2025 VOLUME 38 NUMBER 1 ISSN 1649-7899

Irish Tax Institute

Irish Tax Review

The Journal of the Irish Tax Institute www.taxinstitute.ie

ALSO IN THIS EDITION

- Pillar Two: Updates and Points to Consider for 2025
- Capital Acquisitions Tax Changes Introduced by Finance Act 2024
- The Legal and Taxation Aspects of Earn-Outs: Part 2
- Navigating Pillar One: Ireland's Adoption of Pillar One Amount B Through Finance Act 2024
- Finance Act 2024: Tax Credits for Film and Television Production
- Finance Act 2024: Residential Property Measures
- Leasing: Review of Changes in Finance Act 2024
- Pensions: PRSA and SFT Changes and the Introduction of Auto-Enrolment
- Finance Act 2024: Retirement Relief — Really, Mind the Cap
- Finance Act 2024: New Participation Exemption for Certain Foreign Distributions

Pillar Two: Updates and Points to Consider for 2025

Irish Tax Institute

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

ISSN 1649-7899
2025, Volume 38, Number 1

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

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

Contents

2025 Number 1

Messages from Irish Tax Institute

Regular Features

Feature Articles

Irish Tax Institute News

Editor's Pages

Amanda-Jayne Comyn
Editor

Regular Articles

Policy & Representations Monitor

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

Recent Revenue eBriefs

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

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

Mark Ludlow

- 198TACD2024 considered the question of valuing shares of a private company and whether a minority discount should apply for CGT purposes.
- In *O'Sullivan v Revenue Commissioners* [2024] IEHC 611 the High Court considered whether a taxpayer had made a "full and true" tax return so as to be able to rely on the four-year time limit provisions.
- In *Fire Safety Security Advantage Limited (Formerly Superior Group Irl Limited) v Revenue Commissioners* [2025] IEHC 78 the High Court considered whether a company was entitled to retain the benefit of Employment Wage Subsidy Scheme (EWSS) payments that it had received.
- 10TACD2025 considered a taxpayers claim to the Help to Buy scheme for a self-build.

Direct Tax Cases: Decisions from the UK Courts

Stephen Ruane and **Patrick Lawless**

UK Cases

- In *ScottishPower (SPCL) Ltd and others v HMRC* [2025] EWCA Civ 3 the England and Wales Court of Appeal held that redress payments made by the taxpayers to consumers and charities pursuant to agreements made in settlement of regulatory investigations were deductible for the purposes of corporation tax.
- In *NHS Mid & South Essex ICB v Revenue and Customs* [2024] UKFTT 1117 (TC) the First-tier Tribunal considered whether redress payments made to individuals who were wrongly treated as being ineligible for continuing healthcare included an element of "interest" for income tax purposes.
- In *The Mersey Docks and Harbour Company Ltd v HMRC* [2024] UKFTT 1163 (TC) examined if capital allowances could be claimed for the wall's construction costs with HMRC arguing that the wall was not plant or machinery.
- In *Ball and Torokoff v Revenue Scotland* [2024] FTSTC 6 the First-tier Tribunal for Scotland considered the classification of a building as a residential property and liability to land and buildings transaction tax (LBTT) at residential rates.

International Tax Update

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

- BEPS Developments
  - The OECD has issued updated guidance on Pillar Two
  - Hong Kong has announced Pillar Two adoption
  - Pillar Two implementation and top-up tax amendments have been announced in UK Budget 2025
  - Poland has signed off on global minimum tax legislation
  - The Swiss Federal Council has approved amendments to minimum tax ordinance to apply IIR from 2025
  - HMRC has released guidance for MNEs on global minimum tax payment
  - The Isle of Man's parliament has approved Pillar Two legislation
  - Guernsey has published regulations to implement Pillar Two rules
  - Australia has enacted Pillar Two legislation
  - France has clarified scope of Pillar Two obligations
  - Netherlands has declined to apply Pillar one amount B to domestic distributors
  - HMRC has sought feedback on Pillar Two draft guidance
  - Oman has introduced a 15% domestic minimum tax
  - The European Parliament has issued favourable opinion on DAC9
  - New resources and implementation of Pillar One Amount B has been released by OECD and US Treasury
- OECD Developments
  - Statistics published by the OECD shows tax administrations trending towards dispute resolution
  - 61 jurisdictions have committed to implementing the OECD's crypto-asset framework
- EU Developments
  - European Commission has published the final version of implementing regulation for the EU public CbCR directive
  - European Commission has prepared standard forms and computerised formats for DAC7 implementation
  - The Romanian Ministry of Finance has released clarification on public CbCR reporting requirements
  - The EU working party on tax matters is set to examine the practical implications and legal drafting of the European Commission's revised approach to the draft Directive on preventing the misuse of shell entities (Unshell)
  - Council of the European Union had adopted new rules for withholding tax procedures
  - The majority of EU countries have rejected the draft Transfer Pricing Directive
  - European Commission has published a recommendation for a Council recommendation endorsing the national medium-term fiscal structural plan of Luxembourg
  - European Commission has adopted its 2025 work programme
- In Australia a bill introducing public country-by-country reporting measures has been passed

VAT Cases & VAT News

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

VAT Cases

- In *Skatteministeriet v Lomoco Development ApS, Holm Invest Aalborg A/S, I/S Nordre*

Strandvej Sæby, Strandkanten Sæby ApS ("NSS") C-594/23 dealing with the VAT treatment of supplies of buildings and supplies of building land

» In *'SEM Remont' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite* C-624/23, the right to deduct input VAT on costs related to dredging work performed by a third party was examined

» In the case of *Weatherford Atlas Gip SA v Agenția Națională de Administrare Fiscală – Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili* C527/23, the Court considered the refusal of the Romanian tax authority to permit input VAT recovery on costs relating to the purchase of administrative services provided within the same group of companies

» *Killarney Consortium C v Revenue Commissioners* IEHC 732 dealt with the cancellation sum payable after the automatic cancellation of a waiver of exemption (triggered by a sale of property) where excess input VAT was claimed over output VAT accounted for

» 168TACD2024 related to whether supplies of certain "small value" goods marketed as gifts made by the appellant to its customers in conjunction with other supplies (which were zero rated) were gifts as marketed or were supplies "for consideration"

Accounting Developments of Interest

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

Legal Monitor

James Quirke 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.

Revenue Commissioners' Update: Enhanced Reporting Requirements

The Revenue Commissioners provide an update on the level of reporting by employers since the introduction of ERR.

Key Tax Dates

Helen Byrne details key tax-filing dates for both companies and individuals.

Feature Articles

89 Pillar Two: Updates and Points to Consider for 2025

Harry Harrison, **Paul McKenna** and **Sarah Bradley** outline recent developments relating to Pillar Two, covering Finance Act 2024, Tax and Duty Manual updates and future OECD guidance, as well as Pillar Two points to consider for 2025.

95 Capital Acquisitions Tax Changes Introduced by Finance Act 2024

Julia Considine examines the CAT changes introduced by the Finance Act 2024, including increased group thresholds, close-relative loan filing requirements and updates to agricultural relief.

President's Pages

Aoife Lavan
Irish Tax Institute President

Annual Dinner

The Annual Dinner, which takes place every year on the last Friday in February, is the big night out in the Institute's calendar. The guests start to filter into the foyer of the Clayton Hotel on Burlington Road, Dublin, from 6.15, and by 7 the place is buzzing in anticipation of a night that goes on into the wee hours for many, and there's a palpable determination to enjoy it. The glamour is seriously impressive, and spirits are high.

It's a good hour before the guests, who are by then in committed reveller mode, are seated at their tables, and it takes another 20 minutes to command their attention for the speeches. That is exactly how it unfolded on the night of 28 February, when I had the enormous privilege, as President of the Institute, of addressing the great gathering at this year's Annual Dinner. I won't deny that it was a terrifying experience to stand up in front of close to a thousand people seated across two rooms at 100 tables, but it was an honour that will stay with me for the rest of my days.

Thank you to all who were there for being such an attentive and supportive audience.

Guest of honour

Our guest of honour was the Minister for Finance, Paschal Donohoe TD, who had returned from South Africa just that afternoon, where he had attended meetings of the G20 and the G7, the latter in his capacity as President of the Eurogroup. The fact that the Minister made it his business to come to our Annual Dinner at the end of such a highly pressurised week is a compliment to the Institute and the entire tax profession, and none of us should take it for granted.

Trade tensions

Given the growing threat of a global tax and trade war and the news emerging from the extraordinary meeting between President Trump and President Zelenskyy that had taken place that afternoon, it was no surprise that the prevailing geopolitical uncertainty was a dominant theme of Minister Donohoe's address.

In a carefully worded speech he said President Trump's Memorandum on the OECD Global Tax Deal and the potential retaliatory measures that have been announced are being studied by officials. He added that although the Government regrets the position adopted by the President, "we do recognise the significance of the concerns raised and the commitment to engagement over the coming months".

Tax uncertainty

He said that he was conscious that the current situation has created huge uncertainty, "precisely the opposite of what was intended when we reached political agreement on these rules in 2021". He added that cooperation through the OECD is critical to bringing stability to the international tax environment and avoiding the risk of far-reaching global disputes. "I am still firmly of the view that global agreement on a fairer mechanism to address the taxation of the digital economy remains the best approach and remains preferable to a proliferation of uncoordinated unilateral measures and the disputes that would inevitably arise from them. It is incumbent on all of us to explore opportunities to resolve these issues," he declared.

Simplification

I had earlier said in my speech that the Government should prepare for the worst as threats from across the Atlantic escalate, and I assured the Minister that the Institute would work constructively with him and his officials to protect our economic interests in this time of upheaval in the global economy.

However, I also said that the Government should act quickly on the things that it can control, including simplifying the tax and pensions systems.

In relation to the tax system, I said that a shift to a more supportive mindset across the Government was required to ensure that the pro-enterprise policies of this and previous Governments achieve their objective. I added that the system needs to understand that risk is an integral part of any enterprise and that those who take it should be supported and are entitled to a fair reward.

The Minister, in fairness, recognised the validity of the issues in my speech and also acknowledged that complexity in the tax system is damaging to our competitiveness. He gave a commitment that he would pursue a policy of simplification here, at home, and at EU level: "We must maintain a stable and robust tax framework that is both easier to navigate and easier to administer".

Collaboration

Minister Donohoe also thanked those who have engaged with the Department of Finance's consultation processes and asked us to continue to share our insights, which, he said, are critical to helping us to achieve our shared goals.

Against the backdrop of the current unstable and unpredictable global environment, it was reassuring to hear the Minister reaffirm this collaborative approach. And you could have heard a pin drop when he said at the end of his speech: "The challenges Ireland and Europe confront are immense, potentially historic. But with will, with work, and with the right decisions, we can yet be the match for them...You have all played your part in our economic success and resilience over the last decade and for that I thank you. Let's go to work, again."

Pensions

On these pages in *Irish Tax Review*, Issue 4 of 2024, I expressed my disappointment with the changes to the personal retirement savings account (PRSA) rules introduced in Finance Act 2024. These changes apply benefit-in-kind to employer contributions greater than 100% of the employee's salary in the year of assessment, and employer contributions to PRSAs greater than 100% are not tax deductible.

Since then we have learned more about why these changes were introduced. As I said in my speech at the Annual Dinner, I understand the reasoning, but I think it's unfortunate that the behaviour of a small number of companies has resulted in additional complexity, and a third method of calculating contributions, being introduced.

I hope that we can work together to find a simpler, more equitable approach, particularly at a time when 160,000 one-member schemes are looking for a safe haven in light of the IORP II Directive. In the meantime we urgently need clarity for pension administrators and employers on the operation of the new rules. The Institute has been raising our issues with Revenue through TALC, and I look forward to further guidance being provided.

In my Annual Dinner speech I suggested that the self-employed should be allowed to join the Auto-Enrolment Retirement Savings Scheme, particularly for the sake of the lower-income self-employed. The most recent Central Statistics Office data on pensions showed that 59% of the self-employed had supplemental pension coverage, compared to 68% of those in employment. The data also revealed that 25% of workers without a supplemental pension said that they never got around to setting one up, with a further 18% saying they would set one up at a future date. An obvious way to encourage and enable lower-income self-employed workers to save for their retirement is to give them access to Auto-Enrolment. It may be a challenge, but we should persevere.

I also noted in my speech that the self-employed are already at a disadvantage when it comes to pension coverage because the lack of flexibility regarding contributions takes no account of the fluctuations that they typically experience in their income, particularly as they approach retirement age. The limits on these contributions have not been reviewed since 2010.

Pension coverage among the self-employed seems to be going in the right direction, but it could be better if we concentrated our efforts on the lower-income group in the sector.

Contributors' Dinner

I was delighted to welcome more than 100 guests to the Institute's Annual Contributors' Dinner in Roly's Bistro at the end of January. It's a lovely, informal event and our modest way of showing our appreciation for the generosity of those who give their time and their talents to the Institute and its members. Everyone was in good form, and it was the perfect end to a quieter month.

Conclusion

With another successful Annual Dinner to its credit, the Institute's focus now is final preparations for the Annual Conference 2025, which takes place, as usual, in the Galmont Hotel, Galway, on 4–5 April. This year's theme is Finding Clarity – and amid the complexity and uncertainty of the world we all work in right now, what could be more apt? I look forward to meeting you all in Galway.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

Introduction

It has been a whirlwind start to the year. Across the Atlantic, the new US administration is following through on their campaign promises causing economic uncertainty with the growing risk of a global tax and trade war.

Domestically a new Government is in place and as a small open economy that is vulnerable to these external pressures, their focus must be on ensuring that Ireland enhances its competitiveness. The Institute is committed to working with the Department of Finance, Revenue and other stakeholders to support the necessary reforms.

Annual Dinner

On the last evening of February 2025, we welcomed nearly 1,000 guests to the Clayton Hotel, Burlington Road, Dublin for Annual Dinner 2025. For the first time since the pandemic, our Guest of Honour was the Minister for Finance, Paschal Donohoe TD. Having only returned from the G20 and G7 meetings in South Africa that day, we were incredibly grateful that the Minister joined us, bringing us up to date on the current economic outlook and the approach to tackling external risks.

At this year's Annual Dinner, we linked up with the Jack and Jill Foundation. Since

28 February 2025: Institute President, Aoife Lavan, addressing nearly 1,000 guests in the Clayton Hotel, Burlington Road, Dublin.

28 February 2025: Minister for Finance, Paschal Donohoe TD, delivering his keynote address at Annual Dinner 2025.

its launch in 1997, over 3,100 children and their families have been supported by the Foundation. I am delighted to announce that, thanks to the generosity of our guests, we raised over €2,400 to help fund more than 135 valuable hours of in-home nursing care in communities across Ireland.

Congratulations to our President, Aoife Lavan, and my team in the Institute on a highly successful evening.

Representing Your Concerns

The Department of Finance launched a Consultation on the Tax Treatment of Interest in Ireland last September. With input from our members, the Institute submitted 33 detailed recommendations on the reform of the tax treatment of interest, including a number of straightforward changes that could be implemented as part of Finance Bill 2025 and would go some way towards making the interest deductibility rules easier to administer.

In addition to the submissions, we represented your issues at TALC and at our own Branch Network meetings with Revenue, including the new process to approve client/agent links on ROS which comes into operation on 25 March.

The Institute has been providing detailed feedback to the Department of Finance in recent weeks on a number of tax policy priority areas including the participation exemption for certain foreign distributions and the decluttering and simplification of five EU Directives. We will soon be meeting with Department of Finance officials about the tax priorities for the year ahead. We will also be interviewed by the European Commission as part of its ongoing evaluation of the Anti-Tax Avoidance Directive (ATAD).

Fantasy Budget

Our annual Fantasy Budget competition invites third-level students to submit their analysis of three Budget measures and to propose a measure that they believe should have been introduced. After considering a range of innovative suggestions, from an incremental property tax to a VAT exemption for counselling and psychotherapy services, and much deliberation our judges, Brendan Keenan and Jim Powers, chose the top three teams.

On 29 January, our President Aoife Lavan welcomed the top teams and their lecturers to the Institute for lunch and presented each team with their prizes. Congratulations to the winners and we hope to see them pursue a career in tax advisory in the future.

A Career in Tax Advisory

A priority of the Institute is promoting the career in tax advisory among second- and third-level students. This month our team delivered class talks in Limerick, Kildare and Dublin. The opportunity to engage with the students directly was extremely beneficial and provides us with instant feedback on the perception of the career.

An important cohort in the world of students is those who can influence their decisions, including guidance counsellors. In March we attended the Institute of Guidance Counsellors' conference, where we promoted the career and our Third-Level Scholarship. The Scholarship is open for applications until 14 April 2025. It is aimed at Leaving Certificate 2025 students

29 January 2025: Institute President, Aoife Lavan, presenting the Fantasy Budget 2025 first-place team from University of Galway with their prizes.

L – R: Micheál Martin Walsh; Aoife Lavan, Institute President; James Carroll; Dr. Maria O'Brien, lecturer; and Mark Dempsey.

who are interested in tax advisory as a career and need financial support to progress through college.

Best of Luck

The lectures for our autumn courses are wrapping up. As the students shift their focus to their upcoming exams, I would like to wish them the best of luck with their preparation and exams.

Publications

The updated *The Law and Practice of Irish Stamp Duty* publication is available in print, eBook and on TaxFind. It is Ireland's most comprehensive, expertly written commentary on stamp duty and is essential reading for all professionals engaging in stampable transactions. Thank you to our authors Tom Power, BL and Emmet Scully, Byrne Wallace Shields LLP, and Caroline Devlin, Legal & Tax Consultant.

The latest version of *The Professional's Guide to the R&D Tax Credit, KDB and Related Reliefs* is also available in print, eBook and on TaxFind. This expertly written commentary on the R&D tax credit and other innovation incentives, includes new chapters on the Digital Games Tax and Innovation Incentives - Grants. Thank you to Ken Hardy and Damien Flanagan of KPMG, and Ruud van der Hoeven of Johnson Electric for sharing their expertise.

Annual Conference

The return to Galway is quickly approaching. We look forward to seeing you at the nearly sold-out Annual Conference on 4 and 5 April. With 12 technical sessions, the conference offers detailed tax technical updates and unique opportunities to network with your fellow CTAs.

Here is a short recap video to help you get a taste of the Annual Conference.

Contributors' Dinner

The Institute can deliver its high-quality services only through the support of our contributors. At the end of January, we host an evening to mark our appreciation of their time and contribution. This event also provides our contributors with the opportunity to connect with their peers and fellow CTAs.

We look forward to continuing to collaborate with our contributors and welcoming new ones. If you would like to get involved in any of our work, please let us know.

Global Tax Policy Conference

As I mentioned in Irish Tax Review Issue 4, in October 2025 we will be welcoming expert speakers and delegates from across the world for the Global Tax Policy Conference, in partnership with Harvard Center for International Development. Minister for Finance, Paschal Donohoe TD will open the conference with high profile speakers already secured, including:

- Manal Corwin, Director, Centre for Tax Policy and Administration, OECD
- Gerassimos Thomas, Director-General, DG-TAXUD European Commission
- Benjamin Angel, Director, DG-TAXUD European Commission
- Brian Arnold, Senior Adviser, Canadian Tax Foundation
- Clare Costello, Assistant Secretary, Department of Finance, Ireland
- Brendan Crowley, Senior Counsel, IMF
- Melissa Gierach, Managing Director, Tax Policy, DLA Piper US
- Karine Halimi-Guez, Group Head of Tax, Booking Holdings
- Colm Kelly, Chair, FFS & Global Leader - Corporate Sustainability, PwC International Ltd
- Will Morris, Vice-Chair, BIAC, OECD & Global Tax Policy Leader, PwC
- Liz Nelson, Director, Advocacy and Research, Tax Justice Network, UK
- Nina Olson, Executive Director, Center for Taxpayer Rights, US

29 January 2025: Institute contributors enjoying the evening with peers.

- Feargal O'Rourke, Chair, IDA Ireland
- Mekar Satria Utama, Director of International Taxation, Directorate General of Taxes, Indonesia
- Maria Elena Scoppio, Director, DG-TAXUD European Commission

You can learn more and book your place now at www.taxinstitute.ie

New Subscription Year

With the 2024 subscription year ending, there are a couple of deadlines you need to be aware of. You will receive communications from the Institute in the coming weeks with the details of how to renew your subscription for 2025 and declare your 2024 CPD. Please also make sure that your contact details are up to date on your dashboard.

Policy and Representations Monitor

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

News Alert

Programme for Government agreed

The Cabinet formally ratified the Programme for Government on 23 January, after the election of the new Taoiseach, Micheál Martin TD, and the nomination of his new Cabinet. The Programme for Government 2025: Securing Ireland's Future was agreed between the Government parties; Fianna Fáil, Fine Gael and the Regional Independent Group, and outlines a wide range of commitments. These include delivering a strong and stable economy; improving Ireland's competitiveness; enhancing Ireland's position and influence in international affairs; and ensuring that Ireland is a positive and active contributor to the European Union.

The Programme states that the new Government will strive to reduce costs for business, cut through unnecessary bureaucracy, ensure access to finance and invest in vital infrastructure to help businesses succeed. The Government will publish a whole-of-Government action plan for competitiveness and productivity within 12 months, with a key focus on reform. This plan will include tax and wage policy, access to finance, education and training, energy and utility policy, infrastructure and digitisation.

In the event of an economic downturn and unexpected deterioration in the public finances, the Programme notes that the Government would maintain capital spending to support the continued growth of the economy while postponing changes to income tax credits or bands, similar to what occurred in Budget 2021, and work to protect the funding of the existing level of public service delivery.

The Programme includes a range of commitments in respect of tax, which are outlined below.

Enterprise and employment

- Establish a new Small Business Unit and a Cost of Business Advisory Forum. This Forum will include a review of all business taxes and costs and ensure that businesses are consulted before new legislation or policies are introduced that impact small businesses.
- Rigorously implement the SME test to scrutinise every new piece of legislation and regulation for its impact on SMEs, ensuring that any obligations that increase business costs are phased in and that there is consideration across the Government of the broader implications of any decisions affecting businesses.
- Continue to review and simplify the current business and enterprise tax system to promote innovation and economic growth.
- Maintain support for the Angel Investment Scheme.
- Examine the regularity of SME reporting and filing requirements.
- Examine options to enhance the R&D tax credit, reward innovation and digitalisation, and ensure that Ireland has the global best-in-class incentive to encourage innovation by domestic and international companies.

Public finances

- Prepare and submit a new Medium Term Fiscal Plan setting out sustainable budgetary plans for the next five years. The plan will reflect the choices to be made in relation to tax and expenditure policy (taking account of both voted and non-voted expenditure) to support economic and societal growth and development. It will be published at the same time as the Summer Economic Statement in mid-2025.

- Implement a pro-enterprise tax policy, supporting long-term investment in high-quality jobs.
- Maintain a broad tax base to guard against the need for counter-cyclical fiscal policy in the event of a downturn and to prepare for future budgetary challenges relating to population ageing.
- Implement progressive changes in taxation if the economy remains strong, including indexing credits and bands to prevent an increase in the real burden of income tax.
- Continue to engage constructively on international tax reform through the OECD process, recognising the need for Ireland's corporate taxation policy to reflect the globalised nature of trade and industry.
- Maintain a tax system that supports innovation and entrepreneurship to ensure that Ireland remains an attractive place to sustain and grow an existing business or to start and scale up a new business.
- Acknowledging the increased energy cost pressures on households and businesses, bring forward taxation measures to help contain energy costs, including with regard to VAT.
- Progress and publish an implementation plan for consideration in Budget 2026 taking into consideration the recommendations of the Funds Review to unlock retail investment and opportunities to grow this sector in Ireland.

Agriculture and food

- Update the eligibility criteria for the farm succession partnership tax credit by revamping support and eligibility criteria.
- Review the eligibility criteria for the succession planning advice grant to ensure better take-up.
- Continue the current array of key agricultural tax reliefs.
- Support farm transfers by reviewing the tax-free threshold for capital acquisitions tax.
- Examine potential barriers for women farmers in the taxation system to ensure greater inclusivity and fairness. Implement the National Women in Agriculture Action Plan to support gender equality, including promoting female succession, and liaising with Revenue to address any taxation barriers to female participation.
- Examine a new farm income volatility taxation measure to safeguard farmers from markets' rising and falling.
- Set up a farm contracting working group to consider training, support and taxation measures.

Fisheries and the marine

- Liaise with fishing stakeholders and request that Revenue examine the current tax allowances for the sector and bring forward recommendations on how the taxation system can further support its progression.

Accelerating housing supply

- Continue to implement the land value sharing levy, residential zoned land tax and vacancy taxes, with protections for active farmers, to penalise land hoarding and ensure that zoned land is developed.
- Retain and revise the Help to Buy scheme and extend it until 2030.
- Progressively increase the rent tax credit.
- Help renters seeking to become home buyers with a series of targeted measures through the tax system and the First Home Scheme.
- Continue the landlord tax credit.
- Continue to implement the Defective Concrete Block Scheme. Undertake the planned review of the scheme and, in line with legislation, expand it to counties impacted by the issue.

Carbon tax for a sustainable future

- Continue with the planned carbon tax increases, aligning with recommendations from the Climate Change Advisory Council and scientific experts.
- Continue to use carbon tax revenues to fund social welfare measures, agri-environmental schemes and retrofitting.

Invest in student accommodation

- Examine measures to boost the take-up of rent-a-room relief as part of a plan to tackle the lack of student accommodation.

Logistics and road haulage

- Examine the taxation of hydrotreated vegetable oil used for commercial freight to support sustainable transport solutions.

Social protection

- Maintain the state pension age at 66.
- Introduce pay-related benefit in March 2025, linking unemployment payments to previous earnings for those who have contributed to the Social Insurance Fund and who lose their jobs.
- Introduce the auto-enrolment retirement savings scheme, My Future Fund, in September 2025 to provide workers with greater comfort and security regarding their retirement savings.
- Explore the option of giving self-employed workers access to illness benefit by means of making a higher PRSI contribution.
- Introduce a new working age payment, which will ensure that individuals always see an increase in income when they work or take on additional hours. The working age payment will remove inconsistencies and anomalies in the current jobseekers' allowance that discourage people from taking up employment. The Government will publish draft proposals for full consultation with stakeholders before agreeing the final design of the working age payment.

Supporting communities

- Examine tax measures for donations to community development companies.

Charities

- Strive to make it easier for charitable organisations to register formally as a charity and update the tax code to promote charitable donations.

Safe and secure communities

- Expand the powers of the Criminal Assets Bureau and give it the power to publish a list of tax defaulters.

Arts and culture

- Continue the s481 TCA 1997 film tax credit to support film and unscripted productions.
- Examine options to introduce sector-specific measures for the visual effects sector.
- Examine the tax treatment of production costs for theatre productions.
- Allow approved sports bodies to create long-term strategic development funds for capital investment in facilities, removing the requirement that the proceeds of donations (and associated tax relief) be tied to a specific approved capital project.

Strengthening local democracy

- Ensure fairness and stability in local property tax payments and continue to retain revenue collected locally in the same local authority.

Institute responds to Consultation on Tax Treatment of Interest in Ireland

The Institute responded to the Consultation on the Tax Treatment of Interest in Ireland on 30 January. The consultation is part of the Department of Finance's review of the taxation and deductibility of interest by businesses in Ireland.

The Institute's submission makes 33 detailed recommendations for the reform of the tax treatment of interest in Ireland. We highlight that the rules on interest deductibility are excessively complex, making it difficult and costly for businesses to operate in Ireland and comply with their tax obligations. We urge that a key objective of the Department's review should be to streamline the existing rules, taking into account the protections against base erosion for the Exchequer that exist in the Irish tax code. We note that the overriding principle in simplifying the rules should be to recognise that debt and the payment of interest thereon are a normal commercial reality and a legitimate cost of doing business.

We emphasise that a reformed, principle-based approach to s247 and s249 TCA 1997, which enable companies to claim relief for interest as a charge for interest paid on borrowings incurred for valid commercial purposes, would significantly reduce the complexity faced by companies operating in Ireland.

Taking into account that the review undertaken by the Department of Finance is a multi-year project, we outline some straightforward changes that could be implemented as part of this year's Finance Bill and that would go some way toward making the rules on interest deductibility easier to administer. These include:

- Removing the common director requirement in s247 TCA 1997.
- Reforming the rules that were introduced by Finance Act 2017 to s247 TCA 1997 regarding double holding company structures and their interaction with the deemed recovery of capital rules in s249 TCA 1997.
- Removing the specific anti-avoidance provision in s247(2B) TCA 1997.
- Permitting Case III interest income and expenses to be computed on a net basis, relying on the protection afforded by the transfer pricing rules to ensure that any deduction for interest paid is calculated on an arm's-length basis.
- Expanding the scope of relief available under s552 TCA 1997 to include interest on funds used to purchase land on which a building is constructed.
- Removing the restriction in the s110 TCA 1997 rules for interest paid to tax-exempt persons, such as pension funds and investment entities that are tax resident in an EU Member State or a country with which Ireland has a double taxation agreement and are "specified persons".

Noting that most groups have financing arrangements in place that have been designed with the existing rules on interest deductions in mind, we stress the importance for the Department of Finance to publish a roadmap outlining any changes envisaged with clearly defined milestones signposted. We also highlight the need for close engagement between the Department, Revenue and stakeholders at each stage of the process, with an opportunity for taxpayers and their representatives to provide feedback on draft legislative approaches.

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

Policy News

Tánaiste to establish Consultative Group on International Trade Policy and US-Based Strategic Economic Advisory Panel

The Tánaiste and Minister for Foreign Affairs and Trade, Simon Harris TD, has secured the agreement of the Government to establish a Consultative Group on International Trade Policy. The Consultative Group, which will be chaired by the Tánaiste, is being established to facilitate engagement with key domestic stakeholders on the latest and emerging trade developments and opportunities.

The Group will bring stakeholders together to:

- enhance multi-stakeholder policy dialogue to foster a broad understanding of Ireland's trade opportunities and challenges;
- discuss emerging trade policy developments and their implications for Irish sectors;
- share expertise to inform Ireland's trade policy and exchange views on country- and region-specific developments; and
- update members on key developments in international trade and their impact on Ireland.

The members of the Consultative Group will include relevant Government Ministers and business/sectoral representatives. A full list will be confirmed before the first meeting. The Tánaiste is expected to convene the first meeting by the end of February.

The Tánaiste also announced the establishment of a US-based Strategic Economic Advisory Panel, as part of Ireland's efforts to intensify outreach in the US. In line with the commitment in the Programme for Government, this Panel will be composed of senior decision makers in key business sectors in the US. The Panel will provide insights on strategic economic opportunities for Ireland in the critically important and mutually beneficial US–Ireland economic relationship.

VAT rules for small enterprises

From 1 January the EU special VAT regime, or SME scheme, allows small enterprises to sell goods and services without charging VAT to their customers (VAT exemption), alleviating their VAT compliance obligations. Small enterprises choosing the VAT exemption will lose the right to deduct VAT on goods and services used to make exempt supplies; however, the SME scheme is optional.

A domestic SME scheme and a cross-border SME scheme are available to small enterprises.

- **Domestic SME scheme:** To apply the domestic SME scheme, the small enterprise must have an annual turnover not exceeding the national annual threshold set by the Member State of establishment (MSEST). This threshold cannot be higher than €85,000. Readers will recall that Finance Act 2024 increased the VAT registration threshold in Ireland to €42,500 for services and €85,000 for goods from 1 January 2025.
- **Cross-border SME scheme:** For the cross-border SME scheme, any small enterprise with a total annual turnover of no more than €100,000 (or the equivalent in national currency) in all Member States, for the current and previous calendar year, is eligible for VAT exemption in its MSEST and/or in other Member States under the cross-border SME scheme. However, this is applicable only if the Member State concerned has implemented the scheme in its national legislation.

Compliance requirements under the cross-border SME scheme are simplified. Small enterprises will need to register for the purpose of the SME scheme only once, in the MSEST. The MSEST will grant a single identification "EX number" that will be used in all Member States where the small enterprise benefits from the VAT exemption. The small enterprise is required to file a single quarterly report to disclose its turnover in the 27 Member States. The quarterly report must be submitted in the MSEST. Small enterprises applying the SME scheme are allowed to issue simplified invoices.

The European Commission launched a web portal to provide information to small businesses on how to avail of the SME scheme, including FAQs. In an eBrief on 13 December 2024 Revenue provided an overview of the EU VAT SME scheme that came into effect from 1 January 2025.

In January the European Commission opened infringement procedures and sent letters of formal notice to eight Member States – Bulgaria, Cyprus, Greece, Ireland, Lithuania, Portugal, Romania and Spain – for failing to transpose Directive 2020/285 on the special VAT scheme for small enterprises into national law by 31 December 2024. The eight Member States have two months to complete their transposition and notify their measures to the Commission. In the absence of a satisfactory response, the Commission may decide to issue a Reasoned Opinion.

Commission seeks feedback on standard forms and computerised formats for DAC6

The European Commission has released a draft Implementing Regulation to provide for standard forms and computerised formats to be used in relation to the sixth update to Council Directive 2011/16/EU on administrative cooperation in the field of taxation (the DAC).

The Implementing Regulation aims to specify:

- the date by which Member States have to submit statistical data in relation to information reported by digital platform operators; and
- the statistics to be provided in relation to joint audits.

The consultation period runs until 4 March 2025.

Council adopts FASTER proposal

At a meeting of the Economic and Financial Affairs Council (ECOFIN) on 10 December 2024 the European Council adopted the proposal for a Council Directive on faster and safer relief of excess withholding taxes (FASTER). The FASTER initiative aims to make withholding tax procedures in the EU safer and more efficient for cross-border investors, national tax authorities and financial intermediaries, such as banks and investment platforms.

The key elements of the FASTER Directive include a common EU digital tax residence certificate (eTRC); two fast-track procedures complementing the existing standard refund procedure for withholding taxes; and a standardised reporting obligation for financial intermediaries, such as banks and investment platforms, making it easier for national tax authorities to detect potential tax fraud or abuse.

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

The Directive was published in the *Official Journal of the European Union* on 10 January. Member States must transpose the Directive into national legislation by 31 December 2028, and the national rules must apply from 1 January 2030.

Commission introduces standardised reporting for public CbCR

The European Commission adopted a Commission Implementing Regulation (EU) to standardise the presentation of income tax information for public country-by-country reporting (CbCR), as mandated by Directive 2013/34/EU.

The Regulation introduces a common template and electronic format. 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) mark-up, ensuring both human-readable and machine-readable formats.

The Regulation was published in the *Official Journal of the European Union* on 2 December and entered into force on 22 December.

Commission adopts its 2025 Work Programme

The European Commission has adopted its 2025 Work Programme, outlining the key strategies, action plans and legislative initiatives that will form the building blocks for work during this term to respond to the Commission's ambition to build a strong, secure and prosperous Europe.

Framed by the Political Guidelines and the Mission Letters sent by the Commission President, Ursula von der Leyen, to each College Member, the Work Programme outlines the main initiatives that the Commission will take in the first year of its mandate.

The key deliverables identified in the Commission Work Programme 2025 cover a broad range of areas, including sustainable prosperity and competitiveness; defence and security; supporting people, strengthening societies and the social model; sustaining quality of life; protecting democracy and upholding values; a global Europe – leveraging the EU's power and partnerships; and delivering together and preparing the EU for the future.

In respect of sustainable prosperity and competitiveness, the Work Programme notes that the newly launched Competitiveness Compass will guide sustainable growth efforts, with the EU Start-up and Scale-up Strategy empowering entrepreneurs through better access to capital.

In addition, to support innovative companies to invest and operate in the Single Market without facing 27 distinct legal regimes, the Commission will work towards "a 28th legal regime to simplify applicable rules and reduce the cost of failure, including any relevant aspects of corporate law, insolvency, labour and tax law".

Focus on simplification

The 2025 Work Programme focuses strongly on simplification. A Communication on Implementation and Simplification accompanying the Work Programme sets out how the Commission plans, over the next five years, to make implementation of EU rules easier in practice, to reduce administrative burdens and to simplify EU rules. It outlines a set of tools that the Commission will use to deliver simpler rules and more cost-effective implementation.

With a view to improving how rules are implemented, the Communication outlines that each Commissioner will host at least two implementation dialogues annually to:

- get feedback from industry, including SMEs, social partners, civil society organisations, and regional and local authorities; and
- identify good practices and issues of poor implementation, "gold plating", fragmentation and simplification opportunities.

The Work Programme outlines a series of Omnibus packages and other simplification proposals to tackle priority areas identified with stakeholders over the past year. These are intended to contribute to achieving the goal of reducing administrative burdens by at least 25% for all companies and at least 35% for SMEs. The Work Programme also includes an annual plan of evaluations and fitness checks to ensure continuity of the simplification and burden reduction exercise. Regarding the Evaluation of the Anti-Tax Avoidance Directive, the Work Programme provides an indicative finalisation timeframe of Q4, 2025.

Assessment of existing proposals pending adoption

The Commission has also examined proposals that were pending adoption by the European Parliament and the Council at the start of its mandate and made an assessment of whether the proposals should be maintained, amended or withdrawn. The Commission intends to withdraw 37 proposals pending agreement, which are listed in Annex IV of the Annexes to the Commission Work Programme 2025.

Tax-related proposals withdrawn include:

- Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. (The scope of the proposal has been partly taken over by the EU Minimum Tax Directive.)
- Proposal for a Council Directive on the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States. (No foreseeable agreement, as discussions have been suspended since 2019 and further progress unlikely.)
- Proposal for a Council Directive on administrative cooperation in the field of taxation (codification). (Since the adoption of this proposal in 2020, a number of significant amendments have been adopted that make this codification proposal obsolete. The Commission will propose a new codified proposal.)

The remaining pending proposals are listed in Annex III of the Annexes to the Commission Work Programme 2025. These include tax-related proposals for Directives on:

- administrative cooperation in the field of taxation (DAC9);
- Business in Europe: Framework for Income Taxation (BEFIT);
- transfer pricing;
- establishing a head office tax system for micro, small and medium-sized enterprises (HOT);
- laying down rules on a debt–equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (DEBRA);
- laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (UNSHELL);
- VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT;
- the common system of VAT as regards conferral of implementing powers on the Commission to determine the meaning of the terms used in certain provisions of Directive 2006/112/EC;
- restructuring the Union framework for the taxation of energy products and electricity;
- the common system of a digital services tax on revenues resulting from the provision of certain digital services;
- laying down rules relating to the corporate taxation of a significant digital presence; and
- implementing enhanced cooperation in the area of financial transaction tax (FTT).

The list of pending proposals also includes proposals for a Council Decision and Regulation to amend the system of own resources of the EU.

Ireland to participate in G20 as a guest country

Ireland has been invited by South Africa to participate as a guest country in G20 meetings as part of South Africa's G20 Presidency from 1 December 2024 to November 2025.

At a Department of Finance event on 13 February 2025 to mark Ireland's participation in the G20, the Tánaiste and Minister for Foreign Affairs and Trade, Simon Harris TD, and Minister for Finance, Paschal Donohoe TD, welcomed the invitation, noting Ireland is honoured to be invited to join the G20. The Tánaiste attended the Foreign Ministers Meeting, the first Ministerial meeting of South Africa's G20 Presidency, in Johannesburg on 20 February 2025. Minister Donohoe represented Ireland at the first Finance and Central Bank Deputies and Ministerial meeting in Cape Town from 24 to 27 February, alongside Gabriel Makhlouf, governor of the Central Bank of Ireland.

The G20 is an intergovernmental forum comprising the world's leading economies to discuss international economic and financial stability. The country holding the Presidency of the G20 invites a small number of guest countries to participate throughout its Presidency. The previous Presidency was held by Brazil and saw eight countries participate as guests.

Pillar One: OECD releases new tools for the implementation of Amount B

Amount B under Pillar One of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy provides for a simplified and streamlined approach to the application of the arm's-length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries.

On 19 December the OECD released Factsheets that provide a high-level overview of the mechanics of Amount B, including the steps that taxpayers and tax administrations should take to apply Amount B, and a Pricing Automation Tool to compute automatically the Amount B return for an in-scope tested party, requiring only minimal data inputs.

The adoption of Amount B is optional and is still under consideration by many Inclusive Framework members as they take time to complete domestic administrative and legislative procedures along with competing fiscal priorities in 2025/2026. To facilitate coordination, the OECD will maintain a list of countries that have officially confirmed that they will adopt Amount B, including the date of adoption.

The OECD hosted a technical webinar on 11 February 2025 on the latest developments relating to Amount B, including a demonstration of the Pricing Automation Tool. The OECD released a "Consolidated Report on Amount B" on 24 February, which includes all of the publications from the Inclusive Framework in 2024 relating to Amount B in one document.

Pillar Two: Compilation of legislation and administrative guidance released

The Inclusive Framework on BEPS has released a document setting out those jurisdictions whose minimum tax legislation has secured transitional qualified status, administrative guidance on Article 9.1 of the Global Anti-Base Erosion (GloBE) Model Rules, together with other tools to streamline the coordinated administration of the global minimum tax under Pillar Two.

Central Record of Legislation with Transitional Qualified Status

The GloBE Rules incorporate an agreed rule order that limits the application of the minimum tax rules in one jurisdiction where there are "qualified" rules in another jurisdiction. In 2024 the Inclusive Framework agreed a fast-track process for confirming the qualified status of a jurisdiction's domestic legislation on a transitional basis. The OECD has now published a document titled "Qualified Status Under the Global Minimum Tax – Questions and Answers", which provides details on the transitional qualification mechanism.

A "Central Record of Legislation with Transitional Qualified Status" has been published on the OECD website. The Central Record sets out those jurisdictions whose minimum tax legislation has completed the agreed process and secured transitional qualified status.

A total of 27 jurisdictions, including Ireland, were included on the Central Record as of 13 January 2025. This document will be updated on a regular basis and in a timely manner to include additional minimum tax legislation that has completed the fast-track process.

Administrative Guidance on Article 9.1 of the GloBE Rules

In connection with the release of the Central Record, the Inclusive Framework has agreed further "Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules", which excludes certain deferred tax assets for the purposes of computing a multinational enterprise (MNE) group's effective tax rate, when they arose before the application of the global minimum tax, as a result of certain governmental arrangements or after the introduction of a new corporate income tax.

This guidance clarifies the application of Article 9.1; however jurisdictions may need to consider whether their domestic legislation will need to be amended to apply some aspects of this guidance.

GloBE Information Return and Multilateral Competent Authority Agreement

The Inclusive Framework released an update to the standardised "GloBE Information Return (January 2025)", a supporting "GloBE Information Return (Pillar Two) XML Schema User Guide for Tax Administrations" and a "Multilateral Competent Authority Agreement on the Exchange of GloBE Information (January 2025)" to facilitate central filing and exchange of the GloBE Information Return (GIR).

The GIR is a standardised information return that implementing jurisdictions will use to evaluate the correctness of a constituent entity's liability under its minimum tax rules. The GIR may be filed in a single jurisdiction, with the relevant parts of that return being exchanged with other implementing jurisdictions.

The updated version of the GIR incorporates simplifications and clarifications based on stakeholder feedback that address cases where no jurisdictions have taxing rights under the GloBE Rules. A new annex sets out a notification template that jurisdictions could use when they require a notification from MNE groups that they will receive the GIR through exchange of information. The Inclusive Framework has also agreed further "Administrative Guidance on Article 8.1.4 and 8.1.5 of the Global Anti-Base Erosion Model Rules (January 2025)" on how to complete certain sections of the GIR.

The GIR Multilateral Competent Authority Agreement sets out the conditions and modalities for the automatic exchange of GIR information under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and the XML Schema and User Guide reflect the content and structure of the GIR in a common electronic format. Although the XML schema has been primarily designed to facilitate the exchange of GIR information between tax administrations, the XML schema can also be used for domestic GIR filings, to the extent permitted under the domestic laws of the relevant jurisdiction.

Further work is expected to be undertaken on a common approach to data consistency and quality in the form of validation rules to be applied to the GIR information prior to filing and exchange.

US Presidential Actions on trade and taxation policy published

After the inauguration of Donald Trump as the 47th President of the United States on 20 January, President Trump published several Presidential Actions, including a Memorandum on the OECD Global Tax Deal and a Memorandum on an America First Trade Policy.

Memorandum on the OECD Global Tax Deal

The memorandum states that the OECD's Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy ("Global Tax Deal"), supported under the prior administration, has no force or effect in the US as it allows extraterritorial jurisdiction over American income and limits the ability of the US to enact tax policies that serve the interests of American businesses and workers.

The memorandum outlines that because of the Global Tax Deal and other discriminatory foreign tax practices, US companies may face retaliatory international tax regimes if the US does not comply with foreign tax policy objectives.

The OECD will be notified by the Secretary of the Treasury and the Permanent Representative of the US to the OECD that any commitments made by the Biden Administration, on behalf of the US, with respect to the Global Tax Deal have no force or effect within the United States, absent an act by Congress adopting the relevant provisions of the Global Tax Deal.

The memorandum sets out that the Secretary of the Treasury, in consultation with the US Trade Representative, shall investigate whether any foreign countries are not in compliance with any tax treaty with the US or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or that disproportionately affect American companies. A list of options for protective measures or other actions that the US should adopt in response to such non-compliance or tax rules will be developed and presented to President Trump within 60 days.

On 22 January the US House Committee on Ways and Means issued a press release confirming that it had introduced legislation that will ensure that "President Trump has every tool at his disposal to pushback against any foreign country that seeks to undermine America's economic vitality or unfairly target our workers and businesses".

According to the press release, the Defending American Jobs and Investment Act, which is co-sponsored by the Republican Members of the Ways and Means Committee, will protect US jobs and economic growth, with "reciprocal taxes applicable to any foreign country that decides to target Americans with unfair taxes under the OECD's global minimum tax":

- The Act will require the Treasury Department to identify extraterritorial taxes and discriminatory taxes enacted by foreign countries that attack US businesses, such as the undertaxed profits rule (UTPR) surtax.

- After unfair foreign taxes have been identified, the tax rates on US income of wealthy investors and corporations in those foreign countries will increase by 5 percentage points each year for four years, after which the tax rates remain elevated by 20 percentage points while the unfair taxes are in effect.
- The reciprocal tax will cease to apply after a foreign country repeals its extraterritorial and discriminatory taxes.
- The reciprocal tax will remain dormant as long as countries avoid any unfair taxes on US businesses and workers.

The press release states that several countries have already made the decision to exclude the UTPR surtax from their implementation of the OECD global minimum tax.

Memorandum on an America First Trade Policy

In 2017 the Trump Administration pursued trade and economic policies that put the US economy, people and national security first, according to the memorandum. President Trump has confirmed that he is: "establishing a robust and reinvigorated trade policy that promotes investment and productivity, enhances our Nation's industrial and technological advantages, defends our economic and national security, and – above all – benefits American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses".

The memorandum states that the Secretary of the Treasury shall investigate whether any foreign country subjects US citizens or corporations to discriminatory or extraterritorial taxes.

In seeking to address unfair and unbalanced trade, the memorandum states that the Secretary of the Treasury, in consultation with the Secretary of Commerce and the Secretary of Homeland Security, has been tasked with investigating the feasibility of establishing and recommending the best methods for designing, building and implementing an External Revenue Service to collect tariffs, duties and other foreign trade-related revenues.

The memorandum sets out that the US Trade Representative shall review existing US trade agreements and sectoral trade agreements and recommend any revisions that may be necessary or appropriate to achieve or maintain the general level of reciprocal and mutually advantageous concessions with respect to free trade agreement partner countries.

Additional economic security matters that the Trump Administration will address are set out in the memorandum, including requesting recommendations from the Secretary of State and the Secretary of Commerce on how to maintain, obtain and enhance the US's technological edge and how to identify and eliminate loopholes in existing export controls, especially "those that enable the transfer of strategic goods, software, services, and technology to countries to strategic rivals and their proxies".

Commission statement on US reciprocal tariff policy

On 13 February the US President, Donald Trump, issued a Memorandum on Reciprocal Trade and Tariffs. The memorandum confirms that the Trump Administration will work to counter non-reciprocal trading arrangements with trading partners by determining the equivalent of a reciprocal tariff with respect to each foreign trading partner.

According to the memorandum, this approach will examine non-reciprocal trade relationships with all US trading partners, including any tariffs imposed on US products and unfair, discriminatory or extraterritorial taxes imposed by trading partners on US businesses, workers and consumers, including VAT.

On 14 February the European Commission issued a press release stating that it views President Trump's proposed "reciprocal" trade policy as a step in the wrong direction. It notes that the EU remains committed to an open and predictable global trading system that benefits all partners.

The press release states that:

> "The EU maintains some of the lowest tariffs in the world and sees no justification for increased US tariffs on its exports. Tariffs are taxes. By imposing tariffs, the US is taxing its own citizens, raising costs for business, stifling growth and fuelling inflation. Tariffs heighten economic uncertainty and disrupt the efficiency and integration of global markets."

The Commission confirms that the EU will react firmly and immediately against unjustified barriers to free and fair trade, including when tariffs are used to challenge legal and non-discriminatory policies.

Intergovernmental negotiations commence on UN International Tax Cooperation

A meeting of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation took place from 3 to 6 February 2025. Items for discussion included addressing and concluding on organisational matters, including the decision-making rules of the Committee, and selecting the subject of the second early protocol, which will be drawn from a list of specific priority areas. These policy areas are:

- 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.

At the commencement of the meeting, the US delivered a statement declaring:

> "the goals of a future UN Framework Convention on International Tax Cooperation are inconsistent with U.S. priorities and represent unwelcome overreach. We do not plan to participate further in this organizational session, process, or negotiating United Nations Framework Convention on International Tax Cooperation text. We reject the very nature of these discussions. The process that has been adopted will lead to a Convention that would unacceptably hamper nations' ability to enact tax policies that serve the interests of their citizens, businesses, and workers."

The US confirmed that it intends to reject the outcomes of the Framework Convention process and welcomed others to join its opposition.

Recent Revenue eBriefs

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

Revenue eBriefs Issued from 1 November 2024 to 31 January 2025

No. 267 AEOI – FATCA

Revenue has updated the guidelines dealing with the Foreign Account Tax Compliance Act (FATCA) and the automatic exchange of information (AEOI) to provide further clarity on the reporting of US Taxpayer Identification Numbers (TINs) for financial institutions and account holders. The updates to the manuals are detailed below:

- Paragraph 4.3 of the manual “Guidance Notes on the Implementation of Foreign Account Tax Compliance Act (FATCA) in Ireland” has been reworded for clarity.
- The manual “Revenue Guide to Automatic Exchange of Information (AEOI) for Financial Account Holders” has been updated to include new wording to encourage account holders to provide their US TIN.
- New wording has been added to paragraphs 7.5 and 7.6 of the manual “Filing Guidelines for Foreign Account Tax Compliance Act (FATCA)” to add clarity about the DOB and TIN elements of the schema.

No. 268 Payment Made Without Deduction of Income Tax

The manual “Payment Made Without Deduction of Income Tax” has been updated to reflect the change in PRSI rates effective from 1 October 2024. Examples 6, 7 and 8 have also been updated to reflect the employee PRSI rate of 4.1% and employer PRSI rate of 11.15%.

This manual outlines the circumstances in which re-grossing will apply or will not apply in certain circumstances where an employer fails to operate statutory PAYE obligations.

No. 269 Filing and Paying Stamp Duty on Instruments Chapter 2: Obligation to File a Stamp Duty Return

Revenue’s manual “Filing and Paying Stamp Duty on Instruments – Chapter 2: Obligation to File a Stamp Duty Return” has been updated as follows:

- Section 1 includes the full range of sections in Chapter 1 of Part 7 of the Stamp Duties Consolidation Act 1999 that provide for stamp duty reliefs and exemptions.
- A reference to a new manual, “Miscellaneous Acts Which Contain Stamp Duty Exemptions”, has been included in section 1.
- The layout and content of sections 1 and 2 have been amended to provide greater clarity.

No. 270 Instruction Manual on Inward Processing

Revenue’s “Instruction Manual on Inward Processing” has been amended as follows:

- Definitions: a definition of non-Union goods has been added.
- Section 6.1: additional reference that Form 1034 should accompany bill of discharge.

No. 271 Customs Warehouse Instructions

The “Guidance Manual on Customs Warehousing” has been updated to include the definition of non-Union goods.

No. 272 Instruction Manual on Outward Processing

Revenue's "Instruction Manual on Outward Processing" has been updated in section 3.4 ("Simplified Authorisation") to clarify that the use of an authorisation by declaration is restricted to three times in a 12-month period.

No. 273 Exportation of Cultural Goods

Revenue's manual "Exportation of Cultural Goods, Archaeological Objects, Documents and Pictures" has been amended at paragraph 3 to include the National Gallery of Ireland as the competent authority for intra-EU licences for paintings and drawings.

No. 274 Tobacco Products Tax

The "Tobacco Products Tax" manual has been amended to reflect the Budget 2025 changes in the excise duty rates of tobacco products tax in the worked examples in section 4.2 ("Calculation of Tobacco Products Tax"). This change took effect from 2 October 2024.

No. 275 Guidelines for Registration for IT, CT, RCT, PREM and Certain Other Taxheads (Part 38-01-03a)

Revenue has updated its manual "Guidelines for Registration for IT, CT, RCT, PREM and Certain Other Taxheads" as follows:

- A new sub-section 2.2.2 has been inserted in section 2.2, "Pre-requisites for Registration", to include information regarding the Statement of Particulars.
- A new section 7.6 provides an outline of the defective concrete products levy (DCPL).
- A new section 7.7 provides an outline of the stamp duty insurance levy.
- A new section 7.8 provides an outline of the non-resident landlord withholding tax (NLWT) system.

No. 276 Vehicle Registration Tax Manual Section 8

Revenue has updated section 2 ("Valuation of New Vehicles") and section 3 ("Valuation of Used Vehicles") of its vehicle registration tax (VRT) manual "Section 8 – Valuation System for New and Used Vehicles", to reflect current operational practices in the National VRT Service.

No. 277 Meaning of "Control" in Certain Contexts

Revenue's manual "Meaning of "Control" in Certain Contexts" has been updated to include a summary of the definition of control contained in s11 TCA 1997 and to provide additional detail regarding the definition of control contained in s432 TCA 1997.

The manual confirms that some TCA 1997 provisions may establish a stand-alone test of control, ownership, voting power, etc. in order for the relevant measure to apply. Other provisions may rely on the definition of control in s11 or s432. Examples of various provisions in TCA 1997 that apply the definitions of control from s11 and s432 are also listed in the manual.

No. 278 Interest Relief for Qualifying Financing Companies (QFCs) – Section 76E

Revenue has published a new manual, "Interest Relief for Qualifying Financing Companies (QFCs) – Section 76E", providing guidance on the deductibility of interest by intermediary financing companies under s76E TCA 1997. Finance (No. 2) Act 2023 introduced s76E to the TCA 1997, which permits certain intermediary financing companies, known as qualifying financing companies, to obtain a deduction for interest paid in certain limited circumstances.

No. 279 Stamp Duty Manual Part 7: Section 80 – Reconstructions or Amalgamations of Companies Updated

The stamp duty manual "Part 7: Section 80 – Reconstructions or Amalgamations of Companies" has been updated at section 8 ("Withdrawal of Exemption") to clarify the circumstances in which relief under s80 of the Stamp Duties Consolidation Act 1999 will be withdrawn.

No. 280 Customs Manual on Preferential Origin – Appendix 3

Revenue's "Customs Manual on Preferential Origin – Appendix 3: Trade and Cooperation Agreement (TCA) EU/UK" has been updated for the following:

- The product-specific rules that will apply following the period of transitional rules (i.e. after 31 December 2026) in section 2.
- Changes to the transitional product-specific rules for electric accumulators and electrified vehicles that apply from 1 January 2021 until 31 December 2026 (pages 77 to 78) in section 4.
- Some minor text changes to the manual.

No. 281 Adjustment of VAT Deductible Regarding Unpaid Consideration

The manual "Adjustment of VAT Deductible Regarding Unpaid Consideration" has been updated to remove content no longer needed regarding the introduction of s62A of the Value-Added Tax Consolidation Act 2010.

No. 282 Conditional Audit Settlement Offers

Revenue's "Conditional Audit Settlement Offers" manual has been removed on the basis that it is no longer relevant. The information provided in the manual is now set out in the "Code of Practice for Revenue Compliance Interventions".

No. 283 Inward Processing

The "Instruction Manual on Inward Processing" has been updated at section 6.1 to include an additional reference clarifying that the Form 1034 should accompany a bill of discharge.

No. 284 Electronic Tax Clearance

Revenue's manual "Electronic Tax Clearance (eTC) Guidelines & Procedures" has been updated at section 21 to clarify the requirements for renewal of a tax clearance certificate (TCC).

The TCC will remain valid for four years once an applicant's tax affairs remain in order (except in the case of a grant, the application of which must be submitted each year). After four years a new application must be submitted. However, if there is a change in circumstances – for example, property sale, property purchase, joining a partnership, leaving a partnership – then a new application for tax clearance must be made if it is still required.

When applying for tax clearance through eTax Clearance, a "Review your details" screen is presented. This will list details held by Revenue of any persons or property related to the applicant. As part of the tax clearance application process, it is the responsibility of the applicant to ensure that these details are accurate. The information can be amended or updated if necessary. On the summary screen of the online application the applicant is asked to declare that the information provided in the form is true and correct before submitting the application to be processed.

No. 285 PAYE Services: Review Your Tax

The manual "PAYE Services: Review Your Tax" on myAccount has been updated to reflect the following changes:

- The reference to the facility to create, review or print the Employment Detail Summary (EDS) has been removed from paragraph 1, which outlines the tasks that can be performed under "Review your tax". (The EDS can be accessed for all years in "PAYE Services" under a separate heading, "View your Employment Detail Summary (EDS) documents", or via a link at the top of the "Review your tax 2020–2023" page).
- The manual is updated to reflect the available review years.
- Screenshots have been updated throughout the manual.

No. 286 VAT Return of Trading Details – Guidance for Filers

The "VAT Return of Trading Details" manual has been updated as follows:

- Paragraph 2.2, "Supplies of Goods and/or Services Filing", clarifies the treatment of the receipt of services from outside the EU on a self-accounting basis.

- Paragraph 2.3, "Acquisitions from the European Union and Non-European Union", references that section 4 of the VAT Return of Trading Details, "Other Deductible Goods and Services", is subject to the deductibility rate of the filer.
- Examples in paragraph 2.6 and Appendix 2 have been updated to reflect guidance on exempt reporting.

No. 287 Preferential Origin – Appendix 2

Revenue has updated the "Customs Manual on Preferential Origin – Appendix 2" to reflect that on 1 January 2025 Vanuatu is graduating from a Generalised System of Preferences (GSP) Everything But Arms (EBA) country to a GSP Standard Beneficiary country. The lists of GSP EBA and GSP Standard Beneficiary countries in Annexes X and XI have been updated accordingly.

No. 288 Taxation of Provisions and Accruals

The manual "Taxation of Provisions and Accruals (Income Tax and Corporation Tax)" has been updated to reflect recent changes in Irish generally accepted accounting practice (FRS 100–FRS 105) published in September 2024 and to provide for some miscellaneous minor revisions.

No. 289 Interest on Loans to Defray Money Applied for Certain Purposes

Revenue published a manual, "Interest on Loans to Defray Money Applied for Certain Purposes", to provide guidance on s840A TCA 1997. Section 840A is an anti-avoidance provision that restricts the ability of certain companies, referred to as "investing companies" in the section, to claim a deduction for interest payable on certain connected-party borrowings to fund the acquisition of certain assets from other group companies.

No. 290 Revised Preferential Origin Rules of the Pan-Euro-Mediterranean Convention Applicable from 1 January 2025

Revenue's manual "Appendix 1 to the Customs Manual on Preferential Origin – Annex I – The Rules of Origin for the Agreement Countries of the Pan-Euro-Mediterranean Zone" has been amended to clarify that the revised preferential-origin rules of the Pan-Euro-Mediterranean Convention will apply with effect from 1 January 2025. During the one-year transition period from 1 January to 31 December 2025, the revised origin rules will apply in parallel with the existing rules.

No. 291 Transfer of Close Company Status Opinions under TDM 13-01-02 to Revenue Technical Service

The manual "Close Companies: Interpretation and General" explains some of the key definitions and terms used in the close company provisions in Part 13 TCA 1997. Paragraph 1 of the manual outlines how taxpayers can seek agreement from Revenue that the close company legislation will not apply to an Irish-resident company in certain circumstances, where the ultimate ownership and control of the company is widely dispersed among a large number of investors in funds operated through a limited partnership structure.

Paragraph 1 has been updated to outline the details that must be submitted to Revenue for a request to be considered. With effect from 2 December 2024, requests must be submitted to Revenue via the Revenue Technical Service in accordance with the procedures set out in the manual "The Revenue Technical Service".

No. 292 Guidance on Interest Limitation

Revenue has updated the "Guidance on the Interest Limitation Rule" manual at sections 8 and 9 to reflect the Finance Act 2024 amendments to Part 35D TCA 1997, dealing with the interaction of the interest limitation rule with leasing transactions, and to provide further clarity on the operation of the long-term public infrastructure project exemption.

No. 293 Stamp Duty Manual Part 9: Section 125A – Levy on Authorised Insurers

Revenue's manual "Part 9: Section 125A – Levy on Authorised Insurers" provides for stamp duty to be levied on certain health insurance contracts entered into between health insurers and their customers. The manual has been updated to include the rates of the levy for accounting periods commencing on or after 1 April 2025, as provided for by s10 of the Health Insurance (Amendment) and Health (Provision of Menopause Products) Act 2024, which was enacted on 11 November.

No. 294 Stamp Duty Manuals for Part 9 and Section 126AB SDCA 1999 Updated

Revenue's manual "Part 9: Section 126AB – Further Levy on Certain Financial Institutions" provides for stamp duty to be levied on certain financial products and financial institutions. The manual has been updated to reflect the Finance Act 2024 amendment to s126AB of the Stamp Duties Consolidation Act 1999 (SDCA 1999). In addition, Revenue's manual "Part 9: Levies" has been updated to reflect the Finance Act 2024 amendment to Part 9 of SDCA 1999.

No. 295 Preferential Origin

Revenue has updated the "Customs Manual on Preferential Origin" as follows:

- References to the Revised Pan-Euro-Mediterranean (PEM) Convention and the EU–New Zealand trade agreement are added to the "Introduction".
- The practical examples in section 1, "Preferential Trade Agreements and Rules of Origin", are amended to reflect the new origin rules of the Revised PEM Convention.
- The link to the PEM Matrix for origin cumulation is updated in section 1.13, "Direct Transport/Non-Manipulation Rule/Non-Alteration Rule".

No. 296 Collection of Customs Debts Manual

Revenue has updated the "Collection of Customs Debts" manual in the following sections:

- Section 3.3, "Notification of a Customs Debt", has been updated to incorporate recovery action.
- Section 3.4, "Limitations of a Customs Debt", has been updated to differentiate between limitation and notification.
- Section 3.5, "Suspension of the Period", has been updated to give clarity on the right to be heard.
- Customs definitions have also been updated in the manual.

No. 297 VAT Notes for Guidance

Revenue has published the "Finance Act 2024 VAT Notes for Guidance" on the Revenue website.

No. 298 VAT Treatment of Share Transactions and Trading Platforms

A new manual, "VAT Treatment of Share Transactions and Trading Platforms", has been published to provide guidance on this topic.

No. 299 VAT Treatment of Stock Exchange Fees

Revenue has updated the following VAT manuals:

- "VAT Treatment of Stock Exchange Fees" has been updated to provide guidance on the current regime.
- "VAT Treatment of Debt Factoring and Invoice Discounting" has been updated.
- "VAT and Solicitors" has been updated to include a new paragraph 4 on legal fees relating to lenders.

No. 300 Pre-letting Expenses

The "Introduction" of the manual "Pre-letting Expenditure in Respect of Vacant Residential Premises" now reflects the Finance Act 2024 amendment to s97A(2) TCA 1997, which extends the current relief for a further three years to 31 December 2027.

No. 301 Deduction for Digital Services Taxes

Revenue has updated the manual "Section 81: Deduction for Digital Services Taxes" to include the Canadian digital services tax in the list of digital services taxes that are accepted as being deductible where incurred wholly and exclusively for the purposes of a trade.

No. 302 Deduction for Stock Exchange Listing Expenditure

A new manual, "Deduction for Stock Exchange Listing Expenditure", has been published to provide guidance on the new corporation tax relief available, under s81D TCA 1997, for expenditure of up to €1m incurred by a company on listing its shares for the first time on an EEA stock exchange. This measure was introduced by Finance Act 2024 and applies to first-time listings on or after 1 January 2025.

No. 303 Guidance on Anti-Hybrid Rules

Revenue has updated its "Guidance on Anti-Hybrid Rules" manual for the following:

- Section 1, "Introduction to hybrid mismatches", has been updated to clarify that OECD guidance on hybrid mismatches cannot be relied on to disapply any provisions of the hybrid mismatch rules in ATAD2, as transposed into Part 35C TCA 1997, but only to provide guidance regarding their application.
- Section 2, "Mismatch outcomes", has been updated to introduce the concept of primary and defensive anti-hybrid rules.
- Section 3, "Interpretation (Section 853Z)", has been updated to include definitions of "deduction" and "structured arrangement".
- Section 4.2.1, "Section 835Z(1)(a)", has been updated to include an example of a territory that applies tax to some, but not all, entities.
- Section 5.1, "Worldwide system of taxation – Ireland", has been updated to include guidance on how to deal with loss-making branches with trapped losses.
- Section 7.1.1, "Having regard to the capital of the entity", has been updated to clarify scenarios where a 50% associated-enterprise test applies instead of a 25% test.

No. 304 Tax and Duty Manual Part 09-02-08 – Leasing of Machinery and Plant – Scenarios Where Section 299(1) Applies

Revenue has published a new manual, "Leasing of Machinery and Plant – Scenarios Where Section 299(1) Applies", to provide guidance on when s299(1) TCA 1997 applies to a lease and outlines the tax implications for both lessors and lessees.

No. 305 Tax Treatment of Payments Received under the Brexit Voluntary Permanent Cessation Scheme

The manual "Tax Treatment of Payments Received Under the Brexit Voluntary Permanent Cessation Scheme", which sets out guidance on the tax treatment of decommissioning payments to certain fishing vessel owners, has been updated to reflect that a licence holder who availed of the decommissioning scheme may elect to have a deduction of up to 50% of the Temporary Tie-Up Payment (TTUP) taken into account in the chargeable period in which the TTUP is chargeable to tax.

No. 306 Accelerated Capital Allowances for Farm Safety Equipment

The manual "Accelerated Capital Allowances for Farm Safety Equipment" has been updated to reflect the Finance Act 2024 amendment to Part 2 of Schedule 35 TCA 1997, Types and Descriptions of Qualifying Equipment for the Purposes of Section 285D. This extends the list of items that qualify for accelerated capital allowances for farm safety equipment and adaptive equipment for farmers with disabilities.

The list has been expanded to include certain equipment that qualifies for TAMS (Targeted Agricultural Modernisation Scheme) grants, including calving gates, livestock monitors, floodlights for farmyards and slider/roller doors for agricultural buildings.

No. 307 Tax and Duty Manual 12-04-02 – Leasing Ringfences – Sections 403 and 404 TCA 1997

Revenue published a new manual, "Leasing Ringfences – Sections 403 and 404 TCA 1997", providing guidance on the application of the ringfences contained in s403 and s404 TCA 1997.

No. 308 Part 15 Tax Credits Finance Act 2024 Updates

The following manuals have been updated to reflect Finance Act 2024 amendments:

- "Sea-Going Naval Personnel Tax Credit" reflects the extension of the credit to the 2029 year of assessment. The value of the credit and the qualifying criteria remain unchanged. The examples have also been updated.
- "Incapacitated Child Tax Credit – Section 465 Taxes Consolidation Act (TCA) 1997" reflects the increase to the value of the credit from €3,500 to €3,800 from 1 January 2025.
- "Employee (PAYE) Tax Credit – Section 472 of the Taxes Consolidation Act 1997" reflects the increase in the value of credit to €2,000 for the 2025 year of assessment and subsequent years. The table and example in section 1, "Application of the Employee (PAYE) Tax Credit", have been updated to reflect the increase to the credit.
- "Earned Income Tax Credit" reflects the increase in the value of the credit to €2,000 for the 2025 year of assessment and subsequent years. Examples throughout the manual have been updated to reflect the increase to the credit.

No. 309 Customs Controls in the Area of Product Safety

The manual "Customs Control in the Area of Product Safety" has been amended at paragraph 1, "Introduction & Legislation", to include references to the new Market Surveillance Regulation and associated national legislation.

No. 310 Stamp Duty Manuals – Section 81AA (Transfers of Land to Young Trained Farmers) and Section 81D (Relief for Certain Leases of Farmland) SDCA 1999 – Finance Act 2024 Updates

Revenue has updated two stamp duty manuals to reflect Finance Act 2024 amendments to the following stamp duty reliefs.

Young trained farmer stamp duty relief

Section 81AA of the Stamp Duties Consolidation Act 1999 (SDCA 1999) provides relief from stamp duty on the transfer of an interest in agricultural land to certain farmers who are under 35 years of age and who hold a relevant agricultural qualification (i.e. young trained farmers). Where the relief is claimed, the young trained farmer is required to spend at least 50% of his/her normal working time farming the land for five years.

The manual "Part 7: Section 81AA – Transfers of Land to Young Trained Farmers" has been updated to provide that the active farmer condition may be met where the land is farmed through a company, if certain conditions are met, and to reflect the inclusion of a new sub-section 13A in SDCA 1999 to provide that a clawback will apply where the transferee fails to comply with the condition to farm the land for 50% of his/her normal working time.

Relief for leases of farmland

Section 81D SDCA 1999 provides for relief from stamp duty in respect of certain leases of farmland executed on or after 1 July 2018. It applies in respect of a lease for a term of not less than 6 years and not exceeding 35 years of any lands that are used exclusively for farming carried on by the lessee on a commercial basis and with a view to the realisation of profits.

The manual "Relief for Leases of Farmland – Part 7: Section 81D" has been updated to provide that the relief may be claimed where the lessee is a company, if certain conditions are met, and to confirm that this relief, being a State Aid, is available to a single undertaking within the meaning of Commission Regulation (EU) No. 1408/2013 of 18 December 2013.

No. 311 Corporation Tax Relief for New Start-up Companies

The "Tax Relief for New Start-up Companies" manual has been updated to reflect Finance Act 2024 amendments to s486C TCA 1997. The relief is computed by reference to employer PRSI contributions paid by the company during the year, subject to a limit of €5,000 per individual.

Following Finance Act 2024 amendments, relief can also be computed by reference to the total Class S PRSI contributions paid through the

PAYE system by certain company directors/ owners for accounting periods beginning on or after 1 January 2025, subject to a limit of €1,000 per individual.

The manual has also been amended to provide new and updated examples and information on the operation of the relief, as well as a restructuring of the content for ease of reading.

No. 312 Help to Buy (HTB) Manual Updated

Revenue has updated the "Help to Buy (HTB)" manual to reflect the extension of the HTB scheme to 31 December 2029. In addition, footnote 1 in paragraph 5, "What Is a Qualifying Residence?", is updated to reflect a technical amendment to the definition of "qualifying residence" introduced by Finance Act 2024. The amendment ensures that a newly constructed property purchased by a local authority for onward sale to an purchaser under the Local Authority Affordable Purchase Scheme is eligible for the HTB scheme.

No. 313 Vehicle Registration Tax Manual Section 01C

The vehicle registration tax manual "Section 1C – Conversions" has been updated at section 6, "Post Registration Conversions (including those previously registered in another jurisdiction)".

No. 314 Residential Premises Rental Income Relief (RPRIR)

Revenue has updated the manual "Residential Premises Rental Income Relief" (RPRIR) to reflect amendments made by Finance Act 2024 to s480C TCA 1997:

- Paragraph 2, "Claiming RPRIR", has been updated to reflect the amendment that provides that the relief is not available in circumstances where a landlord has an overall Case V rental income loss or where the landlord's overall rental profit is lower than the amount of the RPRIR.
- Paragraph 4, "When will a clawback of the relief occur?", has been updated to state that the death of a landlord will not trigger a clawback of RPRIR and that where an individual is no longer entitled to the relief, the amount of relief clawed back will be the same as the amount of relief claimed.

No. 315 Overview of EU VAT SME Scheme

Revenue provided an overview of the EU VAT SME scheme, which will come into effect from 1 January 2025.

Currently, Member States can set their national VAT registration thresholds within EU rules and, usually, businesses operating below these thresholds making domestic supplies of goods and services are not required to register and account for VAT. Finance Act 2024 increased the VAT registration thresholds in Ireland to €42,500 for services and €85,000 for goods from 1 January 2025.

Generally, where an Irish-established trader makes supplies in another Member State there is no *de minimus* threshold. They must immediately register and account for VAT in the Member State where the supply takes place. From 1 January 2025 the SME scheme will allow these small traders the option to avail of the thresholds in other Member States. If eligible, these businesses will not have to register for VAT when supplying goods and services there.

To be eligible to use the EU VAT SME scheme in another Member State, an Irish business must:

- be established for VAT purposes in Ireland only;
- not exceed the domestic turnover threshold(s) of the other Member State(s) where supplies are made;
- not exceed the Union turnover threshold of €100,000;
- be registered in Ireland to use the scheme (separate registration process); and
- file quarterly reports once registered.

An Irish business wishing to register to use the scheme in other Member States must make a formal application to Revenue. This scheme is optional, and Irish businesses do not have to use it for supplies in other Member States.

Normal VAT rules for businesses not making use of this scheme will continue to apply.

There is no change to Irish businesses making domestic supplies of goods and services currently operating the SME scheme in Ireland (i.e. they do not have to register for VAT). However, they can elect to do so.

Revenue can be contacted via MyEnquiries, selecting "VSME (EU VAT SME Scheme)", or via email to vsmehelp@revenue.ie for queries relating to this scheme.

No. 316 Charitable Donation Scheme

Revenue has updated the manual "Charitable Donation Scheme – Tax Relief for Donations to Approved Bodies: Section 848A and Schedule 26A TCA" at paragraph 7 to reflect Finance Act 2024 changes to the scheme. With effect from 1 January 2025 the two-year waiting period for eligibility for the scheme no longer applies. Also, where a charity has merged or restructured into another entity, the condition that the predecessor entity must have been approved for two years before the "successor body" is eligible no longer applies.

No. 317 Accelerated Wear and Tear Allowances for Gas Vehicles and Refuelling Equipment

Revenue has updated the manual "Accelerated Wear and Tear Allowances for Gas Vehicles and Refuelling Equipment" to reflect an amendment in Finance Act 2024 that extended the accelerated capital allowance scheme to 31 December 2025. The scheme is available in respect of capital expenditure incurred on gas and hydrogen vehicles and refuelling equipment used for the purposes of carrying on a trade.

No. 318 Stamp Duty Manual – Part 5: Provisions Applicable to Particular Instruments – Updated

Revenue has updated the stamp duty manual "Part 5: Provisions Applicable to Particular Instruments" to state that Revenue accepts that a contract or agreement for sale under s31A of the Stamp Duties Consolidation Act 1999 (SDCA 1999), a licence agreement under s31B SDCA 1999 or an agreement for a lease under s50A SDCA 1999 is deemed to be executed on the date on which the 25% threshold, as referred to in each of those sections, is reached.

The manual has also been updated to reflect the Finance Act 2024 amendment to 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, which increased the higher rate of stamp duty from 10% to 15% on 2 October 2024.

No. 319 Exemption of Certain Profits Arising from Production, Maintenance and Repair of Certain Musical Instruments

Revenue has updated the manual "Exemption of Certain Profits Arising from Production, Maintenance and Repair of Certain Musical Instruments", relating to the exemption in s216F TCA 1997. The manual has been updated to reflect an amendment in Finance Act 2024 that provided for 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 minimus* aid.

No. 320 Stock Relief – Farming Trades

The "Stock Relief – Farming Trades" manual sets out guidance on the tax deduction for farmers for increases in stock values, known as "stock relief", in s666 TCA 1997. This manual has been updated to reflect an amendment in Finance Act 2024 that extended the availability of stock relief to 31 December 2027.

No. 321 General Rule as to Deduction of Expenses in Employment

Revenue has updated the manual "General Rule as to Deduction of Expenses in Employment" as follows:

- A new paragraph 3, "Claiming Employment Expenses (other than FRE allowances)", has been added to provide guidance on how to make a claim for employment expenses in respect of actual vouched expenses incurred wholly, exclusively and necessarily in the performance of the duties of employment that are outside of the flat-rate expense (FRE) allowance regime.

- Paragraph 5, "Continuous Professional Development (CPD)", has been updated to explain the circumstances where a course is regarded as relevant to the business of an employer for the purpose of deciding whether the cost of such a course is regarded as a taxable benefit when paid for or reimbursed by an employer.
- Guidance in paragraph 6, "Deductibility of Typical Expenses that may be Incurred by an Employee", has been expanded on to provide more clarity.
- A new paragraph 7, "Flat Rate Expense (FRE) Allowances", has been included in the manual. This paragraph provides detailed guidance on how to make a claim for an FRE allowance, including how to claim the increase in the FRE allowance available for eight employment categories effective from 1 January 2023.

No. 322 Update to Part 04A-01-01 – Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Administration and Part 04A-01-02 – Regarding the Application of Pillar Two Rules

Revenue has updated its manual "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Administration", which contains an overview of the administration of Pillar Two. The updates to the manual reflect certain amendments made to Part 4A TCA 1997 by Finance Act 2024:

- Section 2.3 has been updated to clarify the meaning of a "designated filing entity".
- Section 2.8, "Specified Return Date", clarifies that the specified return date of an entity shall be 30 June 2026 where the specified return date of that entity, or group, would otherwise arise before 30 June 2026.
- Section 3, "Obligation to Register – Section 111AAH", clarifies that the notification date of an entity or group shall be 31 December 2025 where a registration notification date of that entity, or group, arises before 31 December 2025.
- Section 13, "Date for Payment – Section 111AAS", clarifies that GloBE taxes fall due and payable on 30 June 2026 where the specified return date would otherwise arise before 30 June 2026.
- Section 19.1, Table 1, "Five Year Elections", provides for the allocation of a deferred tax expense election.
- Section 19.2, Table 2, "Annual Elections", provides for the simplified-calculations safe-harbour election.

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

- Section 5.1, "Section 111A – Interpretation (Part 4A)", includes updates in relation to widely held investment funds, master–feeder investment funds and umbrella fund/sub-fund structures.
- Section 5.4, "Section 111D – Location of Constituent Entity", includes updates in relation to the interaction of tax residency and location of a constituent entity in certain circumstances.
- Section 7.2, "Section 111P – Adjustments to Determine Qualifying Income or Loss", includes updates on the interaction of Part 35A TCA 1997 and s111P(4) TCA 1997. Updates have also been made in relation to refundable and marketable transferable tax credits and intra-group financing arrangements.
- Section 11.1, "Section 111AQ – Ultimate Parent Entity that is a Flow-through Entity", includes updates in relation to identifying the "ownership holder" referred to in s111AQ(1).

This manual will be further updated in due course to reflect the amendments made to Part 4A by Finance Act 2024.

No. 323 Updates to Tax and Duty Manuals Part 38-01-03a and Part 38-01-03b

Revenue's "Guidelines for Registration for IT, CT, RCT, PREM and Certain Other Taxheads" has been updated to reflect the change of name of the National Employer Helpline to the National Employer Helpdesk, to better reflect the services that the unit provides.

"Guidelines for VAT Registration" has been updated to include information for applicants with a VAT registration subsequently applying for postponed accounting via ROS.

No. 324 Procedures in Relation to Relief for Investment in Films

The manual "Procedures in Relation to Relief for Investment in Films" has been marked as no longer relevant as it related to the incentive for investment in film. This scheme closed to new applications in January 2015 and was replaced by the film corporation tax credit (film relief). The manual "Section 481 Film Corporation Tax Credit" provides guidance on film relief.

No. 325 Co-operative Compliance Framework – Large Corporates Division and High Wealth & Financial Services Division

The manual "Co-operative Compliance Framework – Large Corporates Division and High Wealth & Financial Services Division" has been updated to include references to the High Wealth & Financial Services Division (HW&FSD), where appropriate, after the move of the financial services branches from Large Corporates Division (LCD) to HW&FSD. The contact details for LCD and HW&FSD in section 7 have also been updated, together with some other minor changes.

No. 326 Outbound Payments Defensive Measures

The manual "Outbound Payments Defensive Measures" has been updated at section 3.8, "Excluded payment", and section 5.2, "Section 817U(6) – tax transparent entity and one or more owners located in the same territory", to reflect Finance Act 2024 amendments. In addition, Example 5.1.2 has been revised to provide clarification on the association test as it applies in that example.

No. 327 Retirement Relief – Disposals Within Family of Business or Farm

Revenue has updated the retirement relief manual titled "Disposals Within Family of Business or Farm (S.599)", which provides guidance on s599 TCA 1997. Section 599 provides for relief from capital gains tax (CGT) on the transfer by an individual who has attained 55 years of age of certain business or agricultural assets where such a transfer is to a child, as defined in the section.

The guidance has been updated to reflect the following amendments made to s599 by Finance Act 2024:

- To provide for an option for an individual to defer the CGT liability arising on a "relevant disposal" made on or after 1 January 2025. A "relevant disposal" means a disposal of qualifying assets, as referred to in s599(1)(b)(v) TCA 1997, being a disposal in respect of which CGT is chargeable as the value of the assets exceeds the €10m limit on relief granted under s599 TCA 1997.
- To provide for a general anti-avoidance provision in respect of relief granted on transfers of qualifying assets from an individual to a child and the potential deferral of CGT arising in respect of such transfers.
- To provide new and updated examples and information on the operation of the relief, as well as a restructuring of the content for ease of reference.

The manual includes guidance and examples in section 2 on calculating the aggregate consideration for disposals of qualifying assets to a child, including where disposals are made before and after 1 January 2025.

No. 328 VRT Manual Section 1A and Section 8

The vehicle registration tax (VRT) manual titled "Section 1A: Vehicle Classification and Tax Categories" has been updated at section 4, "Vehicle Categories", to reflect changes made by Finance Act 2024 and Statutory Instrument 201 of 2024, European Union (Road Vehicles: Type – Approval and Market Surveillance) (Amendment) Regulations 2024.

The VRT manual "Section 8: Valuation System for New and Used Vehicles" has also been updated in Appendix 2 to reflect changes made in Finance Act 2024.

No. 329 Stock Relief for Young Trained Farmers

Revenue has updated the "Stock Relief – Young Trained Farmers" manual to reflect an amendment in Finance Act 2024 that extended the scheme to 31 December 2027.

No. 330 Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action

Revenue has published a new manual, "High Wealth and Financial Services Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action". A new procedure applies to applications to the High Wealth & Financial Services Division for an opinion or confirmation, in accordance with sections 1 and 2 of the manual. All such applications must be submitted on a fully completed Form RTS 1A.

The treatment of financial services branches remains the same as under the manual "Large Corporates Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action".

No. 331 Retention of Books and Records

The "Books and Records" manual, which provides guidance on maintaining proper books and records, has been updated to reflect the period for which certain records and linking documents must be retained.

No. 332 Part 38-01-03c Cancellation of Tax Registration

Revenue has updated the "Cancellation of Tax Registration" manual to amend the wording of Cessation of Tax Registration Letters contained in Appendices 3, 4, 5 and 6.

No. 333 EU Cross-Border Payments Reporting Requirement for Payment Service Providers

Revenue has updated the manual "Reporting Requirement for Payment Service Providers on Cross-Border Payments – EU Central Electronic System of Payment Information ('CESOP')" to reflect Finance Act 2024 amendments. The amendments provide for a penalty regime for non-compliance by payment service providers (PSPs) with their obligations under Part 9A of the Value-Added Tax Consolidation Act 2010. These obligations transpose EU reporting obligations for PSPs in respect of certain cross-border payments that they facilitate in the EU. Revenue has also consolidated the content of the manual. The legislative changes come into effect on 1 January 2025.

No. 334 PAYE Services Manage Your Tax

Revenue has updated the manual "PAYE Services: Manage Your Tax" at section 2.3 to remove the reference to the rent tax credit from the Real Time Credit section. The rent tax credit is a PAYE Online Services Credit rather than a Real Time Credit, which requires the mandatory upload of receipts via the Receipts Tracker.

The manual also includes updated screenshots throughout for changes made under the "PAYE Services Card", changing "Manage your Tax 2024" to "Manage your Tax for the Current Year".

No. 335 Importation and Exportation of Medicinal Products and Unauthorised or Falsified (Counterfeit) Medical Preparations

The manual "Importation and Exportation of Medicinal Products and Unauthorised or Falsified (Counterfeit) Medical Preparations" has been updated at section 3.6 to reflect the current list of manufacturers approved to import specified controlled drugs into Ireland.

No. 336 Part 37-00-04b Guidelines for Agents or Advisors Acting on Behalf of Taxpayers

Revenue's manual "Guidelines for Agents or Advisors Acting on Behalf of Taxpayers" has been updated to reflect Revenue's withdrawal of the Authorisation Form PAYE A2 (PAYE A2) process, as noted in eBrief No. 256/24 last October.

The PAYE A2 facility permitted agents to receive refunds for PAYE taxpayers into the agents' bank accounts. The PAYE A2 cannot be used to link to any client from 1 January 2025. Agents with correct PAYE A2 mandates in place for PAYE (only) clients by 31 December 2024 can continue to receive refunds until 31 December 2025, provided that the clients do not update their bank details during that period.

Where a PAYE taxpayer updates their bank details between 1 January and 31 December 2025, the agent cannot change those bank details to their own bank account regardless of whether a PAYE A2 form is on record before 31 December 2024. Sections 4, 7, 11 and 14 of the manual have been updated to reflect these changes. The link to the PAYE A2 Authorisation Form has also been removed from Appendix 1.

No. 337 Parts 15 Tax Credits and Part 42 Finance Act 2024 Updates

Several Revenue manuals have been updated to reflect Finance Act 2024 amendments to tax credits that apply from 1 January 2025:

- "Dependent Relative Tax Credit" reflects the increase in the value of the credit to €305 and the increase in the "specified amount" to €18,028.
- "Home Carer Tax Credit" reflects the increase in the value of the credit to €1,950. Examples throughout the manual have been updated to reflect this amendment. A new paragraph 8 provides guidance on how to make a claim.
- "Blind Person's Tax Credit" reflects the increase in the value of the credit to €1,950 per qualifying individual. In addition, the following paragraphs have been added to the manual:
  - paragraph 2, "Conditions to qualify for the Blind Person's Tax Credit",
  - paragraph 3, "Value of the Credit",
  - paragraph 4, "How to Claim the Credit", and
  - paragraph 5, "Other tax credits and allowances.
- "Single Person Child Carer Credit" reflects the increase in the value of the credit to €1,900. Paragraph 9, which relates to claims where the claimant's circumstances change during the year, has been updated to provide additional guidance on how to claim the credit.
- "PAYE/USC Regulations – Emergency Tax" reflects the increase in tax rates and tax bands for 2025.

No. 338 Mortgage Interest Tax Credit

Revenue has updated the "Mortgage Interest Tax Credit" manual to reflect the extension of the credit to the 2024 year of assessment, as provided for by Finance Act 2024.

The credit for 2024 will be calculated on the increase in interest paid in 2024 over interest paid in 2022, subject to all conditions being met. The value of the credit and all qualifying conditions remain unchanged. Definitions and examples throughout the manual have been updated to reflect the extension.

No. 339 Vacant Homes Tax

The "Vacant Homes Tax" manual has been updated to reflect the Finance Act 2024 increase to the rate of vacant homes tax (VHT) from five times to seven times the basic rate of local property tax.

The new rate applies for the chargeable period from 1 November 2024 to 31 October 2025 and all future chargeable periods. The overview and paragraphs 4.2 and 4.3 of the manual have been updated to reflect this change. A further update has been made at paragraph 4.2 on how to prepare and file a return.

No. 001 VAT Treatment of Heat Pump Heating Systems

A new manual, "VAT Treatment of Heat Pump Heating Systems", has been published to provide guidance on the 9% VAT rate that will apply with effect from 1 January 2025 to the supply and installation of low-emission heat pump heating systems. In addition, the following VAT manuals have been updated to reflect amendments made by Finance Act 2024:

- "VAT Treatment of Food and Drink Supplied by Wholesalers and Retailers" has been updated to clarify that the standard rate of VAT applies to juice extracted from, and other drinkable products derived from fruit, vegetables, plants, grains, seeds or pulses and that milk substitute drinks derived from plants will continue to be subject to the zero rate of VAT.
- "Management of Special Investment Funds" has been updated to provide clarity that the management of an Irish alternative investment fund (AIF) managed by an Irish alternative investment fund manager (AIFM) is covered by the fund management exemption. It also ensures that the exemption applies to the management of an Irish AIF managed by a non-Irish AIFM, including where the AIFM is registered with a competent authority of a Member State.
- "Flat-rate Scheme for Farmers" has been updated to include the new flat-rate addition rate of 5.1%.
- "VAT Treatment of Construction Services" includes a consequential amendment arising from the application of the second reduced rate to the supply and installation of low-emissions heat pump heating systems.

No. 002 Taxation of Foreign Retirement Lump Sums

The "Taxation of Foreign Retirement Lump Sums" manual has been updated at paragraph 4.3.1 to reflect the Finance Act 2024 amendment to the definition of the "standard chargeable amount" in s790AA TCA 1997. After the Finance Act 2024 amendment the term "standard chargeable amount" is defined by s790AA to mean €500,000 less the tax-free amount (currently €200,000). The amended definition applies from 1 January 2025.

No. 003 Section 31C Shares Deriving Value from Immovable Property Situated in the State

Revenue has updated the stamp duty manual "Part 5: Section 31C – Shares Deriving Value from Immovable Property Situated in the State" to reflect Finance Act 2024 changes relating to stamp duty rates applying to properties valued at in excess of €1.5m and the increase in higher rate of stamp duty on the bulk acquisition of residential properties.

No. 004 Stamp Duty Guidance Updated

Revenue has updated several stamp duty manuals to reflect Finance Act 2024 changes relating to stamp duty rates applying to properties valued at in excess of €1.5m and the increase in higher rate of stamp duty on the bulk acquisition of residential properties.

The rates of stamp duty applying to the acquisition of residential property were increased by s90 of Finance Act 2024. The revised standard rates are:

- 1% on the consideration up to €1m,
- 2% on any consideration exceeding €1m up to €1.5m and
- 6% on any consideration exceeding €1.5m.

This amendment also provides that the new 6% rate will not apply to the acquisition of three or more apartments in the same apartment block.

The higher rate of stamp duty charged on certain acquisitions of residential property in s31E of the Stamp Duties Consolidation Act 1999 (SDCA 1999) was also increased by Finance Act 2024. The higher rate applies where a person acquires ten or more residential properties, excluding apartments, in any 12-month period. The revised higher rate is increased from 10% to 15%.

The following manuals have been updated to reflect these revised rates that apply in respect of instruments executed on or after 2 October 2024:

- "Schedule 1 – Stamp Duties on Instruments",
- "Part 7: Section 83DA – Repayment of Stamp Duty under Affordable Dwelling Purchase Arrangements",
- "Part 7: Section 83DB – Repayment of Stamp Duty in Respect of Certain Residential Units" and
- "Part 5: Section 31E – Stamp Duty on Certain Acquisitions of Residential Property".

In addition to the above, the "Notes for Guidance – Stamp Duty 2024" have been published, reflecting the Finance Act 2024 changes to SDCA 1999.

No. 005 Investment Undertakings

The "Investment Undertakings" manual has been updated to reflect Finance Act 2024 amendments that provide that a repayment of exit tax is available where it arises from the investment of:

- a relevant payment by a relevant person under the Mother and Baby Institutions Payment Scheme Act 2023 and
- a relevant payment by a relevant woman under the CervicalCheck Tribunal Act 2019.

No. 006 Part 38-04-14 – Non-Routine Revenue Powers

Revenue has updated the "Non-Routine Revenue Powers" manual to include a new section 3.7 relating to claims of privacy and/or legal and professional privilege during a search of premises.

No. 007 Capital Acquisitions Tax Manual Part 23: Capital Acquisitions Tax (CAT) Exemptions

Part 23 of the capital acquisitions tax (CAT) manual "Exemptions from Capital Acquisitions Tax (CAT)" has been updated at paragraph 23.12, "Exemption of certain receipt", to reflect Finance Act 2024 amendments to s82 of the Capital Acquisitions Tax Consolidation Act 2003. Finance Act 2024 introduced an exemption from CAT for certain ex-gratia payments made under the CervicalCheck non-disclosure ex-gratia scheme and payments made under Phase 1 of the Stardust ex-gratia payment scheme.

No. 008 Capital Acquisitions Tax Manual Part 26 – Reporting Requirement in Relation to Gifts in Respect of Certain Loans

Part 26 of the CAT manual "Reporting Requirement in Relation to Gifts in Respect of Certain Loans" has been updated to reflect Finance Act 2024 amendments to s46 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003). Finance Act 2024 extended the reporting requirement, introduced by Finance (No. 2) Act 2023, to include certain low-interest loans with effect from 1 January 2025. The illustrative examples have been updated to reflect the reporting requirements in respect of certain low-interest loans with effect from 1 January 2025.

For the year 2025 and each subsequent year a reporting requirement will arise where, in that year, a person is deemed to take a gift in accordance with s40(2) CATCA 2003 in respect of a specified loan 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.

No. 009 Research and Development (R&D) Corporation Tax Credit

Revenue has updated the manual "Research and Development (R&D) Corporation Tax Credit" to reflect the Finance Act 2024 amendment to s766C TCA 1997 to increase the first instalment threshold amount from €50,000 to €75,000. The amendment applies in respect of accounting periods commencing on or after 1 January 2025. Existing examples have been updated, where relevant, and new examples included to reflect the increased first instalment threshold amount.

No. 010 Living City Initiative

The "Living City Initiative" manual has been updated. The LCI provides tax relief for qualifying expenditure incurred on the refurbishment and conversion of both residential and commercial properties located within the historical centres of Cork, Dublin, Galway, Kilkenny, Limerick and Waterford. Qualifying expenditure incurred on refurbishment or conversion work carried out up to 31 December 2027 may qualify for tax relief under the LCI, subject to certain conditions.

The manual has been updated to include the following:

- Where an individual making a claim under the owner–occupier element of the scheme first occupies the property as their sole or main residence on or after 1 January 2023, relief is available over seven years at a rate of 15% in the first six years and 10% in the final year. An individual may also carry forward the relief that is unused in the seven-year period for up to nine years after the year in which the claim is first made.
- Details on the interaction between funding available from local authorities to property owners under the Repair and Leasing Scheme and relief available under the LCI.
- An update to reflect the revised De Minimis Regulation, 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 minimus* aid. The key requirements are that an undertaking may not receive more than €300,000 in State Aid from all sources subject to the De Minimis Regulation in any three-year period. A declaration on the *de minimus* aid is also required by a claimant of the rented residential and commercial elements of the scheme when completing their tax return.

No. 011 Review of Opinions or Confirmations

Revenue has updated the manual "Review of Opinions or Confirmations" to reflect the application deadline for renewal or extension of opinions/confirmations issued in 2019. Taxpayers who wish to continue to rely on an opinion or confirmation issued by Revenue in the period between 1 January and 31 December 2019 in respect of a transaction, period or part of a period on or after 1 January 2025 must apply for its renewal or extension on or before 31 March 2025.

The manual also clarifies that if the matter dealt with in the original opinion/confirmation has subsequently been clarified in Revenue guidance, a request of a renewal of the opinion/confirmation will not be accepted.

No. 012 Receivership – Revenue Caseworking Guidelines

Revenue has updated the manual "Receivership – Revenue Caseworking Guidelines" to include more detailed information on receiverships. The additional content includes information on the statutory requirements, e.g. on the appointment of a receiver.

No. 013 Transit Customs Operational Guide

The manual "Part 2 – Transit Customs Operational Guide" has been updated to incorporate the New Computerised Transit System (NCTS) Phase 5, which went live on 1 January 2025.

No. 014 Surcharge on Certain Undistributed Income of Close Companies

Revenue has updated the manual "Surcharge on Certain Undistributed Income of Close Companies" to include updated and new worked examples on the operation of the surcharge arising under s440 TCA 1997, including a new Example 5 relating to "HoldCo", an investment company. Some content has also been restructured and clarifications added for ease of reference.

No. 015 Section 481A Digital Games Corporation Tax Credit

The manual "Section 481A Digital Games Corporation Tax Credit" has been updated throughout to reflect Finance (No. 2) Act 2023 changes to how this tax credit is claimed and utilised for expenditure incurred in accounting periods commencing on or after 1 January 2024. The main changes are as follows:

- A claim for the interim digital games corporation tax credit must be made in the Form CT1 for the accounting period in which the expenditure giving rise to the claim was incurred and must be made within 12 months from the end of that period.
- A claim for the digital games corporation tax credit must be made in the Form CT1 for the accounting period in which the last of the expenditure giving rise to the claim was incurred and must be made within 12 months from the end of that period.
- Where the final cultural certificate is issued after a date that is less than three months before the expiry of the 12-month period, the company has three months from the date on which the final cultural certificate was issued to make a claim for the digital games corporation tax credit.
- The credit is not offset against the company's corporation tax liabilities. The company must elect to have the credit treated as an overpayment of tax, for offset against tax liabilities, or repaid to the company by Revenue.

No. 016 Stamp Duty Manual – Part 7 Section 83D – Repayment of Stamp Duty Where Land Used for Residential Development

The stamp duty manual "Part 7: Section 83D – Repayment of Stamp Duty Where Land Used for Residential Development" has been extensively updated. This manual provides guidance on s83D of the Stamp Duties Consolidation Act 1999, which provides for a partial repayment of stamp duty paid in respect of a conveyance or transfer of land where the land is subsequently developed for residential purposes.

The revisions to the manual include:

- updated examples and the addition of new examples and diagrams;
- the addition of guidance on the record-keeping and information-sharing provisions contained in sub-sections (14) and (17), respectively; and
- the addition of two appendices:
  - Appendix 1 contains a checklist of the qualifying conditions and the conditions required to avoid a clawback and
  - Appendix 2 contains step-by-step guidance on how to make a repayment claim using Revenue's eRepayments system (which can be accessed through ROS or myAccount).

In addition to the above, the previous versions of this manual provided separate guidance on how the scheme operated in respect of single dwelling units (one-off houses) and multi-unit developments containing dwelling units. As most of the same qualifying conditions apply to both types of development, the guidance has been combined, with the fundamental differences highlighted throughout the manual.

No. 017 Electronic Relevant Contracts Tax System

Revenue has updated the manual "Electronic Relevant Contracts Tax System" to include additional links to further information on the operation of relevant contracts tax.

No. 018 Operational Guidelines for the Transfer or Sale of a Relevant Site for Residential Zoned Land Tax (RZLT)

Revenue published a new manual providing guidance on the operation of the residential zoned land tax (RZLT). "RZLT Site Sale or Transfer Guidelines" details the process for:

- submitting an RZLT Transfer or Sale Return,
- submitting an RZLT Transfer or Sale Return within a group company structure and
- how to make a payment of RZLT.

No. 019 Operational Guidelines for Registration of a Site for Residential Zoned Land Tax (RZLT) – Site Registration

Revenue published a new manual providing guidance on the operation of the residential zoned land tax (RZLT). "RZLT Registration" details the process for:

- registering a relevant site for RZLT,
- registering a relevant site where planning permission has been granted on a portion of a site and
- submitting a declaration of the commencement of non-residential development.

No. 020 Import Payment Methods

The manual “Import Payment Methods” has been updated to clarify that when a Customs and Excise (C&E) monthly statement issues, only the payer of C&E import declarations will receive a monthly statement via ROS. The manual also confirms that all other C&E reports are available to download at any time via ROS.

No. 021 Stamp Duty Manual for Section 81D SDCA 1999 Leases of Farmland Updated

Revenue’s manual “Relief for Leases of Farmland – Part 7: Section 81D” has been updated to reflect a Commission Regulation in December that increased the relevant allowable ceiling for *de minimus* State Aid. Section 81D of the Stamp Duties Consolidation Act 1999 provides for relief from stamp duty in respect of leases of farmland for a term of not less than 6 years and not exceeding 35 years for any lands that are used exclusively for farming carried on by the lessee on a commercial basis and with a view to the realisation of profits.

This relief is a State Aid, and the manual has been updated to reflect the increased allowable ceiling of *de minimus* aid from €20,000 to €50,000, with effect from 16 December 2024. The manual has also been revised to note that the ceiling applies to the amount of all *de minimus* aid that is granted in accordance with the Regulation, whether given by way of tax relief or direct grants.

No. 022 Section 996 Taxes Consolidation Act 1997

The manual “Unpaid Remuneration – Section 996 Taxes Consolidation Act 1997” has been updated to remove the reference to s989 TCA 1997 and to update the example in paragraph 2.

No. 023 Controlled Foreign Company Rules

Revenue has updated the manual “Controlled Foreign Company Rules” to reflect the following:

- Finance Act 2024 amendment to s835YA TCA 1997, which provides for Irish defensive measures in respect of the CFC rules and incorporates the October 2024 update to the EU Code of Conduct list of non-cooperative jurisdictions for tax purposes.
- Finance Act 2024 consequential amendment to s835Q TCA 1997, and the rules for calculating the “undistributed income” of the CFC, which arises as a result of the introduction of the new corporation tax exemption in respect of certain foreign distributions under s831B TCA 1997.
- Finance (No. 2) Act 2023 Pillar Two-related consequential amendments to the CFC rules made in respect of s835S TCA 1997 (Creditable tax) and s835T TCA 1997 (Effective tax rate exemption).

No. 024 Personal Importation of Live Animals and Products of Animal Origin

Revenue has updated the “Manual on the Personal Importation of Live Animals and Products of Animal Origin” to include a new paragraph 2.3, which provides information on the ban on the importation of XL Bully dogs.

No. 025 Exemption in Respect of Annual Allowance for Reserve Members of the Garda Síochána

The manual “Exemption in Respect of Annual Allowance for Reserve Members of the Garda Síochána” has been updated to reflect Finance Act 2024 amendments. Section 25 of Finance Act 2024 amended s204A TCA 1997 by replacing the reference to the Garda Síochána (Reserve Members) Regulations 2006 (SI 413 of 2006) with a reference to the Garda Síochána (Reserve Members) Regulations 2024 (SI 64 of 2024). It provides for the continuation of the exemption from income tax related to the allowance payable under the latest version of the Regulations.

No. 026 Part 18D-00-01 – Universal Social Charge

The "Universal Social Charge" manual has been updated to reflect the following Finance Act 2024 amendments:

- Paragraph 4 reflects the increase in the USC rate thresholds in line with increases to the national minimum wage and the reduction of the 4% USC rate to 3%.
- Examples throughout the manual have been updated to reflect the changes.

The list of USC-exempt payments has been updated in paragraph 12.2.

No. 027 07-01-06 Charitable Tax Exemption

The "Charitable Tax Exemption" manual has been updated to reflect Finance Act 2024 amendments as follows:

- A new paragraph 8, "Accumulation of funds by a charity for a charitable purpose", details amendments to s207, s208 and s208A TCA 1997. The amendments provide that a charity will retain its charitable exemption in circumstances where it intends to accumulate funds for charitable purposes, provided that the income is expended by the end of the fifth year after the year in which the income is received.
- Paragraph 10, "Charitable Donation Scheme – section 848A and Schedule 26A TCA", has been updated to cover the removal of the current two-year waiting period for eligibility for the Charitable Donation Scheme (CDS) in Part 3 of Schedule 26A TCA 1997. In addition, where a charity has merged or restructured into another entity, the condition that the predecessor entity must have been approved for the CDS for two years also no longer applies.

No. 028 Rent Tax Credit

Revenue has updated the "Rent Tax Credit" manual to reflect the increase in the value of the credit as provided for by Finance Act 2024. From 1 January 2024 the rent tax credit (RTC) has increased to €1,000 for an individual and €2,000 for a jointly assessed married couple/civil partners. The illustrative examples have also been updated.

A new paragraph 7.5 provides guidance on how to claim a "top-up" in respect of 2024, where applicable, given that the increase in the value of the credit for 2024 was applied retrospectively.

In cases where a claim for the RTC in respect of the 2024 year of assessment exceeded €5,000 (€10,000 for jointly assessed married couples/civil partners) an amended tax credit certificate for 2024 was made available that shows the additional "top-up" amount of credit due from 13 November 2024. The additional amount due would have been processed through payroll by the employer.

In cases where a claim for the RTC in respect of the 2024 year of assessment was less than €5,000 (€10,000 for jointly assessed married couples/civil partners) taxpayers must submit an income tax return and amend the rent paid figure to avail of the increased credit available for 2024.

PAYE taxpayers can claim the increase through the "Manage Your Tax for the previous 4 years" option on myAccount (as per paragraph 7.3.1).

Self-assessed taxpayers who are not in receipt of PAYE income for 2024 should claim the increase in their 2024 Form 11 return (as per paragraph 7.3.2).

No. 029 Stamp Duty Manual – Part 7: Exemptions and Reliefs from Stamp Duty

Revenue has updated the stamp duty manual "Part 7: Exemptions and Reliefs from Stamp Duty" to include guidance on s108AA to s108D of the Stamp Duties Consolidation Act 1999 (SDCA 1999), dealing with exemptions in relation to the following State financing agencies and funds:

- Strategic Banking Corporation of Ireland,
- National Asset Management Agency,
- Ireland Strategic Investment Fund and
- The Future Ireland Fund and the Infrastructure, Climate and Nature Fund.

An appendix has also been added that provides a full list of the reliefs and exemptions contained in Part 7 SDCA 1999.

No. 030 Charges on Income for Corporation Tax Purposes

Revenue has updated the manual "Charges on Income for Corporation Tax Purposes" to include a new paragraph 4.6 concerning the dissolution of companies.

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

Mark Ludlow
Senior Associate – Tax, RDJ LLP

	Topic	Court
01	**Capital Gains Tax: Share Valuation and Minority Discount**	Tax Appeals Commission
02	**Capital Gains Tax – "Full and True Disclosure"**	High Court
03	**Employment Wage Subsidy Scheme: Turnover Reduction Calculation**	High Court
04	**Help to Buy Scheme: Whether a House Was Self-Built**	Tax Appeals Commission

01 Capital Gains Tax: Share Valuation and Minority Discount

In **198TACD2024** the Tax Appeals Commission (TAC) considered the question of valuing shares of a private company and whether a minority discount should apply for capital gains tax (CGT) purposes.

The facts were that the appellant (who was the 100% shareholder of a company) disposed of his entire shareholding by way of a number of separate gifts on the same day. He applied a 30% minority discount when calculating the market value of each disposal for his CGT return.

Revenue took the view that no minority discount should apply in circumstances where the appellant had disposed of 100% of the company (albeit by separate gifts) and raised an assessment.

Revenue's approach appeared to have been based on a particular reading of s549 TCA 1997, which requires market value to be imposed where a transaction is between connected parties or is otherwise than a bargain at arm's length. The construction argued for by Revenue was evident in the following summary of its valuation expert witness evidence:

> "the statutory hypothesis meant that he had to consider what a willing vendor on the open market would do, and he believed that such a willing vendor would seek to sell 100% of the company, rather than [redacted] shareholdings of [redacted]. Therefore a minority discount was not appropriate. The Appellant's 100% shareholding was disposed on one day: 'It wasn't disposed over a week, it wasn't disposed over months; it was disposed in one day.' A willing seller on the open market would not sell it in tranches at a discount. He stated that 'This was a singular transaction.' He stated that he was not using 'disposal' in a legal sense, but was talking 'in a valuation sense'."

The TAC held, in allowing the taxpayer's appeal against the assessment, that:

- Revenue's approach of aggregating the transactions was mistaken and
- s548(1) required that each separate disposal be examined (and valued) in isolation.

> "However, the Commissioner considers that this approach was mistaken. Section 548(1) provides that 'market value', in relation to any assets, means the price which **those assets** might reasonably be expected to fetch on a sale in the open market [emphasis by the Commissioner]. As the case law requires that each disposal must be considered separately, it is the market value of those assets transferred in each disposal that falls to be calculated. The Commissioner is satisfied that there is no basis in law for [redacted] suggested approach of aggregating the value of the disposals, on the basis that a willing vendor would choose to sell 100% of the shareholding in order to maximise value. In the absence of a statutory deeming provision, it is necessary to ascertain the market value of the disposal that actually took place, not a different disposal that another taxpayer might have chosen to make. In this appeal, the Appellant chose not to dispose of [redacted] 100% shareholding in one lot, and the Commissioner is satisfied that there is no basis on which [redacted] could be deemed to have done so. The fact that the [redacted] disposals took place on the same day, or that they were in equal shares, does not alter or disapply this principle." [paragraph 73]

02 Capital Gains Tax – "Full and True Disclosure"

In ***O'Sullivan v Revenue Commissioners*** [2024] IEHC 611 the High Court considered whether a taxpayer had made a "full and true" tax return so as to be able to rely on the four-year time limit provisions.

On 1 December 2005 Tramult Limited was incorporated, with the Appellant (the taxpayer) holding 80 A Ordinary Shares (out of a total of 304 A Ordinary Shares). The Appellant was also a minority shareholder in second company, Mulcahy McDonogh and Partners Limited ("MMP"). In December 2005 MMP subscribed for 150 Ordinary Shares in Tramult Ltd at a premium of €9,869 per share, becoming its controlling shareholder. Subsequently, on 21 December 2005, the shareholders of Tramult (which included the Appellant and MMP) passed a special resolution to increase the company's authorised share capital and to allocate additional shares to the shareholders (including the Appellant). Rights attaching to the shares were also moved from the Ordinary Shares held by MMP to the A Ordinary shares held by the other shareholders (including the Appellant). On the same day a special resolution was passed to wind up the company. Tramult was liquidated, and as part of that process a tax clearance letter was received from Revenue in 2006 stating that the company had no outstanding tax liabilities.

Details of the transfer and distribution were not included in the Appellant's tax return which was filed in November 2006 (the Appellant did not complete any part of the capital gains tax section of the tax return). Revenue commenced an investigation more than four years later, in February 2011.

The Appellant argued that full details of the transaction were disclosed on the B5 (notice of allotments) that had been filed with the Companies Registration Office (CRO) and so were a matter of public record. The Appellant further argued that he believed that he had completed his tax return in a true and accurate manner as he believed he had no liability to disclose.

The question before the High Court was whether Revenue was statute barred by s955 TCA 1997 from raising the assessment beyond four years.

The High Court held, in dismissing the taxpayer's appeal, that:

- The Appellant could not rely on the protection of s955(2)(a) TCA 1997 as he had not made a full and true disclosure of all material facts in his tax return.
- The Appellant could not rely on the fact that details of the transaction were included in the B5 filed with the CRO.
- The Appellant's subjective belief that he had no tax liability and thus nothing to disclose was not relevant, with the court citing with approval the words of Mulcahy J in *The Revenue Commissioners v Tobin* [2024] IEHC 196: "The answer posed to the question at the opening of this judgment is that for a tax return to be regarded as a true and full disclosure of all material facts, it must be accurate in every material respect; a taxpayer's subjective belief, however well informed, as to the accuracy of its contents is not a relevant consideration."
- The court also rejected the Appellant's argument that there was nowhere on the tax return to disclose the transaction: "Had the Appellant wished to disclose the transaction, the form allows him to do so. This is not a case of the Appellant forgetting or being ignorant of the issue. This is a case in which the Appellant relied upon his tax advice to such an extent that he fervently believed he had no tax liability and therefore did not have to make a disclosure. The issue as to the boxes on the form is irrelevant."

03 Employment Wage Subsidy Scheme: Turnover Reduction Calculation

In ***Fire Safety Security Advantage Limited (Formerly Superior Group Irl Limited) v Revenue Commissioners*** [2025] IEHC 78 the High Court considered whether a company was entitled to retain the benefit of EWSS (Employment Wage Subsidy Scheme) payments that it had received. Revenue had raised assessments to recover 14 such payments on the basis that the company had not satisfied the terms of the scheme.

One of the key requirements of the scheme was that claimant had to be able to show a 30% reduction in turnover/orders by reference to a comparison period. The core question before the High Court was whether it was necessary to compare the full specified period against the full corresponding period or (as the Appellant argued) the comparison could be on a month-by-month basis such that the company was entitled to the subsidy until such time as its turnover was not reduced by 30%.

The High Court held, in dismissing the company's appeal, that on its interpretation of the legislation the reduction in turnover should be read as by reference to the whole of the specified period vs the whole corresponding period, and not a month-by-month basis.

A secondary issue raised by the Respondent (regarding whether Revenue was correct that the calculation of the 30% reduction in turnover test could not be determined retrospectively but, rather, it was necessary for the claimant to show that it had prepared contemporaneous calculations showing an anticipated reduction in turnover at the time the payment was claimed) was not considered by the court as it had dismissed the appeal on the foregoing issue. In this regard, the Tax Appeals Commission (TAC) has considered the issue of whether the 30% reduction test could be carried out using retrospective calculations or had to be based on contemporaneous rolling reviews on several occasions (23TACD2023), and it held that s28B of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and the guidelines published thereunder required rolling reviews to be carried out contemporaneously and that EWSS claims could be denied in the absence of same. That approach was reiterated as recently as determination 08TAC2025, where the TAC also held that a company could not base its claim on a 30% reduction in the **number** of customer orders in circumstances where the **value** of those customer orders did not show a 30% reduction.

04 Help to Buy Scheme: Whether a House Was Self-Built

In **10TACD2025** the Tax Appeals Commission (TAC) considered a taxpayer's claim to the Help to Buy scheme. The facts of the matter were that the taxpayer had purchased a property on which there was a partially completed dwelling-house – the structure was roofed and had windows but otherwise required works to make it habitable. The taxpayer claimed relief under the Help to Buy scheme (s477C TCA 1997) on the basis it was a "self-build" property. Revenue initially granted the claim (valued at €7,500) before reversing it and raising an assessment.

The issue before the TAC was whether the Appellant had 'built' the property. The Appellant argued that he should be regarded as having "built" the property because when he purchased the property it was not in a habitable state and required substantial works. Revenue contended that he should not be regarded as having "built" the property because it was already constructed to roof level and had windows installed and "first fix" works had been completed at the time of purchase.

The TAC held in rejecting the appeal that the Appellant had not 'built' the property. In reaching this decision the TAC considered the *Oxford English Dictionary* and *Cambridge Dictionary* definitions of the word "built" and concluded:

> "the Commissioner considers that to build a house involves the construction of a building from foundation stage onwards, to include, but not limited to: the laying of foundations; the laying of blocks and/or the construction of a wooden structure; the construction of a roof; the installation of windows; the insulation of the building; the plastering of the building; the installation of electrical wiring and plumbing; the installation of a heating system; the laying out of rooms; the fitting of doors, a kitchen and bathroom sanitary ware."

On the evidence, the Commissioner was satisfied that the works on foundations, walls, roof, windows, external doors etc. had been completed before the Appellant's purchase of the property and therefore he could not be considered to have "built" it.

Direct Tax Cases: Decisions from the UK Courts

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

	Topic	Court
01	**Corporation Tax – Deductibility of Penalty Payments**	England and Wales Court of Appeal
02	**Corporation Tax – Redress Payments**	First-tier Tribunal
03	**Capital Allowances – Quay Wall**	First-tier Tribunal
04	**Land and Buildings Transaction Tax – Use as a Dwelling**	First-tier Tribunal for Scotland

01 Corporation Tax – Deductibility of Penalty Payments

In *ScottishPower (SPCL) Ltd and others v HMRC* [2025] EWCA Civ 3 (17 January) the England and Wales Court of Appeal held that redress payments made by the taxpayers to consumers and charities pursuant to agreements made in settlement of regulatory investigations were deductible for the purposes of corporation tax. The Upper Tribunal decision was discussed in "Direct Tax Cases: Decisions from the UK Courts", *Irish Tax Review*, 36/4 (2023).

ScottishPower (SP), as a supplier and generator of electricity and gas, was regulated by Ofgem. Under various settlement agreements, made between October 2013 to April 2016, SP paid sums called "penalties" in nominal amounts (£1), together with payments to consumers, consumer groups and charities, totalling approximately £28m. In each case, after Ofgem's opening of the investigation, Ofgem proposed penalties. Negotiations ensued, and a settlement agreement was ultimately reached.

HMRC originally denied the taxpayers' claim for corporation tax deductions related to the consumer redress payments. The First-tier Tribunal agreed with HMRC's decision, except for one part of the payments. On appeal, the Upper Tribunal ruled that all the payments were non-deductible. The taxpayers then appealed to the Court of Appeal (CoA).

The main issue was how to apply the principle from *IRC v Alexander von Glehn & Co Ltd* [1920] 2 KB 553, as clarified by Lord Hoffmann in *McKnight v Sheppard* [1999] STC 669. This principle establishes that a penalty or fine incurred under a statutory regime is not deductible in computing trading profits. The CoA decision noted how this principle is separate to whether the expenses were incurred "wholly and exclusively for the purposes of the trade" in the UK equivalent of s81(2) TCA 1997.

The statutory basis for disallowing deductions under the *von Glehn* principle is found in the UK equivalent of s76A TCA 1997, which requires trading profits to be calculated according to GAAP but allows adjustments where required or authorised by law. The CoA confirmed that the *von Glehn* principle qualifies as such an adjustment.

The CoA rejected HMRC's argument that payments made in place of penalties should be treated as penalties. There was no judicial authority supporting this replacement principle argument.

Accordingly, the CoA concluded that the payments in question were not penalties, so the *von Glehn* principle did not apply. This was true even though Ofgem had agreed to substitute payments for penalties on a pound-for-pound basis. Additionally, the CoA noted that it was unclear to what extent the payments were truly made in lieu of penalties, given that Ofgem also considered other factors, such as the taxpayers' past and future behaviour, when determining the appropriate penalty.

02 Corporation Tax – Redress Payments

In *NHS Mid & South Essex ICB v Revenue and Customs* [2024] UKFTT 1117 (TC) the First-tier Tribunal (FTT) considered whether redress payments made to individuals who were wrongly treated as being ineligible for continuing healthcare included an element of "interest" for income tax purposes.

A report into NHS funding for care costs concluded that criteria for patients' eligibility had been misinterpreted and misapplied, resulting in compensation being provided to affected patients aimed at compensating them for the financial loss they had suffered. Therefore, individuals were refunded their costs, plus an inflation value based on the retail price index (RPI) over the period from when the costs were originally incurred to the final date of payment by the NHS. It was these inflation values that were the subject of the appeal.

The FTT considered whether there was a withholding tax obligation under the UK equivalent of s246 TCA 1997 (it was common ground that the paying entity met the definition of a company for the purposes of this statute). The question ultimately arising was whether the payments of such compensation by the appellant companies included the payment of "yearly interest arising" and therefore whether the payments should be subject to withholding tax. HMRC concluded they were and issued assessments accordingly.

The FTT determined that the sums assessed by HMRC constituted "yearly interest" under the UK equivalent of s246 TCA 1997. Although there is no statutory definition of interest, the case law cited – including *Bennett v Ogston* [1930] 15 TC 374, *Bond v Barrow Haematite Steel* [1902] 1 Ch 353 and *Chevron Petroleum (UK) Ltd v BP Petroleum Development Ltd* [1981] STC 689 – generally characterises interest as compensation for the use of money over time. The Tribunal referred to *Pike v R & C Commrs* [2014] STC 2549, which outlined six key features of interest, emphasising that it must be linked to an underlying debt, accrue over time and serve as compensation for not having access to money earlier. The FTT rejected the argument that an entitlement to a principal sum was required, stating that the true nature of the payment, rather than strict legal rights, determines its tax treatment.

Regarding whether the sums constituted "yearly interest", the FTT relied on *R & C Commrs v Joint Administrators of Lehman Brothers International (Europe)* [2019] UKSC 12. The Supreme Court in that case held that interest could still be classified as yearly interest even if there was uncertainty about whether any payment would be made, if it was payable in a lump sum or if there was no liability to pay interest during the relevant period. The FTT concluded that the payments met the criteria for yearly interest, as they compensated recipients for not having access to funds over time.

Accordingly, a withholding tax obligation arose for the NHS entities.

03 Capital Allowances – Quay Wall

In *The Mersey Docks and Harbour Company Ltd v HMRC* [2024] UKFTT 1163 (TC) the taxpayer, operator of the Port of Liverpool, constructed a deep-water container terminal, Liverpool2, between 2013 and 2017. This involved building a quay wall adjacent to the river and a container transition area (CTA) on reclaimed land. The taxpayer claimed capital allowances for the wall's construction costs, but HMRC denied the claim, arguing that the wall was not plant or machinery.

The taxpayer appealed, and the First-tier Tribunal (FTT) ruled in its favour. The Tribunal found that the wall primarily served two key functions: mooring ships and supporting ship-to-shore cranes. It disagreed with HMRC's view that the wall was part of the overall terminal, determining instead that it was a distinct asset with a specific and separate function. Although physically integrated, the CTA was designed for container storage and movement, whereas the wall facilitated vessel berthing and mooring, making its function highly specialised.

On the question of whether the wall was plant or premises, the Tribunal found it more appropriate to classify it as apparatus rather than premises. It played a crucial role in positioning large vessels for loading and unloading, meaning that its entire structure was integral to the port's operations. Therefore the construction costs were considered expenditure on plant.

The FTT has allowed the taxpayer's appeal in respect of its claim for capital allowances for expenditure incurred on the quay wall.

04 Land and Buildings Transaction Tax – Use as a Dwelling

In *Ball and Torokoff v Revenue Scotland* [2024] FTSTC 6 the First-tier Tribunal for Scotland considered the purchase of an Edinburgh property in 2020 known as Baberton House. Revenue Scotland determined that land and buildings transaction tax (LBTT) was due, at residential rates. The purchasers appealed against this decision.

By way of background, the property had been sold in 1979 to a company that converted it into offices for its corporate headquarters. However, an annex remained in residential use, occupied by a caretaker until 1991. By 2018 the company had decided to sell the property, marketing it as being in office use but with potential for residential conversion. In 2019 the company obtained planning permission to change the property's use from office to residential. This was granted before the purchase was completed.

The taxpayers viewed the property in 2018 with the intention of making it their main residence. Their initial offer was not accepted, but after other buyers withdrew, they made a new offer, conditional on planning permission, which was accepted. The purchase was completed in April 2020.

When submitting their LBTT return, the taxpayers had classified the property as non-residential. However, Revenue Scotland assessed it under residential rates, leading the taxpayers to appeal.

The First-tier Tribunal for Scotland found that on the effective date of the transaction the property was not actively in use, neither as offices nor as a residence. The key issue was whether it was "suitable for use as a dwelling", as per the relevant legislation. The Tribunal noted that the property had served as a home for more than 350 years, demonstrating its historical suitability as a dwelling. Additionally, it retained many residential characteristics, and renovations, including work on the shower room and ceiling, had been completed within months.

Although the taxpayers wished to modernise and remove traces of its office use, the Tribunal determined that the property was already suitable for residential use at the time of purchase. As a result, it was classified as a residential property for LBTT purposes, and the taxpayers' appeal was dismissed.


International Tax Update

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

01 BEPS: Pillar One and Pillar Two Recent Developments

OECD issues further guidance on Pillar Two

On 15 January 2025 the OECD issued several important updates, including the following.

Central Record of Legislation with Transitional Qualified Status

The global minimum tax rules include a provision that limits the application of the minimum tax in a jurisdiction when there are "qualified" rules in another jurisdiction. In 2024, the Inclusive Framework on BEPS established a fast-track process to confirm the transitional qualified status of a jurisdiction's domestic legislation. The Central Record of Legislation with Transitional Qualified Status lists jurisdictions (including Ireland) whose domestic minimum tax laws have gone through this process and received transitional qualified status. This record will be regularly updated to include new jurisdictions that complete the fast-track process.

Further administrative guidance on Article 9.1

This new guidance clarifies the application of Article 9.1, which excludes certain deferred tax assets when computing a multinational enterprise group's effective tax rate (ETR). Specifically, it addresses situations where deferred tax assets arise from certain government arrangements or after the introduction of new corporate income tax rules, excluding these assets from the ETR calculation. It should be noted that the rules must also be taken into account when carrying out the simplified effective tax rate safe-harbour calculation.

Updates to the Standardised GloBE Information Return, XML Schema and Multilateral Competent Authority Agreement

In support of the central filing and exchange of the GloBE Information Return (GIR) the

Inclusive Framework has released the GIR Multilateral Competent Authority Agreement (MCAA), along with accompanying Commentary, as well as the GIR XML Schema and User Guide. The GIR MCAA outlines the conditions for the automatic exchange of GIR information under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The GIR XML Schema and User Guide provide the technical structure for filing the GIR in a standardised electronic format.

Hong Kong announces Pillar Two adoption plan after consultation

The Hong Kong Government has published the results of its stakeholder consultation on the adoption of Pillar Two rules, after discussions with the OECD. The findings highlight Hong Kong's commitment to aligning its tax framework with the global GloBE rules while preserving its tax competitiveness.

Released on 30 October 2024, the consultation outcome outlines five key approaches to implementation.

- **Implementation timeline:** the amendment Bills for the global minimum tax and Hong Kong minimum top-up tax (HKMTT) are set for introduction by January 2025, but the undertaxed profits rule (UTPR) will be delayed, allowing for further study of international practices. This approach provides taxpayers time for financial statement adjustments to meet the new requirements.
- **Definition of "Hong Kong resident entity":** a new definition of "Hong Kong resident entity" will apply under the Inland Revenue Ordinance for general purposes, with retroactive effect from 1 January 2024, helping to provide a robust basis for defence when facing the uncertainty of determining an entity's Hong Kong residency.
- **Exclusion of certain entities:** investment and insurance investment entities will be excluded from the HKMTT to maintain their tax neutrality.
- **Payment designation flexibility:** multinational enterprise groups may designate one or more paying entity(ies) for the annual top-up tax under the UTPR and HKMTT, offering flexibility for commercial arrangements.
- **Extended payment and objection deadlines:** the deadlines for top-up tax payment and objection submission will be extended to reduce compliance burdens.

UK Budget 2025: updates on Pillar Two implementation and top-up tax amendments

In her Autumn Budget speech of 30 October 2024 the UK Chancellor, Rachel Reeves, confirmed significant updates to the Pillar Two framework, including the implementation of the undertaxed profits rule (UTPR) and amendments to the multinational and domestic top-up taxes.

Implementation of the undertaxed profits rule

The UTPR will be integrated into the multinational top-up tax, following a draft legislation consultation in July 2023. HMRC has released a policy paper detailing amendments to Part 3 of the Finance (No. 2) Act 2023 to accommodate these changes.

Amendments to multinational and domestic top-up taxes

The Budget also introduced amendments to the multinational and domestic top-up taxes, originally enacted under Parts 3 and 4 of the Finance (No. 2) Act 2023. These updates aim to align UK legislation with the latest OECD global anti-base erosion (GloBE) rules, ensuring consistency with evolving commentary and administrative guidance under Pillar Two.

Most of these amendments will take effect for accounting periods beginning on or after 31 December 2024, with certain provisions retroactively applying to periods beginning on or after 31 December 2023. Additionally, companies may elect to implement an extra set of provisions from 31 December 2023.

One key measure, the transitional country-by-country safe-harbour anti-arbitrage rule, will be effective from 14 March 2024, following the release of the written ministerial statement.

Polish President signs off on global minimum tax legislation

The Polish President, Andrzej Duda, has signed legislation into law implementing the EU's global minimum tax Directive, ensuring that large multinational enterprise groups and significant domestic groups are subject to a 15% effective tax rate. The Act on Equalisation Taxation of Constituent Units of International and Domestic Groups, signed on 15 November 2024, incorporates Council Directive (EU) 2022/2523 in Polish law.

Switzerland: Federal Council amends Minimum Tax Ordinance to apply IIR from 2025

On 20 November 2024 the Swiss Federal Council approved amendments to the Ordinance on the Minimum Taxation of Large Corporate Groups to facilitate the implementation of the income inclusion rule (IIR) under Pillar Two.

In September 2024 the Federal Council announced that the IIR would take effect from 1 January 2025, but the implementation of the undertaxed profits rule (UTPR) would be postponed. The international supplementary tax under the IIR complements Switzerland's domestic minimum top-up tax, which was introduced in 2024, ensuring that tax revenue generated from the OECD global minimum tax remains in Switzerland rather than being allocated to other jurisdictions.

The estimated potential tax revenue for Switzerland is between CHF1.5bn and CHF3.5bn, which could otherwise be lost to foreign tax authorities.

UK tax authority posts global minimum tax payment instructions

HM Revenue & Customs has released guidance for multinational enterprise (MNE) groups on the timing and process for paying domestic and multinational top-up taxes under the UK's Pillar Two global minimum tax framework.

The guidance, published on 20 November 2024, outlines three possible scenarios for tax payment deadlines. If an MNE group's first accounting period subject to Pillar Two reporting ends on or before 31 December 2024, the taxes must be paid by 30 June 2026. If the first accounting period concludes after 31 December 2024, the payment deadline is 18 months from the end of that period. For all other cases, the due date is either 30 June 2026 or 15 months after the end of the relevant accounting period, whichever is the latest.

Isle of Man: Pillar Two Legislation Approved

On 21 November 2024 Tynwald (the Isle of Man's parliament) approved legislation to implement the OECD's Pillar Two global minimum tax framework. The new rules introduce an income inclusion rule, referred to as the "Multinational Top-up Tax", along with a 15% "Domestic Top-up Tax", which is designed to qualify as a qualified domestic minimum top-up tax. These measures will apply to accounting periods beginning on or after 1 January 2025.

Guernsey publishes regulations to implement Pillar Two rules

Guernsey has released regulations to enact the OECD Pillar Two framework, effective from 1 January 2025. The jurisdiction will implement a qualified domestic minimum top-up tax and an income inclusion rule but opted not to introduce an undertaxed profits rule. These regulations align with the OECD Model Rules and Administrative Guidance.

Australia Pillar Two legislation enacted

Australia has officially enacted legislation implementing the global anti-base erosion (GloBE) rules and a domestic minimum top-up tax in accordance with Pillar Two of the OECD's global tax reform initiative. The Australian Senate approved three key Bills – the Taxation (Multinational – Global and Domestic Minimum Tax) Imposition Bill 2024, the Taxation (Multinational – Global and Domestic

Minimum Tax) Bill 2024 and the Treasury Laws Amendment (Multinational – Global and Domestic Minimum Tax) (Consequential) Bill 2024 – which passed their third reading on 26 November 2024.

These laws introduce the income inclusion rule (IIR), the undertaxed profits rule (UTPR) and a domestic minimum tax. The IIR and domestic minimum tax apply to fiscal years beginning on or after 1 January 2024, and the UTPR takes effect for fiscal years starting on or after 1 January 2025.

On 10 December 2024 the legislation received Royal Assent, and on 23 December 2024 the Treasurer registered the legislative instrument containing the substantive rules.

France: decree clarifies scope of Pillar Two reporting obligations

On 5 December 2024 France issued Decree No. 2024-1126, which clarifies the reporting obligations under Pillar Two, including group affiliation notification, the GloBE information return (GIR) and the statement of payment. The decree also introduced a specific form for French constituent entities (CEs) to file with their corporate income tax returns.

Reporting requirements for French entities in MNE groups: notification of group affiliation

French CEs must annually notify the French tax authorities (FTA) of their group affiliation when filing their corporate income tax return. For groups with a fiscal year ending on 31 December, this notification is due by 5 May 2025 (with an additional 15 days for electronic filing). For groups with a different fiscal year-end, the notification is due by the end of the third month following the fiscal year-end (plus 15 days for electronic filing). The required form (Form No. 2065-INT-SD) is available on the FTA website and includes sections for country-by-country reporting and Pillar Two.

GloBE Information Return

French CEs within the scope of Pillar Two must file a GloBE Information Return (GIR) with the FTA within 15 months following the fiscal year-end (extended to 18 months for the first applicable fiscal year). For groups with a fiscal year ending in 2024, the first GIR is due by 30 June 2026.

Exemption

French CEs are exempt from filing the GIR if:

- another French CE has been designated to file a single GIR for the group, and the FTA has been notified, or
- the ultimate parent entity or another entity in a country with an automatic exchange-of-information agreement with France has filed the GIR.

The decree also allows for a simplified GIR, limiting information to countries where a top-up tax is due for the 2024–2028 period.

Statement of payment

Along with the GIR, French CEs must file a statement of payment for the top-up tax in France, with the first filing due by 30 June 2026 for groups with a fiscal year ending on 31 December.

Netherlands declines to apply Pillar One Amount B to domestic distributors

The Netherlands has decided not to implement the Amount B transfer pricing framework for Dutch distributors. However, it will uphold a political commitment to support resource-limited jurisdictions that choose to adopt the simplified approach.

In a decree published on 4 December 2024 in the Dutch official gazette, *Tjebbe van Oostenbruggen*, the Dutch Minister for Tax Affairs and Tax Administration outlined this decision regarding Amount B – an optional method for applying the arm's-length principle to baseline distribution activities. The decree, effective from 1 January 2025, will govern transfer pricing between related entities and the allocation of profits to permanent establishments.

UK: HMRC seeks feedback on final draft guidance for Pillar Two implementation

HMRC has initiated a consultation on supplementary draft guidance and previously issued draft materials related to the implementation of the multinational and domestic top-up taxes in the UK. This supplementary release will be the final draft guidance before the official publication of the manual.

The guidance covers key areas such as flow-through entities, joint ventures, the insurance sector, additional top-up amounts and the undertaxed profits rule. It also addresses new and revised provisions introduced in the current Finance Bill.

Launched on 28 January 2025, the consultation is open until 8 April 2025.

Oman introduces 15% domestic minimum tax from 1 January 2025

Oman has moved forward with implementing the OECD/G20 Pillar Two framework under the BEPS 2.0 initiative. On 31 December 2024 Royal Decree 70/2024 was issued, introducing a 15% domestic minimum tax along with a top-up tax on multinational enterprises through the income inclusion rule.

The decree, which was published in the official gazette on 5 January 2025, reflects Oman's commitment to aligning with global tax standards while maintaining a competitive tax environment. However, the executive regulations and detailed rules necessary for full implementation are still awaited from the Omani tax authorities.

European Parliament issues favourable opinion on DAC9

On 12 February 2025 the European Parliament's plenary session approved its opinion on the proposed amendments to the Directive on Administrative Cooperation (2011/16), commonly known as DAC9. This proposal seeks to streamline the filing process and alleviate administrative burdens for multinational enterprises in accordance with the Pillar Two Directive.

Given the technical complexity of DAC9 and the urgency of its implementation, the European Parliament followed a simplified procedure (Rule 52 of its Rules of Procedure) and issued an opinion without suggesting any modifications. The opinion, prepared by MEP Aurore Lalucq, received broad support, passing with 608 votes in favour, 33 against and 8 abstentions. Although the European Parliament's opinion is a required step under the consultation procedure, it remains non-binding.

OECD and US Treasury: new resources and implementation of Pillar One Amount B

On 19 December 2024 the OECD Inclusive Framework released two new resources regarding Pillar One Amount B – a simplified transfer pricing method for baseline marketing and distribution activities of goods. These documents complement the existing Amount B guidelines and include a high-level step guide (factsheet) and an automation tool designed to help calculate Amount B outcomes.

On 18 December 2024 the US Treasury published a notice outlining the implementation of Amount B in the United States, effective from 1 January 2025, on an elective basis. The notice also highlighted the US Treasury/Internal Revenue Service's intention to assess whether the simplified approach should become mandatory for all businesses within the scope of Amount B that are involved in distribution activities.

02 OECD Tax Developments

OECD: tax administrations trending towards dispute prevention

The OECD's 2023 statistics on mutual agreement procedures (MAPs) and advance pricing agreements (APAs) indicate a shift in tax administrations' approach from dispute resolution to dispute prevention, with a growing emphasis on APAs.

For the first time since these statistics have been tracked, the number of MAP cases has declined, driven by an increase in case closures and a decrease in new cases opened. Meanwhile, APA cases have risen, reaching 4,080, up from 3,919, with 1,136 new cases initiated in 2023. During the year 860 APAs were granted, with the average processing time for an APA being approximately 37 months.

Governments make progress on OECD Crypto-Asset Framework adoption

A total of 61 jurisdictions, including Ireland, have committed to implementing the OECD's Crypto-Asset Reporting Framework (CARF) by 2027 or 2028, with 48 expected to sign a CARF multilateral competent authority agreement in the near future. The Global Forum on Transparency and Exchange of Information for Tax Purposes confirmed these commitments in an announcement on 26 November, marking its 15th anniversary and expanding its tax transparency efforts to include the crypto-asset sector.

The CARF facilitates the automatic exchange of crypto-asset-related information to combat tax evasion. It was introduced alongside amendments to the Common Reporting Standard (CRS) in a June 2023 report, which also included explanatory commentary. On 2 October the OECD released CARF guidance, and on 26 November the Global Forum published a step-by-step implementation guide and a report outlining a capacity-building strategy for broader adoption of the framework.

With the first exchanges of information under the CARF and the updated CRS set to begin in 2027, the Global Forum anticipates a demanding three-year period of preparation. It will oversee the implementation of CARF commitments, support jurisdictions in adopting the framework and monitor compliance with the amended CRS.

03 EU Tax Developments

European Commission publishes final version of Implementing Regulation for the EU Public CbCR Directive

On 2 December 2024 the European Commission released the final Implementing Regulation, establishing a standardised template and electronic reporting formats for applying the Accounting Directive (2013/34). This Regulation specifically pertains to Article 48c(4), introduced by the Public Country-by-Country Reporting Directive (2021/2101). Published in the *Official Journal of the European Union*, the final version builds on the draft template issued by the European Commission on 21 October 2024.

European Commission prepares standard forms and computerised formats for DAC7 implementation

The European Commission has announced plans to introduce an Implementing Regulation establishing standard forms and computerised formats for the Amending Directive to the 2011 Directive on Administrative Cooperation (2021/514) (DAC7). The Regulation will specifically define:

- the deadline by which Member States must submit statistical data related to information reported by digital platform operators and
- the types of statistics required for joint audits.

The Commission aims to adopt the Regulation in the first quarter of 2025, with an opportunity for stakeholders to provide feedback before finalisation. The progress of this initiative can be monitored through official EU channels.

Romania: Ministry of Finance issues clarification on public CbCR reporting requirements

The Romanian Ministry of Finance has released a press statement addressing reporting obligations under the Public Country-by-Country Reporting (CbCR) Directive. Before the provisions of Commission Implementing Regulation (EU) 2024/2952, adopted on 29 November 2024, take effect, businesses required to report corporate tax information under Directive 2021/2101 (amending Directive 2013/34/EU) have several reporting options. They may use:

- the reporting instructions specified in Section III, Parts B and C, of Annex III to the Directive on Administrative Cooperation (2011/16) (DAC);
- the standardised templates and formats outlined in Regulation (EU) 2024/2952; or
- a self-defined reporting format, provided it includes all required information in compliance with applicable accounting regulations.

As stated in Article 5 of Commission Implementing Regulation 2024/2952, these provisions will apply to income tax reports covering financial years beginning on or after 1 January 2025.

There was a separate 31 December 2024 CbCR deadline relevant to Romania, arising from its early adoption of the EU's Directive on Public CbCR. For non-EU-headed groups, the Directive will require certain groups with revenues of more than €750m to publish CbC information, usually within 12 months from the group's balance sheet date. Although most EU Member States are implementing the rules with effect for fiscal years starting on or after 22 June 2024, Romania has implemented the rules with effect from businesses' fiscal years beginning on or after 1 January 2023.

Unshell Directive

The EU working party on tax matters is set to examine the practical implications and legal drafting of the European Commission's revised approach to the draft Directive on preventing the misuse of shell entities (Unshell).

The Commission's revised approach introduces risk hallmarks requiring entities to conduct self-assessments, similar to the framework under the Sixth Directive on Administrative Cooperation (DAC6). Member States are expected to deliberate on key aspects of the draft Directive, including its scope, risk hallmarks, reporting obligations, information exchange between jurisdictions and administrative measures to detect abusive tax arrangements.

Although the Commission has proposed administrative tools such as tax audits to identify misuse, Hungary's Presidency is likely to advocate for a more flexible approach, allowing Member States to determine their own enforcement measures. At this stage it seems unlikely that the Presidency will incorporate the Commission's suggestion for a peer-review mechanism, which would enable Member States to share experiences and best practices.

EU Council adopts new rules for withholding tax procedures

The Council of the European Union adopted new rules on 10 December 2024 to streamline and enhance the security of withholding tax procedures in the EU. The FASTER Directive aims to simplify the process of obtaining double taxation relief, promoting cross-border investment while strengthening measures against tax fraud.

It introduces more efficient and secure mechanisms for investors, national tax authorities and financial intermediaries, such as banks and investment platforms. The Directive will be published in the *Official Journal of the European Union* and will take effect accordingly. Member States must incorporate it into their national legislation by 31 December 2028, with the rules becoming applicable from 1 January 2030.

Majority of EU countries ditch draft transfer pricing Directive

The Hungarian Presidency of the Council of the European Union has faced a significant setback in its efforts to secure agreement on a transfer pricing Directive, as the latest draft was widely rejected by a majority of EU Member States. During a 13 November meeting of the Council's working party on tax questions, more than half of the Member States reportedly opposed the proposed Directive. Although there is general support for establishing a new transfer pricing platform, disagreements remain over its structure and governance.

European Commission publishes Recommendation for a Council Recommendation endorsing the National Medium-Term Fiscal–Structural Plan of Luxembourg

On 26 November 2024 a Recommendation for a Council Recommendation was published endorsing Luxembourg's National Medium-Term Fiscal–Structural Plan, while identifying the country as the only EU Member State failing to address aggressive tax planning adequately. In contrast, Malta was given the benefit of the doubt owing to its commitment to implementing necessary measures.

The recommendation highlights that Luxembourg's fiscal–structural plan does not sufficiently tackle features of its tax system that facilitate aggressive tax planning, exceeding internationally agreed minimum thresholds. Similar concerns were raised in 2019, 2020, 2022, 2023 and 2024.

For context, in 2019 the European Commission flagged six countries, including Ireland, for having high-risk tax systems, referring to them as "tax black holes". Each June the Commission issues economic recommendations for EU Member States, which are later endorsed by the Council of the European Union. In June 2024 only Luxembourg and Malta were criticised for insufficient progress in addressing aggressive tax planning, a significant reduction from the original six.

European Commission adopts 2025 Work Programme, withdraws proposals

On 11 February 2025 the European Commission adopted its 2025 Work Programme, titled "Moving Forward Together: A Bolder, Simpler, Faster Union". This programme outlines the Commission's key initiatives for 2025, the first year of the new von der Leyen Commission's mandate. It provides insight into planned legislative proposals, the withdrawal of pending initiatives and the review of existing EU laws. In the area of direct taxation, the Commission has announced the following actions.

Evaluation of the Anti-Tax Avoidance Directive

The Commission intends to complete its assessment of the ATAD by the fourth quarter of 2025.

Withdrawal of certain proposals

The proposal for a Council Directive on a common system of taxation for interest and royalty payments between associated companies in different Member States has been withdrawn. The Commission cited its redundancy, as aspects of the proposal have been incorporated in the Minimum Taxation Directive (2022/2523). Remaining issues will be addressed through an upcoming Omnibus Act as part of broader simplification efforts.

The proposal for a Council Directive on administrative cooperation in taxation (codification) has also been withdrawn owing to obsolescence. The Commission plans to introduce a new codified proposal.

Continuation of legislative procedures for key proposals

The Commission will proceed with the legislative process for the following Council Directives:

- amendments to administrative cooperation in taxation (DAC9),
- Business in Europe: Framework for Income Taxation (BEFIT),
- head-office tax (HOT) system for micro, small and medium-sized enterprises,
- debt–equity bias reduction allowance (DEBRA) and interest deductibility limitations for corporate tax purposes,
- Unshell Directive to prevent tax avoidance through shell entities,
- digital services tax on certain digital revenues,
- significant digital presence rules for corporate taxation in the digital economy and
- financial transaction tax under enhanced cooperation.

The Work Programme is accompanied by a Communication on Implementation and Simplification, which details the Commission's strategy for reducing administrative burdens and streamlining EU Regulations. However, no specific measures for direct taxation are included in the Communication.

04 Australia

Australia: Bill introducing public country-by-country reporting measures passed

On 10 December 2024 Australia enacted the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, which includes significant public country-by-country reporting (CbCR) requirements. These provisions mandate that certain multinational corporations operating in Australia publicly disclose specific tax-related information.

The legislation aims to enhance transparency by obliging eligible multinational entities to release details such as income, taxes paid and business activities for each country in which they operate. This move aligns Australia with global efforts to increase corporate tax transparency and combat tax avoidance. The public CbCR measures are anticipated to affect multinational entities meeting certain criteria, compelling them to disclose specified tax information publicly.

VAT Cases & VAT News

Gabrielle Dillon
Director – VAT, PwC Ireland

VAT Cases

01 Supply of Building Land – Meaning of a "Building" CJEU Judgment C-594/23

The Court of Justice of the European Union (CJEU) delivered its judgment in ***Skatteministeriet v Lomoco Development ApS, Holm Invest Aalborg A/S, I/S Nordre Strandvej Sæby, Strandkanten Sæby ApS ("NSS")*** C-594/23 on 7 November 2024. This case dealt with the interpretation of Article 12(1)(a) and (b) and Article 135(1)(j) and (k) of the VAT Directive, which outline the VAT treatment of supplies of buildings and supplies of building land. The Danish Ministry of Taxation assessed NSS for VAT on the supply of land that had foundations for residential housing structures in place at the time of sale. NSS acquired property in 2006 that had previously been used as a camping site. In 2008 it subdivided the property into several plots, and in 2009 it installed connections for electricity, water, heating and sewerage on some of the plots. Foundation works were then carried out and completed in late 2010. NSS sold 16 plots to a Danish company in 2015, which onward sold the plots to private individuals. Before 31 December 2010 Denmark applied an exemption from VAT in respect of all supplies of immovable property and supplies of buildings (where the construction had begun on that date). As the foundations built on the land at issue were laid in 2010, NSS claims that the supply of that land is exempt from VAT.

The Danish tax authority took the view that NSS had supplied building land that was subject to VAT. The Danish Ministry of Taxation was of the view that a residential housing structure cannot be regarded as completed and as capable of being occupied if only the foundations of the building have been laid. It argued that such foundations cannot constitute "parts of a building" within the meaning of Article 12 of the VAT Directive, as there is a supply of parts of a building only if the parts supplied can be occupied. Under Article 12(2) of the VAT Directive a building means "any structure fixed to or in the ground", and Article 12(3) provides that "building land" means any land, unimproved or improved, defined as such by the Member States. Exemption from VAT is provided for under Article 135(1)(j) in favour of the supply of buildings, other than those referred to in Article 12(1)(a).

NSS argued that when the laying of the foundations on the plots commenced, the plots passed from the status of "building land" to that of "building or parts of a building and the land on which the building stands". It argued that foundations are included in the very broad concept of "building", within the meaning of Article 12. The question referred to the CJEU was whether a supply of land that has at the date of supply only the foundations of residential housing structures in place comprises a supply of building land.

Member States can only exempt from VAT supplies of land that has not been built on and is not intended to support a building. The court noted that it is necessary to determine whether those foundations constitute a "building" or "parts of a building", within the meaning of Article 12, in which case that land could no longer be regarded as "building land". In practice, Article 135(i)(j) and Article 12 make a distinction between old buildings, the sale of which is not, in principle, subject to VAT, and new buildings, the sale of which is subject to VAT. In determining what constitutes a building, the court referred to the importance of the "first occupation" criterion in Article 12(1)(a) and said that this must be understood as corresponding to the first use of the property by the owner/occupier. By reference to preparatory documents for the Sixth VAT Directive, the first occupation criterion was included to determine the point in time when the product was likely to leave the production process and enter into the consumption sector. Although the foundations of a building may constitute a part of a building and the definition of building is very broad, as Article 12(1)(a) refers to "first occupation", the court noted that mere foundations of residential housing structures are not capable of being in "occupation", defined in this manner. It also commented that the laying of foundations does not mark the end of the construction process of the building and its entry into the consumption sector. The court held that the foundations of residential housing structures cannot be classified as a "building" or as "parts of a building" within the meaning of Article 12(1)(a) of the VAT Directive. So a supply of land that, at the date of that supply, has only the foundations of residential housing structures in place, constitutes a supply of "building land".

Under the VAT-and-property rules in Ireland, the question of development is pertinent to every transaction, and in the context of a sale the meaning of buildings and of first occupation are important in assessing whether exemption from or a charge to VAT applies.

02 Right to Deduct Input VAT – Formal and Substantive Requirements CJEU Judgment C-624/23

The Court of Justice of the European Union (CJEU) judgment in ***'SEM Remont' EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite*** C-624/23 was delivered on 21 November 2024. The Bulgarian tax authority refused to grant a Bulgarian VAT-registered company, SEM Remont EOOD (SEM), the right to deduct input VAT on costs related to dredging work performed by a third party. SEM builds underground and overground railways. It concluded a contract with a Russian company, Gidrostroy – Russia OOD (GRO), which provided ships to carry out dredging work in Bulgaria (at the port of Varna). GRO was contracted to supply the services to SEM. Before registering for Bulgarian VAT, GRO issued two invoices (in October and November 2020) to SEM for services provided, and

VAT was not included on the invoices. SEM and EIS (Bulgarian representative of GRO) formed a company, ES BILD, which was also a recipient of the services. GRO became VAT registered in December 2020. During an audit it was discovered that GRO had exceeded the registration threshold and should have been registered a year earlier; it was instructed to calculate VAT due. This was done by way of a report to the tax authority (rather than via invoices), which also indicated that GRO was both supplier and recipient of the services. SEM sought to deduct the VAT calculated in the report. Tax authority found that, on the date of issue of that report, the chargeable event for the tax liability had not occurred and that, consequently, VAT was not payable. It concluded that SEM was not entitled to refund as it did not hold VAT invoices.

The question referred was whether a Member State can deny the right to deduct where the supplier failed to fulfil its obligation to register for VAT, issued invoices without VAT and then issued a report stating that VAT amount and stating that the supplier was also the recipient of the supply. The court reiterated that the right to deduct is an integral part of the VAT scheme and may not, in principle, be limited and that the right is exercisable immediately. But that right of deduction is subject to compliance with certain requirements, particularly the requirement that the VAT must be due or paid.

The court has previously held that a contract may be regarded as an invoice where that contractual agreement contains all of the information necessary for the tax authorities of a Member State to be able to establish whether the substantive conditions for the right to deduct VAT are satisfied. However, in this case the court indicated that the report provided to the tax authority could not be treated as an invoice. In addition, the substantive conditions had not been met as the VAT was not paid by SEM and was not payable by SEM. The tax authority found that the invoices in question had been issued for a transaction carried out at a later stage by GRO for ES BILD. The court held that the requirements that need to be satisfied to have the right to deduct were not met.

A further question addressed to the court was whether domestic legislation can prevent the correction of an invoice where the invoice did not include VAT and where a report was provided to the tax authority calculating the VAT amount and outlining that the supplier was also the recipient. The court has held in a number of cases that input VAT deduction is to be permitted even where some formal requirements have not been met, but this is on basis that the substantive requirements have been met. Previous cases dealing with retroactive correction of invoices have dealt with scenarios where input VAT was paid. The court noted that the mechanism for the adjustment of undue VAT deductions provided for by the VAT Directive is not applicable when the deduction was initially made in the absence of any right of deduction. In this case input VAT was not paid by SEM and was not payable by SEM. The court held in respect of this question that a Member State can exclude the possibility of correcting an invoice where the invoice that the supplier has provided to the recipient of a supply subject to VAT did not state that tax and where during an audit the supplier drew up a report stating the VAT and putting forward the supplier as also being the recipient of that supply.

03 Right to Deduct Input VAT – Administrative Services Provided to Group Companies CJEU Judgment C-527/23

The Court of Justice of the European Union (CJEU) judgment in the case of ***Weatherford Atlas Gip SA v Agenția Națională de Administrare Fiscală – Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili*** C–527/23 was published on

2 December 2024. The referral to the CJEU resulted from the refusal of the Romanian tax authority to permit input VAT recovery on costs relating to the purchase of administrative services provided within the same group of companies. Weatherford Atlas Gip ("Weatherford") is part of the Weatherford group of companies, which specialises in oil services. It acquired Foserco SA (Romanian company), which supplied ancillary services for the extraction of oil and natural gas. Foserco provided drilling services in Romania to two customers, and to provide those services it purchased general administrative services from companies in the Weatherford group. The suppliers were established outside Romania, and it applied the reverse charge to account for the VAT on the services received. Other companies in that group also received the same services.

The denial of input VAT recovery was on the basis that, first, no act or document had been produced to demonstrate the link between the services purchased and the activity of the taxable person under inspection and, second, (1) the nature of the services provided, (2) the identity of the persons who provided those services, (3) the period during which they were provided and (4) the need for those services for Foserco do not emerge from the documents that were provided. Even though the costs of those services were shared between the companies, the tax authority maintains that they should not have been invoiced to Weatherford as the services were not required by Weatherford.

The question referred was whether the right to deduct input VAT paid may be refused on the basis of a subjective assessment by the tax authority, relating to the necessity and appropriateness of the purchase of such services, where it is established that the costs relating to those services are part of that taxable person's general costs. The court acknowledged that the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT that they are liable to pay is a fundamental principle of the VAT system. An entitlement to input VAT due or paid arises where the goods or services are used for taxable supplies by the taxable person (direct and immediate link). Even where there is no direct and immediate link, where the costs of the goods and services are part of its general costs and are, as such, components of the price of the goods or services that it supplies, a right to deduct arises.

It will be for the referring court to assess whether there is a direct link between the services provided and the consideration paid by Foserco. It will also have to assess whether Foserco and the companies that provided the administrative services are taxable persons and whether those services were used by Foserco for the purposes of its own taxed output transactions. The court noted that if it turned out that part of the services had been used not for the purposes of the taxable person's own transactions but for the purposes of transactions by third parties, the existence of a direct and immediate link between those services and that taxable person's taxed transactions would be partially broken, so that that taxable person would not be entitled to proceed to deduct the VAT charged on that part of the expenditure. It also indicated that the question of whether the purchase of the administrative services was necessary or appropriate seems irrelevant. The court held that:

> "Article 168 of the VAT Directive must be interpreted as precluding national legislation or a national practice under which the tax authority refuses the right to deduct input VAT paid by a taxable person when acquiring services from other taxable persons belonging to the same group of companies on the grounds that those services were supplied at the same time to other companies in that group and that their purchase was not necessary or appropriate, where it is established that those services are used by that taxable person for the purposes of its own taxed output transactions."

The two cases above dealing with the right to deduct input VAT continue to highlight the common themes that the CJEU refers to when considering a refusal or denial of the right to deduct input VAT. It will reference the requirement for a direct and immediate link, and in the absence of a direct link, it will reference the possibility of qualifying for input VAT recovery where the inputs are part of the general overheads and are linked to the economic activity as a whole. As noted in these and earlier cases, objective evidence will be required and sought to determine the right to deduct.

04 Waiver of Exemption – Cancellation Amount High Court [2024] IEHC 732

After the Tax Appeals Commission (TAC) determination 40TACD2023, a case was stated for an opinion of the High Court. *Killarney Consortium C v Revenue Commissioners* [2024] IEHC 732 dealt with the cancellation sum payable after the automatic cancellation of a waiver of exemption (triggered by a sale of property) where excess input VAT was claimed over output VAT accounted for. The question at issue was whether the domestic provision (s96(12) of the Value-Added Tax Consolidation Act 2010) imposing the VAT liability was in breach of EU law, and the TAC had determined that the domestic provision should be disapplied on the basis that it was contrary to EU law. The decision of the High Court was delivered on 20 December 2024 by Mr Justice Rory Mulcahy.

The Consortium purchased a property in 2004 and developed apartments, and the VAT incurred was reclaimed in 2006. The property was let between 2006 and 2009 to an adjoining hotel owner, and VAT was accounted for on rents as the appellant had exercised a waiver of exemption. The hotel went into liquidation, and the appellant took back the lease and was unsuccessful in letting it again. The property was sold in 2017, resulting in an automatic cancellation of the waiver of exemption. An assessment was raised by Revenue for the differential between VAT reclaimed and paid.

The letting of property is exempt from VAT under Article 137 VAT Directive, but the right of option for taxation is provided for by Member States, and they can restrict the scope of the right and are required to set out the details of its use. Article 17 provides that the right of deduction arises at time VAT is incurred. Under the Irish legislation, s7 of Value-Added Tax Act 1972, as amended, permitted a landlord to exercise a waiver of exemption and outlined details of its application, while the Regulations set out the rules relating to the cancellation amount calculation.

The Consortium put forward the argument that the payment of a cancellation sum, when the property had been used for taxable purpose, was in breach of the principle of fiscal neutrality. A retrospective restriction on the right of deduction was not permitted unless Member States were entitled to do so under the VAT Directive. It argued that the Irish legislation is applied irrespective of use of the property and therefore is related purely to quantum. Revenue had submitted that the principle of fiscal neutrality was not offended as the cancellation amount balances the input VAT recovered with output VAT paid. The effect of the cancellation amount was that the person who did not exercise the waiver was treated equitably with the person who exercised a waiver that was subsequently cancelled. It also argued that the discretion provided to Member States was very broad – designed to ensure fiscal neutrality between those who waived and those who did not.

The court summarised the three main issues between the parties as follows: (1) whether the provisions of s96 are permissible in the exercise of the discretion afforded to the State by Article 137(2) of the VAT Directive; (2) whether the provisions of s96 respect the principle of fiscal neutrality; (3) and whether the structure of s96, which imposes a requirement to make a balancing payment only after cancellation of a waiver of exemption, has a bearing on the compatibility of the legislative scheme with EU law.

Mr Justice Mulcahy accepted the characterisation by the Consortium of the requirement to pay a cancellation sum as *prima facie* an interference with deductions lawfully made and therefore an interference with the right to deduct. The provisions of s96 are therefore an interference with the taxpayers' right to deduct and are not compatible with EU law. He stated that the fundamental difficulty with s96 is that is undermines the principle of fiscal neutrality and, in particular, the First Directive principle that the deduction system is designed to relieve businesses of the burden of the tax while taxing the final consumer. At paragraph 88 he stated that:

> "the provisions of section 96 are not a restriction on the scope of the right of option, which is permitted by Article 137(2), rather they are a restriction on the right to deduct, which is not permitted, other than in accordance with the adjustment provisions which Revenue does not contend are engaged here".

Mr Justice Mulcahy considered that the Tax Appeals Commissioner had correctly applied the relevant principles of EU law and was correct in exercising his jurisdiction to disapply the provisions of s96 as they were incompatible with EU law.

05 Supplies of Promotional Goods – Supplies for Consideration TAC Determination 186TACD2024

Tax Appeals Commission determination **186TACD2024** related to whether supplies of certain "small value" goods marketed as gifts ("the promotional goods") made by the appellant to its customers in conjunction with other supplies (which were zero rated) were gifts as marketed or were supplies "for consideration" (i.e. made in return for value provided by the customer to the appellant). Section 21 of the Value-Added Tax Consolidation Act 2010 deems the supply of a good made free of charge to have been "for consideration in the course or furtherance of business" unless the cost of the good to the donor does not exceed a sum specified in Regulations, in which case it might be a gift. Regulation 5 of the Value-Added Tax Regulations 2010 prescribes that the cost of the gift to the donor is to be no more than €20. The respondent noted that all of the promotional goods at issue in the appeal had a cost to the appellant of less than €20 and did not fall to be "deemed" supplies for consideration under s21. Instead, the main issue was whether the promotional goods supplied as part of its promotions were supplied in exchange for actual consideration.

The appellant submitted that the promotional goods were supplied to its customers for free as part of promotions designed to increase its sales and foster the loyalty of new and existing customers. It also argued that the promotional goods were the ancillary element of a single "composite supply", also involving its other supplies, which were the primary or predominant element. In either case, it argued that no VAT was chargeable as there was no consideration and the rate of VAT applicable to the single composite supply of goods would be 0% as that was the rate applicable to the principal part of the composite supply. The respondent submitted that the reality of the supply by the appellant of the promotional goods to its customers was that they were "individual supplies", distinct from the other supplies that were part of a "multiple supply" of goods, and the consideration was an overall sum of money that covered both the other supply and the relevant promotional good.

Based on the facts, evidence provided and case law, the Commissioner determined that the promotional goods were supplied for consideration and therefore were not gifts and were chargeable to VAT; the promotional goods and the other supplies were not elements of a single composite supply; and even if there was a single composite supply, the promotional goods were taxable at the standard rate, as opposed to the zero rate applicable to the other supplies.

VAT News

Ireland

Revenue eBrief No. 286/24, "VAT Return of Trading Details – Guidance for Filers", was published on 20 November 2024. The Tax and Duty Manual (TDM) covering this guidance was updated to clarify the treatment of the receipt of services from outside the EU on a self-accounting basis; to reference that section 4 of the Return of Trading Details (Other Deductible Goods and Services) is subject to the deductibility rate of the filer; and to update the examples in paragraph 2.6 and Appendix 2 to reflect guidance on exempt reporting.

Revenue eBrief No. 298/24, published on 5 December 2024, highlights the publication of a new TDM, "VAT Treatment of Share Transactions and Trading Platforms", providing guidance on this topic.

Revenue eBrief No. 315/24, published on 13 December 2024, provides an overview of the EU VAT SME Scheme. Generally, where an Irish-established trader makes supplies in another Member State, there is no *de* minimis threshold. They must immediately register and account for VAT in the Member State where the supply takes place. From 1 January 2025 the SME scheme allows small traders the option to avail of the registration thresholds in other Member States. If eligible, these businesses will not have to register for VAT when supplying goods and services there. The eligibility criteria are set out in the eBrief (see below in relation to EU guidance).

Revenue eBrief No. 333/24, published on 20 December 2024, provides details of EU cross-border payments reporting requirement for payment service providers. The TDM "Central Electronic System of Payment Information (CESOP)" was updated to reflect the amendment in Finance Act 2024 that relates to the imposition of penalties.

Revenue eBrief No. 001/25, published on 2 January 2025, highlights updates to a number of TDMs following amendments made by the Finance Act 2024. A new TDM has been published to provide guidance on the "VAT Treatment of Heat Pump Heating Systems". The "VAT Treatment of Food and Drink Supplied by Wholesalers and Retailers" TDM is amended to clarify that the standard rate of VAT applies to juice extracted from, and other drinkable products derived from, fruit, vegetables, plants, grains, seeds or pulses and that milk substitute drinks derived from plants will continue to be subject to the zero rate of VAT. The "Management of Special Investment Funds" TDM is amended to provide clarity that the management of an Irish alternative investment fund (AIF) managed by an Irish alternative investment fund manager (AIFM) is covered by the fund management exemption. It also ensures that the exemption applies to the management of an Irish AIF managed by a non-Irish AIFM, including where the AIFM is registered with a competent authority of a Member State. The "VAT Treatment of the Special Flat-Rate Scheme for Farmers" TDM is amended to include the new flat-rate addition rate of 5.1%, and the "VAT Treatment of Construction Services" TDM includes a consequential amendment arising from the application of second reduced rate to the supply and installation of low-emissions heat pump heating systems.

EU

The European Commission published Explanatory Notes on the EU VAT Special Scheme for Small Enterprises, which is effective for businesses from 1 January 2025. The new VAT scheme for small and medium enterprises ("the SME scheme") covers a domestic scheme and a cross-border scheme. The domestic scheme covers small enterprises that make use of the SME scheme only in their Member State of establishment. The cross-border scheme covers small enterprises that make use of the SME scheme in a Member State other than their Member State of establishment or in both. The Explanatory Notes set out the differences between the schemes, the criteria to be met, and the registration and compliance obligations.

On 16 December 2024 the European Commission has published a report prepared by the VAT Expert Group in relation to ViDA (VAT in the Digital Age), *VAT after ViDA – Reflections on the Future of VAT*. The executive summary states that the report "examines long-term and immediate strategies for modernizing the VAT system. It builds on past initiatives and aims to simplify, broaden, and ensure neutrality in VAT application across the EU, reducing burdens and supporting sustainable development goals. This is a strategic report, and it aims to provide ideas to the EU Commission and interested stakeholders to further explore and research. It is not aimed at providing fully fledged solutions."

On 13 December 2024 the European Parliament (Committee on Economic and Monetary Affairs) published a Draft Resolution on the draft Council Directive amending the VAT Directive relating to the ViDA package. The Council approved the ViDA package on 5 November 2024 and sought a new consultation with the Parliament. The Draft Resolution approves the Council draft (15159/2024); calls on the Council to notify the Parliament if it intends to depart from the text approved by the Parliament; requests the Council to consult the Parliament again if it intends to amend its draft substantially; and instructs its President to forward its position to the Council, the Commission and the national parliaments.

Accounting Developments of Interest

Aidan Clifford
Advisory Services Manager, ACCA Ireland

Credit Union Act 1997 (Regulatory Requirements) (Amendment) (No. 2) Regulations 2024

The Registrar of Credit Unions has issued new Regulations governing many aspects of the provision of services by credit unions to their members, which supersede Regulations issued in 2016. In general, the new Regulations cover more activities and are more prescriptive. Some historical material has been removed, such as the procedures required for "loan applications by fax". Some of the required procedures have been greatly expanded, particularly for prize draws and insurance intermediation services.

Credit Union Lending Rules

The Central Bank of Ireland has published an analysis of the impact of the changes to credit union lending rules introduced in 2020. In the review's conclusion the Central Bank is holding a consultation on a proposal for a number of material changes to the credit union lending regulations in respect of concentration limits for house and business lending, and lending practices for specific categories of lending.

Credit Union Prize Draws

The Central Bank of Ireland undertook a thematic review of credit union prize draws in 2017 and published its Findings from Thematic Review of Prize Draws in Credit Unions in March 2018. These findings highlighted particular weaknesses in credit unions' systems of control in relation to member prize draws, which suggested that some credit unions had failed to fully and properly apply guidance on prize draws issued by the Central Bank in February 2017. As a result of the findings, the Central Bank published enhanced guidance on prize draws in the Credit Union Handbook, which set out the Central Bank's expectations and recommendations for credit unions operating member prize draws. The enhanced guidance included the Central Bank's expectation that member prize draws would be reviewed by both internal and external audit, with a recommendation that "[t]ransactions in the prize draw should be reviewed on an annual basis by the external auditor, and prize draw transactions and balances should be reported separately in the annual accounts".

The Central Bank expects credit unions to have effective systems of control in place and to ensure that they are in compliance with the conditions attaching to the provision of member prize draws as set out in the Amending Regulations.

Although the external auditor determines the appropriate audit programme for the annual audit, the Central Bank considers that the findings from the Thematic Review will continue to be of assistance to external auditors in preparing for the audit. Given the potential impact of a failure by a credit union to adhere to proper controls with respect to the operation of prize draws, the Central Bank considers that due consideration should be given to the operation and related financial transactions of member prize draws by both the external and the internal audit function. The Central Bank considers that the internal and external audit processes can provide a reasonable level of assurance with respect to the operation of member prize draws.

With respect to the Credit Union Act 1997 (Regulatory Requirements) (Amendment) (No. 2) Regulations 2024 – specifically, paragraph 10(K): “the credit union’s external auditor reviews, on an annual basis, all transactions in the prize draw” – the Central Bank expects that where there is a prize draw operating in a credit union, it would fall within the scope of the audit work programme being undertaken by the external auditor. It is the Bank’s expectation that the auditor would “assess, on a sample basis and in line with materiality as determined by the auditor, transactions related to the prize draw. We would expect that the scope of the work of the external auditor in this regard may be informed by the work undertaken and assurances (or otherwise) provided by the internal auditor during the financial year.”

The Central Bank will shortly be updating the credit union services chapter of the Credit Union Handbook to reflect its guidance on the application of the new Regulations, and this will include guidance on member prize draws.

International Standard on Quality Management Ireland 1

ISQM 1 requires audit firms to apply a risk-based approach to designing, implementing and operating a system of quality management. This system of quality management must be documented in an ISQM 1 manual. That manual must be reviewed annually and updated as necessary. The Irish Auditing and Accounting Supervisory Authority (IAASA) has published a study of the manuals prepared by audit firms under its supervision and published its key messages from that study.

A number of commercial companies have manuals and guides on how to prepare an ISQM manual, but this IAASA study also sets out the key documentary requirements that the IAASA has for ISQM 1 compliance:

- Firm’s risk assessment process: Establish an ongoing risk assessment process that considers your unique circumstances, including technologies used, networks and external service providers.
- Governance and leadership: Ensure effective governance and leadership in your firm.
- Relevant ethical requirements: Adhere to ethical standards and requirements.
- Acceptance and continuance of client relationships and specific engagements: Evaluate client relationships and specific engagements.
- Engagement performance: Focus on thorough audit procedures and quality performance.
- Resources: Allocate resources for recruiting, developing audit teams and providing appropriate tools.

- Information and communication: Foster effective communication within the firm.
- The monitoring and remediation process: Embrace scalability, flexibility and continuous improvement.

The study identified the following weaknesses in some ISQM manuals:

- The ISQM 1 quality objectives were not directly mapped to the firm's system of quality management.
- The responses to the quality risks identified were not tailored to the circumstances of the firm, including the description of key documents and personnel requirements.
- Instances were identified where there were errors in the completion of acceptance and/or continuance assessments, including failure to record non-audit services being provided to a client for an audit continuance assessment
- There was failure to perform sufficiently an independence check for a new audit engagement
- There was insufficient evidence that the firm has performed adequate monitoring activities to provide a basis for identifying deficiencies that are relevant to the firm's system of quality management.

Updated Factsheets for FRS 102

The Financial Reporting Council has issued additional guidance to reflect the amendments to FRS 102. Three new factsheets have been published that relate to the significant changes to FRS 102, including new versions of Section 20: Leases and Section 23: Revenue from Contracts with Customers. A number of other factsheets have also been updated to reflect the changes to FRS 102:

- Factsheet 3 – Statement of cash flows,
- Factsheet 4 – Financial instruments,
- Factsheet 5 – Property: Fair value measurement,
- Factsheet 6 – Business combinations,
- Factsheet 7 – Transition to FRS 102,
- Factsheet 8 – Climate-related matters,
- Factsheet 9 – Initial application of the Periodic Review 2024 amendments,
- Factsheet 10 – Revenue from Contracts with Customers and
- Factsheet 11 – Lease accounting for lessees.

Factsheets 1 and 2 have been withdrawn.

Frequently Asked Questions on EU Sustainability Taxonomy

The European Commission has published a set of frequently asked questions (FAQs) on the EU sustainability taxonomy.

Deduction of Expenses in Employment for Taxation Purposes

Revenue has updated its guidance on the deductibility of expenses. The guidance includes additional information on how to claim a deduction for actual vouched expenses incurred wholly, exclusively and necessarily in the performance of a person's duties of employment. It also covers when CPD can be deductible and provides examples of typical expenses that are deductible and additional guidance on "flat-rate expenses".

Of particular interest to members is the guidance on membership fees paid to a professional body. There are a number of examples set out at this link, and even where an employer refuses to cover a membership subscription, there are circumstances where that membership fee can still be claimed as a tax deduction, including where professional membership fees are commercially necessary or there is a statutory requirement for membership of a professional body.

FRS 101 Proposed Amendments

The Financial Reporting Council has issued FRED 86 – Draft amendments to FRS 101: Reduced Disclosure Framework . FRS 101 is for subsidiary entities using IFRS but with a reduced disclosure burden. The amendments will provide a new exemption from some new requirements in IFRS 18, including disclosure in relation to management-defined performance measures. There is also an amendment preventing qualifying entities from applying both FRS 101 and IFRS 19. FRED 86 is open for comment until 7 March 2025.

IFRS 19

The International Accounting Standards Board has issued IFRS 19: Subsidiaries without Public Accountability – Disclosures. The standard is for certain subsidiaries using IFRS accounting standards and will allow them to reduce their disclosures substantially. In Ireland there is already a different reduced disclosure framework for users of IFRS accounting, called Financial Reporting Standard 101: Reduced Disclosure Framework (FRS 101). To comply with Irish company law, company financial statements must be prepared in accordance with either IFRS accounting standards adopted by the EU (including IFRS 19, once approved – see the approval status here) or Financial Reporting Standards set by the Financial Reporting Council (FRC) (including FRS 101). The FRC has issued an explainer of the differences between FRS 101 and IFRS 19 and its thoughts on the future of FRS 101.

Contracts for Nature-Dependent Electricity Contracts

The International Accounting Standards Board has issued targeted amendments to IFRS 9: Financial Instruments and IFRS 7: Financial Instruments – Disclosures. These amendments are intended to help companies better report the financial effects of nature-dependent electricity contracts, which are often structured as power purchase agreements. The amendments include:

- clarifying the application of the own-use requirements,
- permitting hedge accounting if these contracts are used as hedging instruments and
- adding new disclosure requirements to enable investors to understand the effect of these contracts on a company's financial performance and cash-flows.

Voluntary Sustainability Reporting Standard for Non-listed SMEs

The VSME standard is the one that small entities will use to report on their sustainability. It will be used to allow them access sustainable finance, report to customers as part of the customer's sustainable supply chain reporting and, generally, tell their companies' sustainability story in a cost-efficient way. The VSME standard is only 60 pages long and requires about 20 disclosures. The full European Sustainability Reporting Standards (ESRS), in comparison, have up to 1,100 data points. The European Financial Reporting Advisory Group (EFRAG) has announced that it has delivered its technical advice on the VSME standard to the European Commission and it has released some educational videos on the VSME standard.

Meanwhile, in the UK, the UK Sustainability Disclosure Technical Advisory Committee has published its technical assessment and endorsement recommendations for the UK to adopt IFRS S1 and S2, with minor amendments. IFRS S1 and S2 are the international sustainability standards and are described as interoperable with the ESRS, the sustainability standards required in the EU.

Screening of Third Country Transactions Act 2023

The Screening of Third Country Transactions Act 2023 gives effect to the EU Foreign Direct Investment Screening Regulation 2019/452 and introduces an inward investment screening mechanism to Ireland. All provisions of the Act have been commenced as of 6 January 2025.

Charity Amendment Act 2024

The Charities Regulator has published a summary of the new legislation.

AMLA Starts Recruitment

The EU anti-money-laundering regulator, the AMLA, has commenced recruitment of 400+ staff, including finance and legal professionals, data analysts and admin/HR professionals. Information on the application process and job vacancies is available here. Some roles will be based in other Member States, but most are likely to be in Frankfurt. The taxation rules for employees of an EU institution are here.

Proposals to Change Sustainability Reporting Requirements in the CSRD

Accountants have expressed concern about the administrative burden that the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CS3D) and the Taxonomy Directives (TD) are imposing on businesses. The EU is now proposing an Omnibus Package (OP) to merge the CSRD, CS3D and TD. There are suggestions that the OP will be used as an opportunity to rewrite all three Directives and reduce the scope and depth of reporting required under each.

Accountancy Europe recently met five of the EU Commissioners, including Commissioner Michael McGrath, to discuss the proposed Omnibus Package. Some of the takeaways from the meeting are that all options are on the table, including a full rewrite and reopening of the CSRD, but there is also a possibility of just tweaking application dates and reporting thresholds. Clearly, reporting under the European Sustainability Reporting Standards is a considerable burden,, but reopening the legislation would also cause great difficulty. Accountancy Europe made representations on a recommended route, which includes that the "Commission should focus any alleviations in a possible omnibus proposal on provisions that have not yet been implemented due to their later compliance deadlines, rather than retroactively altering obligations that are already in effect".

The package is due to be presented on 26 February, and the situation is being carefully monitored. Once the OP is published and if there is a legislative proposal, there will be a one-month feedback period.

IAASA 2024 Financial Report Examinations Outcomes

The report by the Irish Auditing and Accounting Supervisory Authority lists the financial statement examinations completed in 2024 and the outcomes of those examinations.

Implementation of CSRD in Europe

Accountancy Europe has set up a tracker that monitors the transposition of the EU Corporate Sustainability Reporting Directive (CSRD) across the EEA. So far, 20 Member States have transposed the Directive, six have draft proposals published and three are still preparing proposals. Ireland transposed the Directive on 5 July 2024.

Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024

The Act, among other matters, allows for the postponement of maternity leave for a period of between five weeks and one year, provided the person concerned is being treated for a serious health condition including a serious mental health condition. A serious mental health condition is interpreted in the Act as one requiring in-patient hospital treatment.

How Businesses Are Becoming More Sustainable

The Department of Enterprise, Trade and Employment has published a series of case studies on how a business can become more sustainable. The case studies include a small café, a potter and a laundry.

European Sustainability Reporting Standards

The first crop of published sustainability reports are now available:

- Tryg (insurance) Annual Report 2024 – TRYG A/S,
- Netcompany (IT services) Annual Report | Netcompany,
- DSV – Global Transport and Logistics (transportation) annual report 2024,
- Novo Nordisk (healthcare) annual report 2024,
- Demant (healthcare) reports,
- Vestas (renewable energy) 2024 report,
- Lundbeck (pharmaceutical manufacturing) 2024 report,
- Pandora (jewellery) 2024 report,
- TomTom (IT services and consulting) annual report 2024,
- Ringkjøbing Landbobank A/S (banking) 2024 report,
- Nykredit (financial services) 2024 report,
- NykreditRealkredit (mortgage services) 2024 report and
- Spar Nord (banking) 2024 report.

Legal Monitor

James Quirke
Partner, McCann FitzGerald LLP

Selected Acts Signed into Law from 1 November 2024 to 31 January 2025

No. 43 of 2024: Finance Act 2024

This Act aims to give effect to the measures set out in Budget 2025. The Act includes a number of tax changes that are intended to provide additional support to individuals, families and businesses while maintaining the long-term stability of the public finances. Key features of the Finance Act 2024 include a reduction of the 4% USC rate to 3% and an increase to the standard rate income tax band, as well as an increase to the rent tax credit to €1,000. The Act has also provided for a number of tax measures aimed at supporting business and investors, including capital gains tax relief for angel investors and a participation exemption for certain foreign distributions. The Act was enacted on 12 November 2024.

Selected Bills Initiated from 1 November 2024 to 31 January 2025

No Bills of note were initiated in this period.

Selected Statutory Instruments from 1 November 2024 to 31 January 2025

No. 592 of 2024: Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 5) (State Pension (Contributory) – Calculation of Pension in Accordance with Section 109(6D)) Regulations 2024

These Regulations came into operation on 1 January 2025. They amend the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to reflect the phased transition from the yearly average contributions approach to the total contributions approach in the calculation of the State pension – contributory. The Regulations also provide for an age-referenced increase where a qualified claimant reaches pensionable age or deferred pensionable age on or after 1 January 2025.

Nos 634, 635 and 636 of 2024: Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 14) (No. 15) (No. 16) (Jobseeker's Pay-Related Benefit) Regulations 2024

These Regulations amend the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to introduce the new jobseeker's pay-related benefit scheme. This scheme directly links the amount of benefit that an unemployed person may receive to their previous earnings. Individuals who have at least five years' paid PRSI contributions will receive a weekly payment of 60% of their earnings (subject to a maximum of €450 per week) for the first three months, with this rate subsequently decreasing in three-month intervals. The Regulations come into operation on 31 March 2025.

No. 684 of 2024: Credit Union Fund (Stabilisation) Levy Regulations 2024

These Regulations require each credit union in operation on 1 January 2025 to pay a levy to the Minister for Finance at the rate of 0.001384% of the total assets of the credit union not later than 28 February 2025.

No. 698 of 2024: Broadcasting Act 2009 (Section 21) Levy (No. 2) Order 2024

This Order imposes a levy on specified classes of broadcasting service providers to the amount required by Coimisiún na Meán ("the Commission") to meet its expenses properly incurred and its working capital requirements, where these expenses and requirements are not met in any other way. The Commission shall calculate the applicable levy in respect of each class of broadcasting service provider in accordance with the methodologies set out in the Order. This Order came into operation on 1 January 2025.

No. 710 of 2024: Finance Act 2024 (Section 54(1)) (Commencement) Order 2024

This Order states that sub-section 1 of s54 of the Finance Act 2024 shall come into operation on 1 March 2025. Sub-section 1 inserts a new Chapter in Part 19 of the Taxes Consolidation Act 1997, providing for capital gains tax (CGT) relief for investment in innovative small and medium-sized enterprises. The effective reduced rate of CGT will be 16% for individual direct investors and 18% for individuals who invest via a qualifying partnership. This relief aims to attract investment and to position Ireland as an attractive location for angel investors.

No. 725 of 2024: European Union (Value-Added Tax) Regulations 2024

These Regulations came into operation on 1 January 2025 and amend the Value-Added Tax Consolidation Act 2010 to transpose into Irish VAT law Council Directive (EU) 2022/542 of 5 April 2022. The Regulations amend the place-of-supply rule in relation to virtual cultural, sporting or similar events to provide that where such virtual events are supplied to a non-taxable person, the place of supply is where that non-taxable person is established. The Regulations also provide that the margin scheme cannot apply in respect of works of art or similar that are supplied to or imported by a taxable dealer where those supplies have been subject to a reduced rate of VAT.

No. 10 of 2025: Charities (Amendment) Act 2024 (Commencement) Order 2025

Under this Order a number of the provisions of the Charities (Amendment) Act 2024, including s40, came into force on 27 January 2025. Section 40 amends s851A(8) of TCA 1997 by replacing the provisions of s851A(8)(f) with new provisions. The new provisions of s851A(8)(f) outline expanded circumstances in which a Revenue officer may disclose taxpayer information, to include when such disclosure is required by the Charities Regulatory Authority for the purpose of or in connection with the performance of its functions under the Charities Act 2009.

Tax Appeals Commission Determinations

Catherine Dunne BL

Published from 1 November 2024 to 31 January 2025

Income Tax

170TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

174TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

175TACD2024

Appeal regarding tax treatment of payments under the Single Farm Payment Scheme as income of an individual or as income received by a company formed, owned and managed by the appellant

s18 TCA 1997

Case stated requested: Unknown

176TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

178TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

179TACD2024

Appeal regarding refund in respect of health expenses incurred while in Fair Deal/HSE Nursing Home Loan Scheme

s469 TCA 1997

Case stated requested: Unknown

183TACD2024

Appeal regarding material interest in a fund that was not tax resident in Ireland (see also 42TACD2024; 104TACD2024–105TACD2024; 107TACD2024–117TACD2024; 137TACD2024–141TACD2024; 143TACD2024–147TACD2024; 155TACD2024–159TACD2024)

s740 TCA 1997, s743 TCA 1997

Case stated requested: Unknown

189TACD2024

One of a series of grouped determinations on the status of an investment in a fund. Each of the appellants had been an investor in a fund and had treated that investment as being subject to CGT treatment.

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

190TACD2024

One of a series of grouped determinations on the status of an investment in a fund. Each of the appellants had been an investor in a fund and had treated that investment as being subject to CGT treatment.

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

191TACD2024

One of a series of grouped determinations on the status of an investment in a fund. Each of the appellants had been an investor in a fund and had treated that investment as being subject to CGT treatment.

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

193TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

197TACD2024

One of a series of grouped determinations on the status of an investment in a fund. Each of the appellants had been an investor in a fund and had treated that investment as being subject to CGT treatment.

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

01TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

02TACD2025

Appeal regarding application of non-resident aggregation relief

s1017 TCA 1997, s1018 TCA 1997, s1032 TCA 1997

Case stated requested: Unknown

06TACD2025

Appeal regarding underpayment of USC

s531AM TCA 1997, s960C TCA 1997, s960E TCA 1997

Case stated requested: Unknown

11TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

13TACD2025

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

Capital Gains Tax

198TACD2024

Appeal regarding application of minority discount to the disposal of the appellant's shareholding

s547 TCA 1997, s548 TCA 1997, s549 TCA 1997

Case stated requested: Unknown

This determination is covered in more detail elsewhere in this issue, Direct Tax Cases: Decisions from the Irish Courts and TAC Determinations.

Income Tax and Capital Gains Tax

169TACD2024

Appeal regarding material interest in a fund that was not tax resident in Ireland (see also 42TACD2024; 104TACD2024–105TACD2024; 107TACD2024–117TACD2024; 137TACD2024–141TACD2024; 143TACD2024–147TACD2024; 155TACD2024–159TACD2024)

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

[171TACD2024]

Appeal regarding material interest in a fund that was not tax resident in Ireland (see also 42TACD2024; 104TACD2024–105TACD2024; 107TACD2024–117TACD2024; 137TACD2024–141TACD2024; 143TACD2024–147TACD2024; 155TACD2024–159TACD2024)

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

181TACD2024

Appeal regarding material interest in a fund that was not tax resident in Ireland (see also 42TACD2024; 104TACD2024–105TACD2024; 107TACD2024–117TACD2024; 137TACD2024–141TACD2024; 143TACD2024–147TACD2024; 155TACD2024–159TACD2024)

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

182TACD2024

Appeal regarding material interest in a fund that was not tax resident in Ireland (see also 42TACD2024; 104TACD2024–105TACD2024; 107TACD2024–117TACD2024; 137TACD2024–141TACD2024; 143TACD2024–147TACD2024; 155TACD2024–159TACD2024)

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

188TACD2024

Appeal regarding material interest in a fund that was not tax resident in Ireland

s740 TCA 1997, s743 TCA 1997, s745 TCA 1997

Case stated requested: Unknown

Income Tax and VAT

07TACD2025

Appeal regarding treatment of income as derived from self-employment or employment, following a prompted voluntary disclosure and Form 46G returns made by third parties

s18 TCA 1997, s19 TCA 1997, s959B TCA 1997, s2 VATCA 2010

Case stated requested: Unknown

VAT

172TACD2024

Appeal regarding application of the four-year statutory limitation period

s99(4) VATCA 2010

Case stated requested: Unknown

180TACD2024

Appeal regarding application of the four-year statutory limitation period

s101 VATCA 2010

Case stated requested: Unknown

185TACD2024

Appeal regarding certification of VAT vouchers in respect of goods imported

s58 VATCA 2010

Case stated requested: Unknown

186TACD2024

Appeal regarding VAT treatment of free promotional gifts

s19 VATCA 2010, Articles 14, 16, 73 and 110 VAT Directive

Case stated requested: Unknown

This determination is covered in more detail elsewhere in this issue, VAT Cases

04TACD2025

Appeal regarding VAT refund to taxable persons not established in the Member State of refund but established in another Member State

Council Directive 2006/112/EC, Council Directive 2008/9/EC, s101 VATCA 2010

Case stated requested: Unknown

12TACD2025

Appeal regarding application of the four-year statutory limitation period

s119(h) VATCA 2010

Case stated requested: Unknown

Relevant Contracts Tax

173TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

05TACD2025

Appeal regarding application of the 0% rate of RCT

s530E TCA 1997, s530G TCA 1997

Case stated requested: Unknown

Artists' Exemption

177TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

192TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

194TACD2024

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

03TACD2025

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

Vehicle Registration Tax

184TACD2024

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

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

Vacant Homes Tax

187TACD2024

Appeal regarding charge to VHT

s653AO TCA 1997

Case stated requested: Unknown

Local Property Tax

195TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

196TACD2024

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

Employment Wage Subsidy Scheme

08TACD2025

Appeal regarding application of EWSS and 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

09TACD2025

Appeal regarding application of EWSS and 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

Help to Buy

10TACD2025

Appeal regarding qualifying property for Help to Buy scheme

s477C TCA 1997

Case stated requested: Unknown

This determination is covered in more detail elsewhere in this issue, Direct Tax Cases: Decisions from the Irish Courts and TAC Determinations

Revenue Commissioners' Update: Enhanced Reporting Requirements

Since the introduction of PAYE Modernisation (PMOD) on 1 January 2019, employers have been required to report their employees' pay and deductions in real-time, when they operate payroll. The introduction of Enhanced Reporting Requirements (ERR) on 1 January 2024 further enhanced the real-time reporting carried out by employers.

The ERR were introduced through Finance Act 2022, and require employers to report details of certain expenses and benefits made, without the deduction of tax, to employees and directors. There are three reportable benefits within the scope of the ERR and they are as follows:

1) the remote working daily allowance,

2) the payment of untaxed travel and subsistence expenses, and

3) the small benefit exemption.

The ERR require employers and their agents to ensure they are satisfied that the correct tax treatment is applied to specific payments, expenses and benefits at the time they are given or paid to an employee. This has led to significant improvements in accuracy for employers and employees.

Revenue has supported and facilitated employers and agents in familiarising themselves with the ERR obligations. This is in line with Revenue's approach to the introduction of other new reporting regimes.

For the first six months of 2024, (January to June), a "Service for Compliance" approach was taken by Revenue. This allowed employers to commence reporting and seek assistance from Revenue's National Employer Helpdesk (NEH) in meeting their obligations. This was extended for a further 6 months (July – Dec). Employers are expected to have commenced reporting by the end of 2024, or to be actively engaged with Revenue if issues persisted.

During this period, Revenue hosted over 40 outreach events and information sessions (including live Q&A), with approximately 1,200 employers and agent in attendance. This provided them with help and support in fulfilling the new reporting requirements. Ongoing collaboration with stakeholders was a high priority for Revenue throughout this period. Stakeholder co-operation and contribution during the change management process was paramount to its successful implementation.

These changes have resulted in tighter controls being implemented by employers, and will lead to significant improvements in compliance for both employers and employees.

As at the end of December 2024, over 55,000 employers have reported in excess of €1.6 billion in payments to employees under the reportable categories. The latest data shows a consistent rise in reporting into 2025.

The real time data provided by employers through PMOD and ERR assists Revenue in assessing risks associated with benefits and expense payments, and the operation of PAYE on all taxable income, in real-time. Revenue's 3-level Compliance Intervention Framework provides for a proportionate intervention response based on taxpayer behaviour and the particular risks identified. Real time data serves to enhance Revenue's data-driven risk assessments, focusing on the riskiest cases and reducing the likelihood of a compliance intervention for compliant taxpayers.


Harry Harrison
Tax Partner, PwC Ireland
Paul McKenna
Tax Director, PwC Ireland
Sarah Bradley *(Not Pictured)*
Tax Senior Manager, PwC Ireland

Pillar Two: Updates and Points to Consider for 2025

Introduction

The year of 2024 was another busy one in terms of the evolution of Pillar Two of the Global Anti-Base Erosion (GloBE) rules, and there are no signs of its slowing down in 2025. Finance Act 2024 legislated for additional guidance and brought in some legislative changes, and Revenue issued and updated the Tax and Duty Manuals. The OECD published a Pillar Two adminstrative guidance package on 15 January 2025, containing several additional documents. Below we summarise the key Pillar Two updates from 2024 and include some points for businesses to consider going into 2025.

OECD Pillar Two GloBE Administrative Guidance Package

The OECD on 15 January released additional Pillar Two Administrative Guidance on the Global Anti-Base Erosion (GloBE) Model Rules and several related documents aimed at streamlining the administration of the global minimum tax. This includes guidance on transition rules on deferred tax assets (Article 9.1 Model Rules), a list of countries that have (temporary) 'qualified' Pillar Two rules, an updated GloBE Information Return (GIR) and related Commentary, an updated XML Schema, and a Multilateral Competent Authority Agreement (MCAA) to facilitate central filing and exchange of the GIR.

The guidance aims to clarify the application of the GloBE Model Rules and standardise the collection and dissemination of GIR data by and between implementing jurisdictions. For many businesses, the guidance on Article 9.1 will be the most impactful. Its measures will need to be considered when calculating GloBE effective tax rates (ETR) or determining safe harbours. The 9.1 guidance may also significantly alter the Adjusted Covered Tax input, directly impacting the ETR and the amount of Top-up Tax payable.

Finance Act 2024: Pillar Two Measures

Finance (No. 2) Act 2023 marked a significant milestone from a corporate tax perspective, with the introduction of Pillar Two legislation in Ireland. Now, over a year into the implementation of the rules, Finance Act 2024 (via Finance Bill 2024) legislated for updates to the Irish Pillar Two rules. The updates relate mainly to the Pillar Two GloBE Administrative Guidance released on 18 December 2023 ("December 2023 AG") and the Pillar Two GloBE Administrative Guidance released on 17 June 2024 ("June 2024 AG"). The updates also include clarification on the operation of certain aspects of the domestic top-up tax calculation.

By addressing these areas, Finance Act 2024 provided some helpful clarifications that resolve some areas of uncertainty in the existing legislation. Further updates are, however, expected through future releases of OECD Administrative Guidance.

The key Pillar Two measures introduced in 2024 include:

- updates to reflect elements of the December 2023 AG and elements of the June 2024 AG,
- updates to clarify the operation of certain aspects of the domestic top-up tax calculation,
- clarification with respect to the order of utilisation of loss deferred tax assets and
- an additional carve-out from the qualified domestic top-up tax (QDTT) for stand-alone entities that are "investment undertakings".

OECD Administrative Guidance, December 2023

Finance Act 2024 legislated for a number of aspects of the December 2023 AG. Section 111AJ TCA 1997, which provides for the transitional country-by-country reporting (CbCR) safe harbour, is amended to include the detailed provisions outlined in the OECD guidance in respect of "hybrid arbitrage arrangements". The rules on hybrid arbitrage arrangements shall apply in respect of accounting periods commencing on or after 31 December 2024.

The provisions stipulate that for the purposes of determining whether the transitional CbCR safe harbour applies to a multinational enterprise (MNE) group, any expense or loss or income tax expense arising as a result of a hybrid arbitrage arrangement entered into after 15 December 2022 shall be excluded from the MNE's profit and loss in respect of the jurisdiction. A hybrid arbitrage arrangement includes a deduction/non-inclusion arrangement, a duplicate loss arrangement and a duplicate tax recognition arrangement.

The section is also updated to include (1) the guidance issued in respect of the appropriate treatment of purchase price accounting adjustments from a transitional CbCR safe harbour perspective and (2) confirmation that where an MNE group does not file a CbC report, it can rely on data from qualified financial statements that would have been reported in a CbC report if the MNE group were required to file one.

These provisions bring some welcome clarification in respect of the operation of the CbCR safe harbour but add further complexity to what is regarded as a simplification measure.

Finance Act 2024 also introduced a new section, s111AKA TCA 1997, which provides for the "simplified calculations safe harbour" to be applied to non-material constituent entities by eligible groups.

OECD Administrative Guidance, June 2024

Finance Act 2024 legislates for a number of areas provided for in the June 2024 AG, including:

- Section 111A TCA 1997 expands the definition of "hybrid entity" and clarifies the definition of "owner" when it comes to the assessment of whether a flow-through entity is a tax-transparent or reverse hybrid entity.

- Section 111X TCA 1997 has been updated to reflect the methodologies for identifying and tracking categories of deferred tax liabilities that are subject to recapture.
- Section 111X(16) TCA 1997 addresses scenarios where divergences between GloBE and accounting carrying values arise. It provides that deferred tax assets and liabilities for Pillar Two purposes are determined by reference to the GloBE carrying value, with the total deferred tax adjustment determined accordingly.
- The June AG provides guidance on how jurisdictions could treat "securitisation entities" that are consolidated into groups where an ownership interest in the entity did not exist. It acknowledges that these securitisation vehicles are typically set up to ensure tax neutrality. In an effort to preserve this neutrality, the OECD provided optionality to jurisdictions regarding the application of a QDTT to a securitisation entity. Ireland has introduced an option that removes the QDTT from the securitisation entity if there are other, non-securitisation entities in the Irish group. However, if there are no such entities, any QDTT due is to be borne directly by the securitisation entity. This ensures that the "switch-off" rule does not apply when applying the QDMTT safe harbour.

Again, the updates to the Irish legislation to include the various aspects of the June AG provide some helpful clarity on the operation of the rules. However, with additional guidance invariably comes additional complexity. In particular, the aspects of the rules dealing with divergences between the GloBE rules and accounting carrying values are extremely complex and in practice mean that any transfer of assets between group entities must be considered in detail on a case-by-case basis and will ultimately require the Pillar Two carrying value of assets to be tracked separately from the actual financial accounts for many years. Indeed, even the simplification measures in respect of deferred tax liability recapture are notorious for their complexity.

Domestic top-up tax

Transfer of assets and carrying value of acquiring entity

Section 111AN TCA 1997 outlines the rules with respect to the transfer of assets and liabilities in a Pillar Two period. The amendments to this section in Finance Act 2024 provide that if the acquiring constituent entity meets the conditions to prepare its QDTT calculation using local financial statements under s111AAD(2)(e)(3A) TCA 1997, the acquiring entity's carrying value of the acquired assets and liabilities shall be determined using the local financial statement accounting standards. Previously, the carrying value was to be determined by reference to the consolidated financial statements.

Substance-based income exclusion where local accounts are used for QDTT

The substance-based income exclusion (SBIE) recognises the substantive economic activities of multinational groups in low-tax jurisdictions by providing a meaningful reduction to excess profits that are subject to top-up tax.

In the context of calculating the QDTT based on local financial statements, Irish legislation was previously unclear regarding which accounts should be used for the purposes of calculating the SBIE. Finance Act 2024 confirms that where the QDTT calculation is prepared based on local financial statements under s111AAD(2)(e)(3A) TCA 1997, the calculation of the SBIE should also be based on local accounts.

Election for gains and losses that arise on fair-valued or impaired assets and liabilities

Section 111P(6)(a) TCA 1997 provides for an election for gains and losses in respect of assets and liabilities that are subject to fair-value or impairment accounting such that these gains and losses are determined in accordance with the realisation principle in the calculation of qualifying income or loss. Previously, the assets and liabilities had to be subject to fair-value or impairment accounting in the consolidated financial statements.

Finance Act 2024 confirms that if the constituent entity meets the conditions to prepare its QDTT calculation using local financial statements under s111AAD(2)(e)(3A) TCA 1997, the election can be made for assets and liabilities that are subject to fair-value or impairment accounting in the local accounts.

Order of utilisation of loss deferred tax asset

Section 111X(8) TCA 1997 provides that where a deferred tax asset is attributable to a qualifying loss that has been recorded at a rate lower than 15% and is subsequently recalculated at 15%, the total deferred tax adjustment shall be reduced accordingly.

Finance Act 2024 confirms that for the purposes of determining the total deferred tax adjustment amount, the reversal of a loss deferred tax asset shall be attributable first to a loss deferred tax asset that arose in the most recent fiscal year until the balance of the loss deferred tax asset is reduced to zero. If necessary, the loss deferred asset that arose in the next most recent fiscal year is then reversed, and so on for preceding fiscal years until the balance is exhausted.

The above updates to the domestic top-up tax in Finance Act 2024 apply in respect of accounting periods commencing on or after 31 December 2024.

Tax and Duty Manuals Parts 04A-01-01 and 04A-01-02: Updated Versions

On 17 December 2024 Revenue published updated versions of the following Tax and Duty Manuals (TDMs):

- Part 04A-01-01, "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union – Administration", and
- Part 04A-01-02, "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union".

After their initial release in September 2024, the TDMs were updated following feedback from various stakeholders. Two of the main updates related to intra-group financing arrangements and an arm's-length requirement.

Intra-group financing arrangements

The TDM released in September 2024 contained confirmations with respect to scenarios where a commensurate increase in taxable income of a high-tax counterparty would arise in the context of intra-group financing arrangements.

One such scenario was where the lender has losses forward that are used to shelter interest income. The TDM contains an update with respect to this position and notes that where the losses carried forward by the lender are used to shelter the interest income from an intra-group financing arrangement, and those losses become recognised for accounting purposes solely as a consequence of the intra-group financing arrangement's taking place (and the recognition of income as a consequence of the arrangement), there will not be a commensurate increase in the taxable income of a high-tax counterparty.

The TDM also confirms that where a group qualifies for the CbCR safe harbour in respect of a jurisdiction, Revenue will accept that a member of the group located in that jurisdiction is in a jurisdiction that is not a low-tax jurisdiction, i.e. located in a high-tax jurisdiction.

A further clarification is provided regarding scenarios where a borrower is a hybrid entity (treated as fiscally transparent in the owner's jurisdiction but not in its own location) and pays interest on a debt instrument that it has issued, resulting in the owner's being taxed on the borrower's income without deducting the interest expense, whereby, on the basis that the borrower's income is included in the taxable income of the owner, this results in a deemed commensurate increase in the taxable income of the owner.

The updated TDM also confirms that the calculation of the hypothetical effective tax rate when determining whether a constituent entity is a low-tax entity or a high-tax counterparty must be done without considering the income or expense accrued from the intra-group financing arrangement. It also confirms that equivalent adjustments must be made to covered taxes, meaning that if the income or expense related to the intra-group financing transaction is excluded, the corresponding increase or decrease in covered taxes must also be excluded.

Arm's-length requirement

Guidance on the arm's-length requirement of the Pillar Two rules has been updated and notes that there is no interaction between the transfer pricing provisions of Part 35A TCA 1997, which apply for the purposes of calculating corporation tax, and the application of the arm's-length principle contained in s111P(4) TCA 1997 for the purposes of GloBE top-up taxes. The provisions must be considered independently.

It was noted by Revenue that TDM Part 04A-01-02, "Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union", will be further updated in due course to reflect the amendments made to Part 4A TCA 1997 by Finance Act 2024.

2025 Considerations for Pillar Two

Groups within the scope of the Pillar Two rules, which have been in force in Ireland and many other jurisdictions since the beginning of 2024, must focus on post-year-end requirements for Pillar Two and look forward to 2025. Focusing on the following key areas will ensure that in-scope businesses are ready for upcoming audits and position them for future Pillar Two compliance requirements.

Under-taxed profits rule

The UTPR top-up tax rule is a secondary taxing rule designed to operate as a backstop to the income inclusion rule top-up tax. It ensures that top-up tax is allocated to group entities in implementing jurisdictions. UTPR top-up tax may apply if a group does not have a parent company, in the ownership chain, in a jurisdiction that has implemented Pillar Two. The UTPR comes into effect for fiscal years commencing on or after 31 December 2024. It is therefore important that groups assess the potential impact of this rule.

Country-by-country reporting safe harbour

Many groups will have assessed their eligibility for the transitional CbCR safe harbour. For those groups that anticipate the CbCR safe harbour's applying in respect of certain jurisdictions in which they operate, it is important to verify their pre-year positions once 2024 actual data is available. It is also critical that groups evaluate the qualifying nature of the CbCR to ensure that it meets the detailed requirements as set out in legislation and guidance, such that the report can be relied on for the purposes of the safe harbour.

Pillar Two Tax liability assessment

Accurately calculating your Pillar Two effective tax rate (ETR) and any potential top-up tax for the year 2024 is a critical step. If you have not yet modelled the calculations, it is essential to consider the process for extracting the required data from your accounting systems. Once the relevant data is available, the focus shifts to calculating the jurisdictional ETR, which involves a series of complex calculations that require a detailed understanding of the Pillar Two rules.

Pillar Two balance sheet

Discrepancies may arise between the book value of assets/liabilities and their corresponding deferred tax positions when viewed through the lens of Pillar Two versus traditional accounting practices. Such differences may include deferred tax assets that are not disclosed in the financial statements owing to materiality or accounting recognition criteria not being met.

Revenue has confirmed in its guidance that groups must maintain a Pillar Two-specific balance sheet/deferred tax schedule with supporting documentation that tracks adjustments from underlying financial data to the total deferred tax adjustment. This must also include the tracking of deferred tax liabilities as per Pillar Two guidelines.

Therefore, in addition to considering the process for extracting data for Pillar Two calculations, consideration should be given to having a robust process in place for preparing and maintaining a Pillar Two balance sheet.

Transaction-level review

It is important that each transaction undertaken in 2024 and those that will be undertaken in 2025 have been assessed from a Pillar Two perspective. Have financing or refinancing transactions been considered in terms of the locations and ETRs of lenders and borrowers, if intra-group? Has the impact of the Pillar Two rules on the carrying value of assets been considered? Have pricing arrangements been determined in accordance with the arm's-length principle? These questions are fundamental components of the tax due diligence with respect to Pillar Two.

Julia Considine
Director, Private Clients, Deloitte Ireland LLP

Capital Acquisitions Tax Changes Introduced by Finance Act 2024

Introduction

This article explains and examines the changes introduced to capital acquisitions tax (CAT) by the Finance Act 2024 ("the Act"). The changes include, most notably, an increase to the tax-free group thresholds, an amendment to the close-relative loan filing requirements and updates to the application of agricultural relief, albeit that the last is subject to commencement by Ministerial Order.

Group Thresholds

The group thresholds have not increased since 2019. As a reminder, CAT at 33% applies to the taxable value of gifts and inheritances in excess of the relevant group threshold.

The Group A threshold is applicable to a gift or inheritance taken by the child of a disponer or minor child of a deceased child of the disponer. It also includes the child of the civil partner of the disponer, the minor child of a deceased child of the civil partner of the disponer, the minor child of the civil partner of a deceased child of the disponer and the minor child of the civil partner of a deceased child of the civil partner of the disponer. It also includes a parent of the disponer; however, this is applicable only to an inheritance and only if the interest taken is not a limited interest (i.e. there are no conditions or restrictions attached to the interest).

The Group B threshold is applicable to a lineal ancestor/descendant of the disponer, a brother or a sister of the disponer, a child of a brother or of a sister of the disponer and a child of the civil partner of a brother or of a sister of the disponer other than those included in Group A.

The Group C threshold applies to all relationships other than those included in Groups A and B.

The new thresholds are:

- Group A: €400,000, increased from €335,000;
- Group B: €40,000, increased from €32,500; and
- Group C: €20,000, increased from €16,250.

The revised tax-free thresholds apply to all gifts and inheritances taken on or after 2 October 2024.

It is important that, for each taxable gift or inheritance, any prior benefits are aggregated. The basis of the aggregation calculation, provided in Schedule 2, paragraph 3, of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003), means that the additional threshold amount is not available where prior benefits exceed the current threshold, as we need to consider the **taxable values** of the prior gifts and inheritances within the same group category taken since 5 December 1991 and there is no regard in the aggregation calculation for the available thresholds at the time of the prior gifts.

Thus, those who have previously exceeded a particular threshold in the past greater than the new threshold and who have paid CAT will not be able to "benefit" from the current increased threshold, whereas those who have not yet reached the threshold can avail of the increased limit.

For example, if a child has received an inheritance with a taxable value of €500,000 in 2023 (with no prior gifts or inheritances), they will have paid CAT at 33% on €165,000, given the previous threshold of €335,000. On receipt of a subsequent gift or inheritance, they cannot avail of the additional €65,000, i.e. the increase in the threshold to €400,000. However, if they received the inheritance on or after 2 October 2024, they would pay CAT only on €100,000.

This may be seen as unfair in that some taxpayers will have been able to benefit only from the previous, lower threshold and will have paid CAT on amounts above that. However, any historical increase or decrease in the thresholds has operated in the same manner.

Close-Relative Loans

Practitioners will be aware that the Finance Act (No. 2) 2023 introduced a filing requirement for loans between close relatives. A detailed analysis of same was included in my article "Impact of Changes to Capital Acquisitions Tax in Finance (No. 2) Act", *Irish Tax Review*, Issue 1 of 2024.

As outlined, the reporting requirements applied to loans made to a close relative where (1) the recipient was deemed to take a gift by virtue of s40(2) CATCA 2003, (2) no interest had been paid within six months of the following 31 December and (3) the balance of the outstanding loan together with any other "close-relative" loans exceeded €335,000 for at least one day during the year. All of these conditions had to be met for the close-relative loan to be reportable pursuant to s46(4A) CATCA 2003.

The amendment introduced by the Act simply removed the second condition, regarding the payment of interest. This change came into operation on 1 January 2025. Accordingly, any close-relative loan that meets the two conditions (i.e. a deemed gift arises owing to either a low or nil interest rate and the balance of such loans exceeds €335,000) will be subject to a reporting requirements. If the interest being paid is a market-value deposit rate, such that there would be no deemed gift arising under s40(2) CATCA 2003, then the first condition is not met and the loan is not reportable.

The successive changes may give rise to differing treatment of close-relative loans in 2024 (which will be reportable by 31 October 2025) and 2025 (which will be reportable by 31 October 2026). In addition, the threshold of the reportable loans did not increase in line with the increased thresholds and remains €335,000.

Managing the reporting requirements

Section 40 CATCA 2003 requires us to analyse if there is a deemed gift as at 31 December in each year. If a loan has been provided on an interest-free basis, the valuation date for same will be 31 December in each year. This would result in a filing obligation by 31 October in the following year. If the period of free use ends before 31 December, s40(4) treats the gift as being taken immediately before the period's ending.

There are two matters to consider for each loan:

- Is there a taxable benefit that gives rise to a requirement to file a CAT return and/or pay tax? The small-gift exemption and any available threshold could shelter the deemed gift of interest forgone.
- Is the loan a reportable loan under s46(4A)? This analysis is different for 2024 and 2025. If interest was paid on such a loan in the six months from 31 December 2024, then no such filing requirement would arise, provided there is no other reason to file a return. From 1 January 2025, regardless of whether interest was paid, the loan will need to be reported.

On the first question above, given available thresholds and use of the small-gift exemption, it is possible that, for some loans, no requirement to file a return in relation to a benefit arises. Yet the second reporting requirement, under s46(4A), arises and will continue to annually.

For loans that are reportable but do not give rise to a tax liability (through use of thresholds and the small-gift exemption), the burden of additional annual compliance is placed on the borrower. A simplified obligation could have limited this to the point of creation and discharge of the loan.

Discharge of loans

If a specified loan is discharged before 31 August in any year, different filing dates will arise in respect of the two questions outlined above. On the first question, and in accordance with s40(4), the gift is deemed to be taken immediately before the free use ends. For example, for a loan discharged in full on 1 July 2025, the free-use element will be treated as being taken immediately before 1 July 2025, giving rise to a valuation date of 30 June 2025 and a tax return filing deadline of 31 October 2025.

The reporting requirement in s46(4A) requires you to analyse whether interest has been paid within six months of the end of the “relevant period” and whether the outstanding balance when aggregated with other loans exceeds €335,000 in the relevant period. Relevant period has the meaning given to it by s40(1), being the 12 months ending on 31 December in each year, and not the shortened period in s40(4) for gifts that cease earlier in the calendar year. It appears, therefore, that the discharge of a loan before 31 August in any period will give rise to filing requirements in two taxable periods. The first obligation will arise on 31 October in that year, given that s40(4) treats the gift as being taken immediately before the free use ends, whereas the second obligation cannot be analysed until you can review the relevant period that ceases on 31 December that year and results in a filing obligation on the following 31 October. In our example, the second reporting requirement has a deadline of 31 October 2026.

Part 26 of the Revenue Tax and Duty Manual, "Reporting Requirement in Relation to Gifts in Respect of Certain Loans", states that "Revenue accepts that the reporting requirement in relation to a specified loan that is discharged in full on or before 31 August in a particular year can be deferred to 31 October in the following year". On my reading of the legislation, the reporting requirement does not arise until the following year anyway, and the position stated does not address the fact that IT38s will need to be filed in both the year of discharge and the year following the discharge of the loan.

Any close-relative loans should be monitored on an annual basis to ensure that the compliance obligations are met in time. Many families provide loans to their children to assist them with significant purchases such as a family home. It seems that the obligations created by this section are quite onerous and convoluted. Further changes in the Act have only made the reporting requirement more confusing for taxpayers, and making it an annual requirement seems disproportionate for the families concerned, when it could be simplified to a reporting obligation at the time of creation and discharge, particularly in the context of loans that create no tax liability.

Agricultural Relief

The Act introduced a new section, s89A CATCA 2003, which was originally due to apply to gifts and inheritances of agricultural property taken on or after 1 January 2025. However, it was amended before enactment to make the new provisions subject to a Commencement Order. The rationale is to allow time for further engagement and consultation with stakeholders.

The new section was drafted to allow a level of flexibility in how the farmer tests can be met. The new section includes conditions for the disponer and the beneficiary, both of whom must be individuals. I outline below the conditions and the practical considerations that arise.

Disponer conditions

The disponer must for a period of not less than six years before the date of the gift or inheritance have been beneficially entitled in possession to the agricultural property. The new section incorporates similar replacement-property provisions if such property is disposed of and replaced within one year, or within six years if compulsorily acquired. The disponer is also considered to be beneficially entitled to property that is the subject of a discretionary trust.

With regard to the disponer, one of the following conditions must be satisfied:

- The disponer is an active farmer, i.e. he/she holds a relevant qualification and uses agricultural property for the purposes of farming on a commercial basis and with a view to the realisation of profits from that property, or spends at least 50% of his/her normal working time using agricultural property for the purposes of farming on a commercial basis and with a view to the realisation of profits from that agricultural property.
- The agricultural property was leased to an individual who satisfied either of the above conditions.
- A combination of the two conditions above as regards different portions of the agricultural property.

A transitional provision for six years after the commencement of the new section shortens the time period for the disponer to satisfy the above conditions, which must be satisfied instead from the date of commencement of the section to the date of the gift/inheritance. In addition, the period of ownership of a predeceased spouse or civil partner shall count towards satisfying the above conditions. Regarding a disponer who is not ready to meet the above conditions at the date of the commencement of the section, the transitional measures will not allow them to qualify for the relief. It is therefore important that any potential disponers are considering these measures before commencement to ensure that they can meet the above conditions.

Beneficiary conditions

Practitioners will be familiar with the two tests to be applied when determining whether agricultural relief is applicable – the farmer test and the active farmer test. The farmer test will be satisfied if the value of the beneficiary's agricultural property at the valuation date consists of 80% of the market value of their total property after taking the gift or inheritance. The second test can now be satisfied in one of the following ways:

- The beneficiary is an active farmer, i.e. he/she holds a relevant qualification (or obtains same within four years of the date of gift or inheritance) and uses agricultural property for the purposes of farming on a commercial basis and with a view to the realisation of profits from that property, or spends at least 50% of his/her normal working time using agricultural property) for the purposes of farming on a commercial basis and with a view to the realisation of profits from that agricultural property.
- The agricultural property is leased to an individual who satisfies either of the above conditions.
- A combination of the two conditions above as regards different portions of the agricultural property.

Other conditions

Specifically in relation to solar panels, the land on which they are installed will qualify as agricultural property provided the solar panels are installed on no more than half of the total area of land. The disponer and beneficiary conditions need to be met only in respect of that portion of the land that the panels are not installed on.

The same clawback provisions are included as provided for in Finance Act (No. 2) 2023 regarding disposals, and the clawback period runs from the valuation date.

The new section also introduced the flexibility of appropriating of assets during the administration of an estate, and if agricultural property is appropriated to a particular beneficiary, then the property is deemed to have been comprised in that gift or inheritance at the date of the gift or inheritance and can qualify for agricultural relief, provided the other conditions are satisfied.

Areas not addressed

Under the current agricultural relief regime, there is an option to provide a benefit that is subject to a condition that it be invested in agricultural property within two years of the date of the gift/inheritance. This allowed a disponer the opportunity to leave cash to a beneficiary who may meet the farmer test on the condition that the beneficiary use the benefit to acquire agricultural assets such as land, livestock and farm machinery. This provision has not been included in the Act, removing the opportunity for a disponer to allow a beneficiary to acquire additional agricultural property.

The proposed changes to agricultural relief, although they allow flexibility in meeting the farmer tests, give rise to a number of areas that are currently dealt with by way of Revenue concession in the guidance. As the term "individual" is specifically used as a requirement of both the disponer and the beneficiary, it appears that farms leased to someone other than an individual, e.g. a farming partnership/company, will no longer qualify. In the current Revenue guidance in the context of beneficiary requirements, there is concession whereby Revenue will accept that a lease may be to a partnership or to a company. In the case of a lease to a company, the main shareholder must be a working director of the company and must farm the agricultural property on behalf of the company. Where land is leased to a company that is owned equally by a person and his or her spouse or civil partner, at least one of them must satisfy the working director and farming requirements to qualify for the relief. Given the current concessions, it seems unusual that the new section does not place these on statutory footing. It remains to be seen whether similar concessions will be given when the new section commences.

There are a number of areas that need to be addressed before the agricultural relief changes are commenced to deal with the real-life situations faced by farming families. Without further amendments and appropriate concessions, the amended relief will not benefit the farming families it was intended to provide equality to:

- Difficulties could arise in meeting the farmer test where farmland in an estate passes into a discretionary trust.
- Informal farming arrangements where either a formal lease is not in place or the required time is not spent farming could deny the relief. This is particularly relevant for disponers who may lose their capacity and not have appropriate arrangements in place.
- The new section does not deal with the farmhouse where the land is leased, which by current Revenue concession will qualify for relief "provided that the land leased comprises the whole, or substantially the whole, of the agricultural property".

The section has been enacted but awaits commencement. Farmers should look at their arrangements to ensure that they can meet the conditions from the date of commencement for any potential transfers in the coming years.

Section 82: Exemption of Certain Receipts

Section 82 CATCA 2003, which lists various receipts that are exempt from CAT, has been updated to include the receipt by a person of any payment made pursuant to the CervicalCheck non-disclosure ex-gratia scheme, and this amendment is deemed to have come into operation on 11 March 2019. Where such a payment was made at any time in the year of assessment 2019 or 2020 and CAT was paid in respect of same, an application for a repayment of CAT can be made within four years commencing on 31 December 2021.

In addition, any payment made to a person under Phase 1 of the Stardust ex-gratia payment scheme will also be exempt from CAT from 9 August 2024.

Conclusion

The increase in thresholds is welcomed and long awaited. It will be important to monitor all close-relative loans to ensure that the appropriate reporting obligations are met going forward, noting the differences in legislative provisions between 2024 and 2025. It is hoped that, through appropriate consultation, any changes to agricultural relief will not adversely affect those whom it is primarily designed to benefit and support.


Robert Dever
Partner, Pinsent Masons Ireland LLP
Gerry Beausang
Partner, Pinsent Masons Ireland LLP
Brídín Redmond *(Not Pictured)*
Associate, Pinsent Masons Ireland LLP

The Legal and Taxation Aspects of Earn-Outs: Part 2

Introduction

In the first article in this two-part series, "The Legal and Taxation Aspects of Earn-Outs: Part 1", published in *Irish Tax Review*, Issue 4 of 2024, we looked at what an earn-out is and some of the advantages and disadvantages that earn-outs can pose for both buyers and sellers. We also considered the structural elements of an earn-out arrangement, including common performance indicators and benchmarks used for calculating the earn-out, as well as the key elements that the parties should focus on when negotiating the earn-out.

In this article, we examine the tax implications that can arise for the sellers and the buyer from an earn-out arrangement, including the applicability of certain tax reliefs and exemptions. We also consider some other areas where tax issues can arise in the context of earn-outs as negotiated by the parties.

For the purposes of this article, it is assumed that each of the sellers and the buyer are tax resident in Ireland.

Seller Considerations

Contingent and ascertainable consideration

When calculating the gain (or loss) for capital gains tax (CGT) purposes arising on the sale of shares or other assets, the sales proceeds will need to be considered upfront by the sellers. In line with s563(1)(a) of the Taxes Consolidation Act 1997 (TCA 1997), no discount is permitted for any postponement of the right to receive any part of the sales proceeds. This is regardless of whether any part of the sales proceeds may be irrecoverable and/or whether the right to receive any part of them is contingent. In practice, this means that where the parties agree an earn-out arrangement that is subject to a maximum amount, s563(1)(a) requires the sellers to calculate their CGT liabilities based on the maximum earn-out that could be payable by the buyer. Interestingly, the Irish practice and interpretation of s563(1)(a) in cases where the sales proceeds are contingent but ascertainable is different from the equivalent provision in the UK (s48 of the Taxation of Chargeable Gains Act 1992), which applies only where the sales proceeds are contingent but not where they are either unascertainable or variable in nature.

Where any part of the earn-out becomes irrecoverable, the sellers will be entitled to seek a refund of the overpaid duty from Revenue pursuant to s563(1)(b) TCA 1997. The sellers will need to show to the satisfaction of the Revenue inspector that some or all of the earn-out has proved to be irrecoverable. Sellers in these circumstances should be mindful that procedural matters can give rise to difficulties when seeking a refund under s563(1)(b), which is highlighted in *Harrahill v O'Donnell* [2017] IEHC 483. There is no statutory obligation on Revenue to pay interest in relation to a refund pursuant to s563(1)(b) because the assessment will have been raised in accordance with the seller's own tax return. Although a time limit of four years generally applies to claims for repayments of tax under s865 TCA 1997, this provision is specifically disapplied for refunds pursuant to s563(1)(b). Payments will often be made under the earn-out over a number of years after closing (typically, between three and five years) by reference to the target's EBITDA in the financial year. This means that where an overall maximum for the earn-out was agreed by the parties, any claim for a refund of overpaid CGT is unlikely to be successful until after the last earn-out payment is payable. This is unless the sellers are able to satisfy the Revenue inspector that no further earn-out payments will be received by them.

Unascertainable consideration

Although s563(1)(a) TCA 1997 applies to a situation where the sales proceeds are contingent or ascertainable in nature, it does not contain any provision for dealing with the scenario where the sales proceeds are wholly unascertainable. The English courts have set out the rules to be applied in cases of unascertainable or variable deferred consideration, most notably in *Marren v Ingles* [1980] 1 WLR 983. That case established that the right of a seller of shares in a company to deferred consideration that includes an unascertainable element constitutes a chose in action, which is an asset for CGT purposes. *Marren v Ingles* also confirmed that the realisation of the right to the payment of deferred consideration constitutes a capital sum derived from that asset. This matter has not come before the Irish courts yet, but it is understood that Revenue's practice is to adopt *Marren v Ingles* principles in cases of unascertainable consideration. As mentioned above, the Irish position in cases of variable deferred consideration is to apply s563(1)(a) rather than *Marren v Ingles* principles.

In the case of earn-outs, the application of *Marren v Ingles* principles can give rise to a number of issues. First, the right of the sellers to deferred consideration, being the earn-out payment, will constitute consideration for the disposal of the shares in the target and so will need to be brought into each of the sellers' CGT computation relating to that disposal. Valuing this right in these circumstances can be difficult, although the value tends to be lower than the forecasted earn-out once a discount for uncertainty and the time value of money have been factored in. Where there is a range of valuations that are reasonable to adopt, the sellers might seek to use a higher or a lower one, depending on their circumstances. For example, while a higher valuation would result in the sellers paying more CGT upfront, the overall effective tax rate on the sale may be lower where the sellers are able to avail of tax reliefs, such as entrepreneur relief or retirement relief (in the case of individual sellers) or the substantial shareholding exemption (SSE) under s626B TCA 1997 (in the case of corporate sellers), on the share sale. Second, once the earn-out payment has been received, there will be a further disposal for CGT purposes, with the base cost of that right being the agreed value of the right on the date it was created. Where the earn-out is paid out in instalments over a number of years, each receipt will constitute a part-disposal of the right to the earn-out payment (with the chargeable gain arising on each instalment payment typically being the difference between the amount of the payment and the pro-rated value of the right to the earn-out payment). A concern that can arise for the sellers is that the actual earn-out received may be lower than the amount brought into the CGT computation in respect of the share sale, as it will not be possible to carry back the capital loss arising and offset it against the gain that arose on the sale of the shares in the previous tax year. Instead, this loss can be used by the seller only against chargeable gains arising in either the same or future tax years and may constitute a trapped loss where the shares constituted the seller's only chargeable asset. As adverted to above, another consideration arising from the application of *Marren v Ingles* principles is that the nature of the right to the earn-out payment means that sellers may not be in a position to benefit fully from certain tax reliefs or exemptions (this is considered further below in relation to both individual and corporate sellers). Sellers will also need to be mindful that the CGT rate when the disposal of the right to the earn-out payment occurs may be different from the applicable rate when the shares were sold.

Please see the examples at the end of this article, which illustrate the differing CGT treatment where consideration is ascertainable as opposed to unascertainable in cases involving an earn-out arrangement.

Hardship

Where sales proceeds are payable by instalments over a period of at least 18 months, Revenue may agree on a case-by-case basis to the CGT being paid by instalments under s981 TCA 1997. The earn-out period will often exceed this length of time, so this is something that may be relevant to a seller. The seller will need to demonstrate to Revenue that they would suffer undue hardship if all of the CGT was paid upfront. If agreed, the seller can discharge the CGT liability over a maximum of five years (or the time when the last earn-out payment is payable, if shorter).

Potential impact of earn-outs on entrepreneur relief and other tax reliefs/exemptions

In the absence of (revised) entrepreneur relief, CGT will be payable by the individual sellers at a rate of 33% in respect of the sale of their shares in the target. Where the conditions for entrepreneur relief are satisfied, the rate payable is reduced to 10% on the first €1m of lifetime gains under s597AA TCA 1997. Although a seller may be in a position to avail of entrepreneur relief in relation to their shares in the target at the date of sale, where the earn-out is wholly unascertainable, *Marren v Ingles* principles will apply. In those circumstances, entrepreneur relief will not apply in respect of the disposal of the right to the earn-out payment because that right does not constitute shares or any other asset that qualifies for entrepreneur relief. This means that a seller may be subject to a higher effective tax rate on the difference between the earn-out received and the value of the right to the earn-out payment as included in the CGT computation relating to the share sale. This is unlikely to be a concern for sellers who can fully utilise the relief up to the lifetime limit as part of the sale, although there is still potential for a trapped loss to arise where the value attributed to the right to the earn-out payment is higher than the earn-out ultimately received. For this reason, it may be more beneficial for the sellers who will be claiming entrepreneur relief to negotiate with the buyer for a cap to be applied to the earn-out in order for the provision in s563(1)(a) TCA 1997 to apply instead, so that those sellers can maximise the sales proceeds that are subject to the 10% rate (with a refund of overpaid tax to be sought under s563(1)(b) if the maximum earn-out is not received).

Where a seller avails of entrepreneur relief in relation to the sale of the shares but retains some shares (to be disposed of to the buyer at a later date, such as pursuant to a put and call option agreement), there is scope for entrepreneur relief to apply to the subsequent disposal on the basis that the three-year ownership requirement can be satisfied at any time before the disposal. This was not always the case, as before 1 January 2021 the requirement to own at least 5% of the ordinary shares of the target was in respect of a continuous period of three years in the five-year period immediately before the disposal. As it stands, sellers in these circumstances should be mindful that the requirement to act in a managerial or technical capacity for the target for a continuous period of three years in the period of five years before the share sale still applies. Where a seller ceases to be employed by the target in such a capacity after the initial share sale, this can impact on the availability of entrepreneur relief on the subsequent disposal of the remaining shares.

Sellers who are looking to avail of a form of tax relief other than entrepreneur relief may run into similar issues to those outlined above due to the earn-out arrangement. This can include a situation where the conditions for retirement relief under s598 or s599 TCA 1997 are satisfied in relation to the shares in the target where the right to the earn-out payment is acquired under *Marren v Ingles* principles. Careful consideration will need to be given by affected sellers and their advisers to the valuation of the right to the earn-out payment and, once this value is aggregated with the consideration received on closing, how this compares to the financial limits for retirement relief that may be relevant to that seller and any potential withdrawal of the relief that can arise once aggregation rules are taken into account. The scope for marginal relief may be particularly relevant in cases involving a claim for retirement relief where *Marren v Ingles* principles apply.

Corporate sellers

Earn-outs are not typically associated with corporate sellers, but there can be circumstances where a corporate seller may agree to an earn-out structure in the context of a share sale. One of the more common instances of a corporate seller's involvement in an earn-out is where key staff who are also shareholders hold some of their interests in the target via a personal holding company. Another example is where the corporate seller is a minority shareholder that cannot dictate the structure of the deal. Where there is a mix of individual and corporate sellers, the corporate seller may seek to receive its full share of the sales proceeds at completion, with any earn-out being paid only to individual sellers (who are often being retained in key positions).

The tax treatment of a corporate seller selling its shares in the target where it will be participating in an earn-out arrangement is broadly the same as the tax treatment of individual sellers. However, a key concern for a corporate seller in this position will often be whether the SSE will apply to all of the sales proceeds received. Provided the relevant conditions for the exemption are satisfied, the SSE will exempt the selling company's gain from corporation tax on chargeable gains arising on the sale of the shares. However, an issue can arise where *Marren v Ingles* principles apply, as the SSE will not be available in respect of any gain representing the difference between the earn-out received and the value of the right to the earn-out payment as included in the CGT computation relating to the share sale. The same issue does not arise where s563(1)(a) TCA 1997 applies instead, such as where a maximum earn-out is in place. For this reason, it is more favourable (at least from a tax perspective) for a corporate seller that can avail of the SSE to agree with the buyer to put a cap in place in respect of its element of the earn-out. In practice, inserting a cap on the potential payout under the earn-out can be difficult for a corporate seller to accept from a commercial perspective, especially where the buyer is not necessarily pursuing a cap. This can be a further reason why a corporate seller may be unwilling to be involved in the earn-out structure, unless it is confident that a sufficiently high maximum earn-out can be agreed with the buyer insofar as its element of the earn-out is concerned.

Buyer Considerations

The sellers will be focused on the implications of the earn-out from a CGT perspective, but the buyer will also need to be mindful of certain issues arising from the earn-out arrangement.

Section 980 TCA 1997

In the case of a share sale where the sales proceeds exceed €500,000, the sellers will need to obtain a CGT clearance certificate under s980 TCA 1997 where the target derives more than half of its value directly or indirectly from Irish specified assets. These include Irish land and buildings; Irish minerals or any rights, interests or other assets in relation to mining or minerals or the searching for minerals; and exploration or exploitation rights in a designed area (as defined in the Maritime Jurisdiction Act 2021). Where the above criteria are satisfied but the sellers fail to provide the buyer with a certificate on closing, the buyer will need to withhold 15% of the sales proceeds and account for same to Revenue within 30 days.

In the case of an earn-out to which s563(1)(a) TCA 1997 applies, the sellers will often seek to include the maximum amount that may be paid under the share purchase agreement (SPA) when applying to Revenue for the CGT clearance certificate. In these circumstances, the buyer will not typically need to insist on the sellers providing a further clearance certificate when a payment arises under the earn-out. In contrast, where the consideration shown on the certificate provided by the sellers on closing does not take into account any additional amounts that may be payable under the earn-out, the buyer should ensure that the sellers provide a further clearance certificate before any earn-out payment is paid, with the amount reflected on the certificate matching the relevant earn-out payment.

By comparison, where *Marren v Ingles* principles apply, it is unlikely that the right to the earn-out payment will be treated as falling within the scope of s980 TCA 1997. However, the buyer may still insist on a CGT clearance certificate being provided by the sellers in respect of each earn-out payment that becomes payable.

Stamp duty

Section 44 of the Stamp Duties Consolidation Act 1999

The presence of an earn-out arrangement will mean that the total consideration to be paid by the buyer cannot be ascertained on closing and will not be ascertained before the stamp duty pay-and-file deadline. In line with s44 of the Stamp Duties Consolidation Act 1999, the stamp duty liability should be based on the market value of the shares transferring. In practice, this is considered to be the buyer's best estimate of the total consideration that is likely to be paid for the shares. The buyer should retain contemporaneous evidence supporting the calculations of the estimate in case Revenue subsequently raises any queries in relation to the stamp duty filing(s).

Where the "best estimate" approach is used and Revenue accepts the basis for the estimate, no additional stamp duty is payable where the actual consideration ultimately paid to the sellers is higher than was expected on closing and the stamp duty return(s) submitted does not need to be amended. However, where the actual consideration is lower than the estimate, no refund of the excess duty paid will be due to the buyer.

It is important to note that Irish stamp duty law does not currently operate the contingency principle. As a result, where a maximum earn-out has been agreed by the parties, the buyer is not required to calculate the stamp duty payable based on that maximum amount. Notwithstanding this, in our experience, where the buyer considers that the maximum earn-out is achievable by the sellers and/or envisages that the likely earn-out amount will be difficult to calculate, the buyer will often decide to pay stamp duty based on the maximum earn-out, in addition to the other sales proceeds payable under the SPA. A buyer may also decide to calculate its stamp duty liability based on the maximum earn-out where it wishes to avoid any risk of a Revenue challenge in respect of a best estimate calculation.

Wait-and-see approach

Revenue has operated a longstanding practice in certain situations where the total sales proceeds cannot be ascertained on closing and will not be ascertained before the stamp duty pay-and-file deadline. This is known as the "wait-and-see" approach. In the case of a share sale, this approach involves the buyer making an initial stamp duty payment based on the amount paid to the sellers on closing, with the duty "topped up" once the total sales proceeds have been confirmed. In more recent years, Revenue has been unwilling to operate the wait-and-see approach in circumstances where the total consideration will not be ascertained within 12 months of closing. For this reason, as it stands, it does not tend to be appropriate for buyers to seek to apply the wait-and-see approach in cases involving an earn-out arrangement unless the earn-out period is short and the earn-out can be ascertained before the first anniversary of closing.

Other Relevant Considerations

Continued involvement of sellers

As we outlined in the first article, an earn-out can be used to motivate individual sellers who will continue to be employees of the target or will otherwise be involved in the business to maximise the target's success after closing. However, this structure can give rise to concerns that the earn-out represents payment for work carried on by the retained seller(s) for the target, rather than payment for the shares sold, which would mean that the target is liable to operate and account for payroll taxes under the PAYE system on such payment. This risk is heightened where the buyer seeks in the transaction documentation to link the earn-out payment to the continued involvement of the retained sellers with the target's business. Although this will be a commercial point for negotiation, the parties should work closely with their legal and tax advisers in these circumstances to ensure that any risk of payroll taxes applying is mitigated and appropriate legal protections are put in place, where relevant.

Section 135(3A) TCA 1997

Readers will be familiar with s135(3A) TCA 1997, as introduced in Finance Act 2017, which seeks to combat avoidance schemes where sellers try to extract value from a company at lower CGT rates. This anti-avoidance provision applies where a member of a close company (or a connected person of that member) enters into arrangements directly or indirectly with another close company where that member disposes of an interest in shares or securities of the first-mentioned company and the consideration for the acquisition of those shares or securities is paid directly or indirectly out of the assets of the first-mentioned company. Although the implications of s135(3A) applying will primarily be a sell-side concern, the buyer should also be aware of the potential tax exposures for the target, including in respect of dividend withholding tax.

Section 135(3A) can be relevant in the context of an earn-out where the payment may be funded out of the profits of the target, such as by way of a distribution to the buyer to facilitate a payment to the sellers under the earn-out. Although no "bona fide" exclusion exists in the legislation, Revenue has confirmed in Tax and Duty Manual Part 06-02-05 that bona fide financing arrangements entered into by a buyer to fund an earn-out are outside the scope of this anti-avoidance provision. This guidance should provide the buyer and the sellers with a level of comfort where some of the earn-out may ultimately be funded out of the profits of the target. However, the applicability of s135(3A) in the context of an earn-out arrangement may need to be considered in more detail by the parties.

Conclusion

In a share sale, earn-outs can give rise to a number of important tax issues for both sides of the transaction. For the sellers, the operation of relevant CGT rules to earn-out arrangements can result in unexpected consequences, including a potential loss of the full benefit of certain tax reliefs and exemptions. In particular, the application of s563(1)(a) TCA 1997 in cases where a maximum earn-out has been agreed by the parties can be seen as harsh on sellers, who are expected to pay CGT in respect of the earn-out at a point in time when they are not necessarily "in the money". Sellers and their advisers should carefully consider the impact of the earn-out on the sellers' tax position and how any issues arising can be addressed or mitigated by amending the transaction structure. A common structure is for the sellers to retain some of their shares in the target and dispose of them as part of a put and call option agreement, thereby creating more than one capital disposal for CGT purposes. However, the buyer may be unwilling to permit the sellers to maintain a minority shareholding in the target, especially where those shares have dividend participation and/or voting rights attached to them. Matters can become more complicated when there is a mix of individual and corporate sellers, as it may not be possible to agree a "one size fits all" structure. Non-Irish-resident sellers who will not be subject to Irish CGT on the sale of their shares may also look to resist any changes to the deal structure.

Examples of earn-out calculations for CGT purposes

Example 1: Buyer and seller agree a maximum earn-out.

Background

Joe Bloggs sells his bakery company for €1,140,000 in cash paid on closing, with an additional amount to be paid based on the company's financial performance for each of the four years after closing. The total maximum amount that Joe can receive under the earn-out arrangement is €400,000.

Assume no base cost and that the conditions for entrepreneur relief are satisfied.

On sale of company

Joe is subject to CGT on €1,540,000 (being the €1,140,000 he received upfront plus the maximum potential earn-out of €400,000).

This gives rise to a CGT liability for Joe of €278,200 (€1,000,000 @ 10% plus €540,000 @ 33%, assuming that Joe has not claimed entrepreneur relief previously and ignoring the annual exemption).

This means that Joe has after-tax proceeds of €861,800 following the sale.

Following end of earn-out period

After four years, Joe has received an additional €250,000 from the earn-out.

Joe has overpaid CGT by €49,500 (being the difference between €400,000 and €250,000 @ 33%).

Joe can seek a refund of the overpaid CGT from Revenue under s563(1)(b) TCA 1997.

Example 2: Buyer and seller agree an uncapped earn-out.

Background

Jane Doe sells her software company for €1,140,000 in cash paid on closing, with an additional amount to be paid based on the company's financial performance for each of the four years after closing. There is no upper limit on what Jane may receive under the earn-out arrangement.

Jane instructs a valuer, who values the right to the earn-out payment at €150,000, discounting the right for uncertainty regarding whether it will be paid.

Assume no base cost and that the conditions for entrepreneur relief are satisfied.

On sale of company

Jane is subject to CGT on €1,290,000 (being the €1,140,000 she received upfront plus the value of right to the earn-out payment of €150,000).

This gives rise to a CGT liability for Jane of €195,700 (€1,000,000 @ 10% plus €290,000 @ 33%, assuming that Jane has not claimed entrepreneur relief previously and ignoring the annual exemption).

This means that Jane has after-tax proceeds of €944,300.

Following end of earn-out period

After four years, Jane has received an additional €250,000 from the earn-out.

Jane is treated as disposing of the right to the earn-out payment and is subject to CGT on €100,000 (being the €250,000 proceeds less the base cost of €150,000 on which she was assessed as part of the sale of her shares).

This gives rise to a further CGT liability for Jane of €33,000 (€100,000 @ 33%, as entrepreneur relief has been fully utilised and ignoring the annual exemption).

Summary

The effective overall tax rate for both Joe and Jane is 16.45% (€228,700/€1,390,000).

Joe has had to fund the CGT relating to the earn-out himself for four years. He also needs to seek a refund of the overpaid tax from Revenue following the earn-out period, whereas Jane needs to make a further CGT payment to Revenue.

In contrast, by negotiating the earn-out so that the consideration she receives for her company is unascertainable on closing, Jane has received €82,500 more in after-tax proceeds following the sale and defers some of the CGT relating to the earn-out arrangement. In addition, she has not limited her potential earn-out if the target ultimately performed better post-closing than the parties may have expected.

Let's see what would have happened, though, if for any reason no earn-outs became payable to either Joe or Jane in these examples:

- Joe: Again, Joe has overpaid CGT, in these circumstances by €132,000 (being €400,000 @ 33%). As before, Joe can seek a refund of this amount from Revenue pursuant to s563(1)(b) TCA 1997.

- Jane: Once it becomes clear that Jane will not receive any payment from the earn-out, she would be treated as having disposed of the right to the earn-out payment for nil consideration. However, it is not possible for Jane to seek a refund from Revenue under s563(1)(b) TCA 1997 as this constitutes a separate disposal for CGT purposes. Nor can she bring the capital loss of €150,000 back to the tax year in which the share sale took place. It can only be carried forward against any future capital gains that may arise to Jane.


Aoife Murray
Partner – Transfer Pricing, EY Ireland

Priyanka Aynor
Director – Transfer Pricing, EY Ireland

Navigating Pillar One: Ireland's Adoption of Pillar One Amount B Through Finance Act 2024

Introduction

The Pillar One initiative of the Organisation for Economic Co-operation and Development (OECD) is part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). It focuses on reallocating the taxing rights of multinational enterprises (MNEs) to ensure that profits are taxed where economic activities and value creation occur, irrespective of whether the MNEs have a physical presence in the jurisdiction. It also aims to address the tax challenges arising from the digitalisation of the economy. Key aspects under Pillar One include the reallocation of taxing rights, Amounts A and B, a focus on the digital economy and a consensus-based approach.

The Amount B approach is designed to simplify and standardise the way arm's-length profits are allocated to routine marketing and distribution activities of MNEs in various jurisdictions. It comprises a set of rules designed to make it simpler for companies to determine the amount of profit they should report in various jurisdictions for routine activities, such as sales and distribution, which are common in many businesses. Unlike Amount A, there is no threshold requirement for the applicability of Amount B. It is intended to be applicable to all MNE groups, regardless of their size or turnover. The OECD expects the Amount B approach to enhance tax certainty and relieve compliance burdens for taxpayers and tax administrations alike.

Marketing and distribution entities globally are often faced with various types of transfer pricing (TP) litigation. Common TP issues include the characterisation of transactions; scrutiny of sales and marketing expenditures by distribution entities to determine whether these expenditures created valuable marketing intangibles; benchmarking and comparability analysis; and customs valuation. These controversies are usually complex and time-consuming, often requiring extensive documentation, expert analysis, and negotiation with tax authorities. Given this, the Pillar One Amount B approach is a welcome development. However, although the Pillar One Amount B approach is expected to offer significant benefits in terms of simplification and standardisation, it comes with its own set of constraints, ambiguities and implementation challenges, which are discussed below.

In this article we delve into the Pillar One Amount B approach and its adoption under Irish law via the Finance Act 2024. We provide an overview of the guidance, its integration into Irish regulations, the uncertainties surrounding its adoption, the implementation challenges and recommendations for businesses.

OECD Transfer Pricing Guidelines for Amount B: Summary

In February 2024 the OECD published a report and detailed guidance on "Pillar One – Amount B". This report outlines the specific characteristics required for distributors to be considered in-scope. The Amount B approach is incorporated in the OECD Transfer Pricing Guidelines as an annexure to Chapter IV, and jurisdictions have the option to adopt the approach for qualifying transactions involving eligible baseline distributors. A jurisdiction can adopt the Amount B approach either as an elective approach or as a mandatory requirement when the specified scoping criteria are met. The outcome determined under this approach is non-binding on the counter-party jurisdiction if that jurisdiction chooses to opt out of the approach. However, where a covered jurisdiction applies this approach, the guidance provides a commitment from the Inclusive Framework member countries to respect the application of Amount B. The list of 66 covered jurisdictions was published in June 2024, and the Amount B approach is applicable for fiscal years starting on or after 1 January 2025.

The framework aims to simplify TP rules by introducing a three-step process to determine a return on sales for qualifying distributors. It also provides comprehensive guidance on documentation, transitional issues and tax certainty considerations, ensuring a clear and consistent application of the new approach.

Qualifying Transactions and In-Scope Distributors

To ensure that the simplified and streamlined approach is applied correctly and consistently, the guidance provides both qualitative and quantitative scoping criteria for qualifying transactions.

1 A distributor engaged in both wholesale and retail is considered solely a wholesale distributor if its three-year weighted average net retail revenues are 20% or less of its three-year weighted average net revenues.

The Amount B approach is applicable to wholesale distributors,[1] sales agents and commissionaires involved in the sale of tangible goods. First, the scoping criterion, as explained in paragraphs 13–21 of the guidance, provides key characteristics that allow a transaction to be reliably priced using a one-sided TP method. Specifically, the distributor must be the tested party, and the transaction must not necessitate a two-sided method. The transactional net margin method is typically used, except in cases where the comparable uncontrolled price method with internal comparables is applicable. The in-scope distributor does not assume economically significant risks, nor does it own or create unique and valuable intangibles. Additionally, activities such as the distribution of commodities or digital goods are outside the scope of the simplified approach.

Next, the scoping criterion, as explained in paragraphs 22–24 of the guidance, provides for the use of quantitative filters to narrow down further the in-scope transactions. These filters help to determine whether a tested party qualifies, based on the ratio of operating expenses to sales. The tested party's three-year weighted average ratio of operating expenses to annual net revenues must be between 3% and 20%–30%.[2]

Pricing Framework

Section 5 of the guidance provides a three-step process for determining a return on sales for in-scope distributors that provides an approximation of an arm's-length result. The approximation of arm's-length results is structured into matrix segments based on three key factors: net operating asset intensity (OAS), operating expense intensity (OES) and industry groupings. Return on sales is utilised as the net profit indicator to establish pricing outcomes for in-scope transactions. Table 1 presents the Pricing Matrix (Return on Sales) derived from a global dataset.

Table 1: Pricing Matrix.

Factor Intensity (resulting from Step 2, explained below)	Industry Grouping 1	Industry Grouping 2	Industry Grouping 3
(A) OAS 45% or more, any level of OES	3.50%	5.00%	5.50%
(B) OAS 30% to 44.99%, any level of OES	3.00%	3.75%	4.50%
(C) OAS 15% to 29.99%, any level of OES	2.50%	3.00%	4.50%
(D) OAS less than 15%, OES 10% or more	1.75%	2.00%	3.00%
(D) OAS less than 15%, OES less than 10%	1.50%	1.75%	2.25%

Source: OECD, *Pillar One – Amount B: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project* (Paris: OECD Publishing, 2014), Table 5.1.

Below is an outline of the three-step process to determine where in the Pricing Matrix a distributor should land.

2 For example, for fiscal year X, the three-year weighted average ratio is derived by summing the annual operating expenses for years X–3, X–2 and X–1, summing the annual net revenues for the same period, and then dividing the total operating expenses by the total net revenues to arrive at the percentage. The specific percentage within this range can vary depending on the country implementing the Amount B rules. This flexibility allows for adjustments based on local economic conditions and industry standards.

Step 1 – Determine the industry grouping(s)

- Industry grouping categorises specific industries and sectors in which in-scope distributors operate, divided into three predefined groups based on the relationship between industries/products and their baseline distribution profitability.

Step 2 – Determine the relevant factor intensity classification

- To identify the tested party’s factor intensity classification (A, B, C, D or E) and determine the corresponding return on sales row in the pricing matrix, calculate OAS (net operating assets to net revenue) and OES (net operating expenses to net revenue) as three-year weighted averages, expressed as percentages.

Step 3 – Identify the range from pricing matrix

- Determine the return on sales by finding the intersection of the industry grouping(s) and the factor intensity classification in the pricing matrix. If sales span multiple groupings, calculate a weighted average return by multiplying each cell’s return by its sales proportion and summing these values.

Fig. 1: Steps in determining position in Pricing Matrix.

Step 1 is to determine the distributor’s industry grouping – that is, this step determines which one of the three columns in the Pricing Matrix is the relevant column. Below are the categories of goods falling into each of the three industry groups.[3]

Table 2: Industry groups by categories of goods.

Group 1	Group 2	Group 3
• Essential and perishable goods • Grocery and household consumables • Construction materials, plumbing and metal	• IT hardware and components • Electrical components and consumables • Animal feeds, pet foods and agricultural supplies • Alcohol and tobacco • Pharmaceuticals • Health and wellbeing products • Home and office supplies • Clothing, paper and jewellery • Vehicles, parts and supplies	• Specialised machinery and industrial supplies • Medical machinery • Industrial machinery • Industrial components • Miscellaneous supplies

3 The detailed categories of goods falling into each of the three industry groups are provided in the OECD report published in February 2024.

Step 2 is to determine the distributor's relevant factor intensity classification. This step determines which of the five rows of the Pricing Matrix is the correct row. Once the correct row of the Pricing Matrix is determined, the appropriate return is found to the right in the corresponding industry grouping column.

Operating Expense Cross-Check and Data Availability Mechanism for Qualifying Jurisdictions

The three-step process for calculating the arm's-length return for a tested party involved in in-scope transactions is enhanced by the operating expense cross-check. This cross-check acts as a guardrail to ensure that the return on sales net profit indicator remains within a reasonable and predefined range, thereby maintaining consistency and fairness in pricing outcomes.

After determining the return on sales as per the Pricing Matrix, the operating expense cross-check is applied to validate the results. This involves calculating an equivalent return on operating expense and comparing it to the "cap-and-collar range" specified in the guidance (Table 5.2). If the return on sales results in an equivalent return on operating expense that falls outside this range, adjustments are made to bring it within the acceptable limits. This combined approach mitigates the risk of distortive effects from unusual operating expense ratios. The initial report suggested that higher alternative operating expense cap rates should be applied to certain qualifying jurisdictions.

The data availability mechanism addresses cases where there is insufficient data in the global dataset for a specific tested-party jurisdiction that qualifies as a "higher risk" country, measured by reference to the sovereign credit rating. This mechanism permits upward adjustments to the Pricing Matrix returns to ensure that the Amount B Pricing Matrix remains appropriate for such qualifying jurisdictions.

The second additional guidance document on the Amount B approach,[4] released on 17 June 2024, provides further clarification on "qualifying jurisdictions" for both higher alternative operating expense cap (section 5.2) and data availability mechanism adjustments (section 5.3). The Statement on qualifying jurisdictions provides separate lists for sections 5.2 and 5.3. For section 5.2 qualifying jurisdictions, refer to those classified by the World Bank Group as low income, lower-middle income or upper-middle income based on the latest available "World Bank Group Country Classifications by Income Level". For the purposes of section 5.3, "qualifying jurisdictions" are defined as those with (1) a publicly available long-term sovereign credit rating of BBB+ (or equivalent) or lower from a recognised independent credit rating agency and (2) fewer than five comparables in the global dataset.

The detailed jurisdictional list is published in June 2024 guidance document. In December 2024 the OECD published two additional documents on Amount B. These include an Amount B fact sheet that provides a high-level overview of the mechanics of Amount B and the Pricing Automation Tool. This tool is designed to compute automatically the Amount B return based on data input.

Transfer Pricing Documentation Requirement for the Simplified and Streamlined Approach

For the simplified and streamlined approach, documentation is crucial to verify that in-scope distributors' qualifying transactions meet the scoping criteria and that the approach has been properly applied. Key documentation requirements include providing detailed explanations of the delineation of in-scope qualifying transactions, including a functional

4 See https://www.oecd.org/content/dam/oecd/en/publications/support-materials/2024/02/pillar-one-amount-b_41a41e1e/statement-qualifying-jurisdiction-definitions-section-5-2-section-5-3-simplified-streamlined-approach.pdf.

analysis and context; written contracts or agreements governing the transactions; calculations of relevant revenue, costs and assets allocated to the transactions; and allocation schedules showing how financial data ties to annual financial statements.

Companies applying the approach for the first time should include consent to apply the approach for a minimum of three years in their local file or other relevant documentation. Tax administrations retain the right to examine the taxpayer's self-assessment on whether the scoping criteria are met and the pricing methodology has been properly applied.

Transition Issues

The OECD Amount B report (February 2024) states that MNEs can restructure to fall within or outside Amount B, but tax authorities can determine the tax consequences based on OECD guidelines, particularly Chapter IX of the Transfer Pricing Guidelines. It warns against artificial reorganisations for tax advantages and notes that jurisdictions may address these issues. Additionally, the tax treatment of prior-year losses for restructured distributors will be dealt with under local law.

Adoption of Pillar One Amount B Approach in Irish Legislation via Finance Act 2024

The Finance Act 2024 introduces "Phase I" of the Amount B rules to Irish law, effective for accounting periods beginning on or after 1 January 2025. These rules apply to transactions between MNE constituent entities based in Ireland and in "covered jurisdictions" as defined by the OECD (the most recent list was issued on 17 June 2024).

The introduction of the Amount B rules through the Finance Act 2024 represents a significant step towards aligning Ireland's TP regulations with the OECD's Pillar One framework. The adopted approach is in line with OECD guidance and follows the detailed processes discussed in the initial sections of this article.

Below is a summary of the Amount B approach as per Irish law.

A new section, s835DA, is introduced to Part 35A of the Taxes Consolidation Act 1997 to provide for the political commitment in respect of Amount B of Pillar One. Ireland has committed to respect the Amount B outcome determined under the Phase One rules (as outlined in the "Pillar One – Amount B" report) if such an approach is applied by a covered jurisdiction with which it has a bilateral tax treaty.

A qualifying arrangement is defined as either a buy–sell marketing and distribution arrangement, where the distributor purchases goods from associated companies for wholesale distribution to independent parties, or a sales agency or commissionaire arrangement, where the sales agent or commissionaire aids in the wholesale distribution of goods to independent parties on behalf of associated companies. In these arrangements, the goods are sold by the associated company without involving other associated parties as intermediaries.

An arrangement is not a qualifying arrangement if it involves the distribution of non-tangible goods, services or commodities. Additionally, it does not qualify if the distributor, sales agent or commissionaire has annual operating expenses below 3% or above 30% of its annual net revenues.

The new s835DA also provides for updating the local file requirement to incorporate all of the additional documentation requirements as per OECD guidance in relation to the Amount B approach. The local file requirement also includes confirmation that the required conditions will be satisfied for a qualifying arrangement for a minimum period of three years, commencing from the first day of the first chargeable period to which s835DA applies.

Section 835DA(3)(3A) provides that where the relevant person is a party to a qualifying arrangement, the relevant person shall submit a notification to Revenue on the applicability of the section no later than the date on which a return for the chargeable period is required to be filed. The manner and form in which notification is to be submitted is yet to be prescribed by Revenue.

Limitations and Uncertainties in Adoption of Amount B Approach

The limited scope of Amount B, which is restricted to wholesale distributors and specifically focuses on baseline marketing and distribution activities involving tangible goods, constrains its broader applicability. For example, software companies are notably not covered under the three industry classifications, thereby limiting the wider applicability of the approach, even though in many instances the software licence is akin to a transaction in tangible property because of the limited rights granted to the licensee/purchaser. Future work in this area may expand the industry classifications to include certain transactions involving software.

Given that each jurisdiction has the choice to adopt or not to adopt the Amount B approach and those that adopt it can further decide whether to implement it as an elective or a mandatory approach for companies within their jurisdiction, there are many uncertainties regarding the adoption of the Amount B approach. Additionally, the fact that the outcome determined under the Amount B approach is not binding on counter-party jurisdictions that have not opted for the approach means that there remains the risk of TP controversy, adjustment and potential double taxation, all of which are outcomes the Amount B approach sought to remedy. For example, countries such as India and Australia have announced several reservations with the Amount B approach. Recently, on 18 December 2024, the US Department of the Treasury and Internal Revenue Service published a notice regarding their intention to issue proposed regulations allowing US taxpayers to apply the Amount B approach. Taxpayers subject to US tax with respect to in-scope transactions may elect to apply the Amount B approach for tax years beginning on or after 1 January 2025. This makes the US the first jurisdiction to adopt the approach for all in-scope inbound marketing and distribution activities. In contrast, the Netherlands recently issued a new Decree on Amount B that specifically applies to baseline distributors in a covered jurisdiction and does not apply to distributors in the Netherlands. Ireland has taken steps to adopt the Amount B approach, but only for covered jurisdictions with which it has treaty. The Irish regulation as it now stands would not recognise the Amount B applied in the US, as the US is not listed under the covered jurisdictions.

These examples demonstrate the divergent approaches in the way that jurisdictions choose to implement Amount B, which can create challenges for companies trying to comply with different sets of rules in various countries, creating the need to maintain different documentation and TP policies for jurisdictions that do and do not accept Amount B. The lack of a unified approach can lead to uncertainty, disputes and an increased compliance burden for companies.

Additionally, the added documentation requirement, such as providing confirmation and filing notifications, may result in further compliance requirements and might, to some extent, lower the anticipated benefit from the simplified approach.

Recommendation

Companies should carefully review all relevant updates on Amount B and stay informed of further developments, including, for example, the approaches adopted by different jurisdictions. Companies should also closely monitor the implementation dates of different jurisdictions so that they can effectively manage the Amount B implementation.

For companies dealing in multiple products or products that can be classified under different industry groupings, implementing Amount B may be particularly challenging. Businesses may need to prepare product-specific segmented financials, review the allocation of resources for different products, etc. Businesses must ensure that their internal systems are updated to comply with these new requirements.

Last, the Amount B approach was designed to simplify and standardise TP outcomes for routine marketing and distribution activities. For some, this outcome may be achieved, but for others, the complexities and the uncertainties around the approach may simply add to their administrative burdens.

Thanks to Dan McSwiney, Partner/Transfer Pricing Leader, EY Ireland, for his contribution to this article.


Brian Gormley
Partner, Philip Lee LLP
Jonathan Kelly
Managing Partner, Philip Lee LLP

Finance Act 2024: Tax Credits for Film and Television Production

Introduction

Two sections of Finance Act 2024 are of particular interest to the audiovisual sector in Ireland. The first is s48, which implements amendments to s481 TCA 1997 that will deliver an enhanced tax credit value for qualifying lower-budget feature films. The second, s49, introduces a new s487A to TCA 1997, which, once commenced, will establish an entirely separate tax credit for "unscripted" television productions.

In this article we provide a brief overview of both of these new initiatives, each of which will come into effect on such day or days as the Minister for Finance may appoint by order (which, in turn, depends on EU State Aid approval's having been obtained).

Amendment of s481: Enhanced Tax Credit for Lower-Budget Films

Section 48 implements an increase to the value of the s481 tax credit, which was originally announced by the Government on Budget Day in October 2024.

What is the s481 film corporation tax credit?

Section 481 provides for a payable tax credit that is available to a qualifying "producer company" (PC) in respect of Irish eligible expenditure incurred on the production of a "qualifying film" by an Irish single-purpose "qualifying company" (QC), which must be a wholly owned subsidiary of the PC. The PC must carry on a trade of producing films, and it is not entitled to claim payment of the s481 tax credit until it has been trading for a period of at least 21 months.

A "qualifying film" is a film (as defined) in respect of which the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media has issued a certificate pursuant to s481.

For a qualifying film to be eligible for the tax credit, the total cost of production of the film must be not less than €250,000 and the eligible expenditure amount (as defined in s481 and set out in further detail in regulations under sub-section (2E)) must be not less than €125,000.

The tax credit is available at 32% of the lowest of:

- the eligible expenditure amount (as defined),
- 80% of the total cost of production of the film and
- €125m.

The relief is claimed against the PC's corporation tax liabilities (if any) for the relevant period, with the excess value thereof being payable by Revenue to the PC after the filing by the PC of an amended tax return in respect of the period.

Under sub-section (2E) the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media must make regulations addressing a range of matters, including specifying the categories of films (including television programmes) that are eligible to be certified as qualifying films. The Film Regulations 2019 are the current iteration of those regulations and specify that the following categories of film are eligible to be certified under s481:

- feature films,
- short films of feature quality,
- television drama (feature length or series),
- animation (whether computer generated or otherwise but excluding computer games) and
- creative documentaries, provided that certain criteria are met.

What are the amendments introduced by s48 of the Finance Act 2024?

The amendments to s481 that will take effect when s48 FA 2024 is commenced will increase the film corporation tax credit for "lower budget films" from the generally applicable rate of 32% to an enhanced rate of 40%.

The definition of "lower budget film", to be inserted in s481(1) by virtue of sub-section (1) of s48, is as follows:

> *"'lower budget film' means a qualifying film –*
>
> *(a) which is a feature film or animated film of feature length,*
>
> *(b) in the production of which one or more key creative roles are performed by individuals who are nationals of, or ordinarily resident in, the State or another EEA state, and*
>
> *(c) in respect of which the qualifying expenditure, as determined in accordance with regulations made under subsection (2E), incurred on the production of the film is less than €20,000,000".*

In this context, "qualifying expenditure" means the total global expenditure that is "wholly, exclusively and necessarily incurred" on the production of a qualifying film. It excludes items that are not viewed as production costs, such as costs incurred on the distribution or promotion of the qualifying film.

The term "key creative role" is a new one in the context of s481 and is defined as follows:

> "*'key creative role', in relation to a qualifying film, means –*
>
> *(a) the film director,*
>
> *(b) the film screenwriter, or*
>
> *(c) any other such similar creative role of appropriate seniority as may be specified in regulations made under subsection (2E)*".

For any film to be certified by the Minister as a qualifying film, it must satisfy a cultural and/or industry development test. However, for qualifying films that are not "lower budget films", there is no requirement for any particular key creative role to be filled by a person resident in the State or another EEA state.

In summary, feature films budgeted below €20m that are eligible for certification under s481 and that employ the services of Irish or other EEA residents in one or more key creative roles will, when s48 is commenced, be eligible for the film corporation tax credit at an increased rate of 40% (rather than 32%).

Section 487A: Tax Credit for Unscripted Programmes

Section 49 of the Finance Act 2024 inserts a new s487A in Chapter 3 of Part 15 of TCA 1997 to provide a corporation tax credit for qualifying expenditure that is incurred on the production of a qualifying unscripted programme.

The credit will be available to "producer companies" for certain expenditure on qualifying unscripted programmes. A producer company for the purposes of s487A must carry on a trade of producing unscripted programmes.

What are unscripted programmes?

An "unscripted programme" means a non-fiction audiovisual work consisting of either a single programme or a season of an unscripted series.

This differs from the s481 tax credit, which is intended for television programmes that are scripted or that satisfy the criteria for creative documentaries. The Film Regulations 2019 set out the categories of television programmes that are not eligible for the s481 tax credit. Those categories include "reality television whether scripted or unscripted" and "talk show formats that...are largely unscripted". A programme that fits within one of these categories of television programme, and is therefore ineligible for the s481 tax credit, may instead be eligible for the s487A tax credit.

In order for an unscripted programme to be eligible for the s487A tax credit, it must be (a) produced on a commercial basis with a view to the realisation of profit and (b) produced wholly or mainly for exhibition to the public by means of broadcast on television or transmission on the internet.

The global budget may not be less than €250,000, eligible expenditure may be not less than €125,000, and the programme may **not** be produced for exhibition as part of a promotional campaign or advertising for a specific product or undertaking or as a commercial.

Qualification for the credit will be subject to a cultural test that will be administered by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, and certification will be required before Irish production.

What is the culture test for unscripted programmes?

The culture test will have regard to the contribution that the unscripted programme is expected to make to the promotion and expression of Irish or European culture by reference to (s487A(5)(d) TCA 1997):

- **cultural content**, including setting, themes, performers and participants, subject matter and language, in particular the Irish language;
- **cultural creativity**, including (a) innovative portrayal of Irish culture, (b) the use of a format or concept developed in Ireland, (c) the use of persons in creative roles who are

nationals of, or ordinarily resident in, Ireland or another EEA state and (d) the use of music, script or other materials written or created in Ireland or by persons who are nationals of, or ordinarily resident in, Ireland or another EEA state;

- **contribution to the development of a concentration of cultural activity**, including (a) the proportion of creative work carried out in Ireland, (b) the number of key positions in the production of the unscripted programme occupied by persons who are nationals of, or ordinarily resident in, Ireland or another EEA state and (c) the proportion of the members of the production team who are nationals of, or ordinarily resident in, Ireland or another EEA state; and
- **cultural contribution**, by reference to matters including the educational content of programmes aimed at children and the inclusion of themes relating to (a) diversity and equality, (b) promoting the protection and restoration of Irish or European ecosystems and (c) raising awareness of the exigencies of increasing environmental sustainability and minimising climate change.

What is a producer company for the purposes of the s487A tax credit?

A "producer company" means a company resident in the State or in an EEA state that carries on a trade of producing unscripted programmes that are wholly or mainly for exhibition to the public by means of broadcast on television or transmission on the internet on a commercial basis with a view to the realisation of profit.

It cannot be, or be connected to, a broadcaster or a company whose business consists wholly or mainly of transmitting films or programmes on the internet. (A similar restriction applies to a PC in the context of s481.) Also similar to a PC in the context of s481, a producer company may not be an "undertaking in difficulty" within the meaning of the Communication of the European Commission on Guidelines on State Aid for Rescuing and Restructuring Non-financial Undertakings in Difficulty.

What is eligible expenditure for the purposes of the unscripted tax credit?

This means the portion of the total cost of production of a qualifying unscripted programme that is expended on the production of the programme in Ireland:

- directly by the producer company on the employment of individuals and
- directly or indirectly by the producer company on the provision of certain goods, services and facilities.

It appears that expenditure on individuals engaged by the producer company as an independent contractor may not be considered expenditure eligible for the s487A tax credit. By way of contrast, expenditure incurred on the provision of labour-only services by an individual is eligible for the purposes of the s481 tax credit for film and television programmes.

Further information on what constitutes eligible expenditure will be provided in regulations to be enacted in due course.

It should be noted that the cost of on-screen services, meaning amounts, excluding travel and subsistence expenses, paid or incurred under (a) a contract of service, (b) a contract for service or (c) any other contract in respect of the provision of those services is excluded from eligible expenditure. "On-screen services" means services provided by an individual where it is reasonable to consider that the individual could appear on screen. Again, this is a significant point of contrast between the unscripted tax credit and s481.

Value of unscripted tax credit

The tax credit will be available at 20% of the lowest of:

- the eligible expenditure amount (see definition above),
- 80% of the total cost of production of the unscripted programme and
- €15m.

Interim and final certificates

A producer company may make an application for an interim certificate or a final certificate. The producer company may claim payment of one or more interim instalments of the tax credit on a yearly basis in respect of the previous accounting period during which expenditure was incurred. Alternatively, the company may claim 100% of the tax credit after the unscripted programme has been completed.

Apart from the cultural aspects mentioned above, the Department will also have regard to the following when considering whether to grant a certificate:

- the employment-related responsibilities of the producer company in the production of the unscripted programme,
- the employment of personnel, including trainees, for that production,
- the maximum State Aid intensity and
- the nature and detail of acknowledgement of the s487A tax credit in the opening titles or closing credits of the unscripted programme.

A producer company is prohibited from making a claim for payment of the s487A tax credit unless the tax affairs of the following persons are up to date: the producer company, any company controlled by it, and each person who is either the beneficial owner of or able, directly or indirectly, to control more than 15% of the ordinary share capital of the producer company. Again, this parallels a similar restriction in s481.

Commencement Order

Section 487A is subject to a Commencement Order as the relief will constitute a State Aid and must be notified to and approved by the European Commission before commencement. Once enacted, the scheme will run until 31 December 2028.

Brendan Murphy
Tax Partner, Baker Tilly

Finance Act 2024: Residential Property Measures

Introduction

It is no surprise that housing emerged as the central focus of Budget 2025, with nearly €8bn allocated to the Department of Housing. The Government's commitment to resolving the housing crisis is evident in the substantial funding dedicated to this area. The Programme for Government, issued in January, contains eight pages in relation to accelerated housing supply, with a target of 300,000 new homes to be delivered by the end of 2030.

The Programme for Government also sets out that a dedicated infrastructure division will be put in place, led by a Deputy Secretary-General. This is welcome to ensure that the appropriate improvements are made, especially within areas of Irish Water and the national grid, to facilitate the required housing supply.

Below we will look at the specific tax measures amended and introduced by Finance Act 2024 that are aimed at assisting both homeowners and tenants against rising property costs.

Incentive for Renters

The rent tax credit was introduced in Finance Act 2022 (FA22), allowing a credit of €500 per tenant for years of assessment from 2022 to 2025. This credit was increased to €750 in Finance (No. 2) Act 2023 (F(No. 2)A23) and has now been increased to €1,000 through Finance Act 2024 (FA24). This could result in a tax credit up to €2,000 for jointly assessed couples who are renting their home. The increased credit will apply for the years of assessment 2024 and 2025. It is good to see the Programme for Government note that it will continue to increase the rent tax credit over its term. This is a welcome financial benefit for tenants at a time of increasing rents.

Incentive for Landlords

The marginal rate of tax that applies to a large majority of landlords is a huge disincentive to renting out a property in many instances, especially when combined with additional compliance charges and obligations to complete tax returns, draw up tenancy agreements and make relevant registrations. Therefore, it is important to look at measures to encourage landlords to bring properties to the rental market.

FA22 improved relief for pre-letting expenses incurred from 1 January 2023 by increasing the allowable deduction from €5,000 to €10,000 and reducing the period of vacancy from 12 months to 6 months. This incentive had been due to expire on 31 December 2024, but FA24 has extended the relief by three years to 31 December 2027.

Section 21 F(No. 2)A23 introduced a new personal tax credit for landlords of residential property to offset against their income tax suffered on rental profits. The tax credit is currently available for the years 2024 to 2027 inclusive and is capped at the lesser of 20% of rental profits and €600 for 2024, €800 for 2025, and €1,000 for 2026 and 2027. FA24 includes a slight tweak to the provisions to restrict the credit in situations where there is an overall Case V rental loss. The credit available to a landlord is now the lowest of the stated amount, 20% of rental surpluses and 20% of overall Case V profits. Overall Case V losses will take account of capital allowances and Case V losses forward. The Programme for Government includes a commitment to continue the landlord tax credit, but it will be felt by many landlords that further amendments are needed to the scheme to ensure that it encourages the supply of rental properties to the market.

Incentive to Sell

With rising house values, many property owners will be reviewing their potential capital gains tax position if they were to sell investment property. It is likely that the 33% charge will be a disincentive to many who have base costs lower than current market values. However, FA24 continues to implement both the vacant homes tax (VHT) and the residential zoned land tax (RZLT) to encourage those seen as “hoarding” properties or development land to bring them to the market. The Programme for Government also includes measures aimed at bringing vacant properties to the market.

The VHT was introduced in FA22 and applies to properties used as a dwelling for fewer than 30 days a year. For such properties, the owner will incur a charge that initially was to be equal to three times the relevant local property tax (LPT) charge (before the local adjustment factor is applied) on the property. This rate was increased to five times the LPT in F(No. 2)A23 and has now been increased to seven times the LPT in FA24. There are some exemptions from the charge, including where the property is being actively marketed for sale or rent.

FA24 included some technical tweaks to RZLT in relation to the timing of site preparation, disputes regarding local authority maps and planning permission disputes. However, in broad terms, the tax will apply from 1 February 2025 and will be charged at 3% of the value of the land for land zoned for residential use and services before 1 January 2022. The return and related payment will be due by 23 May 2025. For land zoned after 1 January 2022, the RZLT will apply three years after the year in which the land comes into scope.

The main provision of FA24 in this regard has been the opportunity for landowners to make a rezoning request regarding maps to be published on 31 January 2025, which, if rezoned, allows for an exemption from RZLT for 2025.

Incentive to Buy/Build

The Help to Buy scheme was introduced in 2017 and has been used by more than 50,000 people to date. It currently provides for a refund of tax of up to €30,000 for first-time buyers of new-builds from an approved contractor or for self-builds. The property value must not exceed €500,000, and the mortgage must be for at least 70% of the value. This scheme, which had been due to expire on 31 December 2025, has been extended for four years, to 31 December 2029, which is good news for new entrants to the property market.

Finance (No. 2) Act 2023 introduced a new section into legislation allowing for mortgage interest tax relief for taxpayers in certain instances on their principal private residence. This was to be a one-year tax credit, with a maximum value of €1,250 available for 2023. The relief works by comparing the mortgage interest paid in 2023 to the amount paid in 2022 and allowing a credit for the difference. The loan balance must have been between €80,000 and €500,000 as of 31 December 2022. FA24 has extended the tax credit for a year to allow a claim to be made by individuals for the 2024 year of assessment. The value of the credit and the rules on loan balances remain in place. As was the case for 2023, the interest for 2024 will be measured against the base year of 2022 to calculate the relief.

The above measures are welcome to assist first-time buyers and homeowners. However, the mortgage interest credit is restrictive, given the loan limits that apply, and the Help to Buy scheme applies only to new-builds and self-builds. It would be beneficial if such provisions were extended to a wider population of people, particularly those looking to purchase a home or who have significantly high mortgages.

Although it may not, in practice, affect first-time buyers, given the level of consideration to which it applies, it is also worth noting the stamp duty change introduced in FA24, which applies a 6% rate to consideration above €1.5m on a property purchase; 1% still applies to the first €1m, and 2% to the next €500,000.

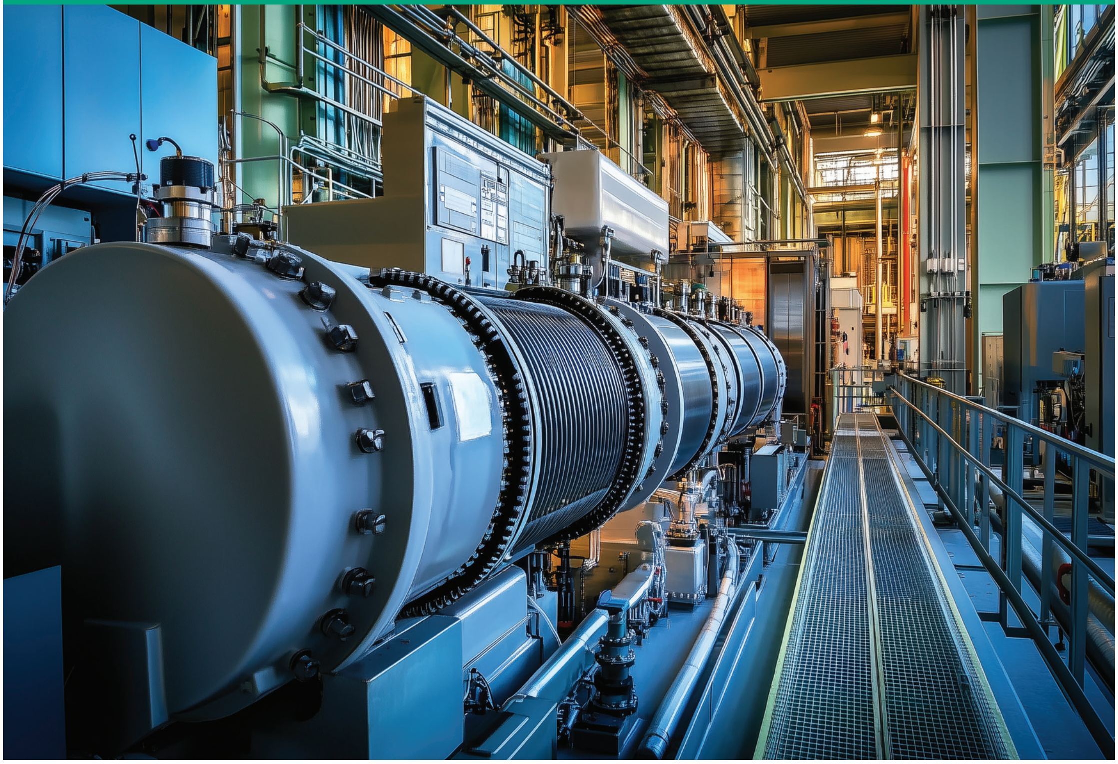
In another bid to deter institutional investors from purchasing large blocks of housing, the 10% stamp duty rate on purchases of ten or more properties has been increased to 15% from 2 October 2024.

Conclusion

Overall, there have been some welcome announcements for renters and house-hunters in Finance Act 2024, and there is much positive intention included in the Programme for Government in relation to housing supply. It would be hoped that something more significant may be considered by the new Government to encourage supply by landlords and owners. Certainly, capital gains tax incentives for property sales or more generous landlord credits could see a significant increase in supply.


Brian Brennan
Partner, KPMG
Conor Burke
Director, KPMG

Leasing: Review of Changes in Finance Act 2024



Introduction

Ireland's Finance Act 2024 contained measures that will be of interest to taxpayers operating in the leasing sector. Although the amendments are broadly positive, we would like to see further improvements in future years to increase the attractiveness of our leasing tax regime.

To provide some context to the changes, there has been extensive industry interaction with Revenue and the Department of Finance over recent years in respect of leasing matters generally and historical practices in particular. As part of these discussions, Revenue confirmed the withdrawal of many of its historical leasing practices from the end of 2023. Finance (No. 2) Act 2023 codified some of these practices and introduced some measures that will mitigate the effects of the loss of others. Although these changes in Finance (No. 2) Act 2023 were welcomed, a number of issues have not been addressed and could result in significant uncertainty for leasing groups in Ireland.

Finance Act 2024 provided for amendments with the intention of addressing concerns arising from Finance (No. 2) Act 2023, along with some other consequential amendments. Continued stakeholder dialogue is important. It is hoped that future Budgets will include further measures to ensure that Ireland does more to foster and support entrepreneurial businesses in the leasing sector.

Capital Allowances for Leased Machinery or Plant (s288 TCA 1997)

Finance Act 2024 amended s288 TCA 1997 to confirm the timing and value of balancing events under certain lease arrangements, known as “relevant leases”, as defined in s299 TCA 1997. This is to address an issue arising from Finance (No. 2) Act 2023.

Background

As a general rule, only the owner of machinery or plant can claim capital allowances. However, there are rules providing that where an owner leases machinery or plant, the lessee may potentially claim capital allowances, instead of the owner, under certain lease agreements, assuming that the burden of wear and tear on the machinery or plant falls on the lessee under the lease arrangement. Capital allowance claims for lessees are governed by s299 TCA 1997.

One of the conditions for capital allowances to be claimed by a lessee is that the lease is a “relevant lease” as defined in s299 TCA 1997. Relevant leases include finance leases, as well as certain operating leases. The definition of relevant lease was introduced in Finance (No. 2) Act 2023. In addition, that Act introduced a change to s288 TCA 1997 regarding the rules on balancing allowances and charges by providing that a balancing event can occur for the owner when entering into a relevant lease. Similarly, a balancing event can arise for a lessee on the conclusion of the relevant lease, where the machinery or plant returns to the lessor rather than ownership transferring to the lessee.

However, this change to s288 TCA 1997 raised some concerns. In practice, lessors, particularly for large-scale items such as aircraft and ships, sometimes enter into a lease well before the leased machinery or plant is actually made available to the lessee. This can cause an issue because the aforementioned rule may deem there to be a balancing event for the owner on entering into the lease contract, resulting in the premature recapture of capital allowances for the owner.

Amendment

Finance Act 2024 includes a measure to address such situations, whereby if the lease is entered into before the machinery or plant is made available to the lessee, the deemed balancing event for the owner can, in certain circumstances, be at the time that the machinery or plant is made available to the lessee. This provision will not apply if it is reasonable to consider that the reasons for the date when the lease was entered into and the date when the machinery or plant was made available being different were not bona fide commercial reasons or if he use of different dates is part of an arrangement under which a tax advantage arises where either that tax advantage is priced in to the terms of the arrangement or the arrangement was designed to give rise to a tax advantage. A tax advantage in this case will arise if the total tax relief claimed by the lessee (through Irish or foreign capital allowances and/or other rental deductions) materially exceeds the aggregate of the lease payments over the lease term. These changes have effect from 1 January 2025.

Taxation of Lease Payments (s299 TCA 1997)

Finance Act 2024 amended s299 TCA 1997 to address some issues arising from Finance (No. 2) Act 2023. The modified treatment under s299 is particularly important for finance lessors that do not have an entitlement to capital allowances for the relevant machinery or plant.

Background

The general rule is that a company should compute its taxable profits based on its accounting profits (s76A TCA 1997). However, this is disapplied in the case of a company that leases machinery or plant under a finance lease, under the provisions of s76D TCA 1997. Instead, such a company is subject to tax on the gross amount of finance lease rents receivable by it, rather than being taxed on the accrued rental income in the profit and loss statement.

Where a lessor is subject to tax on the gross amount of rents, it is important that the company is entitled to claim capital allowances on the leased machinery or plant such that only the commercial profits that the company earns are ultimately subject to corporation tax. Otherwise, there would be an inequitable treatment, as the lessor would be taxed on gross lease rentals (which would generally be much higher than the accounting profit amount), with no corresponding deduction for the underlying machinery or plant.

As previously mentioned, there are situations where a company that leases machinery or plant may not be entitled to claim capital allowances. A lessee can claim capital allowances under certain lease arrangements, and where this occurs, the lessor is not entitled to capital allowances.

To address the risk of a lessor having an inequitable tax treatment, by longstanding practice Revenue previously allowed such lessors to be taxed on their finance margin (effectively, in line with their accounting results) where the lessee was the party claiming the allowances. However, Revenue confirmed the withdrawal of this leasing practice from the end of 2023.

Finance (No. 2) Act 2023 put this practice on a statutory footing. Amendments to s299 TCA 1997 were introduced to confirm that, in calculating the profits of a trade, a lessor can choose to apply a modified treatment in the case of "relevant leases" (as described above – which is finance leases and certain operating leases) such that the lessor is to be taxed on the financing margin recorded in its financial statements (or, in the case of a relevant lease that is not a finance lease, the amount that would be so recorded if it were a finance lease). For a lessor to qualify to apply this modified treatment so that it is taxed only on the financing margin, the lessor and lessee had to meet a number of legislative conditions. However, the rigours of certain conditions caused concern, particularly for certain leasing scenarios.

Amendments

Finance Act 2024 includes a revocation of conditions that applied to lessees. It also amended some of the conditions that lessors had to meet, including the following.

Arm's-length requirement

Under Finance (No. 2) Act 2023, to satisfy the conditions, the lessor must have acquired the leased machinery or plant by means of a bargain made at arm's length. This requirement could preclude a lessor qualifying where it had acquired the machinery or plant from a connected party and had made an election for the transfer to be treated as occurring for the tax written-down value of the machinery or plant. Finance Act 2024 includes a change to permit such situations.

Ownership of asset

Under Finance (No. 2) Act 2023 there was also a requirement that the asset belong to the lessor immediately before the lease is entered into. This may not be possible in certain lease cases. For example, a lease contract may be entered while machinery or plant is still being built by a manufacturer. In this case, the machinery or plant may not belong to the lessor when the lease is entered, given that the machinery or plant is owned by the manufacturer (not the lessor) while it is being built.

Finance Act 2024 includes a measure to address such situations, whereby if the lease is entered into before the machinery or plant is made available to the lessee, the requirement for the machinery or plant to belong to the lessor is tested at the time the machinery or plant is made available to the lessee.

Non-tax-resident lessees

Finance (No. 2) Act 2023 required that where the lessee is not Irish tax resident, it must be reasonable to consider that the amount of lease expenditure deductible by the lessee for foreign tax purposes is similar to that calculated under the equivalent Irish rules (essentially, an amount equivalent to the financing margin of the lease rentals and not the gross rental expense). This requirement sometimes proved difficult for lessors to satisfy.

Finance Act 2024 removes this requirement and replaces it with a new condition that applies only where the lessee is an associated enterprise (broadly, this requires 25%+ common ownership).

This new condition provides that, at the commencement of the lease, it must be reasonable to consider that the total foreign capital allowance claims that the lessee will be entitled to will not materially exceed the difference between the total lease payments (over the term of the lease) and any other foreign tax deductions that the lessee may be entitled to in respect of those lease payments. In broad terms, this is intended to ensure that the Irish lessor can only be taxed on its financing margin from a relevant lease (rather than the gross rental payments) where the total foreign tax relief claimed by the lessee (through capital allowances and/or other rental deductions) does not materially exceed the aggregate of the lease payments over the lease term. Finance Act 2024 requires that if the lease terms are changed, a new assessment under this rule must be undertaken. This new rule is also to apply to a sub-lessee where the lessee sub-leases the machinery or plant to an associated enterprise.

Anti-avoidance rule

Finance Act 2024 also includes a new anti-avoidance rule that applies with respect to all leases and will prevent the lessor from making a claim to be taxed on its financing margin where it is reasonable to consider that the relevant lease has not been entered into for bona fide commercial reasons and is part of an arrangement under which a tax advantage arises where either that tax advantage is priced in to the terms of the arrangement or the arrangement was designed to give rise to a tax advantage. A tax advantage for these purposes essentially mirrors the assessment of the lessee's position under the first new condition, i.e. a tax advantage will arise if the total tax relief claimed by the lessee (through capital allowances and/or other rental deductions) materially exceeds the aggregate of the lease payments over the lease term.

These changes have effect from 1 January 2025.

Interest Limitation Rule: Leasing Changes (s835AY TCA 1997)

Finance Act 2024 provides for an amendment to the ILR provisions to rectify a potentially anomalous outcome that could have arisen for taxpayers involved in certain lease arrangements.

Background

The interest limitation rule (ILR) was introduced by Finance Act 2021, as provided for in the EU Anti-Tax Avoidance Directive, and came into effect from 1 January 2022. The ILR caps deductions for "exceeding borrowing costs" (i.e. a company's interest (and equivalent) borrowing costs as reduced by its interest (and equivalent) income) at 30% of a corporate taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) as measured under tax principles.

The interest equivalents that are in scope of the ILR include the finance element of finance lease payments. The portion of a finance lease payment (be it income or expense) that is treated as interest equivalent for the purposes of the ILR is determined by calculating a fraction at the outset of the lease.

The fraction is computed by dividing the total expected finance income (or expense) that will be recognised in the company's accounts over the life of the lease by the total expected gross rent receivable (or payable) over the life of the lease. This fraction is then applied to the amount of taxable (or tax-deductible) rent included in the company's tax return each year. This approach estimates the amount of the finance lease payment that equates to a financing return (or expense) and includes that portion in the ILR calculation.

Although this approach makes sense in a scenario where the lessor is taxing the gross rental income (not just the financing margin) or the lessee is deducting the entire lease payment (not just the financing cost), the legislation had not taken into consideration a situation where a lessor is taxing only the finance margin (because it is not claiming capital allowances on the asset) or the lessee is deducting only the finance element of the lease payment (because it has elected to claim capital allowances on the leased asset). In these scenarios the amount of taxable (or tax-deductible) lease payment in the tax computation is already an amount equating to the financing return (or expense). Consequently, applying the prescribed fraction to this amount would give rise to an anomalous outcome.

Amendment

Finance Act 2024 includes an amendment addressing this issue, such that where a lessor is taxing only the finance margin or a lessee is deducting only the finance element of the lease payment (under either a finance lease or an operating lease within the scope of the abovementioned "relevant lease" provisions), the full taxable (or tax-deductible) amount of those payments will be treated as an interest equivalent for the ILR. Finance Act 2024 also has an equivalent change in respect of lessors taxed under the short-life asset regime. These changes apply to accounting periods beginning on or after 1 January 2025.

Interest Limitation Rule: Carry-Forward Attributes (s835AY TCA 1997)

Finance Act 2024 has also amended the ILR provisions to clarify the treatment of amounts carried forward in a foreign currency, to ensure that the legislation operates as intended. This is a helpful development for taxpayers that use a non-euro-denominated currency to prepare financial statements and corporation tax returns.

Background

Under the ILR, where exceeding borrowing costs are more than 30% of EBITDA, the taxpayer disallows that amount of a tax deduction. These disallowable amounts are carried forward and are tax-deductible from total profits in future years where the taxpayer has sufficient capacity to claim the deduction (this would be the case where the company has not exceeded its 30% threshold in that later year). In addition, when "exceeding borrowing costs" are below the 30% threshold, the unused amount is carried forward as "limitation spare capacity". Moreover, where a taxpayer has financing income in excess of borrowing costs, this excess is carried forward as "interest spare capacity". In future years where the taxpayer exceeds its 30% threshold, it can use this unused capacity to increase the amount of interest (or disallowed amounts carried forward) in that year.

However, legislative clarity was required in the case of a trading company where the tax return is prepared in a non-euro currency: should its carry-forward attributes be valued in the non-euro-denominated currency or in euro, and thus subject to foreign exchange volatility?

Amendment

Finance Act 2024 amends the rules governing the carry-forward of the abovementioned attributes to clarify that where the disallowable amount or spare capacity was calculated in a currency other than euro, then it is to be carried forward in that currency rather than being converted to euro at the prevailing exchange rate.

This change is helpful as it will mean that where a trading company with a non-euro functional currency carries forward a disallowable amount or spare capacity, its value will not increase or decrease as a consequence of foreign exchange movements. Finance Act 2024 also includes rules that are to apply where such a company changes its functional currency. These changes apply to accounting periods beginning on or after 1 January 2025.

Leasing Ring-Fence Provisions (s403 and s404 TCA 1997)

Finance Act 2024 provided amendments to the leasing ring-fencing provisions in s403 and s404 TCA 1997.

Section 403 TCA 1997

Under Irish tax legislation, losses generated by excess capital allowances on leased machinery or plant may be set off only against income from the leased machinery or plant or, where the lessor is a company carrying on a trade of leasing, the profits from that trade. This is referred to as the "leasing ring-fence". Certain activities come within the leasing ring-fence (e.g. the leasing of machinery or plant and the provision of loans to fund the purchase of machinery or plant), and therefore excess capital allowances could also be utilised against these activities.

Finance (No.) Act 2023 widened the range of the activities that could come within the leasing ring-fence. One such activity is the provision of intra-group finance and guarantees via intermediate financing companies. However, there appeared to be a typographical error in Finance (No.) Act 2023 as it required that the intermediate financing company borrow from a third-party lender.

Finance Act 2024 amended the language relating to the provision of intra-group finance and guarantees via intermediate financing companies that required the intermediate financing company to borrow from a third party. This is corrected such that the group company lending to the intermediate financing company is the entity that must have borrowed from a third party. This change has effect from 1 January 2025.

In addition, certain outdated sections in the leasing ring-fence provisions have been removed on the basis that they are viewed as obsolete. Consequential amendments were also made to remove cross-references to these obsolete sections.

Section 404 TCA 1997

Further ring-fencing rules apply to losses generated by excess capital allowances on leased machinery or plant that arise in respect of certain leases, known as "balloon leases" (i.e. leases where the rental payments are substantially skewed toward the end of the lease period).

Historically, lessors could potentially use these excess allowances to shelter the income arising from other leasing activities. Section 404 was introduced many years ago to ensure that lessors treated these balloon leases as a distinct trade from the other leasing trade activities. Activities of the balloon lease are to be ring-fenced from other leasing activities. Therefore there are further limitations on the utilisation of capital allowances for leased machinery or plant that falls under the criteria of balloon lease.

However, owing to the evolution of accounting standards and tax rules since the balloon leasing provisions were enacted, the taxation of lease payments in respect of machinery or plant will, in many cases, be spread evenly over the lease, as the company should generally calculate its taxable profits on accounting profits, even where the timing of lease contract payments is non-uniform.

Finance Act 2024 clarifies that the balloon leasing ring-fencing rules should be disapplied where the total lease payments receivable in respect of that lease are treated as receipts arising evenly over the lease term. This should help to ensure that these rules do not apply where rent is spread evenly over the lease term for tax purposes even if the amounts payable per the lease contract are not.

In addition, Finance Act 2024 repeals a number of provisions, including those that allow a company to surrender ring-fenced balloon leasing trading losses to another group company with income from its own balloon leasing trade. This will result in a more narrow availability of ring-fenced losses where leased machinery or plant meets the balloon lease conditions.

Finance Act 2024 also introduces additional detailed reporting requirements for the tax returns of companies within the balloon leasing ring-fence. These changes have effect from 1 January 2025.

Conclusion

For the leasing sector, Finance Act 2024 positively builds on changes introduced by Finance (No. 2) Act 2023. It indicates that Ireland is taking steps to ensure that the tax environment for the leasing sector remains very attractive and makes sure Ireland is well placed to compete for international investment in leasing platforms. However, it is vital that leasing continues to be on the agenda in future Budgets to further improve our lease regime offering.

Alison McHugh
Tax Partner, Head of EY Private Client Services, Ernest & Young, Ireland
Brian O'Malley
Tax Senior Manager, Private Client Services, Ernest & Young, Ireland

Pensions: PRSA and SFT Changes and the Introduction of Auto-Enrolment

Introduction

Leading up to the recent Finance Act there was much public attention and debate with respect to the scope of employer personal retirement savings accounts (PRSA) funding, the current level of the standard fund threshold (SFT) and the roll-out of the Automatic Enrolment Retirement Savings System (AE). Thus, there was little surprise when Finance Act 2024 introduced a number of key tax measures pertaining to these areas of retirement planning. It is evident that the Irish pension system is currently undergoing significant reform. The pension changes provided for by Finance Act 2024 aim to address compliance concerns, modernise retirement planning and expand our national pension coverage. In this article we outline these pension tax reforms in detail, opine on the specific legislative changes and consider the potential impact of such changes on our pensions landscape.

Employer Contributions to PRSAs

Before examining the relevant Finance Act 2024 change to employer PRSA contributions, it is best to recap on the evolution of the PRSA employer funding rules in chronological order, given the number of changes to same in such a short period, coupled with the divergence of funding scope associated with each amendment. Chapter 24 of Revenue's Tax and Duty Manual "Pensions Manual: Chapter 24" (last updated April 2024) provides:

> "Prior to the passing of Finance Act 2022 on 15th December 2022, employer contributions to an employee's PRSA were treated as a taxable Benefit-in-Kind (BIK) (section 118(5) TCA). Contributions made by an employer to an employee's PRSA were aggregated with employee contributions for the purposes of calculating the maximum tax relieved contribution. This meant no additional tax charge applied if the combined employer and employee contribution was below the age-related percentage limit for the individual. This treatment was abolished in Finance Act 2022.
>
> Under the new rules introduced in Finance Act 2022, employer contributions to an employee's PRSA are not aggregated with employee contributions for the purposes of calculating the maximum tax relieved contributions, and employer contributions are not subject to a BIK charge. There is no limit on employer contributions to an employee's PRSA. However, an individual's pension savings are subject to the overall standard fund threshold (SFT) of €2m; amounts in excess of the SFT are subject to chargeable excess tax, currently 40%."

The initial change brought about by Finance Act 2022 aimed to implement a recommendation of the "Report of the Interdepartmental Pensions Reform & Taxation Group 2020" to "harmonis[e] the rules applying to PRSAs and occupational schemes to the extent that is practicable".

During a Dáil debate on 6 November 2024 (Finance Act 2024: Committee and Remaining Stages) the Minister for Finance, Jack Chambers TD, declared that:

> "Revenue has actively monitored developments in this area and identified a number of cases that gave rise to concerns where the employer contributions to PRSAs are significantly higher than the salary associated with the employment and, in most of these cases, the employee for whom the contribution was made had a connection to the employer. It would appear these cases show signs of behaviour that is not in keeping with the policy intent of the Finance Act 2022."

In an attempt to address Revenue's abovementioned concern, s12 Finance Act 2024 amends a number of sections of the Taxes Consolidation Act 1997 (TCA 1997) to limit the tax relief available for employer contributions to an employee's PRSA arrangement.

Capping employer PRSA contributions

A limit to the size of the employer contributions to a PRSA that are not considered to be a benefit-in-kind (BIK) under s118 TCA 1997 has now been imposed. The following sub-section is now included in s787E TCA 1997:

> *"(1A) Where an employer makes a contribution to an employee's PRSA and the total of such contributions exceeds the employer limit, the sum of those contributions made, less the employer limit, shall be chargeable to tax as income of the employee, in accordance with section 118(1)."*

Employer contributions to PRSAs are now limited to an "employer limit" of 100% of the employee's emoluments (i.e. anything assessable to income tax under Schedule E) as defined in s787A(1) TCA 1997. Amounts exceeding this "employer limit" are subject to tax as a BIK under s118 TCA 1997 in the hands of the employee.

As per s787V(1)(b) TCA 1997, the legislature has also provided that an employee's emoluments in the previous year may be used to determine the "employer limit" in the current year in the following scenarios:

> *"where the employee's emoluments for the year of assessment from that employer are lower than that employee's emoluments for the previous year of assessment from that employer by virtue of –*
>
> *(i) receipt of a benefit paid under the Social Welfare Consolidation Act 2005 to which section 126 applies,*
>
> *(ii) a period of unpaid leave approved by the employer, or*
>
> *(iii) a period of sick leave at a reduced rate of emoluments or in respect of which no emoluments are paid by the employer, 100 per cent of the employee's emoluments in the previous year of assessment from that employer;"*

Tax deductibility restrictions

Revenue's "Notes for Guidance – Taxes Consolidation Act 1997 (Finance Act 2024)", published on 27 December 2024, state that "From 1 January 2025, an employer contribution to an employee's PRSA will only be an allowable deduction in calculating the employer's taxable profits up to the employer limit (as defined in section 787A TCA 1997)".

Section 787J TCA 1997 is now amended to provide that employers may claim a tax deduction only for PRSA contributions that do not exceed "the employer limit for that employee". Thus, where the employer limit is exceeded, no corporate tax deduction will be available under s787J. This ensures that employer contributions are aligned with an employee's taxable employment benefits. We await further Revenue clarification to determine whether a deduction will be available for the portion of any employer contribution that exceeds the "employer limit", as would be the case with any BIK expense.

Although the capacity for an employer to provide retrospective PRSA funding in relation to an employee's past service may be curtailed under Finance Act 2024, there some positives to consider:

- There is now certainty with respect to the level of employer PRSA contributions that may be made without creating BIK or other adverse tax implications for an employee.
- PRSAs continue to be a viable pension funding option for family business owners and private investment holding companies in situations where a genuine employment substance exists.
- A fine balance has been achieved to ensure that the scope of employer funding is more generous than that offered under the pre-Finance Act 2022 rules and less favourable than may have been the perception under the pre- Finance Act 2024 rules.

Standard Fund Threshold

The standard fund threshold (SFT), introduced in 2005, has undergone several revisions. Initially set at €5m, and increasing to just over €5.4m in 2007, it was reduced to €2.3m in 2010 and to €2m in 2014. This threshold caps the lifetime amount that an individual can accumulate in tax-relieved pension funds. However, owing to a stagnant SFT threshold since 2014, wage growth and a change in the pensions landscape, this has created challenges, particularly with respect to recruitment for senior public sector positions. This prompted the Government to commission an independent examination of the SFT at the end of 2023, with the associated report published on 18 September 2024. In line with recommendations of the report, s13 Finance Act 2024 amends s787O, s790AA and Schedule 23B of TCA 1997 to provide for a number of changes to the SFT.

SFT level (s787O TCA 1997)

Starting in 2026, the SFT will rise from €2m by €200,000 annually, reaching €2.8m in 2029. From 2030, the threshold will be adjusted annually based on the Central Statistics Office's Earnings, Hours, and Employment Costs Survey, ensuring alignment with inflation and wage growth.

Definition of standard chargeable amount (s790AA TCA 1997)

Before Finance Act 2024, in relation to the taxation of lump sums in excess of the tax-free amount, the standard chargeable amount, which is taxed at 20%, was calculated as follows:

- 25% of the SFT less
- the tax-free amount (currently, €200,000).

Since Finance Act 2024, s790AA(1)(a) TCA 1997 has been amended such that the "standard chargeable amount means €500,000 less the tax free amount". Thus, going forward, the standard chargeable amount is no longer linked to the SFT and will remain constant at €500,000, despite the future SFT level's increasing as outlined above. Given that the 2022 report of the Commission on Taxation and Welfare suggested that marginal tax rates should be applied on all lump sums that exceed the tax-free threshold, this appeared to be a pragmatic solution to maintaining the current approach to taxing pension lump sums as the SFT increases in the near future.[1]

Benefit crystallisation events

Schedule 23B of TCA 1997 has been amended to classify transfers from PRSAs to vested PRSAs as a benefit crystallisation event. This means that individuals will incur a chargeable excess tax liability if their pension entitlements exceed the SFT after such a transfer.

Automatic Enrolment Retirement Savings System

Sections 14 and 15 of Finance Act 2024 provide the tax legislative framework for the Auto-Enrolment Retirement Savings System, which is scheduled to commence on 30 September 2025. However, it is important to emphasise that both of these sections are subject to a Commencement Order to be made by the Minister for Finance.

Section 14 Finance Act 2024 amends Part 30 TCA 1997 by inserting a new Chapter, Chapter 2E. The Explanatory Memorandum to Finance Act 2024 succinctly describes the principle of this provision:

> "The Automatic Enrolment Retirement Savings System Act 2024 (AE Act) provides the legislative basis for AE. While AE is a policy initiative of the Department of Social Protection, the legislation governing the taxation elements of the AE scheme [is] being introduced in this Bill.
>
> Chapter 2E comprises five new sections. The key features of the provisions include:
>
> - employer contributions to AE will be exempt from tax;
> - income and gains of AE funds while held by an AE provider will be exempt from tax;
> - amounts paid from the fund (after any tax-free lump sum) will be taxed."

Section 15 Finance Act 2024 introduces several supplementary amendments related to Auto-Enrolment (AE) to TCA 1997 and the Stamp Duties Consolidation Act 1999, which will come into effect on the issuance of a Commencement Order by the Minister for Finance. The amendments to TCA 1997 include:

- Section 118: Amended to remove employer contributions to AE from the BIK charge.
- Section 192Q: Newly inserted to exempt State contributions to the AE system from income tax and universal social charge (USC).
- Section 246: Amended to exclude the obligation to withhold tax on yearly interest payments to and from An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir ("the Authority").
- Section 256(1): Amended to exempt the Authority from deposit interest retention

1 "Foundations for the Future: Report of the Commission on Taxation and Welfare", https://www.gov.ie/en/publication/7fbeb-reportof-the-commission/

tax (DIRT) on interest earned from AE contributions.

- Section 608: Amended to exempt gains from the disposal of investments in specified superannuation funds, including units in an AE provider scheme, from capital gains tax.
- Section 706: Amended to attribute premiums paid under AE provider schemes to the pensions business of assurance companies.
- Section 739D: Amended to ensure that gains are not treated as arising to an investment fund on a chargeable event in AE, provided the Authority has made a declaration to an investment undertaking before the event.
- Section 787O: Amended to include new definitions to incorporate AE in the scope of Chapter 2C and Schedule 23B for calculating benefit crystallisation events.
- Section 790AA: Amended to include AE payments in the scope of a "relevant pension arrangement" for calculating an individual's lump sum payment limit.

Additionally, the Stamp Duties Consolidation Act 1999 is amended in s82C to include AE provider schemes in the definition of a "pension scheme".

Conclusion

In summary, the Finance Act 2024 introduces significant tax reforms to the Irish pensions system, reflecting a comprehensive approach to modernising retirement savings and ensuring equitable tax treatment. The revisions to PRSA contribution limits and the SFT demonstrate a balanced effort to provide clarity and fairness in pension funding and tax relief. Concurrently, the implementation of the Automatic Enrolment Retirement Savings System is a landmark development aimed at broadening pension coverage and encouraging long-term savings. Given the number of independent review reports that have been published in recent times on various aspects of our pensions system, one can expect further amendments and enhancements to Part 30 TCA 1997 in the near future.

John Cuddigan
Partner – Tax, RDJ LLP

Finance Act 2024: Retirement Relief – Really, Mind the Cap

Introduction

Finance Act 2024 ("the Act") introduced amendments to the retirement relief provisions in s599 TCA 1997. The changes, discussed below, seek to mitigate the impact of some of the amendments to s599 made by Finance (No. 2) Act 2023. The latter, had they been introduced from 1 January 2025, would have capped at €10m the relief given under s599 TCA 1997 on the disposal of qualifying assets by individuals aged between 55 and under 70. This capping would have had a significant impact on lifetime transfers of shares in many successful indigenous family businesses, where employment is significant.

This article outlines the changes in the Act to the retirement relief provisions, with an analysis of how they will apply to disposals, and comments on whether the amendments are sufficient. Before reviewing the changes in the Act, the amendments made by Finance (No. 2) Act 2023 to s599 TCA 1997 are revisited to allow for a complete understanding of the changes in the Act. These amendments are left entirely unchanged by the provisions of s55 of the Act, which focus on a new claim entitlement and clawback period for disposals by individuals aged between 55 and under 70 where the consideration for qualifying assets exceeds €10m.

Amendments to s599 TCA 1997 Introduced by s50 Finance (No. 2) Act 2023

Section 50 introduced the following amendments to s599 TCA 1997 that apply to disposals of qualifying assets on or after 1 January 2025.

New capping provisions to apply from 1 January 2025

Amendments were made to sub-paragraph (1)(b) of s599 TCA 1997 to provide for the following caps to consideration that will apply to disposals of qualifying assets on or after 1 January 2025:

- For individuals **aged between 55 and under 70**, if the market value of the "qualifying assets" is €10m or less, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets".
- For individuals **aged between 55 and under 70**, if the market value of the "qualifying assets" is greater than €10m, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets" as if the consideration on the disposal were €10m.
- For individuals **aged 70 or over**, if the market value of the "qualifying assets" is €3m or less, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets".
- For individuals **aged 70 or over**, if the market value of the "qualifying assets" is more than €3m, relief is given in respect of the full amount of CGT chargeable on any gain arising on the disposal of the "qualifying assets" as if the consideration on the disposal were €3m.

Aggregation rules to apply from 1 January 2025

Amendments were made to sub-section s599(2) TCA 1997 to introduce and tighten up aggregation rules for the purposes of the application of the caps. These changes can be summarised as follows:

- Where an individual **who has attained 66** disposes of "qualifying assets" in the period from 1 January 2014 to 31 December 2024, the consideration for each disposal shall be aggregated for the purposes of the €3m cap.
- Where an individual **who has attained 66** disposes of "qualifying assets" in the period from 1 January 2014 to 31 December 2024 **and on or after 1 January 2025**, the consideration for each disposal shall be aggregated for the purposes of either the €10m cap or the €3m cap (with a maximum aggregation of €3m for disposals occurring before 31 December 2024).
- Where an individual **who has attained 55** disposes of "qualifying assets" in the period commencing **on or after 1 January 2025**, the consideration for each disposal shall be aggregated for the purposes of either the €10m cap or the €3m, whichever is relevant. There is, however, no aggregation for disposals on or after 1 January 2025 with an individual's disposal of qualifying assets before 1 January 2025 where the individual was aged under 66 at the date of the earlier transfer.

Aggregation for purposes of s598(3) TCA 1997 to apply from 1 January 2025

Section 599(7) TCA 1997 was also amended – first, to repeat largely (with some cross-reference changes) the pre-existing position that where there is a disposal of qualifying assets by an individual aged 66 or older and there is also a disposal of shares or securities in a family company by the same individual to a company controlled by his or her child, the consideration is deemed to be aggregated for the purposes of s598(3). This was to be the case for disposals up to 31 December 2024 and following that date.

The special aggregation rule under sub-section (7) was, however, also extended to apply to disposals falling under s599 TCA 1997 made by an individual aged 55 or older on or after 1 January 2025. This is an entirely new aggregation rule that applies to disposals on or after 1 January 2025.

Readers might find it useful to refer to the article on these amendments in *Irish Tax Review*, Issue 1 of 2024.

Amendments to s599 TCA 1997 Introduced by s55 of the Act

Section 55 of the Act has now introduced amendments to s599 TCA 1997. The amendments allow for a further claim for relief on the disposal of qualifying assets by individuals **aged between 55 and under 70** where the consideration for qualifying assets exceeds €10m. The terms of the new section also provide, by way of balance, for a new clawback period of 12 years for any claim regarding consideration in excess of the cap. The amendments comprise new sub-sections (4A) and (9) of s599 TCA 1997.

New sub-section (4A)

The new sub-section (4A) of s599 TCA 1997, as introduced by s55 of the Act, provides for the following:

- The sub-section is to apply to an individual who makes a disposal of qualifying assets to his or her child on or after 1 January 2025 where the individual is **aged between 55 and under 70** and the market value of the "qualifying assets" is greater than €10m.
- The individual to whom the sub-section applies can make a claim to defer the payment of the CGT on the disposal of the qualifying assets in the return of income and gains for the year of assessment of the disposal. This is known as the "deferred capital gains tax" and will comprise the CGT that arises owing to the imposition of the €10m cap.
- A new retention period of 12 years from the date of the disposal of the qualifying assets is applied in relation to the "deferred capital gains tax", with two possible outcomes:
  - if the assets are disposed of by the child before the expiration of the 12 years running from the date of the original disposal to the child, then the "deferred capital gains tax" is assessed on the child, along with any CGT that might arise on the disposal; **or**
  - if the assets are not disposed of by the child before the expiration of the 12 years running from the date of the original disposal to the child, the "deferred capital gains tax" shall no longer be due or payable.

The death of a child will not be a disposal for the purposes of the clawback provisions.

The terms of sub-section (4A), accordingly, now provide for a deferral of the CGT on disposals of qualifying assets exceeding €10m in value, and subject to the 12-year holding period's being met, there is, in effect, a permanent deferral. There is no change in the rules pertaining to the disposal of qualifying assets to the extent the value is less than or equal to €10m. The relief will fall to be claimed in the normal course on qualifying assets up to this level and the 6 year retention period will continue to apply to that extent.

In effect, the new sub-section (4A) results in the relief under section 599 TCA 1997 now being apportioned in relation to disposals of qualifying assets up to €10m and in relation to disposals of qualifying assets over €10m. In the former case, the relief is granted under section 599(1) TCA 1997 and carries the 6 year retention period and in the latter case, the relief is claimed under section 599(4A) TCA 1997 but the tax arising is 'deferred' for a period of 12 years, following which it may become a permanent deferral.

Whilst these separate claim mechanisms exist, there appears to be no practical difference save that the relief may be removed where there is a disposal of the qualifying assets to the extent the original value on the original gift of the qualifying assets exceeded €10m.

In the case of disposals by individuals aged 70 or over, it should be noted that the provisions of sub-section (4A) do not have any application to a charge to CGT due to the €3m cap's being breached. In such a case, the CGT will be fully payable and no deferral regime applies.

Revenue published an updated Tax and Duty Manual on the application of the provisions of s599 TCA 1997 after Finance Act 2024 with some examples.[1]

Example 1: Disposal on 31 March 2025.

An individual aged 60 transfers qualifying assets comprising shares in a trading company worth €16m to a child on 31 March 2025.[2]

The individual and the qualifying assets satisfied the conditions to obtain relief under s599 TCA 1997, but the disposal is one to which s599(1)(b)(v) TCA 1997 applies.

It can be assumed that there is a deductible cost of €1 m in the shares, and the professional costs of transferring the shares can be ignored.

The relief calculations under s599 TCA 1997, taking into account the new provisions of sub-section (4A), are set out below:

Computation ignoring s599 TCA 1997

Disposal consideration	16,000,000
Less cost	(1,000,000)
Chargeable gain	15,000,000
CGT at 33%	4,950,000

Relief under s599 TCA after FA 2024	**Quantum**	**Detail**
Relief under s599(1)(b)(v)	2,970,000	(€10,000,000 – €1,000,000) x 33%
Deferred CGT under s599(4A)	1,980,000	(€16,000,000 – €10,000,000) x 33%
Total CGT	4,950,000	

Claims to be made by individual	**Quantum**	**Detail**
Claim for relief under s599(1)(b)(v)	2,970,000	Made through return of income and gains for 2025
Claim for deferral under s599(4A)	1,980,000	Made through return of income and gains for 2025

Clawback for child	**Clawback of tax**	**Detail**
Disposal before 31/03/31	4,950,000	Full clawback of all relief claimed
Disposal after 31/03/31 but before 31/03/37	1,980,000	Deferred CGT under s599(4A) TCA 1997
Disposal after 31/03/37	–	No clawback

1 See https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-19/19-06-03b.pdf

2 Further examples are contained in the Revenue Tax and Duty Manual, including demonstrating the position that applies for disposals straddling pre- and post-1 January 2025

New sub-section (9)

A new sub-section (9) has been introduced to s599 TCA 1997 to restrict any claim for relief – including a claim to the deferral under sub-section (4A) – to where it would be reasonable to consider that the disposal of the qualifying assets is for bona fide commercial reasons and where the disposal does not form part of any arrangement or scheme the main purpose or one of the main purposes of which is the avoidance of tax.

This new sub-section, in the context of claims for relief under s599 TCA 1997, which will involve transfers of business assets within families in commercially driven succession in businesses, appears out of place and inappropriate but reflects the recent practice of the legislature to restrict application of reliefs to commercial transactions. It is difficult however to see how successions within family trading companies or groups – utilising a relief that carries clawback provisions and significant conditionality – could be viewed as having a main purpose for the avoidance of tax.

Commentary on Changes

As was highlighted last year by this writer, the introduction of the cap of €10m, as included in Finance (No. 2) Act 2023, would have primarily impacted succession strategies of medium and large indigenous SMEs, a sector that delivers a significant and growing proportion of total employment in the private business economy.[3] In that article the risks of deferred successions, poorly timed successions and the need to force a sale to avoid a charge to tax that could financially impact the business or the successors were highlighted.

If the need to preserve existing control and encourage continued growth in indigenous businesses was important in early 2024, it is even more so now, in light of recent international political changes that put the multinational sector in Ireland under greater focus and pressures. Any strategy that encourages sales of successful indigenous businesses rather than growth and good and viable succession would appear to be out of step with this new reality.

The risks associated with capping the relief have also been the subject of commentary by a number of business groups, including IBEC,[4] which expressed the view succinctly that the introduction of the cap was “running contrary to Government policy to encourage the growth of indigenous business”.

In this light, it would be churlish not to give a guarded welcome to the changes introduced by s55 Finance Act 2024, given that they effectively disapply the cap of €10m introduced for transfers of qualifying assets within families by the measures in Finance (No. 2) Act 2023.

However, the retention of reference to a cap – albeit one that does not actually apply if a further claim is made and a 12-year post-transaction holding period is met – continues to undermine succession in indigenous business. Twelve years – which is double the clawback period originally contained in the section and will continue to apply up to the €10m limit – represents a significant holding period that may not be possible to meet – or may be perceived as not possible to meet – in a dynamic and modern business environment and will therefore continue to be a factor for shareholders of such companies in evaluating whether growth and succession or sale is more viable.

Additionally, if the rationale of the 12 year holding period is to recognise that equity and

3 Jim Power Economics, “Significance of the SME Sector in the Irish Economy” (May 2020), https://isme.ie/wp-content/uploads/2020/05/LOCAL-JOBS-ALLIANCE-REPORT-May-20-2020.pdf

4 *The Irish Times*, 21 May 2024.

fairness demand a longer period of clawback – and this is entirely reasonable – it is unfortunate that a cliff-edge approach is applied for the full 12 years and not a tapered form of clawback, with the relief on the value over the level of €10m proportionately retained during the second six-year period. Tapering would offer a measure of clawback of the relief where there is an early sale but would do so on a proportionate basis that would not undermine the succession strategy being employed at the outset but allow for greater choices on the part of the successors to the business.

Conclusion

Section 55 Finance Act 2024 should be welcomed as that it potentially allows for a removal of the tax charge associated with the introduction of the cap of €10m by Finance (No. 2) Act 2023. However, the measures are certainly not perfect, in light of the 12-year holding period that now applies for the relief claimed by reference to any consideration over €10m in relation to qualifying assets. This holding period may continue to impact negatively proper succession strategies, and further changes may be appropriate or required.

Fiona Carney
Director, Tax Solutions Centre, PwC Ireland
Pearse Casey
Associate, PwC Ireland

Finance Act 2024: New Participation Exemption for Certain Foreign Distributions

Introduction

Section 50 of Finance Act 2024 introduces to Irish legislation a participation exemption for foreign dividends and other distributions through the enactment of a new s831B in Chapter 2 of Part 35 (Double taxation relief) of TCA 1997. This has been a highly anticipated and much welcomed development for Irish corporates with overseas interests, providing simplification of double taxation relief through a corporation tax exemption for qualifying foreign dividends and other distributions made on or after 1 January 2025.

By way of background, although Ireland has a long-established participation exemption in respect of capital gains in the form of s626B TCA 1997 relief, before Finance Act 2024 it was one of only a small number of OECD Member

States that did not operate some form of participation exemption for foreign-sourced dividend income. Ireland, instead, operated what is referred to as a "tax and credit" system whereby, in broad terms, dividends and other income receipts in respect of shares are subject to Irish corporation tax but credit is given for tax paid in other jurisdictions up to the amount of Irish tax payable on the income.

The *Review of Ireland's Corporation Tax Code*, which was presented to the Minister for Finance and Public Expenditure and Reform by Mr Seamus Coffey in 2017, included a recommendation that the Government consider whether it is appropriate to move to a territorial corporation tax base in respect of foreign-sourced dividends from connected companies and in respect of the income of foreign branches of Irish-resident companies.

In December 2021 the Department of Finance released a public consultation on the introduction of a territorial regime of double taxation relief in Ireland, and in September 2023 it published its *Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax*, which committed to the introduction of a participation exemption for foreign dividends in Finance Act 2024 and to continuing consideration of the policy merits for the introduction of a foreign branch exemption.

The Department of Finance subsequently published two Feedback Statements in 2024 seeking stakeholder feedback on the design of a participation exemption for foreign dividends, which included a "Strawman proposal" on how the exemption might work.

Following this consultation, s50 Finance Act 2024 was introduced. It amends Chapter 2, Part 35, TCA 1997 (Double taxation relief) by introducing a new s831B to provide a corporation tax exemption for qualifying foreign distributions made on or after 1 January 2025. It also makes a number of consequential amendments to other sections of TCA 1997 to take account of the new provisions.

It is important to note that the new measures do not replace the existing "tax and credit" system but instead sit in tandem with these measures. Going forward, taxpayers can elect into the participation exemption on an accounting period-by-accounting period basis. Where an election is made, any qualifying distributions made in that accounting period will be exempt from corporation tax and any non-qualifying distributions will continue to be taxed under the existing "tax and credit" system.

The new measures are also currently limited to distributions received from companies that are resident in a "relevant territory", being an EEA State or a territory with which Ireland has a double taxation agreement. This restriction in scope renders the Irish participation exemption for foreign distributions out of step with major competitor jurisdictions, as their regimes generally apply to a wider range of territories. It is therefore very welcome that the Department of Finance has signalled that work will continue in 2025 on giving further consideration to the geographic scope of the participation exemption. As part of that process, the Department intends to give further consideration to the potential introduction of a foreign branch exemption.

Key Features of the New Participation Exemption

Section 831B(3) provides that the exemption applies where, in an accounting period:

- a "relevant subsidiary" makes a distribution to a "parent company" of the relevant subsidiary that is, or part of which is, a "relevant distribution" and
- the relevant distribution constitutes income in the hands of the parent company and would otherwise be chargeable to corporation tax under:
    - Schedule D, Case III, provided that it is not computed under the principles of Schedule D, Case I (see "Exclusion of Certain Companies", below), or

- Schedule D, Case IV, in the case of a dividend paid in respect of preference shares for s138 TCA 1997 purposes.

The parent company must make a "relevant claim", as defined in s831B(8), in the corporation tax return for the accounting period in which the relevant distribution is made. The claim is made in respect of all relevant distributions made by relevant subsidiaries to the parent company for the accounting period.

Once the necessary conditions are met, and except where otherwise provided in the Corporation Tax Acts, corporation tax is not chargeable on any relevant distributions in that accounting period, and they are not taken into account in computing income for corporation tax purposes. Any non-qualifying distributions continue to be taxed under the existing "tax and credit" system.

The participation exemption does not apply to relevant distributions made to certain entities, including s110 TCA 1997 companies and certain assurance companies and collective investment undertakings (see "Exclusion of Certain Companies", below).

It is also subject to a specific anti-avoidance test.

Key Definitions

The terms in quotation marks above are defined in s831B(1), as outlined below.

Parent company

A "parent company" is a company that holds a "qualifying participation" in the relevant subsidiary and is either:

- resident in Ireland or
- resident for the purposes of foreign tax in another EEA State by virtue of the law of that state and not generally exempt from foreign tax.

A "qualifying participation" for this purpose is defined in s831B(2) as directly or indirectly owning at least 5% of the ordinary share capital of the relevant subsidiary and, by virtue of this, having beneficial entitlement to at least 5% of the profits available for distribution and at least 5% of the assets available for distribution on a winding-up of the subsidiary.

Section 831B(2)(b) sets out a number of circumstances where shareholdings cannot be taken into account in determining whether the qualifying participation condition is met. These include situations where:

- the share capital in the relevant subsidiary is held indirectly through another company that is not tax resident either in Ireland or in a relevant territory or
- a profit on a sale of the share capital in the relevant subsidiary would be treated as a trading receipt of the company that directly holds those shares.

Section 831B(5)(a) further provides that the parent company must hold the qualifying participation in the relevant subsidiary for an uninterrupted period of not less than 12 months, being a period during which the relevant distribution is made.

It is worth noting that the qualifying participation criteria for a "parent company" are narrower in some respects than those contained in s626B TCA 1997 for the purposes of the participation exemption for the disposal of shares. It is not, for example, possible to take account of shares held by other, wider group members in the manner provided for in s626B(1)(b)(ii). Neither can the period of ownership of the shares be extended where, for example, shares that were previously held by another group company were transferred to the parent company in a no-gain/no-loss transfer in the manner provided for in Schedule 25A, which supplements s626B.

Relevant subsidiary

A "relevant subsidiary" is a company that meets three conditions:

- Both at the date on which the relevant distribution is made and throughout the "relevant period" it:

  - is resident for the purposes of "foreign tax" in a "relevant territory" by virtue of the law of that territory and
  - is not generally exempt from foreign tax.
- It did not, at any time in the "reference period", acquire a business or part of a business, or the whole or greater part of the assets used for the purpose of a business, that was previously carried on by another company that was not resident for the purposes of foreign tax in a relevant territory by virtue of the law of that territory in the period from the start of the reference period (or from the time when the other company was incorporated or formed, if this was within the reference period) to the date of the acquisition.
- It was not formed through a merger at any time during the reference period in circumstances where a party to that merger was another company that was not resident for the purposes of foreign tax in a relevant territory by virtue of the law of that territory in the period from the start of the reference period (or from the time when the other company was incorporated or formed, if this was within the reference period) to the date of the merger.

The key terms in quotation marks above are also defined in s831B(1), as follows:

- A "relevant territory" is defined for this purpose as an EEA State, other than Ireland, or a territory with which Ireland has a double taxation agreement (a "treaty territory") provided the territory is not a "listed territory" as defined in s835YA TCA 1997, being a territory on Annex I of the EU List of non-cooperative tax jurisdictions. It is important to note that Ireland is not a "relevant territory" for the purposes of these provisions. As noted above, it is hoped that the geographical scope of "relevant territory" will be widened in a future iteration of the legislation and that this will include Ireland.
- "Foreign tax" is defined for this purpose as a tax that corresponds to Irish corporation tax; generally applies to income, profits and gains arising to companies that are tax resident in that territory; and is imposed at a nominal rate greater than 0%.
- The "relevant period" is the period of five years immediately before the date of the relevant distribution or, if the relevant subsidiary was incorporated or formed within that five-year period, the period from that date of incorporation or formation to the date of the distribution.
- The "reference period" is the period of five years immediately before the date of the relevant distribution.

Where any of the conditions is not met, the parent company will be unable to claim the participation exemption in respect of any dividends paid by the subsidiary until five years have elapsed from the date that the relevant condition was not met.

Significant care is needed when determining whether a subsidiary is a "relevant subsidiary", as it is subject to several conditions involving a look-back period. First, the residence test is not a point-in-time test but requires consideration of the subsidiary's residence status for up to five years before the distribution is made.

Furthermore, any acquisition or merger activities involving the subsidiary and another company that was not resident in a "relevant territory" in the previous five years need to be taken into account in determining whether the condition is met. The tests do not take any account of the relative scale or economic value of any business or assets acquired in the course of the acquisition or merger or their contribution to the profits and assets of the subsidiary, meaning that a relatively minor acquisition could result in the conditions' not being met. It is hoped that this will be addressed in a future iteration of the legislation.

A further challenge is that the subsidiary may not have knowledge of the historical residence status of the other company, particularly if that company is a third party. It is hoped that the guidance will clarify that the test takes into account what the subsidiary knows or could be reasonably expected to know in respect of the current and historical residence status of the other company, particularly in the case of third-party transactions.

Companies will also need to be mindful of future transactions undertaken by relevant subsidiaries in circumstances where they wish to claim the participation exemption on distributions from that subsidiary, including any transactions involving Irish companies.

Relevant distribution

A "relevant distribution" is a distribution, or part of a distribution, that:

- constitutes income in the hands of the recipient for corporation tax purposes and
- is made by the relevant subsidiary in respect of its share capital:
  - "out of the profits" of the relevant subsidiary – profits are defined for this purpose in s21B(1)(a) TCA 1997 – or
  - "out of the assets" of the relevant subsidiary where the cost of the distribution, or that part of the distribution, falls on the relevant subsidiary.

In circumstances where the distribution is made "out of the assets" of the relevant subsidiary, a further condition must be satisfied. Section 831(5)(b) provides that the participation exemption applies only if any gain on the disposal of the shares held by the parent company would not be a chargeable gain under the provisions of s626B TCA 1997 were the parent company to dispose of them on the date the distribution is made.

There are also a number of specific exclusions from the meaning of "relevant distribution". It does not include:

- a distribution that is deductible for tax purposes in any territory outside of Ireland,
- a distribution in a winding-up,
- any interest or other income from debt with profit participation rights,
- any amount considered to be "interest equivalent" for the purposes of the interest limitation rule in s835AY TCA 1997 or
- any dividend paid or distributions made by an offshore fund within the meaning of s743 TCA 1997.

Out of profits/out of assets

In assessing whether a distribution is made "out of the profits" of the relevant subsidiary, the definition of "profits" is taken from s21B(1)(a) TCA 1997, the section that permits certain dividends received by Irish-resident companies out of trading profits of a non-resident company to be charged to corporation tax at 12.5% instead of 25%.

Broadly, "profits" are the after-tax profits shown in the profit and loss account or income statement of the company as required to be laid before the annual general meeting of the company. If the company has no such requirement, "profits" are the after-tax profits shown in the profit and loss account or income statement of the company as prepared in accordance with local generally accepted accounting practice.

Thus, relevant distributions derived from reserves that are traceable to profits recorded in the profit and loss account or income statement of a relevant subsidiary should qualify as "out of profits". Companies already availing of s21B(3) or the additional credit for foreign tax on certain foreign dividends provided for in Part 9I of Schedule 24 will be familiar with the need to identify and trace the "profits" out of which the dividend is regarded to have been paid. It will be important to ensure that the board minutes and other documentation supporting the distribution clearly specify which pool(s) of profits the distribution is made out of.

In circumstances where it is not feasible to trace a dividend as being paid "out of profits", consideration may need to be given to whether the relevant distribution is made "out of assets". This can include cases where sufficient reserves are created after a capital reduction by the subsidiary. The subsidiary may not be required to have reserves to make the distribution under local corporate law or may be permitted to make a distribution from a share premium account. As noted above, the parent company will need to be satisfied that it would qualify for s626B relief on a disposal of its shares in the relevant subsidiary for the exemption to apply.

It is welcome that the participation exemption can apply to part of a distribution. Complexities may arise in practice in establishing what part of the distribution can qualify for the exemption, which will likely need to be addressed in Revenue guidance.

Exclusion of Certain Companies

Section 831B(6) excludes from the participation exemption distributions made to:

- assurance companies in circumstances where the distribution is taxed under the special provisions of Chapters 1 and 3 of Part 26, being the "old basis business" provisions for life assurance companies, and
- collective investment undertakings within the meaning of s738 TCA 1997 that are companies.

Section 831B(3)(b) also excludes distributions that would otherwise be chargeable to corporation tax in the hands of the parent company under Schedule D, Case III, where the amount chargeable is computed under the principles of Schedule D, Case I. This would include:

- securitisation companies chargeable to tax under the provisions of s110 TCA 1997 and
- Irish-resident companies assessable to tax under Schedule D, Case III, in respect of a trade carried on wholly abroad under the provisions of s77(5) TCA 1997.

Anti-Avoidance Provision

Section 831B is subject to its own targeted anti-avoidance provision. Section 831B(7) provides that the participation exemption does not apply where the relevant distribution arises in respect of an arrangement or part of an arrangement that:

- has been put in place for the main purpose of obtaining a tax advantage or where one of its main purposes is to obtain a tax advantage and
- is not genuine, taking into account the relevant facts and circumstances, meaning that it is not put in place for valid commercial reasons that reflect economic reality.

Consequential Amendments to Other Provisions

Section 50(1) Finance Act 2024 amends a number of other provisions in TCA 1997 on account of the new participation exemption provisions, including the following.

Section 129A TCA 1997 (Dividends paid out of foreign profits)

Section 129A is an anti-avoidance provision that operates to exclude from the scope of the corporation tax exemption in s129 TCA 1997 for distributions from Irish-resident companies any distributions that are made between Irish-resident connected companies out of profits that arose at a time when the paying company was resident outside the State.

Section 129A TCA 1997 is now amended through the insertion of s129A(6), which confirms that the s129A exclusion will not apply to a distribution if that distribution would have qualified for the participation exemption under s831B TCA 1997 had it been paid immediately before the paying company became Irish resident and had a relevant claim been made. Such a distribution can therefore qualify for exemption under s129, which is very welcome.

Section 835E TCA 1997 (Modification of basic rules on transfer pricing for arrangements between qualifying persons)

Section 835E TCA 1997 provides for an exclusion from the application of the transfer pricing rules in the case of certain qualifying Ireland-to-Ireland transactions. One condition is that the acquirer in relation to the arrangement is chargeable to corporation tax in respect of the profits or gains or losses arising from that arrangement.

Section 835E(2)(b)(ii) provides that the acquirer will be regarded as chargeable to corporation tax in circumstances where the relevant profits or gains would be chargeable to corporation tax but for s129 TCA 1997. This paragraph is amended to include the new s831B TCA 1997. This ensures that the modification to the basic transfer pricing rules for Ireland-to-Ireland transactions continues to apply to a parent company that avails of the participation exemption and is not therefore within the charge to corporation tax on relevant dividends received from its relevant subsidiaries.

Section 835Q (Controlled foreign company charge – undistributed income)

Part 35B TCA 1997 contains the controlled foreign company (CFC) provisions. which operate by attributing certain "undistributed income" of the CFC to the controlling company where certain conditions are met.

Section 835Q sets out the rules for determining the undistributed income of the CFC, being the distributable profits for the accounting period less any relevant distributions made in respect of the accounting period. Section 835Q(4) confirms that a relevant distribution for this purpose includes a distribution made by the CFC to, *inter alia*, "a person resident in the State". This sub-section is now amended to add the condition that such a distribution is a relevant distribution only where the recipient does not make a claim for the participation exemption in respect of that distribution under s831B TCA 1997.

Conclusion

The introduction of a participation exemption has been long awaited, and it is a very welcome addition to our double taxation relief measures. However, the new measures are limited in terms of geographical scope, rendering them out of step with many other jurisdictions with similar exemptions. They are also subject to several stringent conditions that are likely to present challenges to taxpayers as they look to assess whether foreign distributions received can qualify for the exemption. This includes the need to consider all transactions undertaken by the subsidiary over a five-year period. As noted, some of the information required to determine whether the conditions are met may not be readily available to the taxpayer. It is therefore very welcome that the Department of Finance has signalled that further consideration will be given to the new measures this year, and it is hoped that they will be expanded on and simplified in future Finance Acts.

News & Moves

Grant Thornton Announce 15 New Partners Including 3 New Tax Partners

Grant Thornton has announced the appointment of 15 new partners across its audit, tax and advisory areas in Ireland.

*(Clockwise from L-R) Sharon Scanlan, Paul Prenter, **Janette Maxwell (CTA)**, Stephen Tennant (CEO), Bronagh Bourke, Graham Stirling, Victoria Armitage, Robert Ryan, **Úna Ryan (CTA)**, Sean Ridley, Áine Logan, Ross Sheridan, **Mark Bradley (CTA)**, Sarah Bradley and Declan Walsh. (Not present - Simon Nicholas)*

The 3 new Tax Partners are:

Mark Bradley Mark has been appointed as a tax partner leading the Grant Thornton transaction tax advisory team in Belfast. Mark's client portfolio spans several sectors, including renewables, real estate, hospitality, healthcare, and technology. He has extensive experience advising businesses and management teams on transactional tax matters, with a particular focus on due diligence, pre-sale and post-acquisition structuring, group simplification, debt restructuring, and asset protection. Mark is a Chartered Tax Adviser with the UK's Chartered Institute of Tax and a Fellow of the Association of Taxation Technicians.

Janette Maxwell has been appointed as a tax partner leading the Grant Thornton international indirect tax practice, having joined as a tax trainee in 2010. Janette specialises in cross-border transactions, real estate, relevant contracts tax, due diligence M&A, and tax technology, particularly across asset management, banking, life sciences, and the public sector. Janette is a solicitor and a Chartered Tax Adviser (CTA). She holds a Bachelor of Laws (LLB) from Trinity College Dublin and a Master of Laws (LLM) from Queen's University Belfast. Janette also plays a pivotal role in Grant Thornton's EU VAT Task Force committee.

Úna Ryan Úna has been appointed as a tax partner, having joined Grant Thornton in 2008. She specialises in providing tax structuring (mergers, group rationalisation, debt & equity financing, share schemes) and pre-sale restructuring including buy-side and sell-side due diligences. She has extensive experience on estates and trusts for high-net-worth individuals, including residency planning, estate planning and cross border estate tax issues and offshore trusts and anti-avoidance provisions. Úna holds a Bachelor of Civil Law degree from UCD, an LLM in Electronic Commerce Law from UCC and is a Chartered Tax Adviser (CTA), an associate of the Chartered Governance Institute (ACG) and is a qualified Trust and Estate Practitioner (TEP).

Matheson Appoints Nine New Partners Including 1 New Tax Partner

Matheson LLP is delighted to announce the appointment of nine new partners. The new Tax Partner is:

Maeve Lochrie (CTA) and TEP (trust and estates practitioner) in Matheson's Private Client Group, where she advises Irish and foreign UHNW/HNW individuals and families, single/multi-family offices, foreign trust companies, investment managers and private banking clients on a variety of legal and tax issues associated with wealth and succession planning, asset protection and preservation, and offshore structures.

*(L-R) **Simon Shinkwin** (Competition and Regulation); **Sarah O'Meara** (Asset Management); **Seóna O'Donnellan** (International Business Group); **Lisa Tait** (Finance and Capital Markets); **Michael Jackson**, Managing Partner; **Maeve Lochrie** (CTA) (Private Client); **Aishlinn Gannon** (Commercial Litigation and Dispute Resolution); and **Owen Collins** (Energy and Infrastructure).*

McKeogh Gallagher Ryan, a Xeinadin Company, Announce 2 Promotions

McKeogh Gallagher Ryan, a Xeinadin company, are pleased to announce the promotions of **Darragh Moloney** (CTA) to Assistant Manager in our Limerick office and **Pamela Kennedy** (ACCA, CTA) to Assistant Manager in our Ennis office.

Darragh Moloney is from Quilty, Co. Clare. He is a graduate of the University of Limerick. He joined McKeogh Gallagher Ryan in January 2024 after training as a Chartered Tax Adviser (CTA) in the Corporate and International Tax Department of Deloitte's Limerick office. Since joining the tax team, Darragh has worked closely with Tax Partner Mary McKeogh and Tax Director Anne Hogan providing a wide range of compliance and advisory services to both our personal and corporate tax clients. Darragh has a particular focus on succession planning, company restructuring and domestic tax advisory services.

Pamela Kennedy is originally from Clonmel in Co Tipperary where she trained with Binchy & Co (now ROCG) but has been based in Ennis for over 20 years. She joined the firm in 2005 and is a Fellow of the ACCA and a Chartered Tax Adviser (CTA). She works closely with Director Bríd Darcy and Audit Partner Eoin Gallagher in our General Practice Division assisting clients across a diverse range of sectors from agri to SMEs to family-owned businesses, sole traders and solicitors.

*(L-R) Newly promoted **Darragh Moloney**, Director **Bríd Darcy**, newly promoted **Pamela Kennedy**, Director **Aileen O'Neill**. (Photo: Paul Corey)*

With Barden,
you're in great company.