Deloitte.

Deloitte Boardroom Programme
Board Agenda Series 1 –Taxation & Remuneration Hot Topics

Monday, 20 May 2024

Today’s presenters:

Colm McDonnell
Partner
cmcdonnell@deloitte.ie

Colm is a partner in the Risk Advisory business in Ireland with over 30 years professional services experience.

He is the lead partner on a number of key clients, is the Boardroom Programme sponsor and is the Industry lead partner for Technology, Media and Telecommunications for Ireland

Daryl Hanberry
Partner
dhanberry@deloitte.ie

Daryl leads the Tax & Legal practice within Deloitte Ireland and supports the team in providing a wide range of services across all tax heads as we help corporations, employees and individuals navigate the complexities of tax systems in Ireland and across the world.

James Smyth
Partner
jasmyth@deloitte.ie

James is an experienced tax professional with a commercial focus and specific expertise on business model optimisation, transfer pricing, permanent establishment, M&A and international tax planning.

Anne Kelleher
Director
ankelleher@deloitte.ie

Anne is a global leader with over 20 years of combined Human Resource business strategy, total rewards and corporate experience, having worked in both the technology and financial services sectors. She is results focused, a strong communicator and skilled influencer with a passion for identifying future trends and developing innovative and practical solutions to meet business challenges.

Fiona McLafferty
Managing Director
fmclafferty@deloitte.ie

Fiona is a Managing Director in Tax Controversy and is a practising Solicitor, an Accredited Mediator and an Associate of the Irish Tax Institute. She is a former Tax Appeal Commissioner, acting as the quasi-judicial decision-maker in all tax disputes. Prior to her role as a Tax Appeal Commissioner, Fiona was a Solicitor in the Revenue Commissioners for 15 years providing a legal service to the tax authority in all aspects of its business. She was seconded to the European Commission as a National Expert for a period in 2016. She has extensive experience to provide advice and support throughout the tax controversy lifecycle from tax risk mitigation to tax audit management through to tax dispute resolution.

Pillar 2 trends and insights

James Smyth - Partner

Pillar Two - Key elements

Applicable from 1 January 2024

Main rule	**Income inclusion rule ("IIR") – from 1 January 2024** Large multinational groups pay a minimum level of tax in each country in which they operate	Group revenues of €750 million+ 15% rate
Backstop rule	**Undertaxed profit rule ("UTPR") – from 1 January 2025** (backstop)	
Local issue	**Qualified Domestic Minimum Top-Up Tax ("QDMTT")** Territorial addition to standard corporate income tax – reduces or eliminates effect of IIR at ultimate parent entity	Country choice
Priority rule	**Subject to tax rule ("STTR")** Source country taxation of specific types of ("passive") **intra-group payments** Gross level taxation (not a tax on net profits)	Threshold rate

The IIR, UTPR & QDMTT rules operate as a 'top up' to a minimum rate of 15%, unless a Safe Harbour Rule applies

Transitional country-by-country reporting safe harbour

Overview of the rules

- Uses **country-by-country report data** to exclude operations in **lower-risk countries** from needing full calculations
- **Short-term measure:** applies for years beginning on or before **31 December 2026 (three years for most groups)**
  - A **‘once out, always out’** rule applies

Where any of **three CbCR-based tests** are satisfied, Pillar Two top-up tax **for the country** for a year will be **zero**:

De minimis test

Routine profits test

Effective tax rate test

Special rules / exclusions can apply, for example for: joint ventures, joint venture subsidiaries, entities held for sale, flow-through ultimate parents, deductible dividend regimes, ‘multi-parented’ groups, investment entities, stateless entities, eligible distribution tax system and ‘net unrealised fair value losses’

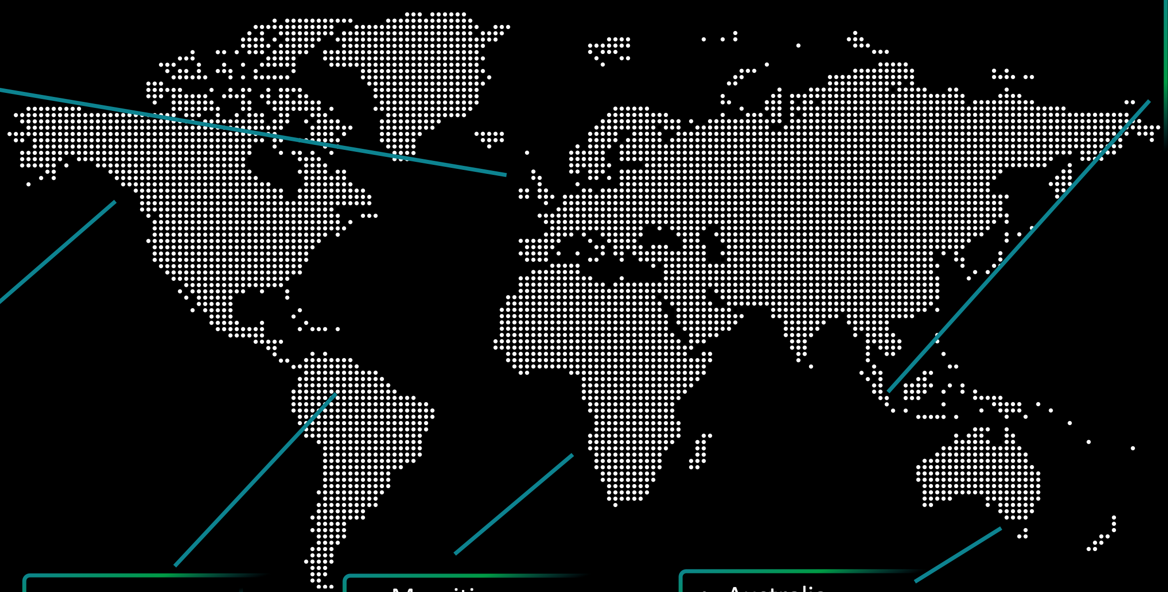
Approach in Different Countries

Pillar Two - GloBE Rules

IF members taking steps to implement include:

- EU member states
- Jersey
- Liechtenstein
- Norway
- Switzerland
- United Kingdom

- Hong Kong (China)
- Japan
- Korea
- Thailand
- Indonesia
- Malaysia
- United Arab Emirates (UAE)



- Canada

- Colombia

- Mauritius
- South Africa

- Australia
- New Zealand

Disclosures required

Fact entity has applied exception

Current tax arising from Pillar Two

If Pillar Two enacted/substantively enacted but not yet in effect disclose known or reasonably estimate:

Qualitative information

- How entity is affected by Pillar Two legislation; and
- Main jurisdictions in which exposures to Pillar Two might exist

Quantitative (at least an indicative range) information

- Indication of the proportion of profits that might be subject to Pillar Two; and
- Average effective tax rate; or
- Indication of how the average effective tax rate would have changed if Pillar Two had been in effect

Public CbCR

Background

- Irish Regulations came into operation on 22 June 2023 –S.I. No. 322 of 2023 and transpose EU Directive 2021/2101/EU
- Goal is for disclosure of certain information publicly to align with BEPS work by the OECD and G20 and also to increase corporate transparency overall
- Romania first EU MS to transpose the EU Directive with the rules in force since 1 January 2023.

In scope MNCs – Irish Position

- EU and non-EU headquartered MNCs and certain standalone entities who operate in the EU, for financial years starting on or after 22 June 2024
- 2025 will be the first reportable year with the report to be first published by 31 December 2026
- Applies to Irish ultimate parent or standalone undertakings, with turnover exceeding €750 million in the last two consecutive financial years.

Information to be reported – Irish Position

- All affiliated undertaking and nature of their activities
- Name of ultimate parent/standalone undertaking
- Revenue
- Number of employees (full-time equivalents)
- Profit or loss before income tax
- Accumulated income tax
- Income tax paid
- Accumulated earnings
- Currency

This information will need to be provided for each EU member state and for each jurisdiction on the so-called EU "black" and "grey" lists within the EU list of noncooperative jurisdictions for tax purposes.

There is an option to defer disclosure of certain commercially sensitive information for five years in certain circumstances.

Penalties – Irish Position

- A fine of up to €5,000 and/or up to 6 months imprisonment.
- Corporate enforcement authority will “police” compliance

Remuneration in Ireland

Gender Pay Gap and Pay Transparency
Anne Kelleher - Director

Gender Pay Legislative Initiatives Across the Globe, the journey to pay transparency

Gender Pay Gap Information Act 2021

Corporate Sustainability Reporting Directive July 2024

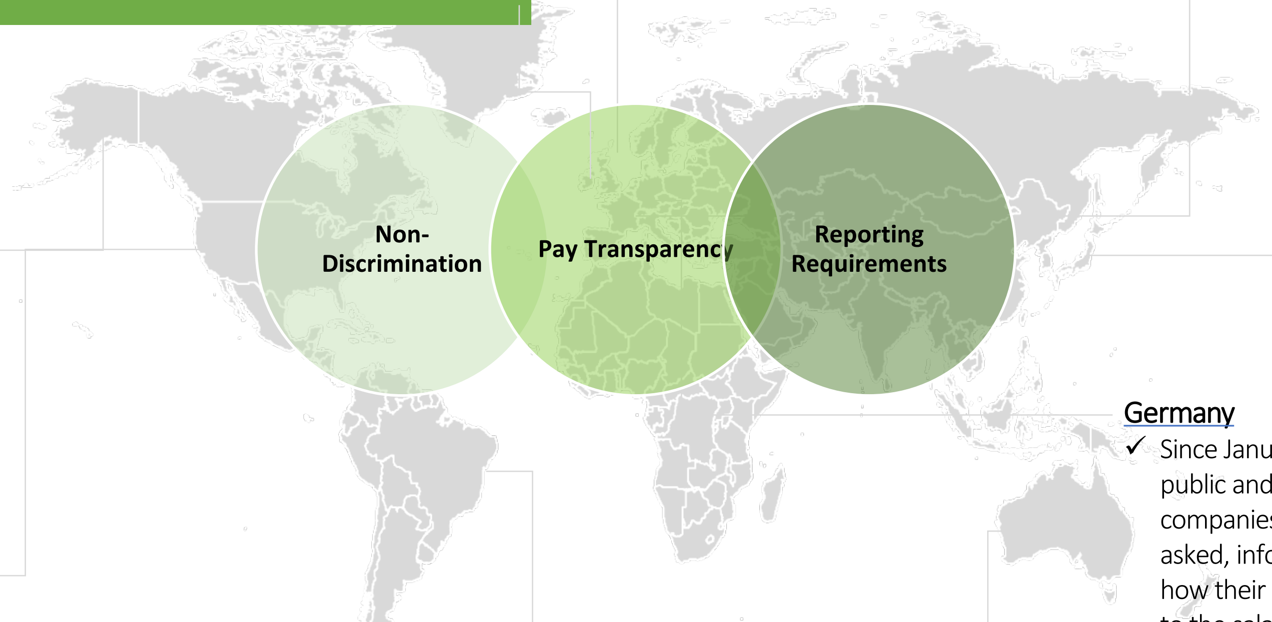
EU Pay Transparency Directive June 2026

Ireland
- ✓ In 2021, Ireland introduced Gender Pay Gap Reporting for companies with 250+ employees
- ✓ In 2024 the threshold has reduced to 150+ employees
- ✓ By 2025 the threshold will be 50+employees
- ✓ Complaints for non-disclosure can be brought to the WRC
- ✓ No financial penalties for non-compliance but serious reputational and brand damage if you are found to be non-compliant

United Kingdom
- ✓ On April 5, 2017, the Gender Pay Gap reporting regulations came into force for all employer with + 250 employees
- ✓ Claims of unequal pay are brought before the Employment Tribunal
- ✓ Further regulation expected

France
- ✓ Recently, a measure has been discussed in France that would put pressure on employers to close their 'unfair' gender pay gap (through software on company payroll systems)

Japan
- ✓ Equal pay for equal work regulations came into effect in Japan in April 2020, and in April 2021 for small and medium-sized companies



Canada
- ✓ Non-discrimination rules
- ✓ Pay transparency rules
- ✓ Reporting requirements

United States
- ✓ Non-discrimination rules
- ✓ Pay transparency rules
- ✓ Reporting requirements

Brazil
- ✓ On 30th March, the Brazilian Senate approved a legislative bill applying a new and more severe sanction to cases where organisation have a gender pay gap without a non-discriminatory reason

Australia
- ✓ In 2009, the Fair Work Act mandated equal pay for equivalent or comparable work

Germany
- ✓ Since January 2018, both public and private companies must, when asked, inform employees how their salary compares to the salaries of people of the opposite gender in corresponding roles at the company

EU Pay Transparency Directive

Rules on Pay Transparency

EU ministers approved the EU Pay Transparency Directive on the 24th of April 2023. Member states are obligated to implement the Pay Transparency Directive into their national laws, regulations, and administrative provisions within three years after the Pay Transparency Directive's entry into force (for Ireland by the 7th of June 2026)

The new rules will provide for more transparency and effective enforcement of the equal pay principle between women and men as well as improve access to justice for victims of pay discrimination

Pay transparency measures:

- Pay transparency (pay levels) for job-seekers
- Right to information (individual and average pay level) for employees
- Reporting on gender pay gap mandatory for employers with 100+ employees
- Joint pay assessment where a gender gap of at least 5% exists

Justice for victims of pay discrimination

Compensation for workers

Workers who have suffered gender pay discrimination can receive compensation, including full recovery of back pay and related bonuses or payments in kind

Burden of proof on employer

Where the employer did not fulfil its transparency obligations, it will be for the employer, not the worker, to prove that there was no discrimination in relation to pay

Sanctions will include fines

Member States should establish specific penalties for infringements of the equal pay rule, including fines

Equality bodies and workers' representatives

May act in legal or administrative proceedings on behalf of workers

Source: New EU rules for pay transparency (europa.eu)

EU Pay Transparency Directive

Considerations for NED's, Remuneration Committees and Senior Management

As the Directive will impact all organisations, it is of particular importance for NED's , remuneration committees and senior management to understand the role they play over the next 18-24 months, as it pertains to company compliance with the Directive and the strategic position companies take in relation to readiness on the Directive.

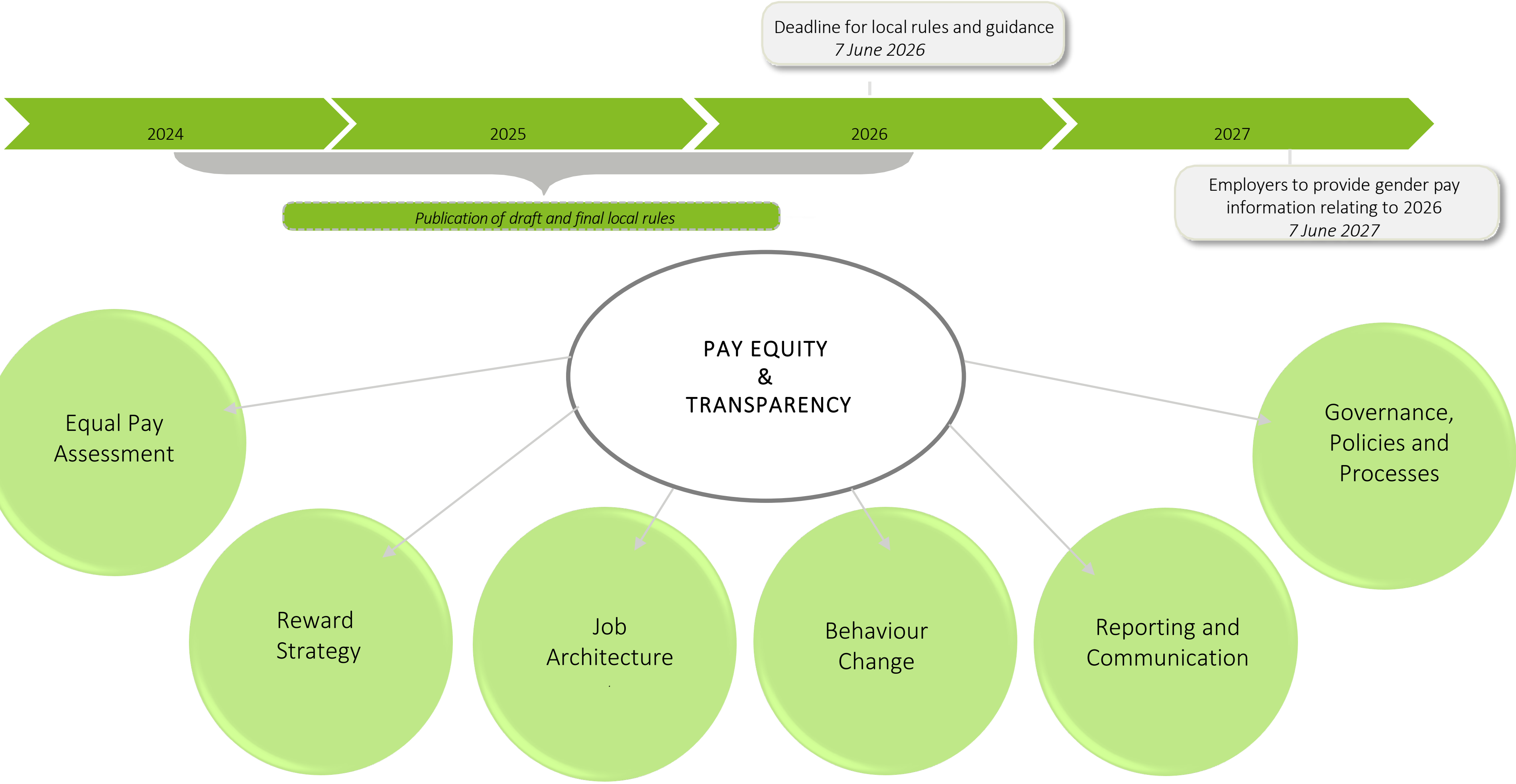
Understanding Implications and Defining Company Position on Compliance	Gender Pay Gap Reporting- Results, Actions and Transparency	People & Reward Strategy, Policies ad Procedures	Governance
• Ensure full awareness of the Directive and its **implications to the organisation**, risks and interdependencies • Recognise the **financial and non-financial implications** of noncompliance to the Directive • Determine **company position on adherence to the Directive and how it fits into the companies culture** • Consider the **requirement to communicate to staff** on the impact of, and their rights under, the Directive i.e. proactive, align with Direction implementation.	• Awareness of the process on how **Gender Pay Gap (GPG) reporting** and **equal pay assessments** are completed so be confident in the organisation's approach and the data being utilised • Understanding of the Directive and how companies may be required to complete **pay assessments** with worker representation and related implications • Consider **the positive and negative impact transparency on pay may have on employees** and candidates. This especially pertains to internal employees having visibility to salary bands via external postings and the ability to ask for the average pay of peers performing similar work, both of which may impact employee morale and an organization's reputation • Consider the **cost implications** in the review and implementation of actions to be compliant with the Directive	• **Review People / HR (and broader) strategies, policies and procedures** to ensure they are compliant as well as ensuring they meet the firm's objectives as it pertains to the Directive • **Pay models will need to be reviewed** to ensure they are gender neutral and enable fair decision making. This means companies should review their compensation framework, including salary, variable compensation (inclusive of LTIPs), and benefit offerings • **Engaged on change** in relation to strategy and policy and ensure the appropriate oversight	• **Informed on companies' readiness for the Directive and any potential risks** pertaining to company approach or readiness considering the potential fines and reputational damage for non-compliance • **Oversight of remuneration governance, including policy and adherence to regulation.** Companies will need to decide what level of oversight is required/necessary for them. Some areas of oversight to consider are: a) Metrics for gender pay gaps and narrative b) Salary bands, changes to remuneration programmes c) Review and outcome of any joint pay assessments and plans to address gaps d) Communication Strategy

EU Pay Transparency Directive

Overview & Timeline

While the core requirements of the Directive **may be expected broadly to align across the EU**, companies should be prepared for the possibility of there being **differences or nuances in local implementation**, determined once those local rules are published.

The key focus areas of the EU Pay Transparency Directive will incorporate a number of workstreams. As such, **employers should be taking steps for implementation over the next 18-24 months**, mapping out the different implementation workstreams, owners and associated timeframes.



EU Pay Transparency Directive

What companies should be considering

Setting the Foundation for Success

Education, Job Architecture and Strategy

- Ensure you understand how the Directive impacts the organisation
- Create a **roadmap identifying the risk and opportunities** that arise from the Directive
- Review or define your **organisations DE&I strategy, Total Rewards Strategy, and job architecture**

Driving Success

Structured Frameworks & Governance

- Once you have a strong foundation, it is about the elements which will drive success, which are **your organisation's compensation framework (CF) including incentive design, performance management framework (PMF) and salary bands**
- A strong CF and PMF will clearly and transparently define how your organisation pays for equal work of equal value, underpinned by your salary bands and governance

Supporting Success

Process, Tooling & Reporting

- Review of downstream processes, particularly in recruiting and HRI systems
- It is important to conduct a **holistic review of your processes end to end** and understand how they may need to adapt
- **Reporting on remuneration and accessibility of remuneration data**, will be key to the success of driving both your total rewards and DE&I strategy.

Maintaining Success

Training & Communication

- **Education and communication** are key to ensuring your organisation's people understand what is changing, why it is changing and how it impacts them, both as it pertains to the regulatory change and/or any internal framework and process change.

Gender Pay Gap, Equal Pay Audits and Salary Transparency

These steps taken to achieve success will prepare you for the requirements under the EU PTD, particularly:

- Gender Pay Gap reporting by worker category
- Equal pay audits where there is a gap of at least 5% by worker category, that cannot be explained by objective gender-neutral criteria
- Transparency of salary information via job postings
- Employee right to request pay information
- No longer being able to rely on previous remuneration when setting pay

Managing Revenue Controversies

Fiona McLafferty – Managing Director

Landscape

Revenue Realignment

- National divisions
- Alignment of resources to risk
- Know profile of your branch

Tax Disputes

- Real-time progression
- Stricter on deadlines
- Automated workflows

'New' Code of Practice

- Graduated approach to risk
- Materiality and complexity
- Come to us before we come to you

Compliance Interventions – Statistics

	TOTAL*	YIELD
2023	291,756	€787 million
2022	428,316	€813 million
2021	463,814	€1,388 million
2020	595,143	€487 million
2019	566,282	€548 million

*Completed Interventions

Source: Revenue Commissioners - Annual Reports

Current Issues of Interest

- Budget 2023 – PAYE interventions; Share Schemes
- Budget 2024 – eCommerce; Payroll and Expenses; Cash/Shadow Economy
- Section 291A TCA 1997 (expenditure on intangible assets)
- Section 766 TCA 1997 (credit for research and development expenditure)
- Part 35A TCA 1997 (transfer pricing)
- Valuation of land and shares (market value)
- Enquiries on control and governance procedures.

Compliance Interventions – Preparation Risks

Narrow Lens	Wider Lens
Level	Contamination to other entities
Scope	Contamination to other periods/tax heads
Focus	Potential for escalation and impact on disclosure
Timing	Managing extension and if information available to make disclosure

- **Manage reactive** – engage early with the Revenue Commissioners to manage the intervention process. Consider all responses to the Revenue Commissioners from the perspective of whether it deals with the query and could it give rise to follow-up questions.

- **Be proactive** – take time to think about how a tax position would be deconstructed in a compliance intervention or a tax dispute – what explanations and evidence will be produced to persuade the Revenue Commissioners or the Tax Appeals Commission that the tax position is correct.

Appendix

Gender Pay Gap and Pay Transparency – additional detail

EU Pay Transparency Directive June 2026 Implementation

REWARD STRATEGY & PAY STRUCTURES

ARTICLE 4

Employers shall have pay structures ensuring **equal pay for equal work of equal value.**

Pay structures shall allow the **comparison of the value of jobs** based on objective and gender-neutral criteria, including skills, effort, responsibility, working conditions and, if appropriate, other relevant factors.

ARTICLE 6

Employers shall ensure that criteria used to determine **pay, pay levels and pay progression is objective and gender neutral,** and such criteria are accessible to employees.

RECRUITMENT PROCEDURES

ARTICLE 5

Applicants have the right to receive information about the initial pay or its range, based on objective and gender-neutral criteria, to ensure an informed and transparent negotiation on pay (e.g. in a job vacancy, prior to the interview or to the conclusion of a contract).

Employers shall **not ask applicants about their pay history** from other employment relationships.

Employers shall ensure that **job vacancy notices and job titles are gender-neutral** and that recruitment processes are led in a non-discriminatory manner.

RIGHT TO INFORMATION

ARTICLE 7

Employees have the **right to request information on their individual pay level and on the average pay levels, by sex,** for the category of employees performing the same work as them or work of equal value to theirs. Employers shall provide this within 2 months.

Employers shall **not prevent employees from voluntarily disclosing their pay** for the purpose of upholding the principle of equal pay.

ARTICLE 8

Employers shall provide information to employees in a **format which is accessible to persons with disabilities**, and which considers their personal needs.

JOB ARCHITECTURE & DEFINING WORKER CATEGORIES

GENDER PAY GAP REPORTING

ARTICLE 9

Employers shall provide the following information:

- Mean & Median **gender pay gap** (% difference in average pay levels for male v female employees)
  - Base salary
  - Complementary / variable components
- Proportion of male and female receiving complementary / variable components
- Proportion of male and female employees in each quartile pay band
- Gender pay gap between employees by categories broken down by
  - Basic wage or salary
  - Complementary / variable components

Employers >100 workers shall regularly report (every 3 years or every year for >250 workers)

ARTICLE 10

A **joint pay assessment** shall be carried out if the difference in the average pay level between female and male employees is at least 5% in any category of employees, employers cannot justify the difference based on objective and gender-neutral criteria[1], and the employer has not remedied the unjustified difference within 6 months of the pay reporting submission.

The Unadjusted, Expected & Adjusted Gender Pay Gap

Employers will report the unadjusted pay gap, which shows areas of potential bias in pay policies and practices. However, to determine whether a joint pay assessment is needed, employers must take two further steps:

- A **regression analysis** should then be used to identify the influence of objective and gender-neutral drivers of pay; and
- The employer should use these justifiable drivers of pay to calculate expected pay and compare it to the unadjusted pay gap. The difference between the two is the **"Adjusted Pay Gap",** which is attributable to gender or other variables not considered in the statistical model and which should be remediated by making adjustments to pay and reviewing policies and practices that affect pay decisions.

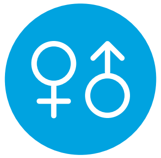
Unadjusted Gender Pay Gap

The **difference between the mean** (or median) **salary of men vs. mean** (or median) **salary of women** (expressed both in % and in Euros)

Expected Gender Pay Gap

Demographic characteristics, such as education, years of professional experience, seniority, time in role, professional position, site, hours and professional required skills are considered in **explaining variation in salary**

Adjusted Gender Pay Gap



The Adjusted Gender Pay Gap is the **difference between the Unadjusted Pay Gap and the Expected Pay Gap**

This gap is attributed to the effect of gender and other characteristics that are not taken into account when calculating the Expected Pay Gap

How Deloitte Can Support You

How can we support you?

START → Setting the Foundation For Success → Driving Success → Supporting Success → Maintaining Success → Gender Pay Gap & Equal Pay Audits → KEY MILESTONES

Setting the Foundation For Success

Education, Job Architecture and Strategy

- Education on the regulation including a roadmap of risk and opportunities for your organisation
- Create or review your DE&I Strategy, Total Reward Strategy, and Job Architecture

Driving Success

Structured Frameworks & Governance

- Advisory on your compensation and performance management framework
- Advisory on salary banding
- Support in governance including the role of the Remuneration Committee

Supporting Success

Process, Technology & Reporting

- Advise on implications of the regulation and/or framework changes to key HR processes
- Advise on reporting best practices to drive organisational decision making
- Advise on areas where automation should be considered

Maintaining Success

Training & Communication

- Support in the training of key stakeholders including HR, management and employees
- Support in the drafting of communication to key stakeholders

Gender Pay Gap & Equal Pay Audits

Gender Pay Gap, Equal Pay Audits and Salary Transparency

- Assist in end-to-end gender pay gap reporting
- Supporting equal pay audits and recommending actionable strategies to address any gaps
- Review of DE&I strategy after review of results

Deloitte.