will include "consideration of further criteria such as other connecting

factors", suggesting that the proposed residence-based system for IHT may not be entirely clear-cut.

Reform of the IHT exposure of trusts is also proposed. Under current grandfathering rules, any trust settled by a non-dom that holds only non-UK assets is permanently sheltered from IHT. This exemption applies regardless of whether a non-dom settlor subsequently becomes UK domiciled or deemed domiciled. It is proposed that the consultation process will consider whether an IHT charge should apply if a settlor meets the residence criteria. Notably, the changes as announced indicate that any trust settled by a non-dom before 6 April 2025 will continue to benefit from permanent "excluded property" status (although the Labour Party has indicated that it will remove this "loophole"). This may be an aspect to consider in estate planning before the implementation of any changes.

No changes to IHT will take effect before 6 April 2025.

Conclusion

Previously one of the cornerstones of personal taxation, the abolition of the remittance basis represents a fundamental change to the UK tax system. The benefits of non-dom status have already been diluted, including by the 2017 changes; however, it appears that they will now be eradicated entirely in respect of income and gains with effect from 6 April 2025.

In their place, favourable tax treatment will be provided to short-term residents under the new FIG regime, which aims to create a modernised regime that is simpler, fairer and more competitive.

Although there are both "winners" and "losers" from the changes announced, medium- and long-term residents (with 5–15 years' tax residence) will be most negatively impacted. It remains to be seen whether the initiative will achieve the additional revenues of £2.7bn a year mooted or if it will impact the number of globally mobile taxpayers choosing to remain in the UK.

Taxpayers now have short window to prepare for the new regime and should take advice, particularly in relation to what can be achieved in respect of their investments and trusts before 6 April 2025 and the transitional arrangements.

A final word of caution reiterating that the underlying legislation implementing the changes is still awaited as is the result of the he next UK general election (now announced for 4 July 2023). It is expected that there will be a change of government before these new rules come into effect. With the likely change of government, there may very well be more to come.

Note: The author wishes to acknowledge the observations and comments of her colleague Patrick Harney.

Dearbhla Cunningham
Barrister-at-Law

High Court Considers Limited Reopening of Old Cases in *The Revenue Commissioners v Tobin*

Introduction

There are four years within which taxpayers may be assessed by the Revenue Commissioners. The time limit is an important safeguard for taxpayers, who can expect finality and closure in respect of their tax affairs once the time to assess has elapsed. There are certain circumstances in which the time limit is displaced, in which case the power to assess is open-ended. The question of whether the time limit can be displaced such that old cases can be opened in particular circumstances arises frequently before the Tax Appeals Commission (TAC) and has also come before the Superior Courts in recent years.

The statutory criterion for displacing the time limit on the power to assess in the case of income tax, corporation tax and capital gains tax returns is by reference to taxpayers'

obligation to make a "full and true disclosure of all material facts" in their tax return pursuant to s955(2) TCA 1997. Similar provisions for time limits on assessment apply to other taxes.

The question of what constitutes full and true disclosure for the purposes of reopening an old income tax return came before the High Court in the case of *The Revenue Commissioners v Tobin* [2024] IEHC 196. The questions for the court were what is the scope of the obligation imposed on the taxpayer by the requirement to make a "full and true disclosure of all material facts" in their income tax return pursuant to s955(2) TCA 1997 and whether the obligation can be satisfied by a taxpayer's filing what they believe to be a full and true return.

Judgment was delivered on 19 April 2024 by Mr Justice Mulcahy. At the time of writing, the matter is still before the courts and has been remitted to the TAC, so this article is limited to giving a brief flavour of the current state of the law concerning the power to assess taxpayers.

Tobin

The case came before the court as a case stated from a determination of the TAC (60TACD2023) by way of appeal by Revenue against a favourable determination for the taxpayer. The factual background to the case is set out in the judgment (para. 8):

> "On 3 April 2017, Revenue issued a Notice of Amended Assessment ('the Amended Assessment') to Mr Tobin for the year ending 31 December 2011. The liabilities in respect of which the Amended Assessment was delivered related to an entitlement received by Mr Tobin from the Department of Agriculture, Food and the Marine (DAFM) in 2011, known as the Single Payment Scheme (SPS), in the amount of €140,656, which had not been included in Mr Tobin's return for that year. The genesis of the dispute between the parties was Mr Tobin's decision to transfer his farm business to a company incorporated by him, Dermot Tobin Farm Limited (DTFL). This transfer took place during the course of 2011. An SPS payment was made to Mr Tobin for that year, which he immediately transferred to DTFL. This income was returned as income of the company for 2011 and not as income of Mr Tobin. The Amended Assessment treated the entirety of that payment as income in the hands of Mr Tobin and assessed his additional liability for income tax as €72,728.35. It was acknowledged by counsel for Revenue that its contention that Mr Tobin was liable for income tax on the SPS payment necessarily involved an acceptance that DTFL had overpaid in respect of its income tax for the year 2011."

The assessment was appealed by the taxpayer, who argued that it was out of time and that Revenue was not entitled to issue an amended assessment. The TAC had to be satisfied that a full and true disclosure had been made for the four-year time limit to be operative. The Commissioner's findings included that "[t]he appellant has made what he believed to be a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period 2011". The conclusion that he had made a full and true disclosure and that the omission of the SPS entitlement from his tax return did not amount to a default in the disclosure of material facts (recorded at paras 10 and 12) was informed by the dictionary definitions of "full" and "true" and by the Supreme Court decision in *The Revenue Commissioners v Droog* [2016] IESC 55. The determination was therefore that Revenue was not entitled to issue the amended assessment.

The Commissioner made a number of findings of fact, which are summarised in the case stated. These include a finding (at (xi), below) that the appellant had made what he believed to be a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period 2011 (Tobin is the "appellant" referred to in this summary):

> "(i) Prior to 1 June 2011, the appellant personally farmed his lands.

(ii) On 31 May 2011, the appellant incorporated his farming business under the company name DTFL and DTFL held its first meeting.

(iii) From 1 June 2011 onwards, DTFL commenced trading, it carried out all farming activities and the appellant transferred all stock and machinery of the farming trade to DTFL.

(iv) On 8 June 2011, the appellant and his wife entered into a lease agreement with DTFL for a period of four years and seven months for 35 acres that they owned jointly. In addition, the appellant entered into a lease agreement with DTFL for four years and seven months for 20 acres of which he had a life interest. On 1 October 2012, Castletown Farms Limited entered into a lease agreement with DTFL for 303 acres at Castletown for a period of three years.

(v) On 29 June 2011, the herd number was transferred to DTFL.

(vi) In May 2012, the appellant applied to the DAFM to transfer the SPS entitlements to DTFL.

(vii) SPS payment applications must be made to the DAFM prior to 15 May and transfer or amendments made up to 31 May in any given year.

(viii) The SPS payment from the DAFM was paid directly into the bank account of the appellant and immediately transferred to the bank account of DTFL.

(ix) The SPS payment from the D[A]FM for 2011 was returned by DTFL in its Corporation tax return.

(x) The relevant date for the purposes of section 955 TCA 1997 and the four year time limit for raising an assessment is 31 December 2016.

(xi) The appellant has made what he believed to be a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period 2011."

Procedurally, the TAC dealt with the time limit issue only, and the substantive issue – whether the SPS payment from the DAFM during the year under appeal is taxable as income in the hands of the appellant, as contended by the respondent, or is instead taxable as income received by a company formed, owned and managed by the appellant, as contended by the appellant – was not determined by the TAC on the basis that it fell away because it was determined that the assessment was out of time.

The High Court followed this approach, opining that the Commissioner addressed the question of the application of s955 on the assumption that the SPS payment was – or, at least, might be – material. Having concluded that s955(2) did not apply, i.e. that Mr Tobin had made a full and true disclosure, the Commissioner did not consider, still less decide, whether Mr Tobin was liable to income tax in relation to some or all of the SPS payment. In the circumstances, it was appropriate to follow the approach of the Commissioner and consider the interpretation and application of s955(2) first (para. 37 of the judgment).

The determination by the TAC was that the appellant, in making the return, made a full and true disclosure of the material facts and that the omission of the payment from his return did not amount to a default in the disclosure of material facts, as per the provisions of s955 TCA 1997. It followed that Revenue was not entitled to issue an amended assessment.

The questions for the High Court on appeal by way of case stated by Revenue included:

- Did the Commissioner err in law in the interpretation of s955(2) TCA 1997?
- Was the Commissioner correct in her application of s955(2) TCA 1997?

There was a third question, in terms of the primary findings of fact, but this article is not concerned with this aspect of the appeal.

The questions that this article looks at are whether there was an error in the statutory interpretation of s955(2) and in its application to the case. Although the self-assessment provisions in Part 41 TCA 1997 that included s955 were repealed and replaced by Part 41A, the matter is relevant to returns that were filed before the end of 2012, and the new provisions on self-assessment incorporate provisions similar to s955(2). It follows that the question is one that remains relevant.

Section 955 TCA 1997

The kernel of the issue is the power to amend assessments and the time limits on doing so. There is a four-year time limit on the power to amend assessments to direct taxes provided that taxpayers have made in their return "full and true disclosure of all material facts". Section 955(2) provides as follows:

"(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period in which the return is delivered and

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years; and

(ii) no tax shall be repaid to the chargeable person after the end of the period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(b) Nothing in this section shall prevent the amendment of an assessment –

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii) to give to a determination on any appeal against an assessment,

(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv) to correct an error in calculation, or

(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person…".

Irish Authorities on Time Limits

The High Court considered a number of cases on the time limits on the power to assess, and this is an instructive synopsis of the state of the law on reopening old cases. The principles arising in these cases are summarised below.

The question of time limits in direct taxes was first considered in the well-known case of *The Revenue Commissioners v Hans Droog* [2016] IESC 55, where Clarke J (as he then was) described the purpose of the provision as protecting the taxpayer and stated that such protection was subject to exceptions. The reasoning he regarded as clear – that it would be unfair to allow Revenue to reopen after the four-year time limit. He noted that such unfairness is mitigated by circumscribing the power to inquire into old returns such that a reasonable basis is required for considering the return to have been fraudulent or negligent. He also noted in this context the importance of the expression-of-doubt facility.

In *Tobin* the court considered this to be the most relevant authority and noted that the case concerned whether the time limits applied to making or amending assessments under s811 TCA 1997 rather than the interpretation of

s955(2), itself. The court in *Tobin* acknowledged that the four-year time limit is for the benefit of the taxpayer and the benchmark is one of fairness as to whether it is fair to close or allow,

The High Court in recent times has considered the application of the "full and true disclosure" requirement in two other cases, both of which were cited by the court in *Tobin*. In *Hanrahan v Revenue* [2022] IEHC 43 Stack J considered whether a return that failed to disclose that a relevant transaction was between connected parties was a "full and true disclosure". She held that it was not and rejected an argument by the taxpayer that the requirements of "full and true disclosure" were satisfied because Revenue had been able to make **some** assessment based on the return.

What constitutes full and true disclosure was also considered in *McNamara v The Revenue Commissioners* [2023] IEHC 15, where Barr J rejected the taxpayer's argument that, although there were a number of errors in the return, he was relieved of responsibility as the return had been made by his tax adviser, relying on a line of UK authorities. In addressing this, Barr J held (at para. 99):

> "However, the situation is a little more nuanced than providing protection whenever a taxpayer relies on the advice of his accountant/tax adviser. In the decisions referred to by the appellant, the decision makers were careful to draw a distinction between circumstances where the accountant is merely a functionary, who makes a return on behalf of his client; and a situation where there is a complex question of tax law involved and upon which the taxpayer takes the advice of an accountant/tax adviser. In the former case, the taxpayer remains liable for the erroneous return. In the latter case, he may be able to avoid a finding of negligence, where he has relied on the advice given by the tax adviser."

Barr J distinguished the UK authorities on the stated basis that (para. 101):

> "They primarily dealt with the issue of whether the taxpayer had been negligent in making his return, when he did so based on advice as given by his tax advisers. These cases did not deal with the issue of whether the taxpayer could be held not to have made 'full and true disclosure', when making an erroneous return."

The issue of reopening old cases was ventilated in two other cases cited by the court in *Tobin*, which concerned different provisions but similar concepts. In *Stanley v The Revenue Commissioners* [2017] IECA 279 the Court of Appeal concluded that the obligation to file a full and true return for CAT purposes was satisfied by filing a **correct** return and distinguished between the return and the (self-) assessment. In *Tobin v Foley* [2011] IEHC 432 the High Court considered the concept of "negligence" in the context of whether there was negligence in submitting an incorrect capital gains tax return for the purposes of penalties. The court held (at para. 30) that:

> "Negligence is a term which implies more culpability than mere carelessness or oversight...Negligence in the context of this legislation means that a person having a duty to make a tax return truthfully and honestly fails to make all appropriate inquiries in order to ensure that the details contained in the return were complete, accurate and truthful. A person completing such a return must be expected to make appropriate enquiries if she herself does not have the necessary facts and information in order to complete the return. If she has to rely on others for information, she is under an obligation to ensure as far as reasonably possible that the information given is correct and truthful. There is no evidence that the respondent took any steps whatsoever to satisfy herself that what was contained in the return, or that information she gave at any later stage, was correct. If her evidence is to be accepted at all, it is to the effect that

> she blindly accepted what others had told her, and completed and signed the return. That is negligent and not merely careless or an oversight."

The High Court concluded that its approach in *Tobin* was consistent with those Irish authorities that it cited. It also considered a judgment of the Australian High Court in *Federal Commission of Taxation v Levy* [1961] HCA, which was relied on by Revenue in its submissions. The court found that its approach was also consistent with this Australian authority, although it expressed some reservation about its relevance.

The time limit on the power to assess is also circumscribed by a "full and true disclosure" requirement in the Australian tax code. This was relied on by Revenue and cited by the court in its judgment as it concerned what appear to be similar statutory provisions to s955(2). The approach taken by the Australian High Court was that there was not a full a true disclosure, so the time limit did not apply where the correct position was within the taxpayer's means of knowledge had proper investigations been made. One of the judgments in that case went further and concluded that, once the figures given in the return were incorrect:

> "[that] is in itself enough to make it impossible to hold that there was a full and true disclosure of all the material facts necessary for the assessment of the taxpayer. 'True' in this phrase appears to me to refer simply to the correctness of the material facts disclosed and to imply nothing as to the taxpayer's knowledge of the erroneous character of any incorrect fact he may state."

Statutory Interpretation

The question before the court was the interpretation of s955(2), and the guiding principles on statutory interpretation were agreed, with both sides citing the finding in *Perrigo Pharma International DAC v McNamara* [2020] IEHC 552 – that the provision is given its ordinary meaning seen in its context. The court cited the decision in *Heather Hill Management Company Clg v An Bord Pleanála* [2022] IESC 43 and the Supreme Court's emphasis that the words are given primacy as they are the best guide to the result that the Oireachtas wanted to bring about and they are to be read in their statutory context.

The High Court applied the principles of statutory interpretation and regarded the use of both full **and** true in the provision as indicating that these are distinct but complementary concepts forming part of the self-assessment provisions that impose obligations on the taxpayer to provide all of the information necessary to ensure that Revenue is in a position to assess correctly that taxpayer's liability to tax.

The court resolved the interpretation and application question in a two-stage process by first looking at the provision "divorced of context", stating (at para. 46):

> "On the assumption that the payment was income in the hands of the respondent, 'full' disclosure would have required that income to be disclosed. 'True' disclosure is a little more difficult as a concept, but not unduly so. In its plain and ordinary meaning, the requirement is that it be true that all relevant facts have been disclosed. Prima facie, if a relevant fact is not disclosed, for whatever reason, the return is not true."

The court went on to consider whether, when context and purpose **are** taken into account, a different interpretation of s955(2) is necessitated, or, more specifically, whether the respondent's interpretation, that "true" means, in effect, "genuinely believed to be true", is the correct one. The statutory context included the expression-of-doubt facility in s955(4) TCA 1997, which provides that if taxpayers are in doubt about a matter in their return, they can express such doubt and so be protected by the time limit, notwithstanding the matter in doubt. The relevant statutory provisions at the time also included s956(2)(b) and (c), which

the court said were of "some relevance" and expressed in "markedly different terms" from s955(2). These impose a four-year time limit for enquiries unless, *inter alia*, the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner. This power was not at issue in the *Tobin* case.

The court (at para. 47) emphasised the caveat of Murray J in *Heather Hill*:

"However – and in resolving this appeal this is the key and critical point – the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

The court concluded that although the meaning is not without difficulties, the context and purpose of s955(2) do not require a different interpretation. In the circumstances, the answer posed to the question at the opening of the judgment is that for a tax return to be regarded as a "true and full disclosure of all material facts", it must be accurate in every material respect; a taxpayer's subjective belief, however well-informed, regarding the accuracy of its contents is not a relevant consideration.

Implications of Tobin

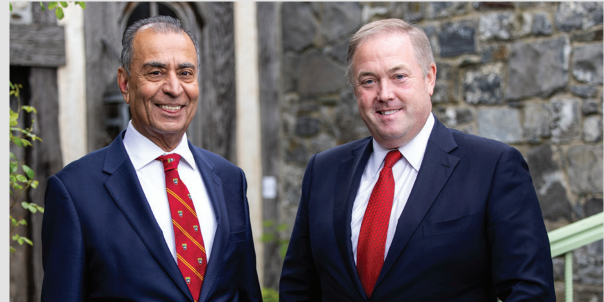
The court acknowledged that its conclusion equates "full and true" with "accurate" or correct and that this poses a significant onus on the taxpayer, but it stated that this seems consistent with the system of self-assessment, is consistent with the requirement for clarity in tax statutes and is more straightforward to apply.

News & Moves

Roberts Nathan to Merge with UK-based MHA

Roberts Nathan has announced that it will merge with UK-Based MHA to form Baker Tilly Ireland from 1 July 2024, creating 100 new jobs and enhanced opportunities for client internationalisation.

"This merger marks a pivotal milestone, allowing us to provide more extensive solutions for clients while creating opportunities for our team," said Vivian Nathan, Managing Partner at Roberts Nathan and future Regional COO of Baker Tilly Ireland.



l-r Rakesh Shaunak, Managing Partner and Chairman of MHA and Vivian Nathan, Managing Partner of Roberts Nathan.

BDO in Ireland Announces New Partners Across Audit & Advisory, Tax and Cybersecurity Including 2 New Tax Partners

The appointments are part of BDO in Ireland's strategic plan to expand its market presence and meet the increasing demand for expert advisory services across diverse sectors in Ireland.

Natalie Byrne becomes a Tax Partner at BDO Limerick. Natalie manages Corporation Tax compliance for multinational clients across various industries and has a strong track record in dealing with the Revenue Commissioners on audits and compliance interventions. Natalie holds a first-class Honour's Degree in Business Studies from the University of Limerick and is a member of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

(L-R) Eoghan Daly, Cian O'Sullivan, Áine McInerney, with BDO in Ireland's Managing Partner Brian McEnery, Managing Partner of BDO Limerick Liam Hession, Natalie Byrne and Chris Fogarty.

Cian O'Sullivan is appointed as Partner in the Private Client Tax Services team and co-leads the BDO Sports Advisory Unit. Cian has extensive experience advising individuals, families, and professionals on tax and financial matters, including transaction tax planning and intergenerational wealth management. His unique expertise in sports advisory has benefited numerous sportspeople, clubs, and high-net-worth entertainers. Cian is a Chartered Accountant and Chartered Tax Adviser (CTA). He co-chairs BDO's Global Private Client Sports Committee.

Deloitte Strengthens Leadership Team with the Appointment of 13 New Partners Including 4 in Tax & Legal

Deloitte Ireland has appointed 13 new partners across its business, following strong growth throughout the year. The new Tax Partners are **Aileen Stephens**, **Niamh Barry**, **Joanne Clarke** and **Karen Clarke**.

Commenting on the appointments, Harry Goddard, CEO, Deloitte Ireland, said: "Congratulations to all our new partners, on what is a significant milestone both for them and for our organisation. Our new partners showcase the full breadth and depth of capabilities across our industry groups, and have a proven track record of driving our clients' strategic agendas. Improving gender balance at all levels of our organisation is a priority, and while we still have a journey to travel, these appointments support our ambition of achieving 35% female partnership by 2025. Championing growth and diversity within their own teams is also an area our new partners have shown huge strength, and I wish them all every success in their new roles."

New Deloitte Tax & Legal partners Niamh Barry, Karen Clarke, Aileen Stephens and Joanne Clarke pictured with Daryl Hanberry, partner and Head of Tax & Legal.

Aileen Stephens Aileen has a deep interest working with Family Enterprises and their business owners. Aileen is a Chartered Tax Adviser (CTA) with 14 years' experience focusing on value delivery for her clients using her insights and expertise to develop solutions to challenging issues.

Niamh Barry Niamh specialises in employment tax and global mobility. She has significant experience in advising clients across a broad range of payroll tax issues, including Revenue audits, due diligence matters, expense policy reviews, issues arising from global mobility programmes, and taxation of equity schemes. Niamh is a UCC alum, a member of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

Joanne Clarke Joanne's experience spans a vast range of industry sectors which allows her to understand the unique VAT challenges facing individual clients and their distinct business needs. Joanne has extensive experience providing international organisations with VAT technical analysis, supply chain structuring & optimisation, governance & compliance and

dispute resolution across the globe, including five years of complex VAT implementation projects in the GCC. J Joanne is a Chartered Tax Adviser (CTA) and a Chartered Accountant.

Karen Clarke Karen specialises in M&A tax in the Business tax department and has been with Deloitte for over 12 years. Karen has significant experience working on a variety of M&A transactions including advising on the tax structure of transactions, undertaking the tax due diligence aspects (both buy side and vendor), review and advice of legal agreements and post-acquisition integrations. Karen is an Associate of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

Forvis Mazars

On 1 June, Mazars and FORVIS, a leading US public accounting firm, formed a new network under a shared global brand, **Forvis Mazars**. The new network will provide Irish-based clients with coast-to-coast US coverage and access to an additional 6,000 professionals with extensive expertise and experience in key global industries. Forvis Mazars will also attract and facilitate inbound FDI investment from a pool of US businesses eager to invest in Ireland.

Tom O'Brien, Managing Partner of Forvis Mazars, speaking at rebrand launch event.

Interpath Launches Tax Practice in Ireland with Denis Herlihy Appointment

Interpath Advisory has announced the launch of its tax practice with the appointment of **Denis Herlihy** as Managing Director – Tax as it continues to expand and scale its multi-disciplinary financial advisory offering in Ireland.

Formerly a Managing Partner at BDO Limerick, Denis, who has more than 30 years' experience, is one of the most respected professionals in the Irish tax advisory market.

The team will offer tax advisory services, including the resolution of tax controversy and Revenue interventions, tax support for mergers & acquisitions, insolvency, and restructuring.

McKeogh Gallagher Ryan Appoints Senior Manager and Assistant Manager

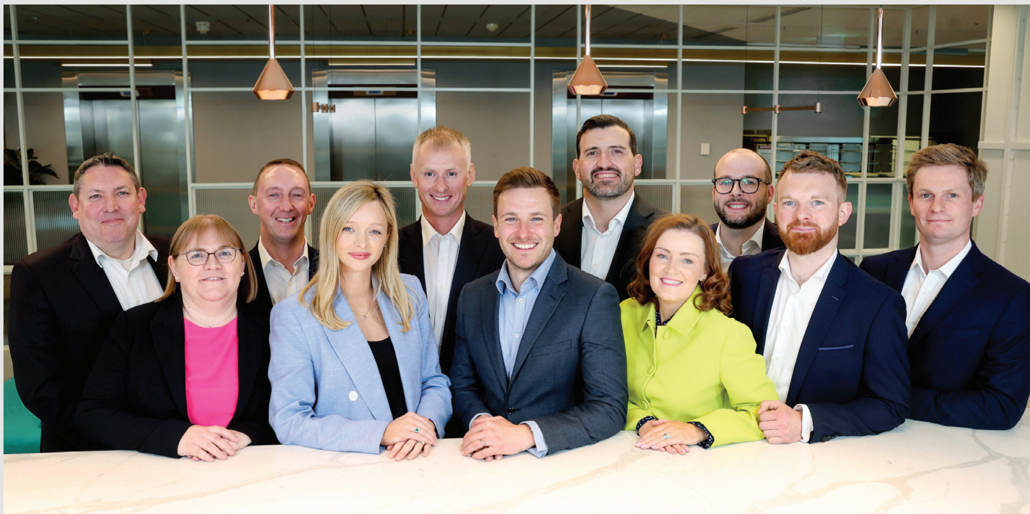
We are delighted to announce the appointments of **Jane Hughes** as a Senior Manager and **Katelyn Hanley** as an Assistant Manager. Both Jane and Katelyn work in our Tax Department, providing tax consulting and compliance services across a variety of sectors and all areas of tax.

Together with their fellow management and colleagues, these two key senior members of our organisation will provide excellent service to our clients and continue to grow our business as part of Xeinadin. We wish them continued success in their roles.

l-r Jane Hughes, Mary McKeogh, Katelyn Hanley and Anne Hogan.

Ten New Partners at PwC Including 4 Tax Partners

PwC Ireland is delighted to announce the admission of ten new Partners, including four new Tax Partners: **Colm Browne**, **Andrew Dunne**, **Laura McKeown** and **Pádraic Rehill**.



Pictured with Enda McDonagh, PwC Ireland's Managing Partner (left) are PwC's ten new Partners (l-r) ***Rose-Marie McNamara*** *(Assurance),* ***Colm Browne*** *(Tax),* ***Laura McKeown*** *(Tax),* ***Francis Farrell*** *(Assurance),* ***Kevin D'Arcy*** *(Assurance),* ***Eugene Nel*** *(Assurance),* ***Clodagh O'Reilly*** *(Assurance),* ***Andrew Dunne*** *(Tax),* ***Pádraic Rehill*** *(Tax) and* ***David Pickerill*** *(Assurance).*

The new Partners work across a diverse range of business areas and reflect continued investment in the firm's growth and market ambition.

Speaking at the announcement, Enda McDonagh, PwC Ireland Managing Partner, said: "Our new Partner appointments are in response to robust client demand and reflect the firm's ambitious growth strategy. Geopolitical uncertainty, climate change, cyber risks, AI and GenAI are driving the risk of wide-scale business model disruption. Our new Partners, with their sectoral and subject matter expertise, will help our clients seize the opportunities to transform their businesses in this challenging and fast-moving disruptive environment."

Colm Browne becomes a Tax Partner leading the firm's dedicated Compliance Tax Centre and Connected Tax Compliance services. Colm has over 20 years' experience in advising a diverse range of domestic and international companies. He specialises in corporate tax compliance, working with his team to enhance and leverage efficiencies for clients. He is a Chartered Tax Adviser (CTA) Fellow and Immediate Past President of the Irish Tax Institute. Colm is also a member of Chartered Accountants Ireland.

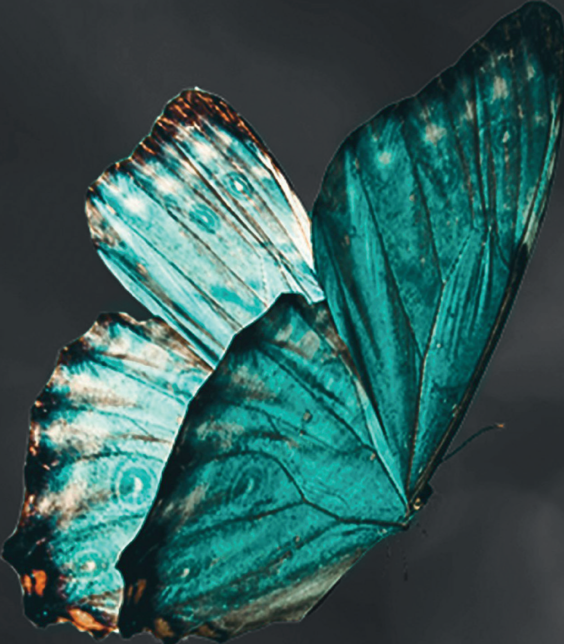
Andrew Dunne becomes a Tax Partner in the firm's Foreign Direct Investment practice. Andrew has 18 years' experience working with multinational companies, helping to design and implement innovative international and domestic structures. He has extensive financing and treasury management experience and advises on merger and acquisition transactions, including helping clients navigate the new Pillar Two rules. Andrew led the PwC Irish tax desk in New York for three years. He is a Fellow of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

Laura McKeown becomes a Tax Partner in the firm's Financial Services practice. Laura has 12 years' experience of working with clients in the Financial Services industry with a specific focus on Asset and Wealth Management. Laura brings extensive experience across both domestic and international tax structuring with a particular focus on private equity, credit and hedge fund clients. Laura also has international experience, having been on secondment to the Irish Tax Desk based in New York as part of PwC's International Tax Practice. She is a member of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

Pádraic Rehill becomes a Tax Partner in the firm's Domestic and International Outbound practice. Pádraic has 15 years' experience in advising a diverse range of clients on domestic and international tax structuring across a variety of industries with a particular focus on Irish PLCs and large corporates. Pádraic works with clients on all aspects of their business including mergers and acquisitions, due diligence, financing, and group reorganisations. Pádraic is a Fellow of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).

Talent Advisory.

Recruitment, **but better.**



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