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Irish Tax Institute

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ALSO IN THIS EDITION

- The Legal and Taxation Aspects of Earn-Outs: Part 1
- Trading Losses and Charges on Income: The Different Avenues to Tax Relief
- The *Susquehanna* Case: A High Court Reversal
- Interest Limitation Rules: Treatment of Carry-Forwards and Potential Future Changes
- Tax in Deals: Beyond Mergers and Acquisitions: Part 2
- Deductibility of Royalty Withholding Tax
- Taxation of Woodlands and Forestry in Ireland
- VAT and Sustainability
- VAT on Property Scenarios
- Provisions on Time Limits for Revenue Assessments: *O'Sullivan v Revenue*

The Legal and Taxation Aspects of Earn-Outs: Part 1

Irish Tax Institute

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Regular Articles

Policy & Representations Monitor

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

Mark Ludlow

- In *Farrell & Sons (Garages) Limited v Revenue Commissioners* [2024] IEHC 553 the Court considered whether a taxpayer could overturn two tax settlements that it had entered into with Revenue 10 years ago
- *Revenue Commissioners v Susquehanna International Securities Ltd. & Ors* [2024] IEHC 569, considered the interaction between the group relief provisions (s411 TCA 1997) and the Ireland–USA double taxation agreement.
- TAC Determinations 104–117TACD2024, 124–127TACD2024, 137–146 TACD2024, 152–159TACD2024 are a series of grouped TAC determinations on the status of an investment in a fund. Each investor had treated the investment as being subject to CGT treatment
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UK Cases

- In *The Executors of K Beresford v HMRC* [2024] UKFTT 952 the First-tier Tribunal determined that shares in a holding company did not qualify as "relevant business property" for the purposes of business property relief from inheritance tax.
- In *Putney Power Ltd and another v HMRC* [2024] UKFTT 870, the First-tier Tribunal held that a trade had not commenced within two years of the share issue (the deadline for the Enterprise Investment Scheme (EIS), similar to Ireland's Employment Investment Incentive) as the trade infrastructure was not yet in place to enable operational activities to start
- In *The Commissioners for His Majesty's Revenue and Customs v Peter Gould* [2024] UKUT 285, HMRC appealed a decision of the First-tier Tribunal (FTT) that no UK tax was payable on a dividend of £20m paid to Peter Gould (PG).

International Tax Update

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

- BEPS Developments
  - The OECD announced that the OECD/G20 Inclusive Framework on BEPS had released a model competent authority

agreement concerning Amount B of Pillar One

  - The European Commission has adopted a proposal to ease filing obligations under Pillar Two Directive
  - Jersey has published draft legislation to implement Pillar Two framework
  - The Swiss Federal Council confirmed that Switzerland will implement the income inclusion rule with effect from 1 January 2025
  - The Bahrain government has announced the introduction of a domestic minimum top-up tax at a rate of 15%
  - The government of the Czech Republic is introducing a top-up tax in alignment with the EU Directive on a global minimum tax
  - Portugal has adopted a draft Bill to implement the EU Pillar Two Directive
  - Malta has delivered Budget 2025 and confirmed that Malta will not introduce Pillar Two top-up tax rules in 2025
  - Germany has introduced the concept of a “minimum tax group” for German-resident constituent entities of a multinational enterprise group
  - Spain, Cyprus, Poland and Portugal referred to CJEU for delayed transposition of Pillar Two rules
  - New treaty advances Pillar Two global minimum tax STTR designed to protect tax base in developing countries
- OECD Developments
  - Mutual agreement procedure simplified peer-review reports published
  - OECD has published the annual peer-review of BEPS Action 13
- EU Tax Developments
  - The Italian Council of Ministers has approved the draft Budget Law for 2025, which includes amendments to the application of the digital services tax
  - The Netherlands has published the governments draft tax plan for 2025
  - The Finnish government published a draft proposal for the introduction of a corporate income tax credit for large-scale industrial investments that support the transition to a net-zero economy
  - The EU list of non-cooperative jurisdictions for tax purposes was updated in October
  - ECON Committee adopted the draft report on the proposal for a Council Directive for the Faster and Safer Relief of Excess Withholding Taxes (FASTER)
  - Ireland ratified both the income tax treaty with Oman and the amending protocol to the individual income tax agreement with Jersey
  - Italian Supreme Court has softened the relevance of OECD guidelines
- United Kingdom
  - UK government released a Corporate Tax Roadmap alongside the Budget
  - HMRC has updated its large business tax strategy guidance
  - HMRC has published transfer pricing guidelines for compliance
- Canada has implemented new reporting rules for digital platforms
- United States of America has requested dispute settlement consultations on Canada’s digital services tax
- India has published Budget 2024 with some CT measures.

VAT Cases & VAT News

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

VAT Cases

- *Skatteverket v Digital Charging Solutions GmbH* C60/23 related to the interpretation of Articles 14 and 15 of the VAT Directive.
- *Voestalpine Giesserei Linz GmbH v Administrația Județeană a Finanțelor Publice Cluj, Direcția Generală Regională a Finanțelor*

Publice Cluj-Napoca C475/23 dealt with the interpretation of the deduction provisions under Part X of the VAT Directive in the context of input VAT claimed on goods subsequently made available free of charge

» *H GmbH v Finanzamt M* C83/23 considered the interpretation of the rules relating to VAT refunds for non-established traders (in this case, H GmbH, a company established in Germany)

» The joined cases *X* (C639/22), *Stichting BPL Pensioen* (C643/22), *Stichting Bedrijfstakpensioensfonds voor het levensmiddelenbedrijf (BPFL)* (C644/22), *v Inspecteur van de Belastingdienst Utrecht*, and *Fiscale Eenheid Achmea BV* (C640/22), *Y* (C641/22), *v Inspecteur van de Belastingdienst Amsterdam*, and *Stichting Pensioenfonds voor Fysiotherapeuten v Inspecteur van de Belastingdienst Maastricht* (C642/22) concerned the interpretation of Article 135(1)(g) of the VAT Directive in the context of proceedings between a number of pension funds regarding the application of the VAT exemption to those pension funds.

Accounting Developments of Interest

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

Legal Monitor

Niall McCarthy 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 – Winter 2024

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

Tax Technology Update – Winter 2024

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Colm Brussels and **Olivia Long** provide an overview of the recent High Court decision in *O'Sullivan v Revenue*, which considered the application of the Irish provisions on the time limit for Revenue to make assessments.

President's Pages

Aoife Lavan
Irish Tax Institute President

Introduction

The final quarter is always an eventful and hectic time of year for the tax profession, but Q4 2024 was different in one important respect: the country went to the polls. Speculation about the date of the general election had been going on all year, and by the time I took up my role as President in early September it was at fever pitch. We were finally put out of our misery when the Taoiseach, Simon Harris TD, dissolved the Dáil on 8 November. The practical impact was that the entire budgetary process was significantly accelerated, with the announcement of Budget 2025 and the passage of Finance Bill 2024 being shoehorned into just five weeks.

Budget 2025

Nonetheless, some issues of concern to members were addressed in the Budget and subsequently in the Finance Bill. Among them were Revenue's Enhanced Reporting Requirements (ERR) and retirement relief.

In a pre-Budget meeting with the Minister for Finance, Jack Chambers TD, the Institute made a strong case for amending the rules governing the small-benefit exemption to give employers greater flexibility in awarding non-taxable benefits to their employees, thereby easing the burden of complying with the new ERR rules. Accordingly, we were delighted when Minister Chambers announced on Budget Day that the number of allowable non-taxable benefits would be increased from two to five per annum and that the value of such benefits would be raised from €1,000 to €1,500.

The real-time reporting of staff benefits under ERR will continue to place a very significant administrative burden on businesses, and I want to assure you that the Institute will be monitoring Revenue activities and member feedback on ERR throughout 2025.

In relation to CGT retirement relief, we welcomed the Minister's decision, announced on Budget Day, to change the rules on the €10m cap to allow the full abatement of the tax where a child retains the assets for more than 12 years.

However, the Finance Bill stipulated that the inheriting child will be required to file an abatement claim for the deferred tax on the expiry of the 12-year retention period. After the publication of the Bill, we raised our concerns about the practical challenges of requiring a claim to be made after such a long period of time with the Department of Finance and Revenue. Thankfully, our representations did not fall on deaf ears, and the filing requirement was removed at Committee Stage, although the condition to retain the assets for 12 years remains.

Pensions

The second half of the year saw some major developments in the area of pensions, my own area of expertise. The Auto-Enrolment Retirement Savings Scheme, which has been 20 years in the making, was finally signed into law in early July, and on the day before the Budget, the Minister for Social Welfare, Heather Humphreys TD, signed a Commencement Order for the launch of the new scheme, called My Future Fund.

Two weeks before the Budget, the report of the independent review led by Dr Donal de Buitléir, titled *Examination of the Standard Fund Threshold*, was published by the Minister for Finance, who subsequently announced a multi-year plan to implement its recommendations. Key among them is the recommendation to increase the SFT in line with the increase in incomes since 2014, when the threshold was reduced to €2m. Although an increase (up to €2.8m by 2029) is welcome, the increase is incremental over a four-year period and only effective from 2026

The Finance approach to calculation of the pension cap for Chargeable Excess Tax purposes is over complicated and not thought through. Post 2029, it is expected that the SFT will move with the applicable level of wage growth. Increasing the

threshold to take account of indexation was one of the Institute's recommendations in our response to the public consultation on the SFT. The report also addresses several recommendations including a reduction in the Chargeable Excess Tax (CET) rate to equivalent of not less than the higher rate of tax – in many cases this would suggest a reduction in the CET rate from 40% to 10%. The Minister committed to progressing this and recommendations in the report on the SFT, and the Institute will be monitoring developments.

We were, however, deeply disappointed with a change to personal retirement savings accounts (PRSAs) included in Finance Bill, which curtail the benefit-in-kind (BIK) exemption on employer contributions to 100% of the employee's salary in the year of assessment. The whole idea of abolishing BIK on employer contributions was to level the playing field with occupational pension schemes. This change will add further complication to the pensions landscape and goes against the objective of simplification. It seems to me to be a heavy-handed approach to address concerns regarding what Revenue data shows is a small number of cases.

Tax Competitiveness

The Institute welcomed the income tax changes announced in Budget 2025, which built on the progress of recent years towards a more competitive employment tax regime. But we were disappointed that more was not done to make our business tax code more competitive.

We have been calling for over a decade for changes to make SME taxes more user-friendly and less restrictive. We have also been pointing out that, in a post-Pillar Two world, Ireland urgently needs to update and reform key parts of its tax system to attract foreign investment. In that context we welcomed the publication in the Finance Bill of the long-awaited legislation to introduce a participation exemption for foreign dividends, which is due to come into effect on 1 January 2025. We will also welcome the recently launched consultation on the tax treatment of interest in Ireland.

However, the rate of reform is slow, and the next Government must move at pace on a wide-ranging, systematic, well-resourced business tax simplification project. We do not underestimate the work involved in such a project, but inaction is not a viable option. With the risk of global trade wars growing and geopolitical tensions worsening, Ireland's FDI model is under threat as never before from developments over which the Government has no control.

The Institute's Tax Strategy for the Next Government

Tax simplification is a minority sport and, if we're honest, was never going to make the cut in a pre-election Budget. But it is a burning issue for many of our members, who believe that Ireland is resting on the laurels of its extraordinary success in attracting foreign investment. Decluttering the business tax code is a key recommendation in the Institute's comprehensive *Tax Strategy for the Next Government*, published just the week before the election, that sets out our tax policy proposals to address the challenges facing the next Government.

The document, which has been circulated to all the political parties, contained recommendations on how the tax system could be used to strengthen economic growth, to alleviate supply constraints in housing, to effect the behavioural change needed to decarbonise the economy and to mitigate the economic and fiscal risks of caring for an ageing population. Ireland's ability to adapt and compete will be critical if the country is to overcome these challenges. The next Government must use all of the levers at its disposal to protect and build on our economic success. It is within the power of the Government to create a clear, simple and fair system of tax, and it should be a top priority over the next five years.

At the time of writing, it seems unlikely that negotiations on the formation of the next Government will be finalised before the beginning of the new year. Tax policy is likely to form an important part of those negotiations. We have put forward our recommendations, and we hope that they will inform the discussions now under way.

Conferring Ceremony

The annual Conferring Ceremony, which took place in the O'Reilly Hall in UCD on 28 November, was a haven of joyful enthusiasm and optimism: the perfect antidote to the previous three weeks of election debate. Amid all the trouble and uncertainty in the world, it is immensely reassuring to know that such a talented and wonderfully diverse bunch of people are choosing to join the profession.

It was a joy and a privilege to present scrolls to our 271 newest members and to meet the brightest at the prize-giving ceremony. The pride on the faces

of the many parents and family members who came along to celebrate the achievements of their loved ones was heartwarming.

Well done to Martina O'Brien, her team and all concerned in the organisation of such a memorable event that exuded happiness and confidence. It made me proud to be President of the Institute.

Southwest Members' Lunch

I was delighted to attend the Southwest Members' Lunch at the Clayton Hotel in Cork City, where a record 132 people gathered for this annual event. The growing attendance at the event shows the appetite for such gatherings among members, and it is important that the Institute hosts these networking occasions outside of Dublin. The guest speaker on the day was renowned Cork woman and three-time Irish Olympian Derval O'Rourke, who enthralled us with stories of her achievements as an athlete and her subsequent career in business. It was a lovely event and one that could be replicated in other parts of the country.

Happy Christmas

It has been a busy autumn, and I'm sure that we will all welcome the respite that Christmas brings. On behalf of the Institute, I wish all our members a happy and peaceful Christmas with your loved ones and a prosperous and fulfilling new year.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

Introduction

The end of another year draws near. The tax landscape continues to change, with further changes expected in 2025 as new leaders take control in jurisdictions across the globe. The final quarter has been busy, although broken up by several social and celebratory events, including the Conferring Ceremony. The Tax Policy and Representations team submitted an extensive response to the Finance Bill and represented your concerns at various stakeholder meetings, and our winter CPD programme provided you support to meet your learning needs.

Conferring Ceremony

The Annual Conferring Ceremony, one of the Institute's flagship events, took place in UCD's O'Reilly Hall on 30 November. Marking their great achievement, the conferees were joined by their families and friends as they were admitted to membership. Congratulations to our 271 new CTAs and 34 Tax Technicians! I hope you enjoyed the occasion, and I encourage you to stay connected with your Institute and become active members.

Institute President, Aoife Lavan, addresses the O'Reilly Hall audience and congratulates our new members on their achievement.

On the same evening, our President, Aoife Lavan, presented awards to our CTA and Tax Technician prizewinners, a fellowship and a scholarship. Our newest fellow is Feargal O'Rourke, for his outstanding contribution and commitment to the Institute and the tax profession. The 2024 Third-Level Scholar is Isabel Keleghan from Galway. As recipient of the scholarship, Isabel will receive financial support throughout her third-level education, as well as a place on the CTA programme to begin a career as a Chartered Tax Adviser (CTA). We look forward to supporting Isabel throughout college and on the journey to becoming a CTA.

Third-Level Scholar – Isabel Keleghan.
First-place winners in CTA Part 3, L–R: Ross Kavanagh, Isobel Dunne and Ryan O'Brien.

See photos of the special evening.

Moments before the Conferring Ceremony, 19 sponsored awards were presented to students who excelled in their exams. Well done to all of our winners – to qualify as a CTA is an achievement in itself, but to excel is exceptional. I would like to thank each of the 12 sponsoring firms for their continued support of our CTA programme.

The Institute is pleased to work in partnership with Revenue, assisting in the development of officials over the last decade. Earlier, on 28 November, the Institute jointly hosted a Conferring Ceremony with Revenue for the Revenue officials who completed a range of Certificates and Tax Technician qualifications.

Third-Level Work

In addition to the presentation of the Third-Level Scholarship, the Institute has been busy engaging with third-level students and lecturers. Our Education team were on the road in the last three months giving class talks about the career,

delivering lectures on areas of tax and rewarding the top students in tax modules across third-level institutions. We plan to continue and build on this work in the coming years.

General Election 2024

Before the General Election was called, the Irish Tax Institute published its proposed 'Tax Strategy for the Next Government'. The document was sent to political parties and picked up by national media outlets.

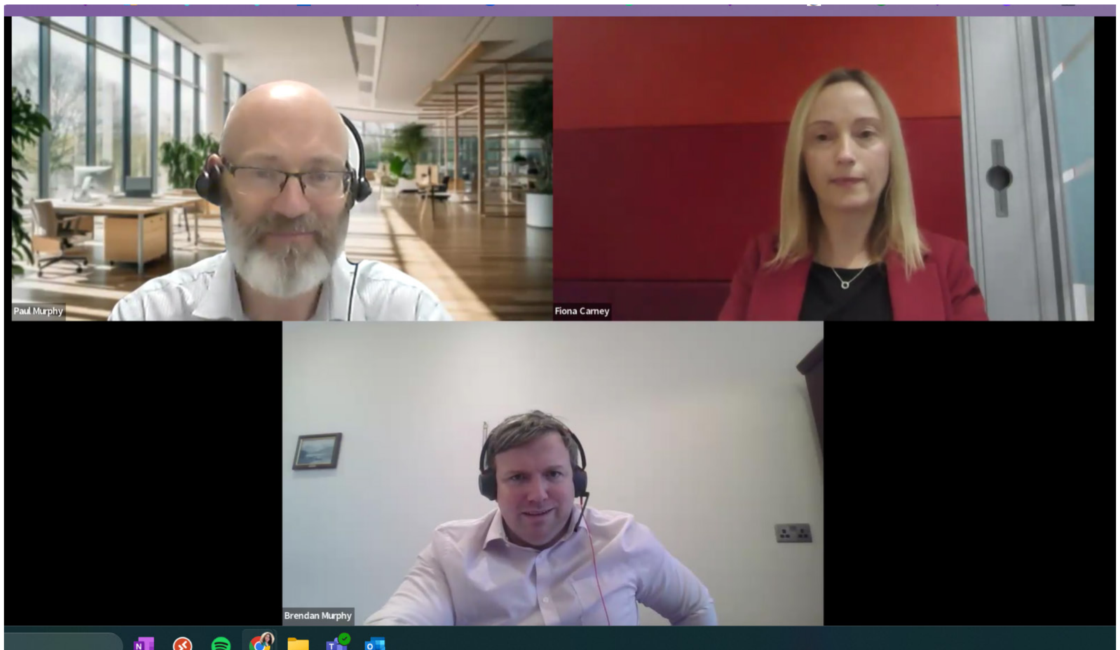
The wide-ranging document sets out tax policies for the consideration of the next Government that we believe will foster an innovative and productive domestic business sector while ensuring that Ireland remains well placed to attract the next wave of FDI. The recommendations included:

- Reduce the marginal personal tax rate to 50%, reform PRSI and broaden the tax base so that all taxpayers contribute according to their means.
- Promote productivity and innovation among SMEs with more accessible and less restrictive tax measures.
- Continue to attract FDI with clear and simple corporate tax rules.
- Set out a clear and stable policy to increase housing supply in a sustainable way.
- Explore opportunities to expand existing environmental taxes and align the tax system with our 2030 carbon emissions targets.
- Ensure that the tax system continues to promote pension saving and eliminate inconsistencies and inequities in the tax treatment of different retirement arrangements.

We look forward to engaging with the new Government to ensure that the Irish tax system is utilised as a lever to serve a successful economy and a fair society.

Finance Act 2024

The last three months of the year proved busy for tax advisers. Finance Bill 2024 was released and signed into law in a shortened period of time. Thank you to those who raised concerns with us, which formed the basis of our engagement with the Department of Finance



Finance Bill & Act 2024 webinar series, top L–R: Paul Murphy, Martin J. Kelly & Co., Fiona Carney, PwC; bottom: Brendan Murphy, Baker Tilly.

L–R: Alison McHugh, EY, Donal O’Donovan, Irish Independent, and Austin Hughes, economist. Not photographed: Laura Lynch, L&J Tax.

and Revenue as the Bill rushed through the Oireachtas.

Fiona Carney of PwC and Brendan Murphy of Baker Tilly analysed the details of Finance Bill 2024 for the first part of our Finance Bill & Act 2024 webinar series. The second part is scheduled for February 2025, to delve into the Act and what it means for you and your clients.

During the speedy progress of the Bill we recorded a podcast episode to discuss its impact, along with Budget 2025, on individuals, businesses and the economy. Joining Tax Talk host Donal O’Donovan are Laura Lynch, Institute Council member and Partner with L&J Tax, Alison McHugh, Tax Partner and Head of Private Client Services with EY Ireland, and economist Austin Hughes. You can listen to Tax Talk on your favourite podcast app.

CPD Winter Programme

Each year we take a short break during pay and file season to give our members space to focus on meeting the winter deadline. As a show of support during this often stressful period, we hosted a complimentary webinar on stress management and resilience. Dr Margaret O’Rourke, Consultant Clinical Psychologist, provided attendees with practical, evidence-based tips and tools to use during the busy season.

Ramping up again in late November, our CPD offering included seminars on UK and Ireland lifetime planning, farming and land use, VAT on property and a tax research skills workshop. In addition, we launched a new online Certificate in Domestic Corporate Tax for CTAs, which will cover administration of corporation tax, close companies, relief for losses and more.

All available seminars are on taxinstitute.ie.

Catching Up with Old and New Friends

Kicking off the festive season early this year, our President, Aoife Lavan, hosted the Southwest Members' Lunch in mid-November. It was a record-breaking year, with over 130 members from the region heading to Cork City for good food, great company and to hear from Derval O'Rourke, one of Ireland's most celebrated athletes and an inspiring voice on resilience, performance and health. The atmosphere provided warmth to an otherwise chilly day. You can view photos from the event here.

Derval O'Rourke inspiring our Southwest members in the Clayton Hotel, Cork City.

In collaboration with Chartered Accountants Ireland (CAI), we invited our recently qualified members to catch up with their fellow CTAs and meet members of CAI. It was a great evening of networking and festive fun, all in support of Focus Ireland. Thanks to those who joined us and to Barden for supporting the event.

Every year we welcome our Past Presidents to our Grand Canal offices for lunch and stimulating conversation with those who steered the Institute from its early years. This enjoyable occasion completed our November calendar and provided us with many insights for future endeavours.

We await to meet you all again in the new year at other highly anticipated social events, such as the Annual Dinner.

Save the Date – Global Tax Policy Conference

In partnership with Harvard Centre for International Development, I am delighted to

announce that the Global Tax Policy Conference is back next year. We will be communicating with you throughout the year about the programme and the line-up of expert speakers from around the world. But, for now, keep 24 and 25 October 2025 free in your diary.

Thank You

All that is left for me to say is that I wish you and your loved ones a safe and healthy Christmas and a Happy New Year. Thank you for continuing to support the Institute, and we look forward to seeing you again in 2025.

Policy and Representations Monitor

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

News Alert

Key tax measures in Budget 2025 and Finance Act 2024

On 1 October the then Minister for Finance, Jack Chambers TD, and Minister for Public Expenditure, NDP Delivery and Reform, Paschal Donohoe TD, delivered Budget 2025, which was followed by the publication of Finance Bill 2024 on 10 October.

Finance Bill 2024 passed all stages in the Dáil and Seanad in the week commencing 4 November, before the dissolution of the Dáil on 8 November. Committee Stage amendments were published before the Committee Stage debate on 5 November. The Government's amendments were not discussed during the Dáil or Seanad debates, due to time constraints. Finance Act 2024 (FA 2024) was signed into law by President Michael D. Higgins on Tuesday, 12 November 2024.

The key features of Budget 2025 and Finance Act 2024 are outlined below. The Institute's Pre-Finance Bill 2024 Submission and Pre-Budget 2025 Submission are available on our website, www.taxinstitute.ie.

Personal tax

- A reduction in the 4% rate of USC to 3% from 2025 onwards, and an increase in the ceiling of the 2% USC rate from €25,760 to €27,382 to ensure that it remains the highest rate of USC paid by full-time minimum wage workers when the national minimum wage increases on 1 January 2025 to €13.50. (See s2 FA 2024.)
- Increase of €2,000 in the standard rate income tax band to €44,000 for single individuals and €53,000 for married couples/civil partners (with one earner) for 2025 onwards. (See s3 FA 2024.)
- The personal tax credit, employee tax credit and earned income tax credit will increase by €125 to €2,000 for the tax year 2025 onwards. The Home Carer Credit will increase to €1,950; the Single Person Child Carer Tax Credit will increase to €1,900; the Incapacitated Child Credit will increase to €3,800; the Blind Person's Tax Credit will increase to €1,950; and the Dependent Relative Tax Credit will increase to €305 from 2025 onwards. (See s3 FA 2024.)
- The Sea-going Naval Personnel Credit is extended 31 December 2029. (See s4 FA 2024.)
- Increase in the rent tax credit to €1,000 for individual renters, or €2,000 for jointly assessed married couples or civil partners, in the private rented sector who are not in receipt of other State housing supports, for the tax years 2024 and 2025. (See s5 FA 2024.)
- One year extension to the temporary mortgage interest tax credit for taxpayers with an outstanding mortgage balance on their principal private residence of between €80,000 and €500,000 as of 31 December 2022. Relief will be available at the standard rate of income tax of 20% in respect of the 2024 tax year on the increase in interest paid in 2024 over 2022. The amount qualifying for relief will be capped

at €6,250 per residence, equivalent to a maximum tax credit of €1,250. The taxpayer must be compliant with local property tax requirements. (See s6 FA 2024.)

- The Help to Buy scheme will be extended to the end of 2029. The Act amends the definition of "qualifying residence" so that certain properties purchased by a local authority for onward sale to an affordable purchaser are not excluded from the scheme. (See s7 FA 2024.)
- Amendment to the small-benefit exemption to increase the annual limit from €1,000 to €1,500, and the number of non-cash benefits that an employer can give their employees will increase from two to five benefits per year (the cumulative total of the first five benefits in a year cannot exceed €1,500). Introduction of a sunset clause such that the small-benefit exemption will cease for the 2030 tax year and subsequent years. (See s8 FA 2024.)
- Introduction of an exemption from benefit-in-kind (BIK) in circumstances where an employer incurs an expense in providing a facility for the electric charging of vehicles at the home of a director or an employee and an exemption from BIK where facilities for the charging of electric vehicles are provided on a business premises where all employees and directors can avail of such facilities. (See s9 FA 2024.)
- Amendment to BIK for company vehicles to extend the temporary universal relief of €10,000 applied to the original market value (OMV) of a vehicle, including vans and electric vehicles (EVs), for vehicles in Categories A–D to reduce the amount of BIK payable. The current reduction of €35,000 in OMV will continue to apply for all EVs until the end of 2025, followed by a reduction of €20,000 in 2026 and €10,000 in 2027. The extension to the lower limit of the highest mileage band, so that the highest mileage band is entered at 48,001km, is retained for 2025. (See s10 and s11 FA 2024.)
- An amendment to the split-year residence (SYR) provisions to remove the requirement to supply an in-year notification to avail of SYR, under s822 TCA 1997, for individuals arriving or departing Ireland on or after 1 January 2025. (See s23 FA 2024.)
- Amendment to the list of entities in Schedule 13 TCA 1997 that are accountable persons for the purposes of professional services withholding tax (PSWT) to remove five entities that are no longer accountable persons required to operate PSWT, to update the name of the entity included at paragraph 140 from the Personal Injuries Assessment Board to the Personal Injuries Resolution Board and to add three entities – Maritime Area Regulatory Authority, An Rialálaí Agraibhia and An Ghníomhaireacht um Fhoréigean Baile, Gnéasach agus Inscnebhunaithe – at paragraphs 215, 216 and 217, respectively. (See s22 FA 2024.)
- Amendment to s192A TCA 1997, which provides for an exemption from income tax for awards or settlements made as a result of an infringement of an employee's statutory rights, to remove a rights commissioner, the Director of the Equality Tribunal and the Employment Appeals Tribunal from the definition of "relevant authority", as they are no longer operating or issuing determinations in respect of employment law. (See s24 FA 2024.)
- Amendment to the exemption from income tax for an annual allowance payable to members of An Garda Síochána under the Garda Síochána (Reserve Members) Regulations, by updating the relevant Regulation to refer to Regulation 14 of the Garda Síochána (Reserve Members) Regulations 2024 (SI 64 of 2024). (See s25 FA 2024.)
- The time limit for the making or amending of an assessment by a Revenue officer under s990 TCA 1997 is amended to provide that the four-year time limit shall commence at the end of the year following the year of assessment in which the employer return for an income tax month is made, effective for all income tax month returns from 1 January 2025. (See s26 FA 2024.)
- A number of amendments were made to the provisions relating to members of the

Disabled Drivers Medical Board of Appeal (DDMBA), including (see s27, s28 and s29 FA 2024):

- Introduction of a new s195E to Chapter 1 of Part 7 TCA 1997, which provides for an exemption from income tax for payments made on or after 1 November 2023 to members of the DDMBA in respect of expenses for travel and subsistence incurred by members in attending meetings of DDMBA. The exemption applies only to payments that do not exceed civil service rates for travel and subsistence.
- Amendment to the definition of "relevant payment" for the purpose of PSWT in s520 TCA 1997 to add "a locum cover payment" within the meaning of s986(4A) made on or after 1 November 2023 to the list of payments that are excluded from the definition of "relevant payment" for PSWT. As a result, members of the DDMBA are not obliged to deduct PSWT from locum cover payments.
- A member of the DDMBA may engage a locum in their place to perform their normal duties in their medical practice while the member is attending meetings of the DDMBA. Any payment made by the Minister for Finance to contribute to the cost borne by the member of engaging a locum would be a "locum cover payment". A new sub-section 4A is inserted in s986 TCA 1997, which includes the definition of "locum cover payment" and provides that PAYE shall not be applied to locum cover payments made to members of the DDMBA on or after 1 November 2023.

- A number of amendments to introduce exemptions from income tax, CGT and CAT for payments made to the women impacted by the failures in the CervicalCheck national screening programme are included in the Bill by the introduction of a new s205C TCA 1997 (see s30 FA 2024). In addition:
  - The Bill makes necessary amendments to ss256, 267, 613, 730GA and 739G TCA 1997 for exemptions from DIRT, CGT and exit tax. These exemptions apply retrospectively from 1 September 2008.
  - The Bill amends s82 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) to provide for an exemption from CAT. The amendment to s82 is deemed to have come into operation on 11 March 2019. If the payment referred to in the new paragraph (bc) of s82 CATCA 2003 was made at any time in the tax years 2019 or 2020, reference to the making of a valid claim within four years is a reference to four years commencing on 31 December 2021.
- A new s205D TCA 1997 provides for an exemption from income tax and CAT for payments made under Phase 1 of the Stardust ex gratia payment scheme. These exemptions apply from 9 August 2024. (See s31 FA 2024.)
- The stock reliefs available for farmers under ss666, 667B and 667C TCA 1997, relating to general stock relief, stock relief for young trained farmers and stock relief for registered farm partnerships, have been extended to 31 December 2027. (See s38 FA 2024.)
- Repeal of s657A, Taxation of certain farm payments, s657B, Restructuring and diversification aid for sugar beet growers, and ss669A to 669F, Milk quotas, in Part 23 of TCA 1997, which are considered obsolete. (See s39 FA 2024.)
- Amendment to Part 2 of Schedule 35 TCA 1997, Types and Descriptions of Qualifying Equipment for the Purposes of Section 285D, to extend the list of items that qualify for accelerated capital allowances for farm safety equipment and adaptive equipment for farmers with disabilities. (See s40 FA 2024.)
- Amendment to s216F TCA 1997 to amend the definition of the EU *de minimis* Regulation to the Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid and a number of consequential amendments. (See s34 FA 2024.)
- The exemption from income tax and CGT for certain bodies in Schedules 4 and 15 of TCA 1997 is amended to add and remove certain bodies. (See s43 FA 2024.)

Charities and sports bodies

- Changing the way in which s847A TCA 1997 provides tax relief for relevant donations to approved sports bodies for the funding of certain projects so that, for the year of assessment 2025 and subsequent years of assessment, individuals, irrespective of whether they are self-assessed or PAYE taxpayers, can elect to obtain a deduction for a relevant donation against their total income or surrender the relief to the approved sports body (provided the donation(s) is at least €250). The Bill provides that Revenue may make regulations for the purposes of setting down the conditions under which an individual shall make the election. (See s20 FA 2024.)
- Introduction of a new s847AA to TCA 1997 to provide for a scheme for tax relief on donations to certain National Governing Bodies (NGBs) where the donations are used to fund projects to purchase certain sporting equipment, to support elite athletes in competitive sport and to support the participation of women and people with disabilities in sport. Relief will also be available to a company that makes a relevant donation to an NGB. Relief to a company will be by way of a deduction against total income. (See s21 FA 2024.)
- A number of changes to approved charities, promotion of athletic/amateur sports and NGBs, as follows:
  - Removal of the requirement that charities need to be established for at least two years to access the Charitable Donations Scheme. Where a charity has merged or restructured into another entity, the condition that the predecessor entity must have been approved for two years no longer applies. (See s16 FA 2024.)
  - Amendment to ss207, 208 and 208A TCA 1997 to enable a charity to retain its tax exemption under the appropriate section provided that it applies its income to charitable purposes by the end of the fifth year after the year in which the income is received. (See s17 FA 2024.)
  - The definitions in s235 TCA 1997, which relates to bodies established for the promotion of athletic or amateur games or sports, are extended to a new s235A and some drafting errors and references are corrected. (See s18 FA 2024.)
  - Introduction of a new s235A TCA 1997 to provide that certain NGBs can have an exemption for income that they invest for up to 10 years. The exemption applies provided the income is ultimately applied for certain qualifying purposes, outlined in the section. (See s19 FA 2024.)

Pensions

- Limit to the tax relief available for employer contributions to personal retirement savings accounts (PRSAs) and pan-European pension products (PEPPs). The exemption from the BIK charge of expenses incurred in the making of any contribution to a PRSA or PEPP will apply only to contributions up to an "employer limit", i.e. 100% of an employee's salary in the year of assessment, and any contributions above the "employer limit" will be considered a BIK for the director or employee and therefore subject to tax. An employer's contributions to a director's or employee's PRSA or PEPP will be an allowable deduction in calculating the employer's taxable profits up to the new "employer limit". (See s12 FA 2024.)
- A number of changes to the operation of the standard fund threshold (SFT) based on recommendations from the report titled *Examination of the Standard Fund Threshold*. The report was published after a targeted review of SFT regime, which began in December 2023, led by an independent expert, Dr Donal de Buitléir, with support from the Department of Finance.
  The Institute responded to the public consultation on the SFT regime in January 2024, recommending that the SFT should be increased to compensate for the lack of indexation of the threshold over the last decade. The Minister announced a multi-year plan to implement the recommendations of the report.

The changes to the SFT included in this year's Finance Act include (see s13 FA 2024):

- Increasing the level of the SFT on a phased basis by €200,000 per year from 2026 until 2029, resulting in an SFT of €2.8m, and then converging the level of the SFT with the applicable level of growth, in line with the recommendations of the report.
- Amending the definition of "standard chargeable amount" to mean €500,000 less the tax-free amount (currently €200,000).
- Amendment to Schedule 23B TCA 1997 to provide that transfers from PRSAs to vested PRSAs are considered a benefit crystallisation event, which means an individual will have a chargeable excess tax liability, at a rate of 40%, if their pension entitlements exceed the SFT as of that event.

The Minister confirmed that an inter-agency group will be formed to oversee the implementation of the remaining recommendations in Dr de Buitléir's report.

- Introduction of a new Chapter 2E to Part 30 of TCA 1997 to provide for the taxation and relief rules for the Auto-Enrolment Retirement Savings System (or AE scheme). The rules provide that employer contributions to the AE scheme will be exempt from tax, that employer contributions will be allowed as an expense of management or as a trading deduction, and that a repayment of employer contributions, as a result of an overpayment of contributions, will be treated as a receipt of that trade. Income and gains of AE funds, while held by an AE provider, will be exempt from tax. The Bill provides for the taxation of payments from the AE scheme on draw-down, except for a 25% lump sum. The lump sum will be tax-free up to €200,000, taxed at 20% between €200,000 and €500,000, and taxed at 40% above €500,000. As the State will make direct contributions for employees within the AE scheme, no tax relief will be available for employee contributions to the scheme. (See s14 FA 2024.)
- The Minister for Social Protection, Heather Humphreys TD, signed a Commencement Order on 30 September providing for the AE scheme, to be called My Future Fund, to begin on 30 September 2025. Government approval has been secured for the establishment of the National Automatic Enrolment Retirement Savings Authority (NAERSA) on 31 March 2025. The NAERSA will identify eligible employees to be enrolled and notify employers through an automated payroll instruction to pay a contribution amount at a set percentage rate. On 30 September 2025 the NAERSA will begin collecting contributions from employees, their employers and the State, and investing that money on the employees' behalf.
- A number of auxiliary amendments dealing with the AE scheme are made to TCA 1997 and the Stamp Duties Consolidation Act 1999. (See s15 FA 2024.)

EII, SURE and SCI

- The reliefs in Part 16 TCA 1997, the Employment Investment Incentive (EII), the Start-Up Relief for Entrepreneurs (SURE) and the Start-Up Capital Incentive (SCI), are extended for a further two years to the end of 2026, at which point the EU General Block Exemption Regulation (GBER) is due to expire. (See s37 FA 2024.)
- Increase to the limit on the amount that an investor can claim relief for such investments under the EII to €1m per year of assessment from 1 January 2025. Currently, the maximum investment on which a taxpayer can claim relief is €500,000 per year of assessment where the EII shares are held for a minimum period of four years.
- Increase to the rate of relief that applies under the EII to follow-on investments to 35% for investments made within the seven-/ten-year eligibility period, with 20% applying thereafter. This amendment applies in respect of shares issued on or after 1 January 2024. The income tax relief available is

subject to the maximum tax relief thresholds provided for under the GBER.

- Amendment to the conditions to be met by a company regarding increases in employment or expenditure on R&D+I when claiming the EII to provide that a company will be deemed to have fulfilled the employment condition if it satisfies either of the employment tests, i.e. an increase in the number of employees or an increase in total remuneration. The amendment will apply in respect of shares issued on or after 1 January 2025.
- Amendment to the SURE scheme to set out the level of relief that will apply to investments made by investors in line with the GBER and to provide that the relief available may not exceed the maximum tax relief thresholds outlined in the GBER.
- Increase to the maximum relief available for SURE investments from €100,000 to €140,000 per year (i.e. an increase from €700,000 to €980,000 over seven years).
- Extending the date by which Statements of Qualification and Statements of Qualification (SURE) may be issued from four months after the end of the year of assessment in which the shares were issued to 31 December in the year following the year in which the shares were issued.

Corporation tax

- Introduction of a new s831B to Chapter 2 of Part 35 of TCA 1997 to provide for the introduction of a participation exemption for foreign distributions. Under the new rules a company will have the option to claim the participation exemption or to continue to use existing tax-and-credit relief under Schedule 24, by way of an election in its annual corporation tax return. Where a company elects to claim the participation exemption for an accounting period, it must do so for all distributions potentially in scope of the exemption in that period. The participation exemption will be available for relevant distributions received on or after 1 January 2025 from subsidiaries in EU/EEA and tax-treaty partner source jurisdictions. (See s50 FA 2024.)
- The Institute responded to the second Feedback Statement on the introduction of a participation exemption for foreign dividends to the Irish corporation tax system on 5 September, highlighting a number of elements of the proposed legislative approaches that we believe needed to be reconsidered if the participation exemption was to fulfil the commitment by the Minister for Finance to simplify the Irish corporate tax system and to promote a best-in-class business environment. The Institute also provided feedback to the Department of Finance in August after discussions at the meetings of the Business Tax Stakeholder Forum Subgroup on a Participation Exemption for Foreign Dividends. The Institute's submissions are available on our website, www.taxinstitute.ie.
- Amendments to Part 4A TCA 1997 in relation to the EU Minimum Tax Directive (Council Directive (EU) 2022/2523 of 15 December 2022) to incorporate elements of the December 2023 Administrative Guidance in primary legislation; incorporate elements of the June 2024 Administrative Guidance in primary legislation; and provide further clarity on the existing Part 4A legislation. (See s115 FA 2024.)
- Amendments to Part 35A (Transfer Pricing) TCA 1997 to introduce a new s835DA to provide for the political commitment agreed by OECD/G20 Inclusive Framework members in February in relation to "covered jurisdictions" in respect of Amount B. This element is referred to as Phase One of Amount B. Where all of the conditions contained in the provision are satisfied, the arm's-length consideration in respect of a qualifying arrangement may be determined in accordance with the OECD Pillar One – Amount B guidance. The new s835DA also provides for additional documentation requirements and includes anti-avoidance rules. (See s45 FA 2024.)
- A number of technical amendments have been made to the definitions in s817U TCA

1997, which contains outbound payment defensive measures to prevent double non-taxation, to remove unnecessary duplication in certain definitions and to ensure that the legislation operates as intended, primarily where payments are made to entities that are treated as transparent for tax purposes. The reference to "foreign company charge" in the definition of supplemental tax has been deleted. In addition, the reference in sub-section 6 to "that is resident or situated in a different territory" has been removed. (See s46 FA 2024.)

- Amendments to three definitions in s835AY TCA 1997, which provides for the Anti-Tax-Avoidance Directive interest limitation rule, relating to: "finance cost element of non-finance lease payments", "finance element of finance lease payments" and "finance income element of non-finance lease payments". The updated definitions take account of changes introduced by Finance (No. 2) Act 2023 to the classification of leases for tax purposes. A new sub-section (4) is also inserted to clarify the treatment of amounts carried forward in a foreign currency. This amendment is to ensure the legislation operates as intended. (See s47 FA 2024.)
- A number of amendments relating to the taxation of leases have been made, mainly in ss288, 299, 403 and 404 TCA 1997, along with other consequential amendments. (See s44 FA 2024.)
- Amendment to the relief for certain start-up companies in s486C TCA 1997 to extend the calculation of the relief by reference to the amount of Class S PRSI (see s51 FA24). In addition, an amendment to the definition of the EU *de minimis* Regulation to the Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (see s34 FA 2024).
- Increase to the amount of the first-year payment for the R&D tax credit from €50,000 to €75,000 in respect of claims made in accounting periods commencing on or after 1 January 2025. (See s41 FA 2024.)
- Enhancement to film relief in s481 TCA 1997 to address specific challenges being faced by smaller feature-film projects. The enhanced credit will apply to feature films and animated films of feature length with a qualifying expenditure of less than €20m that meet certain qualifying criteria related to employment in key creative roles. The credit will be calculated at the rate of 40% on qualifying expenditure of less than €20m. The commencement of the uplift will be subject to the receipt of State Aid approval from the European Commission. (See s48 FA 2024.)
- Introduction of a new s487A to TCA 1997 to provide for a tax relief for the unscripted production sector. The relief will take the form of a corporation tax credit for expenditure incurred on the production of an unscripted programme. The credit will be 20% of the lowest of eligible expenditure, 80% of the total cost of production and €15m. The commencement of the credit will be subject to the receipt of State Aid approval from the European Commission. The scheme will run until 31 December 2028. (See s49 FA 2024.)
- Introduction of a new s81D to TCA 1997 to provide for a tax deduction for expenditure incurred by a company wholly and exclusively in respect of a first listing on a stock exchange in the EEA. The relief will take the form of a corporation tax deduction for expenditure incurred wholly and exclusively for the purpose of admitting to trading the shares of a company on a regulated market or multilateral trading facility in an EEA State. The deduction will be available in respect of listings that take place from 1 January 2025 to 31 December 2029 and is subject to the overall €1m cap. (See s42 FA 2024.)
- Extension of the accelerated capital allowances scheme for gas- and hydrogen-powered vehicles and refuelling equipment in s285C TCA 1997 for a further year to 31 December 2025. (See s32 FA 2024.)
- Adjusting downward of the CO_2 thresholds for claiming capital allowances on business

cars in light of improved vehicle emissions standards. (See s33 FA 2024.)

- An amendment to s835YA TCA 1997 to take account of the EU list of non-cooperative jurisdictions for tax purposes updated in October 2024. (See s52 FA 2024.)

Capital gains tax

- Amendment to CGT retirement relief to provide for CGT relief on disposals to a child that are valued over €10m provided the assets are retained for a 12-year period. During Committee Stage amendments, the Minister confirmed the removal of the requirement for the child to file an abatement claim for the deferred tax on the expiry of the 12-year retention period. In our engagement with the Department of Finance and Revenue on the Finance Bill measures, the Institute highlighted the practical challenges of requiring a claim to be made after such a long period of time and sought the removal of this filing requirement. The condition to retain the assets for 12 years remains. (See s55 FA 2024.)
- The CGT relief for angel investors introduced in Finance (No. 2) Act 2023 was repealed and a new Chapter 6A was introduced to Part 19 of TCA 1997 to provide for a targeted CGT relief to encourage angel investment in innovative start-ups, to allow those investors to avail of a reduced rate of CGT on a sale to a third party. The qualifying investment must be in a company whose relief group is no more than seven years old. Where an individual invests directly in a qualifying company, a qualifying investment is an investment in newly issued ordinary shares costing a minimum amount of €20,000, or €10,000 where it amounts to at least 5% of the company's share capital. The shares acquired must be held for a minimum of three years. Relief is not available on a part-disposal of eligible shares or on the redemption, repurchase or repayment of eligible shares. A reduced CGT rate of 16% is available on a gain of value equivalent to twice the value of the investor's initial investment. An effective reduced rate of 18% applies to individuals who make the investment via a qualifying partnership. There is a lifetime limit of €10m on gains that may avail of the reduced rate of CGT. The relief is subject to a sunset clause of 31 December 2026 and is subject to a Commencement Order by the Minister of Finance. (See s53 and s54 FA 2024.)
- Amendment to provide that no chargeable gain shall arise in respect of disposals of registered and national monuments and archaeological objects in accordance with the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023. (See s56 FA 2024.)

Capital acquisitions tax

- Broadening the reporting requirement for gifts in respect of certain interest-free loans between close family members to specified loans with any element of a gift. The extended reporting requirement will come into operation on 1 January 2025. (See s98 FA 2024.)
- Amending the group thresholds in Part 1 of Schedule 2 of CATCA 2003 to increase the Group A threshold from €335,000 to €400,000, the Group B threshold from €32,500 to €40,000 and the Group C threshold from €16,250 to €20,000. The increased group thresholds apply to gifts or inheritances received on or after 2 October 2024.
- Inserting a new s89A in CATCA 2003 to modify the agricultural relief provisions by requiring the disponer to meet the six-year active-farmer test in order for the beneficiary to benefit from the relief. The new provisions were intended to apply to gifts and inheritances taken on or after 1 January 2025; however, this section was made subject to a Commencement Order by a Committee Stage amendment. (See s100 and s101 FA 2024.)

Property

- Substituting s653AP with a new section confirming the rates of vacant homes tax

(VHT) to apply for chargeable periods beginning 1 November 2022 as (see s113 FA 2024):

- three times the local property tax (LPT) payable for the chargeable period commencing 1 November 2022;
- five times the LPT payable for the period commencing 1 November 2023; and
- seven times the LPT payable for the period commencing 1 November 2024 and subsequent chargeable periods, as announced on Budget Day.

- Amendments to the residential zoned land tax (RZLT) in Part 22A TCA 1997, including to provide a further opportunity for landowners whose land will appear on a revised map to request a rezoning of the site (between 1 February and 1 April 2025) from the local authority where the land is located; to provide for an exemption (rather than a deferral) from the 2025 RZLT liability in respect of land appearing on a revised map to be published on 31 January 2025, where the owner has availed of the opportunity to request a rezoning under the amended s653I; to provide that where planning permission is granted to part of a site before it becomes a relevant site for RZLT purposes, it will be treated as two separate relevant sites from the date the site becomes a relevant site, and the landowner will be required to register both relevant sites with Revenue; to provide for an exemption from RZLT (rather than a deferral) where development of a site may not be commenced because the planning permission is subject to a third-party judicial review application, or an appeal of a judicial review determination, with the exemption to apply for the duration of the proceedings irrespective of the eventual outcome; to provide for a deferral of RZLT for 12 months from the date of grant of planning permission, or until the land is sold to a third party, if earlier; to provide for the 12-month deferral (from the date planning permission is granted) of the RZLT to continue where a site is transferred between group companies; and to make consequential amendments. (See s114 FA 2024.)
- Extending the current relief for pre-letting expenditure in respect of vacant premises under s97A TCA 1997 for a further three years to 31 December 2027. (See s35 FA 2024.)
- Amendments to the residential premises rental income relief, including to provide that relief will not be available where the landlord has an overall rental loss; to restrict the credit will to the lowest of (a) the credit amount (i.e. €600 for 2024, €800 for 2025 and €1,000 for 2026 and 2027), (b) 20% of the rental surplus from qualifying properties and (c) 20% of the landlord’s overall Case V profits; and to amend the manner in which relief will be clawed back. The Institute had sought in its Pre-Finance Bill 2024 Submission to the Minister for the clawback provisions to be amended to ensure that any clawback is restricted to the relief granted. (See s36 FA 2024.)

Stamp duty

- Introducing a third rate of stamp duty on residential properties in Schedule 1 SDCA 1999 to apply where the value/acquisition price exceeds €1.5m. It applies at a rate of 6% on the balance of the consideration in excess of €1.5m. The new 6% rate took effect from midnight on 1 October. The existing stamp duty rates continued to apply to instruments executed before 1 January 2025 in respect of which a binding contract was in place before 2 October 2024. The existing 1% stamp duty rate on residential property with a value not exceeding €1m, and 2% on any value between €1m and €1.5m, will continue to apply. The new 6% rate is disapplied where three or more apartments in the same block of apartments are acquired. In such cases the 1% rate will apply to consideration not exceeding €1m and the 2% rate will apply to consideration exceeding €1m. (See s90 FA 2024.)
- Increasing the higher rate of stamp duty on the acquisition of certain residential property where a person acquires at least 10 residential units during any 12-month period, in s31E SDCA 1999, from 10% to

15%. The increase to the rate took effect from midnight on 1 October. Transitional arrangements apply to instruments executed before 1 January 2025 in respect of which a binding contract was in place before 2 October 2024. (See s90 FA 2024.)

- Inserting a new sub-section 12A in s31E SDCA 1999 to provide that the transfer on or before 31 December 2025 by the National Asset Management Agency (NAMA) or a NAMA group entity of shares in the National Asset Residential Property Services DAC to the Land Development Agency will not come within the scope of these provisions and will therefore not be liable to the higher rate of stamp duty. (See s91 FA 2024.)
- Amending the working-time condition for the young trained farmer stamp duty relief so it can be satisfied where the young trained farmer farms the land through a company. The young trained farmer must spend not less than 50% of his or her normal working time farming the land as an employee of the company; hold not less than 20% of the ordinary share capital of the company; be a director of the company; and have the ability to participate in the financial and operational decisions of the company. (See s91 FA 2024.)
- The stamp duty relief applicable to leases of farmland will be revised so that relief can be claimed where the farming business is carried on by a company. Relief can be claimed by a company in certain circumstances, and relief is available to a single undertaking within the meaning of Commission Regulation (EU) No. 1408/2013 only insofar as it does not exceed the ceiling of aid laid down in the Regulation. (See s92 FA 2024.)
- Repeal of ss94, 102, 114 to 122 and 125B of SDCA 1999, which are obsolete. Amendment to provide that the section refers to "Temple Bar Cultural Trust Designated Activity Company" and amendment to provide that the exemption for certain licences and leases granted under the Petroleum and Other Minerals Development Act 1960 will not be available after 31 December 2029. (See s93 FA 2024.)
- Amendment to ss31A and 31B SDCA 1999 to provide that where a repayment of stamp duty is claimed under either of those sections, the general requirements of s159A SDCA 1999 (General provisions on claims for repayment of stamp duty) must also be met. (See s94 FA 2024.)
- Amendment to s123B SDCA 1999, which provides for stamp duty on cash, combined and debit cards, and s124 SDCA 1999, which provides for stamp duty on credit card accounts and on charge cards. (See s95 FA 2024.)
- Confirmation that the revised bank levy, introduced in Finance (No. 2) Act 2023, will apply for 2025 and will be payable by banks that received State assistance during the banking crisis, namely AIB, Bank of Ireland, EBS and PTSB. The revised bank levy will be applied at the rate of 0.112% of the value of eligible deposits held by each bank on 31 December 2022. (See s96 FA 2024.)

VAT

- Increasing the VAT registration thresholds with effect from 1 January 2025. The registration threshold for businesses will increase from €40,000 to €42,500 for services and from €80,000 to €85,000 for goods. (See s78 FA 2024.)
- Temporary extension of the 9% VAT rate to gas and electricity supplies until 30 April 2025. (See s79 FA 2024.)
- Providing that, with effect from 1 January 2025, the 9% VAT rate will apply to the supply and installation of low-emission heat pump heating systems. (See s79 and s88 FA 2024.)
- Clarifying that a receiver, liquidator or similar person disposing of assets on behalf of a borrower is the person entitled to deduct the VAT on inputs relating to such disposals. (See s80 and s82 FA 2024.)
- Clarifying the limitation on input deductions not allowable on food, drink, accommodation or personal service. (See s81 FA 2024.)

- Confirming the increase to the flat-rate addition for farmers from 4.8% to 5.1% from 1 January 2025. (See s83 FA 2024.)
- Providing for the application of penalties where a payment service provider does not comply with its obligations under Part 9A of VATCA 2010 in relation to the EU Central Electronic System of Payment Information (CESOP). (See s84 FA 2024.)
- Clarifying that the VAT exemption for the management of EU alternative investment funds (AIFs) applies to the management of all EU AIFs, including where the alternative investment fund manager is registered with a relevant competent authority. (See s85 FA 2024.)
- Consequential amendments to Part 1 of Schedule 2 VATCA 2010 to remove paragraphs 4(1), 4(6) and 6(2)(c), following amendments made in Finance Act 2020. (See s86 FA 2024.)
- Clarifying that the standard rate of VAT applies to juice extracted, or drinkable products derived, from fruit, vegetables, plants, grains, seeds or pulses, with effect from 1 January 2025. Committee Stage amendments legislated for the VAT zero rate to apply to milk alternatives, which are currently zero-rated based on a Revenue concession. (See s87 FA 2024.)

Miscellaneous measures

- Introduction of an excise duty on e-cigarettes subject to a Commencement Order. The tax will apply to all e-liquids at a rate of €500 per litre. (See ss57–68 FA 2024.)
- Providing for emissions-based vehicle registration tax (VRT) for category B vehicles registered on or after 1 July 2025, with a table setting out the CO_2 emissions categories for the registration of vehicles and the corresponding percentage rates of VRT that are chargeable on the open-market selling price of the vehicle. Providing for a change to the weight ratio from 130% to 125% for commercial electric vehicles to qualify for the €200 VRT rate with effect from 1 January 2025. (See s76 FA 2024,)
- Amendment to s891J TCA 1997 in relation to the transposition of the OECD Model Rules for Reporting by Platform Operators, which were enacted into Irish law by Finance Act 2022, to provide for the revocation of the Platform Operator ID by Revenue that has been assigned to a non-resident platform operator. (See s103 FA 2024.)
- Amendment to s891L TCA 1997, inserted by Finance (No. 2) Act 2023, following the transposition of Article 12A of DAC7 (i.e. the EU Directive on Administrative Cooperation) into Irish law, which introduces a common legal basis by which EU Member States are obliged to facilitate other Member States in conducting joint audits. (See s104 FA 2024).
- Amendment to give effect to the zero per cent interest rate on warehoused debt where taxpayers engaged with the Collector-General's Division by 1 May 2024 to make arrangements to pay their warehoused debt. (See ss105–110 FA 2024.)
- Inserting a new s826B in TCA 1997 to provide that where a correlative adjustment or mutual agreement reached under s826 TCA 1997 gives rise to a repayment of tax, subject to the satisfaction of all the relevant conditions, the repayment of tax may be made to another group company in instances where the company that would have been entitled to the repayment has ceased to exist. (See s111 FA 2024.)
- Amendments to the list of international tax agreements entered into by Ireland in Part 1 and Part 3 of Schedule 24A TCA 1997. (See s112 FA 2024.)

Consultation on the tax treatment of interest in Ireland launched

On 27 September the Minister for Finance launched a consultation on the tax treatment of interest in Ireland. The consultation document notes that to ensure that Ireland's tax system is resilient, supports competitiveness, protects the tax base and aligns with commitments in the field of international taxation, the Department of Finance is now carrying out a public consultation with the intention of seeking stakeholder views on this topic.

The consultation invites stakeholders to:

- identify aspects of the existing interest-related tax rules that pose difficulties and outline those difficulties;
- identify aspects of existing interest-related tax rules that could be simplified and how these simplifications might be implemented;
- identify and describe any bona fide commercial scenarios where tax relief for interest expense is not currently available for businesses under existing legislation but where tax relief should be available;
- identify and explain the benefits that would be expected to flow from any new approach to the taxation and deductibility of interest; and
- identify and explain possible adverse consequences of any proposed changes.

The consultation is framed around 27 questions. The first 26 questions cover legislative provisions relating to:

- the taxation of interest income and related targeted anti-avoidance provisions;
- the deduction of interest expense;
- the ATAD interest limitation rule;
- targeted anti-avoidance provisions relating to interest deductibility;
- specific rules relating to financial services transactions;
- interest withholding taxes; and
- reporting obligations.

The final question relates to broader policy considerations around reforming the existing interest regime in Ireland. The consultation period will run to **Thursday, 30 January 2025**.

The Institute will be responding to this important consultation for businesses operating in Ireland.

CJEU judgment in the *Apple* State Aid case published

The judgment of the Court of Justice of the European Union (CJEU) in the *Apple* State Aid case was published on 10 September, setting aside the judgment of the General Court of the European Union (GCEU). The *Apple* State Aid case concerned a Decision issued by the European Commission to Ireland in 2016 finding that Ireland had provided State Aid to Apple. Ireland challenged this finding to the GCEU. In 2020 the GCEU issued its judgment, which annulled the Commission's 2016 Decision. The Commission appealed the GCEU judgment to the CJEU, and the CJEU heard the appeal on 23 May 2023.

In its ruling the CJEU gives final judgment in the matter and confirms the Commission's 2016 Decision. A press release from the CJEU noted that the court confirms the Commission's approach, according to which, under the relevant provision of Irish law relating to the calculation of tax payable by non-resident companies, the activities of the branches of Apple Group (Apple Sales International (ASI) and Apple Operations Europe (AOE)) in Ireland had to be compared not to the activities of other Apple Group companies (e.g. a parent company in the US) but to those of other entities of those companies, particularly their head offices outside Ireland.

Ireland's position

In a press release on the day that the judgment was published the Department of Finance noted the statements in relation to the judgment from the CJEU and stated:

> "The Irish position has always been that Ireland does not give preferential tax treatment to any companies or taxpayers. The CJEU has found that the tax paid was insufficient and that a greater amount of taxation was required to be recovered. Ireland will of course respect the findings of the Court regarding the tax due in this case."

The press release from the Department of Finance clarified that:

> "The Apple case involved an issue that is now of historical relevance only; the Revenue opinions date back to 1991 and

2007 and are no longer in force; and Ireland has already introduced changes to the law regarding corporate residence rules and the attribution of profits to branches of non resident companies operating in the State."

Apple Escrow fund

To comply with the 2016 Decision of the Commission, the alleged State Aid was placed by Apple in an escrow fund, with the proceeds to be released only when there was a final determination in the EU courts. The value of the escrow fund as of 9 September 2024 was €14.1bn. Funds are being released from escrow following the issue of tax assessments by Revenue and in accordance with the Escrow Framework Deed. Tax payments are paid to Revenue and in turn to the Exchequer. The full balance in the fund, after fees and operational expenses are paid, will accrue to the State. To date two-thirds of the total liability from the CJEU ruling has been transferred to Ireland (Department of Finance, Fiscal Monitor, November 2024).

In its original State Aid Decision the Commission noted that there was a possibility that other countries (i.e. third countries) may seek to tax some of the profits that the Commission was proposing to allocate to the Irish branches of the Apple companies. Such third-country adjustments have taken place on two occasions since the establishment of the fund, with a total of €455m paid out in third-country adjustments since 2019. €209m was returned to Apple during 2019. A further third-country adjustment took place in May 2021 for €246m. The Department of Finance stated in September that it was not aware of any further such claims, which would arise if third countries claim that taxes were due by these companies in those jurisdictions.

Institute responds to Commission's evaluation of Anti-Tax Avoidance Directive

The Institute responded to the European Commission's call for evidence for the evaluation of Council Directive (EU) 2016/1164 of 12 July 2016, as amended by Council Directive (EU) 2017/952 of 29 May 2017 (Anti-Tax-Avoidance Directive (ATAD)), in September. The Commission's evaluation focuses on three broad themes:

- The functioning of ATAD in the form of a qualitative and quantitative assessment of the effectiveness of its measures as a minimum standard in addressing aggressive tax planning.
- Future-proofing the ATAD measures, in particular their fitness for purpose and continued relevance when considering the introduction of Council Directive EU 2022/2523 on a global minimum level of taxation of 14 December 2022 (the EU Minimum Tax Directive).
- The implementation of ATAD in Member States and the policy choices made where the Directive allowed the legislator of the Member State to choose.

In our response we noted that in the period since ATAD was adopted by the European Council a range of initiatives have been implemented across the EU that have a similar objective to ATAD. This has resulted in an extraordinarily complex tax environment for businesses operating in the Single Market.

We welcomed the Commission's plans to declutter EU tax legislation by reducing duplicative and potentially onerous regulations and requirements in favour of more streamlined rules. We proposed that the Commission's evaluation of ATAD should consider the continued relevance of each of the ATAD measures in the context of the wider tax legislative landscape, rather than focusing on ATAD in isolation. We urged the Commission to focus its evaluation on opportunities to simplify the tax law landscape to reduce the regulatory burden on business and increase the competitiveness of the Single Market.

Noting that the interest rate environment has changed significantly since ATAD was adopted, with interest rates increasing as governments have adjusted their monetary policies to address inflation, we advocated

that consideration be given to whether it is appropriate to benchmark the cap on exceeding borrowing costs under the ATAD interest limitation rule (ILR) to reflect changes in interest rates. We also queried the necessity for general anti-avoidance provisions in EU Directives, such as the Parent–Subsidiary Directive and the Interest and Royalties Directive, in light of the implementation of the ATAD general anti-abuse rule across EU Member States.

We urged the Commission to identify areas of overlap between the Pillar Two GloBE Rules and ATAD and for consideration to be given to the continued relevance of the ATAD measures, such as the controlled foreign company rules, the ILR and the anti-hybrid rules, in a Pillar Two context.

Finally, we highlighted the importance of ensuring that the ATAD measures, when considered in the wider tax regulatory environment, do not place a disproportionate burden on businesses operating in the Single Market.

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

Succession Planning Advice Grant – inclusion of Chartered Tax Advisers as accredited professionals

The Institute engaged with the Department of Agriculture, Food and the Marine, seeking the specific inclusion of Chartered Tax Advisers as accredited professionals from whom advice must be sought for the purposes of the Succession Planning Advice Grant. The terms and conditions of the scheme were updated in August to include Chartered Tax Advisers registered with the Irish Tax Institute as one of the categories of accredited professionals.

The Succession Planning Advice Grant is a scheme aimed at encouraging best practice in intergenerational land transfer addressing significant generational imbalances in farming. The grant is to encourage and support farmers aged 60 years and over to seek succession planning advice by contributing up to 50% of vouched legal, accounting and advisory costs, subject to a maximum payment of €1,500.

Funds Sector 2030 final report published

On 22 October Minister for Finance published "Funds Sector 2030: A Framework for Open, Resilient and Developing Markets – Final Report". The report fulfils the recommendation of the Commission on Taxation and Welfare that called for an examination of:

- the taxation regime for funds, life assurance policies and other, related investment products, with the goal of simplification and harmonisation where possible;
- the regimes for REITs and IREFs and their role in the property sector, including how they support housing policy objectives; and
- the use and scope of the s110 TCA 1997 regime.

Key tax recommendations in the final report are outlined below.

Retail investment

Taxation of Irish-domiciled funds/life products

The report recommends reforms to the taxation of Irish-domiciled funds and Irish-domiciled life products, with similar amendments made to the equivalent products in EU, EEA and OECD territories, to bring the regime into closer alignment with the taxation of other savings and investment products. These include:

- removing the eight-year deemed-disposal rule;
- aligning the investment undertaking tax rate and life assurance exit tax rate with the 33% CGT rate;
- allowing for a limited form of loss relief; and
- repealing the 1% life assurance levy.

In responding to the public consultation in September 2023 the Institute advocated for the removal of the eight-year deemed disposal rule; allowing the offset of losses incurred on one investment fund against gains made on

another investment fund; and, in the case of individuals, a single rate of tax of 33% to apply to investment income and gains.

Offshore funds

The report recommends that work to simplify and consolidate the tax regime for offshore funds should be prioritised. In our response to the public consultation the Institute urged that the taxation of fund investments be overhauled to simplify the regime and support tax compliance.

Providing stability and certainty for investment in property in Ireland

Irish real estate funds

The report recommends that the Department of Finance undertake a public consultation setting out potential options for an entity-level tax for IREFs. The report states that there appears to be a strong case for amending the IREF regime to incorporate an entity-level tax, as this would enable greater certainty and stability regarding the taxation of rental income and other gains from property.

The report also notes that the future use of IREFs is uncertain and that there is a move towards using other corporate structures, owing to recent changes in the IREF regime, uncertainty over its future tax treatment, and the cost and governance burden of a maintaining a regulated entity.

Real estate investment trusts

Although the report acknowledges that the REIT regime is not meeting all of its objectives, no substantive amendments have been proposed to REITs. Instead, the report notes that discrete amendments could be considered as part of the normal annual Finance Bill process.

Exempt unit trusts

If a review of the role of EUTs in the property market is undertaken, the report recommends also examining the regulatory oversight of EUTs by the Central Bank of Ireland and the Interdepartmental Pensions Reform and Taxation Group.

Exchanging data on large landlords

The report recommends a legislative change to allow Revenue to collate data in relation to large landlords and share that data with relevant stakeholders in the civil and public service to aid policy-making.

Structured finance

Section 110 companies

The report recommends that legislation be progressed to enable Revenue to publish a list of special-purpose entities availing of the s110 TCA 1997 regime, including the name of the entity, with the list updated at regular intervals.

It also recommends that the Department of Finance and Revenue consider how to implement a requirement for a Legal Entity Identifier from entities availing of the s110 designation, which should be updated annually. (A Legal Entity Identifier is a 20-character alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization, which connects to key reference information that enables identification of legal entities participating in financial transactions.)

History of the funds sector

Alongside the final report, a history of the funds sector in Ireland has been completed and published by the Institute of Banking.

Indecon review of taxation of share-based remuneration

The "Indecon Review of the Taxation of Share-Based Remuneration" was published on 1 October. In his Budget 2025 statement Minister Chambers stated that he will consider Indecon's recommendations in due course. The key recommendations of the review are summarised below.

PRSI

Consideration should be given to introducing measures to contain the growth in the overall Exchequer costs of share-based remuneration schemes. The rationale for this recommendation is the high and growing costs of the schemes,

noted in the report's findings and detailed analysis, a significant element of which relate to the cost of the PRSI exemption. The report notes that one option would be to introduce a cap on the level of the employer PRSI exemption.

Key Employee Engagement Programme

Measures should be taken in the short term to enhance the attractiveness of the KEEP by providing greater clarity and guidance to SMEs, particularly around share valuation, and by more effective promotion of the scheme. Consideration should be also given to wider amendments to, and a redesign of, the KEEP for the post-2025 period, having regard to State Aid constraints and the need to obtain State Aid approval.

The report notes that data on the KEEP indicated that the number of share options exercised is very low, with only 26 individuals exercising options under this scheme in 2022. The total value of share options exercised was only €3.2m.

Restricted stock units

The tax treatment of RSUs for internationally mobile employees should be moved to a sourcing or apportionment method, aligned with the approach used internationally and with that used in respect for stock options for internationally mobile employees in Ireland.

Simplifying the administrative burden

Initiatives to simplify the administrative burden surrounding the reporting of share-based remuneration schemes should be continued with a view to reducing administrative costs and increasing attractiveness for SMEs. The report notes that additional information is needed to assist future evidence-based evaluation of these schemes and that the collection of the necessary data needs to be managed efficiently.

Consideration should also be given to moving the approval of approved profit-sharing schemes by Revenue to a pre-notification system, but any such change should be signalled well in advance so as to avoid creating uncertainty.

Benefit-in-kind on loans to employees

The BIK rate on loans offered to employees for the purpose of funding costs associated with the purchase of shares in share-based remuneration plans should be reduced. For instance, the rate could be linked to market prevailing interest rates for non-financial corporations. The rationale for this change is to improve take-up particularly among SMEs.

Employee ownership trusts

There is merit in considering reforming the taxation of employee ownership trusts in line with the treatment of such arrangements in the UK.

Updated Code of Practice on Determining Employment Status

On 18 November the updated *Code of Practice on Determining Employment Status* was published. The Code has been reviewed and updated by an interdepartmental group comprising the Department of Social Protection, Revenue and the Workplace Relations Commission (WRC) after the judgment of the Supreme Court in *Revenue Commissioners v Karshan (Midlands) Ltd T/A Domino's Pizza* [2023] IESC 24 in October 2023.

The Code's objective is to provide a clear understanding of the employment status of individuals, taking into account current labour market practices and developments in legislation and case law. The employment status of an individual has implications for taxation, PRSI contributions and associated welfare benefits, and employment rights.

Importantly, the Code notes that decisions of the Department of Social Protection, Revenue or the WRC are not binding on each other. After the Supreme Court judgment in *Karshan*, Revenue published a detailed manual titled "Guidelines for Determining Employment Status for Taxation Purposes".

The Code explains the five-step framework set out by the Supreme Court in *Karshan*, noting that it provides a clear decision-making model to determine the employment status of each worker, taking account of their facts and circumstances.

The Code outlines that the question of whether a worker is an employee can be resolved by, first, having regard to three "filter" questions below:

- Does the contract involve the exchange of wage or other remuneration for work?
- If so, is the agreement one where the worker is agreeing to provide their own services, and not those of a third party, to the business?
- If so, does the business exercise sufficient control over the worker to render the agreement one that is capable of being an employment agreement?

If any one of these questions is answered negatively, it means that there can be no contract of employment.

- If the three requirements above are met, all the circumstances of the arrangement must be considered. In other words, whether the terms of the arrangement between the business and the worker, interpreted in the light of the practical/real conditions of engagement (the "factual matrix"), are consistent with a contract of employment, or with some other form of contract, having regard, in particular, to whether the arrangements point to the worker's working for themselves or for the business/employer.
- Finally, it should be determined whether there is anything in the legislative regime under consideration that requires a particular approach to be taken. For example, a person might be an employee for social insurance purposes but self-employed for employment law or tax purposes.

Detailed guidance on each of the five questions is set out in the Code.

Policy News

Minister signs Commencement Order for OECD June 2024 Administrative Guidance on Pillar Two

On 22 October the Minister for Finance signed the Commencement Order to include the agreed "Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) – June 2024" as part of the Irish Pillar Two legislation in s111B TCA 1997. The OECD/G20 Inclusive Framework on BEPS released the Administrative Guidance to provide guidance on a number of key topics where consistency and simplifications were sought by Inclusive Framework members and stakeholders.

Statutory Instrument on EU Regulation on Markets in Crypto-Assets

The Minister for Finance signed SI 607/2024 – European Union (Markets in Crypto-Assets) Regulations 2024 – to give effect to the Markets in Crypto-Assets Regulation (MiCAR) EU 2023/1114 and amend Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937. The commencement date of SI 607/2024 is 8 November 2024.

The statutory instrument:

- designates the Central Bank of Ireland as the national competent authority;
- outlines the administrative penalties and measures for regulated and non-regulated financial service providers; and
- specifies the duration of the transition period for firms that provided crypto services before 30 December 2024.

MiCAR is the first European-level legislation to introduce a harmonised and comprehensive framework for crypto-assets, covering issues from the offering to the public of crypto-assets to preventing market abuse in crypto-asset

markets. The legislation provides a set of prescriptive rules that will shape the functioning of the European markets in crypto-assets, including transparency rules, authorisation requirements, customer protection rules and an anti-market abuse framework.

New pay-related benefit Commencement Order signed

On 30 September the Minister for Social Protection, Heather Humphreys TD, signed the Commencement Order providing for the new pay-related benefit that will come into effect from 31 March 2025. The new benefit aims to ensure that people with a strong work history receive enhanced benefits if they lose their employment.

European Parliament approves new College of Commissioners

The European Parliament approved the new College of Commissioners on 29 November. The proposed College of Commissioners was assessed by MEPs in dedicated public hearings held between 4 and 12 November. Candidates submitted themselves to the European Parliament committee hearings to assess their suitability and their ability to carry out the duties linked to the portfolios to which they had been assigned.

The Parliament's Conference of Presidents declared the hearings closed and published evaluation letters on 27 November. After its formal appointment by the European Council via a qualified majority the new European Commission took up its duties on 1 December 2024.

ViDA package agreed at ECOFIN

At a meeting of the Economic and Financial Affairs Council (ECOFIN) on 5 November the European Council reached a political agreement on the VAT in the Digital Age (ViDA) package.

The agreement includes the three strands of the ViDA package:

- e-invoicing and digital reporting requirements,
- platform economy and
- a single VAT registration.

Given the substantial changes to the Directive over the past year, the European Parliament will once again be consulted on the agreed text. The text will then need to be formally adopted by the Council before being published in the EU's *Official Journal* and entering into force.

EU list of non-cooperative jurisdictions updated

At the October meeting of the Economic and Financial Affairs Council (ECOFIN) the Council approved conclusions on the revision of the EU list of non-cooperative jurisdictions for tax purposes. Antigua and Barbuda has been removed from the list of non-cooperative jurisdictions for tax purposes (Annex I) after being granted a supplementary review by the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes, which will take place in the near future. Pending the results of the review, Antigua and Barbuda will remain on the state-of-play document (Annex II).

With these updates, Annex I of the EU list consists of the following 11 jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Nine jurisdictions now feature in Annex II, based on commitments that they have made to improve their tax good governance: Antigua and Barbuda, Belize, the British Virgin Islands, Costa Rica, Curaçao, Eswatini, the Seychelles, Türkiye and Vietnam.

The next revision of the list is scheduled for February 2025.

Council adopts Directive on multiple-vote share structures

The European Council formally adopted the proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market. The Directive aims to facilitate

access by SME owners to market financing without jeopardising the control they have over their companies. The European Securities and Markets Authority will develop regulatory technical standards on the most appropriate way of marking multiple-vote shares.

The Directive was published in the *Official Journal of the European Union* on 14 November and subsequently entered into force. Member States must adopt the legal and administrative provisions necessary to comply with the Directive within two years after the date of its entry into force.

Commission adopts DAC9 proposal to transpose GloBE Information Return into EU law

On 28 October the European Commission adopted a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation. The amendments to the Directive (DAC9) are intended to make it easier for companies to fulfil their filing obligations under Council Directive (EU) 2022/2523 of 14 December 2022 (EU Minimum Tax Directive).

The EU Minimum Tax Directive aims to ensure a global minimum level of taxation for multinational enterprise groups (MNEs) and large-scale domestic groups (LSDGs) in the EU. Without the DAC9 proposal, each company that forms part of an MNE would have to file a top-up tax information return in the country where it is based. Under DAC9, MNEs will have to file only one top-up tax information return, at central level, for the entire group. This will significantly simplify the filing process and reduce the administrative burden for MNEs.

The OECD has developed a standard template GloBE Information Return (GIR) to be used by the entities to fulfil their filing obligations. DAC9 transposes the GIR into EU law by making it the top-up tax information return envisaged in Article 44 of the EU Minimum Tax Directive.

DAC9 also lays down a framework to facilitate the exchange of top-up tax information returns between Member States and enable MNEs to switch from local to central filing (i.e. filing by the ultimate parent entity or a designated filing entity instead of filing by each constituent entity).

Once it is adopted by the European Council, Member States will have until 31 December 2025 to transpose DAC9. For countries that have chosen to delay implementing the Pillar Two Directive, the same deadline will apply for implementing DAC9. MNEs are expected to file their first top-up tax information return by 30 June 2026, as required under the Pillar Two Directive. The relevant tax authorities must exchange this information with each other by 31 December 2026 at the latest.

Commission plans to introduce standardised reporting for public CbCR

The European Commission has released an updated draft Implementing Regulation to standardise the presentation of income tax information for public country-by-country reporting (CbCR), as mandated by Directive 2013/34/EU. The proposed Regulation introduces a common template and electronic format, and companies in scope of the regulation will be required to comply with the requirements set out in the Regulation for reports on income tax information for financial years starting on or after 1 January 2025. Reports will require the use of Extensible Hypertext Markup Language (XHTML) with Inline Extensible Business Reporting Language (iXBRL) markup, ensuring both human-readable and machine-readable formats, facilitating digital accessibility and regulatory compliance.

Inclusive Framework publishes Amount B Model Competent Authority Agreement

On 26 September the OECD/G20 Inclusive Framework on BEPS published a Model Competent Authority Agreement (MCAA) to facilitate the implementation of its political commitment on Amount B of Pillar One of the *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*.

In February the Inclusive Framework released a report on Amount B of Pillar One, which provides a simplified and streamlined pricing framework for baseline marketing and distribution activities. Amount B is intended to reduce transfer pricing disputes and compliance costs and to enhance tax certainty for tax administrations and taxpayers. The implementation of Amount B is supported by a political commitment from all Inclusive Framework members to take all reasonable steps to relieve potential double taxation that may arise from the application of the simplified and streamlined approach by a covered jurisdiction where there is a bilateral tax treaty in effect.

Jurisdictions can use the MCAA to implement the political commitment where there is a tax treaty in place. Entering into a competent authority agreement is optional for jurisdictions. The absence of such an agreement does not, in itself, impede the implementation of the political commitment, which could be implemented by jurisdictions through other means in light of their legal and administrative systems. Inclusive Framework members that wish to extend the political commitment to jurisdictions not included in the list of covered jurisdictions may also use this model.

Additional guidance on Amount B, including the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B, was published in June. Further work on the Pillar One package, including the Amount B Framework, is ongoing.

Signing ceremony for MLI to facilitate implementation of subject-to-tax rule

The OECD held a signing ceremony for the Multilateral Convention to Facilitate Implementation of the Subject to Tax Rule (STTR MLI) on 19 September. Under Pillar Two of the Two-Pillar Solution the new STTR MLI will implement the subject-to-tax rule in bilateral tax treaties, offering developing countries a new tool to protect their domestic tax base. Nine jurisdictions have signed the MLI, with another ten expressing their intent to sign it.

UK Autumn Budget 2024

The UK Chancellor of the Exchequer, Rt Hon. Rachel Reeves MP, presented her Autumn Budget 2024 to the UK Parliament on 30 October. A summary of the key tax measures announced in the Autumn Budget 2024 is given below.

Corporation tax

- A Corporate Tax Roadmap published alongside the Autumn Budget 2024 confirms that the headline rate of corporation tax will be capped at 25% for the duration of the Parliament.
- The small-profits rate and marginal relief will be maintained at their current rates and thresholds.
- The capital allowances system, including permanent full expensing and the £1m annual investment allowance, writing-down allowances, and the structures and buildings allowance, will be maintained.
- The UK Government has committed to exploring how to provide greater clarity on what qualifies for different capital allowances; the simplification of capital allowances legislation; the tax treatment of predevelopment costs, and the extension of full expensing to assets that are bought for leasing or hiring.
- The audio-visual expenditure credit and the video game expenditure credit will be maintained.
- The Corporation Tax Roadmap notes that stakeholders can expect a consultation to review the effectiveness of land remediation relief in spring 2025.

R&D tax reliefs

- The rates for the merged R&D expenditure credit and the enhanced support for R&D intensive SMEs will be maintained.
- The administration of R&D reliefs will be enhanced by establishing the R&D expert advisory panel; continuing to improve signposting and guidance on R&D reliefs; and launching an R&D disclosure facility by the end of 2024.

- A consultation on widening the use of advance clearances in the R&D reliefs will be undertaken.
- The Roadmap also confirms the patent box and the UK's regime for intangible fixed assets will both be maintained.

International tax reform measures

- The Corporate Tax Roadmap outlines that there will be further consultation on reforms to the UK's rules on transfer pricing, permanent establishments and diverted profits tax, including the potential removal of UK-to-UK transfer pricing.
- There will also be consultations on further changes to transfer pricing legislation, including potentially lowering the thresholds for exemption and introducing a requirement for multinationals to report cross-border related-party transactions to HMRC.
- The Roadmap confirms that the transfer pricing treatment of cost contribution arrangements will be reviewed.
- The UK will continue to support the international agreement on a multilateral solution under Pillar One and maintain the UK's commitment to repeal the digital services tax when that solution is in place.
- The UK will continue to ensure that its domestic rules reflect internationally agreed updates to Pillar Two and will consider opportunities for simplification or rationalisation of the UK's rules for taxing cross-border activities in light of Pillar Two.

Income tax and NIC

- The UK Government will not extend the freeze to income tax and National Insurance Contributions (NIC) thresholds. From April 2028 these personal tax thresholds will be uprated in line with inflation.
- The rate of employer NICs will increase from 13.8% to 15%, and the per-employee threshold at which employers become liable to pay National Insurance (the secondary threshold) will reduce from 6 April 2025 to £5,000.
- The current employment allowance, which gives employers with NIC bills of £100,000 or less a discount of £5,000 on their employer NIC bill, will increase to £10,500. The £100,000 eligibility threshold has also been removed to simplify and reform employer NICs so that all eligible employers now benefit.

Non-UK-domiciled individuals

- A new residence-based regime will replace the current non-domicile regime from 6 April 2025.
- Offshore trusts will no longer be able to be used to shelter assets from inheritance tax, and there will be transitional arrangements in place for people who have made plans based on current rules.
- The planned 50% reduction for foreign income in the first year of the new regime will be removed.

Capital taxes and stamp taxes

- Capital gains tax (CGT) will increase from 10% to 18% for those paying the lower rate and from 20% to 24% for those paying the higher rate from 30 October 2024. These new rates will match the residential property rates, which are unchanged at 18% for the lower rate and 24% for the higher rate.
- Business asset disposal relief will remain at 10% this year before rising to 14% on 6 April 2025 and 18% from 6 April 2026.
- Inheritance tax thresholds will be fixed at their current levels until April 2030.
- From 6 April 2027 inherited pension pots will be subject to inheritance tax.
- From 6 April 2026 agricultural property relief and business property relief will be reformed. 100% relief will apply for the first £1m of combined business and agricultural assets, with the rate of relief reducing to 50% after the first £1m.
- The tax treatment of carried interest will be reformed, ensuring that it is in line with the economic characteristics of the reward. First, from 6 April 2025, the CGT rates on carried

interest will increase to 32%. Then, from April 2026, all carried interest will be taxed within the income tax framework.

- The higher rate for additional dwellings surcharge of stamp duty land tax on the purchase of second homes, buy-to-let residential properties and companies purchasing residential property will increase from 3% to 5% from 31 October 2024.

VAT and indirect taxes

- A 20% VAT rate will apply to education and boarding services provided for a charge by private schools from 1 January 2025. The UK Government will also remove business rates charitable rate relief from private schools in England from April 2025.
- Fuel duty will be frozen for one year, and the temporary 5p cut will be extended to 22 March 2026.
- To support the take-up of zero-emission cars, vehicle excise duty first-year rates are changing from 2025–2026. Rates for zero-emission cars will be frozen at £10 until 2029–2030, while rates for hybrid and petrol/diesel cars will rise from 1 April 2025.
- From 2026–2027, air passenger duty (APD) rates for short- and long-haul flights will be adjusted to partially account for previous high inflation. For economy passengers, this is only a £1 increase for domestic flights, £2 for short-haul and £12 for long-haul flights, with children under the age of 16 remaining exempt from APD. APD for larger private jets will be increased by a further 50%.
- The soft-drinks industry levy will increase over the next five years to account for inflation since it was last updated in 2018. The duty will also increase in line with inflation yearly going forward.

Other measures

- Permanently lower business rates multipliers for high-street retail, hospitality and leisure properties (RHL) will be introduced from 2026–2027. During the interim period 2025–2026 the small-business multiplier will be frozen to support the high street and small businesses in England, and RHL businesses will receive 40% relief (up to £110,000 per business).
- Changes will be made to the energy profits levy, including increasing its rate by three percentage points to 38%, removing the 29% investment allowance and extending the time the levy applies until 31 March 2030.

Update on meetings of UN Ad Hoc Committee on international tax cooperation

The second session of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (Ad Hoc Committee) took place in New York from 29 July to 16 August 2024. The Ad Hoc Committee, which was established in December 2023, was mandated to develop draft terms of reference for a UN Framework Convention on International Tax Cooperation.

The Bureau of the Ad Hoc Committee released Revised Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation on 18 July. Following this, further revised Draft Terms of Reference and an advanced unedited version of the Chair's Proposal for Draft Terms of Reference were published for consideration by the General Assembly.

The draft notes that the framework convention would incorporate commitments to the fair allocation of taxing rights, including "equitable taxation of multinational enterprises". It would commit to addressing tax evasion and avoidance by high-net-worth individuals, and ensuring international tax cooperation approaches that will contribute to sustainable development. The framework would also ensure effective mutual administrative assistance in tax matters related to transparency and the exchange of information; addressing tax-related illicit financial flows, tax avoidance and evasion, and harmful tax practices; and effective prevention and resolution of tax disputes.

The draft notes that efforts to achieve the objectives of the framework convention should,

in the pursuit of international tax cooperation, be aligned with States' obligations under international human rights law.

The draft confirms that protocols are separate legally binding instruments, under the framework convention, to implement or elaborate the framework convention. The revised text states that "each party to the framework convention should have the option whether or not to become party to a protocol on any substantive tax issues, either at the time they become party to the framework convention or later".

The draft states that two early protocols should be developed simultaneously with the framework convention and that one of the early protocols should address taxation of income derived from the provision of cross-border services in an increasingly digitalised and globalised economy. The subject of the second early protocol should be drawn from the following specific priority areas:

- taxation of the digitalised economy;
- measures against tax-related illicit financial flows;
- prevention and resolution of tax disputes; and
- addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

The draft recommends that an intergovernmental negotiating committee (INC) meet for at least three sessions per year from 2025 to 2027, with the goal of submitting the final text of the framework convention text and the two early protocols to the UN General Assembly for its consideration by September 2027.

On 27 November the United Nations General Assembly's Second Committee (Economic and Financial) approved a resolution adopting the terms of reference for a United Nations Framework Convention on International Tax Cooperation. The resolution also decides to establish a Member State-led, open-ended INC for the purpose of drafting the United Nations Framework Convention on International Tax Cooperation and two early protocols simultaneously, in accordance with the terms of reference.

The INC will meet in 2025, 2026 and 2027 for at least three substantive sessions per year for a duration of no more than ten working days per session and may convene additional sessions as necessary. The INC will convene an organisational session in New York from 3 to 6 February 2025 to address and conclude organisational matters, including decision-making rules of the committee, and decide on the subject of the second early protocol, which shall be drawn from the list of specific priority areas set out in the terms of reference.

The EU abstained in the vote on the resolution. A Statement (Explanation of Vote) delivered by Hungary on behalf of the EU and its Member States on the resolution, noted that although the EU and its Member States share the goals of inclusive and effective international tax cooperation, "their continued engagement however must not be taken for granted as we move towards the launch of the negotiating committee next February". The statement recalls the EU's serious outstanding reservations with the resolution.

Recent Revenue eBriefs

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

Revenue eBriefs Issued from 1 August to 31 October 2024

No. 209 C&E Economic Operators Registration Identification (EORI) Registration

The manual "C&E Economic Operators Registration Identification (EORI) Number – Registration on ROS" has been updated to note the requirement to supply an Eircode/postcode for the individual's/company's official address on ROS. It will not be possible to proceed with the EORI registration without these details.

For Irish addresses, a valid Eircode will need to be included in the Eircode field of the official address. Where the address is not within the Republic of Ireland, the postcode should be included in the postcode field of the official address. Paragraph 4.5 of the manual includes further details on the requirement and on how the address can be updated on ROS.

No. 210 Updates to Revenue Guide to the Exchange of Information

Revenue has updated the manual "Guide to Exchange of Information under Council Directive 2011/16/EU, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters – Role of International Tax Division" as follows:

- Further information on the role of a competent authority in initiating the exchange of information has been added to the manual.
- References to Council Directive 2011/16/EU have been updated to reflect amendments to that Directive, including amendments under Council Directive (EU) 2021/514 (DAC7), as transposed by s81 of Finance Act 2022 and SI 705/2022. These include the role of platform operators, in section 3.8, and the purposes for which information exchanged may be used.
- The jurisdictions with which Ireland automatically exchanges information have been updated in Annex I.

No. 211 Income Tax Return Form 2023 – ROS Form 11

Revenue has released an updated "Income Tax Return Form 2023 (ROS Form 11)" manual to highlight further updates and changes to the 2023 Form 11, since its release last January. The changes to the manual include:

- Information on the time limits for making elections for the chosen basis of assessment and a link to the manual "Income Tax Treatment of Married Persons and Civil Partners" have been added (paragraph 2).
- A tick box has been added to the Extracts from Accounts to indicate if the Sales/Receipts/Turnover figure includes VAT (paragraph 3.2).
- The field "Pre-letting expenditure on vacant properties allowed by S. 97A", in the Irish Rental Income panel, includes an updated validation, which was released in June. The update reflects the €10,000 cap on authorised deductions per vacant premises, which is applicable from 1 January 2023

under s97A(4) TCA 1997, an increase from €5,000 (paragraph 4.1).

- Information on the pre-population of non-resident landlord withholding tax (NLWT) information and claiming "missing" rental notifications, related advisory messages and options for administration of 2023 returns are outlined in the text (paragraph 4.2).
- Updated guidance on allowable deductions incurred in employment (paragraph 6.2).
- Updates to social welfare payment information (paragraph 6.3 and Appendix 2).
- An illustration of the "Lump Sums from Relevant (Foreign) Pension Arrangements" panel is included, showing questions and validations for the treatment of pension lump sum payments arising from foreign pension arrangements (paragraph 7.1).
- Correction to UK deposit interest rate. The applicable tax rate on UK deposit interest is 33% up to the extent of the unutilised standard rate band. UK deposit interest is taxed at 40% when the filer's income exceeds the standard rate band (paragraph 7.2).
- A new section has been added to declare proceeds from the sale of patent rights for capital sums (paragraph 8.1).
- Information on the mortgage interest tax credit, the rent tax credit and the Employment Investment Incentive is included (paragraph 9).
- The wording of the "Capital Acquisitions 2023" panel has been updated to clarify when a Form IT 38 is required to be filed and to confirm that ticking the box on the panel on the Form 11 does not satisfy a requirement to file a Form IT 38 (paragraph 12.1).
- A new Appendix 4 includes feedback intended to assist filing and reduce follow-up contact with Revenue.

The eBrief reminds Return Preparation Facility users that if the screen is inactive for 30 minutes or longer, the time-out will be triggered and any unsaved work will be lost. The timer is reset when the "Save As" or "Save" button is clicked or by moving between tabs in the form.

No. 212 Research and Development (R&D) Corporation Tax Credit: Appointment of Expert to Assist in Audits

The manual titled "Research and Development (R&D) Corporation Tax Credit: Appointment of Expert to Assist in Audits" has been updated to reflect the start of the new independent expert panel on 8 August 2024 and to include miscellaneous minor revisions.

Section 3 of the manual has also been updated to outline a change to Revenue's process in relation to pre-meetings with independent R&D experts going forward. The manual notes that where a pre-meeting is arranged between the Revenue officer and the independent expert (which will not be necessary in all cases), the company may choose to be present or represented at that pre-meeting. The manual also reflects that the text in Appendix IV ("Initial Introduction of Independent Expert to the Company") should be read out at the pre-meeting, where the company or representative is in attendance, to ensure that everyone is clear about the role and independence of the expert.

No. 213 Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Administration

Revenue published a new manual titled "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Guidance on Administration", which contains an overview of the administration of Pillar Two.

Revenue has also updated the manual "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union" to include guidance on the operation of the Pillar Two rules, in addition to the detailed correlation table that cross-references the legislation contained in Part 4A of TCA 1997 with:

- the relevant article of the EU Minimum Tax Directive,
- the relevant article of the OECD Model Rules,

- OECD Commentary, where relevant, and
- OECD Administrative Guidance, where relevant.

No. 214 Revisions to Authorisation of Warehousekeepers & Approval of Tax Warehouses Tax and Duty Manual

Revenue has updated the manual "Authorisation of Warehousekeepers and Approval of Tax Warehouses" as follows:

- The title has been amended to "Authorisation of Warehousekeepers and Approval of Tax Warehouses".
- The contents of Notice No. 1890, Authorisation of Warehousekeepers & Approval of Tax Warehouses, have been incorporated in the revised manual, and Notice No. 1890 is withdrawn on publication of this manual.
- Inclusion of amended references to the Control of Excisable Products Regulations 2010 (SI 146 of 2010) and the Control of Excisable Products (Amendment) Regulations 2013 (SI 368 of 2013) with the Control of Excisable Products Regulations 2024 (SI 36 of 2024).
- Revisions to paragraphs concerning Excise Movement Control System accompanying documents and messages to include amendments made by Commission Delegated Regulation (EU) 2024/296 of 9 November 2023 as regards the messages concerning the movement of excise goods under suspension of excise duty.
- Miscellaneous other, minor corrections and revisions.

No. 215 Stamp Duty Manual – Section 125A SDCA 1999: Levy on Authorised Insurers

Revenue has updated the manual "Part 9: Section 125A – Levy on Authorised Insurers" at section 2 to correct an error in the rates of levy that were previously published relating to insurance contracts that are renewed or entered into on or after 1 April 2024.

No. 216 Updates to the Administration & Control of Tax Warehouses Manual Part 1 – General Warehousing Provisions

The manual "Administration & Control of Tax Warehouses: Part 1 – General Warehousing Provisions" has been updated as follows:

- The contents of Notice No. 1877, Excise – Revenue's Guide for Tax Warehousekeepers (Alcohol Products), are now included in the revised manual.
- Notice No. 1877 is withdrawn on publication of this manual.
- The manual includes amended references to the Control of Excisable Products Regulations 2010 (SI 146 of 2010) and the Control of Excisable Products (Amendment) Regulations 2013 (SI 368 of 2013) with the Control of Excisable Products Regulations 2024 (SI 36 of 2024).
- Revisions to paragraphs concerning EU legislation and Excise Movement Control System accompanying documents and messages include:
  - Commission Delegated Regulation (EU) 2024/296 of 9 November 2023 as regards the messages concerning the movement of excise goods under suspension of excise duty; and
  - Commission Implementing Regulation (EU) 2024/355 of 23 January 2024 amending Implementing Regulation (EU) 2021/2266 as regards the reference to the certificate for independent small producers of alcoholic beverages and the self-certification by those producers in the administrative documents.
- Paragraphs concerning movements of excisable goods to or from third countries are updated to include the Automated Export System (AES) and the Automated Import System (AIS), as appropriate.

No. 217 Revenue Online Service (ROS)

The manual "Revenue Online Service (ROS)" has been updated as follows:

- Paragraph 9.1, Customer – My Services, includes updates on all the Employer Reporting Requirements facilities currently available on ROS, in Figure 7.
- Paragraph 9.2, Agent/Advisor – TAIN Services, includes updates on all Agent/Advisor TAIN Services currently available on ROS, in Figure 8A.
- Paragraph 16.3, Tax Technical Queries, includes updated information on submitting tax technical queries to Revenue.
- A new screenshot of the link to the Return Preparation Facility during ROS downtime has been added to paragraph 16.4.

The "ROS Pay and File – Useful Tips" manual has been updated as follows:

- A link to further information on CGT payments has been included in paragraph 3, Capital Gains Tax (CGT).
- Updated information on filing CAT returns offline using the RPF in paragraph 4, Capital Acquisitions Tax (IT 38).
- Advice on completing the Form 11 offline is included in paragraph 8.3, Offline Return Preparation.
- Information on the location of other pre-populated information on the Form 11 is included in paragraph 8.6, PAYE/BIK/Pensions panels – PAYE income details and DSP Payments.
- Paragraph 8.7, Non-Residents Renting Property, confirms credit for tax withheld must be claimed before a return is filed. Only non-resident landlord withholding tax (NLWT) that has been claimed will appear in the pre-populated table on the Form 11.
- Inclusion of the ROS Technical Helpdesk email address in paragraph 10.1.

The manual "ROS – Return Preparation Facility (RPF)" has been updated as follows:

- Removal of references to the RPF pilot phase in paragraph 3, Availability of RPF.
- Updated information on filing CAT returns offline using the RPF and information on the forms now available on the RPF in paragraph 4, How to use the Return Preparation Facility.
- Appendix 1 has been updated with the forms available and the dates they were added to the RPF.

No. 218 New Stamp Duty Manual – Miscellaneous Acts Which Contain Stamp Duty Exemptions

Revenue published a new manual titled "Miscellaneous Acts Which Contain Stamp Duty Exemptions", which lists the exemptions contained in the Stamp Duties Consolidation Act 1999 (SDCA 1999).

In addition to the exemptions in SDCA 1999, there are a number of statutes that were enacted before 1922 and Acts of the Oireachtas that were enacted from 1922 onwards that contain exemptions from stamp duty. A list of these exemptions was previously set out in the manual "Stamp Duty Notes for Guidance (Schedules & Appendices)". This list has been reviewed and updated, with any new stamp duty exemptions being captured and obsolete stamp duty exemptions being removed. The list is now outlined in this new manual for ease of reference.

No. 219 Employer Provided Vehicles

The manual "Chapter 2 – Employer-Provided Vehicles" has been updated as follows:

- In paragraph 4.1, to outline the current treatment pertaining to the cash equivalent calculation at the start of the paragraph for clarity.
- In paragraph 4.1, to reflect the extension of the temporary reduction to the Original Market Value (OMV) further by Finance (No. 2) Act 2023. The title of the paragraph has also been updated to "Temporary Reduction to OMV".
- In paragraph 6.3, to reflect the extension of relief available in respect of battery electric vehicles to 2027, as provided for in Finance (No. 2) Act 2023. The table at paragraph 6.3.2, which summarises the battery electric vehicle regime, has also been updated.

- A new paragraph 6.3.1 has been added to show the combined effect of the temporary reduction to OMV and relief available in respect of battery electric vehicles. Example 10, which demonstrates the combined effect, has also been updated.
- In Appendix A, to include a table showing the business mileage applicable from 1 January 2023.

No. 220 Stay and Spend Tax Credit Part 15-01-47

The "Stay and Spend Tax Credit" manual has been updated to remove references throughout the manual to the service provider registration process. The period for such registration has now ceased, and therefore the information pertaining to same is no longer relevant. Information on the process can be viewed in previous versions of this manual.

The Stay and Spend Tax Credit was introduced during the Covid-19 pandemic and could be claimed for qualifying expenditure incurred from 1 October 2020 until 30 April 2021 on services from qualifying service providers in the hospitality sector.

No. 221 Tax Treatment of Members of the European Parliament

The manual "Tax Treatment of Members of the European Parliament – Section 127A of the Taxes Consolidation Act 1997" has been updated to include a table of contents and to provide guidance on allowances paid to MEPs and transitional allowances and pensions paid to former MEPs.

No. 222 Health and Well-being Related Benefits

Revenue has updated the "Health and Well-being Related Benefits" manual at paragraph 2.2 to clarify that relief in respect of speech and language therapy or for educational psychological assessments will apply only in certain circumstances. The manual has also been updated at paragraph 7 to confirm that where an in-house medical plan includes a GP service that is available to all employees and directors, no benefit-in-kind charge arises.

No. 223 Income Tax Credits and Reliefs for Individuals Over 65 and Individuals Caring for Those Over 65

Section 2.7 of the manual "Income Tax Credits and Reliefs for Certain Older Persons and Individuals Caring for Certain Older Persons" has been updated to reflect changes to the upper age limit for a PRSI exemption introduced by the Department of Social Protection (and effective from 1 January 2024).

Since 1 January 2024 an individual may draw down their State Pension (Contributory) between the ages of 66 and 70. An individual will continue to be liable for PRSI until they are in receipt of the State Pension (Contributory) or reach the age of 70.

The title of the manual has also been updated to remove the reference to the age of 65, as it is not relevant for all sections of the manual.

No. 224 MyEnquiries – Access and Registration

Revenue has updated the manual "Access to and Registering for MyEnquiries" to include a new paragraph 3.3.3 on the "priority email address" feature in ROS, together with screenshots. This feature, released on 15 June, enables users of MyEnquiries with multiple email addresses to identify one address as the priority email for Revenue-initiated MyEnquiries correspondence. Paragraph 2 of the manual has also been amended to include updated screenshots for MyEnquiries in myAccount.

No. 225 Residential Premises Rental Income Relief

Revenue published a new manual titled "Residential Premises Rental Income Relief" concerning the relief that was introduced by Finance (No. 2) Act 2023. It applies to rental income in the tax years 2024 to 2027, inclusive. The new manual sets out:

- who can claim the Residential Premises Rental Income Relief (RPRIR) (paragraph 1),

- how much RPRIR can be claimed (paragraph 2),
- how RPRIR operates if there is more than one owner of the property (paragraph 3) and
- when RPRIR may be clawed back (paragraph 4).

No. 226 Allowances, Expenses and Gratuities Payable to Local Authority Chairpersons and Members

The manual titled "Allowances, Expenses and Gratuities Payable to Local Authority Chairpersons and Members" has been updated as follows:

- Paragraph 3 has been updated and renamed "Annual Remuneration Payment".
- Paragraph 7 provides guidance regarding the exemption from tax that is available for maternity-related administrative support allowance payments to local authority members, subject to certain conditions being met.
- Paragraph 8 provides guidance relating to the tax treatment of security allowance payments to local authority members.
- Paragraph 9 provides guidance regarding the application of mandatory reporting requirements under Enhanced Reporting Requirements to travel and subsistence expense payments to local authority members.
- Appendix 2 has been updated to reflect changes included in the Directions issued under Regulation 17 of the Local Government (Expenses of Local Authority Members) Regulations 2021 (SI 313 of 2021).

No. 227 Tax and Duty Manual – Control and Examination of Baggage

Revenue has updated the "Manual on the Control and Examination of Baggage" as follows:

- Section 1.3, which was titled "Brexit", has been removed from the manual.
- References to Automated Entry Processing (AEP) have been replaced with Automated Import System (AIS), in sections 11.3 and 18.3.
- Updated telephone and email contact information for the Prohibitions and Restrictions Unit is included in sections 16 and 17.5.
- References to out-of-date legislation have been removed from section 17.5.2.

No. 228 Relief for Key Employees Engaged in Research and Development Activities (Part 15-01-40)

The manual "Relief for Key Employees Engaged in Research and Development Activities" has been updated to reflect the provisions of s766C TCA 1997, which was introduced by Finance Act 2022 and amended by Finance (No. 2) Act 2023.

Section 472D TCA 1997 provides that, from 1 January 2023, a key employee may avail of a reduction in their income tax liability as a result of the surrender by their employer company of some or all of the R&D tax credit to which that company was entitled under s766C. The manual has been updated throughout to reflect how s766C interacts with this relief. The examples in the manual have also been refreshed to reflect tax credits and tax bands applicable for the 2023 and 2024 tax years.

No. 229 Facilities for the Deaf or Customers with Hearing Difficulties

Revenue has updated the manual "Revenue Information and Services for Customers with Disabilities" at section 4.1, which outlines facilities for the deaf or customers with hearing difficulties. It notes that the loop counter systems to assist hearing-aid users are available by appointment in Revenue's public offices in Dublin (CRIO, Cathedral Street) and Limerick (Sarsfield House).

No. 230 Exemption from Income Tax in Respect of Certain Payments Made under Employment Law

The manual "Exemption from Income Tax in Respect of Certain Payments Made under

Employment Law" has been updated at section 2 to confirm that the Industrial Relations Act 1969 is a "relevant Act" for the purposes of s192A TCA 1997.

No. 231 Donations to Approved Sports Bodies

Revenue has updated paragraph 9 of the "Donations to Approved Sports Bodies" manual to include a link to the "List of Sports Bodies with Tax Exemption", published on the Revenue website.

No. 232 Stamp Duty Repayment Provisions

Revenue has published a new manual titled "Part 11 Stamp Duty Repayment Provisions", setting out guidance in relation to repayment provisions of the Stamp Duties Consolidation Act 1999 (SDCA 1999). Where an entitlement to a repayment of stamp duty arises under any provision of SDCA 1999, Revenue will repay the stamp duty only where the general requirements of s159A SDCA 1999 are also met. Where stamp duty is to be repaid to a person, interest on the repayment may be payable in accordance with s159B SDCA 1999.

No. 233 Failure to Co-operate Fully with a Revenue Compliance Intervention

The manual "Failure to Co-operate Fully with a Revenue Compliance Intervention" has been archived, as the content is now contained in Revenue's "Code of Practice for Revenue Compliance Interventions".

No. 234 Dependent Relative Tax Credit

Revenue has updated the "Dependent Relative Tax Credit" manual as follows:

- To clarify that references to "maintaining at his or her own expense", for the purposes of this tax credit, mean financially maintaining the dependent relative by meeting their everyday living costs (in the Introduction).
- To include an additional example that deals with a claimant who maintains his father, who is incapacitated by old age (in paragraph 2).
- To clarify that where the dependent relative is not resident in the State, the claimant must prove that all conditions of the tax credit are met (in paragraph 4).
- To include in paragraph 6, and throughout the manual, the "specified amount" for 2024. Information pertaining to the "specified amount" for previous tax years has been moved from paragraph 5 to paragraph 6.
- To distinguish between in-year and out-of-year claims (in paragraph 7).

No. 235 CAT Part 26 Reporting Requirements Relating to Certain Interest-Free Loans

Revenue has published a new capital acquisitions tax manual titled "Part 26 Reporting Requirement in Relation to Gifts in Respect of Certain Loans", with guidance on s46(4A) of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003).

Where a person is deemed to take a gift in respect of a loan, they may be required to report information in relation to it in a Form IT38 return. Section 46(4A) CATCA 2003 provides the statutory basis for this reporting requirement. The provision was introduced by Finance (No. 2) Act 2023 and came into effect on 1 January 2024.

The manual sets out guidance on the reporting requirement and includes a number of examples of loan arrangements that come within the definition of a specified loan for the purposes of the legislation.

A reporting requirement will arise where, in the year 2024, or in any year following that:

- a person is deemed to take a gift in accordance with s40(2) CATCA 2003 in respect of a specified loan,
- no interest is paid in respect of the specified loan (either in the year in which the gift in respect of the specified loan is taken or within six months of the end of that year) and
- the balance outstanding on the specified loan, when aggregated with the balance

outstanding on any other specified loan, exceeds €335,000 on at least one day in the year.

The manual notes that where a person has, in a particular year, the free use or enjoyment of money by way of a loan for less than full consideration, the person is deemed to take a gift on 31 December of that year and in every year thereafter where the loan remains outstanding. The valuation date of the deemed gift is 31 December in each year in which the person has the free use or enjoyment of the loan funds.

The manual provides examples of circumstances where the reporting requirement will arise and the due dates for filing the information in a Form IT38 return (see paragraph 26.5, which includes examples).

No. 236 Non-Filing of Returns – Prosecution and Penalty Programmes

Revenue's manual "Non-Filing of Returns – Prosecution and Penalty Programmes" has been amended as follows:

- name and contact details of the unit updated,
- reference to employer PAYE/PRSI/USC/LPT removed and
- information on how to make a penalty payment updated.

No. 237 Outward Processing

The "Instruction Manual on Outward Processing" has been updated at section 3.4, Application for an Authorisation Based on a Customs Declaration (Simplified Authorisation), to include Automated Import System (AIS) procedure codes for the simplified authorisation.

No. 238 VIES Trader Manual

Revenue published a new VAT manual titled "The VIES Traders Manual – Version 1". This manual was previously published as part of the "VIES and Intrastat Traders Manual (Version 12)". The manual focuses on those issues that are likely to be of interest to most intra-Community suppliers and to those required to furnish a VIES statement for the first time. It includes a comprehensive guide to filing and making corrections to VIES Returns on ROS.

No. 239 R&D Corporation Tax Credit – Section 766C and Section 766D Pre-filing Notification Forms

Revenue has published the following Pre-filing Notification Forms on its R&D corporation tax credit webpage:

- Pre-filing Notification Form in respect of a claim to be made under section 766C TCA 1997 and
- Pre-filing Notification Form in respect of a claim to be made under section 766D TCA 1997 R&D Expenditure on Buildings and Structures

Finance (No. 2) Act 2023 introduced a new pre-notification requirement, which applies to companies intending to claim the R&D tax credit for the first time and companies that have not claimed the credit in the previous three years. For accounting periods commencing on or after 1 January 2024, a company is required to notify Revenue of its intention to file a claim under s766C or s766D TCA 1997, in writing in the form prescribed by Revenue, at least 90 days before the claim for the credit is made.

Where a company is required to submit a pre-filing notification, the Pre-filing Notification Form should be completed and submitted through MyEnquiries, selecting the following:

- Category: Corporation Tax (CT) and
- Subcategory: R&D Pre-filing Notification.

No. 240 PAYE Services – Manage Your Tax

Revenue has updated the manual "PAYE Services: Manage Your Tax" to include updated screenshots and tax credits that can be claimed, edited and deleted, to include the mortgage interest tax credit and the rent tax credit.

No. 241 Jobs and Pension Service

A number of sections of the "Jobs and Pensions Service User" manual have been updated:

- In Section 2.1, to remove instructions for adding an additional job.
- In Section 2.2.1, to update the list of Department of Social Protection (DSP) payments for which Revenue does not receive information from the DSP. Three payment types have been added: Death Benefit/Pension, Deserted Wives Benefit and Disablement Pension. Recipients of these payments will be asked to enter the amount of their weekly payment.
- In Section 4, "Agent access to Jobs and Pensions", to remove the reference to registering a second or subsequent job on behalf of PAYE clients. (PAYE Regulations require the employer to register new employments, except where it is the employee's first employment in the State.)
- Screenshots have been updated throughout the manual.

No. 242 Life Assurance Companies – Return of Payments

The manual "Life Assurance Companies – Return of Payments" has been updated as follows:

- Links have been inserted for regulations and legislation that are referenced in the manual.
- Guidance on submission of the return and contact details for the relevant area of Revenue have been updated.
- References to approved minimum retirement funds (AMRFs) have been removed, as all AMRFs effectively became approved retirement funds (ARFs) as of 1 January 2022, following the Finance Act 2021 amendments to the AMRF legislation.
- Various minor updates to improve the clarity of the guidance have been made.

No. 243 Update to Manual on Customs Control of Aerodromes

The "Customs Control of Small Aerodromes" manual has been updated to replace all references to the Customs Drugs Law Enforcement Branch with the Intelligence Development Unit in the Investigation, Prosecution and Frontier Management Division.

No. 244 Budget Excise Duty Rates

The contents of the "Budget Excise Duty Rates" manual have been incorporated into the relevant manuals:

- Rates for electricity tax, natural gas carbon tax, mineral oil tax and solid fuel carbon tax are available in the manual "Excise Duty Rates: Energy Products and Electricity Taxes" and on Revenue's excise duty rates webpage.
- Rates for alcohol products tax, betting duty, sugar sweetened drinks tax and tobacco products tax are also available on Revenue's excise duty rates webpage.

No. 245 Exportation of Hazardous Chemicals

Revenue has updated the "Exportation of Hazardous Chemicals" manual as follows:

- Up-to-date Customs instructions have been included in the manual, changing the box 44 instruction on Automated Entry Processing (AEP) to the Data Element instruction on the Automated Export System (AES).
- The term "hazardous" in relation to chemicals has been replaced by "dangerous" throughout the manual, on instruction from the Health and Safety Authority (HSA).
- The HSA provided updates to paragraph 1, editing the Chemicals Acts.
- The HSA also updated paragraph 2, clarifying the role of the exporter in explaining the use of chemicals to be exported.

No. 246 Capital Acquisitions Tax Manual Part 11 – Agricultural Relief

The capital acquisitions tax manual titled "Part 11 – Agricultural Relief" has been revised to reflect legislative amendments to s89 Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2023). It has also been refreshed throughout to provide clearer and more comprehensive guidance.

The main changes to this manual are set out below:

- Finance (No. 2) Act 2023 amendments are reflected throughout the manual, with new examples included where appropriate.
- The concessional treatment that allowed the "active farming" requirements to commence from the date of inheritance (formerly, paragraph 11.6.3.1) has been withdrawn. It is not consistent with certain changes made by Finance (No. 2) Act 2023, which provide for the clawback period to commence on the valuation date in all cases.
- Appendix 1: CAT Agricultural Relief – Q&As has been removed. This content has been substantially incorporated into the body of the manual, with the following material exceptions:
  - Question 11 on the period of time afforded to a beneficiary to find a new active farmer tenant where a lease ceases has been removed, as the treatment is not consistent with the legislation.
  - Question 18 on the application of the clawback formula in sub-section (4)(aa) has been clarified, as the previous material was inaccurate.
- A new Appendix lists the qualifications for applying for relief from stamp duty in respect of transfers to young trained farmers in Schedules 2 and 2A of the Stamp Duties Consolidation Act 1999.

No. 247 Rent Tax Credit

The "Rent Tax Credit" manual has been updated to reflect changes introduced in Finance (No. 2) Act 2023 as follows:

- The introduction and paragraph 6 reflect the increase in the rent tax credit for the 2024 and 2025 tax years.
- Paragraph 5.3 and Appendix 1 reflect a change in the eligibility of qualifying payments made by parents under tenancies that are not required to be registered with the Residential Tenancies Board, such as rent-a-room or "digs" arrangements, to facilitate their child's attendance at or participation in an approved course (where there is no relationship to the landlord in respect of the claimant or child).
- Paragraph 7.3 is updated with reference to out-of-year and in-year claims.
- Examples now reflect changes arising from Finance (No. 2) Act 2023.

A note has also been included in the manual to advise that income tax returns for 2022 and 2023 may be used by taxpayers seeking to claim the rent tax credit in respect of payments made for digs- or rent-a-room-type arrangements to facilitate their child's attendance at an approved course. This change in eligibility, which was introduced by Finance (No. 2) Act 2023, was applied retrospectively to the 2022 and 2023 tax years and has not been reflected in all 2022 and 2023 income tax returns.

No. 248 ROS Support for the 2024 Pay and File Period, Extended Opening Hours and Updating Your Bank Details

Revenue confirmed the extended opening hours for the ROS Technical Helpdesk, Business Taxes (Income Tax Self Assessed) Support and the Collector-General's Division (including ROS Payment Support) in the days leading up to the ROS Pay and File deadline of 14 November 2024. The opening hours of the phone lines and contact numbers are outlined in the eBrief, which also includes details of the relevant MyEnquiries pathways and links to information on preparing for online filing.

The eBrief includes a reminder and information about updating bank details for a tax payment

or refund for taxpayers who have recently changed to a new banking provider.

No. 249 Mineral Oil Tax (MOT) Rate Changes – 9 October 2024

Revenue's manual "Excise Duty Rates: Energy Products and Electricity Taxes" has been updated to reflect increases to the carbon component and overall rates of mineral oil tax (MOT) on petrol and auto-diesel announced in Budget 2025. These increases are effective from 9 October 2024. Historical MOT rates extending back to 2008 are also included in the updated manual.

No. 250 Filing Guidelines for DAC2–Common Reporting Standard (CRS)

Revenue has updated the manual "Filing Guidelines for DAC2–Common Reporting Standard (CRS)" at section 7.5 to clarify the guidance on the ResCountryCode.

No. 251 Stamp Duty Manual Part 9: Section 126AB Further Levy on Financial Institutions – Updated

The stamp duty manual titled "Part 9: Section 126AB – Further Levy on Certain Financial Institutions" provides guidance to the relevant financial institutions located in the State that come within its scope on the application of the revised bank levy for the 2024 year. The manual has been updated to clarify that the rate of the levy to be applied for the year 2024 will remain at 0.112%, as legislated for in Finance (No. 2) Act 2023.

No. 252 Tax and Duty Manual on the Control and Examination of Baggage

Revenue's updated "Manual on the Control and Examination of Baggage" reflects the Budget 2025 change to excise duty charged on imported tobacco in a traveller's baggage, as from 4 October 2024.

No. 253 Help to Buy (HTB) Updated

Revenue's "Help to Buy (HTB)" manual has been updated at paragraph 5.3, Purchase of Site Containing a Derelict House, to clarify that a renovation or refurbishment of an old residential property does not qualify for the Help to Buy scheme.

No. 254 CESOP Guidelines for Registration and Filing

Revenue's manual "European Cross-Border Payments Reporting (CESOP): Registration and Filing Guidelines" has been updated at section 4 to describe enhanced ROS functionality for CESOP filers that wish to file nil reports in a filing period. Further minor revisions have been made to section 7 to reflect the changes described in section 4.

No. 255 Submission of iXBRL Financial Statements as Part of Corporation Tax Returns

The manual "Submission of iXBRL Financial Statements as Part of Corporation Tax Returns" has been updated as follows:

- To confirm in paragraph 2.1 that companies liable to corporation tax whose affairs are managed in either Large Corporates Division (LCD) or High Wealth and Financial Services Division (HWFSD) are obliged to file their financial statements in iXBRL format.
- To reflect changes to the most recent Form CT1, in paragraph 3, where explicit references to LCD are removed after the creation of HWFSD. Filers should refer to paragraph 2.1 to determine whether they are mandated to file iXBRL financial statements.
- To provide guidance in paragraph 3.1.3 on what should be included in the mandatory DPLTurnoverRevenue and DPLGrossProfitLoss tags after the introduction of a new section of the EU IFRS taxonomy for insurance/reinsurance and life assurance entities reporting under IFRS 17: Insurance Contracts.
- To update examples in paragraph 1.6.1 to reflect more recent accounting standards and related taxonomies.
- To delete the first section of paragraph 3.1 on the basis that it is no longer relevant.

- To update the small company turnover and balance sheet thresholds under the Companies Act 2014 in paragraph 3.1.1.
- To remove references to the no longer accepted Irish GAAP and Irish IFRS taxonomies in paragraph 3.1.3 and emphasise that the values for mandatory tags should appear on the face of the Detailed Profit or Loss account.
- To update paragraph 3.1.5 to reference the withdrawal of the Irish GAAP and Irish IFRS taxonomies and the effect of this on s110 TCA 1997 companies.
- To provide new guidance on the inappropriate use of taxonomies in paragraph 4.1.2.
- References to Large Cases Division are now amended to LCD and HWFSD throughout.
- The appendix referencing older iXBRL FAQs that are incorporated in this manual is deleted as it is no longer relevant.

No. 256 Revised Agent A2 Process

The manual "Guidelines for Agents or Advisors Acting on Behalf of Taxpayers" has been updated to reflect that Revenue will be ending the practice of making repayments of PAYE/USC to the bank accounts of agents, rather than directly to taxpayers (known as the PAYE A2 process). The change will be implemented in two phases:

- New clients: The PAYE A2 facility will be withdrawn for any new clients who sign up with an agent starting from 1 January 2025. Any such new clients from 1 January will receive repayments directly from Revenue.
- Existing clients: The PAYE A2 facility will be withdrawn for existing clients before 31 December 2025. This is to enable an orderly wind-down of existing arrangements during 2025.

In the eBrief Revenue acknowledges the valuable contribution of agents in helping their clients to comply voluntarily with their tax and duty obligations and accepts that there will be a need for engagement with agents on this change. Consequently, Revenue will be establishing a working group through the Tax Administration Liaison Committee (TALC) with agent representatives to manage the change.

Revenue understands that not all agents affected by this change will be members of the professional bodies represented at TALC. Therefore, the eBrief includes contact information for such agents who wish to register their interest in participating in the working group. Requests to participate must have been submitted before 31 October 2024 (via MyEnquiries).

No. 257 Revenue Online Service (ROS)

Revenue has updated the manual "Revenue Online Service (ROS)" at paragraph 7.2 to clarify that when accessing the Reset ROS Login function, the number of attempts to answer security questions has increased from two to three.

Within ROS, the Reset Login process has also been updated as follows:

- The Forgot Password tooltip message has been updated.
- New prompts have been added to update security questions when logging in to ROS in paragraph 7.2 as follows:
  - If a user has failed any security questions from a previous password reset attempt, they will be prompted to update their answers.
  - If a user last updated their security questions more than a year ago, they will be prompted to review their security questions.
- The Reset option on the ROS home page has been moved and changed to Trouble Logging In?
- Screens have been redesigned to improve the reset process flow and address accessibility issues, including breaking down the process into more steps to guide the user through the reset process, as well as a

simplified tax list for individuals, with taxes and acronyms explained.

- The "system password" has been retitled "verification code" in existing ROS registration screens, as well as communications e.g. SMS from the registration process.
- The ROS Reset option in myAccount has been updated to enable PAYE taxpayers to receive a verification code without answering security questions.

No. 258 Part 16-00-02 Relief for Investments in Corporate Trades

Revenue has updated the manual "Relief for Investment in Corporate Trades" to reflect the changes introduced by Finance (No. 2) Act 2023. The manual provides guidance to companies on the reliefs available under Part 16 TCA 1997 for investments in corporate trades, including the Employment Investment Incentive, Start-up Capital Incentive and Start-Up Relief for Entrepreneurs.

The Finance (No. 2) Act 2023 amendments to Part 16 TCA 1997 reflected in the manual include:

- The insertion of a new paragraph 2.6, Investments from 1 January 2024.
- The insertion of new paragraph 4.4.1, Rate of Relief, and new paragraph 4.4.2, Calculation of the deduction from income for investments made from 1 January 2024.
- Update to paragraph 7.1 in respect of eligible shares issued on or after 1 January 2024.
- Update to paragraph 8.2.1 in relation to the age of the RICT group.
- Updates to paragraph 9.2, Initial risk finance investment [s496(5)], paragraph 9.3, Follow-on risk finance investment [s496(7)], and paragraph 9.4, Expansion risk finance investment [s496(6)].
- Update to paragraph 10 to reflect the limits on the amount that can be raised under Part 16 that apply from 1 January 2024.

No. 259 Write-Out of Uncollectable Tax Debts

The manual "Write-Out of Uncollectable Tax Debt" has been updated to include the Small Company Administrative Rescue Process (SCARP) in the list of the most likely types of scenarios where tax can be passed as irrecoverable.

No. 260 Revenue Arrangements for Implementing EU and OECD EOI Requirements in Respect of Tax Rulings

The manual "Revenue Arrangements for Implementing EU and OECD Exchange of Information Requirements in Respect of Tax Rulings" has been updated as follows:

- Section 1.1 reflects changes introduced by Council Directive (EU) 2023/2226 (DAC8) that will bring individuals into scope of exchange of information.
- Sections 3.1 and 4.1 are updated to clarify spontaneous exchange of information for rulings.
- In Section 3.8, references to Council Directive 2011/16/EU (the DAC) have been updated to reflect amendments under Council Directive (EU) 2023/2226 (DAC8). This includes updates to the allowable use of information in line with Article 16 of the DAC.
- Section 3.8 outlines the allowable use of information under the OECD framework.
- In Annex 3 the list of jurisdictions covered by the OECD framework that Ireland has a legal basis to spontaneously exchange information with has been updated.

No. 261 Revised Rates of Stamp Duty on Residential Property

Revenue set out the revised rates of stamp duty on residential property that came into effect on 2 October 2024, as announced in Budget 2025 and amended by Finance Act 2024.

Section 90 of the Finance Act amended Schedule 1 of the Stamp Duties Consolidation Act 1999 (SDCA 1999) to introduce a third

rate of stamp duty on residential properties, to apply where the value/acquisition price exceeds €1.5m. It applies at a rate of 6% on the balance of the consideration in excess of €1.5m.

Therefore, since 2 October 2024, the standard rates of stamp duty in respect of residential property are:

- 1% where the consideration does not exceed €1m; and
- where the consideration exceeds €1m:
  - 1% on the first €1m,
  - 2% on the next €500,000 and
  - 6% on the balance.

However, where the consideration is in respect of three or more apartments in the same apartment block, the rates are:

- 1% where the consideration does not exceed €1m; and
- where the consideration exceeds €1m:
  - 1% on the first €1m and
  - 2% on the balance.

In addition, s90 of the Act amended s31E SDCA 1999, which charges a higher rate of stamp duty on the acquisition of certain residential property where a person acquires at least 10 residential units during any 12-month period, increasing the higher rate of duty from 10% to 15%. This new rate also came into effect on 2 October 2024.

These revised rates apply to instruments (i.e. conveyances, transfers and leases) executed on or after 2 October 2024. Transitional measures apply for instruments executed on or after 2 October 2024 but before 1 January 2025 where:

- there was a contract in place before 2 October 2024 that was binding on the parties to the contract and
- the instrument contains a certificate to this effect.

In such cases the rates that applied prior to 2 October 2024 will apply. To avail of these transitional measures, the person filing the stamp duty return can tick the transitional-arrangements box on the return and enter the date of the contract. If that date is before 2 October 2024, the old rates will automatically apply, and the stamp cert will automatically issue.

No. 262 Part 16 TCA Relief for Investment in Corporate Trades – Employment Investment Incentive ("EII"), Start-Up Relief for Entrepreneurs ("SURE") and Start-Up Capital Incentive ("SCI")

The Return of Qualifying Investments in a Qualifying Company (Form RICT) and Return of Information of an Investment Fund Return (Form IF) have been updated to reflect the Finance (No. 2) Act 2023 amendments to the Employment Investment Incentive, Start-Up Relief for Entrepreneurs and Start-up Capital Incentive arising from the revision of the State Aid General Block Exemption Regulation. The returns are now available in respect of investments made in 2024. The instructions and explanatory notes for each of the returns have also been updated.

No. 263 Recognised Clearing Systems

The "Recognised Clearing Systems" manual has been updated to include Verdipapirsentralen ASA (Euronext Securities Oslo) as a recognised clearing system for the purposes of s246A(2)(a)(xiii) TCA 1997 and to confirm that "recognised clearing system" for the purposes of s172FA(1) TCA 1997 has the same meaning as it has in s246A(2)(a) TCA 1997.

No. 264 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 EU list of non-cooperative jurisdictions for tax purposes as updated on 18 October 2024 (instead of referring to the February 2024 list).

No. 265 Revenue Legislative Services' Guide to Interpreting Legislation

The manual "Revenue Legislative Services' Guide to Interpreting Legislation" has been updated to provide further clarity in section 7 regarding the decision in *Elliss v BP* [1987] 59 TC 474 and its effect on how the term "shall" is to be interpreted in legislation.

Footnote 19 clarifies that in *Elliss v BP* the England and Wales Court of Appeal ruled that a reference in legislation with regard to the manner in which capital allowances "shall be given effect" is limited to the specific manner in which allowances shall be effected on foot of a relevant claim. The manual "High Income Individuals' Restriction – Order of Offset of Reliefs, Allowances and Deductions" provides further detail.

No. 266 Updates to the Administration and Control of Warehouses Manual Part 2 – Breweries, Microbreweries and Cider Manufacturers

Revenue has updated three manuals related to alcohol products tax. The manual "Administration & Control of Tax Warehouses: Part 2 – Breweries, Microbreweries, Cider and Perry Manufacturers" has been updated as follows:

- The title of the manual has been amended.
- The contents of Notice No. 1888, Relief from Alcohol Products Tax, for beer produced in qualifying microbreweries and cider and perry produced by qualifying small producers are incorporated. Notice No. 1888 is withdrawn on publication of this manual.
- Information that was repeated for each product section in the previous edition – for example, legislation – has been consolidated in section 1, General, which includes a new paragraph 1.10 on Automated Import System (AIS) codes, with the relevant codes and corresponding Excise Reference Numbers listed in Appendix 5.
- References to the Control of Excisable Products Regulations 2010 (SI 146 of 2010) and the Control of Excisable Products (Amendment) Regulations 2013 (SI 368 of 2013) are amended with the Control of Excisable Products Regulations 2024 (SI 36 of 2024).
- Revisions to paragraphs concerning Excise Movement Control System administrative documents and messages to include amendments made by:
  - Commission Delegated Regulation (EU) 2024/296 of 9 November 2023 as regards the messages concerning the movement of excise goods under suspension of excise duty.
  - Commission Implementing Regulation (EU) 2024/355 of 23 January 2024 amending Implementing Regulation (EU) 2021/2266 as regards the reference to the certificate for independent small producers of alcoholic beverages and the self-certification by those producers in the administrative documents.

The manual "Administration & Control of Tax Warehouses: Part 3 – Distilleries" has been updated as follows:

- A new paragraph 1.2, Associated Tax and Duty Manuals, has been included, citing the manuals that incorporate withdrawn Public Notices.
- Revisions to paragraph 1.3, Legislation, including links to non-statutory consolidated versions of Finance Acts 2001 and 2003.

The manual "Alcohol Products Tax and Reliefs" has been updated as follows:

- Paragraph 3.2.3, Relief from Alcohol Products Tax for Certain Small Producers, is revised to include references to the full range of alcoholic products and to third countries in the context of small-producer reliefs.
- Appendix 4, CN Codes, includes an additional note on the top of the table to clarify AIS codes and minor revisions to the Common Nomenclatures (CNs) for Scotch whisky to distinguish it from other whiskey products.

Direct Tax Cases: Decisions from the Irish Courts and TAC Determinations

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	Topic	Court
01	**Tax Settlements: *Farrell & Sons (Garages) Limited v Revenue Commissioners* [2024] IEHC 553**	High Court
02	**Corporation Tax and Ireland–US Double Taxation Agreement: *Revenue Commissioners v Susquehanna International Securities Ltd. & Ors* [2024] IEHC 569**	High Court
03	**Offshore Funds Regime: Determinations 104–117TACD2024, 124–127TACD2024, 137–146 TACD2024, 152–159TACD2024**	Tax Appeals Commission
04	**Income Tax: Determination 148TACD2024**	Tax Appeals Commission
05	**Corporation Tax: Determination 59TACD2024**	Tax Appeals Commission
06	**Corporation Tax: Determination 149TACD2024**	Tax Appeals Commission

01 Tax Settlements: Farrell & Sons (Garages) Limited v Revenue Commissioners [2024] IEHC 553

The High Court in *Farrell & Sons (Garages) Limited v Revenue Commissioners* [2024] IEHC 553 considered whether a taxpayer could overturn two tax settlements that it had entered into with Revenue in 1995. The settlements had been entered on foot of a tax audit that had commenced in 1994 and related to payments made through certain bank accounts. The plaintiff argued that it had subsequently (after 2014) discovered that those particular bank accounts had been fraudulently opened by third parties and sought to set aside the tax settlements. The plaintiff grounded its action on various claims of breach of contract, negligence, fraud and duress.

The court, in dismissing the plaintiff's claims, held that:

- the plaintiff's action was statute barred;
- further found that, notwithstanding the statute of limitations, the claim ought to be dismissed as it disclosed no reasonable cause of action, amounts to an abuse of process, is bound to fail or has no reasonable chance of succeeding; and
- criticised the significant delay in taking the action, noting that key witnesses, including a Revenue officer involved in the 1994 audit, were no longer available to testify.

In relation to the "duress" point, the plaintiff had argued that the threat of withdrawal of its tax clearance certificate and the consequences for its business had pressured it into making the settlements. In this regard the court noted three points:

- First, it noted that "the pressure he considers he was placed under was **by his own advisers**. We do not have the benefit of their testimony and can only assume that they gave advice which they believed to be in their client's best interest, recommending the Settlement as being the best outcome he was likely to achieve. They would have been negligent if they had proceeded on any other basis, and I have seen no basis to suggest that they were negligent [emphasis in original]."
- Second, the court emphasised that the communications between the plaintiff and its advisers "were a matter between them alone. Revenue was not party to that professional relationship. The interaction between the Plaintiffs and their advisers could not constitute duress. Even if there was a deficiency with regard to the professional advice – and, in fairness to the advisors, I should note that I have seen no evidence to support such a suggestion – it would not avail the Plaintiffs. Revenue dealt with the Plaintiffs and their advisers in good faith."
- Third, the court accepted Revenue's submission that the granting of tax clearance certificates is governed by statute and that, as the plaintiff had disclosed that it was not compliant, it followed that "the risk to certification arose from the Plaintiffs' own acts and omissions rather than from any Revenue action. Revenue's reference to the certification issue did not constitute duress or undue influence."

02 Corporation Tax and Ireland–US Double Taxation Agreement: Revenue Commissioners v Susquehanna International Securities Ltd. & Ors [2024] IEHC 569

The High Court, in *Revenue Commissioners v Susquehanna International Securities Ltd. & Ors* [2024] IEHC 569, considered the interaction between the group relief provisions (s411 TCA 1997) and the Ireland–USA double taxation agreement (DTA). See also article by Martin Phelan "The Susquehanna Case: A High Court Reversal" in this issue.

The facts of the case are set out in the appealed Tax Appeals Commission (TAC) determination (17TACD2019). In summary, a US (Delaware) incorporated limited liability company (LLC) held shares in a number of Irish companies, including "SL" and "GL". GL purported to surrender losses to SL under the group relief provisions contained in s411 TCA 1997. In essence, that claim was challenged by Revenue on the basis that the group connection between the two companies was traced through the LLC. The taxpayers had been successful before the TAC, and Revenue appealed that determination to the High Court.

The various points of appeal before the court were simplified to the following questions:

- Should the LLC be regarded as resident in the US for the purposes of the DTA and s411 TCA 1997?
- Does the fiscally transparent status of the LLC deprive it of the ability to rely on the anti-discrimination provisions of the DTA?
- Independently of the provisions of the DTA, does the fiscally transparent nature of the LLC mean that the taxpayers are not entitled to group relief under s411?

The court held, in allowing Revenue's appeal, that:

- The LLC could not be regarded as tax resident in the US for the purposes of Article 4 of the DTA because it was not liable to tax in the US by reason of its residence or

place of incorporation (as under US federal tax law it was treated as tax transparent).

- It followed that the anti-discrimination provisions of the DTA were not applicable to the treatment of the LLC. The court further held that those anti-discrimination provisions could not be relied on by the ultimate shareholders of the LLC (in this regard the court quoted *Klaus Vogel on Double Taxation Conventions*: "Article 24 (5) OECD and UN [Model Tax Convention] protects the enterprise against discrimination by the residence State...The shareholders resident in the other Contracting State, however, are not protected by [the Article]. The ownership non-discrimination provision does not prevent a Contracting State from taxing the income accruing to the non-resident shareholders in a different way than income accruing to domestic shareholders... The ownership non-discrimination provision only prevents 'other or more burdensome taxation' at the level of the enterprise, a mere indirect discrimination is not prohibited by Article 24 (5)...").
- As the LLC was not a resident of the US for the purposes of the DTA, the conditions of s411 TCA were not satisfied.

03 Offshore Funds Regime: TAC Determinations 104–117TACD2024, 124–127TACD2024, 137–146 TACD2024, 152–159TACD2024

These grouped Tax Appeals Commission (TAC) determinations on the status of an investment in a fund had been grouped together under the case management provisions. Each of the appellants had been an investor in a fund. They had each treated that investment as being subject to CGT treatment. Revenue had, however, treated the investments as subject to the "offshore funds" regime.

The TAC had previously decided the lead case in the grouped appeals against the taxpayer (42TACD2024). The determination in that lead case recorded that the taxpayer had sought to appeal the determination to the High Court.

These latest determinations record that the taxpayer in that lead case has since decided not to pursue its appeal to the High Court, and so the TAC had written to the other grouped appellants to query whether they wished to proceed to an oral hearing of their own appeals. Most of the determinations record that the appellants did not reply to the TAC's query, and so it proceeded to a determination based on the written submissions that it had previously received from them.

The TAC held, in dismissing each of their appeals (in line with its earlier determination, 42TACD2024), that the investment was an investment in an offshore fund for the purposes of s743 TCA 1997 and that the appellant held a "material interest" (under s743) as the appellant could realise the value of the investment within seven years on the basis that there was a secondary market for the fund investment.

04 Corporation Tax: TAC Determination 118TACD2024

In this matter the appellant was an Irish company that managed intellectual property assets for a global group. It licensed those assets to local operating companies in various jurisdictions and received royalties.

During the relevant years, the appellant received royalties that had been subject to foreign royalty withholding tax (RWHT). The appellant claimed a corporation tax deduction under s81 TCA 1997 for the foreign RWHT, arguing that it was a deductible expense incurred wholly and exclusively for the purposes of its trade. The appellant had been in a loss-making position in the period in question and so was not able to benefit from claiming

a credit for the RWHT against tax under Schedule 24 TCA 1997. In the absence of being able to avail of a credit under Schedule 24, the appellant argued that it ought to be able to claim the RWHT as a deductible expense under s81 TCA 1997.

Revenue denied this deduction, claiming that RWHT is a tax on income and not a deductible trading expense, and the company appealed.

The key questions before the TAC were:

- whether paragraph 7(3) of Schedule 24 precluded the appellant from claiming a deduction for the RWHT under s81; and
- whether the RWHT was incurred wholly and exclusively for the purposes of the appellant's trade.

The TAC held, in allowing the appeal, that:

- The appellant was not in a position to avail of a credit for the RWHT pursuant to Schedule 24 TCA 1997 (as it made no profit to tax). Furthermore, even if the appellant had been in a position to avail of a credit under Schedule 24, it had the right to elect not to allow the credit under paragraph 10. Since no credit was allowed on the facts, it followed that paragraph 7(3) of Schedule 24 did not prohibit the appellant from claiming a deduction for the RWHT if the conditions under s81 could be satisfied.
- The TAC found the RWHT was a cost that the appellant had incurred of doing business in the foreign jurisdiction and there was a direct nexus between that expense and the earning of its royalty income.

Notes:

1. The assessments in question pre-date the introduction of s81(2)(p) by Finance Act 2019, which now prohibits a deduction for "any taxes on income".
2. The determination records that Revenue has sought to appeal the decision to the High Court.
3. The TAC, in determination 119TACD2024, reached a similar conclusion in respect of dividend withholding tax (again, before the Finance Act 2019 introduction of s81(2)(p)).

05 Income Tax: TAC Determination 148TACD2024

The first appellant in this case was a UK-based entrepreneur and sole director/shareholder of the second appellant, an Irish company incorporated in 2020. In 2021 the second appellant (company) made payments totalling €290,468.22 to the first appellant (director/shareholder). Those payments were recorded as a director's loan. No loan agreements were entered into; however, the payments were documented as loans in the second appellant's accounts. Benefit-in-kind (BIK) at 13.5% was also accounted for on payments as if they were preferential loans, and the tax arising on the BIK was paid to Revenue. The loans were subsequently repaid through the payment of dividends.

Revenue recategorised the payments as disguised salary payments and raised alternative assessments against both the first appellant (in the sum of €213,852.44) and the second appellant (in the sum of €296,314.96).

The questions before the TAC were:

- whether the first appellant was an employee of the second appellant;
- whether the payments to the first appellant constituted loans or disguised salary/emoluments under s112 TCA 1997; and
- whether the lack of loan documentation affects the characterisation of the transactions.

The TAC held, in allowing the appeal and setting aside the two alternative assessments, that:

- The payments were intended as loans and were evidenced by accounting records and financial statements.
- The first appellant was (although its sole director) not an employee of the second appellant. The Commissioner reached this determination after applying the first three steps of the Supreme Court's five-step test from *The Revenue Commissioners v Karshan Midlands Ltd T/A Domino's Pizza* [2023] IESC 24. The Commissioner found as a question of fact that: (1) no work-for-wage agreement existed, (2) the first appellant had not agreed to provide services to the second appellant and (3) the first appellant was not under the control of the second appellant. The Commissioner was satisfied that the *Domino's* test was the correct test and rejected Revenue's assertion that the first appellant was an "employee director".
- The preferential nature of the loan triggered a tax charge under s122 TCA 1997 (benefit-in-kind), which liability the appellants had already accounted for and paid.
- In reaching these conclusions the Commissioner also dismissed Revenue's argument that the payments could not be loans because of a breach of the Companies Act 2014 (the loans exceeded 75% of the company's assets yet no summary approval procedure had been conducted). The Commissioner, citing an earlier TAC decision (90TACD2022), held that the payments were loans because "whether or not it was *ultra vires* the powers of the company, was not a relevant consideration, because even if it was *ultra vires*, the director nevertheless incurred a debt to the company".

06 Corporation Tax: TAC Determination 149TACD2024

The appellant, a close company, appealed against Notices of Amended Assessment for corporation tax liability (arising from s440 TCA 1997 close company surcharges) totalling €396,000. The company had filed its corporation tax returns late, and Revenue raised assessments for the close company surcharge, asserting that the s434(3A) TCA 1997 election can be made only in a corporation tax return that has been filed on time.

The key question before the TAC was whether an election under s434(3A) is valid if it is made in a return that has been filed late.

The Commissioner, dismissing the appeal and upholding Revenue's assessments, held that the appellant's failure to file its returns on time invalidated its election under s434(3A). In reaching this decision, the Commissioner held that:

- Section 434(3A) is a relieving provision and, per the principles of statutory interpretation, tax provisions must be interpreted strictly, particularly where they provide relief.
- Section 434(3A)(c) explicitly requires the election to be included in returns made under Chapter 3 of Part 41A TCA 1997, which mandates timely filing.
- The appellant failed to comply with s959I(1) TCA 1997, which requires returns to be filed on or before the "specified return date". As a result, the returns did not comply with the requirements of Chapter 3 of Part 41A, and so the election made in them did not meet the statutory requirements.
- The Commissioner rejected the appellant's argument that s434(3A) lacks a specific time limit, holding that the mandatory language in s434(3A)(c) links the validity of the election to compliance with the broader filing requirements in Chapter 3, which include timeliness.

The TAC determination notes that the taxpayer has sought to appeal the decision to the High Court.

Direct Tax Cases: Decisions from the UK Courts

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	Topic	Court
01	**Inheritance Tax – "Wholly or Mainly" Test for Business Property Relief**	First-tier Tribunal
02	**Corporation Tax – Trade Commencement**	First-tier Tribunal
03	**Income Tax – Interim Dividends**	Upper Tribunal

01 Inheritance Tax – "Wholly or Mainly" Test for Business Property Relief

In ***The Executors of K Beresford v HMRC*** [2024] UKFTT 952 (TC) (24 October) the First-tier Tribunal (FTT) determined that shares in a holding company did not qualify as "relevant business property" for the purposes of business property relief from inheritance tax. The question for the FTT was whether the business of a company was "wholly or mainly one of making or holding investments". There is a similar test in Irish capital acquisitions legislation to qualify for business property relief.

The deceased had owned shares in a holding company. The main capital asset of a wholly owned subsidiary was an office block that had six floors. This company operated a number of the floors as serviced offices. The other floors were let on commercial leases – both parties agreed this was clearly rental income.

In relation to the serviced offices, the company, through an agent, advertised them, negotiated the terms with the customers, arranged the layout of the offices to be used by a particular customer (i.e. moved partitions etc., as required), provided an on-site receptionist and a phone-answering service, cleaned kitchen areas and kept them replenished, and provided and maintained office equipment, heating, air conditioning and electricity. There were around 42 separate offices, and at any given time these were occupied by around 7–20 separate firms. The income from the clients was in the form of two separate fees. The first was described either as a "licence fee" or as a "facility fee". This was a fee for "the workstations" and additional standard services. The second fee was called the "contract services fee" and was charged by reference to specific additional services provided. As the contract fee (being trading income) was a relatively uncontroversial matter, the Tribunal focused on the facility fee and whether this was income derived from the "making or holding of investments". The facility fee represented a significant proportion of the company's income.

The appellants submitted that executors argued that the company's business was, apart from the two floors let on long-term leases, a trading business. Alternatively, they suggested that even if it was not trading, the business was not that of "making or holding of investments". HMRC rejected the proposition that the appellant was carrying on a trading business and argued that the serviced office business was licensing space in the building, which should be classified as investment.

The Tribunal determined that, in the round, the majority of the activities in connection with the facility fee were investment management activities (advertising the offices; negotiating terms; maintenance of office equipment; provision of heat, air conditioning and electricity) and the activities that were not (cleaning, provision of receptionist and telephone answering) were not sufficient to change this. The Tribunal also considered the alternative starting point proposed by the appellant (that the company's activity amounted to trading) but found that, fundamentally, what was being provided was physical space in a building with some desirable additional services but not such a level of services as to mean that the principal transaction is "the exchange of services for reward".

Accordingly, the FTT held that the subsidiary company was generating income from "making or holding investments", and therefore the conditions for business property relief were not met.

02 Corporation Tax – Trade Commencement

In ***Putney Power Ltd and another v HMRC*** [2024] UKFTT 870 (TC) (26 September), the First-tier Tribunal (FTT) held that a trade had not commenced within two years of the share issue (the deadline for the Enterprise Investment Scheme (EIS), similar to Ireland's Employment Investment Incentive) as the trade infrastructure was not yet in place to enable operational activities to start.

The two companies were set up to build and operate power stations using EIS-raised funds. The appellants (Putney Power Limited ("Putney") and Piston Heating Services Limited ("Piston")) each issued shares on 4 April 2016 with the intention that the individuals who subscribed for those shares would be entitled to relief under the EIS. However, in 2020, HMRC determined that EIS relief did not apply, as neither company had begun trading by the 4 April 2018 deadline, as per the EIS rules.

Broadly, HMRC's position was that both trades commenced too late, principally because the power stations constructed by the appellants (for their trade of generating and selling electricity) were not in fact producing and supplying electricity by the EIS deadline. The appellants argued that this position was wrong in law, since it is well established that a trade can commence at an earlier stage than when the trader begins actual supply.

The FTT held in favour of HMRC. After a detailed review of the case law, it noted that the question of whether a trade has begun for UK tax purposes needs to be answered as a matter of commercial substance, looking at the whole picture and, most importantly, considering what is required to start a trade of the kind in question. The FTT noted that this may mean placing more weight on the commercial reality of a set of arrangements than on the precise legal analysis of contractual rights and obligations.

The FTT held that "the trading infrastructure must be actually (not just contractually) assembled, so that it can be used to deliver the trading activity, before a trade can be said to have commenced". On that basis, there was no entitlement to EIS relief, as neither of the appellants had completed the construction of the energy centres before 4 April 2018.

In reaching that conclusion, the FTT made a number of observations:

(1) A trade commences when the putative trader is "open for business".

(2) A putative trader cannot be "open for business" until it is ready to provide the goods or services or carry out the other dealings that form the subject matter of its intended trade. This requires the putative trader to have assembled whatever infrastructure (if any) is necessary for it to provide those goods or services or carry out those dealings.

(3) Assembly of the trade infrastructure does not need to have been completed before trading starts, as long as the infrastructure is operational (i.e. the trader needs to be able to operate/use it to provide whatever goods or services or carry out the dealings that it is concerned with, even if not on the scale or in the manner ultimately planned).

(4) Once the trader has assembled its operational infrastructure (if required), it "open[s] for business" by taking a step that exposes it to real operational risk and reward (for example, producing goods "on spec", buying food for a restaurant or other raw materials, incurring the staff or other costs of opening a restaurant or being ready to provide some other service, with or without a booking or client signed up, contracting to supply goods or services now or in the future).

(5) If a putative trader takes an operational step (of the type discussed in (4)) in anticipation of finishing assembling its trade infrastructure, that will not accelerate the commencement of its trade.

03 Income Tax – Interim Dividends

In ***The Commissioners for His Majesty's Revenue and Customs v Peter Gould*** [2024] UKUT 285 (TCC) HMRC appealed a decision of the First-tier Tribunal (FTT) that no UK tax was payable on a dividend of £20m paid to Peter Gould (PG). The FTT decision was discussed in "Direct Tax Cases: Decisions from the UK Courts", *Irish Tax Review*, 36/1 (2020).

The appellant was one of two brothers who owned Regis Group, a property investment group. After a series of divestments, the board of directors of a holding company in the group resolved to pay an interim dividend of £40m. It was also agreed that the two brothers would receive their dividends on different dates.

The difference in timing was primarily for tax-planning purposes. The appellant's brother (NG) would have been taxed at an effective tax rate of 30.56% if he had been taxed on the dividend in 2015–16, compared to an effective rate of 38.1% in tax year 2016–17. The appellant, however, required that the dividend be paid in the tax year 2016–17, as he would be non-UK resident in that year and therefore not be liable to UK tax on the dividend. Ultimately, the appellant's brother received his dividend on 5 April 2016, and the appellant received his on 16 December 2016.

HMRC challenged the timing of the appellant's dividend and concluded that he was "entitled to the interim dividend of £20m at the earlier date of 5 April 16". It was common ground between HMRC and the appellant that an interim dividend, in contrast to a final dividend, is normally not regarded as "due and payable" (and therefore taxable) when it is declared; rather, it becomes taxable only

when it is actually paid. Section 1168(1) of the UK Corporation Tax Act 2010 (equivalent to our s4 TCA 1997) stipulates that a dividend is treated as paid on the date when the dividend becomes "due and payable". HMRC argued, however, that the appellant's dividend became due and payable when his brother received his dividend, as at that point the appellant was able to enforce the payment of his own dividend.

The Upper Tribunal (UT) disagreed with the FTT and held that once the company had declared and paid the dividend to NG, a dividend was due and payable to PG at the same time (i.e. at a time when PG was still UK resident).

The company's articles of association in this case were the standard Table A articles. Articles 102–104 dealt with the payment of dividends. Taken together, these articles meant that shareholders should be treated equally, including in relation to the payment of interim dividends.

However, the UT did not overturn the ruling of the FTT. The UT confirmed that (a) the FTT had been entitled to find that there was an informal oral agreement between the shareholders to vary the company's articles to permit an interim dividend to be paid to NG without at the same time creating a debt to PG; and (b) alternatively, PG had waived his right to the dividend before the directors resolved to pay the interim dividend.

Accordingly, PG's dividend was not due and payable to him until the tax year 2016-2017, when he was non-UK tax resident.

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 United Kingdom

05 Canada

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07 India

01 BEPS: Pillar One and Pillar Two Recent Developments

Pillar One update

In late September 2024 the OECD announced that the OECD/G20 Inclusive Framework on BEPS had released a model competent authority agreement (MCAA) concerning Amount B of Pillar One. Amount B introduces a new method for pricing baseline marketing and distribution activities, aiming to streamline and simplify the application of the arm's-length principle. The MCAA pertains to the implementation of this approach. According to the OECD announcement, "further work on the Pillar One package, including the Amount B framework, is ongoing as indicated in the Statement by the Co-Chairs of the Inclusive Framework on 30 May 2024".

After the recent US elections, there is further doubt about the likelihood that Amount A of Pillar One will take effect.

European Commission adopts proposal to ease filing obligations under Pillar Two Directive

On 28 October 2024 the European Commission announced that it had adopted a proposal for a Directive (DAC 9) amending Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation to assist multinational enterprise (MNE) groups with their obligations to exchange information as required under the EU Pillar Two Directive. DAC 9 would introduce automatic exchange of information among EU

Member States for the (Pillar Two) top-up tax information return. DAC 9 would also allow MNEs to meet the top-up tax information return filing requirement by submitting one top-up tax information return in one Member State. The filing would be made in the Member State of the ultimate parent entity or in the Member State of a designated filing entity. However, it is likely that multiple Pillar Two return filings will still be required by MNEs within the EU, as where an MNE is within the scope of domestic minimum top-up tax rules of another Member State, it would also have to file a Pillar Two return in that jurisdiction.

Jersey: Draft legislation to implement Pillar Two framework issued

In October the States Assembly in Jersey adopted legislation to implement a Pillar Two income inclusion rule and a multinational corporate income tax (MCIT) from 2025. The new tax laws will apply to entities within multinational groups that have an annual consolidated revenue of at least €750m. Consequently, the majority of businesses in Jersey are not expected to fall within the scope of these rules and will continue to be governed by Jersey's established corporate tax regime.

For accounting periods starting on or after 1 January 2025, in-scope Jersey companies and branches of multinational groups will pay an effective rate of 15% on their Jersey profits under the new MCIT. The MCIT applies the OECD Model Rules and takes account of certain instances of double taxation. Jersey will also impose a top-up tax on low-taxed profits outside of the island under the OECD's Pillar Two income inclusion rule but will not apply the undertaxed profits rule.

Switzerland: IIR to apply as from 1 January 2025, UTPR postponed until further notice

On 4 September 2024 the Swiss Federal Council confirmed that Switzerland will implement the income inclusion rule (IIR) with effect from 1 January 2025. Switzerland introduced a domestic top-up tax from 1 January 2024. The Federal Council also confirmed that the introduction of the undertaxed profits rule (UTPR) has been postponed until further notice. The Federal Council believes that the risk associated with its introduction would outweigh the potential benefit in tax revenues of a UTPR.

Bahrain: introduction of domestic minimum top-up tax

The Bahrain government has announced the introduction of a domestic minimum top-up tax at a rate of 15%. The corresponding legislation will come into effect on 1 January 2025. Bahrain is currently the first Gulf nation to officially enact this legislation, with neighbouring countries expected to follow suit.

Czech Republic: top-up tax to be introduced

The government of the Czech Republic is introducing a top-up tax in alignment with the EU Directive on a global minimum tax. Key items include standardising the tax return deadline for both allocated and Czech top-up taxes to 22 months after the reporting period, with information returns due 15 months after, and an 18-month allowance for the initial period. Additionally, the list of payers of the Czech top-up tax will be expanded to include certain types of entities such as joint ventures, affiliates and stateless entities taxable in the Czech Republic, ensuring that the Czech top-up tax adheres to safe-harbour rules.

Portugal: Transposes EU Pillar Two Directive

In September the Portuguese Council of Ministers adopted a draft Bill to implement the EU Pillar Two Directive. The Bill was largely based on the EU Directive and the OECD Model GloBE Rules, and it includes a qualifying domestic top-up tax. Parliament approved the Bill in October, and the final step, publication in the Official Gazette, took place in early November. The legislation provides for a domestic minimum top-up tax and an income inclusion rule applicable for fiscal years beginning on or after 1 January 2024, as well as an undertaxed profits rule applicable for fiscal years beginning on or after 1 January 2025.

Malta: Budget 2024 and Pillar Two update

Malta's Minister for Finance delivered the Budget speech for 2025 to the parliament on 28 October 2024. The theme of the Budget was "A Country of Quality", which is aimed at taking Malta to the next level. The Minister also provided an update on Malta's Pillar Two solution. Malta will not introduce Pillar Two top-up tax rules in 2025. The Maltese government continues its discussions with the European Commission on the introduction of grants or qualified refundable tax credits that are compliant with the Pillar Two rules and EU State Aid Rules.

Germany: Early notification required regarding designation of Pillar Two group leader

Germany has introduced the concept of a "minimum tax group" for German-resident constituent entities of a multinational enterprise (MNE) group. This is for the purpose of alleviating the administrative burden associated with implementing Council Directive (EU) 2022/2523 (the Pillar Two Directive). The immediate impact is that each MNE group with German-resident constituent entities is required to designate a "group leader" of the minimum tax group by 31 December 2024. The group leader must then submit an electronic notification of its designation to the federal tax office by 28 February 2025.

Spain, Cyprus, Poland and Portugal referred to CJEU for delayed transposition of Pillar Two rules

In early October the European Commission issued a press release stating that it decided to refer Spain, Cyprus, Poland and Portugal to the Court of Justice of the European Union (CJEU) for failure to comply with requirements for the transposition into national law of the EU Pillar Two Directive. All EU Member States were required to enact the necessary laws to comply with the Pillar Two Directive and communicate the text of those measures to the Commission by 31 December 2023. Legislation under the Pillar Two Directive applies to fiscal years beginning from 31 December 2023. Although the majority of EU Member States are compliant with the transposition requirements, Spain, Cyprus, Poland and Portugal have not yet notified the Commission of their national implementing measures. The press release acknowledges that significant efforts are being made by these remaining Member States to finalise their Pillar Two national implementing legislation, but as the Member States have not yet notified the transposition measures, the Commission has taken the formal steps to refer them to the CJEU on this matter. Since this referral, Portugal has transposed the Directive into national law.

New treaty advances Pillar Two global minimum tax STTR designed to protect tax base in developing countries

On 19 September 2024 the international community took another step towards implementation of the new Pillar Two subject-to-tax rule, which was designed as a measure to protect the tax base of developing countries. Nine jurisdictions signed a new multilateral treaty, enabling early adopters to implement the new Pillar Two STTR swiftly. This rule was agreed on by consensus among members of the OECD/G20 Inclusive Framework on BEPS, who also adopted an elective Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI).

The STTR provides for a minimum level of taxation on relevant cross-border payments and aims to prevent scenarios where income is either taxed at very low rates or not taxed at all due to the operation of different tax regimes. Members of the Inclusive Framework that apply nominal corporate income tax rates below 9% to income covered by the STTR have committed to incorporating the STTR into bilateral tax agreements with developing-country members of the Inclusive Framework on request.

The STTR allows jurisdictions to "tax back" when defined categories of income are subject to nominal tax rates below the STTR minimum rate of 9% and domestic taxing rights over that income have been ceded under a treaty.

More than 70 developing-country members of the Inclusive Framework are eligible to

request the inclusion of the STTR in their agreements with other members, in accordance with the STTR commitment. The STTR can be implemented by joining the STTR MLI or through bilateral amendments to tax agreements.

02 OECD Tax Developments

Mutual agreement procedure simplified peer-review reports published

Under BEPS Action 14, mutual agreement procedure (MAP) members of the OECD/G20 Inclusive Framework on BEPS have committed to implementing a minimum standard to enhance the effectiveness and efficiency of MAP for dispute resolution. A simplified peer-review process was established to assist jurisdictions with limited MAP experience to set up a more robust MAP programme. The reports from the simplified peer-review process for Action 14 are published in two stages. Stage 1 involves the review of the assessed jurisdiction's implementation of the minimum standard based on the jurisdiction's legal framework for MAP and the application of this framework in practice. The results from the first two batches under Stage 1 of the simplified peer-review, covering 20 countries, indicate that most jurisdictions involved in the simplified peer-review process either have established or are keen to establish a policy framework for MAP. Additionally, they have or are willing to develop a well-functioning MAP programme and are prepared to take the necessary measures to ensure the efficient, effective and timely resolution of disputes.

OECD publishes annual peer-review of BEPS Action 13

In September the OECD published the seventh annual peer-review of BEPS Action 13 (Country-by-Country (CbC) Reporting). This considers implementation of the CbC reporting minimum standard by jurisdictions as of April 2024. The OECD website listed the following highlights:

- Over 115 jurisdictions have introduced legislation to impose a filing obligation on MNE groups, covering almost all MNE groups with consolidated group revenue at or above the threshold of €750m. Remaining Inclusive Framework members are working towards finalising their domestic legal frameworks with the support of the OECD.
- Where legislation is in place, the implementation of CbC reporting has been found largely to be consistent with the Action 13 minimum standard.
- More than 3,300 bilateral relationships for the exchange of CbC reports are now in place.

03 EU Tax Developments

Italy: Council of Ministers approves amendments to Digital Services Tax in draft Budget

The Italian Council of Ministers has approved the draft Budget Law for 2025, which includes amendments to the application of the digital services tax (DST). A significant proposed change to DST measures is the removal of revenue thresholds for digital services. Currently, Italian DST applies only to businesses where global revenues from digital services exceed €750m and Italian revenues from digital services exceed €5.5m. Removal of the thresholds would mean that any business generating revenue from digital services in Italy would be within the scope of DST. The Budget Law is under parliamentary discussion at the time of writing and may be subject to change. The changes that will be introduced are expected to be effective from 1 January 2025.

Netherlands: Dutch Tax Budget 2025 – summary for multinationals

In September the Dutch Ministry of Finance published the government's tax plan for 2025. The tax plan contains several proposals relevant to international companies, including:

- changes to the earnings-stripping measures, including an increase in the maximum deductible interest amount from 20% to 25% of adjusted profits;
- the extension of merger tax regulations to "sister company mergers";
- the introduction of the general anti-abuse rule under the Anti-Tax Avoidance Directive; and
- some changes to the group concepts as relevant to the application of dividend withholding tax.

Finland: proposed tax credit to promote green investments

The Finnish government published a draft proposal in September for the introduction of a corporate income tax credit for large-scale industrial investments that support the transition to a net-zero economy. The draft proposal was open for public consultation, which closed in early October.

The tax credit would be aimed at investments designed to accelerate the clean-energy transition and reduce reliance on fossil fuels and would include investments in the following areas:

- renewable energy production (including hydrogen and hydrogen fuels but excluding renewable electricity production) and energy storage;
- decarbonisation of industrial production processes and energy-efficiency measures; and
- production of equipment, components and raw materials essential for strategic sectors in the transition toward a net-zero economy, such as batteries, solar panels, wind turbines, heat pumps and electrolysers, as well as the capture, usage and storage of carbon dioxide.

Update to EU list of non-cooperative jurisdictions for tax purposes

The EU list of non-cooperative jurisdictions for tax purposes was updated in October. Eleven jurisdictions are on the updated list: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu. Antigua and Barbuda were removed from the updated list. Both were included on the EU list last October after a negative assessment from the OECD Global Forum with regard to the exchange of information on request. Since then, there have been changes to the rule-sets in both Antigua and Barbuda, and the Global Forum will undertake a further review in the near future.

ECON Committee Adopts Positive Opinion on FASTER Directive, Without Amendments

On 14 October 2024 the Committee on Economic and Monetary Affairs of the European Parliament (ECON Committee) adopted the draft report on the proposal for a Council Directive for the Faster and Safer Relief of Excess Withholding Taxes (FASTER), without any amendments. The new rules are intended to make withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries and national tax administrations. The adopted draft report will serve as the basis for the European Parliament's mandatory but non-binding opinion. The date on which the Parliament will vote on FASTER has not yet been confirmed.

Ireland: update on double taxation agreements and protocols

In September Ireland ratified both the income tax treaty with Oman and the amending protocol to the individual income tax agreement with Jersey. Both agreements will take effect from 1 January of the year following the exchange of ratification instruments.

Italian Supreme Court Softens Relevance of OECD Guidelines

In October the Italian Supreme Court held that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax

Administrations do not constitute legal sources but are technical tools supporting the application of transfer pricing (TP) legislation. Accordingly, it is the responsibility of the taxpayer or the tax authorities, as the case may be, to determine the most appropriate method for the pricing of intra-group transactions. This need not necessarily follow the OECD's recommended hierarchy of methods. The case concerned was an appeal by a taxpayer against a tax assessment that was concerned with the method used to determine the value of certain intra-group transactions. The taxpayer's appeal argued that, based on the OECD TP Guidelines, the comparable uncontrolled price method should be preferable to the transactional net margin method used by the tax authorities in arriving at the tax assessment.

04 United Kingdom

UK Corporate Tax Roadmap 2024

On 30 October 2024 the UK government released a Corporate Tax Roadmap alongside the Budget, outlining its corporate tax policies and plans for the parliamentary term. This Roadmap incorporates feedback from businesses and tax specialists. Key initiatives include:

- capping the main corporation tax rate at 25% for the entire parliamentary term,
- preserving the small-profits rate and marginal relief at current levels;
- upholding the capital allowances framework, with permanent full expensing and a £1m annual investment allowance;
- sustaining the generosity of R&D reliefs;
- collaborating with businesses on tax simplification and enhanced user experience, including HMRC's plans for digital transformation; and
- creating a new process to increase tax certainty for major investments.

The Roadmap also lists forthcoming consultations for stakeholders.

HMRC updates large business tax strategy guidance

HMRC has updated its guidance on the requirement for large businesses to publish a tax strategy, clarifying that the turnover and balance sheet test for UK companies and the multinational enterprise (MNE) turnover test are mutually exclusive. This means that if a UK company is part of an MNE, it is not required to publish a strategy if the global turnover is less than €750m, even if the company itself exceeds the £200m turnover threshold under the UK companies' test.

HMRC publishes transfer pricing guidelines for compliance

In September 2024 HMRC released new Guidelines for Compliance – Help with Common Risks in Transfer Pricing Approaches (GfC7). HMRC aims to provide UK businesses subject to UK transfer pricing rules with approaches to meet HMRC's expectations for transfer pricing compliance, assist businesses in managing their potential UK transfer pricing risks and highlight common areas that require transfer pricing scrutiny.

The new Guidelines for Compliance include sections on "Managing Compliance Risk for UK Businesses" (for those overseeing UK transfer pricing), "Common Compliance Risks" and "Indicators of Transfer Pricing Policy Design Risk" (intended for in-house transfer pricing specialists and advisers). Annex A provides examples of supporting records and information.

05 Canada

Canada implements new reporting rules for digital platforms

Canada is the latest country to introduce new reporting requirements for digital platforms to enhance tax transparency and compliance within the international tax community. These rules are designed to collect essential information from digital platforms that facilitate the sale of goods and services, including property rentals, involving sellers from Canada or countries with similar regulations. Known as the Reporting Rules for Digital Platform Operators, these requirements were enacted under Budget legislation that received royal assent on 22 June 2023. Reporting platform operators must verify the accuracy of the information they collect by 31 December of each reporting period. A transitional period will apply for the first year of compliance; the first filing requirement applies to the 2024 calendar year, and the deadline is 31 January 2025. EU Member States were required to implement DAC 7, the EU equivalent, for 2023 onwards.

06 United States

US requests dispute settlement consultations on Canada's digital services tax

At the end of August the US announced that it had requested dispute settlement consultations with Canada regarding its recently enacted digital services tax (DST). During the summer Canada enacted legislation to introduce a 3% DST. In its request the US asserted that "Canada appears to have targeted its DST on US companies providing Canadian digital services and to be discriminating against US companies in favour of Canadian companies providing those services". The United States also claimed that the DST appears to be inconsistent with the United States–Mexico–Canada Agreement. The request followed concerns expressed by members of the US Congress over Canada's DST.

07 India

India's Union Budget 2024

India's Union Budget 2024, presented on 23 July 2024, introduces various reforms to simplify the tax system, ease compliance and attract foreign investors. From an international and corporate tax perspective, key measures are:

- The equalisation levy on foreign e-commerce operators ended on 1 August 2024.
- The corporate tax rate for non-residents' business income will reduce to an effective rate of 38.33%.
- A participation exemption aims to make transfer pricing easier by expanding safe-harbour rules.

VAT Cases & VAT News

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VAT Cases

01 Supply of Electricity for Charging EVs – Supply of Goods – Additional services: CJEU Judgment C-60/23

02 Deduction of Input VAT – Subsequent Use Free of Charge – CJEU Judgment C475/23

03 Incorrect VAT Charge – Entitlement to Adjustment – CJEU Judgment C-83/23

04 Exemption for Special Investment Funds – Pension Funds – CJEU Judgment C639/22 to C644/22

01 Supply of Electricity for Charging EVs – Supply of Goods – Additional Services – CJEU Judgment C-60/23

On 14 October 2024 the court of Justice of the European Union (CJEU) delivered its judgment in the case of **Skatteverket v Digital Charging Solutions GmbH** C60/23, which related to the interpretation of Articles 14 and 15 of the VAT Directive. The case resulted from a tax ruling issued in 2022 by the Swedish tax agency to Digital Charging Solutions GmbH (a German company). Digital Charging Solutions (DCS) has its place of business in Germany and does not have a fixed establishment in Sweden. It supplies users of electric vehicles (EVs) in Sweden with access to a network of charging points. The users receive, via the network, real-time information on prices and availability of the charging points on the network. The network service includes functions for searching for and finding charging points and route planning. DCS does not operate the charging points on the network but, instead, entered into contracts with network operators to enable EV users to charge the EVs. The EV users are provided with a card and an app for authentication by DCS. When these are used, the charging session is registered with the network operator, and the network operator invoices DCS for the charging sessions (this is done monthly, with 30-day payment terms). DCS then separately invoices the card or app users on a monthly basis. The invoice covers the quantity of electricity supplied (the price of which varies) and access to the network and adjacent services (this is a fixed fee charged irrespective of whether the user purchased electricity in the period). The electricity cannot be purchased without also paying for the network access.

DCS sought a ruling from the Swedish Revenue Law Commission, which provided that the supply by DCS was a composite supply, the principal supply being the supply of electricity and the place of supply being Sweden. The Swedish tax agency sought to

have that ruling confirmed, whereas DCS sought to have it amended. DCS argued that there were two separate supplies – a supply of electricity (supply of goods) and a supply of services (facilitating access to the charging-point network) – and that only the supply of electricity should be taxed in Sweden.

The first question referred was whether Articles 14(1) and Article 15(1) of the VAT Directive must be interpreted as meaning that the supply of electricity, for the purposes of charging an EV at a charging point forming part of a public network of points, constitutes a supply of goods. The court noted that the question related to the charging of an EV at a charging point independent of DCS's intervention in providing the user with access to the network of charging points. Under Article 14(1) a supply of goods means the transfer of the right to dispose of tangible property as owner, and Article 15(1) treats the supply of electricity as a supply of goods. The court noted that a transaction that consists of the supply of electricity to the batteries of an EV constitutes a supply of goods where that transaction enables the user of the charging point to consume the electricity to propel the EV. The court held that the supply of electricity for the purposes of charging an EV at a charging point forming part of a public network of such points constitutes a supply of goods within the meaning of Article 14(1).

The second question posed was whether the same Articles must be interpreted as meaning that the charging of an EV at a network of public charging points to which the user has access through a subscription concluded with DCS means that the electricity consumed is deemed to have been supplied by the network operator to DCS and by DCS to the user, even if the user chooses the quantity, time and place of that charging, as well as the manner of use of the electricity.

The court noted that the concept of "supply of goods" covers any transfer of tangible property by one party that empowers the other party actually to dispose of it as if that party were its owner. It indicated that Article 14(1) does not require the party to whom the tangible property is transferred to be in physical possession of the tangible property or that the tangible property be physically transported to that party and/or physically received by that party. Hence, the same goods may be the subject of two successive sales when they are transported directly, on instructions, from the first vendor to the second person acquiring the goods. This also applies to supplies of electricity.

The court examined the contractual position and the payment arrangements between the parties. Based on the facts, it is the users who initiate, at their discretion, the supply of electricity at the place and time and in the quantity of their choice. DCS does not purchase any electricity over and above that required by the user and appears to play the role of an intermediary. On this basis, the court considered the provisions of Article 14(2)(c), which deals with the transfer of goods pursuant to a contract under which commission is payable on purchase or sale. For this provision to apply, two conditions have to be satisfied – the commission agent must act on behalf of the principal in the supply of goods, and the supplies of goods acquired by the commission agent and sold or transferred to the principal must be identical. Once these conditions are satisfied, the two supplies fall within the scope of VAT.

In this case, the user chooses the quality, quantity, time and manner of use of the electricity, not the commission agent. It is up to the referring court to assess whether the connections may be categorised as commission contracts and assess if the users are principals and DCS is the commission agent (acting in its own name but on behalf of the users), purchasing electricity from the charging-point operators that is intended to be supplied to the users for charging their EVs. The court noted that first condition seems to be satisfied. The supplies of the goods are identical, so the second condition is satisfied.

The court had to also determine if there were two separate supplies by DCS or it was a composite supply and reiterated the criteria for determining this. It observed that DSC invoices users monthly, for the cost of electricity and for access to the charging-point network and additional services. Although it could be considered a composite supply, the fact that the user must pay a fixed fee for the other services separate to the amount paid for the electricity and that it is payable irrespective of any supply of electricity indicates that the services are separate and distinct supplies to the supply of electricity. Based on the economic reality, the court indicated that it would be artificial to treat the supplies as indissociable. This is particularly the case where the user charges the EV in different Member States, resulting in different places of supply.

The court commented that even if the supplies of services are ancillary to the supply of electricity, this does not mean that the commission agent rules do not apply. In this case, DSC received a fixed fee for its services irrespective of the quantity or frequency of charging the EV, so that there was no element of a financial transaction provided by DSC resulting in an exempt supply.

This case highlights the importance of considering all of the circumstances of the supply, the arrangements between the parties and the economic reality in determining whether there is a composite or multiple supply.

02 Deduction of Input VAT – Subsequent Use Free of Charge – CJEU Judgment C475/23

On 4 October 2024 the CJEU published its judgment in the case of ***Voestalpine Giesserei Linz GmbH v Administrația Județeană a Finanțelor Publice Cluj, Direcția Generală Regională a Finanțelor Publice Cluj-Napoca*** C475/23. This case dealt with the interpretation of the deduction provisions under Part X of the VAT Directive in the context of input VAT claimed on goods subsequently made available free of charge. The case arose out of proceedings between Voestalpine Giesserei Linz GmbH (VGL) and the Romanian tax authority, which had refused input VAT deduction to VGL on goods acquired and made available to a sub-contractor free of charge for the purpose of carrying out works for VGL.

VGL (established in Austria) produces various moulded parts in the course of its economic activity. It processes those parts in Romania, where it is registered for VAT purposes. It has a framework contract with Austrex Handels GmbH (Austrex) (also established in Austria) whereby Austrex is able to use the services of a sub-contractor, Global Energy Products SA (GEP) (established in Romania). After processing, the moulded parts are sent and invoiced by VGL to customers in the EU under its Romanian VAT number. VGL owns a building in Romania and acquired and installed a crane on the grounds of the building. VGL makes the building available to Austrex (with a right of use transferable to GEP) and VGL permitted GEP to use the crane free of charge. Austrex and GEP invoiced VGL for the processing services in the course of which they had used the crane. The tax authority disallowed the input VAT reclaimed by VGL in relation to the purchase of the crane on the grounds that it had provided use of it free of charge to GEP.

The first question referred was whether Article 168(a) of the VAT Directive is to be interpreted as precluding a denial of input VAT where the goods are regarded as having been acquired for the purposes of a sub-contractor's taxable transactions, and not for the purposes of the taxable person's taxable transactions. The court reiterated the rules around entitlement to input VAT recovery, i.e. the right to deduct, in principle, may not be limited: it is exercisable immediately, and two conditions have to be satisfied to enjoy the right (the person concerned must be a taxable

person, and the goods or services must be used by the taxable person for the purposes of its own taxed output transactions, and those goods or services must be supplied by another taxable person). The point at issue in this case was the condition requiring the goods or services to be used by the taxable person for the purposes of its own taxed output transactions.

The court also reiterated the requirement for a direct and immediate link between a particular input transaction and a particular output transaction. An entitlement to deduct also arises, it noted, where the direct link is absent but the cost of the goods and services in question is part of that taxable person's general costs and, as such, a component of the price of the goods or services that the taxable person supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole. Based on the facts, the processing of the moulded parts (weighing more than 10 tonnes) would not have been possible without the crane. The acquisition of the crane was therefore essential to the processing of the goods, and without it VGL would not have been able to sell moulded parts.

Where Austrex and GEP get a benefit from using the crane free of charge, this should not result in denial of input credit for VGL where there is a direct link established between the input transaction and its output transactions or its economic activity as a whole. The court noted that the referring court will need to determine a number of factors – whether there is a direct link, whether the inputs are a component of the price of the taxable output or a component of its supplies in the course of its economic activity, and whether availability of the crane was limited to what was necessary to ensure the processing of the moulded parts on behalf of VGL or went beyond what was necessary for that purpose.

The court stated that if the making available of the crane is limited to what was necessary for that purpose, the right of deduction should apply to the entirety of the costs resulting from its acquisition. But if it goes beyond this, the direct link is in part broken, resulting in a recognition only of input VAT levied on the part of the costs incurred on the acquisition of the crane that enabled VGL to carry out its taxed transactions or its economic activity.

The court held that Article 168(a) precludes a national practice:

> "whereby a taxable person has acquired goods which that taxable person then makes available free of charge to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity".

The second question related to whether Article 168(a) must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out, as a result of which the tax authorities are unable to determine certain facts. Based on prior cases, input VAT deduction is allowed once the substantive requirements are satisfied, even if the formal requirements are not. Once the Member State has the information necessary to determine that the substantive conditions are met, additional conditions cannot be imposed that may render the right to deduct ineffective.

VGL did not keep separate accounts for its fixed establishment in Romania. The court stated that if the tax authority can carry out the necessary checks to determine that the substantive conditions are met, then the right to deduct cannot be denied. It noted that denying the right to deduct would go beyond the objective of ensuring correct application of the obligations, as a Member State can impose fines or penalties for not complying with the formal requirements.

The court held that Article 168(a) precludes a national practice:

"whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax authorities are in a position to determine whether the substantive conditions of the right of deduction are satisfied".

03 Incorrect VAT Charge – Entitlement to Adjustment – CJEU Judgment C-83/23

On 5 September 2024 the CJEU delivered its judgment in ***H GmbH v Finanzamt M*** C83/23. This case related to the interpretation of the rules relating to VAT refunds for non-established traders (in this case, H GmbH, a company established in Germany). H GmbH became the successor in title of a limited partnership established in Germany (KG), which was engaged in the hiring out of movable property to other entities under sale-and-leaseback arrangements. The dispute concerns six sale-and-leaseback transactions carried out by KG for the benefit of E-GmbH (a German company). In each of the six transactions, E-GmbH purchased a new motorboat from E-sr (an Italian company); the invoices included the narrative "intra-Community supply", VAT did not arise, and E-GmbH paid the invoice in full. E-GmbH and KG then entered into a sale-and-leaseback agreement. This provided for the sale of the boat to KG at the net purchase price plus German VAT and an agreement to lease the boat to E-GmbH. There was no indication of where the boat was located at the time of sale. E-GmbH issued a sales invoice to KG for the boat, on which German VAT was charged. E-GmbH accounted for the German VAT in its VAT returns, and KG deducted the German input VAT. E-GmbH and KG entered into a leasing agreement concerning the boat for a period of 36 months.

Tax Office M determined that when the boats were sold to KG they were located in Italy, not Germany, and therefore they were subject to VAT in Italy and KG was not entitled to reclaim the German VAT.

In 2014 an insolvency administrator was appointed to E-GmbH; the administrator corrected the six invoices relating to the supply of the boats and submitted the adjusted invoices to Tax Office X, which granted the request, refunded the corresponding VAT, and confirmed that the transactions were subject to Italian VAT. The administrator refused to issue the invoices with Italian VAT. H GmbH did not bring proceedings against E-GmbH with a view to obtaining invoices with Italian VAT.

The question referred was whether the VAT Directive, read in the light of the principles of effectiveness and VAT neutrality, must be interpreted as meaning that the recipient of a service may request, directly from the tax authority of the Member State where it is established, the refund of VAT that it paid to the supplier of a service – which invoiced in error the national VAT of that Member State, instead of the VAT legally due in another Member State, and paid it to the tax authorities of the first Member State – where those tax authorities have already refunded the VAT to the supplier of the service, which has gone into liquidation.

The court noted that in principle the Member States are to set out the conditions required

for adjusting VAT improperly charged (where the invoice issuer can show that they acted in good faith) where such provisions are not in the VAT Directive. In line with the principle of effectiveness, the domestic provisions should set out the detailed rules to enable the invoice recipient to recover VAT improperly invoiced. The case law on this point relates to domestic VAT improperly invoiced and received by the Member State from the invoice issuer. In this case, Tax Office X had already repaid the VAT to the insolvency estate of the service supplier.

The court has held repeatedly, that where a supplier has incorrectly invoiced and paid VAT, that VAT must, in principle, be refunded to that supplier. The Member State concerned is therefore, in principle, required to refund charges levied in breach of EU law. It noted that the invoice recipient can make a request to the tax authority for a refund of unduly invoiced VAT only as an exception and that the exception applies only if the recovery of that VAT from the supplier is impossible or excessively difficult.

In this case the supplier can register for VAT in Italy and issue a correct invoice showing the Italian VAT number and VAT amount, and this would enable the recipient of the service to deduct the input VAT paid in that Member State. H GmbH could have brought a civil action against the administrator with a view to having an invoice including Italian VAT issued, but it did not pursue this course of action.

The court held that the recipient of a service may not request directly from the tax authority of the Member State where it is established the refund of the VAT that it paid to a service supplier that invoiced domestic VAT in error, instead of the VAT legally due in another Member State, and paid it to the tax authorities of the first Member State, where those tax authorities have already refunded the VAT to the service supplier, which has gone into liquidation. This case highlights the difficulties that can be encountered when a refund of VAT incorrectly charged is being sought and the importance of pursuing the correct course of action in attempting to secure VAT recovery. It is also important to be aware of any time limits on recovery.

04 Exemption for Special Investment Funds – Pension Funds – CJEU Judgment C639/22 to C644/22

On 5 September 2024 the CJEU delivered its judgment in the joined cases ***X*** (C639/22), ***Stichting BPL Pensioen*** (C643/22), ***Stichting Bedrijfstakpensioensfonds voor het levensmiddelenbedrijf (BPFL)*** (C644/22), ***v Inspecteur van de Belastingdienst Utrecht***, and ***Fiscale Eenheid Achmea BV*** (C640/22), ***Y*** (C641/22), ***v Inspecteur van de Belastingdienst Amsterdam***, and ***Stichting Pensioenfonds voor Fysiotherapeuten v Inspecteur van de Belastingdienst Maastricht*** (C642/22). The cases all concerned the interpretation of Article 135(1)(g) of the VAT Directive in the context of proceedings between a number of pension funds regarding the application of the VAT exemption to those pension funds. Under Article 135(1)(g) Member States must exempt from VAT the management of special investment funds as defined by Member States.

The applicants are Dutch pension funds that purchased asset management services from an investment manager established outside the Netherlands and from a Dutch company that provided asset management services to a sector-specific pension fund. The argument was that the pension fund that purchased those services or to which those services were provided is a “special investment fund” within the meaning of Article 135(1)(g).

The first question posed was common to all six cases and was whether the VAT exemption must be interpreted as meaning that the members of a pension fund performing, under a collective pension scheme, a pension

agreement providing for pension entitlements and retirement benefits, the amount of which may vary under certain conditions as a result of the investments made by that pension fund, may be regarded as bearing the investment risk. The pension entitlements were based on a standard pension or occupational income and the number of years of employment of each member. In considering this, the referring court asked whether the following factors are relevant: (1) the size of the risk, (2) the individual or collective nature of the risk, (3) the number of years during which the pension entitlement of a member has accrued, (4) the fact that the accrual of the pension entitlements was interrupted at a certain point in time as far as one of the pension funds is concerned and (5) the fact that an employer acted as guarantor for a certain period of time for the targeted pension accrual.

Under the VAT Directive the definition of special investment fund (SIF) is left to the Member States, but funds constituting UCITS under the UCITS Directive must be regarded as a SIF. UCITS are undertakings the sole object of which is the collective investment in transferable securities of capital raised from the public; they operate on the principle of risk spreading, and the units are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. UCITS are undertakings in which many investments are pooled and spread over a range of transferable securities, which can be managed effectively to optimise results, and in which individual investments may be relatively modest. Each investor owns a share of the fund but not the fund's investments.

Funds that are not UCITS but display characteristics identical to those of UCITS and carry out the same transactions or, at least, display features that are sufficiently comparable for them to be in competition with such undertakings must also be regarded as SIFs. The court has held that one of the characteristics required for an entity to be considered as displaying features comparable to a UCITS is that the members bear the investment risk.

Investment risk does not arise where the pension received by the employee does not depend at all on the value of the scheme's assets and the performance of the investments made by the scheme's managers, but is defined in advance on the basis of length of service with the employer and amount of salary.

The application of the exemption presupposes that the amount of pension entitlements and retirement benefits due under the pension agreement concerned is not guaranteed but depends primarily, positively or negatively, on the performance of the investments made by that fund. The risk must be reflected in the level of pension entitlements and retirement benefits.

It is for the referring court to determine whether the pension entitlements and retirement benefits depend primarily on the performance of the investments made by the pension fund concerned. The court indicated that, in considering investment risk, the only relevant factors are how the pension entitlements and retirement benefits are designed in the member's pension agreement and how those entitlements and benefits depend on the performance of the investments made by that pension fund.

In making the assessment, the number of years during which the pension entitlement of a member has accrued or the fact that the accrual of pension entitlements was interrupted at a certain point in time as far as a pension fund was concerned are irrelevant. But the fact that the risk is borne individually or collectively, in the event of, *inter alia*, bankruptcy, and that an employer acted as a guarantor during a certain period of time for the targeted pension accrual are relevant factors without being decisive per se.

A second question was referred but only in the context of two of the cases, C640/22 and C644/22. Member States are required to regard

as SIFs funds that, without being UCITS, carry out the same transactions or, at least, display features that are sufficiently comparable for them to be in competition with such undertakings.

The court held that, by reference to the principle of fiscal neutrality, that the exemption must be interpreted as meaning that to determine whether a pension fund that is not a UCITS may benefit from the exemption provided for under that provision, it is necessary not only to carry out a comparison with such an undertaking but also to assess whether, in the light of the legal and financial situation of the member in relation to the pension fund, that pension fund is comparable to other funds that, without being UCITS, are regarded by the Member State concerned as being special investment funds for the purposes of that provision.

The judgment contains useful commentary on the principles that should be considered to determine whether a fund that is not a UCITS fund is capable of being treated as a SIF.

VAT News

Ireland

Finance Act 2024

The Finance Act 2024 was signed by the President on 12 November 2024. The VAT measures introduced in Finance Act 2024 are:

- An increase in the turnover thresholds above which VAT registration is required to €85,000 for goods (where at least 90% of the turnover is in respect of the supply of goods) and €42,500 for services (applies with effect from 1 January 2025).
- An extension of the reduced rate of VAT on gas and electricity supplies to 30 April 2025 (this was due to revert to 13.5% on 31 October 2024).
- Application of the 9% rate to the supply and installation of low-emissions heating systems with effect from 1 January 2025 (the current VAT rate is 23%).
- An increase in the farmers' flat-rate compensation from 4.8% to 5.1% (applies with effect from 1 January 2025).
- Amendment to the wording used in respect of the VAT exemption for the management of EU alternative investment funds (AIFs) where managed by an AIFM that is "authorised by or registered with the competent authority of a Member State" (applies with effect from 12 November 2024).
- Consequential amendments following Finance Act 2020 to application of the zero rate of VAT to certain services relating to vessels and aircraft. The two provisions providing for the zero rate on services relating to (1) the provision of docking, landing, loading or unloading facilities (including customs clearance), directly in connection with the disembarkation or embarkation of passengers, or the importation or exportation of goods, and (2) the supply of navigation services by the Irish Aviation Authority to meet the needs of qualifying aircraft have been deleted (applies with effect from 12 November 2024).
- The introduction of penalties for non-compliance with CESOP obligations (record-keeping and reporting obligations for certain payment service providers providing payment services within the EU since 1 January 2024) (applies with effect from 12 November 2024).
- Standard rate of VAT to apply to juice and drinks derived from plants, grains, seeds or pulses and clarification that this change does not impact milk alternatives in respect

of which the zero rate applies (applies with effect from 12 November 2024).

- Amendments to provide clarification on input VAT deduction claims in liquidation and receivership cases and the limitation on input VAT deductions on food, drink, accommodation or personal services.

Revenue eBriefs

Revenue eBrief 238/24, published on 10 September 2024, highlights publication of new Tax and Duty Manual, "VIES Trader Manual". The was previously published as part of the "VIES and Intrastat Traders" manual. The new manual focuses on those issues applicable to most intra-Community suppliers and to those required to furnish a VIES statement for the first time. It also covers the filing of and making corrections to VIES returns on ROS.

Revenue eBrief 254/24 was published on 11 October 2024 in relation to CESOP. The Tax and Duty Manual "CESOP Registration and Filing Guidelines" has been updated in section 4 to describe enhanced ROS functionality for CESOP filers who wish to file nil reports in a filing period, with minor related revisions in section 7.

EU

The European Commission on 5 November 2024 welcomed the general approach announced by the Council on the Commission's proposals on VAT in the Digital Age (ViDA). The ECOFIN meeting on this date reached agreement on the adoption of the three pillars of the ViDA package. The key dates agreed for the pillars are 1 July 2028 (Single VAT Registration and VAT Implementation of the Platform Economy), 1 January 2030 (Mandatory adoption of the deemed-supplier rules for the Platform Economy), 1 July 2030 (Mandatory adoption of mandatory reporting requirements and e-invoicing for cross-border B2B supplies) and 1 January 2035 (Harmonisation of national e-invoicing with EU standards).

Accounting Developments of Interest

Aidan Clifford
Advisory Services Manager, ACCA Ireland

Sustainability Assurance Requirements from 1 January 2025

From January 2025 all large Irish companies will have to start collating information to report under European Sustainable Reporting Standards (ESRS), and in early 2026 these companies will be required to seek a Sustainability Assurance Service Provider (SASP) to provide assurance over the reports. The sustainability information and compliance with ESRS are a legal requirement, and it is a category 2 offence if such information is not reported. Although the ESRS information will be included in the main financial statements, it can be assured by either the company's existing statutory auditor (if that person has acquired a SASP licence) or a separate SASP. There is likely to be a shortage of SASPs, so a large company would be advised to make arrangements early and not to assume that its existing statutory auditor will have the resources to undertake the work. For the avoidance of doubt, a top 10 audit firm could be the statutory auditor for a large company, with a small or medium practice the SASP for that company, or vice versa.

For those who will require assurance assignments for the first time in 2026, the standard that will be used is an EU-adopted ISSA 5000. Preparing ESRS information will be by far the most resource intensive element of the Corporate Sustainable Reporting Directive (CSRD) to implement. The assurance over the ESRS disclosures, by contrast – and because it is limited assurance and not reasonable assurance – will be a less resource intensive exercise.

There has been considerable push-back of late against the CSRD by EU parliamentarians, most recently, reportedly, by the French presidency. There is concern that the burden is too much and that EU companies will be at a commercial disadvantage. But Ireland has adopted the law, and at this stage it is unlikely that any amendments to the Directive could be achieved in the short term by the EU.

Obtaining a SASP Licence

The legislation currently does not allow for an independent (non-auditor) Sustainability Assurance Service Provider (SASP); the licence is available only to statutory auditors as a bolt-on qualification. To become a SASP, the auditor must complete 60 hours of sustainability CPD to include coverage of the four pillars in the Directive.

In an unusual quirk in the wording of the legislation, auditors will apply to the professional body that regulates their firm for audit and not the professional body that they qualified with. To make this as seamless as possible, both bodies have an agreed identical application form.

If a person is a statutory auditor before 31 December 2025, then the 60 hours of CPD route is available at any time in the future, and an application does not have to be made before 31 December 2025 – an application under the 60 hours route may be made in 2026 or 2027 as and when the auditor requires a SASP licence. Accountants who are not statutory auditors before 2025 will have to show that they have professional exam coverage of the matters in the Corporate Sustainable Reporting Directive and eight months' sustainability assurance experience. Accountants who qualified before the European Sustainable Reporting Standards were on their syllabus but do not get statutory audit status until after 2025 will need to undertake a diploma/university-level course on sustainability reporting and assurance, as well as acquiring the eight months' experience.

Independent (Non-Auditor) SASPs

An independent (non-auditor) Sustainability Assurance Service Provider (SASP), or I-SASP, is a Member State option in the Corporate Sustainable Reporting Directive. An I-SASP could be an environmental engineer, but it is far more likely that they would be accountants who are not auditors but would like to offer SASP services. So far, 3 EU countries have decided to allow for I-SASPs, 17 are late implementing the Directive and have therefore not confirmed what they are doing, and 7 are not currently allowing I-SASPs. Ireland does not allow for I-SASPs, but the Irish Government has issued a consultation on the matter, and we may allow them in the future. I-SASPs will require the full rigour of oversight and regulation that is currently applied to auditors, and that is probably going to be too expensive in a small country, where there is likely to be a limited number of people interested in the qualification. However, it is expected that almost all of the larger EU countries will allow for the registration of I-SASPs.

Small and Medium Companies Reporting on Sustainability

Many SMEs are already reporting ESG (environmental, social and governance) data to their major customers as a condition of supply, and large companies will have to report on their supply chain as part of their compliance with the European Sustainable Reporting Standards (ESRS) and so will increasingly start demanding this information from their SME suppliers. The standard-setter is working on a very slimmed-down version of ESRS for SME called the voluntary SME (or VSME) standard. A final version of this proposed standard will be presented to the European Commission for approval in November. VSME is expected to be a tiny fraction of the size of the main ESRS standard, with around 20 disclosures, compared to a potential 1,100 under full ESRS. The latest draft of the standard looked like it would be relatively easy and inexpensive for SMEs to comply with, and the EU has said that it plans that large companies will not be allowed to ask for more ESG information from a supplier than would be required to comply with the VSME standard.

Sustainability Newsletter from Accountancy Europe

Accountancy Europe issued its September 2024 Sustainability Update. The update includes details of Accountancy Europe's new factsheet on the Corporate Sustainability Due Diligence Directive and links to a study on early European Sustainable Reporting Standards implementation practices.

Updates to Irish Auditing Standards

The Irish Auditing and Accounting Supervisory Authority (IAASA) has updated the Irish auditing standards to reflect the conforming amendments required due to the revision of ISA (Ireland) 600: Audits of Group Financial Statements in February 2023. The revised standard is effective for financial periods beginning on or after 15 December 2023. Nearly every standard has been updated, including ISQM 1, but the amendments are all minor context and referencing changes. The updated standards are available here.

DSS Panel of Decision-Making Representatives

The Decision Support Service is seeking registered professionals in Ireland to join the Decision-Making Representative Panel. A Decision-Making Panel member who is a tax practitioner will, for example, assist persons with limited decision-making ability to manage their money and taxation affairs.

Amendments to CSRD Enabling Legislation

The Minister for Enterprise, Trade and Employment has signed S.I. No. 498 of 2024, the European Union (Corporate Sustainability Reporting) (No. 2) Regulations 2024 . Following engagement between the Department and stakeholders on application difficulties with the original Corporate Sustainable Reporting Directive legislation, the statutory instrument makes a very small number of important text changes.

Credit Union Legislation

The Minister for Finance has signed a statutory instrument commencing further sections of the Credit Union (Amendment) Act 2023. A credit union may now agree to participate in a loan to a member of another credit union or the referral of members of one credit union to another credit union. This will allow for syndicated loans for larger projects and, potentially, for more mortgage lending. The Commencement Order also allows for approval of all plans and policies by the board every three years, instead of every year, as is the current requirement, and it requires that the board design and adopt an “environmental, social and governance policy”. Some provisions of the 2023 Act remain to be enacted, including the provisions regarding corporate credit unions.

Cyber-security

Phishing attempts are getting more regular and more sophisticated. For accountants and advisers, now is a good time to review a practice’s IT security. The Government is offering grants to assist businesses with cyber-security, with up to €3,000 available for small businesses to review online security. See more details at this link. There is a checklist of IT controls that a business should consider implementing in Appendix 6 of ISA 315 .

As an initial step, accountants and/or advisors in practice should consider setting up a dedicated email address for their correspondence with their professional body or any other organisation they receive regular correspondence from. Do not advertise this anywhere, and either opt out of

disclosing an email address on any public register or directory of members or have a dedicated email address for email addresses that are publicly available.

UK Study on Sustainability Assurance Implementation

The Financial Reporting Council has published initial feedback on its market study into assurance of sustainability reporting. The study was designed to explore how the market for sustainability assurance is functioning and developing in the UK. The findings showed that most UK companies reported having sufficient choice of provider of sustainability assurance. However, some companies raised concerns that the market may begin to consolidate around a small number of large audit firms, limiting choice and effective competition in the market in the future.

Accounting for Carbon Allowances

Companies aiming at net zero will initially reduce their carbon footprint to as low as possible and then bridge the gap to net zero by purchasing carbon credits. The reporting on these credits has therefore come to the fore. The European Securities and Markets Authority (ESMA) has published Clearing the Smog: Accounting for Carbon Allowances in Financial Statements and recently issued the 2024 EU Carbon Markets Report.

Directive on Measures for a High Common EU Level of Cyber-security

The Network and Information Security Directive (NIS2), the Cyber Resilience Act, the Digital Operational Resilience Act and the Cybersecurity Act are a suite of requirements designed to strengthen EU cyber-security. NIS2 must be adopted by Member States by 17 October 2024 (Ireland is late adopting). Under the regulations, companies and state bodies must boost their cyber-defences, with the threat of heavy fines for breaches of the rules. More details are available at https://www.ncsc.gov.ie/nis2/

ESMA Annual Public Statement

The European Securities and Markets Authority has published its Annual Public Statement setting out the European common enforcement priorities for 2024 annual corporate reports.

Report of the Funds Sector 2030 Review

The Minister for Finance has published the report of the Funds Sector 2030 review. The review makes a number of recommendations, including some tax changes to align the tax on investment funds and life assurance products with that on direct equities, as well as reform of the IREF and REIT regimes.

Legal Monitor

Niall McCarthy
Associate, William Fry Tax Advisors

Selected Acts Signed into Law from 1 August to 31 October 2024

No. 33 of 2024: Electricity Costs (Emergency Measures) Domestic Accounts Act 2024

This Act addresses rising electricity costs by providing emergency financial support to domestic consumers. It includes provisions for direct payments to households, subsidies for energy-efficient home improvements and measures to cap electricity prices temporarily. The Act aims to alleviate the financial burden on families and promote energy conservation.

This Act also introduces several amendments to the Taxes Consolidation Act 1997 (TCA 1997). The primary change involves the introduction of a new section, s192JC, which provides tax exemptions for certain payments. Specifically, any electricity costs emergency benefit payment or submeter support scheme payment made under this Act between 1 November 2024 and 30 September 2025 will be exempt from income tax. These payments will not be included in the calculation of total income for income tax purposes.

No. 35 of 2024: Gambling Regulation Act 2024

The Gambling Regulation Act 2024 establishes a new regulatory framework for the gambling industry in Ireland. It creates an independent Gambling Regulatory Authority to oversee licensing, compliance and enforcement. The Act aims to protect consumers, prevent problem gambling, and ensure fair and transparent gambling operations. It also includes measures for responsible gambling and advertising restrictions.

Section 267 of this Act amends s1094 TCA 1997. These amendments integrate the requirements of the Gambling Regulation Act 2024 into the tax clearance processes specified in TCA 1997, ensuring that individuals involved in gambling activities comply with their tax obligations.

No. 36 of 2024: Social Welfare Act 2024

This Act introduces several key changes and provisions aimed at improving the social welfare system. Here are the primary updates:

- The allowance provided for domiciliary care is increased from €340 to €360 per month, starting from 1 January 2025.
- The Act includes provisions related to the disqualification from certain payments of persons residing in designated accommodation centres. This aims to streamline support and ensure that those in such centres are adequately covered by other forms of assistance.
- The Act adjusts the rates of various social insurance and assistance payments, including jobseeker's allowance, farm assist, disability allowance, carer's allowance and pensions. These changes will take effect at the end of December 2024 and in early January 2025.
- The Act amends existing laws concerning liable relatives and child maintenance, aiming to improve the enforcement and management of maintenance obligations.

No. 37 of 2024: Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024

This Act strengthens protections for maternity leave and introduces new measures to promote employment equality. It includes provisions for paid parental leave and protections against workplace discrimination based on gender or pregnancy, and mandates the preservation of employment records related to these matters for a specified period. The Act aims to ensure better support for working parents and gender equality in the workplace.

Selected Bills Initiated from 1 August to 31 October 2024

Bills that had not been passed at the dissolution of the Dáil on 8 November 2024 are now lapsed.

Selected Statutory Instruments from 1 August to 31 October 2024

No. 484 of 2024: Double Taxation Relief (Taxes on Income) (Jersey) Order 2024

This Order introduces a Protocol amending the agreement between Ireland and Jersey signed in 2009. The Order aims to improve relief from double taxation on income and enhance the mutual agreement procedure for resolving tax disputes between the two jurisdictions. It specifies new provisions to prevent tax evasion, especially through treaty-shopping arrangements, and sets out clearer procedures for addressing cases where a person faces taxation not in line with the agreement. It also introduces Article 9A, focusing on the denial of benefits if obtaining them is found to be one of the main purposes of certain arrangements.

The Protocol will take effect from 1 January 2025.

No. 485 of 2024: Double Taxation Relief (Taxes on Income) (Sultanate of Oman) Order 2024

This Order establishes an agreement between the Government of Ireland and the Sultanate of Oman to provide relief from double taxation on income. It also includes provisions for the exchange of tax information, with the goal of reducing tax evasion and promoting mutual cooperation in tax matters.

The provisions take effect from 1 January 2025.

No. 488 of 2024: Legal Services Regulation Act 2015 (Limited Liability Partnerships) Regulations 2024

These Regulations set out new rules for the establishment and operation of limited liability partnerships (LLPs) within the legal services sector in Ireland. They provide a framework for legal businesses seeking to operate as LLPs, outlining necessary steps for registration with the Legal Services Regulatory Authority, including application processes, required insurance coverage and fees.

Key provisions of the Regulations include requirements for professional indemnity insurance, notification of membership changes, and compliance with various legal and ethical obligations. Additionally, the Regulations address the conditions for maintaining operational standards, including the retention of client confidentiality, ensuring data protection and providing transparency to clients about the legal services offered.

No. 551 of 2024: Taxes Consolidation Act 1997 (Section 111B(3)) Order 2024

This Order incorporates into Irish law the OECD's guidance on global anti-base erosion (GloBE) rules for digital economy taxation. Specifically, it acknowledges the OECD Pillar Two Guidance from June 2024, which outlines the rules under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

No. 489 of 2024: Legal Services Regulation Act 2015 (Legal Partnerships) Regulations 2024

These Regulations introduce a framework for legal partnerships in Ireland, enabling solicitors and barristers to form partnerships for providing legal services. Under these Regulations, legal partnerships must consist of at least one practising barrister and one or more solicitors. Key provisions include:

- Formation and notification: Legal partnerships must notify the Legal Services Regulatory Authority (LSRA) when they intend to provide legal services, including details such as the partnership's name, partners and insurance coverage. A commencement fee and a statutory declaration are also required.
- Management and operational rules: The Regulations establish obligations on partnerships, including client confidentiality, the separation of client information and compliance with professional codes. They also require transparency in the partnership's communication with clients regarding the legal services offered.
- Naming rules: Partnerships can either use the names of their partners or apply for a non-partner-based name, subject to LSRA approval. The LSRA will assess the proposed name to ensure that it does not mislead clients or harm the reputation of the profession.

These changes reflect a significant shift in the Irish legal landscape.

No. 563 of 2024: National Minimum Wage Order 2024

This Order sets the national minimum hourly rate of pay from 1 January 2025 at €13.50 and the board and lodging rates as follows:

- Lodgings: €31.89 per week, or €4.55 per day; and
- Board: €1.21 per hour worked.

Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

Published from 1 August to 31 October 2024

Income Tax

88TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

92TACD2024

Appeal regarding apportionment of tax credits

s1080(2) TCA 1997

Case stated requested: Unknown

93TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

94TACD2024

Appeal regarding application of tax relief to additional voluntary contributions

s787 TCA 1997, s959A TCA 1997

Case stated requested: Unknown

95TACD2024

Appeal regarding treatment of excess property value as a distribution

s130(3) TCA 1997

Case stated requested: Unknown

98TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

99TACD2024

Appeal regarding an underpayment of tax on a Statement of Liability after change of employment

s949A TCA 1997

Case stated requested: Unknown

101TACD2024

Appeal regarding the deduction of a fee paid by the appellant to the company as an allowable expense

s81 TCA 1997

Case stated requested: Unknown

103TACD2024

Appeal regarding treatment of foreign income and charges to tax on unlawful activity

s12 TCA 1997, s18 TCA 1997, s58 TCA 1997

Case stated requested: Yes

121TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

125TACD2024

Appeal regarding refusal of claim for dependent relative tax credit

s466 TCA 1997

Case stated requested: Unknown

126TACD2024

Appeal regarding treatment of multiple years' pension payment

s112 TCA 1997

Case stated requested: Unknown

127TACD2024

Appeal regarding entitlement to personal and employee tax credits when employed as EU official and not residing in Ireland

Article 13, Protocol (No. 7) European Union, s819 TCA 1997, s1032 TCA 1997

Case stated requested: Unknown

128TACD2024

Appeal regarding treatment of income from share of partnership profits and treatment of deductions

s18 TCA 1997, s81 TCA 1997, s467 TCA 1997, s1008 TCA 1997

Case stated requested: Unknown

131TACD2024

Appeal regarding joint assessment of income tax when a couple were living apart prior to divorce

s1015 TCA 1997, s1016 TCA 1997, s1018 TCA 1997

Case stated requested: Unknown

134TACD2024

Appeal regarding an amended Statement of Liability in respect of an underpayment of tax following an erroneous refund

s960C TCA 1997

Case stated requested: Unknown

136TACD2024

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

s58 TCA 1997

Case stated requested: Unknown

148TACD2024

Appeal regarding treatment of payments as a director's loan or salary

s112 TCA 1997, s118 TCA 1997, s122 TCA 1997, s438 TCA 1997

Case stated requested: Unknown

151TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

160TACD2024

Appeal regarding application of force majeure measures for the residency test during Covid-19 pandemic

s818 TCA 1997, s819 TCA 1997, s820 TCA 1997, s821 TCA 1997, s822 TCA 1997, s823 TCA 1997, Ireland–UK double taxation treaty

Case stated requested: Unknown

161TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

162TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

164TACD2024

Appeal regarding a Statement of Liability after error in application of credits

s126 TCA 1997, s1112 TCA 1997

Case stated requested: Unknown

166TACD2024

Appeal regarding refusal to grant dependent relative tax credit

s466 1997

Case stated requested: Unknown

167TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

168TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

Income Tax & Capital Gains Tax – Offshore Funds[1]

These grouped Tax Appeals Commission (TAC) determinations on the status of an investment in a fund. Each of the appellants had been an investor in a fund. They had each treated that investment as being subject to CGT treatment:

- 104–117TACD2024
- 124–127TACD2024
- 137–146TACD2024
- 152–159TACD2024

Income Tax and VAT

123TACD2024

Appeal regarding understated income, , from sale of agricultural products where VAT should have been charged

Case stated requested: Yes

Income Tax and Capital Gains Tax

89TACD2024

Appeal regarding treatment of director loans

s28 TCA 1997, s211 TCA 1997

Case stated requested: Unknown

Corporation Tax

118TACD2024

Appeal regarding treatment of a corporation tax deduction in respect of a foreign royalty withholding tax incurred on charges for the use of intellectual property by local operating companies, located in other jurisdictions

s76 TCA 1997, s81 TCA 1997, s826 TCA 1997, Sch. 24 TCA 1997

Case stated requested: Yes

119TACD2024

Appeal regarding treatment of foreign withholding taxes, incurred on dividend payments from shares in foreign-based companies

s81(2) TCA 1997, s77 TCA 1997, s826 TCA 1997

Case stated requested: Unknown

149TACD2024

Appeal regarding the interpretation of s434(3A) TCA 1997 with regard to the applicant's election for relief from the close company surcharge

s434 TCA 1997

Case stated requested: Yes

165TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

1 These determinations have been based upon a similar appeal Determination 42TACD2024. See commentary on these grouped determinations in the article by Mark Ludlow "**Direct Tax Cases: Decisions from the Irish Courts and TAC Determinations**" in this issue

Capital Gains Tax

130TACD2024

Appeal regarding treatment of losses during the Covid-19 pandemic

s31 TCA 1997

Case stated requested: Unknown

VAT

96TACD2024

Appeal regarding VAT refund for aids and appliances for people with disabilities

Value-Added Tax (Refund of Tax) (No. 15) Order 1981, Statutory Instrument 428 of 1981

Case stated requested: Unknown

102TACD2024

Appeal regarding imposition of VAT on the importation of a "new means of transport" to the State

s3 VATCA 2010

Case stated requested: Unknown

163TACD2024

Appeal regarding security required by the Criminal Assets Bureau to be provided by the appellant in respect of taxes that are or may be due

s960S TCA 1997

Case stated requested: Yes

Relevant Contracts Tax

120TACD2024

Appeal regarding determination of principal contractor for the purposes of RCT

s530 TCA 1997, s530A TCA 1997

Case stated requested: Unknown

Artists' Exemption

97TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

106TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

122TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

132TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

Employment Wage Subsidy Scheme

91TACD2024

Appeal regarding application of the EWSS and the requirement that a business would experience a 30% reduction in turnover

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

Case stated requested: Unknown

129TACD2024

Appeal regarding application of the EWSS and the requirement that a business would experience a 30% reduction in turnover

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

Case stated requested: Unknown

133TACD2024

Appeal regarding application of the EWSS and the requirement that a business would experience a 30% reduction in turnover

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

Case stated requested: Unknown

Customs and Excise

142TACD2024

Appeal regarding entitlement to a preferential tariff treatment in the calculation of customs charges on the importation by of a vehicle to the State

EU–UK Trade and Cooperation Agreement

Case stated requested: Unknown

Local Property Tax

150TACD2024

Appeal regarding application of the four-year statutory limitation period

Finance (Local Property Tax) Act 2013

Case stated requested: Unknown

Stamp Duty

90TACD2024

Appeal regarding application of the four-year statutory limitation period

s31B SDCA 1999, s159A SDCA 1999

Case stated requested: Unknown

100TACD2024

Appeal regarding repayment of stamp duty where land used for residential development

s83D SDCA 1999

Case stated requested: Unknown

135TACD2024

Appeal regarding application of the four-year statutory limitation period

s159A SDCA 1999

Case stated requested: Unknown

UK and Northern Ireland Tax Update – Winter 2024

Marie Farrell
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Introduction

At the end of October the UK Chancellor of the Exchequer, Rachel Reeves MP, delivered Autumn Budget 2024, which has provided the main UK tax law developments since the last UK tax update. The Budget lived up to expectations, setting out the Labour Government's stall for this parliament and delivering changes to tax and spending to address a funding shortfall estimated to be as much as £40bn.

The Budget respected Labour's manifesto pledge not to increase the tax burden on "working people", with most of the significant tax rises targeted at capital gains tax and inheritance tax. However, there were some other notable tax measures, which are examined below, together with recent court judgements and developments in UK tax law outside of those announced in the Budget.

Key Autumn Budget Announcements

Inheritance tax

The inheritance tax (IHT) changes are significant for those impacted and will likely lead to business owners and those working in the farming industry considering succession planning much earlier than is currently the case. This is because, under the current IHT regime, relief of up to 100% is available on qualifying business and agricultural assets. However, from 6 April 2026 the 100% rate relief will apply only to the first £1m of combined value for agricultural and business assets, with a 50% rate of relief for any value above this threshold, meaning that an effective IHT tax rate of 20% will apply to assets above £1m.

Perhaps one of the most controversial measures in the Budget is what has been described as the Government's raid on savers. The introduction of a liability to IHT for pensions will have thrown a spanner into the works of legacy planning for many families. From 6 April 2027 most unused pension funds and death benefits will be included in the value of a person's estate for IHT purposes. However, there was some relief that the seven-year rule on gifts remains unchanged, and the period was not increased to ten years, as many feared it would be.

The Government also announced that a new residence-based regime for IHT will be introduced from 6 April 2025. The test for whether non-UK-*situs* assets are within the scope of UK IHT is likely to be whether an individual has been resident in the UK for at least 10 out of the 20 years immediately preceding the tax year in which the chargeable IHT event occurs.

Capital gains tax

The capital gains tax measures announced were much more modest than many had expected, with a focus on lowering thresholds for relief and rate increases:

- The main rates of CGT that apply to assets other than residential property and carried interest will increase from 10% and 20% to 18% and 24%, respectively, for disposals made on or after 30 October 2024.
- The rates of CGT that apply to residential property disposals (18% and 24%) will remain unchanged.
- The rate of CGT on carried interest will increase from 28% to 32%. This change will

take effect from April 2025. The Chancellor also indicated that, from April 2026, carried interest will be taxed fully within the income tax framework.

- Under the current regime, a £1m business asset disposal relief (BADR) allowance is available so that the first £1m of gains is taxed at 10%. For disposals made on or after 6 April 2025 the rate will increase to 14%, and from 6 April 2026 to 18%.
- Investor relief provides for a lower rate of CGT to be paid on the disposal of ordinary shares in an unlisted trading company where certain criteria are met, subject to a lifetime limit of £10m. The lifetime limit is reduced from £10m to £1m for disposals made on or after 30 October 2024, and the CGT rate will also increase in line with BADR.

Taxation of non-domiciled individuals

A key Labour tax policy in recent years has been to abolish the "non-dom" tax regime, replacing it with a new residence-based regime. Thus, the concept of domicile will no longer be relevant to UK taxation.

In the Budget the Government set out in detail its proposals for the replacement regime and a new relief on foreign income and gains (FIG), and published draft legislation. The main proposals are:

- To qualify for relief under the new regime, the individual must not have been UK tax resident in any of the previous ten years prior to becoming UK resident.
- The new regime allows FIG arising in the first four years of residence to be remitted to the UK 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.
- From 6 April 2025, individuals who have been previously taxed on the remittance basis will be able to elect to pay tax at a reduced rate on remittances of pre-6 April 2025 FIG under a new Temporary Repatriation Facility (TRF) that will be available for tax years 2025–26, 2026–27 and 2027–28 only. The reduced rate is 12% for the first two tax years and rises to 15% in 2027–28. The TRF will also be available to qualifying UK-resident settlors or individuals who receive a benefit from an offshore trust structure during these three tax years.
- From 6 April 2025, an individual who is not, or who later ceases to be, eligible for the new four-year FIG regime will be taxed on foreign gains in the same way as a UK-resident individual.
- Under transitional arrangements, individuals who have claimed the remittance basis will, on the disposal of an asset held at 5 April 2017, be able to elect for UK CGT purposes to rebase that asset to its value as at that date.

The new FIG regime will also have the effect of removing protections from non-UK resident trusts on FIG arising from 6 April 2025. FIG arising in non-resident 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 where the settlor has an interest in the trust. FIG that arose in a trust structure before 6 April 2025 will be taxed on settlors or beneficiaries if they are matched to worldwide trust distributions after this date.

Overseas workday relief (OWR) will be retained and will continue to apply to income relating to overseas duties determined on a just and reasonable basis. From 6 April 2025, eligibility for OWR will be primarily based on whether employees are eligible for the four-year FIG regime.

The reforms outlined above take effect from 6 April 2025, and so taxpayers have a few months to take action, which may, in extreme cases, include leaving the UK. If this is the case for any individual, care will need to be taken to monitor their residence position under the statutory residence test on an ongoing basis.

Other Budget announcements

The Chancellor made a number of other announcements, including:

- A Corporate Tax Roadmap was released, setting out several areas (the tax rate, capital allowances, R&D relief) that should not change and some matters that might change, such as updating the application of transfer pricing. The stability that this Roadmap provides will be welcomed by businesses.
- Income tax and National Insurance thresholds are currently frozen until 5 April 2028 but will increase in line with inflation from 6 April 2028.
- The rate of employer National Insurance contributions will increase from 13.8% to 15%, with the threshold lowered from £9,100 to £5,000.
- The national minimum wage will increase to £12.21 (from £11.44) in April 2025.
- Regarding late-payment interest rates, HMRC interest rates are linked to the Bank of England base rate, with late payments of tax liabilities currently being charged at the Bank rate plus 2.5%. From 6 April 2025, the Government will increase the late-payment interest rate charged by HMRC to the Bank of England base rate plus 4%. This increase should serve as a reminder and warning to both individuals and businesses who are not up to date with their tax liabilities to make payments quickly, as the interest cost arising on outstanding tax balances is becoming extremely expensive. It also highlights the importance for corporate groups of ensuring that the correct number of associated companies are identified so that tax is paid on the correct due dates, thereby avoiding significant unexpected late-payment interest charges.
- Increases will be made to the stamp duty land tax payable:
  - by purchasers of additional dwellings and by companies, from 3% to 5% above the standard residential rates; and
  - by companies and non-natural persons acquiring dwellings for more than £500,000, from 15% to 17%.
- The VAT exemption for private school fees will be removed with effect from 1 January 2025, meaning that all education services and vocational training charges provided by a private school in the UK will be subject to VAT at the standard rate of 20%.

Other Developments

Enterprise Investment Scheme and Venture Capital Trust scheme extended to 5 April 2035

The previous Government announced that it intended to extend the sunset clauses in the EIS and VCT legislation by 10 years to 5 April 2035 but these changes were “subject to domestic and international subsidy obligations being met”. These formalities are now complete, and on 3 September 2024 regulations were made to bring into effect this extension. The impact of the extension of the sunset clauses from 6 April 2025 is that shares in a company (for EIS relief) or in the VCT issued before 6 April 2035 will qualify for relief, provided all the other conditions are met.

National Minimum Wage: Tribunal reverses savings club decision

A recent Employment Appeals Tribunal case has highlighted the importance of reviewing, on a regular basis, compliance with national minimum wage (NMW) legislation, especially where employee remuneration packages include saving schemes. In this case HMRC’s view was that although the salary deductions are voluntary, if savings club funds are held in a bank account that the employer can access and use, the employer receives a benefit from the scheme, which can result in an NMW underpayment. Employers are thus urged to review savings schemes and other payroll deductions to determine whether it could be argued that the deductions are for the employer’s own use and benefit, as operating these schemes could mean that employers are inadvertently in breach of NMW legislation.

Tax Technology Update – Winter 2024

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Introduction to E-invoicing

As the adoption and implementation of e-invoicing continues to gain momentum globally, and with the green light having been given to the EU VAT in the Digital Age (ViDA) package in early November 2024, now is the time for businesses to start preparing for these changes. This article briefly outlines how e-invoicing aligns with the ViDA initiative, before delving into the fundamentals of e-invoicing, clarifying what it entails and what it does not. It then explores the reasons behind tax authorities' push for e-invoicing, the various implementation strategies adopted across jurisdictions and what businesses can do now to prepare for future compliance.

VAT in the Digital Age

On 5 November 2024 the EU Finance Ministers approved the ViDA package. This initiative will see transformative measures that will affect how VAT operates across the EU. ViDA aims to modernise VAT under three key pillars:

- **E-invoicing and digital reporting**: Starting from 1 July 2030, e-invoices must be issued and digitally reported for business-to-business (B2B) and business-to-government (B2G) cross-border supplies in the EU within 10 days. From 2025 Member States will no longer need a derogation to implement local requirements; however, any local requirements will need to be in line with EU standards. Existing local requirements (i.e. implemented before 2025) must conform to EU standards by 2035.
- **Platform economy**: From 1 July 2028 digital platforms for transport and accommodation will be responsible for VAT in certain scenarios. This will bring new responsibilities for platform operators across EU Member States.
- **Single VAT registration**: From 1 July 2028 the extended One-Stop Shop (OSS) regime and domestic reverse charges aim to simplify VAT compliance for non-established traders, helping businesses reduce their VAT registration footprint.

What Is an E-invoice?

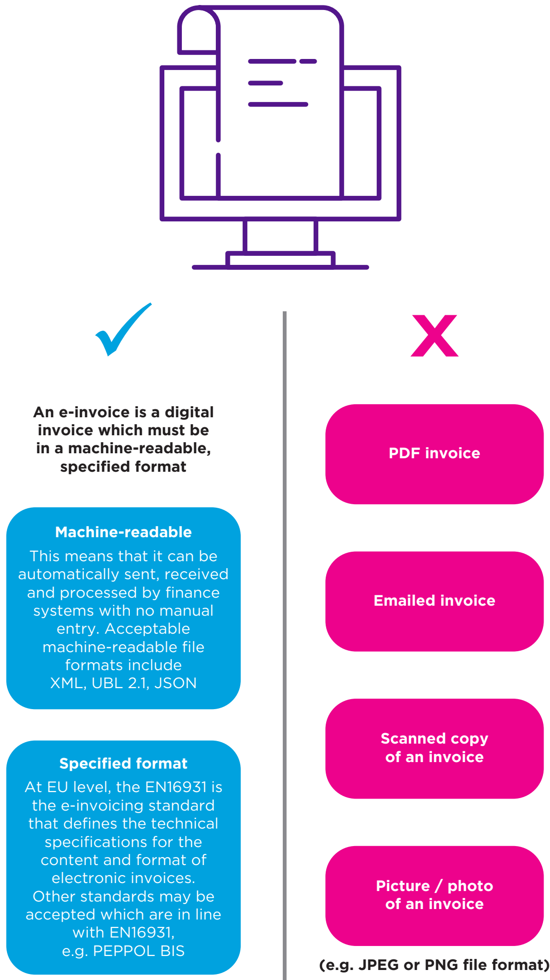

Figure 1: Requirements of an e-invoice.

EDI vs E-invoicing Today

The concept of e-invoicing has existed since the 1960s in the form of EDI (electronic data interchange), which is the method of communicating and exchanging business documents between computer systems in an electronic format, including the electronic exchange of invoices. Although this concept revolutionised the invoicing process for many industries in the decades since, the main limitation of EDI invoices was the lack of standardisation of the documents between businesses and compliance with local tax standards. With no harmonised regulation in respect of the standard content and structure of an EDI invoice, the benefits of this method of electronic invoice exchange were limited.

Government-Regulated E-invoicing

Government mandated e-invoicing was first introduced and implemented in the LATAM region, with initial adoption in Chile, Brazil, Mexico and Argentina. It was introduced to address and tighten the significant tax gap between the tax revenues expected and those ultimately collected – predominately caused by low levels of tax compliance owing to tax fraud, evasion and avoidance. By standardising and automating the invoicing process across the board – and, in doing so, ensuring that the tax authorities are a core part of the e-invoicing cycle – the tax authorities have significantly increased visibility across business transactions in the jurisdiction in near to real time. From the perspective of taxpayers, the implementation of e-invoicing also aimed to reduce the administrative accounting costs to businesses.

In the EU, the European Commission's *VAT Gap Report 2023* reported a €66bn tax gap in 2021. Given this context and the success of e-invoicing in other regions, it is clear why the EU has moved to mandate similar procedures across its jurisdictions through the implementation of the E-invoicing Directive 2014/55/EU. Currently, this Directive mandates all public/government bodies across the EU to have the ability to receive and process e-invoices since 2020. No further mandates at the EU level have been enforced; however, many Member States have implemented further e-invoicing regulations locally, with varying levels of impacts on businesses (e.g. depending on revenue thresholds, sector specifications, business type (B2G/B2B/B2C) etc.). Italy has the widest domestic adoption of e-invoicing in the EU, with mandatory e-invoicing for B2G, B2B and B2C in place since 2019. In the first year of this mandate, tax revenues increased significantly owing to increased VAT collection, input VAT fraud detection and direct tax collection.

How Does E-invoicing Work?

Models

There are a number of ways in which a jurisdiction may implement e-invoicing; some common models are outlined in Figure 2, below. Direct e-invoicing is commonly referred to as the four-corner model, made up of the supplier, the supplier's e-invoicing solution, the buyer and the buyer's e-invoicing solution. The government-mandated models are commonly termed five-corner models, and include the four corners as outlined above, with the tax authority as the final "corner".

Delivery network

The method of delivery of an e-invoice is not currently provided for by the Directive. As a result, there are practical challenges arising from the varying methods of transmission used across EU Member States. Although they are not yet mandated, the European Commission promotes the use of standardised transmission networks that use the eDelivery Building Block as the standard transmission and AS4 as the exchange protocol. PEPPOL (Pan-European Public Procurement Online) is an example of such a network that transmits e-invoices between supplier, buyer and tax authorities. It simplifies the process of sending and receiving e-invoices by ensuring that all parties adhere to a common set of specifications.

How Do Businesses Manage E-invoicing Compliance?

How best to manage e-invoicing compliance will depend on a number of business-specific factors, including the organisation's global operational footprint, its current finance systems and processes, and the capabilities of in-house resources (including tax, IT, finance). For example, if a business operates mainly domestically within Ireland, with very few cross-border transactions, the business may (depending on its system) be able to rely on its finance system to help meet its future e-invoicing and digital reporting requirements.

For more complex businesses with cross-border operations, ever-evolving e-invoicing mandates and differing rules across jurisdictions may require the help of an external software provider to handle the e-invoicing compliance in the countries in which the business operates. There are many software providers that offer e-invoicing compliance services at varying levels of coverage, efficiency and cost. Many ERP providers offer e-invoicing add-on modules to their existing platforms, whereas other service providers directly specialise in e-invoicing – there are benefits and limitations to each solution, and the specific requirements and customer base of the business will determine the appropriate option. In addition, solution providers may be required to obtain

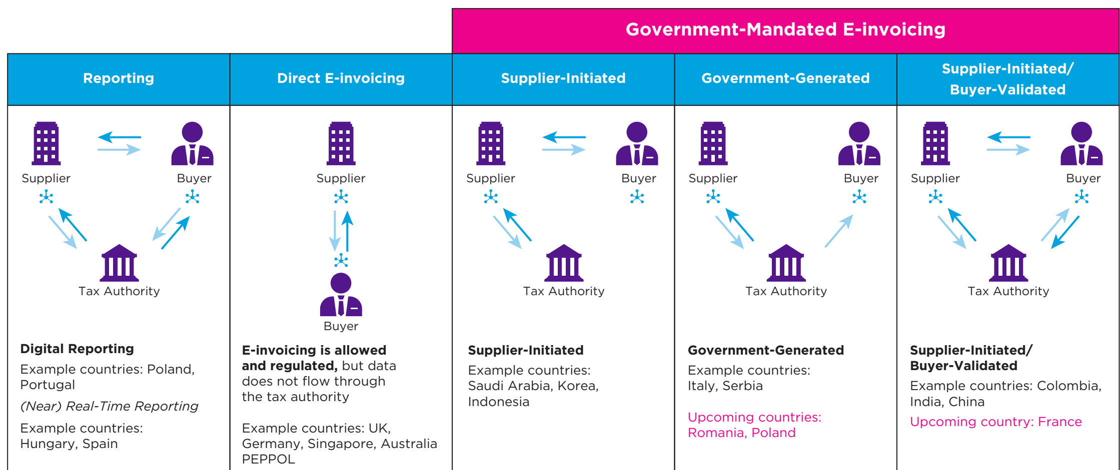

Figure 2: Different models of e-invoicing and digital reporting.

certain certificates, e.g. PEPPOL-certified service provider, or indeed may require certification in certain countries for use in those countries.

For the more complex businesses with cross-border operations, an internal review will be required across the finance, tax and IT teams before determining the e-invoicing solution that is right for the business now and going forward.

However, regardless of the size or complexity, the main challenge that all businesses will face when it comes to e-invoicing will be master data management. Where incorrect customer data, product data, tax rates etc. reside in the system, this information will likely be automatically issued on invoices to both customers and tax authorities, with limited opportunity to review and correct.

Conclusion

E-invoicing is being actively driven by tax authorities globally, and with the EU ViDA package now approved, Irish businesses will be required to comply with cross-border e-invoicing and digital reporting from 1 July 2030, with the potential for a domestic e-invoicing mandate to be implemented ahead of this date. This will impact on both customer interaction and tax authority interaction, which will have a direct impact on the operation of the business. It is therefore essential that businesses engage with this early and review how they will be able to meet these new requirements.

As a first step, businesses should start to review and update their current master data set-up to ensure accurate invoicing data from the outset.

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The Legal and Taxation Aspects of Earn-Outs: Part 1

Introduction

This is the first article of a two-part series discussing earn-out mechanisms in relation to the sale of companies in Ireland. Part 1 explains what an earn-out is and how it can help to bridge valuation differences between buyers and sellers. It also outlines the key drafting and structuring issues to be considered when negotiating an earn-out, including the relevant performance indicators; the amount, number and timing of payments; the mechanics of measuring performance; and the manner of resolving any disputes that may arise. Consideration is also given to sellers' rights and obligations (if any) during the earn-out period, as well as the potential impact of restrictions on the target's activities (if any) post completion. Part 2 will discuss the tax considerations in respect of earn-outs.

Understanding Earn-Outs

An earn-out is a mechanism used in the sale of a company's shares where part of the purchase price is determined by the post-completion performance of the target. Typically, the earn-out is based on the target's profits over specific financial periods after completion, but it can also be linked to other benchmarks, such as turnover, net assets, number of products sold or new customers gained. Although the concept is straightforward, the underlying issues can lead to complex negotiations. In particular, it is crucial for the parties to agree on the benchmarks and the methodology for calculating performance prior to closing the sale to avoid post-transaction disputes.

Earn-outs are commonly used when there is a discrepancy in the perceived value of a

company between the buyer and the sellers. Sellers may have more optimistic expectations for the company's future performance, especially if the company is at an early stage with potential for rapid growth or has an innovative product or technology. Earn-outs can help to bridge valuation differences and allow buyers with limited budgets to defer part of the purchase price. However, they also create the potential for disputes and may not be suitable if the buyer intends to integrate the target with its other businesses immediately following completion. Each party should carefully consider the advantages and disadvantages of an earn-out before agreeing to one (some of which are listed in Table 1 at the end of this article).

Structure and Negotiation of an Earn-Out

The terms governing an earn-out arrangement are usually set out in a separate schedule to the share purchase agreement (SPA) for the sale. Although the earn-out schedule should always be tailored to reflect the specific circumstances of the transaction, there are a number of key issues that will need to be addressed in all cases, such as relevant performance metrics; length of the earn-out period; timing and structure of the earn-out payments; performance measurement mechanics; the sellers' rights and obligations if they remain involved with the target's business; and any restrictions on the target's activities during the earn-out period.

Performance indicators for calculating the earn-out

Earn-outs are structured around various financial and/or operational benchmarks. Typically, these include a target's pre- or post-tax earnings, EBITDA or revenue over the earn-out period. The parties may prefer different indicators. For example, sellers often favour revenue-based metrics owing to their lesser susceptibility to manipulation by expenses, whereas buyers may oppose these (especially when the sellers will manage the target post-completion), arguing that they do not encourage cost efficiency. In contrast, buyers often advocate for net income metrics, as they account for costs and provide a more accurate reflection of performance.

Relying on financial metrics for structuring earn-outs might not be appropriate in all scenarios, particularly in the case of start-ups or businesses with emerging technologies that have little historical data to inform target setting. In such circumstances, choosing operational benchmarks such as specific product sales levels or customer acquisition numbers may be more beneficial. Operational targets also have the merit of emphasising improvements in business performance and are harder to manipulate by altering accounting practices.

The parties should agree on an earn-out performance benchmark that is clearly defined, objective, simple to quantify and aligned with the target's business activities. The parties will also try to account for the various contingencies that may affect the target's ability to achieve the earn-out targets. These can be addressed by including or excluding them (or their effects) from performance calculations. Additionally, if the buyer will be relying on the sellers to run the target during the earn-out period, it should ensure that the earn-out targets are realistically achievable, because the sellers may not be motivated if the targets seem unattainable.

Specifics and measurement of financial metrics

When an earn-out arrangement is based on a financial metric, the earn-out provisions in the SPA should clearly define that financial metric and explain how the target's performance will be assessed against it. This can involve complex accounting issues, so the parties should ensure that their accounting advisers are closely involved in this aspect of the negotiations. Some of the more contentious aspects in terms of the negotiations are considered below.

Definition of "profit"

In a profit-based earn-out, this definition is essential and will usually follow the target's prior accounting practices. It will need to be clear whether the profit is net or gross. Necessary adjustments can include bad-debt provisions.

Extraordinary items

It is usually agreed that gains or losses that are not part of the target's "normal" profits, such as one-off items or those that are not part of the core business of the company or that arise from value changes outside the target's control, will be excluded. However, specific agreement may be needed regarding the treatment of any extraordinary items, such as relocation or redundancy costs arising from the transaction. Agreement regarding any future windfall profits may also be necessary.

Synergistic benefits

One challenging aspect of earn-out negotiations is determining the treatment of any synergistic benefits arising from the acquisition, such as reduced headcount; lower property costs; enhanced purchasing power leading to cost savings on items such as insurance; lower interest rates on borrowing; and preferential terms with suppliers and customers. A buyer's starting point is usually that such benefits should be excluded in determining the profit figure for the purposes of the earn-out, as it will want to avoid paying an increased earn-out where the target's performance is solely underpinned by post-completion synergies. However, in practice, it can be difficult to quantify these benefits precisely. Sellers are generally reluctant to allow their ability to achieve the earn-out to be prejudiced by upfront costs required to achieve anticipated synergies (such as relocation or redundancy payments).

Group resources

When the target is joining a larger corporate group, the buyer may want to utilise the target's workforce or other resources to support and develop the wider group's business. Sellers may be concerned about the buyer's group using the target's resources, as this could disrupt support for the acquired business or lead to increased costs, which could reduce the earn-out. The buyer may agree to pay or credit the acquired business for the services provided on an arm's-length basis if it uses the acquired business's resources in this way.

Sale of the target by the buyer

The buyer may decide to sell all or part of the target group post-completion. If this occurs during the earn-out period, it obviously complicates the earn-out calculation. In agreeing to an earn-out, the buyer accepts that it will be somewhat restricted in what it can do with the acquired business going forward. However, the buyer is unlikely to accept a blanket veto on a subsequent sale of all or part of the business without the sellers' consent, especially if the buyer is a quoted company, owing to concerns about director responsibilities and governance issues. In practice, these potential conflicts can be mitigated by stipulating a first-refusal right for the sellers regarding any future sale, agreeing specific earn-out payments that are triggered by the consideration for the sale (normally calculated by a predetermined formula) or providing that the earn-out payments will be accelerated if all or a substantial part of the target is sold during the earn-out period.

Post-completion acquisitions

The earn-out arrangement may also need to deal with a situation where the target may acquire another company or business during the earn-out period. The sellers will be concerned with significant costs that the target may incur, such as professional fees or the cost of integrating the new company or business.

Period of the Earn-Out

In Ireland a typical earn-out period will last between one and three years, but this can vary based on several factors, including the type of performance metric used, the agreed

business plan, whether specific targets need to be met and the duration of the sellers' involvement in the business post completion. Sellers often prefer shorter earn-out periods in order to receive payments sooner and minimise exposure to the buyer's credit risk (as well as market risks generally). However, sellers who remain involved in managing the business might prefer a longer period with a view to meeting the financial targets.

Buyers generally favour shorter earn-out periods, especially if they face contractual restrictions during this time. If there are minimal post-completion restrictions, buyers might prefer a longer period to reduce the risk of payments being affected by short-term factors. A longer period can also help with cash-flow and reduce the risk of the sellers taking short-term actions that could harm the business's long-term success.

Earn-Out Payments

If the earn-out period is particularly short (12 months or less), there is usually just one earn-out payment at the end of this period. Earn-outs spanning several financial years typically involve multiple payments at agreed intervals during the earn-out period.

Various approaches can be taken to determine the amount of each earn-out payment, including specifying fixed earn-out payments payable only if specified targets are achieved. If there are multiple earn-out payments, the amount payable can increase, decrease or remain constant throughout the earn-out period. The parties can also provide for variable earn-out payments to be calculated by applying a specified multiple or percentage to the amount exceeding relevant performance targets or a specified percentage of the earn-out target (for example, of the target's profit, EBITDA or revenue in each period) or calculated according to another agreed formula.

If the earn-out payments are calculated according to a set formula, the buyer may want to cap the amount payable, whereas the sellers may try to negotiate a minimum payment. However, agreeing a maximum or minimum earn-out payment could have adverse capital gains tax implications (which will be considered in Part 2).

When there are multiple earn-out payments tied to specific targets, the parties should also decide what happens if the target fails to meet such a target in one period but makes this up in a subsequent period. Conversely, the buyer should consider what will happen if the target meets the earn-out target early on but fails in later periods. In such a case, the buyer might want to have the right to reclaim some of the earn-out payments already made. This is particularly relevant when the earn-out payments are front-loaded.

Earn-out payments are usually made in cash, but they can also be partly or wholly satisfied by issuing shares or loan notes in the buyer to the sellers (that could have certain tax implications which will be considered in Part 2).

The sellers may need to consider security for the buyer's obligations to make earn-out payments. Without security, the sellers will be left with an unsecured contractual obligation that they would have to enforce through the courts, if necessary. This is particularly concerning if the buyer is based overseas or has a questionable financial covenant. To obtain the requisite comfort, the sellers may ask the buyer to deposit cash in an escrow account to ensure that funds are available if the earn-out targets are met. Although it is unlikely that the buyer will agree to put the maximum amount of the earn-out in escrow, it may agree to deposit part of the potential payment obligation.

The sellers may request a bank guarantee instead, although this is generally unattractive to buyers as bank guarantees for lengthy periods are expensive and may need to be

cash-backed. Alternatively, sellers may require the buyer to grant a security interest over its assets or the target to secure the buyer's obligations. If the buyer is a subsidiary of a larger company, the sellers may require its parent to guarantee the buyer's obligation to make the earn-out payments. This is particularly important if the buyer is a company established for the acquisition.

Earn-Out Accounts and Dispute Resolution Mechanism

The parties should document the mechanics for calculating and finalising the earn-out and agree on a procedure for resolving any disputes in the earn-out schedule of the SPA.

If the earn-out is based on a financial metric, it needs to rely on a set of accounts. Typically, earn-outs calculated by reference to the target's profits after completion use the target group's audited accounts for this purpose. However, the parties may require special-purpose accounts to be prepared for the purpose of operating the earn-out. This may be necessary where the measurement periods during the earn-out do not coincide with the target's financial year. If special-purpose accounts are required, the SPA should set out the procedure for preparing those accounts.

The parties should also consider the accounting framework and policies to be applied when drawing up the earn-out accounts. This is particularly important if special-purpose accounts need to be prepared, as otherwise there would be no over-arching rules governing their preparation. If the target's annual financial statements underpin the calculations, the accounting framework and policies used to draw up the accounts will still be a factor for the parties to consider as a change in accounting approach during the earn-out could impact the earn-out amount payable.

If the calculation will be based on the target's audited annual financial statements, it is common to agree that once the accounts have been finalised, the buyer's auditors will prepare a draft certificate stating what the earn-out payment is for a particular period based on those accounts. The buyer may accept a contractual obligation to send the draft certificate to the sellers within a specified number of days after the end of the relevant accounting period. The party preparing the draft certificate will need to take care to ensure that it complies with the substantive requirements of the SPA, as failure to do so could be fatal to the validity of the certificate and may cause the preparing party to be in breach of its obligations under the SPA.

Once the buyer (or its auditors) serves a draft certificate detailing its earn-out calculation, the sellers and their advisers can comment on it. If they fail to comment within a specified period, it is usually deemed accepted. Sellers can typically expect access to relevant information and may request the auditors' working papers, with the auditors likely requiring indemnities before granting this access.

If the parties fail to agree the amount of the earn-out, the SPA will typically provide for the dispute to be referred for expert determination by an independent accountant selected by the parties (or, in the absence of such agreement, nominated by a specified appointing authority, such as a person appropriately qualified with sufficient senior standing or the head of a relevant professional body). Where this type of dispute resolution procedure is adopted, the SPA should also address the scope of the independent accountant's remit; the procedure that the independent accountant should follow in making their determination and the timeframe for delivery; the status of the independent accountant's determination and any basis on which it can be challenged; and the allocation of the independent accountant's fees between the parties.

Post-Completion Operation of the Target

As the sellers' right to receive the earn-out payments depends on the target's performance after completion, they are vulnerable to any post-completion actions by the buyer that affect the earn-out. Therefore, sellers will typically seek to negotiate contractual protections for the duration of the earn-out that oblige the buyer to carry on the target's business in the ordinary course and prevent it from making material changes to the business. Sellers may also require the buyer to provide a specified level of support to the target during the earn-out to facilitate the achievement of the earn-out targets, or to maximise the amount of the earn-out payments. If the sellers will not be employees of the target or otherwise involved in the business after completion, the negotiated contractual protections regarding the buyer's conduct during the earn-out are particularly important. The buyer will typically aim to limit its obligations and retain the right to protect its investment, which can create tension when structuring and negotiating this aspect of the earn-out.

The types of contractual protections that sellers will commonly seek include undertakings from the buyer not to make any material changes to the business without the sellers' consent and to ensure that the business is conducted on arm's-length commercial terms. The sellers may also seek a broad undertaking that the buyer will not intentionally reduce or distort the earn-out amount. This is crucial for sellers as it is difficult to predict all potential manipulations of the earn-out. Generally, buyers may find it reasonable to agree to such a provision aimed at preventing deliberate avoidance of earn-out payments.

Sellers will also often seek to impose an obligation on the buyer to procure that no member of the group of which the buyer is a member competes with the target during the earn-out period and to ensure that there are restrictions on management fees (and other intra-group charges) and interest payments on intra-group borrowings. This is clearly an area where a buyer could manipulate the profits of the target without diverting cash from the buyer's group.

Alternatively, the sellers might seek an undertaking from the buyer to use all of its reasonable endeavours to maximise the target's profits and make available sufficient resources to ensure that the target can operate effectively, or an undertaking to maintain the target as a separate business unit.

The sellers may also seek to restrict the target's capital expenditure during the earn-out period and will not usually want the business to incur significant capex or research and development costs if the benefit of the expenditure will be felt only towards the end of, or after, the earn-out period.

Sellers often seek to extend the buyer's post-completion commitments, similar to those normally required by private equity investors or minority shareholders. This may include veto rights over major decisions, such as altering the target's constitution; winding up; changing the accounting date or practices; incurring debt; paying dividends; or hiring and firing key employees. Buyers usually resist such restrictions, but agreeing on a detailed business plan for the earn-out period upfront may help to mitigate these concerns.

If the sellers remain in senior management roles after completion and trust that they will retain significant autonomy, they might focus less on imposing restrictions on the buyer. Instead, they would prioritise securing their employment throughout the earn-out period and addressing the implications if they are removed.

If the sellers continue to have operational control of the target's business during the

earn-out period, the buyer may seek "reverse" protections to ensure that it can prevent the sellers from acting in an opportunistic manner to maximise the earn-out at the expense of the long-term prospects of the business.

Continued Involvement of Sellers

Where the sellers continue to be employees of the target or otherwise involved in the business, an earn-out can motivate them to maximise its success after completion. Securing the sellers' post-completion involvement is a vital consideration in a "people" business, where a significant part of the target's value is linked to its employees' skills. These arrangements can, however, give rise to further issues around negotiations.

From the buyer's perspective, its main interest is usually to ensure that sellers are tied in for a sufficient period, have an agreed benefits package and are restricted from competing for a period after ceasing to be an employee/director of the target. The parties will usually negotiate new employment or consultancy agreements that are then put in place at completion. In practice, post-termination covenants are addressed through the SPA as the courts are more likely to uphold them.

Ensuring that the sellers stay throughout the earn-out period can be challenging for buyers. This issue can be addressed by the notice period in the employment contract/consultancy agreement, although a seller who intends to leave may not perform as effectively. Buyers will often seek to link earn-out payments to the sellers' continued involvement (although such linkage will need to be carefully considered from a tax perspective). This will necessitate the parties defining the circumstances where leaving results in a reduced earn-out, which often leads to a debate about what constitutes a "bad leaver" and a "good leaver". Dismissal for dishonesty and material breach are clear bad-leaver scenarios, but employees can also leave due to death, incapacity, constructive dismissal, redundancy or notice from the target for commercial reasons.
A seller may seek earn-out acceleration if they are a good leaver during the earn-out period, although buyers often resist this, especially where multiple sellers are staying on.

Conclusion

Earn-outs have become increasingly prevalent in the Irish market in recent years, especially for mid-market M&A deals. They help to bridge valuation differences between buyers and sellers, particularly when there is a discrepancy in the perceived value of a company. Earn-outs also allow buyers to defer part of the purchase price, which can be beneficial for those with limited budgets. They also motivate sellers to stay on after completion and maximise the business's profitability.

In the current market, where buyers have more leverage, earn-outs are particularly useful. They allow buyers to mitigate risk by linking part of the payment to the business achieving specific performance targets after acquisition. This ensures that the buyer pays the full price only if the business performs as expected. However, they can be costly and difficult to negotiate, and there is always the potential for disputes to arise after completion. Furthermore, an earn-out may not be feasible or suitable if the buyer intends to integrate the target with its other businesses immediately after completion. In such cases, alternatives to an earn-out arrangement can be considered, including fixed deferred payments (which provide certainty but do not account for the target's future performance) and performance-based bonuses (which can be simpler to negotiate but may not fully align the interests of buyers and sellers).

Table 1: Advantages and disadvantages of an earn-out for buyers and sellers.

	Advantages	Disadvantages
Buyer	• Ensures accurate valuation of the target based on actual future performance and therefore serves as protection against overpaying • Cash-flow benefits from deferred payment • Apportions risk as the buyer and sellers share the potential risks and rewards of the target's future performance • Motivates the sellers to stay on after completion and maximise the business's profitability	• Potential for disputes regarding how to measure performance against financial targets • Constraints on what the buyer can do with the business during the earn-out period • Mistrust can develop if the sellers perceive that the buyer is taking actions after acquisition limiting the consideration it is bound to pay • Factors unrelated to the target's performance or intrinsic value can cause fluctuations in profitability after completion that can be difficult to exclude from earn-out calculation (e.g. the buyer may make changes to its business plan after completion that causes it to achieve earn-out targets it may not otherwise have achieved) • Earn-outs can encourage short-termism and be damaging to the target's long-term prospects • The required post-completion performance monitoring of the target can be a costly distraction • Negotiating and drafting earn-out provisions can prove difficult, time-consuming and costly
Sellers	• Potential to reap the full benefit of selling a profitable business without discounting the purchase price • Synergistic advantages of being part of a larger corporate group	• Potential for disputes regarding how to measure performance against financial targets • Mistrust can develop if the buyer perceives that the sellers are taking short-term actions that could harm the business's long-term success • Factors unrelated to the target's performance or intrinsic value can cause fluctuations in profitability after completion that can be difficult to exclude from earn-out calculation (e.g. an economic downturn might result in the target's failing to achieve targets it would have achieved otherwise) • The buyer may take actions after completion to limit the consideration it is bound to pay • Negotiating and drafting earn-out provisions can prove difficult, time-consuming and costly

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Trading Losses and Charges on Income: The Different Avenues to Tax Relief

Introduction

The Corporation Tax Act was introduced in Ireland in 1976, and s16 of that Act provided for relief for trading losses. The relief has evolved, most notably in 2001, when the concept of "relevant trading losses" was introduced in a new s396A Taxes Consolidation Act 1997 and rules for surrendering such losses by means of group relief were established, and again in 2003, when specific time limits for claiming relief for a "relevant trading loss" were introduced. Further changes were made in 2023 to the definition of a "relevant trading loss". However, the original premise continues: companies that incur a loss in their trade may utilise that loss in the current year, carry it back to the previous year or carry it forward to the next year.

In my experience what commonly requires pause for thought is; the order of claiming the various reliefs for trading losses, how these reliefs interact with the relief available for trade and non-trade charges, and what claims, if any, are required to be made and when. A company has some flexibility in how it can utilise relief for its trading losses and charges, and it is possible to maximise the reliefs available, but it is vital that the conditions and restrictions are carefully considered, and all the time limits adhered to.

In this article I recap on the order of corporation tax loss relief for losses incurred in a trade. I also cover relief available for charges (trade and non-trade). A detailed analysis of group relief for trading losses is outside the

scope of this article, but group relief will be mentioned where relevant for completeness.

When Does a Company Have a Trading Loss?

For tax purposes, we are concerned with the tax-adjusted profit or loss of the company that is derived from the company's accounting profit or loss, as adjusted in accordance with the rules laid out in the Taxes Consolidation Act 1997 (TCA 1997; all legislative references hereafter are to TCA 1997 unless otherwise stated). Generally, if a company does not have a tax-adjusted profit, it will have a tax-adjusted loss. Relief for that loss may be available under the rules contained in Part 12, Chapter 3, TCA 1997.

Relief Available for Trading Losses

A trading company is entitled to claim relief for trading losses incurred. Relief depends on whether the loss is:

- a trading loss: relief available under s396; or
- a "relevant trading loss": relief available under ss396A and 396B.

Companies can also claim terminal loss relief for a loss incurred in the last 12 months of a trade under s397).

Loss Relief for Trading Losses Other Than a Relevant Trading Loss

Relief for a trading loss that is not a "relevant trading loss" is contained in s396. Other than for certain life assurance companies, a trading loss is computed in the same way as trading income (s396(5)). Since Finance Act 2001 (s90), a loss incurred in a trade that is subject to the 12.5% rate of corporation tax, i.e. trades or professions, is dealt with under s396A (see below). However, if the company is carrying on an excepted trade – that is, a trade of dealing in or developing land, working minerals and petroleum activities – then s396 applies.

Section 396 relief can be set sideways in the current accounting period against total profits and gains before charges on income (see below for commentary on the treatment of charges) (s396(2)). If the company was carrying on the trade in the preceding accounting period, the loss can be set backwards against total profits and gains before charges on income in this prior accounting period (s396(2) and s243(2)). A loss can be set back only against an accounting period or periods ending within the time of similar length to that in which the loss arises.

Claims are not automatically granted to the company; a claim must be made within two years of the end of the accounting period in which the trading loss was incurred. Where claims are not made within the two-year period, the trading loss can only be carried forward to shelter future profits of the same trade (s396(1)).

Relevant Trading Loss

Section 396A provides for the concepts of "relevant trading income" and "relevant trading loss", which are specifically defined. Relevant trading income takes its meaning from s243A, which defines it as "trading income of the company for the accounting period (not being income chargeable to tax under Case III of Schedule D) other than so much of that income as is income of an 'excepted trade' within the meaning of section 21A". Generally, this is Irish trading income taxable at the 12.5% rate of corporation tax. A relevant trading loss is a loss incurred in the accounting period in a trade carried on by the company, other than a loss on an excepted trade.

Relevant trading losses are ring-fenced so that the loss can only be set against only:

- relevant trading income;
- income of a trade of non-life insurance, reinsurance and certain life business; and

- foreign dividend income that is chargeable at the 12.5% rate under s21B (i.e. from trading sources).

The loss can be set against the above income sources in the current accounting period first. If the company was carrying on the trade in the preceding accounting period, the loss can be set back against the income arising in the immediately preceding accounting period or periods ending within the time of equal length to that in which the loss arises (s396A(3)).

A company "may make a claim" for its "relevant trading loss"; it is not required to do so, although irrespective of whether a claim is made, it will be treated as having been made for the purpose of the value-based relief, covered below. Such a claim must be made within two years from the end of the accounting period in which the loss is incurred (s396A(5)).

Relevant Trading Loss – Value-Based Relief

Value-based relief (s396B(3)) converts the remaining relevant trading loss after all claims have been made, or as if all claims that could have been made were made, under s396A(3) from an allowance to a credit to be used against "relevant corporation tax" in the period in which the loss was incurred or carried back against the corporation tax liability of the prior period(s).

Relevant corporation tax (s396B(1) is the tax liability before credits and income tax deducted from receipts and payments (ss239 and 241), value-based group relief (s420B) and close company surcharges (ss440 and 441). If the company carries on a life business, then any corporation tax attributable to policy-holder profits is excluded.

It is not possible to increase a claim for value-based relief by not claiming a relevant trading loss as an allowance, i.e. an s396A claim.

Therefore, the value-based claim is restricted to an amount remaining as if a claim under s396A were made, i.e. the excess.

The main rules are:

- Value-based relief will be the standard rate of corporation tax in the year the loss arose (i.e. currently 12.5%) multiplied by the excess "relevant trading loss".
- The relevant corporation tax for the current accounting period is reduced by the value-based relief.
- If after relief in the current accounting period there is an amount left over, and the trade in which the loss is incurred was carried on in the prior period, relief can be set back against relevant corporation tax in the immediately preceding accounting period that is equal in length to the accounting period in which the loss arose (similar to s396A).

A company "may claim" value-based relief, and it must do so within two years of the end of the accounting period in which the loss arises (s396B(6)).

Trading Losses Carried Forward

Any trading loss (i.e. a "relevant trading loss" or a loss in an excepted trade) that cannot be fully used in the current accounting period or carried back against the preceding period can be carried forward to future accounting periods and claimed against the first available profits of the same trade (s396(1)). It is important to note that if there has been any change in the nature or conduct of a trade, analysing the facts of the case will be required to determine if it is the same trade.

There are special rules to determine the amount of the loss that is treated as having been used by the company and therefore available to carry forward (s396B(5)). If the company claimed value-based relief and also

non-trade charges, these rules will have to be considered. (See below for further discussion of these rules.)

A company does not have a time limit on claiming losses forward; however, losses must be used in the first subsequent accounting period for which there are profits of the same trade.

Charges

Treatment of charges in the calculation of corporation tax

Charges paid out of profits that are subject to corporation tax are deductible against total profits after any other relief from corporation tax, which includes relief for trading losses, but before group relief under s420 (s243(2)).

However, and similar to the position for a trading loss and a "relevant trading loss", charges incurred in a trade the profits of which are taxable at the standard rate of corporation tax, i.e. 12.5%, are called "relevant trading charges on income", and the available deduction is ring-fenced (covered below).

Trade charges, other than "relevant trading charges", are essentially those incurred in the course of an excepted trade.

Interest qualifying for relief under s247 is the most common example of a non-trade charge. However, interest paid on a loan to an investing company where the money has been applied in lending to a company and that money is used wholly and exclusively for the purposes of the company's trade, or that of a connected company, is treated as "relevant trading charges on income". This is an important distinction, particularly as excess non-trade charges must be used in the accounting period in which they are paid.

Non-trade charges cannot be carried back to the preceding period, nor can they be carried forward (unlike trade charges, which can be carried forward, s396(7)), in a trading company; however, certain rules exist for investment companies under s83. Excess non-trade charges paid in an accounting period may be lost unless they can be surrendered and claimed by another group company (s420(6)) in the same period. There is an exception for investment companies if the non-trade charges are treated as management expenses under s83.

Impact of non-trade charges on trading losses forward

The legislation contains specific rules (s396B(5)) that apply to determine the amount of losses that are regarded as used and consequently impact the amount available to carry forward. These rules are relevant only if the company has claimed relief for non-trade charges. Charges incurred for an excepted trade are not impacted.

Treatment of relevant trade charges on corporation tax

"Relevant trading charges on income" means charges on income that are paid wholly and exclusively for the purposes of a trade (other than payments for the purposes of an excepted trade, which is taxable at 25%) (s243A(1)).

Relevant trading charges on income are ring-fenced so that they can be offset only against income taxable at the 12.5% rate of corporation tax. The three sources of income (similar to "relevant trading losses") are:

- relevant trading income;
- income of a trade of non-life insurance, reinsurance and certain life business; and
- foreign dividend income that is chargeable at the 12.5% rate under s21B (i.e. from trading sources).

Relevant trading charges are deductible only against these three income sources "as reduced

by any amount set off against that income under s 396A", i.e. after a "relevant trading loss" is deducted.

Where there is an excess of the amount allowed as a deduction, the company may make a claim that the excess be relieved on a value basis by way of a reduction in relevant corporation tax (s243B).

Relevant corporation tax has broadly the same meaning as set out above for loss relief on a value basis (apart from the provision for life businesses). There is a specific formula in the legislation that essentially requires applying the 12.5% rate of corporation tax to the excess relevant trading charges and reducing the corporation tax for the accounting period by this amount.

Where there is an amount of relevant trading charges that remains unused after relief on a value basis, that amount is treated as trading expenses and can be carried forward on that basis. The excess amount of the charges, or, if less, the charges which were made wholly and exclusively for the purposes of the company's trade, are treated as trading expenses for the purpose of computing a loss that may be carried forward under s396(1) and set off against trading income of future accounting periods.

Unlike a "relevant trading loss", that can be carried back to the preceding accounting period of equal length either as an allowance or on a value basis, relief for "relevant trading charges" is available only in the current accounting period or to be carried forward, as above.

Conclusion

Understanding the order of using losses and charges and the distinctions between trading losses and relevant trading losses and between charges and relevant trading charges is essential to ensure that the company maximises the tax relief available to it. It is also crucial that consideration is given to the impact of making a claim for one relief on the amount or availability of another relief, either in the current period or in subsequent periods. Even if a loss relief is not claimed, it may impact on the amount available under another relief, e.g. s396B value-based relief. The interaction of the reliefs covered in this article with the group relief provisions (outside the scope of this article) provides additional flexibility in utilising losses and charges but also adds another layer of importance to the conditions and time limits.

Companies that are experiencing reoccurring periods of overall loss might need to consider surrendering their losses to a group company so that relief can be claimed within the group, rather than holding out to utilise the loss at some point in the future.

A company is not required to claim a relief i.e. s396A, but loss relief forward must be claimed in the first available period for which there are profits.

Tracking losses and charges used or deemed to have been used is vital to ensure that all reliefs are maximised. The "loss memo" is an important record for both correctly utilising relief available and supporting the response to any Revenue enquiries into claims made or not made.

Summary

The table below summarises the order of offset for trading losses and charges for a trading company taxable at the 12.5% rate of corporation tax. Note that group relief provisions are not considered.

Table 1: Order of offset for trading losses and charges for a trading company.

Section of TCA 1997	Use of loss/charge
Section 396(1)	Utilise losses brought forward from a preceding accounting period
Section 396A	Relevant trading losses against relevant trading income in the current period
Section 396A	Relevant trading losses against relevant trading income in the preceding period of equal length
Section 243A	Allowance against current-year relevant trading income
Section 243	Non-trade charges (after all other reliefs except relief under s420)[b]
Section 243B	Credit against other relevant corporation tax on other income and gains in the current year[c]
Section 396B[a]	Excess relevant trading loss after all claims have been made, or as if all claims that that could have been made were made, under s396A in the current period on a value basis
Section 396B	Excess relevant trading loss carried back to the preceding period of equal length on a value basis
Section 396(1)	Carry forward to subsequent periods against income of the same trade[d]

[a] Section 396B(2): "Where the amount of a relevant trading loss incurred by a company in an accounting period exceeds the amounts that could, if a claim had been made, have been set off in respect of that loss against income of the company (under section 396A) then the company can claim relief in respect of the excess." Note that the value-based claim is restricted to an amount as if a claim under s396A(3) were made or after an amount is claimed under s396A(3). It is not necessary that an s396A claim is made first, just that the amount that could have been claimed is considered.

[b] A company that has excess non-trade charges should consider surrendering to a group company; otherwise, any relief available may be lost.

[c] After s243A and s243B, any excess relevant trade charge left can be surrendered to a group company or treated as a deductible trade expense (s396(7)).

[d] The amount of losses forward is subject to special rules where relief for non-trade charges paid has been claimed in the period.

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The *Susquehanna* Case: A High Court Reversal

Introduction

In a recent development the High Court has overturned the Tax Appeals Commission's (TAC) decision in the *Susquehanna* case, a landmark case concerning group relief under s411 of the Taxes Consolidation Act 1997 (TCA 1997). This article follows up on my previous analysis (Martin Phelan and Patricia McCarvill, "The *Susquehanna* Case – Group Relief s411 TCA 1997", *Irish Tax Review*, Issue 2 of 2021).

Background

The *Susquehanna* case revolves around the entitlement to group relief for losses incurred by Susquehanna International Group Ltd and its subsidiaries, Susquehanna International Securities Limited and Susquehanna Atlantic Limited. The Revenue Commissioners had denied the group's claims for group relief on €46.6m of losses for the years 2010, 2011 and 2012, arguing that the parent company, Susquehanna International Holdings LLC (SIH LLC), was not a company for Irish tax purposes and was not resident in the US for tax purposes owing to its treatment as a fiscally transparent entity under US tax law.

High Court Judgment

The High Court judgment in *Revenue Commissioners v Susquehanna International & Ors* [2024] IEHC 569, delivered by Mr Justice Brian O'Moore on 2 October 2024, addressed two primary questions:

- Does the fiscally transparent status of SIH LLC deprive it of the ability to rely on the anti-discrimination provisions of the double taxation agreement (DTA) between Ireland and the US?
- Independently of the DTA, does the fiscally transparent nature of SIH LLC mean that the taxpayers are not entitled to group relief under s411 TCA 1997?

Key Points Considered by the High Court

The High Court's analysis focused on the following points:

- **Fiscally transparent status**: The court examined whether SIH LLC's status as a fiscally transparent entity under US tax law affected its ability to claim group relief. Revenue argued that this status meant that the anti-discrimination provisions of the DTA did not apply and that the taxpayers had not established any discrimination within the meaning of Article 25 of the DTA.
- **Residence for tax purposes**: The court considered whether SIH LLC was a resident of the US for tax purposes. The TAC had concluded that SIH LLC was resident in the US based on a purposive interpretation of the DTA, despite its fiscally transparent status.
- **Interpretation of the DTA**: The court referred to the Vienna Convention on the Law of Treaties and relevant case law to determine the proper interpretation of the DTA. It emphasised the need for a literal interpretation of Article 4 of the DTA, which defines a resident of a contracting state as any person liable to tax in that state by reason of domicile, residence, place of management, place of incorporation or any other similar criterion.

High Court's Findings

- The High Court found that the TAC had erred in its interpretation and application of the law:
- **Literal interpretation**: The court held at paragraph 54 of the judgment that SIH LLC was not liable to tax in the US under the laws of that state, as it was treated as a disregarded entity for federal income tax purposes. Therefore, it did not meet the definition of a resident of a contracting state under Article 4 of the DTA.
- **Anti-discrimination provisions**: The court concluded at paragraph 73 of the judgment that the anti-discrimination provisions of the DTA did not apply to SIH LLC owing to its fiscally transparent status. The court emphasised that the DTA's purpose was to avoid double taxation and prevent fiscal evasion, not to extend treaty benefits to entities not liable to tax in their home jurisdiction.
- **Group relief entitlement**: The court determined that the taxpayers were not entitled to group relief under s411 TCA 1997, as SIH LLC was not a resident of the US for tax purposes. At paragraph 31 of the judgment the court noted that the TAC's purposive interpretation of the DTA was inconsistent with the literal interpretation required by the DTA.

Company for Irish Tax Purposes

The High Court did not specifically address whether SIH LLC is a company for Irish tax purposes. It appears that the court found it unnecessary to address this point, possibly because it had already concluded that SIH LLC did not meet the definition of a resident of a contracting state under the DTA.

Conclusion

The High Court's decision in the *Susquehanna* case underscores the importance of adhering to the literal interpretation of tax treaties and the limitations of extending treaty benefits to fiscally transparent entities. This judgment serves as a reminder that the primary purpose of tax treaties is to avoid double taxation and prevent fiscal evasion, rather than to provide

tax benefits to entities that are not liable to tax in their home jurisdiction.

As anticipated in my previous article, the High Court did not follow the logic of the TAC, reaffirming the need for a strict interpretation of tax laws and treaties. This decision will have implications for future cases involving group relief and the interpretation of tax treaties in Ireland. The High Court's decision also highlights the complexity of determining the tax status of entities such as SIH LLC and provides valuable guidance on the interpretation of tax treaties in such cases. Unfortunately, the High Court did not address whether SIH LLC is a company for Irish tax purposes, which suggests that this issue may require further clarification in future cases, as we now know that Revenue's view is that an LLC that is treated as a partnership for US tax purposes it is not a company for Irish tax purposes. This may have wider implications in other areas, such as participation exemption eligibility.

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Interest Limitation Rules: Treatment of Carry- Forwards and Potential Future Changes

Introduction

The deductibility of interest in Irish tax law has always been an area of focus for taxpayers and advisers, alike, with complex and nuanced rules applying subject to a range of conditions. Whether they are allowable as a trading expense, as a charge on income or as a rental expense, a core question for taxpayers has always been the correct treatment of interest expenses. The interest limitation rules (ILR) are another strand in the already complex area of interest deductibility. As 2024 comes to a close, it is worth considering how have the ILR changed since their introduction, and what are the areas of focus for companies subject to the ILR in future accounting periods?

Background

Contained in Part 35D of the Taxes Consolidation Act 1997 (TCA 1997) and with effect for accounting periods commencing on or after 1 January 2022, the ILR transpose provisions of the Anti-Tax Avoidance Directive 2016/1164 of 12 July 2016 (ATAD 1), designed to limit an entity's ability to deduct net borrowing costs in a given year to a maximum of 30% of earnings before interest, tax, depreciation and amortisation (EBITDA). The rules as transposed into Irish law allow the operation of an equity ratio rule to permit full relief for net borrowing costs where specific conditions are met. Alternatively, the group ratio rule may be availed of to increase the allowable percentage

of EBITDA beyond the set 30% where certain conditions are met. The rules also permit for exemptions and exclusions from the operation of the ILR, including but not limited to, a *de minimus* threshold for net borrowing costs below €3m and an exclusion for standalone entities and legacy debt interest costs.

Although the scope of the rules and the steps to identify and quantify a potential interest restriction, along with key exemptions and exclusions, were previously addressed by this author (Emma Arlow, "Interest Limitation Rules: Key Provisions and Areas To Watch", *Irish Tax Review*, Issue 1, 2022), the rules have been subject to amendment since their introduction.

Amendments to the ILR Since Introduction

Section 39 of Finance Act 2022 (FA 2022) provided for a range of amendments to the ILR, both to expand on specific areas, and to give effect to the intended operation of the provisions. A core amendment to the definition of "interest equivalent" in FA 2022 means that interest treated as a charge (s247 TCA 1997 interest) and claimed as group relief retains its character as interest and must be taken into account in assessing the impact of the ILR for the claimant company. The definition of interest equivalent was further expanded to include amounts treated as expenses of management carried forward from prior years (s83(3) TCA 1997 refers). Further amendments addressed areas of the ILR such as the assessment of the relevant profit or loss, the legacy debt exclusion, the group and equity ratio rules and preliminary tax, to name but a few. Although the scope of this article is not to examine these particular changes in detail, they highlight the point that the world of tax stands still for no one.

Treatment of Tax Attributes Arising – Deemed Borrowing Costs and Spare Capacity in Later Years

On the introduction of the ILR into Irish law the initial focus for many taxpayers was on the operation of the restriction in a current accounting period and identifying any restriction on deductibility (or, alternatively, quantifying any spare capacity arising). Although this will always remain an area of concern, as the ILR beds further into Irish law the issue of carried-forward amounts and the treatment of previously disallowed interest deductions will become an area of attention, as taxpayers look to get to grips with how best to track tax attributes and how to use them in later years. This becomes even more pressing in the context of group reorganisations where companies leave a group carrying previously disallowed amounts with them and the impact of this on the tax charge in later years. The treatment of amounts carried forward to later years falls into two categories:

- treatment of carried disallowable amounts; and
- treatment of carried total spare capacity.

Carry-forward of disallowable amounts

Article 4(6) of ATAD 1 provides that the Member State of the taxpayer may provide for rules allowing the carry-forward of exceeding borrowing costs that cannot be deducted in the current tax period. Such exceeding borrowing costs may be carried forward to later years without time limitation, a provision that is reflected in Irish law. Section 835AAD TCA 1997 permits a relevant entity to carry forward a disallowable amount to later accounting periods indefinitely. Carried-forward disallowable amounts, for the purposes of the carry-forward provisions, are referred to as a "deemed borrowing cost". On the face of it, this would appear a relatively simple concept, and one would expect that tracking such carried attributes should be an easy task for taxpayers and their advisers involved in the compliance process. However, the treatment of deemed borrowing costs in later years is subject to some complexity, as the manner in which these costs are treated in later years depends on a number of factors, including:

- whether the relevant entity is a company that is in a tax-payable position,

- whether the relevant entity is a company that is in a loss-making position and
- whether the relevant entity is an investment company with expenses of management.

In determining the treatment of deemed borrowing costs in later years, it is crucial for taxpayers to understand which of the above categories a relevant entity falls into for year in which the disallowable amount arose. Section 835AAD TCA 1997, as a section, is lengthy but can be split into "scenarios" to assist in understanding how the specific rules operate.

Under the first scenario, the disallowable amount that arises would have (but for the ILR) reduced the tax payable by the relevant entity. Therefore, it applies for relevant entities in a profitable or tax-paying position for that year. In such cases the deemed borrowing cost may be deducted in a future accounting period where a relevant entity makes a claim. The deemed borrowing cost may be deducted from the relevant entity's total profits or chargeable gains arising in a subsequent accounting period. Alternatively, the deemed borrowing cost may be used to create a loss or excess in a later accounting period. Relief is given in the latter case in line with existing loss carry-forward provisions contained in s31, s396(1) or s399 TCA 1997 and is treated as being subject to s397, s400 and s401 TCA 1997. A crucial point is that deemed borrowing costs, having their origin in disallowable amounts arising in a given year, are value based to account for income and gains being taxed at differing rates, i.e. 12.5%, 25% and 33%. To deduct the deemed borrowing costs from the income and gains of the relevant entity on a correct "euro for euro" basis, the value basing applied to the deemed borrowing costs must be reversed where amounts are set against amounts taxed at rates in excess of 12.5% – the mechanism for achieving this is contained in s835AAD(5–6) TCA 1997.

Under the second scenario, the disallowable amount that arises would have (but for the ILR) resulted in the relevant entity incurring a loss (or a greater loss) or offsetting a lower amount of the loss or excess against its income under s396(1), s399(1) or s399(2) TCA 1997 than would otherwise have been offset. It therefore applies to companies in a loss-making position, and where this applies the relevant entity's deemed borrowing cost is treated as a loss or excess incurred in the first accounting period. Relief for that loss is given in line with existing loss carry-forward provisions in s31, s396(1) and s399 TCA 1997 and is treated as being subject to s397, s400 and s401 TCA 1997. The effect of this section is to treat the deemed borrowing cost as forming part of losses forward. As in the case of companies in a profitable or tax-paying position, the value basing applied to the deemed borrowing costs must be reversed to take into account the differing rates of tax (i.e. 12.5%, 25% or 33%) that may be relieved by the use of the losses forward in later years (s835AAD(9) and (10) TCA 1997 refer).

Last, the third scenario applies to investment companies under s83 TCA 1997, where the disallowable amount would have (but for the ILR) resulted in an excess of expenses of management or a greater excess than would have been incurred. This would arise, *inter alia*, in the context of s247 TCA 1997 interest incurred by an investment company. Where an investment company has a disallowable amount arising in a given year, the deemed borrowing cost is treated as if it had been disbursed as expenses of management in the first accounting period. This means that the deemed borrowing cost is treated as akin to an expense of management carried forward to later accounting periods. As with the previous two scenarios, the value basing applied to the deemed borrowing costs must be reversed (s835AAD(13–14) TCA 1997 refer).

Although each of the aforementioned three scenarios has its own specific rules governing the use of deemed borrowing cost, the aggregate of any deemed borrowing cost used is limited to the total spare capacity for the period (meaning the combined amount of interest spare capacity and limitation spare capacity arising). Deemed borrowing costs are not taken into account in applying the ILR

in later years; this ensures that the ILR always operates on a year-by-year basis and attaches only to net interest expenses in the actual accounting period in question.

A special point to note with respect to the carry-forward provisions arises in the context of relief claimed under s291A TCA 1997. Specifically, no relief for deemed borrowing cost is available where it arises from a disallowable amount that reduced the interest relief available in connection with a specified intangible asset. Instead, to avail of relief for the disallowable amount in later accounting periods, the relevant entity is required to look to s291A(6) TCA 1997. This section provides that interest restricted is to be carried forward and treated as relievable interest in the next accounting period.

The differing rules on and treatment of deemed borrowing costs in the three scenarios outlined above are of note particularly for taxpayers and advisers in managing yearly compliance. Although the quantum of any disallowable amount is identified in a formulaic manner and deemed borrowing costs can be easily tracked in the same manner as tax losses or any other attribute, it is essential for taxpayers to ensure that they are also tracking which of the three scenarios gives rise to the deemed borrowing cost in the first place, as this will determine the mechanism by which relief may be claimed in a later period. Appropriately and accurately categorising the deemed borrowing cost under s835AAD TCA 1997 is required to ensure that the amounts are subject to the correct rules in later years. This likely represents an additional step as part of the yearly compliance process to ensure that amounts carried forward are treated correctly in later years, but it is a necessary step to avoid headaches in future years where a taxpayer may look to claim relief.

Carry-forward of total spare capacity

Article 4(6)(c) of ATAD 1 provides that the Member State of the taxpayer may provide rules for the carry-forward of unused interest capacity for a maximum of five years. The ability to carry forward total spare capacity (the aggregate of interest spare capacity and limitation spare capacity) is legislated for in s835AAE TCA 1997. As a general rule, a relevant entity may carry forward total spare capacity for a period not exceeding 60 months (five years) from the end of the accounting period in which the total spare capacity arose. Where the relevant entity makes a claim, any disallowable amount arising in an accounting period can be reduced by the amount of total spare capacity carried forward; the use of total spare capacity therefore reduces the ILR impact on the relevant entity for that year, and any capacity not used is carried into later years until fully absorbed. Although the treatment of total spare capacity is not as prescriptive as the treatment of deemed borrowing costs, any capacity arising in earlier periods is used in priority to capacity arising in later periods. It is important therefore to remember that although spare capacity carried forward may be presented as a single figure, this figure may be composed of total capacity arising in different accounting periods. As part of any compliance process, tracking is required to allow taxpayers to identify the years in which differing tranches of spare capacity arise to ensure that amounts used in later years are taken from the correct years. This tracking is also required to ensure that total spare capacity that is older than five years is not taken into account in any claim made under s835AAE TCA 1997. The carry-forward of total spare capacity was modified by FA 2022 to specify that where an amount of s291A TCA 1997 interest is not deductible in an accounting period but is deducted in a later accounting period, the amount of total spare capacity available for future claims or deductions is to be reduced by the amount deducted.

Interaction Between Carry-Forward Provisions and Interest Groups

As the treatment of carry-forward balances becomes a more prevalent topic for groups, a key question on many taxpayers' minds may centre on how the rules operate in the context of interest groups and, in particular, how tax attributes are treated when a company exits an interest group. The particular treatment of

tax attributes carried forward in the context of the ILR is also of relevance for a potential purchaser carrying out due diligence before an acquisition, in order to model effectively future tax charges that may arise in a target entity.

A "relevant entity" for ILR purposes is defined as either a company or an interest group. An interest group comprises the companies within the charge to corporation tax in Ireland that:

- are either members of the same worldwide group (for financial accounting purposes) or members of the same group per s411 TCA 1997 and
- have elected to be members of the interest group.

The provisions of the ILR treat the members of the interest group as forming one, single "relevant entity", with the effect that the EBITDA and net interest equivalent for each member are aggregated in identifying an allowable and disallowable amount for the group as a whole. Equally, total spare capacity (being the aggregate of interest spare capacity and limitation spare capacity) is identified using the aggregated results of the interest group members. Amounts calculated in respect of an interest group shall comprise the results of all of the members of an interest group. The question that therefore arises is this: when a deemed borrowing cost or spare capacity carried forward is identified, does it attach to the interest group as a whole, or does it attach to the member of the interest group to which it is applicable?

As a general observation, the application of the ILR to an interest group adopts the same formulaic approach as in the case of a single company that is not within an interest group. However, specific modifications must be kept in mind with respect to disallowable amounts and spare capacity and how these are allocated to members of an interest group. First, although the disallowable amount overall is extrapolated based on the aggregated results of the interest group members, s835AAL(6) TCA 1997 requires that this total amount be apportioned to each interest group member. The method of apportionment is based on the deductible interest equivalent for each member as a proportion of the deductible interest equivalent for the total interest group. Alternatively, a disallowable amount may be allocated to a specific interest group member by joint notification. This disallowable amount is, in turn, treated as deemed borrowing costs for use in later accounting periods by the company in question.

A similar formulaic approach is applicable in the case of total spare capacity and interest groups. Per s835AAL(9) TCA 1997, total spare capacity is apportioned to each member of an interest group based on the amount of taxable interest equivalent for each group member as a proportion of total taxable interest equivalent for the group. Alternatively, the total spare capacity may be allocated to specific interest group members on a joint notification basis.

So who holds the deemed borrowing costs and/or total spare capacity balances – the interest group or the interest group member? Section 835AAL(11) TCA 1997 is instructive in this regard in that it specifies that in applying the carry-forward provisions to an interest group, references to relevant entity should be read as being references to a member of an interest group. The starting position, therefore, is that disallowable amounts allocated to a member of an interest group that are, in turn, treated as deemed borrowing costs are treated as tax attributes of that company and not of the interest group as a whole. Equally, total spare capacity allocated to a member of an interest group is treated as a tax attribute of the interest group member and not as belonging to the interest group as a whole. However, this is subject to one modification in s835AAL(12) TCA 1997, which provides that where an interest group member carries an amount of total spare capacity from a preceding accounting period, this may be reallocated to another interest group member (subject to the appropriate notifications' being made by the interest group and the reporting company of the interest group). In this way, total spare capacity as a

tax attribute may be transferred to another company.

Advisers assisting a vendor will need to understand the spare capacity and/or deemed borrowing costs carried forward before any reorganisation or divestment.

Actions Before Year-End

As 2024 draws to a close, many taxpayers with 31 December year-ends will be considering what actions they need to take to prepare for the upcoming compliance cycle and, in particular, what steps they need to take with respect to their interest deductibility. To that end, taxpayers should consider:

- Expected group relief claims – Where s247 interest is in play but has not been paid yet, what is the expected interest capacity in the company that is expected to claim relief for the interest as a charge? Are these amounts expected to be group relieved and, if so, is the claimant company expected to have sufficient capacity to absorb the s247 interest claimed as group relief?
- Where there is an interest group, are there amounts of total spare capacity that can be reallocated back into the group to absorb any expected disallowable amounts arising?
- What are the carried-forward balances from prior years, and how are these to be used for FY24?
- Are there changes envisaged to the group structure in 2025, and how will these affect the tax attributes of the interest group members?

Tax Policy – Change on the Horizon?

If anything is to be learned from the past few years, it is that nothing stands still in the world of tax. This is especially true in the area of interest deductibility, which has seen significant changes in recent years. On an EU level, the European Commission engaged in a review of the Anti-Tax Avoidance Directives (specifically Council Directive (EU) 2016/11641 of 12 July as amended by Council Directive (EU) 2017/9522 of 29 May 2017). This consultation process, which concluded on 11 September 2024, looks to evaluate the measures introduced via ATAD, focussing on the functioning of ATAD, the future-proofing of measures and the implementation of ATAD in Member States. This review necessarily includes a review of the ILR. Although outcomes and next steps remain to be seen, general observations on the ILR from a variety of stakeholders have noted that the interest rate environment has shifted since the adoption of ATAD, with taxpayers facing higher interest costs than before. This may throw into question the appropriateness of the 30% EBITDA limit imposed by ATAD and whether this restriction remains relevant in today's economic environment.

Closer to home, we may also see changes to the tax treatment of interest from an ongoing consultation released by the Department of Finance on 27 September 2024. This consultation, comprising 27 questions on the tax treatment of interest in Ireland, addresses key points, including the taxation of interest, deductibility, withholding tax and compliance matters. The consultation document addresses the ILR and, in particular, asks for stakeholder input on areas of potential enhancement or simplification, in addition to whether policy decisions made on the transposition of ATAD 1 should be re-evaluated. The consultation is due to close on 30 January 2025, and given the range of interest provisions currently contained in Irish law (including the ILR), it is unclear at this point what change may be expected; the consultation document notes that the review will require a significant body of work to be carried out over a multi-year timeframe. Input from stakeholders will be critical in assisting the Department of Finance to identify areas most in need of enhancement, but suffice to say that we may see future change on the horizon.

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Tax in Deals: Beyond Mergers and Acquisitions: Part 2

Introduction

The first article in this series, "Tax in Deals: Beyond Mergers and Acquisitions: Part 1", which was published in *Irish Tax Review*, Issue 3 of 2024, discussed the various types of tax due diligence that can be undertaken and covered tax considerations at the pre-acquisition stage of a deal., Although tax may not be a key driver of merger and acquisition (M&A) activity, as highlighted in Part 1, it should be carefully considered throughout the deal life cycle. This article looks in more detail at acquisition structuring, post-acquisition tax considerations, value creation and exit planning, as well as giving a brief outline of recent tax developments relevant to deals.

Tax Structuring

Tax structuring requires a holistic approach, and in the context of an acquisition this looks at how an acquisition is to be made and funded and how the company/group to be acquired aligns with an existing structure. Acquisition structuring requires careful consideration and will vary depending on a number of factors including; the target's business, funding requirements, the exit plans of the seller and the type of buyer involved in the transaction. Key considerations with regard to a tax structure include managing future tax costs, facilitating future expansion and exit strategies. Where debt is being introduced in the acquisition, a key focus is typically the

deductibility of interest relief on that debt and the identification of any proposed changes that may affect interest deductibility, e.g. liquidation/reorganisations in the acquiring group, which may trigger a restriction of interest relief, together with the potential impact of interest limitation rules or even transfer pricing, given OECD guidelines on debt capacity. Alongside this, the withholding tax treatment of interest is another factor to be considered where debt forms part of an acquisition.

Acquisition Tax Considerations

Acquisition structures

There are a multitude of acquisition structures, depending on the parameters of a particular deal, but in its simplest form an acquisition can be structured as an asset purchase, a share purchase or a merger.

In an asset purchase a buyer acquires specific items, e.g. assets, liabilities, debts, trades and employees, typically from a company. Understanding the asset profile will allow a prospective purchaser to evaluate stamp duty, VAT and the potential for interest relief on acquisition financing.

In a share purchase the buyer acquires existing share capital and, in doing so, acquires the entirety of the contents of that company, rather than the individual components, as in an asset acquisition. A key factor in a share purchase is that the buyer acquires the tax attributes of the acquisition candidate, including any existing and historical tax liabilities. Part 1 of this article series highlighted the importance of carrying out adequate tax due diligence to understand latent or historical tax exposures within a target company. Understanding the historical tax and asset profile of a target will also permit a potential buyer to assess the correct stamp duty position, navigate withholding tax obligations and de-grouping charges, evaluate the feasibility of debt financing, and consider both integration and exit alternatives. This is particularly important where the acquiring entity forms part of an established group.

Mergers involve the combination of two companies in a single entity and can be done by way of a merger by absorption, a merger by acquisition or a merger by formation of a new company. Mergers are less common in a deal scenario between unrelated parties, and domestic mergers are more typically employed after acquisition to simplify group structures, remove surplus entities or consolidate activities. However, again, knowledge of the tax profile and history of the entities that are the subject of a merger is necessary to navigate the capital gains tax, VAT and stamp duty positions in a merger scenario.

As noted above and in Part 1, an understanding of the buyer's objectives, their strategic requirements and the target's business and history is key to determining how to structure the acquisition and navigate the tax landscape.

Key considerations for buyers in determining an acquisition structure

The starting point for structuring an acquisition will generally be the heads of terms agreed between the buyer and the seller. It is important that tax forms part of the deal considerations at this point, which can add real value and benefits to the group structure after acquisition. Crucial considerations to allow for a successful acquisition structure to be implemented include the buyer's objectives for the acquisition; whether there are any constraints as to how the acquisition is to be completed (e.g. banking restrictions, structural versus legal subordination); the level at which the investment will be made; whether the buyer is new to the Irish market; the sources, uses and mix of funds (i.e. debt versus equity); and the location of lenders (domestic or overseas, and what legal form). Giving thought to the overlap of tax structuring considerations with the commercial objectives and legal and banking requirements is essential and should be brought to the fore as soon as possible in the acquisition life cycle.

A review of current structures and the role that each entity plays within the group is crucial. This provides the opportunity to see where a prospective company/asset fits in. For example,

a company that manages various functions for the overall group at a singular level may have scope to recover VAT costs on transaction fees where the newly acquired company will be integrated within the group so that it also comes within scope of the management services being provided. Other considerations include current funding structures within the group, the trading nature of each entity, the types of assets held (cash reserves, any intellectual property etc.) and the tax attributes of each. This may influence where to place an acquired company as well as identifying the acquiring entity in order to manage tax exposures. The approach to repatriation of profits to shareholders, including any withholding taxes applicable and exit charges on the transfer of assets to group members outside the State, should also be considered.

Funding the acquisition

For buyers the choice of acquisition financing is important. The manner in which the acquisition is funded will be determined by a number of factors, including commercial and legal considerations, alongside which, tax forms a crucial part. The options available to a buyer to finance an acquisition are; the use of existing cash reserves, taking on acquisition debt (either third-party or shareholder), issuing equity or any combination of the three. For the purpose of this article we focus on the second option, the introduction of debt, which can provide more efficiencies for the post-acquisition tax structure, given the availability of a tax deduction for interest on the debt, subject to the required conditions' being satisfied.

Where debt is to be introduced to an acquisition structure, a number of considerations arise, including:

- whether different types of debt are being repaid by the buyer (e.g. mezzanine/shareholder debt alongside senior/third-party debt), and the requirement for structural subordination as the third-party lender will want to ensure that its security is as close to the assets/profit-generating activities as possible to service the debt repayments;
- the availability of an interest deduction on the debt and maintaining the interest deduction into the future;
- anti-avoidance provisions linked to the interest deduction;
- interest limitation rules;
- anti-hybrid rules;
- group relief/loss surrender; and
- withholding tax/obligations such as outbound payment obligations.

Debt Structures

Interest relief: trading deduction

Relief on interest can be claimed under s81 of the Taxes Consolidation Act 1997 (TCA 1997) where the interest is incurred on a qualifying loan, i.e. a loan that was used wholly and exclusively for the purposes of the trade. Where a loan has been taken out to finance the acquisition of trading assets that will be used by the buyer going forward as part of its trade, a tax deduction for the interest incurred would be available. In the context of M&As, where a trading loan is being replaced, consideration is to be given to whether the replacement loan is a qualifying loan for the purposes of s81. In Tax Appeals Commission determination 03TAC2023, Revenue determined that a loan that was replaced as part of an acquisition of a group was in respect of the share transaction, and therefore no relief under s81 was available on the interest incurred. In this case, even though the loan being replaced was indeed a trading loan for which a determination had been issued by Revenue on the tax deductibility of the interest, the Tax Appeals Commissioner upheld Revenue's decision and determined that the replacement loan was part of a capital transaction and therefore a tax deduction against trading income was not available on the interest incurred. Careful consideration therefore needs to be given to the availability of a deduction for refinancings etc.

Interest as a charge

For share transactions, interest relief under s247 TCA 1997 (interest as a charge) is available

where the required conditions are met at the time of taking on the debt (either third-party or shareholder debt) and continue to be met on an ongoing basis. Section 247 provides that a tax deduction is available for interest costs incurred in respect of certain loans where the funds borrowed have been used for a "qualifying purpose", such as acquiring trading or rental companies (or holding companies of trading/rental companies) or, alternatively, lending to the above companies for the purpose of their trade/rental/holding activities. Section 247, however, has very specific requirements to be met before the interest expense qualifies for deduction and often requires the draw-down and application of the funds to be structured in a specific way. These include ensuring that the acquiring entity has a minimum 5% shareholding in the ordinary share capital of the borrowing acquired entity/entity; that a common director is in place between the investing company and the entity acquired from the time the funds are drawn down until the interest is paid; and that the borrowed funds are defrayed by the borrower for the "qualifying purpose" within a reasonable period of time from the draw-down. Additionally, there are other provisions to be considered where funds have been subscribed for shares: the funds must be ultimately used for a qualifying purpose, and where shareholder funds are used, there are connected-party anti-avoidance provisions that also need consideration.

It is important to note that relief for interest as a charge will be available only where the interest is **paid**. Where the relevant conditions are met, qualifying interest can be offset as a charge on income, with any excess surrendered on a current-year basis to other Irish-resident group companies that have taxable profits (see below).

The availability of relief under s247 TCA is very prescriptive, as noted above, with very strict conditions, which, if not met, will mean that the relief is not available. Alongside the qualifying conditions, there are detailed anti-avoidance (recovery of capital) provisions under ss247 and 249 TCA 1997 that seek to restrict the availability of interest relief in certain scenarios and that require careful management as part of the post-acquisition structure and on an ongoing basis where interest relief is being claimed.

Whether a trading deduction is being taken on the interest incurred under s81 TCA 1997, or relief is claimed for interest as a charge on income under s247 TCA 1997, the impact of interest limitation rules and anti-hybrid provisions cannot be overlooked when advising on debt structures. These are discussed below.

Although not discussed in this article, the impact of transfer pricing provisions on related-party borrowings and debt capacity also forms part of the considerations when implementing an acquisition debt structure. More recent changes to the tax legislation affecting deals, such as Pillar Two and outbound-payments provisions, are discussed at the end of this article.

Interest limitation rules

Interest limitation rules (ILR), which were introduced to Irish tax legislation as part of Finance Act 2021, applying for accounting periods commencing on or after 1 January 2022, cap the amount of interest (above a *de minimus* amount of €3m) that can be deducted by a company at 30% of the taxpayer's taxable earnings before interest, tax, depreciation and amortisation (EBITDA). This can result in a reduction in the tax shield that companies typically benefit from with acquisition debt financing. There are various exemptions from the application of the ILR provisions in Irish legislation, including the *de minimus* exemption noted above, forming an interest group, being a standalone entity or a single-company worldwide group, the group ratio and the equity ratio, as well as an exemption for qualifying long-term public infrastructure projects.

To mitigate the impact of the ILR, companies could explore alternative deal structures, e.g. using equity financing or cash reserves to finance acquisitions. As with all types of

structures, the use of equity financing in the form of, for example, capital contributions should be carefully considered from a tax perspective.

Anti-hybrid rules

Anti-hybrid rules were introduced by Finance Act 2019 and require careful consideration of the tax treatment of cross-border transactions and entities in other territories. They apply to all payments made by Irish companies after 1 January 2020, with no *de minimus* exemptions. Anti-hybrid rules are designed to prevent tax-avoidance strategies that exploit differences in the tax treatment of financial instruments or entities between different jurisdictions. Additionally, the reverse hybrid rules, which apply to prevent arrangements that exploit the difference in the tax treatment of an entity to generate a tax advantage, or a reverse hybrid mismatch outcome, are also now in effect, for accounting periods commencing on or after 1 January 2022. Understanding the sources and uses of the acquisition funding is key to managing any impact arising from these complex provisions.

During the due diligence phase the target company's existing structuring arrangements and their compliance with anti-hybrid/reverse hybrid rules should be examined to uncover any potential tax liabilities. Furthermore, when structuring an acquisition understanding the sources and uses [of the acquisition funding] is important. An awareness of who the lender is, what their legal status is and how they are taxed in their jurisdiction is important in determining whether there are differences in the characterisation between entities which can lead to anti-hybrid exposures.

Group relief/loss surrender

Where there is debt in a structure, it may result in the ability to surrender excess interest relief or losses. Irish group relief provisions (s411 TCA 1997) allow a member of a tax group (a 75% subsidiary relationship is required) to surrender excess current-year losses to another Irish-tax-resident group company to offset taxable profits. A company may not be a 75% subsidiary of another company unless that other company is (1) tax resident in a relevant territory (i.e. an EU Member State or a country with which Ireland has a double taxation agreement (DTA)) or (2) a "quoted" company where the principal class of shares are substantially and regularly traded on a stock exchange.

Where a group qualifies for the loss relief provisions, as set out above, the cash-flow benefits arising from the sharing of excess tax attributes among the Irish group can facilitate strategic financial planning and resource allocation.

Withholding tax considerations/obligations: Interest

As a standard 20% withholding tax applies to payments of interest by Irish companies, understanding the location of the lender, the form of the lending entity and the tax treatment of the interest income (i.e. whether it is subject to tax in the recipient country) is important to determine whether an exemption from or a reduced rate of withholding tax can be availed of under Irish domestic tax rules, the applicable DTA or the EU Interest and Royalty Directive. Additional reporting obligations and declarations may be required where an exemption is claimed.

Post-Deal Value Creation

In undertaking M&A activity, buyers may be focused on expanding their market shares, markets or business offerings through acquisition and investment. As a result, post-deal value creation is a key priority when undertaking the deal. Tax plays an important role when planning for post-deal value creation and is a topic that buyers are increasingly focused on, given the increasing complexities in tax legislation and regulations.

Restructuring projects often follow as a post-deal action, forming part of a wider growth strategy around improving financial

performance, strategic positioning and overall competitiveness. Tax can often be overlooked as part of these priorities but is crucial to consider. As outlined above, mergers are more typically employed after acquisition to simplify group structures, remove surplus entities or consolidate activities. This can involve transferring trades between entities and liquidating surplus entities. The tax legislation encompasses a range of provisions to facilitate restructuring of corporate groups and shareholdings, but care is required to ensure that there is no negative impact on the tax structure implemented as part of the acquisition. The main factors to work through from a tax perspective include the disallowance of interest relief or loss relief and de-grouping or clawback provisions.

In addition, the potential availability of tax reliefs should be considered, including:

- the R&D tax credit/Knowledge Development Box,
- intellectual property capital allowances and
- accelerated capital allowances.

These reliefs are designed to foster innovation and support growth in Irish businesses.

Repatriation of Profits

There are several ways to extract profits from an Irish-tax-resident company. The most appropriate means of profit repatriation should be evaluated on a deal-by-deal, group-by-group basis. Key tax factors when analysing cash extraction methods include:

- group structure,
- the nature and expected duration of the investment,
- the residence of the parent company/ shareholders,
- liquidity or cash requirements across the group and
- investment/strategic plans.

At a high level, cash repatriation can be in the form of dividends, interest and/or royalty payments, management service charges or inter-company lending.

Dividends between Irish entities are exempt from tax and are not liable to dividend withholding tax (DWT) (subject to a Form V3's being in place where the parent–subsidiary relationship is less than 51%). An exemption from DWT may be available on distributions to non-residents where appropriate declarations are in place before the dividend is paid. Whether DWT applies or not, the filing requirement remains for Irish companies to notify Revenue via Revenue Online Service (ROS), within 14 days of the end of the month in which the dividend is declared, of the amount of the dividend, the recipient and the amount of DWT deducted.

Foreign dividends received by Irish companies are taxed at either 12.5% or 25%, depending on the source. For foreign dividends received by Irish companies from 1 January 2025, Finance Act 2024, in a welcome development, provides for the introduction of a participation exemption for the receipt of relevant dividends. The provision is intended to exempt qualifying foreign dividend income received from a "relevant territory" (an EEA or DTA country, as well as a country with which a DTA has been made but is not yet in force) from Irish corporation tax for recipient companies, subject to ownership test's being met (5% of ordinary share capital, profits and asset entitlements for a continuous 12-month period). The close company implications (where applicable) and whether a s434(3A) TCA 1997 joint election can be made should be fully considered with regard to the receipt of dividends by Irish group entities.

The payment of interest by a borrower company to the lender is another way to extract cash from an investment. Subject to meeting the qualifying conditions, as outlined above, an interest deduction may be available in the borrowing entity. There may be interest

withholding obligations or other declarations to be made, and the interest may be taxable in the recipient entity. If an interest deduction is taken with no corresponding treatment in the receiving entity, anti-hybrid rules apply (discussed above).

Exit Planning

A good understanding of the buyer's exit plan is important when setting up corporate structures. This is especially so in group structures, where certain reliefs are subject to a holding period and there can be a clawback when the group structure is broken (e.g. s623 TCA 1997 and s79 Stamp Duties Consolidation Act 1999). Furthermore, consideration for the disposal may be subject to withholding tax under s980 TCA 1997, as outlined in Part 1 of this article series, and/or capital gains tax where shares held by the group derive more than 50% of their value, directly or indirectly, from Irish specified assets.

For Irish holding companies, consideration can be given to the availability of the participation exemption under s626B TCA 1997 to exempt a chargeable gain arising on disposal, provided the conditions to avail of the exemption are met at the time of the disposal. Other factors that need to be considered include whether any cash is trapped on exit and the mechanism to release this before sale, subject to anti-avoidance provisions under s591A and s135(3A) TCA 1997.

Recent Tax Developments Relevant to Deals

We outline below some recent tax developments that affect deals and require careful consideration during the planning, due diligence and integration phases of a transaction.

ESG

An effective environmental, social and governance (ESG) framework helps companies to set sustainability targets and manage increased regulation and reporting requirements (e.g. the Corporate Sustainability Reporting Directive, the Carbon Border Adjustment Mechanism, environmental and energy taxes, and gender pay-gap reporting, to name but a few). The ESG landscape is dynamic and evolving, but it is clear that tax is a key component of the ESG framework. In an acquisition scenario, aligning ESG strategies between a buyer and a target is crucial to managing tax and reporting risks, as well as optimising value. Such value can be realised via the availability of tax reliefs and grants for sustainable and environmental business models or through the enhanced attractiveness of ethical, sustainable and transparent practices to customers, investors or potential buyers.

Pillar Two

Pillar Two legislation was implemented in Irish law as part of Finance (No. 2) Act 2023, with effect from 31 December 2023, and imposes a minimum effective tax rate of 15% on in-scope businesses (both multinational and domestic businesses with a global annual turnover of €750m in at least two of the preceding four years). The impact of Pillar Two should be fully considered in a deals context from both a due diligence and a structuring perspective. Enhanced due diligence will be required to assess the target company's compliance with Pillar Two; this includes understanding the target's current tax structure and any potential exposure to additional taxes under Pillar Two, as well as evaluating any risk of future tax liabilities. From a structuring perspective, consideration should be given to assessing tax outcomes under the new framework, including the location of group operations and investments and how profits are allocated across different jurisdictions.

Outbound payments: Finance (No. 2) Act 2023

Finance (No. 2) Act 2023 introduced legislation for new measures applying to certain "outbound payments". The legislation has been designed to (1) restrict the operation of certain domestic withholding tax exemptions

and (2) increase the reporting requirements regarding certain outbound payments, such as distributions, royalties and interest payments made to "associated entities" in "specified territories", which include territories other than relevant Member States that are zero-tax (i.e. 0% tax rate or no tax) territories or territories included on the EU list of non-cooperative jurisdictions. The legislation provides that withholding tax at a rate of 20% will apply to a relevant payment of interest or royalties, and a rate of 25% to distributions, paid by an Irish company. The legislation applies to payments of certain dividends, royalties and interest payments made on or after 1 April 2024. Grandfathering provisions apply to arrangements that were in place on or before 19 October 2023 so that the new measures will not apply to these grandfathered payments until 1 January 2025. The impact of these rules will need to be considered as part of the due diligence process and when structuring the location, funding and holding of acquisitions of Irish entities/groups going forward.

Conclusion

In the ever-evolving landscape of business transactions, tax has become an increasingly pivotal consideration. Our two-part article series has explored some of the key tax considerations in deals, as well as the various stages in the life cycle of an acquisition, highlighting the critical areas where tax expertise can significantly impact the success of a transaction.

- Pre-acquisition: the due diligence phase enables the identification of potential tax risks and opportunities, ensuring that material tax implications are thoroughly understood before proceeding with an acquisition.
- Acquisition: tax structures implemented are designed to align with the overall acquisition and commercial strategy while managing tax exposures.
- Post-acquisition: the focus shifts to integration while navigating the complexities of tax compliance and reporting, and implementing value creation strategies.
- Exit planning is advisable for ensuring that the eventual sale or transfer of the business is well managed from a tax perspective and that this aligns with the long-term goals of the investors.

The deals landscape is continuously shifting, driven by regulatory changes, economic fluctuations and evolving business strategies. Tax is a given cost in any deal scenario and one that is harder than ever to navigate owing to increasingly complex tax laws and reporting requirements. Due consideration of tax at every stage of the deal life cycle is vital in driving successful transactions and creating long-term value for businesses.

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Deductibility of Royalty Withholding Tax

Introduction

The deductibility of royalty withholding tax (RWHT) has been the subject of several Tax Appeals Commission determinations in recent years. The most recent of these, 47TACD2024 ("the 2024 determination"), was published in early 2024 and is the focus of this article. There are other determinations that are relevant to the topic and these are:

- A 2023 determination, 128TACD2023 ("the 2023 determination"), the facts of which were similar to the 2024 determination.
- A previous determination issued in 2018, 02TACD2018 ("the 2018 determination").
- A 2019 determination, 08TACD2019 ("the 2019 determination") that addressed the deductibility of dividend withholding tax (DWT) rather than specifically RWHT, but is still relevant and was referred to in both the 2023 determination and the 2024 determination.

The 2024 determination forms the basis for this article. Where relevant, certain aspects of the other determinations are also addressed.

Background

The appellant in the 2024 determination was an Irish-registered and Irish-tax-resident company that licensed its technology solutions to distributors outside of North America and Mexico (to customers in both treaty and non-treaty countries) and then onwards to a

network of resellers in a wide range of countries in Europe and the Asia-Pacific region.

In each of the periods to which the case relates (2010–2016) the appellant was in receipt of foreign-source royalties in respect of the licensed technology solutions. Licensees in several of the foreign jurisdictions deducted RWHT at source in accordance with local tax rules. The appellant did not have a branch or permanent establishment in any of these jurisdictions.

The appellant, who was not in a tax-payable position because its corporation tax liabilities were offset in full by R&D tax credits and relevant trade charges, claimed a deduction for the RWHT. Revenue disallowed a total amount of RWHT of €27,824,379. The amount of tax in dispute was €4,984,363.

The appellant's case centred on the deductibility of the RWHT under s81 of the Taxes Consolidation Act 1997 (TCA 1997).

Appellant's Case

The following is a summary of the arguments made by the appellant regarding why the RWHT should be deductible under s81 TCA 1997:

- RWHT is an expense incurred in earning income from its customers, and the royalty income could not have been earned in the various jurisdictions without incurring RWHT.
- The requirement to deduct RWHT conforms with the statutory obligations imposed by the foreign jurisdictions, and therefore it is an unavoidable expense.
- RWHT represents a form of sales tax as it reduces the appellant's income in a manner consistent with all of the other costs, and therefore it represents a necessary component of its trading cost base.
- RWHT is levied by foreign tax authorities on gross receipts and takes no account of the actual profits earned. Although it is an established principle that a tax on the profits of a trade is not an expense of that trade, a tax incurred in carrying out a trade would usually be deductible.

Revenue's Case

Revenue's case for disallowing a deduction for the RWHT may be summarised as follows:

- RWHTs are by their nature taxes on income.
- The fact that RWHT may be calculated as a percentage of the gross royalty does not mean that the tax is not in the nature of a tax on income profits.
- RWHT is not an expense "made for the purpose of earning the profits" and so is not deductible in accordance with s81 TCA 1997.

Although not specifically relevant to the deductibility under s81 TCA 1997, the following arguments put forward by Revenue in respect of the availability of double taxation relief are worth noting:

- Paragraph 7(3)(c) of Schedule 24 TCA 1997 refers to income being "reduced by" non-creditable foreign tax, as opposed to the foreign tax being deducted from income. To reduce income below zero would go beyond the purpose of double taxation relief in terms of providing compensation for foreign tax. This is the case regardless of whether income is to be interpreted as the Irish measure of the foreign income calculated under paragraph 4(2A) of Schedule 24 TCA 1997 or income as calculated under normal tax principles.
- Even if the reduction available under paragraph 7(3)(c) of Schedule 24 TCA 1997 is not limited by reference to the Irish measure of the foreign income, it is limited to net income as calculated in accordance with s77 TCA 1997.

Commissioner's Analysis

Evidence was provided by the appellant's financial director and experts retained by both the appellant and Revenue in respect

of the accounting treatment of the RWHT. However, the Commissioner did not consider the application or otherwise of accounting standards to be relevant to her determination.

It was noted that the appellant made an alternative claim that the RWHT was deductible under s77 TCA 1997 and paragraphs 7 and 9DB of Schedule 24 TCA 1997. However, the appellant submitted that this alternative claim should be considered only if the claim in relation to s81 TCA 1997 failed and argued that, if it was entitled to a deduction under s81 TCA 1997, the alternative claim did not need to be considered. The Commissioner proceeded on this basis and so considered the deductibility of the RWHT under s81 TCA 1997 on the basis that the RWHT was a final cost of the appellant and that no credits for the RWHT were available.

The Commissioner noted that Revenue is prepared to accept that digital services taxes (DST) are deductible expenses in certain circumstances, even though DSTs are a tax on income. Accordingly, the Commissioner was satisfied that, although RWHT is in the nature of a tax on income, it is not automatically excluded from consideration as a deduction under s81 TCA 1997.

The appellant and Revenue referred to a number of legal cases in their arguments, as well as to the 2018 determination and the 2019 determination. There was no reference to the 2023 determination, presumably because this case commenced before the publication of that determination.

The test of deductibility set out in the decision in *Strong & Co of Romsey Limited v Woodifield (Surveyor of Taxes)* [1906] 5 TC 215 ("*Strong & Co*") established the principle that there must be a nexus between the expense and the earning of profits. This principle was upheld in the decision in *MacAonghusa v Ringmahon* [2001] IESC 47 ("*MacAonghusa*").

The test as set out in *Strong & Co* was also applied in the decision in *Harrods (Buenos Aires) v Taylor-Gooby* [1964] 41 TC 450 ("*Harrods*"), a case in which the dividing line between deductible and non-deductible taxes was considered. In *Harrods* a UK-incorporated and UK-resident company was required to pay a substitute tax equal to 1% of the capital of the company. It was found that the tax did not arise on profits earned as a consequence of doing business in Argentina but as a condition of carrying on that business.

The appellant placed significance on the decision in *Hong Kong Inland Board of Review* D43/91 [1991] 1 HKRC 80-154 ("the *Hong Kong* decision"), which highlighted the distinction between taxes that are a tax on profits and taxes that apply to the income itself. Although Revenue dismissed the relevance of the decision on the basis that it is a decision of a tribunal (as opposed to a court), the Commissioner noted the reliance placed by Revenue on the decision of the former Appeal Commissioner in the 2018 determination, which was a decision of the Commission and not a court.

Revenue relied on the decision of *Yates (Inspector of Taxes) v CGA International Limited* [1991] STC 157 ("*Yates*"), which considered whether a relief was available under UK tax law in respect of a turnover tax levied under Venezuelan law. Revenue argued that the *Yates* decision was relevant because it recognised that a withholding tax may correspond to tax on income profits, even in circumstances where the tax authorities in the country that applied the withholding tax are not concerned with the actual profits of the recipient. The Commissioner found that the decision in *Yates* was of little persuasive value for the purposes of determining the appeal.

The former Commissioner in the 2018 determination found that withholding taxes levied by a foreign jurisdiction are in the nature of a tax on income and, therefore, are not deductible under s81 TCA 1997. However, the Commissioner in the 2024 determination noted that the *Hong Kong* decision was not taken into account in the 2018 determination. Furthermore, the former Commissioner in the

2018 determination distinguished the decision in *Harrods* and relied on the decision in *Yates* to dismiss the appeal. It was also noted that relief from double taxation was available and was claimed by the taxpayer under s826 TCA 1997 and Schedule 24 TCA 1997, which seemed critical to the former Commissioner's decision in that appeal. It was inferred in the 2018 determination that withholding taxes are in the nature of taxes on income, as opposed to being expenses of the trade, and therefore the taxpayer had fully exploited the provisions open to it for relieving the relevant income from double taxation. The Commissioner in the 2024 determination noted that the position in the case before her was somewhat different in that the appellant was taxed on its royalty income without a corresponding entitlement to a credit or deduction for the RWHT.

In the 2019 determination the former Commissioner found in favour of the taxpayer. Schedule 24 and s21B(4)(c) TCA 1997 specifically disallowed the DWT for which the taxpayer was seeking a deduction, and therefore the taxpayer was not otherwise entitled to a deduction or credit. It was found that the DWT incurred was the price of carrying on the business in the foreign jurisdictions and that non-recoverable DWT impacted profits of the trade. The former Commissioner determined that, although both the taxpayer and Revenue agreed that DWT was a tax on income, it was possible for a deduction to be permitted under s81 TCA 1997, so long as the taxes were calculated before the ascertainment of profit. The Commissioner in the 2024 determination noted that relief from double taxation had not been claimed in the 2019 determination, which was a significant difference from the 2018 determination. Also of significance was the fact that the 2019 determination followed the *Hong Kong* decision, unlike the 2018 determination, which did not cite it.

Determination

The Commissioner determined that the appellant was entitled to a deduction under s81 TCA 1997 in respect of the RWHT. This applied to the RWHT incurred in all jurisdictions other than Argentina, as it had not been established that the RWHT incurred in Argentina was imposed on gross royalties payable.

Of particular relevance for the Commissioner was the fact that the RWHT had to have been incurred by the appellant in order to earn or profit from the trade, it was part and parcel of the appellant's business activity and it was a foreseeable condition of earning the royalty income. The Commissioner noted that the RWHT was incurred by the appellant irrespective of whether it made a profit.

The Commissioner considered the principles enunciated in *Harrods* to be significant to the appellant's appeal. In *Harrods* the withholding tax was incurred irrespective of whether the taxpayer earned any profits, and therefore such taxes were considered to represent a cost of doing business. The Commissioner considered the position in *Harrods* to be analogous to the appellant's position.

The Commissioner also noted that it was evident from the *Hong Kong* decision that there is a distinction to be made between taxes calculated before and after profits have been ascertained. With the exception of Argentina, RWHT was applied to the gross income of the appellant. Therefore, the Commissioner was satisfied that the RWHT incurred by the appellant in all jurisdictions other than Argentina can be treated as a cost incurred for the purpose of earning the appellant's profits.

2023 Determination

Although the 2023 determination was not referred to in the 2024 determination, it is worth noting the similarity between the two cases, particularly as the Commissioner in the 2023 determination also found in favour of the taxpayer in determining that it was entitled to a deduction for RWHT. The one significant difference in the 2023 determination is the fact that the taxpayer was in a loss position. The following facts were the same in the two cases:

- The appellant licensed to customers in foreign jurisdictions, a number of which imposed RWHT at source.
- When a royalty payment was made, foreign RWHT was applied on the gross royalties payable, regardless of whether a profit or loss was generated.
- The appellant did not have a branch or permanent establishment in any of the foreign jurisdictions in question.
- The main cases referred to in the arguments were *Harrods*, *Strong & Co*, *MacAonghusa*, the *Hong Kong* decision and *Yates.* The 2018 determination and 2019 determination were also referenced.
- The Commissioner considered the principles enunciated in the *Harrods* decision to be significant to the appellant's appeal.
- Although the Commissioner was satisfied that the RWHT was a tax on income, this fact was not fatal to the appellant's appeal, and the Commissioner referenced the deductibility of DSTs, which are a tax on income.
- The appellant's appeal was made on the basis that it was entitled to a deduction for the RWHT under s81 TCA 1997 but also that it had an alternative claim under s77 TCA 1997 and paragraphs 7 and 9DB of Schedule 24 TCA 1997. Having found in favour of the appellant in relation to the deductibility of RWHT under s81 TCA 1997, the Commissioner did not consider any alternative claim.

Conclusion

An important factor in both the 2023 determination and the 2024 determination was that, as the Commissioners found in favour of the appellants in respect of the deductibility of RWHT under s81 TCA 1997, they did not consider it necessary to contemplate whether a claim may have been made under Part 35 TCA 1997 and Schedule 24 TCA 1997 in respect of the RWHT.

The appellants in both determinations were not in a tax-payable position for the periods in question. Therefore, the fact that the Commissioners did not consider the possibility of a claim under Schedule 24 TCA 1997 may lead to some uncertainty around whether a claim under s81 TCA 1997 or under Schedule 24 TCA 1997 takes precedence, particularly in cases where a taxpayer is in a tax-payable position and the claiming of a credit under Schedule 24 TCA 1997 may be more beneficial than claiming a deduction under s81 TCA 1997.

However, the Commissioner, in the 2024 determination, noted that where the appellant was not in a position to derive any benefit from double taxation relief under Schedule 24 TCA 1997, the appellant was not precluded from treating the RWHT as an expense incurred in carrying on its business if the test of deductibility as set out in *Strong & Co* was satisfied. This suggests that the availability of a credit under Schedule 24 TCA 1997 in respect of foreign RWHT should be considered first, before contemplating whether a deduction under s81 TCA 1997 is available.

However, s76A TCA 1997 sets out the basis for calculating taxable profits in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law. Finance Act 2019 inserted s81(2)(p) TCA 1997, which disallows any sum in respect of "any taxes on income". This amendment, which applies with effect from 1 January 2020, was intended to clarify in legislation Revenue's long-held view with regard to such taxes. However, the Commissioners in the 2023 determination and the 2024 determination accepted that RWHT was a tax on income and still determined that a deduction was available under s81 TCA 1997. Therefore, although the accounting periods in question in these cases pre-dated the introduction of s81(2)(p) TCA 1997, there may be some doubt over whether the introduction of this provision would necessarily deny a deduction for foreign RWHT. As a result,

RWHT may be automatically deductible under s81 TCA 1997. Given that s76A TCA 1997 does not specifically refer to "profit before tax", this may be the case even where the RWHT is reflected in the tax charge in a company's income statement. Therefore, the question remains as to whether the RWHT is automatically deductible under s81 TCA 1997 and, if so, whether a credit may be claimed in priority under Schedule 24 TCA 1997.

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of both the 2023 determination and the 2024 determination. As well as providing a final conclusion on the deductibility of foreign RWHT, the outcome of these appeals should, hopefully, shed more light on the order of precedence between a deduction under s81 TCA 1997 and a credit under Schedule 24 TCA 1997.

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Taxation of Woodlands and Forestry in Ireland

Introduction

We have often been told that money doesn't grow on trees, but given the rise in the popularity of trees as a trading or investment asset and the favourable tax treatment applicable to trees under Irish tax legislation, one might have to revisit that assertion! In this article John O'Reilly details the practicalities facing Irish forest owners today, and Anne Hogan discusses the tax treatment of forests and woodlands in Ireland under various tax heads.

High-Level Forest Statistics

As of 2022, the total area of forest in Ireland was estimated to be 808,848 ha, or 11.6% of the total land area (Government of Ireland, *Ireland's National Forest Inventory 2022 – Main Findings* (Dublin: 2023)), with forest cover estimated to be at its highest level in more than 350 years. Of the total forest area, 397,364 ha, or 49.1%, is in public ownership, mainly owned by Coillte, but a very significant quantum, 411,484 ha, is in private ownership. The term "private" captures forests owned by institutional investors, funds, and private woodland owners, and equates to a very substantial area of timber of significant monetary value.

The national forest estate comprises 69.4% conifers – primarily spruce, be it Sitka spruce or Norway spruce – and 30.6% broadleaves, mainly ash (currently being decimated by ash dieback disease), oak, birch, alder and sycamore, plus other, minor species.

The private forest estate divides into two broad categories:

- grant-aided, 288,497 ha; and
- non-grant-aided, 122,987 ha.

Although a significant proportion of the private non-grant-aided forest estate would have been present before 1980, and this forest type would be located mainly on larger land holdings and within estates, a noteworthy statistic is that 288,497 ha has been planted by private owners for commercial purposes, driven by financial incentives provided by the State. Since 1980, 23,859 individual private forest owners have received grant aid to establish their forests.

The age distribution of the forest estate is still relatively young, but based on current management strategies, sawmill demand and timber prices, sizable areas of woodland are felled once they reach their late 20s and 30s, and Fig. 1 below indicates that significant quantities of timber will come to market over the next decade. Having planted large areas in the 1980s and 1990s, private woodland owners will now start to realise the significant value tied up in their forest assets.

Realisation of Value: Sale of Timber

Forests provide revenue to their owners after harvesting events, and timber harvesting (in an Irish context) falls into two main categories:

- thinning, which is the progressive removal of a percentage of the standing timber, giving the remaining stems more space and room to accrue volume and value; and
- clearfelling, which is the complete felling of the mature crop at the end of its predetermined rotation.

Irish forest owners tend to manage their crops primarily based on a clearfell system, but many are moving toward a management system, commonly used in Continental forestry, called continuous cover forestry (CCF). This management system avoids blanket clearfelling in favour of a more long-term strategy of continually removing a percentage of the

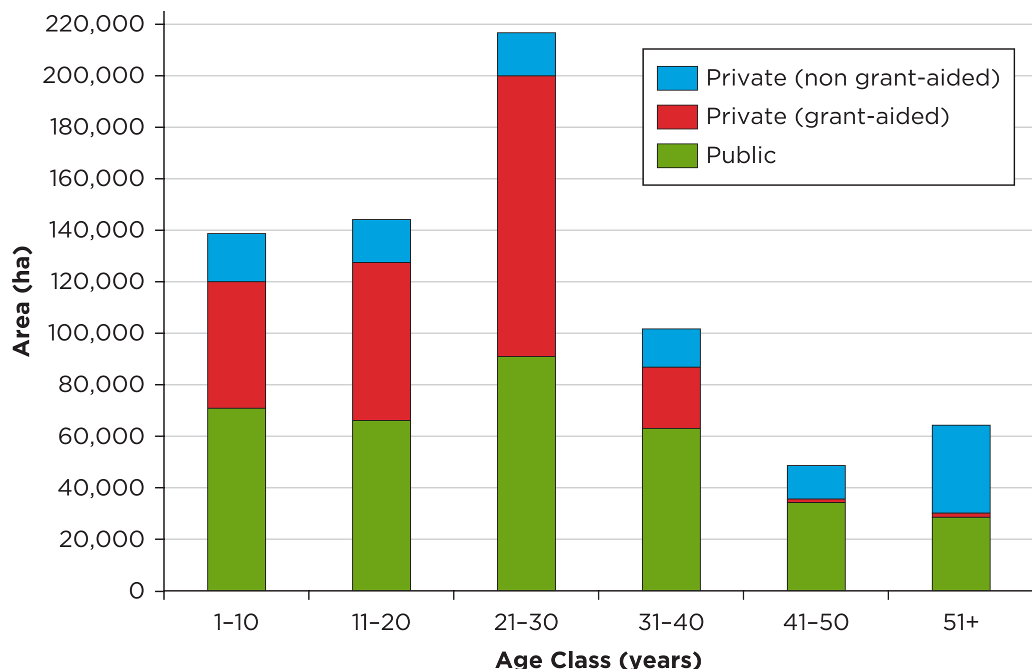

Fig. 1: Forest age-class distribution by ownership (source: *Ireland's National Forest Inventory 2022*).

standing crop over time. CCF is considered to be less environmentally impactful than clearfelling.

Across the maturing private forest estate, forest managers, on behalf of forest owners, bring timber that is ready to harvest to market, selling same to the sawmilling/harvesting sector, normally as a standing sale. Forest managers supervise operations and charge the forest owner accordingly, with the revenue from the timber sale being realised by the woodland owner as income. Private forest owners then benefit from the income tax exemption, with individuals ultimately paying only USC and PRSI (this is discussed further below).

Profitability for the forest owner depends on the price achieved for the standing timber, and this can vary across forest stands. At a high level, Irish timber prices are influenced by:

- domestic demand, driven by the construction sector;
- demand in the UK, our largest export market; and
- the supply of timber from Scandinavia, primarily Sweden (if Scandinavian timber is moving to the US, influenced by US demand, US interest rates and the impact of hurricanes/tornadoes, then the UK market is open to Irish supply and prices lift. If the Scandinavian nations are focused on exporting to the UK, this tends to drive down the price achieved for sawn material and, accordingly, drives down standing log prices).

At a forest level, timber prices are influenced by:

- the quality of the land planted and the yield of the crop (referred to as yield class, a measure of the productivity of a forest in cubic metres);
- species, with the sawmilling sector favouring Sitka spruce;
- access to the stand of timber (whether there is a forest road);
- the scale of operations (larger harvest events achieve better prices);
- timber quality (whether the stand has been well managed); and
- haulage costs.

Accordingly, prices achieved by forest owners can vary dramatically, and forest owners should to be aware of this variance.

Realisation of Value: Sale of a Forest

A forest owner can also realise the value of their asset by selling their forest. In essence, selling a forest consists of two distinct parts:

- sale of the standing timber and
- sale of the underlying land.

The market for Irish forests is currently "brisk", with numerous institutional investors, funds, family offices and high-net-worth individuals looking to acquire maturing forest assets. A natural, and indeed global, progression in forest ownership is the migration of forest assets from multiple smaller private forest owners to consolidated ownership at a fund/institutional level.

Forestry is considered an attractive investment by multiple investors because:

- It provides risk-adjusted returns, offering investors the opportunity to achieve an attractive, low-risk, long-term, positive, real return.
- It is a tax-efficient investment, depending on the jurisdiction (with Ireland offering favourable tax incentives, as discussed below).
- It allows for diversification of an investment portfolio into an asset-backed commodity.
- Forestry has historically delivered strong returns with a low risk-to-return ratio.
- Biological growth is not impacted by external economic factors, in that a forest continues to grow and put on volume, and therefore value, no matter what the economic climate is.

- Unlike other commodities, forests do not have to be harvested if prices are poor; they can be "stored on the stump", awaiting a price uplift.
- Risks can be minimised by effective management.
- Risk discount rates can be adjusted downwards as the asset matures (reduced risk).

As a reasonable percentage of the private forest estate in Ireland is of suitable scale, and is classed as being highly productive, the current market for the appropriate forest asset is strong.

Investors tend to prefer forests that are:

- are coniferous (not broadleaf, owing to the length of the rotation to clearfell);
- are planted with spruce (preferably, Sitka spruce);
- are of scale;
- have good access, with no environmental restrictions; and
- are of good timber quality.

Accordingly, not all forests are of interest to the larger institutional investor, and offers can vary significantly.

When valuing standing timber for a forest sale, the most common method is to calculate the net present value (NPV) of the crop. To determine, first, the future value of the timber, the valuer will need to understand the growth pattern of the forest, determining the future timber volume at the projected time of harvest, as well as the future price that will be paid for the timber. Once future value is determined, this value can then be discounted over a predetermined period, at a selected discount rate, to calculate the NPV of the crop (discount rates that are used to value Irish forests tend to vary from 3.5% to 7%).

The value of the land on which the forest sits is impacted by the Forestry Act 2014, which requires that the land be replanted after felling and that it ultimately remains in a perpetual cycle of forest rotations. It should also be noted that when establishing a crop of trees in the second or subsequent rotations after clearfell, no grant assistance is available from the Forest Service to cover establishment costs, and the land needs to be replanted at the owner's cost. These two factors lead to valuations of planted forest land that are in the range of €750 per acre for low-yielding peaty soils to €2,000 per acre for productive mineral soils.

When private forest owners sell their forest as a going concern, the timber will benefit from capital gains tax (CGT) exemptions while the underlying land will be subject to CGT (discussed further below). In practice, the low value attributed to the land does not lead to significant CGT liabilities, and the real value of any forest is in the value of the timber.

It should be noted that investors provide the option to acquire the standing timber alone, not acquiring the land. In this case the focus is on acquiring the harvesting rights to forests that are 18 years of age and older. This will suit forest owners who do not want to sell their land or who simply cannot sell the land, based on how the forest is integrated into their overall farm holding. The option allows forest owners to cash in on the future value of their forest, converting future value into current cash-flow.

Over the next decade large quantities of timber will be harvested and many forest owners will decide to sell their forest as a going concern. Understanding value and the potential tax liabilities is essential. The structure of the forestry industry in Ireland and the various ways in which an income or gain can be derived from this type of asset have been detailed above. Forestry is seen as one of the most important tools in addressing our nation's carbon footprint, and consequently this is an industry that benefits from favourable tax treatment. The issues to be considered in relation to the taxation of forestry and woodlands under various tax heads are discussed in more detail below.

Income Tax

Section 232 TCA 1997 provides that profits from the commercial occupation of woodlands in the State are exempt from income tax and corporation tax. The woodland must be managed on a commercial basis with a view to profit. This is not defined, but it is understood that the forest owner must be able to demonstrate that they have received advice from a qualified forester/adviser. Consideration would also be given to time spent on the management of the woodlands, labour input, capital works, scale of woodlands etc.

A distinction is drawn between the activities of "tree farming" or "market gardening" as opposed to silviculture. Silviculture is the science and art of growing and cultivating forest.

The forest owners must ensure that they are occupying the land in order to avail of the exemption. Occupation is defined in the legislation as "having the use of that land" and does not equate to mere ownership of the land.

The claim for the tax exemption must be made annually on the exemption section of the tax return. Details of all relevant profits, gains and losses must also be included in the annual return of income to Revenue, in the section relating to exempt income. The normal taxation rules that apply in computing profits, gains and losses still apply to the calculations, albeit that no tax arises on the profit.

- The "badges of trade" should be used to determine whether the activity constitutes a trade. A trade will use generally accepted accounting principles (GAAP) to compute its Case I profits. Under these principles, profits are allocated as the value of the stock increases each year, meaning that profits are spread over the growth of the woodlands.
- Where the level of activity is not sufficient to constitute a trade, the appropriate basis of assessment is Case IV, and profits are treated as arising in the year in which they are realised.

This income tax exemption is no longer considered to be a "specified relief" for the purposes of the high-income earner restriction after an amendment was introduced by Finance Act 2015. This followed representations from the agricultural sector and the Department of Agriculture, Food and the Marine to the effect that woodlands income and gains, by their nature, are erratic rather than arising in a steady stream over a period. It was acknowledged that there can be years with no income or gains while the crop is growing, followed by a year in which the crop is harvested and the income is generated. The application of the high-earner restriction was potentially distorting output and production, with farmers not willing to generate sufficient income to bring them within the scope of the restriction, and for that reason the exemption was removed from the list of specified reliefs.

Table 1 summarises some of the types of income that can arise from holding woodlands and whether the income is considered taxable or exempt under s232. As a rule of thumb, Revenue takes the view that the wood should be capable of use as timber to be considered to fall within the exemption.

Losses incurred in the occupation of woodlands managed on a commercial basis with a view to the realisation of profits may not be claimed as an allowable loss for offset against other income in the year under s381 TCA 1997.

Pay-Related Social Insurance

For an individual, the profit from forestry for each year is fully liable to PRSI, typically at the S rate of 4%.

Universal Social Charge

Similarly, for an individual, forestry profits are liable to the progressive rate of USC, depending on the level of income.

Table 1: Forestry activities and their exemption from income tax under s232 TCA 1997.

Type of activity giving rise to income	Exempt from tax under s232 TCA 1997?
Felling trees and selling hewn timber (timber converted from a log to lumber)	Yes
Planting and harvesting Christmas trees	Yes
Thinnings/foliage created as a by-product of managing woodlands on a commercial basis by removing branches and foliage to ensure optimum growth of the tree	Yes
Sale of thinnings/foliage of holly, eucalyptus, viburnum etc. as a crop that is harvested from the plants, as opposed to harvesting the plants themselves	No
Sale of other trees, shrubs or bushes that are more akin to the cultivation of plants or a nursery	No
Selling standing timber – allowing other parties on to the land to fell the trees while retaining ownership of the land on which the trees grow	Yes
Selling timber products	Portion referable to occupation of woodlands exempt; income referable to timber-processing activities taxable
Planting grant and forestry premium income received from the occupation of woodlands	Yes
Compensation proceeds for damage to woodlands leading to loss of profits, e.g. storm damage	Yes
Sale of land with standing timber held as a capital asset	No Not an income transaction – subject to CGT. A separate CGT exemption may apply to the proceeds referable to the standing timber (discussed below)
Sale of land and standing timber held as a trading asset, i.e. the sale of established woodlands held as trading stock. Profit from the sale of the woodland, as opposed to occupation of the woodland on a commercial basis.	No

Distributions from Exempt Profits

Section 140 TCA 1997 extends the exemption under s232 to dividends or other distributions made by a company that are made out of exempt profits from woodlands. As is the case with the exemption under s232, the exemption under s140 applies to income and corporation tax only and does not extend to USC or PRSI for individuals. The high-income earner restriction still applies to this dividend income where the recipient is an individual (even though income under s232 was removed from the list of specified reliefs).

Capital Gains Tax

As mentioned above, profits from the sale of land with standing timber do not fall within the exemption of s232 TCA 1997, as this is a capital

transaction and not an income transaction. If an individual is disposing of woodland and the disposal is within the scope of CGT (i.e. it is a normal disposal and not part of a trade), then s564 TCA 1997 applies. Section 564 specifically provides that proceeds should be apportioned and that no account should be taken of either the cost of the trees or the value associated with the trees. If a company is disposing of woodland and the disposal is within the scope of CGT, then CGT applies to the full proceeds, i.e. both the land and the standing timber, albeit that the sale of the timber on its own would be considered an income transaction.

Section 564 TCA 1997 provides that, in the case of individuals, the value of the standing timber is not taken into account for CGT purposes. It is important to note that this CGT exemption for the disposal of the crop of trees is not available to a company.

The underlying land is still a chargeable asset, and any proceeds referable to the land will be subject to CGT as normal. As mentioned above, in practice, the land on which woodlands are planted will usually have a low value owing to the existence of the long-term crop growing on it and the cost of reclaiming the land for other agricultural use should the trees be removed.

Interestingly, although the cost referable to the trees must be excluded, there is no explicit requirement that the incidental costs of disposal be excluded or apportioned between the consideration in respect of the timber (which is being excluded from the computation) and the consideration in respect of the land (which is taxable). There is, therefore, a view that the entire incidental costs of disposal would remain deductible against the taxable land element, notwithstanding the fact that a major part of the disposal consideration may be excluded from the CGT computation.

Use of Valuers

In reality, a sale of land together with the trees will usually be made for an overall agreed price without the contract's specifying how the proceeds are to be split between the land and the trees. This then necessitates the engagement of an independent valuer to assist the taxpayer in ascertaining what consideration is referable to the trees (and therefore exempt from CGT) and what consideration is referable to the underlying land (and subject to CGT).

This matter has been the subject of a recent Tax Appeals Commission decision, 108TACD2023, where Revenue challenged the split included by the taxpayer in their tax returns on the basis that it was Revenue's view that the trees were overvalued.

Section 544(5) TCA 1997 (Interpretation and general) provides:

> "For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be such method as appears to the inspector or on appeal the Appeal Commissioners to be just and reasonable."

The importance of engaging a credible valuer to determine what is "just and reasonable" was highlighted in this case, with the taxpayer's calling four different valuers as witnesses while Revenue engaged only one valuer to act as witness. Two of the taxpayer's witnesses were qualified foresters. The requirements to be fulfilled to be a registered forester are detailed on the website of the Department of Agriculture, Food and the Marine. In this tax appeal the foresters explained that the standard models used to value woodlands are the Irish Dynamic Yield Model and the British Forestry Commission Yield Model. The expert witnesses outlined the fact that valuing trees is a scientific and fiscal exercise and that, although valuations can also occur through the use of the transaction method, there are not enough transactions taking place in Ireland to achieve an accurate result with this method. In making her decision, the Appeal Commissioner considered it relevant that some of the lands

did not have felling licences and it was unlikely that such a licence would be available until the trees reached a certain age. For that reason, it was accepted that, in valuing the trees, "some element of future value of the growth of the tree must be relevant in any sale/purchase", and it was not just the market value of the trees if they were all felled and sold at the date of disposal of the land and trees that was relevant. The Appeal Commissioner found that:

> "the valuation of the trees is based on *inter alia* location, size, surroundings, condition, current use, zoning and planning, existing accommodation, services, title/tenure, the value of wood/timber, the property being well managed with grants and premia available".

Given the technical nature of forestry valuation, it is clear that a taxpayer must ensure that they engage a valuer with appropriate expertise in the valuation of woodlands for the purposes of the split required by s564, and not just a regular auctioneer or estate agent who does not specialise in this area. Thought should also be given to agreeing at the time of purchase the split of consideration between the land and the trees between the purchaser and vendor (in the case of a third-party, unconnected sale) and reciting the agreed split in the contract to avoid challenges from Revenue on the consideration allocation. Given the complexity of the matter, it may still, however, be necessary to engage a forester or another independent expert to assist with the split at that stage also.

Capital Sum Derived from an Asset

In another tax appeal, 01TACD2017, the taxpayer received a payment from an energy company in respect of the grant of a series of rights allowing the energy company to erect electricity pylons and a 100kV line on the taxpayer's lands. The appellant's lands were under forestry, and the taxpayer agreed that an area of forest would be cleared to make way for the pylons. The taxpayer contended that part of the consideration received was attributable to the disposal of trees growing on the land and, consequently, sought to claim an exemption from CGT for that part of the proceeds, pursuant to s564 TCA 1997. The Appeal Commissioner found in that case that the payment represented a capital sum for the use or exploitation of an asset in accordance with s535(2)(a)(iv) TCA 1997 and that this was the appropriate taxing provision on the basis that there was no disposal of woodland for the purposes of s564. The land must therefore be fully alienated from the vendor for the exemption under s564 to apply.

Capital Acquisitions Tax

The parent-to-child tax-free exemption for gifts and inheritances was increased to €400,000 under section 99 Finance Act, 2024, with tax at 33% applying to the market value of assets received above this value. Given current land and property prices, this exemption threshold is still relatively low, even after the recent increase from €335,000. This means that the availability of a relief such as agricultural relief (which allows a 90% discount on the market value to arrive at the taxable value of an asset transferred) becomes very important. The agricultural property to which agricultural relief can apply includes "agricultural land, pasture and woodland situate in a Member State [or in the United Kingdom] and crops, trees and underwood growing on such land". Woodland trees qualify for CAT agricultural relief if growing on the land, but this does not apply if the trees or underwood have been harvested or are cut down.

In general, to qualify for agricultural relief, under the "farmer asset test" 80% of the recipient's assets must be in agricultural and forestry property on receipt of the benefit. In addition, the recipient must also meet the "active farmer test". These tests do not apply to the timber growing on the land but do apply to the land itself. There are changes to the farmer test introduced in the Finance Act 2024, but these are subject to Ministerial Order, and as currently drafted, do not change the application of agricultural relief to woodlands as outlined above.

The six-year clawback provisions do not apply to the subsequent disposal of trees or underwood by the beneficiary, In circumstances where the land is retained, the forestry land must continue to be managed on a commercial basis for at least six years after the receipt of the gift or inheritance.

In the event that agricultural relief does not apply, it may be possible to claim business relief on the basis that forestry or woodland business is not considered by Revenue to be in the nature of the making or holding of investments. Similarly to agricultural relief, where business relief applies, a 90% discount is allowed on market value to arrive at the taxable value of a gift or inheritance.

Value-Added Tax

Commercial forestry activities are regarded as farming for VAT purposes. Most private forest owners are not VAT registered but can add 4.8% (increasing to 5.1% from 1 January 2025) to the sale price of their timber to compensate them for being unable to recover VAT inputs.

An unregistered forest owner may be able to recover VAT on buildings and roads under the Repayments to Unregistered Farmers Scheme.

Alternatively, forest owners can waive their VAT exemption and charge VAT on all outputs, as well as recover VAT on all inputs. The sale of timber or the sale of forest and land is subject to the standard VAT rate of 23%, except for firewood and kindling, for which the rate is 13.5%. Forestry services such as planting and felling are liable to VAT at 13.5%.

Stamp Duty

Unlike crops that must be sown every year, trees are generally regarded as *fructus naturales*, which are generally treated as part of the land. The effect of this is that where land is sold with trees on it, the consideration for/value of the trees is treated as part of the consideration for/value of the land and is stampable accordingly.

Stamp duty applies to all transfers and purchases of forestry land at a rate of 7.5%. The only exception is the transfer of forestry land between spouses and between group related companies, which are exempt from stamp duty.

Standing timber (i.e. growing timber) in a commercial woodland is, however, exempt from stamp duty if the growing timber accounts for 75% of the land area, but the underlying land is still liable to stamp duty. Similar to the position with regard to the CGT exemption, in the event of an acquisition of land and standing timber a professional valuation will therefore be required of the land separate from the crop to arrive at the amount of the consideration liable to duty. Where the purchaser is obtaining a valuation for stamp duty purposes and the vendor is obtaining a valuation for CGT purposes, it is important that both parties ensure consistency between the two valuations. .No Stamp Duty applies to assets passing under Will but in the event that a gift of forestry is made the value attributable to standing timber will again be exempt such that an independent valuation will be needed to apportion value between the land and the standing timber.

Young trained farmer relief and consanguinity relief do not apply to the transfer of woodlands

Relevant Contracts Tax

Individuals or companies operating in forestry must also be cognisant of any relevant RCT obligations in their activities. Section 530A(1)(b)(iii) TCA 1997 provides that a person who carries on a business that includes the processing of wood from thinned or felled trees, or who supplies thinned or felled trees for such processing, may be a “principal” for the purposes of RCT.

Forestry operations for the purposes of RCT means operations of any of the following descriptions:

(a) the thinning, lopping or felling of trees in woods, forests or other plantations;

(b) the planting of trees in woods, forests or other plantations;

(c) the maintenance of woods, forests and plantations and the preparation of land, including woods or forests that have been harvested, for planting;

(d) the haulage or removal of thinned, lopped or felled trees;

(e) the processing (including cutting or preserving) of wood from thinned, lopped or felled trees in sawmills or other like premises; and

(f) the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the operations referred to in paragraphs (a) to (e).

Conclusion

It is clear that forestry and woodlands continue to be a very lucrative investment from a commercial point of view while attracting favourable tax treatment in Ireland. It would therefore appear that there may at least be scope to make money grow “from” trees if not actually “on” trees!

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VAT and Sustainability

Introduction

Value-added tax is an indirect tax, levied at the point of consumption of goods and services. The transition to a more sustainable planet is a critical matter that is rapidly changing the consumption habits of individuals and companies, as well as shaping tax policies. In this article we outline the VAT measures in Ireland to date to address environmental sustainability, as well as the emerging global trend of jurisdictions' using their VAT systems to promote sustainability. Drawing on the experience of other countries, we also share some suggestions on what Ireland could consider in future from a VAT perspective to support the decarbonisation journey.

Background Context

The year 2025 is set to be a critical one for renewable energy in Ireland. In a recent report the Sustainable Energy Authority of Ireland highlighted that in 2022 more than 80% of Ireland's energy supply still came from traditional fossil fuels and that there is an urgent need for increased investment in renewable energy sources such as wind and solar to meet Ireland's 2030 climate targets.[1] Ireland has set an ambitious national objective to achieve climate neutrality by 2050. There are also EU climate obligations to be met under the United Nations Framework Convention on Climate Change and the Paris Agreement.

1 See https://www.seai.ie/sites/default/files/publications/Energy-in-Ireland-2023.pdf

Investment in Ireland's energy transition and building fit-for-purpose, secure and stable green infrastructure is critical to make meaningful progress towards our climate targets, to maintain our competitiveness and to attract foreign direct investment. Budget Day represented a step in the right direction, with the announcement of significant additional Government funding commitments targeted at developing Ireland's climate infrastructure and wider decarbonisation measures. Finance Act 2024 contains a number of provisions focused on incentivising investment in the green transition, and more work will be required in the future to promote innovation and encourage further investment in the energy transition.

A balance of tax measures can be used as part of an overall energy transition; however, the primary focus of this article is on VAT. As an indirect tax levied at the point of consumption, VAT is payable at the standard rate (currently, 23%) on most goods and services that we buy as consumers. As a result, certain measures could influence businesses and individuals to behave more sustainably.

Irish VAT Measures So Far

Over recent years there has been a notable trend towards reducing VAT rates to encourage environmentally beneficial consumer behaviour. Finance Act 2023 brought in a zero VAT rate for the supply and installation of solar panels on private dwellings, effective from 1 May 2023. Budget 2024 then expanded the zero rate to the supply and installation of solar panels on schools.

On 1 February 2024 we saw the introduction of the Deposit Return Scheme (DRS), whereby plastic bottles and aluminium cans can be returned to retail outlets in exchange for a small deposit. As part of this initiative, Finance (No. 2) Act 2023 amended the VAT legislation to provide that where a deposit is charged on a drink product that is within the scope of the DRS, the retailer does not have to charge the customer any VAT in respect of the deposit paid. However, a VAT liability will arise for the DRS scheme operator if the empty container is not returned to the DRS for recycling or reuse.

Budget 2025 and Finance Act 2024 have introduced a reduced rate of 9% (from 13.5%) on the supply and installation of heat pumps with effect from 1 January 2025. This will make it more affordable for homeowners to switch to efficient electric heating. This is the lowest VAT rate that is allowable under the VAT Directive for this type of product, and it is on top of the already generous grants that are available for heat pump installations.[2]

The Tax Strategy Group reviewed the merits of introducing reduced VAT rates in areas such as bicycles and e-bikes.

International VAT Measures in Relation to Sustainability

VAT rates and exemptions

A number of countries have used VAT policy to facilitate the green and energy transitions. As noted in the OECD's recent *Tax Policy Reforms 2024* report, the key trends in relation to VAT and sustainability have been evident in the use of:

- lower VAT rates for particular sectors or goods and services to support the transition to a lower-carbon economy;
- reduced VAT rates for residential energy-generation initiatives to promote sustainable energy sources; and
- reduced rates for green transport, such as electric, hybrid and hydrogen vehicles (including bikes and e-bikes).

In 2023, 13 countries introduced permanent or temporary reduced VAT rates for goods and services such as electric and hydrogen vehicles

2 Press release from the Minister for the Environment, Climate, Communications and Transport, Eamon Ryan TD, 1 October 2024, https://www.gov.ie/en/press-release/db282-minister-ryan-delivers-14-billion-in-budget-2025-supporting-families-and-communities-and-underpinning-our-journey-to-net-zero/

and products associated with low-carbon domestic energy generation in an effort to reduce greenhouse gas emissions.[3]

The OECD report notes that several countries have applied reduced VAT rates or exemptions to promote more sustainable objectives, with the changes classifiable into four broad categories, as follows:

Zero rating

Similarly to Ireland, Austria (temporarily), Germany and the Netherlands (both permanently) introduced zero rates for the purchase and installation of solar panel systems.

Extension of zero rating

The United Kingdom extended the scope of the 0% VAT rate on the supply and installation of energy-saving material (heat pumps, solar panels, insulation, etc.) in residential accommodation and charity buildings, which will revert to the 5% reduced rate in April 2027.

Reduced rates

Portugal lowered the VAT rate applied to solar panels, solar water heaters and heat pumps to the 6% reduced rate. In Belgium the application of the 6% reduced VAT rate to solar panels and solar water heaters, introduced in 2022, ended on 31 December 2023, and the application of the reduced rate to heat pumps was extended until the end of 2024. Portugal also applied its lower 6% reduced VAT rate to biomass fuels (temporarily) and bicycles (permanently).

Exemptions

VAT exemptions for the importation of batteries used for solar panels were introduced by Barbados (for two years on residential generators from April 2022) and Jamaica (permanently).

A number of vehicles qualify for reduced rates globally. As noted in the OECD report, there is a general trend towards jurisdictions' granting temporary VAT exemptions and reduced rates on environmentally friendly vehicles, with governments' adjusting them based on market changes and revenue/equity concerns. The examples below are included in the report:

- **Barbados:** Temporary VAT exemption on electric vehicles (EVs) was in place until March 2024.
- **Iceland:** Permanent exemption for new electric and hydrogen cars, and temporary exemption for used ones, bicycles and green motorbikes.
- **Norway**: VAT exemption limited to EVs priced at up to a certain amount (*c.* €44 000).
- **Lithuania:** Businesses can avail of a more extensive input VAT deduction on EVs valued at up to €50,000.
- **Türkiye**: Temporary VAT exemption on some engineering services for businesses producing EVs to boost the industry and reduce greenhouse gas emissions.

In 2021, as part of the sustainability transition, the Council of the European Union reached an agreement on updated rules for VAT rates. Member States are now able to apply reduced VAT rates to the supply, rental and repair of bicycles, including e-bikes.

Use of VAT rates: a balancing of factors

The EU Green Deal initiative recognised that Member States can make more targeted use of VAT rates to reflect increased environmental ambitions. In Ireland there are various energy and vehicle taxes already in place (the total yield from energy and vehicle taxes in 2023 was €4.3bn, representing 5% of tax receipts). VAT is simply one instrument to promote environmental ambitions, and there are different opinions on how best to use the VAT system in this area.

3 OECD, *Tax Policy Reforms 2024: OECD and Selected Partner Economies* (Paris: OECD Publishing, 2024), p. 50, https://doi.org/10.1787/c3686f5e-en

The European Parliament has supported the idea of using reduced VAT rates as a viable environmental tool, but concerns have been expressed about the effectiveness of such measures. Various matters have been identified, including potentially higher compliance costs;[4] legal uncertainty and boundary issues regarding what is covered by a concession; the potential for fraud; and whether consumers will benefit from any VAT rate reductions or exemptions (in circumstances where VAT savings are not passed on). In many cases, VAT rate reductions are not permanent and are monitored in order to address revenue forgone and equity concerns. VAT rate increases have been seen in relation to tourism transportation (Romania), cleaning products (Türkiye) and agricultural inputs (the Netherlands).[5] As a general observation, VAT rates have been used as a carrot (reduced rates) rather than a stick (higher rates).

For completeness, the real impact of reduced VAT rates on environmental objectives is not fully tested. The European Parliamentary Service observed that:[6]

"Several studies show that the distributional effects of reduced VAT rates are relatively small. Reduced VAT rates have only recently been used for environmental purposes, so there are only few empirical studies evaluating their effects so far. Therefore, it is too early to draw any conclusions on the effectiveness of VAT rates towards achieving environmental goals. In general, the effectiveness of reduced VAT rates in promoting social or environmental objectives depends on the pass-through and price elasticity of demand for the goods or services subject to the reduced VAT rate."

The overarching comment is that we are too early on this journey to draw firm conclusions about the use of VAT reduced rates. Notwithstanding the concerns expressed, there is, arguably, a greater prospect of achieving desirable outcomes with VAT rules and measures compared with relying solely on a myriad of environmental taxes. The VAT rules are well understood internationally and embedded in business systems, therefore they are a good starting base for any future reform. The VAT Directive has given Member States flexibility to apply reduced and zero rates to a list of goods and services in Appendix III of the Directive. In terms of the expected pass-through of VAT rate reductions, it should be stressed that although the market always sets the price, in the right circumstances, the pass-through effect should be possible to achieve. A balancing of factors would tend to suggest that there is some flexibility in the VAT rules and, if they can be targeted in the right way, they can continue to be used in the future to facilitate sustainability objectives – not just in Ireland, but globally.

Transactions involving emissions units

For completeness, it should be noted that some countries have made the decision to either zero-rate or exclude from VAT/GST transactions involving emissions units (for example, Australia, New Zealand and Singapore). In New Zealand the GST policy-makers wanted to provide more certainty to investors and traders, as well as reduce compliance costs (as emissions trading units were often used as a payment mechanism, i.e. as part of barter supplies, and in some cases were difficult to value). The New Zealand policy decision was to zero-rate supplies of emissions units and carbon credits, and this has worked smoothly for more than 14 years. The overseas experience in this area is instructive in cases where there are different VAT/GST

4 See, for example, a study conducted by the European Parliamentary Service that looked specifically at the impact of reduced VAT rates on compliance costs, *VAT Gap, Reduced VAT Rates and Their Impact on Compliance Costs for Businesses and on Consumers* (Brussels: European Union, 2021), https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694215/EPRS_STU(2021)694215_EN.pdf

5 OECD, *Tax Policy Reforms 2024*, p. 51.

6 European Parliamentary Service, *VAT Gap, Reduced VAT Rates and Their Impact on Compliance Costs,* p. 21.

treatments being adopted and complicated compliance aspects, such as valuation and the use of emissions units (or allowances) in barter transactions. Notably, this is an effective VAT/GST policy choice as the majority of trading in emission allowances in secondary markets occurs via derivatives.[7]

Future Considerations

Overall ambition for better policies facilitated by VAT rules

The work of the TSG is insightful and demonstrates an ongoing commitment by the Government to explore ways of using the tax rules, including VAT, to facilitate its environmental objectives, including in relation to energy-efficient heating systems.

As noted, the VAT rules have mainly been used to provide incentives such as reduced rates rather than to increase current VAT rates (this approach recognises that other energy or vehicle taxes may already apply, as is the case in Ireland). Although it is, in theory, possible to introduce penal VAT rules for harmful or less environmentally friendly goods and services, it has been rare for a country to impose higher VAT rates or penal regimes that limit VAT deductions.

VAT recovery and refunds

Some countries have rules that allow VAT/GST recovery on costs associated with a share or bond issue, and those rules could be adopted – if appropriate – for fundraising activities that relate to qualifying renewable or green projects (defined by reference to certain criteria). Any reform in this area would also need to be in accordance with the EU VAT Directive. The aim here should be to make it easier for financial service providers to recover VAT incurred on financing sustainable and renewable projects. Another option would be a fast-track procedure for VAT refunds in relation to costs associated with qualifying renewable projects. This could take a similar form to the authorisations that are currently available to taxpayers with a significant proportion of turnover from exported (zero-rated) supplies under s56 of the Value-Added Tax Consolidation Act 2010.

Conclusion

Tax policy is one policy lever available to address the risks of climate change, influence behavioural change, mobilise private investment and capitalise on the many opportunities that the net-zero transformation presents.[8]

7 This reflects the EU Emission Trading System's annual compliance cycle, where non-financial sector firms typically hold long positions for compliance, while banks and investment firms tend to hold short positions (European Securities and Markets Authority, *EU Carbon Markets Report 2024* (Paris: ESMA, 2024), https://www.esma.europa.eu/sites/default/files/2024-10/ESMA50-43599798-10379_Carbon_markets_report_2024.pdf).

8 Refer also to PwC's discussion of how tax policy can facilitate a just transition: https://www.pwc.ie/issues/environmental-social-governance-esg/delivering-just-transition.html

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VAT on Property Scenarios

Introduction

The legislative provisions for VAT on property transactions introduced on 1 July 2008 included the introduction of a Capital Goods Scheme and specific rules for determining the VAT status of a sale; notwithstanding the new rules, some concepts were retained and transitional measures were adopted. An understanding of the pre- and post-1 July 2008 rules and the transitional rules is required when advising on the VAT treatment of a property transaction, and this can make it a challenging task. One of the key concepts, that endured, is the concept of development, which is considered below. This is followed by an analysis of the rules and practicalities surrounding lettings, disposals of property subject to lettings, and the provision of accommodation for different purposes, which can result in irrecoverable VAT costs. This article is based on a paper presented at the ITI Annual Conference in April 2024, the full text of which can be found on TaxFind.

Development

Development as defined in s2 of the Value-Added Tax Consolidation Act 2010 (VATCA 2010) means:

> "(a) the construction, demolition, extension, alteration or reconstruction of any building on the land, or
>
> (b) the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use."

As is evident from the definition, part (a) deals with any building on the land, and it is usually obvious that development has taken place where it comprises construction, reconstruction, extension or demolition, but it can be more difficult to ascertain what constitutes an alteration. Part (b) of the definition deals generally with land, and can be broken down into four conditions, which all need to be satisfied – (i) an engineering or other operation must be carried out; (ii) that operation must be carried out in, on, over or under the land; (iii) that operation must adapt the land for altered use; and (iv) that altered use must be material.

In determining whether a property has undergone development, the focus should be on work of a development nature, i.e. focus on physical works. Usually repairs, refurbishments (ordinary meaning), fixtures and fittings, and upgrades can be excluded. In some circumstances planning permission may be required to carry out certain works, but a successful planning application does not constitute development – there must be some physical works carried out. Clearly, if work is carried out in line with the planning permission, then the nature of those works needs to be assessed to ascertain if there has been development for VAT purposes.

There are other factors that will need to be considered when determining the impact of works carried out on the property from a VAT perspective: one should consider all of the circumstances of the transaction and who carried out the works on the property – for example, the vendor, the purchaser (before completion), the landlord or the tenant, in the case of a let property. The timing of the works has significant importance under the new rules.

Development works and refurbishment are pertinent to every property transaction, and the nature and level of work are important in determining the VAT treatment on a sale, and the time when this was carried out is critical to this assessment. In addition to sales and lettings, development is relevant in the context of sales of reversionary interests. This arises where a reversionary interest is being disposed of with the benefit of a lease and that lease was created before 1 July 2008 (“legacy lease”). Section 93(2) VATCA 2010 provides that the sale of a reversionary interest will not be subject to VAT where the property has not been developed “by, on behalf of or to the benefit of” the landlord since the grant of the legacy lease. It is worth noting that, depending on the circumstances, the sale could, instead, be covered by the transfer-of-business relief provisions in s20(2)(c) VATCA 2010.

Development is also relevant to lettings in the context of any refurbishment works by a tenant. Refurbishment, which is dealt with below, has a specific meaning for VAT purposes. Where a tenant carries out a refurbishment, a capital good is created and may result in an adjustment under the Capital Goods Scheme (CGS) if the tenant surrenders the lease within 10 years of the works’ being carried out, unless the landlord agrees to take over the CGS obligations.

The terms minor development and significant development are frequently used but are not defined in VATCA 2010. The terms are used in the case of the sale of property where development has occurred within five years prior to the sale to determine if the level of development brings the sale within the charge to VAT. Significant development, therefore, means development work where the expenditure incurred is more than 25% of the sale proceeds or where the work adapted the building for a materially altered use. Once the work constitutes a material alteration, the quantum of the expenditure is not relevant. Equally, if the expenditure exceeds the 25% *de minimus*, the building will be considered to be developed. Although development work may have been carried out, once it is not a material alteration and the expenditure does not exceed

25% of the sales proceeds, it is considered to be minor development.

Refurbishment

Two further concepts frequently arise when reviewing physical works to a building: refurbishment and dilapidations. Refurbishment is specifically defined in s63 VATCA 2010 as "development on a previously completed building, structure or engineering work" and includes, for example, an extension. A refurbishment is treated differently from a CGS perspective in that it attracts an adjustment period of 10 years (in comparison to the normal 20-year adjustment period for newly developed property). It is a capital good, and where a number of refurbishments are carried out, this can result in a number of capital goods, each with a different start and end date of an adjustment period. Refurbishment is particularly relevant where a tenant carries out development work, as this will create a capital good for that tenant. As noted above, where the tenant creates a capital good and reclaims VAT, a clawback can arise if the lease is surrendered within 10 years of the refurbishment work being carried out. Where a landlord agrees to take over the CGS obligation, a clawback will not arise for the tenant. This is where lease clauses can be important, as it will be clear from the outset where a landlord is open to such an arrangement or where further negotiation may be required at the time of the surrender if the existing clause is not conclusive on this point.

Dilapidations

Dilapidations usually arise at the end of the lease term or where a tenant is surrendering its leasehold interest and the lease agreement contains a clause obliging the tenant to restore the property to the condition it was in at lease commencement, or the tenant pays a sum of money to the landlord in lieu of carrying out said works. Under general VAT principles, a liability to VAT arises where a supply is made by one person to another for consideration.

The requirement to reinstate the property is generally a contractual obligation on the tenant under the original lease agreement. In the circumstances, a landlord does not make a supply to the tenant so, in general, such payments are not within the charge to VAT. This would need to be considered on a case-by-case basis as the fact pattern will be determinative. A number of examples follow that highlight how the rules and terminology apply in practice.

Example 1: Greenfield site

Farmer John carried out some drainage works and built an underpass for agricultural purposes on his 50-acre farm in 2020. He reclaimed the VAT incurred via VAT Form 58 as a flat-rate farmer and continued his farming activities for a number of years. John received an offer in 2024 from a developer to buy the 50 acres for €1.2m. Although the sale occurs within five years of the works, the sale should be exempt from VAT. The works in this case did not adapt the land for materially altered use, as John used the land for agricultural purposes before and after the works. Although the sale should be exempt, a clawback should not arise, as s63(1) VATCA 2010 provides that a flat-rate farmer is not a capital goods owner in respect of certain works.

Example 2: Greenfield site with planning permission for change of use.

During 2023 Farmer Joe obtained planning permission to change the use of his land from agricultural to industrial use. He then carried out drainage works and added services such as sewerage, waterworks and underground cabling, and in 2024 he sold the land to a pharma company, which intended to build a factory on the land. The sale by Joe should be liable to VAT as the development work carried out was for a materially altered use – the development work changed the use of the land from agricultural to industrial.

Example 3: Refurbishment and dilapidations.

Tristan Newby (TN) bought a newly built warehouse in January 2008 for €3m plus VAT of €405,000 as an investment. He granted a 25-year lease to High Tech Ltd effective from 1 March 2008. The VAT4A procedure was availed of, and the VAT arising on the capitalised value of €3.5m was €472,500 (the economic-value test was met). The lease included a dilapidations clause. High Tech carried out refurbishment in April 2017 costing €350,000 and reclaimed the VAT incurred of €47,250. A Canadian investor group (Quebec Commercials) made a conditional offer to TN to purchase the property for €2.3m with vacant possession. Quebec Commercials has decided not to opt to tax any lettings and is not otherwise an accountable person. TN offers to pay €150,000 to High Tech if it surrenders the lease early (by 1 June 2023). TN issues a schedule of dilapidations to High Tech. High Tech is concerned with relocating to a new property and does not have the resources or time to carry out the repairs and renovations as per the schedule of dilapidations. It has offered to make a dilapidations payment of €250,000 to TN.

Surrender of lease

The surrender of the lease will be liable to VAT as it will take place within 20 years of the grant of the original lease and the tenant had an entitlement to input credit (VAT4A was used). There are 4+1 intervals remaining at the time of the surrender. The VAT amount on the surrender is €118,125 (€472,500 x 5/20), and TN is required to self-account for this VAT and will be entitled to an input credit where he makes a subsequent taxable supply.

Surrender payment

TN is making a payment to the tenant in return for the tenant's giving up its interest in the property. This payment is treated as outside the scope of VAT. (Please note that different VAT treatment applies to payments that arise under leases granted after 1 July 2008 – it generally follows the VAT treatment of the rental income.)

Dilapidation payment

It is necessary to examine the circumstances carefully, review any agreements and have an understanding of the nature of the payment – for example, whether it is a payment for building services (VAT at 13.5%), a payment for a service of releasing the tenant from its obligations under the lease (VAT at 23%), a compensation payment for not carrying out the works as per the schedule of dilapidations; or treated as being outside the scope of VAT. It is generally considered to be compensation for "want of repair" and does not constitute consideration for a taxable supply where there is no direct link between the dilapidations payment and the repair service, so the payment will fall outside the scope of VAT.

Sale

The property has not been developed in the five years before the sale, so it will be an exempt sale. The work carried out by High Tech was in 2017, which is more than five years before the current proposed sale. The sale by TN should be exempt (as no development has taken place in five years), and Quebec Commercials will not jointly opt to tax the sale. This gives rise to an irrecoverable VAT amount of €118,125 for TN.

Tenant's refurbishment

High Tech carried out refurbishment on the property in April 2017, which created a capital good. On the surrender of the lease, a CGS adjustment arises for High Tech as it reclaimed VAT on the works (i.e. it owns a capital good with 10-year adjustment period). The VAT amount reclaimed of €47,250 should result in a clawback of VAT of €18,900 (€47,250 x 4/10). High Tech can avoid this clawback if TN agrees to take over CGS obligations; but TN is unlikely to agree as it would result in an increase of €18,900 in the VAT cost. Therefore, an exempt sale will result in a VAT cost for TN (restriction on the surrender input VAT) of €118,125.

Transfer-of-Business Relief

Certain supplies of goods and services are not supplies for VAT purposes. The transfer of ownership of goods or intangible assets related to the transfer of all, or part, of a business is not a supply, in accordance with s20(2)(c) VATCA 2010, and the transfer of goodwill and other intangible assets is covered by s26. Section 20(2)(c) provides that a transfer of ownership of goods "being the transfer to an accountable person of a totality of assets, or part thereof, of a business (even if that business or part thereof had ceased trading) where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis" shall be deemed not to be a supply of the goods. Therefore, where transfer-of-business relief applies to a transaction, it must be applied – there is no option here, and it is important from a purchaser's perspective to note that, where the relief applies, there would be a VAT deduction risk for the purchaser in circumstances where VAT is charged but should, arguably, not have been charged.

On a review of the legislative provision, it is clear that the relief is subject to two key conditions – the purchaser must be an accountable person (a taxable person engaged in taxable supplies of goods or services), and the transfer must be of an amalgam of assets (e.g. premises, employees, plant and machinery, stock, goodwill, intellectual property and debtors).

Where a business is being disposed of, there is a specific provision to enable VAT recovery on related costs, but restrictions apply where the relief is applying to the sale of a let property, and the VAT status of those lettings dictate the VAT recovery position. In addition, where a property is transferring under transfer-of-business relief, it is the VAT status of the underlying interest that will determine if the CGS obligations are passed over to the purchaser or there is a deemed VAT charge.

In considering the impact of the application of transfer-of-business relief to a transaction, different consequences and obligations arise for the vendor and the purchaser. Where the underlying sale would be taxable in the absence of transfer-of-business relief, the property is treated, from the vendor's point of view, as having been used for fully taxable purposes for the remaining intervals of the adjustment period. From the purchaser's perspective, the purchaser is deemed to have been charged the VAT that would have been charged on the sale and deemed to have recovered it. The property becomes a new capital good for the purchaser, and if the purchaser is not entitled to recover the VAT charged under s64(10)(b), an adjustment will arise in the period in which the sale took place.

In the alternative, where the underlying interest would be exempt from VAT, in the absence of transfer-of-business relief's applying, the vendor will not incur a clawback of VAT that was recovered on acquisition or development as the CGS obligations are passed on to the purchaser. The vendor will be required to provide a CGS record. The purchaser will, for all intents and purposes, step into the vendor's shoes from a CGS perspective, and any adjustment required will depend on the proposed use of the property by the purchaser.

Sale of Let Properties

The concepts of undertaking and business, as referred to in the legislative provisions (s2 and s20(2)(c)), include the exploitation of tangible property for the purposes of obtaining income therefrom on a continuing basis. A sale of let property is a transfer capable of qualifying for transfer-of-business relief, as the vendor is, in effect, treated as if it were selling the "letting" business. As noted above, in order for the relief to apply, the purchaser must be an accountable person, but it is not necessary that the purchaser is an accountable person in respect of the business being acquired. Guidance from Revenue[1] sets out the different property transactions to which transfer-of-business relief could apply, and this needs to be considered on a case-by-case basis.

1 Revenue, Tax and Duty Manual, "VAT Treatment of Transfer of Business", https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/transfer-of-business/transfer-of-business.pdf

Example 4: Transfer-of-business relief with underlying VATable interest.

Jones Tech Ltd engaged a builder to construct a new office building, which was completed in 2022 for €3.6m plus VAT. Jones Tech Ltd granted a three-year letting to its sister company, Jones Telecoms Ltd, and opted to tax the letting. Although the companies are connected, the tenant had full input VAT recovery in respect of the letting. Jones Tech Ltd encountered financial difficulties and decided to sell the new office block with the benefit of the three-year letting. It received an offer of €3.9m from a VAT-registered purchaser, and the contract for sale is due to close in May 2024.

The sale will be covered by transfer-of-business relief on the basis that the purchaser is an accountable person, and the property will be let at the time of sale, in May 2024.

No VAT is charged on the sale price of €3.9m, but the purchaser is deemed to incur and reclaim VAT. The purchaser will acquire a new capital good with an adjustment period of 20 years from May 2024 and a VAT obligation of €526,500 (€3.9m x 13.5%).

Example 5: Transfer-of-business relief with underlying exempt interest.

The same facts apply as in the previous example, but in this case the building was constructed in 2018, and the lease was granted for 10 years. The sale in 2024 should be covered by transfer-of-business relief, but the underlying interest is exempt from VAT, as the property was completed more than five years ago and there was no further development in the five years prior to sale. The purchaser will inherit the CGS obligations attached to the property, which will be €364,500 (€3.6m x 13.5% x 15/20) and will inherit the remaining VAT life, which is an adjustment period of 15 years. Jones Tech Ltd must provide a CGS record to the purchaser.

Example 6: Multi-let property.

Black Diamond Ltd (BD) purchased a 999-year leasehold interest in a multi-unit shopping centre in December 2017 for €3.5m plus VAT of €472,500. The property comprised 10 retail units and was newly constructed in 2016 (but not fully completed, as three units were only partially complete). BD registered for VAT with effect from 1 November 2007 and reclaimed VAT on the purchase. In December 2017 it granted a lease of 9 years and 10 months to a related company, Diamond Electrical Ltd, on Unit 1 and opted to tax the letting. BD granted 20-year lettings in respect of four other units (Units 2–5) to third-party tenants and also opted to tax these lettings. Units 6 and 7 remain vacant, and Units 8–10 are only partially complete for VAT purposes.

BD is now selling its interest in the shopping centre to a VAT-registered consortium of investors (Retail Galore) for €2.5m and will incur costs on the sale of €150,000 plus VAT at 23% (legal, accounting, estate agents, etc.).

VAT treatment of the sale

Transfer-of-business relief under s20(2)(c) should apply as it is a transfer of a let property that is capable of qualifying for the relief and the person acquiring the letting business is an accountable person. BD is selling the property with the benefit of a number of leases, and Retail Galore is an accountable person. Even though some units are vacant, and some are partially completed, BD's business is a letting business and is being sold to the same purchaser. The sale should not be liable to VAT. Retail Galore should assess the CGS/VAT obligations arising for it as there is a mix of let, vacant and incomplete units, and the underlying interest in those units will determine the implications for it.

CGS implications

If the underlying interest in the units is VATable in the absence of transfer-of-business

relief, then BD is treated as making a taxable supply and no CGS adjustment arises. Retail Galore is deemed to have been charged VAT on the sale and to have reclaimed it (new 20-year VAT life). The subsequent use to which Retail Galore puts the units will determine the implications for it.

If the underlying interest in the units is exempt in the absence of transfer-of-business relief, then BD is not treated as if it had used the property for an exempt purpose for the remainder of the CGS adjustment period. Instead, Retail Galore will inherit the CGS obligations of BD.

CGS adjustments would arise for Retail Galore if it put the property to an exempt use, with possible clawbacks of VAT in respect of VAT that it, itself, had not reclaimed.

CGS implications

In summary, each unit will have to be considered in its own right from a CGS point of view:

- Let units: exempt from VAT – CGS record required;
- Vacant units: exempt from VAT – CGS record required; and
- Partially complete units: VATable – deemed VAT charge and input credit (no negative CGS adjustment if the plan is to develop and let on taxable basis).

VAT recovery entitlement

VAT on costs associated with the sale are irrecoverable if the sale would be exempt in the absence of transfer-of-business relief. Partial recovery will arise if part of the property is subject to taxable lettings (e.g. waiver-of-exemption and option-to-tax lettings only). Direct attribution and apportionment exercises are to be carried out by BD to assess the level of input VAT recovery.

Provision of Emergency Accommodation

This is a topical issue as world events have had an impact on the use to which property is put in Ireland, in particular, hotels and guest accommodation. The VAT treatment of the different offerings varies, as do the consequences of changing the use of certain properties. The focus here is on the provision of emergency accommodation and highlighting the areas for consideration when changing the use of the property.

Emergency accommodation

Revenue's Tax and Duty Manual[2] on the provision of emergency accommodation provides that accommodation provided in State-owned property is outside the scope of VAT and that direct provision centres are exempt from VAT. Where emergency accommodation is provided in residential accommodation (house/apartment/part thereof), it will be exempt from VAT unless there is a waiver of exemption in place (which would relate to the rules before 1 July 2008). Where the emergency accommodation is provided in a hotel/guesthouse/similar and is contracted to the State and not available to the public, it is treated as exempt from VAT. Ancillary services provided in connection with emergency accommodation are also exempt from VAT (e.g. cleaning, security), except for catering, whereby the supply of catering services is treated as a separate supply and taxable at the appropriate rate of VAT.

The diversion from taxable activity to the supply of emergency accommodation may result in a number of VAT consequences – adjustments under the CGS, self-supplies and apportionment-of-VAT requirements. The consequences differ depending on who provides the emergency accommodation – i.e. the hotel owner or the hotel operator. Where the hotel reverts to taxable use in the future, a positive CGS adjustment would be available to the owner, and it may be possible to opt to tax a letting to the operator that was previously terminated due to the diversion to residential use.

2 Revenue, Tax and Duty Manual, "Emergency Accommodation and Ancillary Services", https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Services/services-emergency-accommodation-and-ancillary-services.pdf

Example 7: Provision of emergency accommodation by hotel owner.

MountainView Ltd (MVL) acquired an old hotel in March 2015. No VAT was incurred on the purchase as the sale was exempt from VAT as it was an old building. MVL demolished the existing hotel and constructed a new hotel and restaurant at cost of €4.9m (plus VAT of €661,500). It was completed and opened for business in January 2017, and VAT was reclaimed by MVL. In 2022 it carried out a major refurbishment (as defined for VAT purposes) at a cost of €900,000 (plus VAT of €121,500), which was completed on 31 December 2022. MVL also purchased new equipment and furniture in 2022 at a cost of €300,000 (plus VAT at 23% of €69,000). General overheads of running the hotel cost €150,000 (including VAT) per annum. MVL accepted a contract from the State in November 2022 to provide emergency accommodation for a two-year period from 1 January 2023, and it has a year-end of 31 December. MVL provided accommodation in respect of the hotel part of the property only (representing 75% of the area and turnover), and the restaurant continued to trade as normal.

Development of hotel and restaurant

VAT was reclaimed on the development works in 2017 and created a capital good with an adjustment period of 20 years. The diversion to exempt use by MVL should trigger a negative CGS adjustment. 75% of the property is put to an exempt use, and this represents a "big swing" in the use of the property, from 100% taxable to 25% taxable at the end of 2023 (end of interval) (s64(4)(a) VATCA 2010 applies).

A CGS adjustment will arise based on the VAT reclaimed in 2017 of €661,500:

> "Big swing" adjustment formula:
> (C – D) x N
>
> C: reference deduction amount = (€661,500 x 75%)/20 = €24,806
>
> D: interval deduction = €24,806 x 0% = €0
>
> N: number of intervals remaining = 13 + 1 = 14
>
> Adjustment amount: (€24,806 – €0) x 14 = €347,284 (payable in the January–February 2024 VAT3)

Refurbishment of hotel and restaurant

VAT reclaimed on the refurbishment in 2022 also created a capital good but with an adjustment period of 10 years, and this results in a CGS adjustment for MVL. (The "big swing" rules apply for an interval other than the initial interval.) A VAT clawback will be based on a proportion of the VAT reclaimed on the refurbishment of €121,500. In this case, where 75% of the refurbishment related to the hotel, a clawback of €91,125 (€121,500 x 75%) will apply as the hotel was diverted to an exempt use during the initial interval. This amount is payable in the January–February 2024 VAT return.

Purchase of movable goods

The equipment and furniture that were purchased would comprise movable goods, and a diversion to exempt use should fall under the self-supply rules. The clawback of VAT here would be based on the cost of the goods acquired and would be a full repayment of the VAT reclaimed at the time of commencement of exempt activity. A return to taxable activity, however, would not give rise to a proportionate refund of input VAT.

General overheads of the business

The general overheads, such as electricity, heat, etc., are used for both the taxable and the exempt activities of MVL. It will need to apply direct attribution in the first instance and then apply an apportionment method (the default method is the turnover method) to dual-use inputs.

Example 8: Provision of emergency accommodation by hotel operator

Seaview Hotel Ltd purchased a newly completed hotel in 2021 for €4.5m plus VAT. It granted a 20-year lease to a hotel operator, Cold Waves Ltd, and opted to tax the letting. Cold Waves Ltd entered into a contract with the State in respect of the entire property for the provision of emergency accommodation, to commence on 1 January 2022. It will receive an agreed rate for the provision of accommodation and provision of catering services.

Cold Waves Ltd is no longer using the property for taxable hotel activities and diverts it to emergency accommodation. Section 97(1)(d)(v), relating to options to tax, provides that an option to tax is terminated where the property is put to residential use. This change of use triggers a termination of the landlord's option to tax. This results in a negative CGS adjustment for Seaview Hotel Ltd as landlord.

This scenario highlights how critical the clauses relating to VAT in a lease can be. In the first instance, the CGS adjustment is the responsibility of the landlord, but if the letting contains a clause that a payment is required by the tenant to reimburse the landlord for any VAT costs triggered by the actions of the tenant, then the tenant will be required to fund the VAT cost, together with possible direct tax costs.

Conclusion

The foregoing analysis provides just a flavour of the VAT rules that have the potential to give rise to VAT complexities and, in some cases, an irrecoverable VAT cost. Clearly, it is preferable to consider the VAT and CGS implications of a potential disposal before signing contracts, as a detailed analysis is required of the VAT history of the property, to include *inter alia* the level of development undertaken, the letting history and the VAT recovery position.

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Provisions on Time Limits for Revenue Assessments: *O'Sullivan v Revenue*

Introduction

The time-limit provisions contained in the Taxes Consolidation Act 1997 (TCA 1997) serve an important role in providing certainty and safeguarding taxpayers against the reopening of their tax affairs outside a four-year period. The exact construction of these provisions has, however, been the source of many disputes between taxpayers and the Revenue Commissioners (Revenue), that ultimately have been resolved by the Superior Courts. *O'Sullivan v The Revenue Commissioners* [2024] IEHC 611 is the most recent judgment in the area and provides some welcome insights into the proper construction of the provisions, particularly in light of the judgment of Mulcahy J in *Tobin v The Revenue Commissioners* [2024] IEHC 196 earlier this year.

This article examines the decision in *O'Sullivan* and outlines some of the key insights and implications of the case in interpreting the time-limit provisions more generally.

Background

Relevant legislation

For periods before 2013, the relevant rules governing assessments and time limits were broadly contained in Part 41 TCA 1997. These

provisions were revised in Finance Act 2012, although many of the concepts from Part 41 have been retained in these new rules, now contained in Part 41A TCA 1997.

Part 41 (i.e. the pre-2013 regime) established administrative rules in relation to the filing of tax returns and the issuing of assessments. Under s951 TCA 1997 a chargeable person was required to file an annual tax return, and under s954(2) TCA 1997 the inspector was required to make an assessment based on the particulars included in the person's return.

The time-limit provision was included at s955(2) TCA 1997 and provided that where a person has made 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", Revenue would be precluded from issuing an assessment for that chargeable period more than four years after the end of the year in which the return is filed.

Section 956 TCA 1997 provided that, for the purpose of making an assessment, the inspector "may accept either in whole or in part any statement or other particular contained in a return" and further provided that in cases where an assessment had been made, the inspector was not precluded "from making such enquiries or taking such actions...as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular". Section 956(1)(c) imposed a time limit on the inspector's right to make enquiries or take actions to satisfy themselves of the accuracy of a statement or particular, precluding the inspector from exercising those powers more than four years after the end of the chargeable period during which the return was filed. However, that time limit did not apply if "the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner".

Background facts

O'Sullivan involved a transaction to which the taxpayer was party in 2005. Under the transaction, rights attaching to shares in a company, Tramult, were transferred to a group of individual shareholders (including the taxpayer). The shares that originally comprised the rights that were transferred were held by another company in which the taxpayer was a shareholder (MMP). Tramult was subsequently liquidated, and on liquidation the taxpayer received a capital distribution of €394,697. The taxpayer considered that the transaction was capital in nature. The application of s547 TCA 1997 resulted in the acquisition cost of the Tramult shares being equal to the liquidation proceeds. Accordingly, the taxpayer considered that there was no capital gain to report and did not include the transaction in his return.

Revenue disagreed with the taxpayer's approach and considered that the transfer of rights in the Tramult shares from MMP to the taxpayer and the other individual shareholders was a distribution chargeable to income tax under s130 TCA 1997. In February 2011 (more than four years after the taxpayer filed his return), Revenue opened an investigation into the transaction. In December 2011 Revenue issued an assessment to income tax to the taxpayer in respect of the transaction.

The taxpayer appealed the assessment. The hearing at the Tax Appeals Commission (TAC) was stayed while *Hughes v The Revenue Commissioners* [2019] IEHC 807 made its way through the appeals process. That case involved a similar transaction, and Revenue was successful in arguing in the High Court that the transfer of rights between share classes was a transfer of assets for the purposes of s130(3)(a). The High Court held that the transaction should therefore be regarded as a distribution chargeable to income tax. The technical merits of that finding are beyond the scope of this article; suffice to say that once *O'Sullivan* was heard at the TAC and the High Court, it was accepted that as a matter of law, based on the decision of the High Court in *Hughes*, the transaction gave rise to a charge to income tax. The only matter left to be determined was whether Revenue was precluded from issuing the assessment outside the statutory time limit in s955(2) TCA 1997.

Section 955(2) TCA 1997: Subjectivity is not the yardstick

Impact of *Tobin* on taxpayer's arguments

In *O'Sullivan* one of the main arguments made by the taxpayer in written submissions was that the four-year rule in s955(2) should be interpreted in light of s956, such that Revenue would be precluded from issuing an assessment outside the four-year period unless there was evidence of fraud or negligence.

Somewhat unhelpfully for the taxpayer, the decision in *Tobin* (which also considered the application of s955(2)) issued just seven days after written submissions were made in *O'Sullivan.* A full examination of *Tobin* is beyond the scope of this article, and we have limited our comments to the aspects of the decision that informed Nolan J's decision in *O'Sullivan*.[1]

In *Tobin* the High Court was asked to consider the application of the four-year time limit in s955(2) in circumstances where the taxpayer had received a Single Payment Scheme (SPS) payment but had not included it in his income tax return. The taxpayer believed that a company that he had established, DTFL, was properly entitled to the SPS payment. That company had included the payment in its corporation tax return.

The High Court in *Tobin* held that the test in s955(2) (whether a full and true disclosure of all material facts had been made) is an objective one. The fact that the taxpayer believed he had correctly completed his return was not a relevant consideration in applying the test.

Approach to statutory interpretation

The High Court's analysis in *Tobin* was based on the application of the plain and ordinary meaning of the language in s955(2) and the meaning of that language in its broader statutory context (in line with the general approach of the Irish courts to statutory interpretation).[2]

In assessing the broader statutory context of s955(2), Mulcahy J considered both s955(4); which permits taxpayers to make expressions of doubt), and s956(2)(c); which permits Revenue to raise enquiries outside the four-year limitation period in cases of fraud or negligence. Both of those provisions incorporate subjective elements. In comparing those provisions to s955(2), which does not expressly incorporate a subjective element, Mulcahy J was satisfied that: "there was no intention to incorporate any subjective element into that section".

Nolan J's decision in *O'Sullivan* emphatically endorses the reasoning of Mulcahy J and confirms that the test in s955(2) is an objective one. Nolan J accepted that the taxpayer's subjective belief in respect of his returns (i.e. that he was not required to include the transaction) was not a relevant consideration in ascertaining whether the return could be said to include a full and true disclosure of all material facts in the application of the test in s955. In the words of Nolan J, "subjectivity is not the yardstick".

Broader interaction between s955 and s956

As a result of the decision in *Tobin*, the taxpayer's arguments in *O'Sullivan* evolved by the time of the oral hearing. Given the High Court decision, it would have been difficult for the taxpayer to sustain the argument that s955 should be interpreted in light of s956, as originally argued in written submissions. Indeed, Nolan J expressly accepted "not only the logic of Mulcahy J's reasoning, but also out of the comity of judgments, that s955 and s956 are not to be read together but in fact apply to different circumstances".

1 More specific details on the decision in *Tobin* can be found in Dearbhla Cunningham, "High Court Considers Limited Reopening of Old Cases in *The Revenue Commissioners v Tobin*", *Irish Tax Review*, Issue 2 of 2024.

2 See, for example, as cited in *Tobin, Perrigo Pharma International DAC v McNamara and Ors* [2020] IEHC 552 and *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43.

The taxpayer argued, instead, that the provision relevant to the facts of *O'Sullivan* was s956, as the assessment was made on foot of an enquiry or investigation. The taxpayer argued that s955 operated only in cases where there was no such enquiry. Nolan J considered that there was no evidence that the assessment arose out of "enquiries or investigations" as required under s956 and so could not accept that argument.

It was further noted that the proper course of action in respect of enquiries under s956 would have been for the appellant to invoke the relevant safeguards that prohibit out-of-time enquiries, either by way of judicial review or by availing of the specific 30-day appeal procedure in s956(2), but neither remedy was availed of (see paragraphs 57 and 60 of the judgment).

Thus, the question of whether the assessment was issued outside the four-year time limit was one to be considered under s955 only. The key question for consideration was whether the taxpayer had made a full and true disclosure of all material facts necessary for making an assessment, and as noted above, Nolan J was satisfied that the test was an objective one.

Guidance on Materiality

The "full and true disclosure" required under s955 is of "all material facts necessary for the making of an assessment". As a result, the starting point in the application of the test is to ascertain whether the fact at issue is "material" for the purposes of making an "assessment".

In *O'Sullivan* the issue of materiality was addressed by the judgment in *Hughes*. That case confirmed that, as a matter of law, the impugned transaction was a distribution giving rise to a charge to income tax and therefore the existence of the transaction was a material fact that ought to have been disclosed by the taxpayer to enable Revenue to make an assessment.

Nolan J provided more colour on the materiality issue and clarified a distinction between matters of fact (in that case the existence of a particular transaction) and matters of law. He appeared to accept that, provided the taxpayer included the fact of the transaction in his return, the legal treatment of the transaction as income or capital was "immaterial" (paragraph 114):

> "As counsel for the Respondent said, all the information in relation to this transaction was in the hands of the Appellant. If the Appellant simply says nothing about it, then how can the Respondent form a view as to the accuracy of the tax return...The obligation placed on the Appellant by the legislation is to make a true and full disclosure of all material facts. It is immaterial as to whether it was a capital gain or receipt of income."

The taxpayer's obligation is to make a full and true disclosure of all material facts necessary for the making of an assessment, i.e. to give to Revenue the facts that it requires to correctly make an assessment. It appears from Nolan J's decision that the taxpayer may be mistaken in where they include particular facts in the return (i.e. on the application of the law) but that should not necessarily preclude the taxpayer from making a full and true disclosure of all material facts necessary for making an assessment.

This is a welcome clarification, as in *Tobin* Mulcahy J, having assumed from the outset of his judgment that the SPS payment was a material fact for the purposes of making Mr Tobin's assessment[3] (i.e. having assumed that the payment was income of Mr Tobin and not of the company, DTFL), did not provide any further clarity on the application of the test of materiality. It is interesting to note that this assumption on the part of Mulcahy J ran the risk that, when remitted to the TAC to determine the substantive issue, the

3 See paragraph 37 of *Tobin*, for example.

assumption may have been proven false (i.e. if the TAC determined that it was DTFL that was properly entitled to the SPS payment). This is in contrast to the approach adopted in *O'Sullivan*, where the time-limit proceedings were paused pending the judgment in *Hughes*, which in effect addressed the substantive matter in *O'Sullivan*.

Construction of "Full and True"

Once it is established that a fact is material to the making of the assessment, the legislation requires that the disclosure of that information is "full and true". After it was concluded that the fact of the transactions having taken place should have been disclosed, it logically followed in *O'Sullivan* that, because there was absolutely no disclosure of the transaction, the analysis of whether it could be considered "full and true" became irrelevant.

At this point, it is worth considering Mulcahy J's approach to testing the meaning of "full and true" in *Tobin*, as it was echoed in *O'Sullivan*. Having assumed that the SPS payment should have been treated as income in the hands of Mr Tobin, Mulcahy J concluded that, *prima facie*, the non-disclosure of such a fact would result in the returns not being "true" (paragraph 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." [emphasis in original]

Mulcahy J proceeded to give further consideration to the construction of "true" and considered again the broader context of the self-assessment provisions, which require the taxpayer to provide Revenue with the "necessary information" (being the material facts) so that Revenue can accurately make an assessment: "[f]or Revenue to accurately assess the tax for which a self-assessed taxpayer is liable, Revenue must be provided with full and *accurate* information [emphasis in original]".

Given the non-disclosure of the transaction in *O'Sullivan*, Nolan J did not spend much time considering the meaning of "full and true", save for briefly endorsing the reasoning of Mulcahy J in *Tobin*: "There was no doubt from the decision, that the words 'full and true' equates with 'accurate' and 'correct' which is appropriate in circumstances where the system is one of self-assessment".

It should be acknowledged that the test of accuracy referred to by both Nolan J and Mulcahy J is in reference to a test of the "material facts necessary for the making of an assessment" (i.e. the "information" that must be provided). Whether the disclosure is described as "accurate" or "full and true" is therefore of little impact to the requirement that "material" facts must disclosed.

Implications

The facts of the case operate as a salient reminder that time is of the essence in dealing with Revenue enquiries outside the four-year time limit – waiting until an assessment is issued can deny access to remedies that might otherwise apply.

More broadly, the decision emphatically confirms that s955(2) TCA 1997 should be read as an objective test. Nonetheless, it is important to remember that the analysis in *O'Sullivan*, and indeed in *Tobin*, was very much based on a construction of s955(2) in the context of the wider Part 41, which has since been significantly revised. A question therefore arises of whether the same interpretation of the current time-limit provision in s959AA could be arrived at given the new statutory context of Part 41A (i.e. the new self-assessment regime for periods after 2012). In this regard it is notable that the overall mechanics of the post-2012 regime are somewhat different and Part 41A contains a number of updated definitions, including an updated definition of "assessment" and new carve-outs from the four-year rule, including for occurrences of fraud or negligence.

O'Sullivan has also endorsed a reading of s955(2) that equates "full and true" with "accurate". It is the authors' view, however, that, one of the more significant aspects of the decision in *O'Sullivan* is the commentary on what can be considered "material" for the purposes of making an "assessment". The question of materiality continues to operate as an important guardrail for identifying the information that must be disclosed in a return in order for the time limit to apply. The decision in *O'Sullivan* supports the position that if a transaction gives rise to a liability, it will be material and should be disclosed. More generally, whether a fact is material for the purposes of making an assessment should be considered on a case-by-case basis. Further, although the existence of a transaction may well be material, the exact legal treatment (e.g. whether it is included as income or capital) may be "immaterial".

News & Moves

Deloitte Expands Leadership Team with the Appointment of Three New Partners in Tax & Legal

Deloitte Ireland is pleased to announce the appointment of three new partners, further strengthening its Tax & Legal team. Kevin Devenney, Jane Pilkington, and Amine Bouguerra bring extensive expertise to their new roles, enhancing Deloitte's multidisciplinary service offering in a key area of the business.

Kevin Devenney (CTA) joins as a Partner in Tax & Legal, with a focus on providing indirect tax services to both domestic and multinational companies. With over eighteen years' experience, he has advised clients across various sectors including real estate, financial services, and public bodies. A Deloitte alumnus, Kevin is a Fellow of Chartered Accountants Ireland and an Associate of the Irish Tax Institute.

Jane Pilkington, an Irish-qualified solicitor with almost 25 years of experience in corporate immigration and a UCD alum, also joins the Tax & Legal team. Jane's previous roles include Partner at a top 5 Irish law firm and Managing Director of a global immigration company's Irish office. Jane's clients range from multi-nationals to SMEs to start-ups and to private client work.

Amine Bouguerra joins Deloitte as a Tax Technology Consulting Partner. Amine brings significant expertise in Tax Provision & Reporting, CBCR, Pillar II, Operational Transfer Pricing and Legal Entity Forecasting. Amine holds an MBA degree from Laval University in Canada.

KPMG Announces 5 New Partners Including 2 New Tax Partners

KPMG has announced five new Partners, reflecting continued strong demand for its audit, tax and consulting services. Announcing the new Partners, Seamus Hand, Managing Partner of KPMG Ireland said; “We’re proud to introduce our new partners, who will bring fresh and unique perspectives and capabilities to help support our clients in their next success.” Conor McElhinney and Kate Newman were appointed Tax Partners.

Conor McElhinney (CTA) is a Tax Partner advising on Irish and international tax matters for various international groups, large Irish-headquartered multinationals, and high-net-wealth individuals. He has experience across many industries, focusing on the aviation finance sector.

Kate Newman (CTA) is a Tax Partner and has experience in advising Irish headquartered and multinational clients on Irish and international tax matters. She has worked with clients across a wide range of industries and has a particular focus on aviation finance and leasing sectors.

Grant Thornton Appoints Two New Tax Partners

Robert Fitzgerald (CTA) is a tax partner with over 15 years of experience. Robert specialises in the provision of tax advisory and compliance services to domestic and international clients including management companies, investment advisors, institutional investors, asset managers, PE houses, administrators, custodians, promoters and distributors.

A Grant Thornton alumnus, Robert rejoins the firm with extensive Irish and international taxation experience advising on establishment of regulated/unregulated investment vehicles, management companies, financing, securitization, real estate, mergers and acquisitions and cross border transactions.

Emma Broderick (CTA) is a tax partner, leading our Indirect Tax practice. Emma has experience in a broad range of indirect taxes and specialises in VAT, advising both domestic and international clients on Irish and international VAT issues across a range of industries, including financial services, real estate, technology and fintech.

She has extensive experience in VAT consulting, compliance and indirect tax strategy and optimisation, with specific expertise in interpreting intricate Irish and EU VAT law. Emma has a particular focus on financial services and clients with limited VAT recovery, and advises leading companies across funds and asset management, banking and payments and insurance.

ByrneWallace LLP to merge with LK Shields Solicitors LLP

ByrneWallace LLP and LK Shields Solicitors LLP have agreed to merge on one of the largest deals ever undertaken in the Irish legal marketplace. The merged firm, Byrne Wallace Shields, will be one of the largest law firms in Ireland with 430 employees including 220 solicitors. The merger will take effect from 1 January 2025.

(L – R) ByrneWallace LLP Managing Partner Feargal Brennan with LK Shields Solicitors LLP Managing Partner Richard Curran

Great Leaders Go Nowhere
Without Great Teams.

BARDEN