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Deloitte Submission on Budget 2024

7 June 2023

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Department of Finance,
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VIA EMAIL: minister@finance.gov.ie

Dear Sirs/Mesdames:

We are pleased to submit comments on behalf of Deloitte to the forthcoming Budget 2024. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact us at 01-417-2200.

Yours sincerely,

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Head of Tax and Legal

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1. Introduction

The Irish economy has rebounded strongly from all the challenges faced in the last three years.[1] The unemployment rate of 3.8% in May 2023 was lower than the pre-pandemic level of 4.8% recorded in February 2020.[2] Recent statistics in respect of May 2023 note that tax receipts were €33.1 billion to end-May, up €3.1 billion or over 10 per cent on an annual basis, driven by strong income tax, VAT, and corporation tax receipts. Income tax receipts amounted to €13 billion to end-May, up by 9½ per cent on last year. VAT receipts to end-May were up almost 12 per cent compared to the same period last year. Corporation tax receipts to end-May are up €1.1 billion compared to the same period last year.[3] Ireland was the only EU country to avoid a recession during the pandemic, as the strong performance of multinationals bolstered economic activity.[4]

However, several pre-pandemic challenges remain, including housing shortages, infrastructure delivery, green investment gaps and the need to strengthen the growth and competitiveness offerings for indigenous businesses, small and medium sized enterprises ("SMEs") and multinational enterprises ("MNEs").[5]

Labour supply, and in particular increases in labour force participation, has been a significant feature of Irish economic growth in recent decades.[6] Personal tax is a substantial revenue source to the Exchequer to fund vital public services, especially at the time of high and growing demand for many of them[7]. On the other hand, Ireland needs to remain an attractive economy for inward investment ("FDI") and talent in the mobile and competitive global arena going forward. Personal taxes will continue to be critical in attracting and retaining inward investment and talent to Ireland. However, Ireland's high personal tax rate is a disincentive to businesses locating in Ireland, to employees taking on additional work and to foreign based talent (including Ireland's diaspora) relocating to Ireland. An attractive personal tax regime is also vitally important for the SME and indigenous business community which relies on talent to grow and scale business. A roadmap should be put in place to demonstrate to workers when and how the personal tax burden will be reduced.

The second largest tax head was Corporation Tax ("CT"). Net CT receipts of €22.643bn were collected in 2022, equal to 27.5% of total net tax receipts in the year (2021 - €15,323bn; 2020 - €€11,833bn). Ireland has been a major beneficiary of globalisation, one of the drivers of which has been our corporate tax regime and the focus on providing taxpayers with clarity and certainty. While there are many reasons other than tax for Ireland's success, we cannot ignore the reality that the 15% minimum tax will to some degree level the playing field with other competitor countries. Accordingly, other areas of the tax system and economy must be adequately served to ensure that Ireland remains a competitive location in which to invest and grow businesses. A number of areas that should be considered are our relatively high personal taxation, our R&D tax credit, and the complexity of our taxation regime, particularly the cumbersome interest deductibility and double taxation relief rules.

In addition to our continued efforts in the MNE sector, in order to ensure Ireland's tax base is sustainable, we should build a first class productive and innovative SME sector that produces high value jobs and should look to actively support the sector in meeting their growth targets. While Ireland has a significant number of reliefs etc. aimed at SMEs, many need to be refreshed and streamlined and should be revisited. We need to ensure that our SMEs have access to capital and talent and

[1] IMF, 'Ireland: Staff Concluding Statement of the 2022 Article IV Mission' (5 May 2022) < https://www.imf.org/en/News/Articles/2022/05/05/mcs050522-ireland-staff-concluding-statement-of-the-2022-article-iv-mission > accessed 12 April 2023.
[2] CSO, 'Monthly Unemployment May 2023' (31 May 2023) https://www.cso.ie/en/statistics/labourmarket/monthlyunemployment/, accessed 6 June 2023.
[3] Department of Finance, Fiscal Monitor May 2023 https://www.gov.ie/en/publication/e51b0-fiscal-monitor-may-2023/, accessed 6 June 2023.
[4] European Commission '2022 Country Report- Ireland' (09 June 2022) < https://commission.europa.eu/system/files/2022-06/2022-european-semester-country-report-ireland_en.pdf > accessed 12 April 2023.
[5] IMF, 'Ireland: Staff Concluding Statement of the 2022 Article IV Mission' (5 May 2022) < https://www.imf.org/en/News/Articles/2022/05/05/mcs050522-ireland-staff-concluding-statement-of-the-2022-article-iv-mission > accessed 12 April 2023.
[6] Central Bank of Ireland, 'Understanding Irish Labour Force Participation' (Research Technical paper 01-RT-16 2016) < https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/research-technical-paper-01rt16.pdf?sfvrsn=8 > accessed 12 April 2023.
[7] Where your money goes 'Irish Public Spending Data' (2023) < https://whereyourmoneygoes.gov.ie/en/2023/ > accessed 12 April 2023.

receive the necessary support to drive research, development, and innovation. A strategic review of the taxation system pertaining to SMEs should be carried out in order to create a competitive tax system.

Certainty is critical to business and investors. In the past, the Irish government has used the certainty and stability of Ireland's regime to attract inward investment. Ireland needs to maintain and further develop a reputation for certainty, minimising unexpected changes so that long term investment decisions can be made. It is crucial that in making changes to tax law, the Department of Finance consults with stakeholders. Transparency and consultation with stakeholders and the public generally is key in dealing with implementation of new laws and amending of existing law. Throughout the implementation of the BEPS measures, Ireland has sought feedback from stakeholders and issued roadmaps. This has facilitated a thorough and transparent process and led to implementation of law, which although may be subject to amendment for technical matters has a level of certainty of application. We would suggest that a feedback and consultation approach similar to that used in respect of Ireland's implementation of EU directives should be extended to all material areas of taxation going forward. We understand that the intention is to continue to engage in consultation on various tax matters and we welcome this.

The Government now needs to strongly focus on certainty, growth and competitiveness in all top priority areas such as indigenous and multinational businesses, employment, climate change, real estate and tax administration.

We would welcome further discussions with the Department of Finance on the key recommendations made in this submission, in due course.

2. Multinational entities

On 27 September 2022, the government confirmed that Ireland has committed to the OECD International Tax Agreement on Pillars One and Two, and that work is ongoing in this regard to develop multiple new elements required to give effect to the Pillar Two minimum effective tax rate of 15%. The Department of Finance have issued a Feedback Statement on the transposition of Council Directive 2021/0433 of 22 December 2018 ("the Pillar Two Directive") into Irish law. We would refer the Department of Finance to our comments with respect to that Feedback Statement but as an overarching comment Ireland should continue to reiterate its commitment to the 12.5% rate and where relevant the 15% rate under Pillar Two[9]. It is correct that Ireland continues to lead the way as a champion of fair tax competition. We would recommend that Ireland approach EU tax reforms proposals such as BEFIT with a degree of caution to ensure that the measures do not erode Ireland's competitiveness on tax.

Consideration should be given to Ireland streamlining its tax code and making it more competitive by removing the inherent complexity which has developed in Irish tax law in recent years. Some suggestions are set out below in more detail but in summary:

- Reform Ireland's interest deductibility rules, in particular through reform to the complex area of S.247 TCA 97 interest as a charge on income.
- Consider appropriate measures for a territorial regime in respect of foreign dividend and branch income.
- Reform and streamline the double taxation relief regime in respect of other income such as royalties and interest.
- Improve our R&D and Knowledge Development Box ("KDB") offering.
- Reduce personal taxes. Going forward personal taxes will be critical in attracting and retaining inward investment.

Certainty for investors is critical. Recently, there have been significant amendments made to the Irish tax regime, with the introduction of many new rules including:

- Anti–hybrid and Reverse Hybrid rules
- Interest Limitation Rules
- Controlled Foreign Company (CFC) rules
- Exit tax rules
- Substantial amendments to the Transfer Pricing rules
- DAC6 mandatory reporting rules, and
- Country by country reporting.

We would recommend that where significant changes and reforms are introduced in Finance Bill 2023, such changes should be accompanied by continued meaningful and timely engagement with stakeholders and industry bodies to ensure investor certainty.

Separately, a review should also be carried out of the tax system as a whole to simplify and streamline tax law and its administration together with ensuring that the tax system is fair and balanced.

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[8] Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union (2021/0433 (CNS) < https://eur-lex.europa.eu/resource.html?uri=cellar:fa5dbfaf-633f-11ec-9136-01aa75ed71a1.0001.02/DOC_1&format=PDF > accessed 12 April 2023.

[9] Applicable to large multinational businesses with consolidated group revenues of at least €750million per year.

2.1 Public Country by Country reporting

Directive 2021/2101/EU of the European Parliament and of the Council of 24 November 2021[10] ("the Public CbCr Directive") aims to enhance corporate transparency by requiring multinational companies with revenue of more than €750 million to disclose publicly in a specific report the corporate income tax they pay.

The Public CbCr Directive must be incorporated into Irish law by 22 June 2023. We would refer the Department of Finance to our overall comments in response to the previously issued public consultation of 20 December 2021[11]. In particular however we would reiterate the following key points:

- In our opinion, Ireland should take the option to allow relevant entities to temporarily omit specific items of information from the report, in cases where the disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates. The period of such omission should extend to five years of the date of the original omission, which is the maximum period provided for in the Directive.
- We would welcome general guidance as to what would be regarded as "seriously prejudicial". Guidance on such principles, in so far as is practicable, should avoid differences in local interpretation. However, such guidance would need to take into consideration and recognise the fact that it will be companies themselves who are best placed to determine what would be "seriously prejudicial" to their circumstances and so guidance should be general on that basis.
- In our opinion, Ireland should take the option to exempt undertakings from the publishing requirement, where the report is simultaneously made accessible to the public on the website of the CRO and free of charge to any third party located in the EU.
- An option to exempt the undertaking from the publishing requirement where the information is already provided on the website of the CRO allows for greater efficiency by preventing duplication of effort on the part of the taxpayer with respect to information provided. Such an option would likely result in time and cost savings to the undertakings which could be deployed to develop and grow the business.

2.2 Interest deductibility rules

In comparison with our competitors, Ireland's interest deductibility rules are complex, cumbersome and need urgent reform. By way of background, in Ireland, broadly interest is deductible under three separate provisions:

i. Interest is deducted against trading income if such interest is wholly or exclusively laid out or expended for the purposes of the trade;
ii. Interest is deducted against rental income if such interest is on a loan to purchase, improve or repair a premises. (S.97 TCA 97); and
iii. Interest is also deductible under S.247 TCA 97 on loans used:
    - to acquire shares in other companies, or
    - to on–lend to other companies for use in their business.

In addition, there are a wide range of other rules pertaining to financing which operate in tandem. These include:

- Recovery of capital rules (S.249 TCA 97) applicable to S.247 TCA 97 interest
- Transfer Pricing rules
- Anti-Hybrid rules
- Distribution rules applicable to equity type debt instruments and connected party loans (S.130(2)(d) TCA 97)

[10] Amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.
[11] Department of Enterprise, Trade and Employment 'Public Consultation on the transposition of Directive EU 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches' (December 2021) < https://enterprise.gov.ie/en/consultations/consultations-files/deloitte-submission-directive-2021-2101.pdf > accessed 12 April 2023.

- Anti-avoidance rules denying a deduction for interest on connected party loans to acquire connected party assets (S.247(4A) TCA 97 & S.840A TCA 97)
- Caps on the deductibility of interest associated with the acquisition of intellectual property (S.291A TCA 97)
- Interest Limitation rules (introduced in Finance Act 2021 comprising circa 50 pages of legislation)

The myriad of rules pertaining to financing has resulted in significant uncertainty and cost for taxpayers. All of the above provisions are in general complex in their own right. When layered on top of each other, it can be difficult to navigate the rules or provide certainty in respect of them. This places Ireland at a competitive disadvantage with other countries. Further to the above, we would make the following comments:

- The wholly and exclusively for the trade provision is a principle-based approach and is well understood in practice.
- Certain shortcomings exist in S.97 TCA97. For example, interest on a loan used to refinance a loan used to purchase, improve, or repair a premises would not be technically deductible. In addition, certain financing costs such as swaps and arrangement fees would not be deductible from a strict technical perspective as neither amounts are "interest". Some of these shortcomings have been addressed by Revenue practice, but such practices should be put on a legislative footing. In particular, a change of the rules to the effect that all financing costs, including interest should be deductible if incurred in the course of a rental business would be welcome.
- S.247/249 TCA 97 rules should be preferably replaced or at the very least streamlined.
- The anti–avoidance rules in S.247(4A) TCA97 and S.840A TCA97 should be repealed.
- The distribution rules in S.130(2)(d) TCA97 should be reviewed.
- With the introduction of the Interest Limitation Rules, the rules in S.291A TCA97 relating to interest deductibility are superfluous and should be removed.

These points are discussed further at part 2.4.

2.3 TCA 97 section 247 interest relief

As mentioned, S.247 TCA 97 provides relief for interest on loans used to acquire shares or to on-lend to other companies. The following should be noted: -

- The S.247 rules are condition heavy i.e., interest is only deductible if certain conditions are satisfied including (i) if the monies are used for certain very defined purposes, (ii) if the interest is paid, (iii) if a certain percentage of shares are held in the company acquired, (iv) if the companies have common directors, (v) if the monies are used within a specific period of time and (vi) if no capital has been recovered etc. These rules are very complex.
- As mentioned, any monies borrowed must be used for a highly prescriptive purpose. In some cases, even if the borrowings are clearly for business purposes, they may not fall within the very descriptive rules resulting in no tax deduction for genuine business interest.
- Under the recovery of capital rules (S.249 TCA 97), certain routine bona fide transactions such as repaying intra–group debt or internal restructurings can result in denial of interest relief.
- Certain provisions such as the need for common directors would seem to serve little purpose.

In our view, S.247 TCA 97 should be repealed and replaced with new interest deductibility rules that are principle based e.g. interest should be deductible if it is laid out or expended for the purposes of the business concerned. The Transfer Pricing rules, Interest Limitation and Controlled Foreign Company rules referred to above did not exist when S.247 TCA 97 was originally introduced. With these rules now in place, many of the reasons associated with the complexity of S.247 TCA 97 are no longer necessary.

In our view, adopting a principle-based approach to tax relief on finance costs measured on an accounts basis would not extend tax relief inappropriately. This approach can then be subject to transfer pricing and the measurement limitations prescribed in the Interest Limitation Rules which provide a bulwark against excessive interest burdens.

The purpose and intended effect of reform in this area would not be to increase the quantum or availability of relief but to bring simplicity and certainty for Revenue, taxpayers, and advisers alike. Such clarity should reduce the necessity for Revenue opinions. The above changes would not only benefit MNEs, but they should also benefit SMEs.

If such amendment were not seen as feasible in the short-term then we would recommend the following amendments in the interim: -

- As mentioned, relief is only available if the loan is applied for certain defined purposes as set out in S.247 (2) & (2A) TCA 97. We would recommend that S.247 (2) & (2A) TCA 97 are amended to the effect that all loans will be qualifying loans provided such loans are used for genuine business purposes/commercial reasons. The current prescriptive approach should be replaced by a principle-based approach.
- The common director requirements in S.247 (3) (b) TCA 97 should be removed.
- Under the current recovery of capital rules in S.249 TCA 97, a borrower may be denied interest relief on a loan where a subsidiary repays a loan to the borrower or returns capital to the borrower. In addition, the borrower may be denied interest relief on a loan where a subsidiary repays a loan to another subsidiary or returns capital to another subsidiary. Given that a multinational may have numerous layers of subsidiaries across multiple jurisdictions, these rules can be very onerous to manage. We would suggest that consideration be given to replacing the current recovery of capital rules in S.249(2) TCA 97 with principle-based rules.

2.4 Connected Party Rules

S.840A TCA 97, S.247 (4A) TCA 97 and S.247 (4E) TCA 97 are provisions that deny interest relief on loans from connected parties which are used, or which are ultimately used to finance asset acquisitions from connected parties. The purpose of these rules is to prevent the Irish tax base from being eroded.

In our view, the extension of Irish transfer pricing rules and the introduction of interest limitation rules should be sufficient to prevent excessive base erosion and therefore consideration should be given to removing these provisions. These provisions put Ireland at a competitive disadvantage.

2.5 Distribution rules – TCA 97 section130(2)(d)

S.130 (2) (d) (iii) TCA 97 deems interest linked with a company's profitability to be a distribution. As a result, such interest is not allowed as a tax deduction. It should be noted that many genuine third - party lenders look for a profit participating element when lending to companies. As such interest is not deductible, this then results in an additional tax cost for the borrower. We would recommend that consideration is given to disapplying this provision where the lender and borrower are unconnected. S.130(2)(d)(iv) TCA 97 pre–dates the introduction of transfer pricing rules and interest limitation rules. In our view, S.130(2)(d)(iv) TCA 97 is obsolete and should be removed.

2.6 Double Taxation Relief

As an overarching comment, Ireland's current double tax regime is extremely complex with different rules applying depending on the type, nature, and source of the income. This has resulted in a double tax regime which does not lend itself either to taxpayer certainty or user-friendly compliance obligations. Accordingly, we would make the following recommendations, (each of which are expanded on further below):

- Ireland should introduce a foreign source dividend exemption (participation exemption) on an elective basis.
- Ireland should introduce a foreign branch profit exemption on an elective basis.

- With regard to other types of income (e.g., interest and royalties), Ireland should simultaneously take steps to simplify and enhance the existing double tax relief rules in Schedule 24 TCA97. In considering the potential simplification and enhancement of Schedule 24 TCA97, we would point to a number of key areas that should be addressed including broadening the categories of income on which relief may be obtained together with expanding the availability of pooling and carry forward provisions.

The above would bring greater clarity for companies and reduce the compliance workload and complexity associated with double taxation relief. This would enhance the competitiveness of Ireland's tax regime. We would refer the Department of Finance to the commentary and views previously provided in response to the public consultation of 22 December 2021 (accessible here).

2.7 Territorial regime – Dividends

Where an Irish tax resident company receives foreign sourced dividends, ordinarily no incremental Irish tax arises on same due to existing double tax relief rules contained in Schedule 24 TCA97. Therefore, foreign sourced dividends are subject to an effective exemption from tax rather than an actual exemption. However, the calculations required to provide this effective exemption can be cumbersome and complex to apply in practice. Accordingly, the adoption of an appropriate exemption for foreign source dividends would be positive for Ireland and would provide companies and investors with simplified compliance obligations in relation to foreign sourced dividends. A move to a limited territorial regime would bring Ireland's tax system in line with the majority of EU states.

It should also be noted that previously one of the main arguments against a participation exemption regime for foreign source dividends has been the lack of CFC legislation. This is no longer the case as Ireland has introduced CFC legislation.

With regard to the design of the participation exemption, we would recommend the following:

- That taxpayers be allowed to opt into the participation exemption regime for foreign dividends. Where a taxpayer does not elect to apply the participation exemption regime, then the tax credit regime should apply.
- The participation exemption should apply for all foreign source dividends irrespective of whether they are derived from treaty or non-treaty locations. This broad application would help Ireland become more competitive as a holding company location relative to other nations such as the Netherlands, etc.

On a related matter, like most developed countries, Ireland has a participation exemption which exempts capital gains on the disposal of certain trading companies/subgroups (S.626B TCA 97). This exemption, however, is limited to companies which are tax resident in the EU and Double Taxation Agreement ("DTA countries"). Consideration could be given to expanding this exemption to companies which are tax resident in non–EU/DTA countries. This would further improve Ireland's attractiveness as a location for group headquarters. Disapplication of the relief could be considered for countries on the EU Commission's blacklist. Also, the S.626B TCA 97 participation exemption does not extend to a migration of a company's tax residency resulting in exit tax. With an increase in migrations arising in the course of M&A activity the extension of the S.626B TCA 97 participation exemption to migrations should be considered.

2.8 Foreign branch exemption

Companies should be provided with the option of an exemption from corporation tax for foreign branch profits, irrespective of the branch territory. The existing operation of double tax relief under Schedule 24 TCA 97 would, in general, provide for relief either by way of a double tax credit or a partial credit with the remaining foreign tax relieved by way of a deduction in the computation of taxable profit for the Irish company. Accordingly, a move to an optional exemption for foreign branch income would likely result in a similar level of tax take from such companies but with reduced time and complexity associated with the preparation of the company's corporation tax computation and return. With respect to the operation of a foreign branch exemption, the expectation is that an elective territorial regime should not overly impact on tax revenues from Irish resident companies with such branches.

It should be noted that the operation of the branch exemption could, in certain instances, prevent relief from being given for branch losses. Equally, the removal of branch profits from the Irish tax net reduces the amount of relevant profits arising to the company in the calculation of EBITDA for the purposes of identifying any restriction on interest relief under the Interest Limitation Rules ("ILR"). As the operation of a branch exemption could therefore result in an increased interest restriction or the loss of tax losses for the Irish company, such an exemption should remain at the discretion of the company. Where a company does not opt-in to such measures, the existing double taxation relief provisions for branch taxation should remain in place (albeit such provisions requiring simplification). To avoid additional compliance or filing obligations, such an election should be made in the corporation tax return for the Irish company (the Form CT1) and should be made on a yearly basis.

The exemption for branch profits should be extended to all branch income, irrespective of its nature. Existing controlled foreign company ("CFC") rules could, in theory, be used to combat non-genuine arrangements arising from the use of an exempt foreign branch. Such an approach would negate the need for complex anti-avoidance arrangements within the branch exemption rules themselves. However, potential legislative amendments may be required to appropriately bring exempt foreign branches within the scope of the existing CFC rules.

The foreign branch exemption should exempt not only income of the foreign branch, but gains made on a disposal of assets used or attributed to a foreign branch.

2.9 Overhaul of TCA 97 Schedule 24

We propose a broad overhaul of TCA97 Schedule 24 such that relief would be available for foreign tax suffered by whatever name. This reform should be carried out in conjunction with the above-mentioned foreign branch profits and a foreign source dividend exemption. The aim of such a broad overhaul should be to introduce a best-in-class regime for the relief from double tax.

Relief should be available in respect of foreign tax suffered, irrespective of the type of the foreign tax. The simplified regime would distinguish between income sources as follows:

- Income taxable as part of the company's trade (i.e., at the 12.5% rate)
- Income taxable as passive investment income (i.e., at the 25% rate)

The current double taxation relief regime is extremely onerous and applies different rules depending on the type of income (dividends, interest royalties, branch profits etc.), the nature of income (trading v non – trading) and the source of income (EU, treaty or non – treaty). The availability of pooling and the ability to carry forward tax credits also depends on the type of income, rather than being universal across all categories of income. Separate rules for capital gains also apply. The myriad of rules leads to unnecessary complexity, the rationale for which remains unclear. In particular, we would highlight a number of specific areas of concern with respect to Schedule 24 TCA97 and have provided further detail with respect to these issues below.

2.9.1 Foreign tax in excess of treaty permitted limits

Administrative difficulties also arise where foreign withholding tax has been suffered in excess of the limits permitted by the relevant tax treaty. Excess foreign tax suffered therefore falls outside the scope of Schedule 24 TCA97, requiring taxpayers to unilaterally seek refunds from the foreign tax authority in question; such a process may take significant time and can result in an overall cashflow impact for the Irish company in question.

2.9.2 Timing difficulties with respect to relief for foreign withholding tax

In accordance with the Foreign Branch Double Tax Relief Tax and Duty Manual ("TDM") Part 35-02-06, relief may be granted on an administrative basis in the case of foreign branch profits, where there is a mismatch in the timing of income being recognised in the accounts and tax being incurred and paid. Accordingly, relief may be granted against Irish corporation tax arising in an earlier period to the period in which the foreign tax arises with such relief provided by means of a carry back of foreign tax credit. Any remaining unrelieved foreign tax may be carried forward as a credit against Irish corporation tax in respect of branch profits of succeeding accounting periods in the normal way.

A similar fact pattern can emerge with respect to foreign royalty income received by an Irish resident company, on which foreign WHT is suffered. Accounting rule changes in 2018 can require the Irish company to recognise royalty revenue at the start of the contract[12] to license the intellectual property in question. In this scenario, the Irish company only incurs WHT in the subsequent years. While the current Revenue guidance (TDDM-35-02-06) would look to amend the prior four year returns each year, this would require the preparation of five corporation tax returns (Forms CT1) with detailed WHT calculations each year, as well as losing the WHT credit for the first year due to 4-year time-limit imposed by legislation.[13] This is another example of the complexities caused by our current foreign tax credit regime which needs review and simplification.

2.9.3 Complexity with respect to pooling and carry forward of credits

The availability of pooling and the ability to carry forward credits should be available for all types of income regardless of the nature of the income. The removal of differing treatment depending on income classification in our view is the simplest, most efficient manner in which to overhaul the current system. Differing treatment between the various classifications is a core part of the problem practitioners and clients face with the current system. It should also be considered whether such simplified rules should also be applied to capital gains.

2.9.4 Narrow categories of income on which double tax relief is available

The broadening of Schedule 24 TCA 97 beyond the set categories of income is likely to be important in the context of our previous comments to the Department in our response to the consultation on Ireland's tax treaty network. In particular, we would reiterate our previous comments that we are aware of a number of Asian countries and developing economies who seek to impose withholding tax on payments for services referred to commonly as "technical services". This is a consequence of the wording of the UN Model Treaty which, unlike the OECD Model Tax Convention, has since 2017 included a special clause granting the right to tax fees for technical services (see Article 12A of the UN Model Treaty). In certain cases, such withholding tax deductions will be made by non-treaty countries. In other cases, such withholding tax deductions will be made by treaty countries but will not be covered taxes in the treaty. In either case, credit relief may not be available if the technical services are not considered royalties. This is because unilateral relief does not apply to income in general. Instead, unilateral relief applies to specific types of income such as interest and royalties.

Reforming these rules are important from a competitiveness perspective and will assist in attracting group or regional headquarters to Ireland.

2.10 Research and Development

The attractiveness of the Irish 12.5% corporation tax rate will be impacted by the proposed introduction of the 15% minimum tax rate under the Pillar Two rules.

By virtue of the changes brought about in Finance Act 2022 to the refundability of the R&D tax credit, such credits should, going forward, be treated as a "qualified refundable tax credit", and accounted for as a grant in the financial accounts as other income and not as a reduction in current tax expense. Therefore, our expectation is that the revised R&D credit repayment mechanism brought about by Finance Act 2022 should not result in a reduction in the Covered Taxes in assessing a jurisdictions' effective tax rate for Pillar Two purposes. While the Finance Act 2022 amendments are welcome, we would note that by becoming a qualifying refundable tax credit, the credit would become part of global income and taxable for all those within the Pillar Two net. As such, those companies subject to Pillar Two would have their credit taxed at 15% reducing the effective rate to 21.25%. There is a need therefore to increase the rate of the credit to 30% of qualifying expenditure, an effective rate of 25.5%, to ensure Ireland remains competitive from a FDI perspective and to ensure those who have already

[12] For example, if the Irish company receives $100 over 5 years, it will recognise $100 as revenue in year one, but $20 of a payment/cash is received in each of the 5 years.
[13] S959AA TCA97.

invested can deliver on their models. By making that increase the State can maintain the rate for the larger claimants and provide that 30% rate to SMEs.

Consideration could also be given to introducing credits in excess of 30% for certain categories of expenditure, for example on green IP or artificial intelligence. The increase in the tax creditable above 30% could be done on a phased basis similar to the reduction in corporate tax rates between 1998 and 2003. This would be a significant step in ensuring Ireland remains competitive vis a vis its competitors.

In addition, there are a number of other areas that need attention which we have set out below.

2.10.1 Expansion of Qualifying R&D activities

Qualifying R&D activities must be systematic, investigative, or experimental activities, in a field of science or technology, encompassing basic research, applied research and/or experimental development. The fields of science or technology are divided into four areas being natural sciences, engineering, and technology, medical sciences, and agricultural sciences (see S.I. No. 434 of 2004, TCA 97) Each of these areas are further broken down in S.I. No. 434 of 2004, TCA 97. We would recommend that S.I. No. 434 of 2004, TCA 97 is updated to explicitly specify certain emerging technologies such as Artificial Intelligence, Blockchain, Data Analytics and carbon neutrality. Arguably, these emerging technologies are already covered in S.I. No. 434 of 2004, TCA 97. However, we would be of the view that specifically mentioning such emerging technologies in S.I. No. 434 of 2004, TCA 97 would give taxpayers more certainty. In addition, the Report of the SME Taskforce: National SME and Entrepreneurship Growth Plan recommended broadening the definition of innovation to include 'process innovation' and 'organisational innovation'. Action 2.4.1: states *"Redefine the qualification requirements for the R&D tax credit by broadening the definition of innovation to include 'process innovation' and 'organisational innovation*

- *Broadening the definition of innovation should enable SMEs to better recognise the innovation they have achieved, record innovation and measure its impact. Through the inclusion of 'process innovation' and 'organisational innovation', the R&D tax credit should include ongoing activities within SMEs to improve and enhance their business processes and products and in particular, the adoption of productivity and efficiency enhancing processes.*
- *This action will reduce the administrative and financial burden on SMEs to apply for innovation supports and incentives, as they could apply for a greater level of support under this broader definition of innovation just once a year though the R&D tax credit."*

2.10.2 Increased focus on Fintech and innovation

As outlined by the "Ireland for Finance" development strategy for 2025[14], innovation is a key focus in attracting investment in the fintech space. The strategy in particular notes the following:

"In addition, growing numbers of IFS firms are choosing Ireland as a location for researching new financial technologies….To ensure this continues, it will be vital to increase the use of the growing number of innovation hubs. This will need the encouragement and support of key stakeholders….Other stakeholders such as the Central Bank, the Department of Finance, and industry will continue to play a crucial part in shaping the ecosystem to support start-ups, existing financial service providers, fintech businesses, and global technology companies."

While S.I. No. 434 of 2004 makes reference to "mathematics and computer sciences, including mathematics and other allied fields", widening the categories as described above to include emerging technologies including financial services technologies would undoubtedly assist in targeting growth and investment in the fintech space.

[14] Department of Finance 'Ireland for finance: The strategy for the development of Ireland's international financial services sector to 2025' (April 2019) < https://assets.gov.ie/24482/278893738e764db79c43eada83c030e3.pdf >accessed 12 April 2023.

2.10.3 Definition of "expenditure on research and development"

An R&D credit is only allowable on expenditure falling within the definition of "expenditure on research and development" in S.766(1)(a) TCA 97. That defines *"expenditure on research and development*" as *"expenditure……, incurred by the company wholly and exclusively in the carrying on by it of research and development activities in a relevant member state….*" Such wording is not clear and can give rise to narrow interpretations as to what expenditure qualifies. For example, with regard to rental costs, Revenue Tax and Duty Manual 29-02-03 (updated December 2021) substantially limits the type of rental costs on which an R&D credit can be claimed. Revenue Tax and Duty Manual 29-02-03 states "*Where a company rents a specialised laboratory or a clean room in order to advance its R&D, the question to ask is whether or not the company could have undertaken the R&D activity without the specialised nature of the laboratory or clean room. If the activity could not have been carried out, then the specialised nature of the rented space can be said to be integral to the R&D activity the company is carrying on and, to the extent that the expenditure is wholly and exclusively incurred in the carrying on of the R&D activity, rent may be qualifying expenditure. In contrast, a company who rents an office space in which it carries on its R&D activities is unlikely to be able to demonstrate that there is anything specialised in the nature of the space that is integral to the R&D activities. While the company may require a space to house the R&D team, this requirement does not mean that the space is integral to the R&D activity. An office space is the setting in which R&D happens and does not itself perform a key function in relation to the R&D process; it is not integral to the R&D activity".* The removal of rent as an allowable expense in many claims has resulted in a reduction in the value of R&D tax credits for many claimants, thereby reducing the attractiveness of the R&D tax credit regime. We cannot see the policy rationale for denying an R&D credit on rental costs associated with genuine R&D activities.

In addition, R&D projects and particularly those that include digitisation, include significant spend on annual subscriptions for software licences, digital platforms, data costs and renting cloud services etc. We have seen Revenue challenge these costs in the past. Again, we cannot see the policy rationale of this approach. This is of particular concern given that the UK have specifically stated that cloud storage and data costs are qualifying costs when used for R&D. In addition, indirect overhead costs such as recruitment fees, insurance, travel, equipment repairs or maintenance, shipping and telephone costs, currently do not qualify as relevant expenditure. Again, these costs should be qualifying. Further to that, we would recommend that this is addressed through an amendment to the definition of "expenditure on research and development" in S.766 TCA 97. We would recommend that S.766 TCA 97 is amended to read *"expenditure……, wholly and exclusively laid out or expended for the purposes of R&D activities……."* This wording is in line with the tried and tested Schedule D, Case I rules which taxpayers and advisers are familiar with and for which there is a significant body of case law. This should avoid potentially narrow interpretations of what is and what is not qualifying expenditure and give taxpayers more certainty. The suggested amendment would also ensure that companies get a credit for most costs that are essential to the R&D process.

As mentioned, broadly, according to S.766(1)(a) TCA 97, expenditure on research and development means expenditure incurred by the company wholly and exclusively in the carrying on by it of research and development activities. Thus, in the first instance, expenditure incurred on R&D activities carried out by third parties would not be expenditure on research and development for the purposes of the definition in S.766(1)(a) TCA 97. However, S.766(1)(b)(vii) & (viii) TCA 97 provide a number of exceptions to this rule. Where a company incurring expenditure in carrying out R&D activities also pays a sum to a university or institute of higher academic education in the EEA to enable that university or institute to carry out R&D work on behalf of the company, that sum, up to an amount not exceeding the greater of €100,000 or 15% of the expenditure incurred on R&D activities carried out by the company, will qualify for credit. Expenditure by a company on subcontracting research and development work to an unconnected party will qualify for relief up to a limit of the greater of €100,000 or 15% of qualifying R&D expenditure incurred by the company in any one year. We would recommend that these limits on outsourcing are removed. A removal of such limits would encourage interaction and collaboration between Irish businesses and between businesses and Irish third level institutions. At the very least the limits should be significantly increased.

2.10.4 Outsourcing to related parties

The existing R&D legislation prohibits related parties' expenditure from being claimed as part of the Irish R&D tax credit regime, even in cases where such expenditure is recharged to the Irish company, the Irish company is managing and directing the R&D activity in the related party's jurisdiction and the Irish company is the principal IP owner/IP hub location for the group.

We believe the outsourcing restrictions in the R&D Tax Credit regime should be removed. We would recommend allowing all, or a portion of related parties' expenditure that is recharged to the Irish company, particularly where the Irish company is the IP owner, to be included as qualifying expenditure in the Irish company's R&D tax credit claim, subject to the 10-year period claw back provision (i.e., removal of IP from Ireland withing the 10-year period will result in a clawback).

Ireland already has in place a strong legal framework and intellectual property system that offers IP right holders the opportunity to be rewarded for their creativity and innovation and enabling society at large and the economy to benefit from their achievements, in combination with a strong R&D tax regime, they will continue contributing to sustainable CT Exchequer's returns.

2.10.5 R&D Tax credit and personal taxes

Attracting talent is key to attracting R&D and innovation activities and to help foster a knowledge-based economy. Steps need to be taken to reduce the personal tax burden on employees engaged in appropriate R&D activities, to ensure that Ireland can retain and attract key R&D talent. While there are existing measures included in the R&D tax credit regime aimed at reducing the personal tax burden of certain key R&D employees, these measures are seldom used. We would recommend that alternatives are considered including applying the standard 20% rate to an appropriate amount of remuneration reasonably attributable to qualifying R&D activities of R&D employees or offering R&D employees a personal tax credit commensurate with time spent on such activities.

2.10.6 Administrative concerns

There is significant cost and uncertainty associated with the claims process for the R&D tax credit. This reduces the attractiveness of the R&D regime. We would recommend a pre-approval process for first time R&D tax credit claims which would bring much needed certainty for taxpayers. At the very least a pre–approval process should be introduced for SMEs.

2.10.7 R&D definitions for grant purposes

While there are differences in the definition of R&D for the purpose of grants applications and the R&D tax credit, it is considered that the two definitions are very close. With a view to minimising the burden of engaging experts to verify the science test in R&D tax credit claims, Revenue have stated that they would not, as a rule, seek to challenge the science test in relation to a project where: (i) an Enterprise Ireland, Horizon 2020, or IDA R&D grant has been approved in respect of the R&D project; (ii) the project is undertaken in a prescribed field of science or technology, as defined in regulations (S.I. No. 434 of 2004); (iii) the company is a micro or small enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; and (iv) the total R&D tax credit claimed by the company for an accounting period (of not less than 12 months) is €50,000 or less. We welcome such decision but would recommend that this approach is extended to all companies and that the €50k amount is increased to €250k.

Also, in our view, it may be beneficial for aspects of the R&D Tax Credit scheme to take the lead from RD&I grants which would simplify the R&D Tax Credit process and remove some of the ambiguity on qualifying expenditure in the area of apportioned indirect business costs. Adopting the approach of RD&I grants where an uplift on qualifying staff costs of 30% is allowed to cover overheads would reduce this area of contention on what does and does not qualify.

Companies often observe differences in Revenue's interpretation of the law. In particular, different offices and inspectors may apply different interpretations in audits resulting in a variation of allowable expenditure. Given the importance of the tax credit to many companies, and the bespoke expertise involved, developing a centralised audit process would promote consistency and ensure the same interpretations are applied to all claimants.

2.11 Digital Gaming Tax Credit

2.11.1 Status as a qualified refundable tax credit

Per Article 3 of the Pillar 2 Directive[15], a “qualified refundable tax credit” means:

“(a) a refundable tax credit designed in such a way that it must be paid as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or

(b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the partial refundable tax credit”

The digital games relief provided for in S.481A TCA97[16] allows for a refundable corporation tax credit for expenditure incurred on the design, production and testing of a qualifying game. Where a claim for relief is made[17], the corporation tax liability of the company is to be reduced by the amount equal to the credit, while any excess may be repaid to the taxpayer. The excess is treated as an overpayment of corporation tax for the purposes of S.960H(2) TCA97.

Recitals 19a of the draft Directive allows Member States implementing the Directive to have regard to the OECD Pillar Two documentation. In that regard, para 135 of the OECD commentary makes the points: -

“… Refundable means that the amount of the credit that has not been applied already to reduce Covered Taxes is either payable as cash or cash equivalent. For this purpose, cash equivalent includes checks, short-term government debt instruments… as well as the ability to use the credit to discharge liabilities other than a Covered Tax liability. If the credit is only available to reduce Covered Taxes, i.e., it cannot be refunded in cash or credited against another tax, it is not refundable for this purpose. If the tax credit regime provides for an election by the taxpayer to receive the credit in a manner that is refundable, the tax credit regime is considered refundable to the extent of the refundable portion, regardless of whether any particular taxpayer elects refundability.”

It is questionable therefore whether the digital games tax credit may regarded as a “qualified refundable tax credit” for Pillar Two purposes, given the meaning of “refundable” is limited solely to the credit not applied in reducing Covered Taxes. Consideration should be given to the mechanism by which taxpayers may claim relief for the digital games tax credit and whether the relief will be treated as a qualifying refundable tax credit. An assessment of same is in our view vital if Ireland is to be successful in incentivising and attracting inward investment in the growing digital games space.

2.11.2 Shareholder Liability

S481A(26) TCA97 provides for a clawback where it is subsequently found that the payment of all or some of the credit was not authorised. In such cases, the clawback may be assessed on:

a. The company,
b. Any director of the company, or
c. Any person referred to in S481A(13)(c) TCA97.

A person referred to in S481A(13)(c) TCA97 means -

[15] Per the Department of Finance Feedback Statement on Pillar Two Implementation (31 March 2023), the definition of a “*qualified refundable tax credit*” mirrors that contained within the Pillar Two Directive. House of the Oireachtas ‘Finance Act 2021’ (2021) < https://www.oireachtas.ie/en/bills/bill/2021/132/ >accessed 12 April 2023.
[16] Introduced by Finance Act 2021. House of the Oireachtas ‘Finance Act 2021’ (2021) < https://www.oireachtas.ie/en/bills/bill/2021/132/ >accessed 12 April 2023.
[17] Whether via a claim for an interim or a final credit.

(c) the digital games development company, any company controlled by the digital games development company and each person who is either the beneficial owner of, or able directly or indirectly to control, more than 15 per cent of the ordinary share capital of the digital games development company (in this paragraph referred to as a 'relevant person'), as the case may be, is not in compliance with all of the obligations imposed by the Tax Acts, the Capital Gains Tax Acts or the Value-Added Tax Consolidation Act 2010 in relation to—

i. the payments or remittances of taxes, interest or penalties required to be paid or remitted under those Acts,
ii. the delivery of returns, and
iii. requests to supply to an officer of the Revenue Commissioners accounts of, or other information about, any business carried on, by the digital games development company, or relevant person, as the case may be,

While the above is clearly designed to ensure that the clawback may be levied in an effective manner and to act as a disincentive to unauthorised claims, the inclusion of shareholder liability[18] is unworkable from the perspective of global groups who wish to invest in Ireland through a digital games development company. We would accordingly recommend that reference to such shareholder liability be removed from S481A TCA97 and would be of the view that a clawback on the company itself would be sufficient.

2.12 Knowledge Development Box ("KDB")

While the interest in the KDB relief remains high, the uptake of the relief since its introduction remains limited. For example, since its introduction in the Finance Act 2015, the highest number of claimants in a given year was 20 (2020), and the lowest 14 (2021). By comparison, in the same year (2021), 1,629 companies claimed R&D credit.[19] While in UK, based on the latest HMRC statistics, in the tax year 2019 to 2020, 1,395 companies claimed relief under the Patent Box. And projected figures for the tax year 2020 to 2021 show that 1,535 companies claimed relief.[20]

The objective of our KDB regime is positive, however our experience and that of our clients to date is that this is a highly complex area to navigate at present, requiring significant input in terms of not only expertise, but also time and expense for the business. Nevertheless, we are of the view that it has a role to play in attractive FDI, securing sustainable CT returns for Ireland and developing the knowledge economy and, therefore, step should be taken to enhance and streamline the regime in line with its successful UK counterpart.

2.12.1 Pillar Two

The attractiveness of the KDB regime will be eroded as a result of the proposed Pillar Two rules. In particular, there is no specific carve out in the EU Directive on Pillar Two for patent boxes. While patent boxes are not restricted, if there is no carve-out, any income taxed at less than the 15% minimum rate by the country of the patent box would be subject to a GloBE tax liability. To achieve the 6.25% effective rate[21], the KDB gives a downward adjustment to taxable profits. In a Pillar Two context, and in particular with regard to the ETR calculations, this reduces the "Covered taxes" element of the calculations but the "GLOBE income" taken from the financial statements stays the same. As top up tax is paid on the difference between the GLOBE 15% rate and the KDB rate of 6.25%, this means the KDB company will receive no KDB relief when considered at a holistic level. This potentially negates any benefit that a group within the Pillar Two rules (broadly, an MNE with €750m plus

[18] Referring to persons who are able directly or indirectly to control more than 15% of the share capital of the company
[19] Revenue Commissioner, Corporation Tax – 2022 Payments and 2021 Returns, < https://revenue.ie/en/corporate/documents/research/ct-analysis-2023.pdf>, accessed 29 May 2023.
[20] HMRC, Official Statistics: Patent Box relief statistics: September 2022,< https://www.gov.uk/government/statistics/patent-box-reliefs-statistics/patent-box-relief-statistics-september-2022>,
[21] Per S40(1) Finance Act 2022, the effective rate of tax on qualifying profits under the KDB was amended to 10%. However, as at the date of the submission S40(1) FA22 remains subject to a Ministerial commencement order. House of the Oireachtas 'Finance Act 2021' (2021) < https://www.oireachtas.ie/en/bills/bill/2021/132/ >accessed 12 April 2023.

turnover) would obtain by using the KDB. It should be noted that this is arguably at odds with the conclusions reached in Action 5 of the BEPS project at para 26 that a preferential tax regime, like the KDB has a role to play in the tax system.

In the absence of a carve out, consideration should be given to amending the Irish KDB regime. Consideration could be given to changing the method of granting the relief from giving a downward adjustment to giving the taxpayer a tax credit ("IP Tax Credit"), calculated as a percentage of qualifying profits. Such credit should be drafted consistently with the "*qualified refundable credit*" definition in the EU Directive on Pillar Two with a view to making the KDB "Pillar Two neutral".

Any changes to the existing regime would require its reassessment under Action 5 and this should be considered in due course.

2.12.2 Other areas

There are a number of other areas that should be considered to improve Ireland's KDB offering:

- The KDB should be extended to a disposal of the IP asset itself. A "patent box" regime can and should extend to capital gains arising on the disposal of qualifying assets.
- A major component of calculating the benefit relates to the identification of the profits which are derived from the qualifying IP asset. This requires significant analysis, and a range of factors must be considered when calculating same. To the extent possible, we would recommend simplifying the mechanism for identifying qualifying profits and expanding to product/ product family profits (less brand value and routine profits) and not just the incremental price/value due to the qualifying IP asset. This would make the scheme more attractive financially and reduce the complexities in preparing claims.
- In terms of what qualifies for relief, (a "*qualifying asset*") we would recommend that the type of qualifying intellectual property is expanded to the extent possible under Action 5.
- Enable companies to come out of the KDB scheme if the tax benefits fall below the cost of making claims. For example, the UK allows companies to withdraw from their patent box, but to prevent maximisation of trading losses that might result from withdrawing, the company cannot re-join the patent box for 6 years.

For further discussion, please refer to our response to the public consultation on Research & Development Tax Credit and the Knowledge Development Box (accessible here).

2.13 Income Taxes

Based on the latest statistics, our top combined personal tax rates of 52% - 55% (higher rate of tax of 40%, plus top USC rate and PRSI rate) remain among the highest in the EU (Top 10). Ireland's high personal tax rate is a disincentive to businesses locating in Ireland and employees taking on additional work. It is also a disincentive to foreign based talent (including Ireland's diaspora) relocating to Ireland. Furthermore, in light of the potential opportunities/risks arising out of OECD Pillar Two/Brexit, we need to ensure that the personal tax system is not a barrier to attracting and retaining talent in Ireland. It should also be noted that we have a low entry point for the higher rate of income tax to apply. Our core recommendations for reform of the income tax rates and bands are contained within the Employment section to this submission.

3. SMEs

In the face of positive soundings from the small business community, it is imperative that Ireland provides an attractive entrepreneurial landscape for growth. There are numerous forces which will drive a successful entrepreneurial landscape in Ireland, such as a skilled workforce, financial and technological resources, and infrastructure, etc. Critical to all of these forces is our tax system, which should act in a coherent manner to promote growth and entrepreneurship. It is imperative from an entrepreneurial perspective that our tax system incentivises innovation, encourages longevity and does not punish failure.

3.1 Review and reform tax measures and incentives for Irish entrepreneurs

Our present SME tax system needs to be reformed to not only facilitate start-ups but also to incentivise entrepreneurs to remain and scale up their businesses. The taxation of entrepreneurs in a broad context should be addressed both in the context of personal taxation, taxation of funding/financing returns, as well as capital events.

We would suggest the following moves as part of our recommendations:

- **20% tax rate on certain dividends:** A 20% income tax rate should be provided on dividends (with related Dividend Withholding Tax amendments), subject to a €100,000 per annum limit once the business has been in existence for five years.
- **Capital Gains Tax (CGT) Tapering Relief:** With a view to designing a tax system that encourages individuals to stay in business for longer, CGT tapering relief should be introduced for individuals. This relief would encourage entrepreneurs to ‘stay the course’ and scale their business internationally.
- 100% rollover relief to be provided for entrepreneurs that exit the business earlier, but who re-invest 75% of the proceeds in shares in another trading company, the disposal of which would be within the CGT charge.
- **Tax-Efficient Financing Arrangement:** We recommend that a loan finance arrangement be introduced whereby individuals can lend money to SMEs and, provided certain safeguards are in place, for example, market interest rates are applied, then, the individual will be taxed on the coupon received at the standard rate of income tax (i.e., 20%) as opposed to the marginal rate of income tax (i.e., up to 55%).

In addition, we have outlined some additional recommended changes to the taxation of SMEs in Ireland.

3.2 Entrepreneur Relief

CGT Entrepreneur relief provides that gains on disposals of “chargeable business assets” made by individuals are liable to a reduced CGT rate of 10%, up to an overall lifetime limit of €1m. The standard rate of CGT (currently 33%) applies to gains made in excess of the lifetime limit. A “chargeable business asset” is defined as –

- A holding of not less than 5% of the ordinary shares in the qualifying business (or in a holding company of a qualifying group)
- The asset must be held by an individual who is director or employee of the qualifying company (or companies in a qualifying group) in a managerial or technical capacity;
- The individual must be required to spend not less than 50% of their working time in the service of the qualifying company; and
- The individual must have served in that capacity for a continuous period of 3 years in the 5 years immediately prior to the disposal.

To qualify for the reduced rate of 10% the shareholder must have owned the “chargeable business assets” for a minimum period of 3 years prior to disposal. A qualifying business is widely defined to include all activities apart from (i) holding assets as investments, (ii) holding development land or (iii) the development or letting of land.

We would make the following comments:

- The lifetime limit of €1m is too low and should be reviewed;
- There is no incentive for an entrepreneur to remain in place and scale the business; and
- Extend the relief to passive investors (either for all investment or for certain targeted investments).

In our view, Entrepreneur Relief should remain available as an alternative to CGT Tapering relief below, to allow for maximum flexibility in business decisions.

3.3 CGT Rate – Tapering Relief

The current CGT rate of 33% is high by international standards, and consideration should be given to reducing same. While we recognise recent comments made by the Minister for Finance as to the balance of tax across earned income, consumption and wealth, we also note that substantial changes as proposed by the Commission on Taxation may not be on the policy agenda for the forthcoming Finance Bill. As an alternative solution, consideration could be given to reducing the CGT for entrepreneurs who stay with their respective businesses with a view to scaling up their business while retaining the headline rate of tax of 33%.

It is generally in the enterprise's interest that the entrepreneur remains actively involved with the enterprise for as long as possible. In the past, reliefs such as CGT tapering relief recognised this fact and incentivised the entrepreneur remaining with the business. We would argue that a similar relief should now be introduced.

Take the example of a successful entrepreneur who builds a business to a particular size such that he or she is offered €10 million for their investment. The owner knows that the business has the potential to reach a multiple of that if she/he remained, giving the necessary direction for another five years. An additional incentive for remaining with the business may be a reduced rate of CGT where an investment is held for a particular period. Tapering relief is not without precedent. The Capital Gains Tax (Amendment) Act 1978 provided for "tapering relief" before its repeal in 1982. The 1970s tapering tax relief operated in such a manner that the applicable CGT rate was reduced after every three years in which an individual had company ownership, with no CGT being charged for ownership periods in excess of 21 years. On introducing CGT tapered relief, the then Minister for Finance provided as follows:

"Section 4 [The relevant amending section] proposes a further fundamental change in the rate structure of capital gains tax. The new structure is based on the principle that the rate of tax should be related to the length of time for which an asset is held between acquisition and disposal. A basic aim of any capital gains tax should be, I believe, to discriminate between the speculator and the genuine entrepreneur or businessman or farmer. Equity clearly demands that investment and hard work should not be penalised while economic logic demands that a capital tax should not act as a disincentive to economic activity. A man who builds up a business over 15 or 20 years, putting time, effort and money into its improvement and expansion, should not be taxed on the same basis as somebody who simply buys and sells an asset within a short time, relying solely on market forces to increase the value of the asset in question."[22]

A new tapered tax relief could operate in such a manner that the applicable rate of CGT would be reduced on a pro rata basis depending on the length of ownership in the relevant assets by the individual concerned. The very reason for the introduction of this form of relief is commensurate with our need to stimulate growth in the Irish entrepreneurial landscape. A similar relief would reward commercial longevity, signal Ireland as an excellent place to operate as an entrepreneur and encourage direct domestic investment and future domestic employment. In our view, the design of such a tapering relief should encourage long-term ownership by founding entrepreneurs, thereby driving value. In particular, this could be achieved by providing for the CGT rate to be reduced over time depending on the period of ownership/active involvement as follows (the below rates are by way of an example only):

[22] Houses of the Oireachtas 'Capital Gains Tax (Amendment) Bill, 1978: Second Stage' (1978) < https://www.oireachtas.ie/en/debates/debate/dail/1978-10-12/3/ > accessed 20 April 2023.

Period of ownership	CGT rate
0-5 years	33%
5 -10 years and a full-time working director for 5 years	16.5%
10+ years: working director for 10 years and a full-time working director for 5 years	8.25%

Therefore, with this policy objective in mind of rewarding the ‘genuine entrepreneur’, we should look to the approach adopted in the 1970s and should introduce a ‘fundamental change’ in our capital gains tax rate structure for entrepreneurs that encourages a strong entrepreneurial spirit in our domestic economy that is aligned to economic success. If deemed necessary, the relief could apply to certain industry sectors subject to State Aid rules etc.

3.4 Rollover Relief

In addition, 100% rollover relief should be allowed for persons who exit the business earlier but who then re-invest 75% of the proceeds in another company which is itself subject to CGT on a future disposal of that investment.

3.5 Retirement Relief

Retirement relief is a form of relief from CGT which arises on the disposal of certain business assets and shares in certain companies[23]. For an individual who has attained 55 years of age and satisfies the conditions applicable to the relief, there is no monetary limit on the amount of consideration that can qualify for the relief in relation to disposals made prior to 1 January 2014. However, for disposals made on or after 1 January 2014, where the individual making the disposal is 66 years or more and the market value of the qualifying assets is over €3million, relief is limited to the gain on the amount of €3million. This cap on relief presents practical problems in the transfer of a family business to the next generation, in particular when one considers that a key factor in succession planning looks to the maturity, experience and business acumen of the beneficiary in question. Once an individual is over 66 years of age, the €3million cap on relief acts as a hindrance to the transfer of a family business with the result being such assets may instead pass by way of an inheritance; such an outcome is counterproductive when one notes that the purpose of Retirement relief is to facilitate the transfer of a business to the next generation.

3.6 Dividends taxable at the standard rate of income tax

With a policy objective of encouraging entrepreneurs to keep investment in the business and to reward successful entrepreneurs that have emerged from the start-up period, a 20% tax rate on dividends could be provided to entrepreneurs subject to an annual dividend cap of €100,000 and subject to the company’s having been trading for a period of five years. This would greatly help to mitigate some of the adverse consequences arising from the current high marginal rate of income tax. Currently, preferential rates of tax on dividends apply in the UK and the US in certain instances and we would recommend that Ireland update tax policy in this area, which will aid in attracting and retaining globally mobile entrepreneurs.

3.7 Making the investment – Tax efficient financing arrangements

At a time when many SMEs are now considering their growth plan and may now look to draw down additional debt funding, we are of the view that now is a critical time to ensure that entrepreneurs have access to efficient financing arrangements. Many SMEs require access to financial support in various stages of their development in order to grow their business. Without such support it may not be economically viable to operate. Debt funding from third-party financial institutions may be limited for SMEs and thus alternative means of funding are of paramount importance.

[23] Section 598 TCA97 provides relief from CGT on disposals of qualifying assets up to specified limits, while Section 599 TCA97 provides relief for transfers of qualifying asserts to a child of transferor without any limit on the value of the assets transferring.

An alternative to debt funding from financial institutions would be to introduce a special loan finance arrangement whereby individuals can lend money to SMEs in the EU and provided certain safeguards are in place (for example, market interest rates are applied), then the individual will be taxed on the coupon received at the standard rate of income tax (i.e., 20%) as opposed to the marginal rate of income tax (i.e., up to 55%).

While the Employment and Investment Incentive Scheme ("EIIS") is a welcome source of finance for SMEs, the reality is that, from an investor's perspective, the shares acquired under this scheme rank behind trade creditors on liquidation. This results in a significant concern regarding the security of the investment and underlines the importance of an alternative funding option for SMEs. The loan finance arrangement should alleviate these concerns. In addition, many potential investors have capital held in deposit accounts etc. which give a particular rate of return. This loan finance initiative should act as an incentive to 'relocate' those funds into 'active' investments with the potential for a higher market rate return taking account of the additional risk being borne by the investors.

We would also note that a tax efficient financing arrangement similar to that described above would arguably not result in a significant loss of Revenue to the Exchequer. Where the interest is payable in the course of a trade carried by the SME company, tax relief on same would be available at 12.5% while by contrast the interest income in the hands of the lender would be subject to income tax at 20%. Such an arrangement would undoubtedly have the effect of encouraging greater investment in the SME space by making lending to such companies more attractive, rather than acting to reduce the taxable base for such individuals from an income tax perspective.

We would also refer the Department of Finance to our previous response to the public consultation on the Employment Investment Incentive Scheme (issued February 2021).

3.8 Retaining talent

Many SMEs are looking to the future and may now be looking to increase their headcount in order to achieve their growth targets. However, in the current market many SMEs are struggling to attract and retain employees. It is important that measures are introduced for SMEs to firstly, assist them with their remote working offering, and secondly to facilitate non-cash reward mechanisms to help attract and retain key staff. Further to that, reliefs such as SARP and KEEP should be reviewed and updated as necessary. This is discussed in further detail in the Employment section of this submission.

3.9 Professional Services Firms

Professional service firms are inequitably treated by Irish tax legislation. For example, professional service companies are excluded from the EIIS/SURE. In additional, professional service firms are subject to close company rules that can trigger taxation at higher rates or at the very least accelerate when tax is paid as opposed to other trading companies. This results in additional costs or additional cash flow costs for professional companies as opposed to other trading companies. It is difficult to understand the policy objective of treating professional companies in this manner as professional companies are a significant employer in the country. Aligning the tax system for professional companies with ordinary trading companies could incentivise indigenous professional services companies to develop, expand both in Ireland and abroad thereby creating high value jobs (with a resulting increase in PAYE receipts). The continued inequitable treatment of professional services companies (and by extension future start-ups and growth in the fintech and professional services space) creates a blocker to growth and should be re-examined as a priority.

3.10 VAT

We would make the following key recommendations with respect to VAT as it relates to the SME sector:

- The 23% rate is one of the highest rates in Europe. The rate should be reduced to 21%. This should stimulate consumer spending potentially increasing the VAT take.
- The current VAT thresholds are:
  - €37,500 for businesses that supply services only,
  - €75,000 for businesses that supply goods only and

  - €75,000 for businesses that supply both goods and services (provided they generate more than 90% of their turnover by supplying goods).
- Increasing these thresholds to €50,000 and €100,000 respectively would help small businesses.
- Increase the cash-receipts basis of accounting for VAT threshold (currently €2m).
- The EU has recently taken steps which grant EU Member States more flexibility to apply reduced and zero percent VAT rates and the list of goods and services for which reduced VAT rates are allowed has been updated and modernised. The new rules also phase out preferential treatments for certain environmentally harmful goods. Further to that, a review should be carried out to ensure that rates are in line with other EU countries.

3.11 R&D Tax Credit and SMEs

We would refer you to our previous comments on R&D that are equally applicable to SMEs.

3.12 Stamp Duty on transfers of commercial property

Currently, relief from CGT (e.g., Retirement relief, Revised entrepreneur relief) and CAT (e.g., Business relief) act to facilitate the passing of a business to the next generation including the transfer of commercial property. However, similar reliefs are absent from the current Stamp Duty regime in Ireland. For example, quite often, the business property is owned by the individual, but in use by a company (e.g., hotels, offices, pubs, restaurants, nursing homes). With the Retirement and Business reliefs, the CGT and CAT implications on a transfer of the business property along with the shares in the trading company would be minimal. However, a 7.5% Stamp Duty attaches to the gift of the business property. This 7.5% cost may delay or even halt a very important for the business and all stakeholders (i.e., the current owners and successors) succession process. While there is consanguinity relief on farm transfers (reduction of 7.5% to 1%), there is no similar relief on other property transfers. The Government needs to strongly focus on certainty, growth and competitiveness in all top priority areas including indigenous businesses. It needs to strengthen the growth and competitiveness offerings for indigenous businesses, and as one of the measures to address it, we would recommend the reintroduction of the consanguinity relief on commercial property family transfers.

4. Climate change and sustainability

Ireland's geographical position is conducive to the production of renewable electricity from sources such as onshore wind, offshore wind, solar and wave/tidal. This not only gives Ireland an opportunity to be self-sufficient in energy terms but also creates opportunity for export. Having surplus energy also creates other opportunities such as the production of renewable fuels such as green hydrogen.

It has been estimated by the IMF, that Ireland will need to invest €20bn annually (or 5% of GDP) for the next ten years in climate-related infrastructures and mitigation measures to achieve its targeted emissions reduction. Creating surplus green energy which can be exported or used to produce other renewable fuels could be significant in offsetting the cost of that investment.

Further to that, it is important that the investment in green infrastructure and technology is stimulated and that the associated tax rules are certain and clear. In particular, the Sustainable Finance Roadmap issued in October 2021 as part of the "Ireland for Finance" strategy notes that private finance must play its part in meeting investment needs, with the Irish financial services sector being a key enabler[24]. To achieve this, tax measures should provide a best-in-class environment in which sustainable finance can grow and thrive.

We have accordingly identified a number of tax measures which would support the renewable energy sector and further drive greater investment in sustainable finance.

4.1 Relief for investment in renewable energy generation

S.486B TCA97 previously provided corporate tax relief for equity investment in companies involved in renewable energy generation. This relief was introduced in Finance Act 1998 but was withdrawn in 2014. Key features of the relief were as follows:

- The relief was given in the form of a deduction from a company's profits for its direct investment in new ordinary shares in a qualifying renewable energy company.
- To have qualified for this relief, the energy project must have been in the solar, wind, hydro, or biomass technology categories, and must have been approved by the Minister for Communications, Energy and Natural Resources.
- The relief was capped at the lesser of 50% of all capital expenditure (excluding lands), net of grants or €9,525,000 for a single project.
- Aggregate annual investment by a company or group was capped at €12,700,000.
- The corporate investor needed to hold the shares for 5 years in order to avoid a clawback of the relief.

We would recommend that consideration should be given to the re–introducing this relief. This relief would encourage corporate shareholders to invest in renewable energy projects. It should be noted that the relief became less attractive to investors when the corporate tax rate became 12.5% in 2003. Consideration could be given to allowing the relief to be used to shelter income or gains taxed at the higher rates of 25% and 33%.

[24] Ireland For Finance 'Ireland's Sustainable Finance Roadmap' (October 2021) < https://www.sustainablefinance.ie/wp-content/uploads/2021/10/Irish-SusFinance-Roadmap-FINAL-FINAL-OCTOBER-2021.pdf > accessed 20 April 2023.

4.2 Extension of the participation exemption to early-stage renewable energy projects

In many cases, to progress a renewable energy project, it will be necessary for the original promoters to sell all or part of the project at an early stage (to facilitate the introduction of capital and development expertise). In particular, this could involve the promoter selling the shares in the project company. In certain instances, the sale of shares by an Irish holding company would not be subject to Capital Gains Tax, due to the availability of an exemption known as the participation exemption in S.626B TCA 97. However, the sale of shares in a project company hosting an early-stage renewable project may not be in a position to claim the participation exemption as in the Revenue's view the company may not be considered trading (broadly, that the project company should be trading is one of the conditions required for the participation exemption to apply). Revenue practice is to view trading as commencing when the project company commences producing electricity.

Thus, a gain received by a holding company on the disposal of shares in a subsidiary company hosting an early-stage development project may be subject to tax at the rate of 33%. We would suggest that the participation exemption should be extended to the sale of companies that host early-stage development projects (in line with, for example, the UK broader approach). Such an exemption would increase the level of funds available to promoters to develop further new projects.

4.3 Pre trading expenses

In broad terms, an expense is only allowable if such expense is wholly and exclusively laid out or expended for the purposes of the trade. In the Revenue's view, a renewable energy trade will only commence once the company starts producing electricity. As such, any expenses incurred prior to the commencement of trading would not be deductible under first principles. There is, however, a provision that allows deductions for pre–trading expenditure. This provision allows a deduction for certain expenditure incurred in the 3 years prior to the commencement of trade.

Renewable energy projects by their nature take several years from the point of initial investment, until the point the project starts to generate electricity and therefore commences trading. In many cases, this pre-trading period is in excess of 3 years. The costs in this pre–trading period can be significant. As a result, a taxpayer may lose out on tax relief for expenditure incurred outside the 3-year window. We would recommend that the rules are updated to ensure that all vouched pre–trading expenditure is deductible or at the very least expenditure in a 7-year window are deductible (in line with the 7 - year lookback period in the UK).

4.4 Grid connection costs

Normally, in calculating taxable income, a deduction is only allowed for expenditure of a revenue nature (e.g., cost of sales type expenditure). A deduction is not available under general principles for capital expenditure e.g., broadly expenditure that endures for a number of years (e.g., buildings, plant and machinery, wind turbines, solar panels). However, capital allowances are available for capital expenditure. Under the capital allowances regime, broadly, a deduction is allowed for capital expenditure on plant and machinery on a straight-line basis over 8 years. One of the conditions of the capital allowances regime is that the taxpayer owns the asset.

While grid connections costs (costs incurred by the renewable energy company in establishing a connection between the electricity producing assets (i.e., wind turbines, solar cells) and the national transmission grid) are considered capital expenditure, Revenue have in the past taken the position that no capital allowances were available for such expenditure. As a result, a taxpayer receives no relief for such costs, which in most cases are significant.

A recent ruling (94TACD2021) by the Tax Appeals Commission ('TAC') provided clarified that this expenditure (Grid connection costs) should qualify for capital allowances. Considering the amount of power generation and other infrastructure projects that require grid connections that are in planning, design or under construction, and the significant costs involved, this ruling provided welcome clarity on the entitlement to claim tax depreciation on this expenditure. We would ask that the position be clarified. Such clarification would have a significant impact on the overall cost of a renewable energy project. It should be noted that the capital allowances regime in the UK provide relief for grid connection costs.

4.5 VAT

Section 56 of the Value-Added Tax Consolidation Act 2010 provides for a supplier to zero rate the supply of qualifying goods and services to certain authorised persons. It also provides that those authorised persons can apply the zero rate of tax to the acquisition of goods and services received from other Member states, where obliged to account for VAT on the receipt of those supplies, and on the importation of goods from outside the European Union. Broadly, the persons who qualify (i.e., the authorised person mentioned above) are those primarily engaged in exporting more than 90% of their goods (Typically, MNEs). In general, there should be no loss to the exchequer associated with this scheme as any VAT suffered would generally be recovered. However, where the scheme applies to the taxpayer, it avoids the cash flow impact of suffering VAT (i.e., when the invoice is paid) and subsequently reclaiming VAT. (i.e., any refund could take a number of months after the payment of VAT to the supplier).

A similar cash flow impact arises for a renewable energy project. As the outlay in expenditure can be significant and with refunds only due a number of months later, the this can create a significant cash flow burden.

We would recommend that a scheme similar to S.56 is introduced for renewable energy projects which provides for a zero rating of inputs until the project is operational (i.e., generating revenues). This would ease the cash flow burden on renewable energy developers. Alternatively, allowing renewable energy companies, the option of making monthly rather than bi–monthly VAT returns may help to alleviate some of the cash flow burden. (It is currently possible to file monthly VAT returns if the taxpayer is in a constant repayment position, however confirmation that this can apply to companies up to the point of operating their renewable energy business would be beneficial to the sector).

4.6 Relevant Contracts Tax (“RCT”)

Broadly, with certain exceptions, a developer of renewable energy infrastructure in receipt of services from contractors must deduct from payments to the contractors a withholding tax (“WHT”) known as RCT. There are currently three RCT rates (35%, 20% and 0%) which may apply based on the contractor’s RCT status. Following deduction of RCT, the contractors will then receive the net payment and should be in a position to recover the RCT deducted directly from the Irish taxation authorities or offset such RCT against other tax liabilities. One of the purposes of the RCT regime is to increase tax compliance in the construction industry.

There is an exemption from the RCT provisions for persons carrying out building or development work where the payments being made relate to work on land or buildings which will be used or occupied by the person, or their employees and the person is not otherwise considered a Principal Contractor. (“the own use exemption”).

In practice, new companies are normally subject to 35% WHT for up to 3 years. Once the company has established that it is tax compliant the WHT rate may reduce to 20% or 0%. However, in the early years a 35% WHT will create a significant cash flow cost for contractors. Also, it is not uncommon for contracts to include a gross up clause for withholding taxes thus increasing the business cost to the developer.

Consideration should be given to ways that would extend the 0% rate of WHT to companies backed by promoters with appropriate tax compliance records. Alternatively, consideration should be given to extending the “own use” exemption” to renewable energy development companies.

4.7 Decommissioning/rehabilitation costs

S.681 TCA97 provides for a deduction for rehabilitation/decommissioning costs for mines. We would recommend that a similar type of relief be made available for renewable projects such that tax relief is available for decommissioning/rehabilitation costs.

4.8 Research and Development

As Ireland expands its onshore wind, offshore wind (both fixed and floating), solar and biofuel industries, there is likely to be significant investment in research, development and innovation. With the proper incentives, Ireland could become an innovation hub for renewable energy. We should review our R&D regime to ensure that it is first in class and is well positioned to attract investment in the renewables space.

4.9 Solar Investment Vehicle

It is estimated that Ireland will need to invest €20bn annually (or 5% of GDP) for the next ten years in climate-related infrastructures and mitigation measures to achieve its targeted emissions reduction. Where will this level of capital investment come from? Is it expected that such investment will fall to the government or the private sector? If the private sector is to play a role in this targeted emissions reduction, then we believe it is important that adequate incentives, not just through RESS type auctions, are used to facilitate the deployment of private capital.

There remains significant potential for solar energy to aid in achieving Ireland's targets in the short-term. Solar farms have usually received a very positive reception from both the public and local authorities due to the low visual and acoustic impact of the infrastructure.

In Ireland however given regulation costs that accompany infrastructure (such as electricity planning standards), business rates and grid connection fees it is difficult to achieve such low CPPA pricing to stimulate that sub-economy. Note a CPPA is a long-term contract where the end user business (rather than a licensed electricity supplier) agrees to purchase electricity directly from a renewable generator at an agreed price for a fixed term.

At a macro level, the inability of solar energy providers to ensure a competitive return on investment as a result of the relatively high costs of solar assets in Ireland (due to the various factors outlined above) will ultimately limit the amount of solar energy developments which can take place in Ireland (outside those subsidised through the RESS process) and will therefore, in turn, impact on Ireland's ability to meet its renewable energy targets. As such, a solar energy fund tax regime could be introduced to encourage investment in solar energy and to reduce the cost barriers to entry.

This specific tax incentive regime would aid in reducing the costs of producing the electricity and therefore make solar projects more viable to compete with wholesale electricity prices. This in turn should result in increased investment. Other key aspects of a solar investment vehicle include: -

1) Exempt vehicles, such as exempt PLCs, allow access to a wider investor group with potentially reduced demand for high returns. Although there are other exempt investment vehicles we believe that such vehicles do not support access to a wider investor pool as such investors are limited in terms of minimum investment and qualifying criteria and it will be important that both for the solar energy operator and society in general (as a means of environmental investment) investment is accessible widely.
2) On 1st May 2023, the rate of VAT on solar installations for private dwellings was reduced from 13.5% to 0%. However, apart from this change, current tax law does little in the way of incentivising investment in solar energy. While the Carbon Tax will likely impact and dissuade investors to invest in industries with high carbon emissions, it does little to incentivise them to look at solar energy investments. By providing an exempt regime to solar energy projects, be that for vehicles investing in or developing solar energy projects or mortgage type vehicles that finance such projects (both of which are already evident in the US), the Government will be providing the incentive for investors to move their capital into the industry whilst allowing the vehicles themselves to service the investment in as tax-efficient manner as possible.
3) As a result of current tax rules Ireland will suffer financial and economic losses due to the opportunity cost of failing to maximise renewable energy development opportunities and by failing to meet its 2030 renewable energy targets. Each nation within the European Union must enact policy which enables the transition to a low carbon economy including targets for lowering emissions. If such targets are not met, then such nations will incur fines and penalties. Ireland paid €63m in statistical transfers in 2020 despite the downturn in the economy and faces compliance costs of up to €1.8bn cumulative between 2020 -2030 if actions are not implemented to curb greenhouse gases. Clearly, incurring such high fines and penalties when that capital can be deployed elsewhere in the economy, particularly in

incentivising investment in renewables is impractical. Thus, we are suggesting a redeployment of these costs in establishing a solar investment vehicle.

4) Sustainability: The wide scale implementation of solar energy projects will have a positive wider impact on rural Ireland. In addition to helping Ireland fulfil its solar energy ambitions, including those relating to CO2 emissions, the solar energy industry has the potential to make an important contribution to Ireland's growth agenda and the diversification of industry in rural Ireland. The accelerated deployment of solar energy will generate jobs, particularly in the construction and installation sectors but also more broadly in professional services across consultancy, finance, and asset management. A larger domestic market will enhance Ireland's offering as a location for firms in the solar energy supply chain, which could bring further jobs and investment in high-tech, exporting industries. Creating an industry for the development, operation and management of renewable energy projects particularly solar farms could make Ireland a leading competitor for such services. Also, an increase in activities and renewable energy projects in rural areas will increase the rates received by the local authority and will allow the community to prosper more generally through the update of local infrastructure and facilities.

Whilst recognising the need to create the required market signal for renewables investment, we are conscious that an open-ended tax-exempt vehicle may not be the preferred policy going forward, particularly when the renewables sector has reached the required scale to meet targets and indeed reduce our reliance on carbon driven electricity generation. Therefore, we would suggest that certain criteria are included to give a manner of certainty on the potential benefits economically and in time provide a natural source of tax revenues to supplement, or replace, what might be a diminishing carbon tax yield as and when Ireland reduces its reliance on fossil fuels. Additionally, a change in current tax law is likely to have a net positive effect on tax revenues. We are of the view that the tax revenues from the solar energy industry will not increase significantly in the future due to the lack of investment. Thus, there should be little potential opportunity cost of implementing an exempt regime for the solar energy industry. In fact, where we see the potential for increased revenues is from the increase in construction services provided in Ireland in the construction of the solar energy assets as in most instances this will be undertaken by third party contractors but more significantly, we see the increased rental payments under lease arrangements as providing a positive effect on tax revenues. Further, as with the provisions for other exempt plc's, distributions are mandated for the plc exemption to apply. Therefore, a level of annual taxation will still occur, albeit at the shareholder level.

4.9.1 Proposed Legislation

In order to achieve the objective of incentivising investment in solar energy projects, we would recommend enactment of new legislation. This would create an exempt renewable energy vehicle for the sole purpose of generating income from the financing, development or operation of solar energy assets in the State. We would propose qualifying conditions as follows could apply:

During the accounting period in which the company or group elects to be an exempt renewable energy vehicle it must –

1. be resident in the State and not in another territory;
2. be incorporated under the Companies Acts;
3. have its shares listed on the main market of a recognised stock exchange in a Member State;
4. not be a close company within the meaning of Chapter 1 of Part 13 TCA 97;
5. it must derive at least [70%] of its aggregate income from sources outside the RESS regime – e.g., through merchant trading or corporate PPAs;
6. it must maintain an appropriate profit to financing costs ratio which reflects the market from time-to-time;
7. it must ensure that the aggregate of the specified debt does not exceed 50% of the aggregate market value of the business assets of the renewable energy vehicle; and
8. it must have a diversified share ownership and distribute at least 85% of its solar energy income annually on or before the specified date of return date for the accounting period in relation to the renewable energy vehicles.

Solar energy business could be defined as follows, along with ancillary definitions:

"solar energy business" means a business which is carried on by the renewable energy vehicles or the sole purpose of generating income from the financing, development or operation of solar energy assets in the State.

"solar energy assets" means land and accompanying infrastructure, including onsite energy storage, relating to Solar energy.

"solar energy income" means all profits (including chargeable gains) of the solar energy business.

The exemption may be drafted as follows:

"Notwithstanding anything in the Acts, but subject to the provisions of this Part, a company which is a renewable energy vehicle shall not be chargeable to tax in respect of solar energy income."

In July 2021, the Climate Action and Low Carbon Development (Amendment) Act 2021 ("the Act") was signed into law amending the Climate Action and Low Carbon Development Act 2015 (the Principal Act). The 2021 Act requires the Government to "pursue and achieve the transition to a climate resilient and climate-neutral economy by the end of 2050". In particular, the Act amends the principal act and provides a framework to reduce green-house gases ("GHGs") including an objective of climate neutrality by 2050 and an interim target of a 51% reduction in GHG emissions by 2030, relative to a baseline of 2018. This is an extremely ambitious target and Ireland will face many challenges if it is to meet its environmental commitments.

One of the key levers available to the Government is tax policy which can be used to influence behavioural change throughout business and society. In particular, these policy matters could include:

- Tax exemptions for both companies and individuals in respect of certain types of capital gains and income/benefits.
- Tax relief for investors investing in particular types of investments - For example, EIIS allows investors to deduct the cost of their investment from income, therefore reducing their income tax liability.
- Accelerated capital allowances. In general, a taxpayer claims a deduction in respect of expenditure on plant and machinery over a period of 8 years. An accelerated capital allowance allows the taxpayer to take a deduction for all the expenditure in the year such expenditure is laid out. An incentive scheme for certain energy-efficient equipment is due to expire on 31 December 2023. We would call for the extension of the scheme.
- Super deductions. For example, a corporate taxpayer that incurs capital expenditure on energy efficient plant and machinery assets worth say €10m would be able to get a tax deduction of €13m. This would amount to a tax saving of €375k for the taxpayer ((€13m - €10m) @ 12.5%).
- Relaxation of restrictions on particular types of deductions. For example, Finance Act 2021 introduced a restriction in respect of interest deductible. Broadly, only interest less than 30% of EBITDA would be deductible. However, interest on borrowings to finance renewable energy infrastructure was excluded from these interest restriction rules
- Reductions or increases in:
  - VAT rates
  - Excise Duty including VRT and Carbon Taxes and
  - Motor Tax

4.10 Incentivise Green spending

We would recommend that spending on green technology and buildings with recognised accreditation should be incentivised by way of super deductions or accelerated capital allowances. For example:

- 'Super deduction' of up to 150% of capital expenditure incurred (depending on the type of expenditure) or a refundable tax credit with respect to such expenditure[25]; or/and
- Accelerated capital allowances.

Such reliefs could apply for the purposes of:

- Developing new buildings/factories that receive a recognised accreditation for overall energy performance
- Retrofitting existing commercial buildings
- Expenditure on plant and machinery that receive a recognised accreditation for overall energy performance
- Expenditure on IT equipment for remote working
- Expenditure on commercial hybrid and electrical vehicles ("EV's") to encourage companies to electrify their fleet
- Expenditure on charging stations for electric vehicles

An incentive scheme for certain energy-efficient equipment is due to expire on 31 December 2023. We would call for the extension of the scheme.

4.11 Transport

We would encourage wider adoption of electric/hybrid vehicles via:

- Tax incentives for hybrid/electric vehicles such as super deductions and accelerated capital allowances
- Lower rates of VRT on electric/hybrid vehicles
- Lower rates of motor tax on hybrid/electrical vehicles

Currently, there are limits on the amount of capital allowances a business may claim on a company car i.e., regardless of the cost of the car, the capital allowances that may be claimed over the lifetime of the car is €24,000. The limit on capital allowances for EVs could be increased to make the acquisition of such vehicles more attractive.

- Consider the VAT rate of electric and hybrid vehicles in order to bring the cost of such vehicles to a more competitive level.
- Extend the benefit-in-kind exemption for electric vehicles when the current scheme expires and to review the BIK treatment of cars provided by car sharing organisations.

[25] Such a refundable tax credit should be aligned with the Pillar Two definition of a "*qualified refundable tax credit*". Any super deduction or tax credit should also be aligned with US foreign tax credit regulations so as not to disincentivise US groups from engaging in green spending within the Irish economy.

5. Employment

Labour supply, and in particular increases in labour force participation, has been a significant feature of Irish economic growth in recent decades.[26] Therefore, it is not surprising that since 2000, despite ups and downs in financial and labour markets, income taxes generated the largest amount of tax receipts throughout the period,[27] making up to 40% of total tax collected.[28] This is a substantial revenue source to the Exchequer to fund vital public services, especially at the time of high, constant and growing demand for many of them.[29] However, Ireland needs to remain an attractive economy for inward investment ("FDI") and talent in the mobile and competitive global arena going forward. Personal taxes will continue to be critical in attracting and retaining inward investment and talent to Ireland. Therefore, any changes to the personal tax system through the Budget or otherwise should provide a sustainable and stable source to the Exchequer while incentivising work and promoting economic growth.

In the face of a changing international tax landscape, a reduction in inward investment could by extension impact the amount of income taxes collected. For over two decades, Ireland's 12.5% corporate tax rate has served as a major differentiator with other competitor countries. However, the OECD's Pillar Two will limit Ireland's ability to compete using the corporate tax rate. Therefore, Ireland will need to look at other areas that can give us a competitive advantage. While there are many such areas, both tax and non–tax, one of the key areas is still personal taxation.

Our existing personal tax rates are uncompetitive in comparison to other countries both inside and outside the EU. Ireland's uncompetitive personal taxation system may act as a disincentive for multinational companies to come and remain here. Also, high taxes push up the cost of hiring for SMEs and attracting key talent. High personal tax rates not only act as a disincentive for companies staying or locating in Ireland, but they also act as a disincentive for people remaining in Ireland. Changes to working practices brought about by COVID19 and developments in communications technology mean that many high value roles can be carried out from anywhere. High personal taxes could result in some Irish based persons currently within the Irish tax net moving to other locations with a resulting loss of both income and corporate taxes.

Please refer to our response to the public consultation on Ireland's personal tax system for a detailed discussion on income tax proposals for reform and enhancement (accessible here).

5.1 Tax Rates and Bands

A tax policy that is competitive and effective is vital to Ireland's position in retaining and attracting talent in the world which is highly digitalised and mobile. For indigenous companies looking to expand operations and footprint, personal taxes are a key factor as such taxes contribute to the costs of running a business. While some costs are apparent (i.e., employer PRSI), high personal taxes also require companies to offer attractive remuneration packages including higher base salaries to workers. For SMEs, access to talent will likely play a large part in whether ambitious growth targets are achieved, with 35% of founders indicating plans to employ new staff in 2023 according to the Enterprise Nation Quarterly Small Business

[26] Central Bank of Ireland, 'Understanding Irish Labour Force Participation – Research Technical paper (01-RT-16)' <https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/research-technical-paper-01rt16.pdf?sfvrsn=8 >accessed 12 April 2023.
[27] COT Briefing Paper (2021). Further information on, and analysis of, the above tax receipts trends is set out in the Department of Finance's Annual Taxation Report 2021.
[28] Revenue, 'Headline Results 2022' (2022)< https://revenue.ie/en/corporate/press-office/annual-report/2022/headline-results-2022.pdf > accessed 12 April 2023.
Revenue, 'Headline Results 2021' (2021) < https://revenue.ie/en/corporate/press-office/annual-report/2021/headline-results-2021.pdf >accessed 12 April 2023.
Revenue, 'Headline Results 2020' (2020) < https://revenue.ie/en/corporate/press-office/annual-report/2020/headline-results-2020.pdf > accessed 12 April 2023.
[29] Where your money goes 'Irish Public Spending Data' (2023) < https://whereyourmoneygoes.gov.ie/en/2023/ > accessed 12 April 2023.

Barometer[30]. In addition, the personal taxes which key executives and key employees will be liable to pay will also play an important role in deciding whether to locate a business or mobile projects in a particular country. Key talent required in order to ensure a successful business venture may have a preference to locate in a country with a more competitive personal tax regime.

In the absence of any reform, our current personal tax regime may act as a disincentive for businesses and workers who are considering doing business in Ireland as, for example, our combined top personal tax rates of 52% - 55% remain among the highest in the EU (Top 10[31]). For a single person[32], income of up to €40,000 is taxable at the standard rate of 20% of income tax, while the balance over the €40,000 threshold (referred to as the Standard Rate Cut-Off Point or "SRCOP") is taxable at the higher rate of 40% (referred to in the remainder of this submission as the higher rate of income tax).

Despite a slight increase in the SRCOP in the last Budget, we still have a low entry point for the higher rate of income tax to apply. For example, a single person who earns an average salary of €46,800 gross (CSO, Earnings and Labour Costs, 2022) will take home circa €36,405 (77% of the gross salary), while someone in a senior role who earns €100,000 will take home circa €62,755 (63%). The difference between gross and net salary in the example above occurs as a result of the higher tax rate being applied to the salary in excess of €40,000. As such, by remaining in the EU's Top 10, the personal tax burden in Ireland will continue to be higher than many of our competitors. There are numerous forces which will drive a successful entrepreneurial landscape in Ireland, such as a skilled workforce, financial and technological resources, and infrastructure, etc. Critical to all of these forces is our tax system. Personal tax is only one of the factors which workers and businesses are considering (with other factors being housing, transport, infrastructure, education, health care, cost of living etc), however, it is definitely one of the key factors.

We also cannot ignore global trends such as digitalisation and globalisation, which allow entities and people to become increasingly mobile, and which could erode the personal tax base in the longer term.[33] With these matters in mind, and to ensure that the overall tax yield is maintained and continue to provide a sustainable and stable source of revenue to the Exchequer to fund public services,[34] our view is that a sustainable taxation system should remain progressive but with a focus on widening the tax base as a whole, with a view to shifting towards less distortionary taxes. In light of such concerns, serious consideration should be given in future Budgets to enhance and amend the existing personal tax regime to reduce the top combined tax rate for a worker from 52%-55% to no more than 50% through our two key recommendations detailed below:

1. An increase to the Standard Rate Cut off Point ("SRCOP") (e.g., from €40,000 to €50,000); and
2. A reduction in the higher rate of Income tax.

5.1.1 Increasing SRCOP

Ireland's personal tax rates are currently uncompetitive in comparison to other countries both inside and outside the EU, which is hampering SMEs and the indigenous business community as well as multinationals in their efforts to attract and retain talent. With the advancements in remote working, high personal taxes could result in people based in Ireland moving to other locations with a resulting loss of both income and corporate taxes. Therefore, this aspect of the current personal tax system may be harmful to growth and prosperity of the State. The proposal to increase the SRCOP is regularly and well addressed and evaluated by the Tax Strategy Group in advance of the Budgets.[35] When one considers that the average salary

[30] Enterprise Nation, 'Small Business Barometer, Q4 2022' (8 March 2023) < https://www.enterprisenation.com/learn-something/rise-in-optimism-for-irish-entrepreneurs/ > accessed 12 April 2023.
[31] Ireland remains in the top 10. OECD.Stat, 'Top marginal rates' (2023) < https://stats.oecd.org/index.aspx?DataSetCode=TABLE_I7# > accessed 13 April 2023.
[32] Including a widowed person or surviving civil partner without qualifying children, per Revenue 'Tax rates, bands and reliefs' (2023) < https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/tax-relief-charts/index.aspx > accessed 20 April 2023.
[33] e la Feria, R. and Maffini, G. (2021) *The Impact of Digitalisation on Personal Income Taxes*, British Tax Review 2, 154-168.

[34] While there is always a scope to increase tax on higher earners, aiming at providing a comprehensive system of quality public services in Ireland may also require more earners to pay more tax and social insurance too.
[35] For example, see the latest TSG paper 22-02 Income Tax. Department of Finance 'Budget 2023 Tax Strategy Group papers' (10 August 2022) < https://www.gov.ie/en/collection/d5b41-budget-2023-tax-strategy-group-papers/ > accessed 20 April 2023.

in 2022 was €46,800 (CSO, Earnings and Labour Costs, 2022[36]) and is likely to exceed €48,000 in Q4 of 2023[37] due to inflationary pressures and rising wages, such reform would be welcomed by the existing workers in receipt of an average salary in the State, as well as potential expatriate workers. Our recommendation would mean that workers on the average salary in the State would not become automatically taxed at the higher rate of income tax of 40%; an increase to the SRCOP would keep a larger portion of such workers' salaries on the standard rate of income tax of 20% and thus provide greater take home pay for these individuals.

5.1.2 Lowering the higher rate of income tax

Based on the latest statistics, our top combined personal tax rates of 52% - 55% (higher rate of tax of 40%, plus top USC rate and PRSI rate) remain among the highest in the EU (Top 10). Ireland's high personal tax rate is a disincentive to businesses locating in Ireland and employees taking on additional work. It is also a disincentive to foreign based talent (including Ireland's diaspora) relocating to Ireland. Furthermore, in light of the potential opportunities/risks arising out of OECD Pillar Two/Brexit, we need to ensure that the personal tax system is not a barrier to attracting and retaining talent in Ireland. This will be critical in terms of driving economic activity, future investment and reinvestment, and supporting SMEs and entrepreneurs to grow and scale their businesses in and from Ireland. The top combined rate of 52%-55% should be reduced, which would include a reduction in the higher tax rate of 40%.

5.1.3 The intermediate rate of tax

The policy rationale for introducing an intermediate rate of tax at 30% is to increase the entry point before taxpayers are subject to the higher rate of income tax (currently 40%), which would result in an increase in net pay for those taxpayers. Considering that the average salary in 2022 was €46,800 (CSO, Earnings and Labour Costs, 2022[38]), the introduction of an intermediate rate of income tax between the current standard rate of income tax of 20% and the top rate of income tax of 40% would benefit middle/average and high income earners (i.e. those that have some part of their earned income between those income bands) as they would see a direct increase in their net income due to the intermediate rate of tax. While we are of the view that focus needs to be given to middle income workers and the tax burdens faced by them, we would note that the same result could arguably be achieved by effectively addressing our previous recommendations 1 and 2 (moving the entry point to the standard rate cut off and reducing the top rate of Income tax), without the need for introducing a new rate of tax. While we support a reduction in the tax burden for workers, such objectives should not result in greater complexity in the personal tax system.

5.2 Tax Credits and Flat Rate Allowances

Inflation is projected to moderate gradually over 2023 and 2024, but to remain above Central Bank objectives until the latter half of 2024 in most countries. Headline inflation in the G20 economies is expected to decline to 4.5% in 2024 from 8.1% in 2022.[39] Hence, we recommend increasing tax bands and credits and Flat Rate Allowances annually in line with the inflation rate.

5.3 SARP

The Special Assignee Relief Programme ("SARP") is an initiative aimed at encouraging skilled personnel to relocate to Ireland by granting an exemption from income tax for 30% of earnings between €100,000 and €1m. A tax policy that is competitive and effective in attracting top mobile talent to Ireland is vital to Ireland's position in retaining and attracting Foreign Direct

[36] CSO, 'Earnings and Labour Costs' < https://www.cso.ie/en/statistics/earnings/earningsandlabourcosts/ > accessed 13 April 2023.
[37] CSO, 'Earnings and Labour Costs Q3 2022 (Final) Q4 2022 (Preliminary Estimates)' (2022)< https://www.cso.ie/en/releasesandpublications/ep/p-elcq/earningsandlabourcostsq32022finalq42022preliminaryestimates/#:~:text=Earnings%20and%20Hours-,Average%20weekly%20earnings%20were%20%E2%82%AC900.26%20in%20Q4%202022%2C%20an,and%20Labour%20Costs%20quarterly%20release.> accessed 20 April 2023. The calculation of the predicted salary was based on the average increase of gross salary in the last 5 years, based on the information provided by the CSO (i.e., the difference between gross salaries in Q4 in 2022 – 18 were (in order 2022 – 18) €36, 16,60 and 29, with the average being €28 per week or €1,456 per year, gross).
[38] CSO, 'Earnings and Labour Costs' < https://www.cso.ie/en/statistics/earnings/earningsandlabourcosts/ > accessed 13 April 2023.
[39] OECD (2023), 'OECD Economic Outlook, Interim Report March 2023: A Fragile Recovery' (17 March 2023) < https://doi.org/10.1787/d14d49eb-en. > accessed 13 April 2023.

Investment. In our view, the current relief is insufficient and too restrictive. Therefore, while the extension of the relief is welcome, further enhancements to SARP are required to make it easier to access including:

- In order to meet "*relevant employee*" conditions, an employer needs to certify within 90 days of employee arriving in Ireland that the employee meets all qualifying conditions including having obtained a PPS number. We believe that the absence of a PPS number in the first 90 days should not be a barrier in claiming SARP and is an unwelcome addition to the legislation and should be removed. Removal of the 90day administrative rules and instead incorporating any information requests within the self-assessment income tax return would make the relief more workable and user friendly.
- The relief should be available in respect of USC and, where relevant PRSI, rather than being limited to income tax. Extending SARP to USC and PRSI would allow for a lower effective tax rate for the employee making the relief more competitive with regimes in other jurisdictions. This could reduce costs for employers by allowing a lower gross pay due to the lower effective tax rate payable. If SARP applied for employer PRSI purposes, this would further reduce costs for employers allowing for greater investment in the business.
- Similar to other jurisdictions, the relief should be available to new hires as well as existing employees assigned or transferred to Ireland. In the current climate, companies are finding it difficult to source suitably skilled employees and they cannot compete with other countries with lower tax rates or expatriate reliefs. In the 2014 review of SARP the observation regarding extending SARP to new hires, was that this could cause job displacement in the Irish labour market. In our view, this could be addressed by limiting access to the relief by new hires to specific areas in line with the requirements for a Critical Skills Permit. The relief could be available to new hires who, if they were required to hold a permit, would satisfy the conditions for a Critical Skills Permit. This would ensure that it was only available for those working in areas where a critical shortage in Ireland has been identified. The extension of the scheme to new hires would also allow SMEs to access the scheme.
- The relief should be available to employees of all employers, i.e., not just employees of companies in Treaty or Tax Information Exchange Agreement ("TIEA") States.
- Non-residents should be able to claim the relief against the portion of earnings that is taxable in Ireland. This is the position in the Netherlands under the Dutch 30% regime.
- The 5-year period that a claimant needs to be non-resident should be reduced to 3 years.
- The relief should be available for 10 years, rather than 5 years, to set Ireland apart in terms of competitiveness from a personal tax perspective. Existing claimants should be able to qualify for the relief for the extended period.
- All remuneration, including share-based remuneration and BIK items, should count towards meeting the minimum income requirements of €100,000.
- The cap on qualifying school fees should be removed,
- The improvement in the SARP should also be combined with a roadmap to reduce high earner effective personal tax rates.
- Like many other countries with expat reliefs, our preference would be that the SARP relief is claimed on tax returns without the need for pre-approval from Revenue on first arriving in Ireland.
- SARP was extended for new arrivals into the State until 31 December 2025. In our view, the relief should become a fixed part of the tax code, i.e., remove the sunset provision entirely.
- Overall, the SARP application process is unnecessarily complex and should be streamlined and simplified.

Ireland's SARP regime needs to be reconsidered from an international competitiveness perspective, which we would be pleased to discuss further with the Department of Finance, including assessing the competitiveness of the current earnings ceiling. A competitive and attractive SARP regime can ultimately result in increased investment into Ireland, increased jobs creation, and while the SARP relief itself may reduce a specific individual's personal tax burden, overall Ireland should achieve increased tax receipts through the additional corporate tax and personal taxes generated from the business and jobs that have been secured.

5.4 Share Based Remuneration

There is generally no tax due on the date that an option is granted. When an employee exercises an option, that individual must pay Income Tax, Universal Social Charge and PRSI on the difference between the market value of the shares on the date of exercise and the amount paid for the shares. Any subsequent sale of the share will be subject to CGT of 33% on the gain arising.

However, the taxation treatment of a long option is different. A long option is an option that can be exercised more than seven years from the date it is granted. In the case of a long option, the taxpayer should pay Income Tax on the grant date and the date of the exercise of the option if the option price is less than the market value of the shares at the grant date. The tax at grant date is due on the difference between the market value of the shares on the grant date and the amount the employee will pay when they exercise the option. We would recommend that the distinction between short options and long options be removed, i.e., that the treatment of long options be the same as short options.

The rules in respect of share options require individuals to self-assess for any tax arising on the exercise of options, rather than having such amounts taxed through payroll. This adds additional administration for an employee. By comparison, in most other countries, share options are dealt with through payroll. We would recommend a similar in-payroll system is introduced in Ireland.

Many key executives relocating to Ireland will have options and Restricted Stock Units ("RSUs"). The rules in Revenue's Share Scheme Manual allow for apportionment by reference to the portion of the vest period spent in Ireland in the case of share options. However, currently, RSUs are fully taxable if they vest at a time when the executive is Irish tax resident, irrespective of whether the executive has only been resident for a portion of the vesting period. We would recommend that the amount of the benefit taxable in Ireland be apportioned by reference to any part of the vesting period during which the individual is present in Ireland.

5.5 Key Employee Engagement Programme ("KEEP")

The aim of the KEEP is to help smaller firms who cannot compete with larger firms in cash remuneration terms to attract and retain talent in a challenging labour market.

Currently, companies continue to face challenges of cost increases coupled with a constrained labour market and these businesses need to consider alternatives to cash remuneration. The introduction of KEEP was heralded as a mechanism to help SMEs retain and reward staff, but the current KEEP legislation has presented a number of difficulties in operating the scheme effectively which has put SMEs on the back foot in terms of competing in the labour market.

We welcome changes introduced by the Finance Act 2022 including the extension of the scheme to a broader range of group structures; allowing individuals who work part-time or have flexible working arrangements to be regarded as qualifying individuals; extending the relief to existing shares as well as newly issued shares and providing for the buy-back of KEEP shares by the company.

However, some challenges remain in relation to KEEP, such as the definition of a holding company for KEEP and the lack of a safe harbour or Revenue guidance regarding the valuation of shares. Similarly, we would recommend the removal of income tax treatment to shares with CGT treatment instead applying on the disposal (such an enhancement would align the treatment with similar schemes in other EU Member States such as Poland).

5.6 Foreign Earnings Deduction ("FED")

The Foreign Earnings Deduction ("FED") is an Income tax relief available to employees who spend a minimum of 30 days working overseas in certain territories, allowing an individual to ultimately reduce their tax bill by up to €14,000. The FED plays an important role in encouraging and incentivising Irish businesses to export to emerging markets. The extension to the FED until 31 December 2025 is a welcome development for many companies, but continuous reform of the relief is still required to ensure that it remains fit for purpose.

We believe that FED should be enhanced as follows.

5.6.1 Application to all countries

Global Ireland 2025 sets out an ambitious strategy to double the scope and impact of Ireland's global footprint. It is clear from the report that this involves a range of measures focused across the globe and not just in emerging markets. Leo Varadkar stated, *"The EU has always offered the promise of a better future, but it is a future that will not be handed to us. We must work to create it*." It is clear that our aim is to continue to be an active and engaged member state of the EU. In the context of Brexit, we are focusing on new markets both in the EU and beyond and it is key that companies do not solely focus on emerging markets. The report states "...*diversifying beyond the UK market is an important aspect of the national effort to mitigate the negative impacts of Brexit. Further reinforcing our presence in Europe will support this drive, enabling us to better capture and exploit new market opportunities*."

When initially introduced in 2012 the Minister stated, *"I am ... introducing a Foreign Earnings Deduction to further support our export drive by aiding companies seeking to expand into emerging markets."* The relief was extended to additional countries in 2013 and further locations were added in 2015 and 2017.

It is clear from Global Ireland 2025 that there is a global focus not limited to specific regions or countries. We would recommend that the FED is extended to all countries to align with this policy, so as to assist Irish companies looking to expand their exports.

5.6.2 Extend the annual maximum relief to €100,000

The deduction is currently capped at €35,000 equating to a maximum tax saving of €14,000 as the relief is only allowed for income tax. This is quite limited in the context of the extent of travel that an individual may have in a tax year. Employers incur significant costs in relation to travel and subsistence for employees that they need to send overseas and, in many cases, may need to offer an incentive for employees to undertake the development work due to the personal commitment required.

Increasing the maximum deduction to €100,000 would allow companies to reduce their costs as the FED would be the incentive for employees. Companies could redirect any savings to increased investment in the drive for overseas exports resulting in increased growth and exchequer returns.

The above would make the relief sufficiently attractive to encourage greater travel to develop foreign markets while reducing cost for companies.

5.6.3 Other changes

- The sunset provision should be removed, with this relief to be a permanent feature of Ireland's tax code.
- The relief should be extended to USC and PRSI.
- The relief should be extended to the self-employed sector.
- The alternative is for a territorial approach to be taken akin to that in Hong Kong and Singapore where tax/USC/PRSI would only be applied to earnings referable to duties exercised in Ireland. This would be of great assistance to exporters.

We are not alone in our view, as outlined in the report issued from the Commission on Taxation, which notes that the relief does not appear to be adequately targeted to achieve its policy objectives. Broadening the application criteria and extending the annual maximum relief would, in our view, go some way to bridging the gap.

5.7 Small Benefits Exemption

Following the Budget in September 2022, Section 112A TCA97 was updated to reflect the increase of the qualifying amount to €1,000 and allowing for two qualifying incentives in a tax year. Under the legislation "qualifying incentive" means a relevant incentive that is the first or the second relevant incentive given to an employee in a year of assessment where–

a. in the case of a first relevant incentive, the value does not exceed €1,000, and
b. in the case of a second relevant incentive, the cumulative value of the first and second relevant incentives does not exceed €1,000.

A 'relevant incentive' means either a voucher or a benefit that is given to an employee by his or her employer in a year of assessment where the following conditions are satisfied:

a. the voucher or the benefit does not form part of a salary sacrifice arrangement;
b. the voucher can only be used to purchase goods or services and cannot be redeemed, in full or in part, for cash;"

There must be a record of each "relevant incentive" granted to employees as only the first and second can be considered in allowing the exemption. For example, each employee of Company A is granted a voucher for €500 in March, a €50 benefit (e.g., Easter Egg and a box of chocolates) in April and a €450 voucher in December. While each employee of Company B is granted a voucher for €500 in March and a €500 voucher in December only. Employees of both companies received the same amount (€1,000). However, in the first example, employees of Company A can have only €550 tax free (the first and second vouchers), but the €450 will be taxable. While employees of Company B can have €1,000 tax free. We would recommend removing the maximum numbers of benefits (currently 2) and focus on the maximum value instead (€1,000 per year collectively).

5.8 Remote Working Reliefs

Finance Act 2022 provides for income tax relief for remote working by allowing employees who work from home to claim a 20% tax credit for 30% of the cost of broadband, electricity, and heating, apportioned based on the number of days worked from home during the year.

The relief is reduced by any amount reimbursed to the worker by their employer. Also, where the relevant expenses are shared by two or more people, the total costs are apportioned between the individuals based on the amount of the expense paid by each person.

The relief does not apply to other remotely working from home costs which employees may incur, such as stationery, printing, and sanitary costs which in the office would be provided and paid for by the employer. We would recommend extending the relief to include these costs (a 20% tax credit for 30% of these costs).

While the increase to this relief for 2022 and subsequent years is welcome, in practice the tax relief due to most individuals is minimal. For example, someone who works at home 50% of the time with circa €5,000 a year in expenses, will only benefit by around €175.

We would recommend introducing a €1,000 tax credit which may be reduced pro-rata depending in the number of days an individual spends in the office.

Alternatively, removing the 30% cap on expenses and allowing a deduction for the full amount of the expenses. It should be noted that currently employers can contribute up to €3.20 per day to cover the employee's additional costs of working from home without triggering a charge to BIK, but many employers cannot afford to make such a contribution.

We would further recommend that where an employer pays an employee's increase in home insurance premium which arises from remote working this should not be treated as taxable under the BIK regime. Revenue guidance states that remote working will not impact an individual's claim for exemption from CGT on disposal of their Principal Private Residence. This Revenue practice should be put on a legislative footing.

5.9 Place of work in a hybrid world

Identification of an employee's normal place of work is central to the tax treatment of travel and subsistence payments made to employees. While the position adopted by Revenue is that an employee's home is not a normal place of work, such rules should now be reconsidered in light of the growing portion of the labour market who work remotely or on a hybrid basis. The employee's normal place of work should be based on the facts of where the employee carries out the majority of their duties of employment, irrespective of whether that is their home or their employer's office or, indeed, some other workspace. We would recommend recognising a home office as a "*place of work*" in cases where the company formally adopts a hybrid working policy.

5.10 R&D Employees

Attracting talent is key to attracting R&D and innovation activities and to help foster a knowledge-based economy. Steps need to be taken to reduce the personal tax burden on employees engaged in appropriate R&D activities, to ensure that Ireland can retain and attract key R&D talent. While there are existing measures included in the R&D tax credit regime aimed at reducing the personal tax burden of certain key R&D employees, these measures are seldom used. We would recommend that alternatives are considered including applying the standard 20% rate to an appropriate amount of remuneration reasonably attributable to qualifying R&D activities of R&D employees or offering R&D employees a personal tax credit commensurate with time spent on such activities.

5.11 Agriculture, Forestry and Fishing Sector

While the largest employment increases were in Administrative & Support Service activities and the Transportation & Storage sector, more focus is required on incentivising and encouraging people to work in the Agriculture, Forestry & Fishing sector. In 2022 the Agriculture, Forestry & Fishing sector showed the largest decrease, down 5.7% or 6,100 compared with Q4 2021. This is disappointing, considering that the agri-food sector is Ireland's oldest and largest indigenous exporting sector. In 2020, the sector accounted for over 6% of GNI and 9% of exports in value terms. The sector accounts for 38% of total indigenous exports and over 60% of indigenous manufactured exports. In Ireland, agri-food is an integral part of the economy and society, and especially so for our rural and coastal communities.[40] While we already have limited measures in place to encourage people to work in these areas (e.g., Fisher Tax Credit, Flat Rate Allowances), the statistics clearly indicate that it is not enough and further incentives maybe required, including tax incentives to promote careers in Agriculture, Forestry & Fishing sector.

5.12 Construction Sector

The Government should consider fixed period tax reliefs to assist certain sectors. With the shortage of construction workers and the requirement for more housing, as an example, consideration should be given to a 50% tax exemption for earnings from construction employments. The suggestion is that these exemptions would expire after five years (subject to regular reviews and monitoring). It is recognised that EU State Aid approval might be needed, but such targeted measures could be of real benefit to the economy in addressing areas most in need of support.

5.13 Tax measures to incentivise and encourage people to take up and return to employment

Irish tax legislation provides a number of supports and initiatives to assist start-up business and small and medium enterprises. Initiatives include tax incentives - tax reliefs, deductions and exemptions as well as supports and other initiatives[41]. While we recognise that entrepreneurs are vital to the success of the Irish economy and we support existing measures, the absence of meaningful tax measures to incentivise and encourage people to take up and return to employment (i.e., employees) and remain in the employment (including a progression from an average earner to the higher earner) may indicate a scope for review and an introduction of such measures to make work attractive. This is one of the three core areas of economic action

[40] Department of Agriculture, Food and the Marine, 'Agri-Food and the Economy' < https://www.gov.ie/en/publication/e2273-agri-food-and-the-economy/ >accessed 13 April 2023.

[41] For example, the Seed Capital Scheme, Employment and Investment Incentive Scheme, Relief from Corporation Tax for start-up companies. A range of other supports for small and medium businesses are also in place such as exemptions from the requirement to register for VAT and the use of the cash basis for VAT.

outlined in the latest NESC report (April, 2023[42]). Avoiding cliff-edges such that both tax and welfare function and co-exist in some cases should be taken into the account, so that people have an incentive to take up and retain employment, and they do not artificially curtail the hours that they work, decline promotions due to tax concerns or use other measures in response to existing rules under both systems.

When it comes to a discussion on cliff-edge effects, a combined and a simultaneous review of the tax and welfare systems is required. Cliff-edges can result in individuals being left financially worse off as a result of taking up employment, increasing their hours of work or getting a pay rise. They can occur, for example, when earnings surpass the liability threshold for PRSI (at €352 per week) and USC (at €13,000 per year)[43], as well as when working more than three days a week on low levels of pay (leaving individuals ineligible for a partial Jobseekers Allowance payment). Cliff-edges in the taxation and welfare systems should be removed. The Departments overseeing both systems should recognise that arbitrary thresholds and boundaries which result in cliff-edges in both systems may create disincentives for individuals to move from the welfare system into the tax system and to remain in the tax system. The transition from one system to another should be gradual, and in cases where the provisions of both systems apply to a worker (e.g., Back to Work, Family Income Supplement), two systems should work in tandem.

5.14 Tax measures to address at risk individuals

According to the latest research by the ESRI (2022) and statistics provided by the CSO (2022),[44] despite a strong and progressive income growth over the past three decades in Ireland, there are still groups of individuals and households who experienced the highest rates of at risk-of-poverty, deprivation and consistent poverty. These groups include long-term unemployed, lone parents and their children, working-age adults with disabilities and older people (65+) living alone.

Tax labour participation measures and incentives (in addition to other fiscal measures) should be introduced, targeting these groups:

i. unemployed people returning to the workforce, particularly long term-unemployed (e.g., Returning to Work tax Credit similar to the PAYE Credit; tax reliefs for unemployed who return to and take up employment similar to those available to individuals who start up the business etc.);
ii. one-parent families[45] (by, for example, including further increases in related tax credits and the SRCOP) and
iii. those over 65.[46]

[42] NESC, 'Understanding the Irish Economy in a Time of Turbulence' (April 2023), < https://www.nesc.ie/publications/understanding-the-irish-economy-in-a-time-of-turbulence/. >accessed 13 April 2023.
[43] Revenue Commissioners, 'Universal Social Charge' < https://www.revenue.ie/en/jobs-and-pensions/usc/index.aspx. > accessed 20 April 2023.
[44] ESRI, 'Poverty, Income Inequality and Living Standards in Ireland: Second Annual Report' (October, 2022), < https://www.esri.ie/system/files/publications/JR1.pdf. > accessed 13 April 2023. Also, CSO, Survey on Income and Living Conditions (22 February 2023) < https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/poverty/ >accessed 13 April 2023.
[45] In accordance with the latest ESRI report, over the period 2004-2019, lone parents and their children and working-age adults with disabilities and their children experienced the highest rates of at risk-of-poverty, deprivation and consistent poverty. See ESRI, 'Decreasing poverty requires a mix of policy measures such as increasing female labour force participation and spending more on benefits targeting children' (13 June 2022), < https://www.esri.ie/news/decreasing-poverty-requires-a-mix-of-policy-measures-such-as-increasing-female-labour-force. > accessed 13 April 2023. And also, ESRI, 'Poverty, Income Inequality and Living Standards in Ireland: Second Annual Report' (October 2022), < https://www.esri.ie/system/files/publications/JR1.pdf. > accessed 13 April 2023.
[46] CSO, 'Survey on Income and Living Conditions (SILC) 2022' (22 February, 2023) indicated that that older people living alone are at highest risk of poverty of all households, < https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2022/poverty/. > accessed 13 April 2023. The 'at risk of poverty rate' for all older people aged 65+ has almost doubled since 2020 (9.8% to 19%). This represents the highest increase of any age group.

5.15 PRSI and USC systems

With three personal taxes in play (Income tax, USC and PRSI), together with their different rates and reliefs, this creates a level of uncertainty and complexity in the tax system which is not conducive to employment or economic growth. Of the 624 appeals heard by the Tax Appeals Commission in the period from 2016-2022 inclusive (and published in the TAC website), 322 contain some element of personal taxes (whether income tax, PAYE, PRSI or USC), demonstrating the uncertain nature of this area in practice for taxpayers. Merging income tax with the USC would provide a measure of clarity and would streamline the tax system considerably.

Any increases in either employee or employer PRSI will add to the cost for employers of employing people in Ireland. If an employer has a hiring budget, the cost of employer PRSI means that less employees may be hired. Accordingly, we are not of the view that employer PRSI should increase in future Budgets and future opportunities to reduce the cost of employments to employers should be considered. With 12 different rates and 11 different classes, further divided into sub-classes, the Pay Related Social Insurance (PRSI) is overly complex and difficult for people to understand. Significant simplification is required if PRSI is to be effective going forward.

5.16 Tax relief for pension contributions

An individual can get an Income tax relief at the marginal rate against employment earnings in respect of pension contributions (including AVCs) to pension plans such as occupational pension schemes, PRSAs, RACs and qualifying overseas plans. This is subject to an age-related limit and a total earning limit. The maximum amount of earnings taken into account for calculating tax relief is €115,000 per year.

The age-related limits are listed below:

Age	**% Limit**
Under 30	15%
30-39	20%
40-49	25%
50-54	30%
55-59	35%
60+	40%

The composition of Ireland's population is going to change substantially over the coming decades. The old-age dependency ratio in Ireland[47] is set to nearly double over the next 30 years, from 24 per cent at present to 47 per cent by the middle of this century and to 53 per cent by 2070. In other words, while there are currently around 4 persons of working age to support each person aged 65 and over; by 2050, the equivalent figure will be just over 2. Such developments will see demand for demographically sensitive public expenditure such as health and pensions grow, with significant costs for the State.[48]

To promote pension savings and to encourage more people to provide a private pension to supplement their retirement income, in combination with other pension-related measures initiated by the Government to prepare for increased costs to

[47] The number of retirees as a fraction of the number of workers.
[48] Department of Finance, 'Population Ageing and the Public Finances in Ireland' (29 September 2021), < https://www.gov.ie/en/publication/6ba73-population-ageing-and-the-public-finances-in-ireland/. >accessed 13 April 2023.

the State arising from an aging population and other demographic shifts, we would recommend increasing the limits for each age category or having a single maximum limit for all taxpayers.

5.17 Travel and subsistence relief

At present, tax-free subsistence may be paid or reimbursed by the employer for the first 12 months of a temporary assignment provided that the period of assignment in the State does not exceed 24 months. In order to enhance Ireland's competitiveness in attracting key talent to Ireland and to the reduce the costs of international assignments to Ireland, we would recommend that the accommodation costs for the first 24 months of an international assignment to Ireland are tax free, as opposed to the current period of 12 month. Our closest competitor for talent, the UK, allows for such a longer period of relief at a temporary work location.

6. Cost of living

Budget 2023 introduced a range of timely permanent and once-off cost-of-living tax and welfare measures to insulate households from the rising cost of living. We acknowledge and support the prompt and targeted actions of the Government to deliver a timely and substantial support to those in need at times when they needed it most.

The latest OECD Economic Outlook Interim Report[49] indicated that globally positive signs have now started to appear, with business and consumer sentiment starting to improve and food and energy prices falling back. A gradual improvement in global growth is projected through 2023-24, as the drag on incomes from high inflation recedes. Inflation is projected to moderate gradually over 2023 and 2024. However, the improvement in the outlook is still fragile. For example, pressures in global energy markets could reappear, leading to renewed price spikes and higher inflation. In the context of Ireland, the latest European Economic Forecast by European Commission[50] indicated an improving outlook. Falling inflation, strong performance of the labour market and high household savings underpin such outlook. Inflation reached 8.1% in 2022 overall. The unemployment rate for February 2023 was 4.3%.[51] Households saved €3.9 billion, or 20 per cent of disposable income, in the final three months of 2022. Before the pan demic, for example, households saved on average 10 per cent of their disposable income, with consumer spending making up the other 90 per cent.[52] However, energy remains the main driver for inflation, although it has started moderating. By contrast, growth in food prices reached double digits in the final quarter of 2022.[53] Therefore, there may still be a need for further one-off cost-of-living measures if price rises, particularly energy related, persist next year. Fiscal support to mitigate the impact of high food and energy prices needs to become more targeted. Improved targeting and a gradual reduction in overall support would help to ensure fiscal sustainability and limit additional demand stimulus at a time of high inflation.[54]

6.1 Bin and Service Charges Relief

Return of the Bin and Service Charges Income Tax relief should be considered to address the increasing cost of living in Ireland. It was available to individuals who paid a local authority (or somebody operating these services on their behalf) towards bin collection, sewage disposal, or for water charges. The relief was given at the standard rate of tax (20%) and the maximum amount on which a relief could be claimed was €400,[55] which gave a tax credit of €80 per year. We recommend the reintroduction of this relief.

6.2 Rent-a-Room Relief

At present, an individual can let a room in the home tax free, provided the income received does not exceed the exemption limit (€14,000 gross pa). If it does, then an individual is taxed on the total amount at the marginal rate. The gross income is

[49] OECD (2023), 'OECD Economic Outlook, Interim Report March 2023: A Fragile Recovery' (17 March 2023) < https://doi.org/10.1787/d14d49eb-en. > accessed 13 April 2023.
[50] European Commission, 'European Economic Forecast, Winter 2023' (Institutional Paper 194, February 2023), < https://economy-finance.ec.europa.eu/system/files/2023-02/ip194_en_1.pdf. > accessed 13 April 2023.
[51] CSO, 'Monthly Unemployment, February 2023' (01 March 2023) <https://www.cso.ie/en/releasesandpublications/ep/p-mue/monthlyunemploymentfebruary2023/. >accessed 13 April 2023.
[52] CSO, 'Household Saving, Q4 2022' (09 March 2023) <https://www.cso.ie/en/releasesandpublications/ep/p-hs/householdsavingq42022/. >accessed 13 April 2023.
[53] European Commission, 'European Economic Forecast, Winter 2023' (Institutional Paper 194, February 2023), https://economy-finance.ec.europa.eu/system/files/2023-02/ip194_en_1.pdf. >accessed 13 April 2023.
[54] OECD, 'OECD Economic Outlook, Interim Report March 2023: A Fragile Recovery', (17 March 2023) <https://doi.org/10.1787/d14d49eb-en.> accessed 13 April 2023.
[55] Which is a very modest ceiling, considering that According to the Money Guide Ireland website, the annual bin collection charges in Dublin, for example, varied between €191 and €342 (posted 1 March, 2023).

the total income before expenses. Expenses include the maintenance of the room let and capital allowances due on fixtures and fittings. The following conditions must be met:

1. the gross income from the rent must be below the exemption limit
2. there must be a minimum continuous-letting period (with exceptions); and
3. the room must be in a ‘qualifying residence’.

According to the Residential Tenancies Board (“RTB”) rent index for Q3 of 2022, a large proportion of the Irish population are now reliant on the private rental sector, which has also seen rising prices in recent years. Rents in newly registered tenancies increased by 6.7 per cent when compared with the same period in the previous year.[56]

However, for many, the cost of renting a separate accommodation (apartments or houses) remain out of reach due to increasing costs. Hence, many opt for renting room only. But even this option is very limited due to persistent shortages of rental accommodation.

We recommend the following changes to the relief:

- amend the tax exemption limit to €14,000 net (as opposed to gross);
- apply the standard rate of tax to the excess only (as opposed to the marginal rate to any amount in excess of €14,000 gross under the current regime);
- include not only, for example, attached converted garage, but also up to one adjacent converted garage;
- extend the relief to rooms where they are used by a person for a mixed purpose (residential and business-from-home), as opposed to only residential purpose under the current regime, to facilitate current working from home trends and digitalisation in general.

6.3 Rent Tax Credit

We welcome the reinstatement of the Rent tax Credit which is worth €500 per individual or €1,000 per jointly assessed couple to assist the households with the rising cost of renting.

Based on recent statistics as of February 2023, only 137,697 claims have been made in respect of rent paid in 2022[57] compared to an estimated 400,000 tenants who may be eligible for the tax credit. Such slow and low uptake of the tax credit may be indicative of underlying issues in the current regime which need a review or a change.

The low number is believed to be partly due to landlords not being registered with the Residential Tenancies Board (“RTB”). Another reason for renters not applying for the credit could be simply that they may not be aware of the support at all or they may not realise that they are eligible for it.

We recommend the following changes to the relief:

- in light of average and continuously increasing rental costs, the rent credit should be substantially increased to reflect the same and to have a real and meaningful impact on the cost of living of tenants;
- all renters should have access to the tax credit, even if their rental property was not registered with the RTB, due to no fault of their own;
- the age-based condition for relief in respect of students should be removed. The parent(s) of mature students should be able to claim the tax credit for the duration of that course.

[56] RTB, ‘Q3 2022 Rent Index’, (16 March 2023) <https://www.rtb.ie/news/rtb-publishes-q3-2022-rent-index. >accessed 13 April 2023.
[57] Department of Finance, ‘Press Release: Minister McGrath urges renters to claim the Rent Tax Credit’ (11 February 2023) <https://www.gov.ie/en/press-release/d217e-minister-mcgrath-urges-renters-to-claim-the-rent-tax-credit/>accessed 13 April 2023.

6.4 Childcare Services Relief

An individual can provide childminding services at home and claim tax relief on income derived from those services. In order to qualify an individual must:

- not receive more than €15,000 income per annum from the childminding activity (the annual limit applies to receipts from the childminding activity rather than to actual profits from the activity);
- provide the service in her/his home;
- not mind more than three children, who are under the age of 18 years, at any one time;
- be self-employed and registered for self-assessment; and
- notified the Health Services Executive (HSE) that he/she is providing childcare services.

Temporary measures were in place during the pandemic when the HSE has issued guidance on the provision of childcare where, in accordance with this official guidance, individuals who cared for children in their own home could still qualify for Childcare Services Relief. Specifically, as part of the stay-at-home restrictions put in place during the Covid-19 pandemic, the HSE advised that childminding should only take place in the home of the child. While these stay-at-home restrictions were subsequently lifted, Revenue acknowledged that some childminders may have continued to provide care in the child's home on public health grounds. For this reason, the treatment above applied up to 30 April 2022. An individual could no longer qualify for Childcare Services Relief in respect of receipts from the provision of childminding services in the child's own home on or after 1 May 2022.We believe that this temporary measure should be retained on permanent basis, particularly for children who, for example, may require in-home case for medical reasons, but ideally for all children.

While we welcome the availability of such relief, so as to encourage more people to provide childcare cost in their own home and assist parents who are either struggling to secure or afford the cost of creches or prefer their children to be minded in more private settings (including their own home) for either health or other reasons, we would recommend the following:

- amend the exemption limit to €15,000 net (after the expenses) to reflect the rising costs of providing the childcare services;
- consider increasing the exemption limit;
- remove the maximum number of children;[58] and
- allow for the childcare services to be provided in children's home to address for example children's health concerns.

6.5 Taxsaver Commuter Ticket Scheme

The Scheme is designed to encourage workers to use public transport and to reduce traffic congestion. It reduces the cost for workers using public transport, but it is not limited to State-owned public transport. According to Taxsaver, employees can save between 28.5% and 52% of travel costs as a result of tax, PRSI and USC savings by using a TaxSaver ticket.[59] With hybrid working now an option for many, the scheme needs to be adapted for workers who only commute to work for 1-3 days per week. At present, such workers only have an option of purchasing monthly or annual tickets, when they are only travelling to the office occasionally.

We understand that in 2022 the NTA was evaluating the possibility of a new flexi Taxsaver commuter ticket and it had discussions with the Department of Transport and the Department of Finance on this at the start of 2022 and even received a confirmation from Minister for Finance that no legislative change would be required to proceed with such product. However, no new flexi ticket was introduced. As such, we would support and recommend a recommencement of discussion on this point and an introduction of a flexi tax saver ticket for hybrid workers, as an additional cost-of-living support measure.

[58] Having regard to the HSE guidance on the same of course (service provider/children ratio).
[59] Taxsaver.ie, 'How Taxsaver works?' <https://www.taxsaver.ie/Commuters/. >accessed 13 April 2023.

6.6 Health Expenses

Currently, a tax relief is available on the cost of health expenses. These can be an individual's health expenses, those of a family member or any individual, as long as the claimant paid for them. An individual generally receives a tax relief for health expenses at the standard rate of tax (20%). Nursing home expenses are given at the highest rate of tax (up to 40%). Only those who actually paid tax can avail of this relief.

While the list of qualifying health expensive is already relatively broad, certain health expenses remain excluded from the list, such as:

- routine dental care (while, for example, routine GP and maternity services are covered);
- routine ophthalmic care (same as above);
- guide and assistance dog costs (in addition to Guide/Assistance Dog Allowance);
- cosmetic surgery or procedure the sole or main purpose of which is to improve one's appearance.

There are exceptions to cosmetic surgery procedures if the surgery or procedure is necessary to *"ameliorate a physical deformity arising from, or directly related to a congenital abnormality; personal injury; or disfiguring disease."* [60]

Relief may also be allowed in respect of a surgery where a medical practitioner confirms that the treatment is necessary to alleviate a "*life-threatening condition*" (e.g., gastric band).[61]

All cases are examined on a case-by-case basis with no detailed guide and the list of precedents available to the taxpayer, apart from the limited information provided in the related Tax and Duty Manual.

We would recommend the following:

- expand the list of qualifying health expenses to include items such as, for example, routine dental and ophthalmic care, so all basic routine care (e.g., GP/Dental/Ophthalmic/Maternity) is included; and
- direct the Revenue Commissioners to issue a detailed guidance on qualifying cosmetic surgeries and procedures to *"ameliorate a physical deformity arising from, or directly related to a congenital abnormality; personal injury; or disfiguring disease"* and surgeries and procedures which are necessary to alleviate a *"life-threatening condition"*; and maintain a list of non-inclusive examples and precedents, while continue dealing with cases on a case-by-case basis. Such approach will add clarity and transparency to the claiming procedure.

6.7 Child-related tax credits

When it comes to child-raising costs in Ireland, existing tax reliefs are currently very limited and include measures such as:

- an incapacitated child tax credit of €3,300 (per child and if a child is maintained by more than one person, the tax credit is divided between them);
- a single person child carer tax credit of €1,650 (in total and only one parent or guardian of a child can claim this credit); and
- an increased by €4,000 tax band of €44,000 at 20% (only for a single or widowed or surviving civil partner, qualifying for a single person child carer credit).

While we welcome and support the existing measures listed, more can be done from the tax policy side to support parents with young children.

[60] RTDM 15-01-12.
[61] *Ibid.*

Therefore, to address and mitigate the aging trend and to help parents with the cost of raising our future generation, we would recommend the following:

- Increase single person child carer tax credit to mitigate the child-related costs for single parents and if a child is maintained by more than one person, the tax credit should be apportioned between them;
- Increase an incapacitated child tax credit to mitigate the rising healthcare and other costs of raising an incapacitated child;
- Introduce a flat-rate child tax credit (per child, available to each parent or guardian); and
- Introduce childcare/pre-school tax credit (20% of the cost, subject to the maximum amount based on the average cost of the service, similar to the tuition fees tax credit).

For example, a child tax credit is available in Austria, where this credit of €58.40 per child per month is paid in combination with the Child Benefit from general tax revenue. No separate application is required and it is also paid to non-taxable persons and to persons who pay low taxes. Outside EU, the child tax credit is also available in UK up to £3,480 per year, together with tax credits for childcare (up to £122.50 a week (1 child), up to £210 a week (2 or more children)). We would recommend reviewing these credits and assess the possibility of introducing them in Ireland.

7. Real estate

We would make the following recommendations regarding real estate taxation measures:

- **Reducing tax input costs on residential property:** Currently, housing supply is falling significantly short of demand. There are multiple reasons for this including material shortages, rising costs of finance, delays in planning (45,000 homes awaiting planning permission as at January 2023) and viability (particularly in the context of apartments). In respect of affordability and viability, one of the factors driving this, is the amount of taxes and other levies associated with developing new houses. The VAT rate of 13.5% is an absolute cost for homes buyers and property investors (any cost incurred by an investor will likely be passed to tenants). We urge the Government to consider reducing the VAT rate and other tax input costs applicable in connection with residential development. Amendments to the residential zoned land tax should also be considered to ensure it is not taxing those that are genuinely trying to advance developments but being prevented from doing so by reasons outside of their control.
- **Land taxes:** Consideration should be given to whether the cost of new infrastructure should be passed to the purchaser of a new home (via development levies) or whether such infrastructure costs should be charged via Local Property Tax on the entire community (as in many cases it is the entire community that benefits from the new infrastructure). Such a change could have a positive impact on the viability and affordability of housing.
- **Tax incentives to re-purpose the property from non-residential to residential:** Currently, where a developer acquires a site, then 7.5% stamp duty is payable on that site. However, subject to certain conditions, where residential property is developed on the site, then a refund of 5.5% is due. Covid19 has accelerated the trend towards online shopping and home working. While the exact outcome is unclear, over time this could result in a decreased demand for retail and office space. Currently, where a developer buys non-residential property and re–purposes that property for residential purposes, then the above 5.5% refund may also be available. In our view the Government should consider a full refund from stamp duty where sites or developed property designated for non-residential use are subsequently repurposed and made available for residential use.
- **Tax on the disposal of the property:** The CGT rate of 33% is high by international comparison and consideration should be given to reducing same. In particular, given the lack of available rental accommodation, consideration should be given to whether CGT can be used as a mechanism to (1) incentivise new landlords into the market and (2) provide those landlords who are currently supplying rental property with an incentive to continue to do so.
- **Landlords:** We believe that additional measures are required to encourage new landlords to enter the market and keep those currently in from leaving:
  - We recommend introducing a two-tiered system of taxation for landlords where the net rental income in Band 1 is taxed at the reduced rate with the balance being taxed at the marginal rate, similar to the income tax regime.
  - Case V deductibility rules should be brought into line with Case I deductibility rules to avoid situations where genuine letting activity costs are not viewed as deductible for tax purposes.
  - Case V capital allowances should be deductible for USC purposes up to and including the 8% threshold.
  - Consideration should be given to introducing an allowance similar to an Industrial Building Allowance (“IBA”) in respect of the part of the capital expenditure on residential property which does not currently qualify for capital allowances (e.g., The total acquisition cost less the site element less the element which qualifies for plant or machinery allowances). Similar incentive schemes currently exist in Germany, USA, Canada and Australia.
  - We recommend targeted amendments to capital allowances on plant or machinery to reduce the writing down period and potentially become refundable (subject to certain restrictions) where no profits available to offset such allowances against.
  - At present, the treatment of rental losses in a personal capacity is very restricted and should be reviewed. For example
    - A landlord cannot offset rental losses against other income or carry them back to a previous year.
    - Rental losses made by one spouse or civil partner cannot be offset against the rental profits of another.

  - To make corporate residential lettings more attractive consideration should be given to removing profits on residential lettings from the scope of the close company surcharge.
- **Derelict/over-the-shop properties:** We recommend the following measures:
  - Providing tax reliefs to sellers (CGT exemption or a reduced rate) and buyers (Stamp Duty exemption or a reduced rate) for derelict/over-the-shop properties to be renovated and occupied as a principal private residence ("PPR");
  - Introducing the Help to Renovate Scheme in respect of derelict properties;
  - Introducing a tax relief/credit to incentivise the refurbishment of vacant and derelict properties.
- **Help-to-Buy:** To help more people to secure their own homes and to address the housing crisis, we recommend consideration is given to extending the existing scheme to second-hand homes and apartments which meet certain pre specified criteria (e.g., this could also incentivise owners to ensure their property is at a certain level (e.g., climate efficiency) prior to sale).
- **Tax Warehousing Scheme:** A tax warehousing scheme could be introduced for developer's PAYE and VAT liabilities whereby tax liabilities would fall due when the housing development is fully completed and sold. Such a scheme would provide much needed cash flow to the developer.
- **Emergency accommodation:**
  - Request for a VAT concession whereby businesses would not suffer an adjustment under the capital goods scheme for the period in time in which taxable assets have been diverted to provide temporary emergency accommodation.
- **International investors:**
  In line with the published Funds Sector 2030 Terms of Reference we welcome the announcement that a public consultation will be undertaken and look forward to contributing to this in the future as part of the review of the S.110, IREF and REIT tax regimes.

7.1 Tax incentives to re-purpose the property from non-residential to residential

Currently, where a developer acquires a site, then 7.5% stamp duty is payable on that site. However, subject to certain conditions, where residential property is developed on the site, then a refund of 5.5% is due. This relief has been extended from 31 December 2022 to 31 December 2025. Covid19 has accelerated the trend towards online shopping and home working. According to the GeoDirectory Commercial Vacancy Rates Report, the national commercial vacancy rate has increased to a 10 year high at 14% in Q4 2022.While the exact outcome is unclear, this may result in a decreased demand for retail and office space. Currently, where a developer buys non-residential property and re–purposes that property for residential purposes, then the above 5.5% refund may also be available.

In our view the Government should consider a full refund from stamp duty where sites or developed property designated for non-residential use are subsequently repurposed and made available for residential use. Further tax incentives should be considered for developers or investors to stimulate this re-purposing on a timely basis to address the housing shortage.

Therefore, certain targeted incentives should be considered for developers or investors to stimulate this re-purposing on a timely basis to address the housing shortage. For example:

- Accelerated capital allowances for capital expenditure on the repurpose.
- Reduction in CGT rate charged to a commercial landlord who disposes of a property to a developer who subsequently successfully repurposes the property for residential purposes.
- Where a commercial property has been repurposed and subsequently sold as residential, a deduction should be available for VAT incurred on acquisition.

7.2 Landlords

The country's rental system is under increasing pressure due to a surge in the numbers of households renting, coupled with fewer new rental properties coming to the market. According to published market research, since 2013 there is estimated to have been a net outflow of more than 80,600 properties from the private rental market. In contrast, the number of households renting in Ireland has increased almost 30 % since the turn of the century. Currently, private landlords pay up to

55 % in tax on net rental earnings (and indeed more on an effective basis when you factor in that some costs incurred as part of the letting activity are not deductible for tax purposes). The tax treatment of landlords should be reviewed.

We understand that the Department of Finance is looking at options to reduce the tax burden on landlords in advance of the upcoming budget.

We believe that additional measures are required to encourage new landlords to enter the market and keep those currently in from leaving:

- At present, private landlords pay up to 55 % in tax (income tax, USC and PRSI) on net rental earnings. We would recommend introducing the two-tiered system of taxation for landlords where the net rental income in Band 1 is taxed at the reduced rate with the balance being taxed at the marginal rate, similar to the income tax regime.
- Case V deductibility rules should be brought into line with Case I deductibility rules to avoid situations where genuine letting activity costs are not viewed as deductible for tax purposes.
- At present, the treatment of rental losses in a personal capacity is very restricted and should be reviewed.
  For example:
    - A landlord cannot offset rental losses against other income or carry them back to a previous year.
    - Rental losses made by one spouse or civil partner cannot be offset against the rental profits of another.

Consideration should be given to introducing an allowance similar to the Industrial Building Allowance (“IBA”) in respect of the part of the capital expenditure on residential property which does not currently qualify for capital allowances (e.g., The total acquisition cost less the site element less the element which qualifies for plant or machinery allowances). Similar incentive schemes currently exist in Germany, USA, Canada and Australia.

Where residential landlords provide residential accommodation via a corporate vehicle, consideration should also be given to removing Case V income derived from residential property from the definition of estate and investment income such that undistributed Case V rental income of a closely held company is not subjected to the 20% close company surcharge. Alternatively, consideration should be given to allowing current year Case V capital allowances a specified deduction against estate income when calculating the surcharge. This could incentivise more landlords to use a company for residential lettings.

Potential other methods of reducing costs for landlords / developers (thus stimulating the residential rental / development market) could be achieved via targeted amendments to capital allowances:

- Currently, there are accelerated wear and tear allowances for certain energy efficient equipment; said allowances operate via the allowance of 100% of the allowable costs in the year they are brought into use. We note that certain landlords may not gain an immediate cash flow benefit from this relief where they are in a loss position (i.e., losses are carried forward for offset against future profits). Rental capital allowances could be enhanced such that allowances not offset against taxable profits would be available for a refund of tax, in limited circumstances (similar to the R&D tax credit).
- An incentive scheme for certain energy-efficient equipment is due to expire on 31 December 2023. We would call for the extension of the scheme.
- Currently, eligible plant and machinery are subject to capital allowances over 8 years. In the cases of residential landlords / developers, the write down period could be reduced to 4 years to provide an improved cash flow impact for said landlords / developers, thus, providing increased funds to re-invest.

7.3 Tax incentives for derelict and vacant properties

We recommend the following measures for these properties:

- Providing tax reliefs to sellers (CGT exemption or a reduced rate) and buyers (Stamp Duty exemption or a reduced rate) for derelict/over-the-shop properties to be renovated and occupied as a principal private residence ("PPR");
- Introducing the Help to Renovate Scheme in respect of derelict properties (see below);
- Extending the period for which "pre letting expenses" may be deductible against Case V income to expenditure incurred in the 36-month period prior to first letting and removing the cap on such deductions (currently €10,000 for lettings on or after 1 January 2023), such that the rules effectively align with the deductibility of pre-trading expenditure. This would further incentivise landlords to bring vacant properties back on the market. The extended 36-month period would only apply to expenditure incurred on or before 31 December 2024 and where the property is first let on or before 1 July 2025, with the existing clawback mechanism applying where the property ceases to be let as a residential property in the subsequent 4-year period.

7.4 International Investors

Foreign Private equity firms, insurance companies, pension funds and other institutional investors ("large foreign investors") have invested significant amounts in the Irish residential market in the last number of years. Many of these large foreign investors entered the Irish market in the early 2010's acquiring significant amounts of distressed debt following the financial crash. However, this was not the extent of the investment made by large foreign investors. Subsequently, significant amounts of capital were deployed by large foreign investors to finish uncompleted developments (including residential developments) and to commence new developments (including residential developments). In recent years a particular focus of large foreign investors has been social and affordable housing.

Prior to making any investment, large foreign investors will model the likely return over the investment period. This model will be used in making an investment decision. One of the factors in estimating that return is the amount of tax cost associated with the investment. Such tax can be a significant part of the cost of the investment. While there is always some level of volatility with forecasts, and it is important that investors have a high degree of certainty when it comes to tax. In recent years, in a property context, investors have not been able to rely on the certainty that has historically been a feature of the Irish tax system. There is a view of many investors, whether right or not, that the Irish tax system pertaining to property is constantly changing.

For example, Finance Act 2019 REIT changes and the introduction of the 10% stamp duty charge applied to particular transactions where the contracts where already signed. Amending law in an effective retrospective manner is seen as somewhat arbitrary by investors. Over many years, Ireland has developed a reputation as an open economy that welcomes foreign investment. Such changes can impact Ireland's reputation as a place to do business.

The critical challenge in addressing the housing crisis is supply and viability. The focus should be on increasing supply, reducing costs/prices, and removing many of the bottleneck developers face associated with matters such as capacity constraints, zoning, and planning. We need large investors to provide the capital necessary to deal with these challenges. Key to ensuring continued investment by large foreign investors is providing a level of certainty in respect of tax. Further to that, we would urge that where changes are made, the investor, the transaction or results accrued under the earlier legislation (whichever is relevant) is grandfathered and in addition prior consultation is had with the industry.

In line with the published Funds Sector 2030 Terms of Reference we welcome the announcement that a public consultation will be undertaken and look forward to contributing to this in the future as part of the review of the S.110, IREF and REIT tax regimes.

7.5 Emergency Accommodation

We currently have an unprecedented number of refugees seeking emergency accommodation in the State. In order to help meet the demand, many VATable businesses have opened their doors to help provide refugees with accommodation on a temporary basis and a significant reliance has been placed on commercial and private hotel accommodation.

Revenue guidance states that the supply of emergency accommodation is a VAT exempt supply. More importantly, however, Revenue have stated that the change in use of a capital good from a taxable to an exempt activity will give rise to a capital goods scheme adjustment, resulting in a VAT cost to the business, and that there is no current concession for the supply of this type of accommodation.

This has the impact of potentially exposing a large number of businesses to significant VAT adjustments under the capital goods scheme in respect of the temporary use of these properties to provide emergency accommodation, resulting in increased costs. Without a concession in place for these circumstances, the current rules punish taxpayers who have engaged in full VATable activity but accommodated refugees, homeless families and individuals in the interest of the Government's refugee hosting and *'Housing for All'* housing plan. With emergency accommodation becoming an increasing national issue, this VAT cost presents a significant barrier for businesses either getting or remaining involved in the provision of emergency accommodation.

We would very much welcome the introduction of a concession to this rule, whereby these businesses would not suffer an adjustment under the capital goods scheme for the period in time in which these taxable assets have been diverted to provide temporary emergency accommodation.

We note that Revenue have provided concessions in the recent past where businesses have supported the nation's efforts to respond to a crisis, including the non-application of the self-supply rules for certain donations, gifts of goods, and meals.

We also note that a similar concession which we are recommending was provided as part of Covid measures in 2020 (now revoked), namely:

- *"As a concessionary treatment Revenue will not apply the CGS big swing adjustment in cases where the change in the proportion of deductible use is a consequence of a capital good being diverted for use as emergency accommodation. The big swing provisions should be ignored in any interval where the capital good is used for the purpose of emergency accommodation.*
- ***First interval where the property is used for emergency accommodation***
  The calculation of the proportion of deductible use is to be based on the interval prior to the property being diverted for use as emergency accommodation.
- ***Subsequent intervals where the property is used for emergency accommodation during the whole of the interval.***
  The calculation of the proportion of deductibility is to be based on the deductible use in the interval immediately preceding the first interval in which the capital good was used for emergency accommodation.
- ***Proportion of deductible use in the interval immediately following the intervals during which the Capital Good was used for emergency accommodation***
  The proportion of deductible use can be calculated using normal CGS rules, based on actual use during the period; the proportion of deductible use applied to any period of non-use at the beginning of that interval would be deemed the same as applied in the preceding interval."

We hope that the re-introduction of a concession such as the above would help to incentivise taxable businesses to get involved in the provision of emergency accommodation and provide the help and support that the State requires in the pursuit of this social cause.

8. Tax administration and appeals

In the area of Revenue disputes, in our view there are a number of changes and improvements that should be made. In particular, there are a number of scenarios that impose inequitable treatment between the parties to an appeal including:

- The ability of the appeals commissioner to dismiss an appeal entirely where the Revenue has not responded to a request;
- No interest on refunds; and
- Lack of visibility as to the Revenue’s position in advance of filing a notice of appeal.

Such measures directly impair Ireland’s pro-business status-and as a result impair our global competitiveness. Such provisions should be amended to ensure balance. In addition, there are a number of other improvements that could be made in the area of Revenue disputes:

- Reduction in the interest rate
- introducing an Alternative Dispute Resolution (ADR) mechanism
- Appointment of a Tax Adjudicator
- Further consideration with respect to the follow-on implications of an adjustment pursuant to MAP

We would suggest that these proposals be considered to ensure equity in the tax appeals process and strengthen the dispute resolution procedures.

8.1 Dismissing an Appeal

An Appeal Commissioner can give directions to both Revenue and the taxpayer during an appeal for example to provide a statement of case and/or an outline of arguments. Those directions will have deadlines. If such deadlines are not adhered to, the Appeal Commissioner can dismiss the appeal. This would be an appropriate consequence if a taxpayer does not comply with a direction. However, it is wholly inappropriate that a taxpayer’s appeal could be dismissed if the Revenue Commissioners, who raised the assessment under appeal in the first instance, do not comply with such a direction. We would submit that in such an instance, the equitable outcome should be that the appeal be determined in favour of the taxpayer (S.949AV TCA97). It should be noted that where an appeal is dismissed due to a lack of engagement by Revenue, the taxpayer may then have no practical means of having a tax issue heard.

8.2 Restore interest payable on tax refunded to a taxpayer following a successful appeal

S. 960GA TCA97, which was introduced by Finance Act 2020, provides that where a taxpayer appeals an assessment issued by Revenue and discharges the disputed tax liability in advance of an appeal but then subsequently wins the appeal, no interest shall be paid by Revenue on the tax refunded. This treatment discriminates against a taxpayer who has paid the tax liability pending appeal and acts as a disincentive for a taxpayer to make an appeal. It also reduces the incentive for Revenue to expedite disputes with taxpayers as all of the risk is with the taxpayer. It should also be noted, that in contrast, if tax is found to have been underpaid, the taxpayer is charged interest at annualised rates of 8% or 10% per annum from the date the tax liability falls due. An equitable system would treat the Revenue and the taxpayer in the same manner. Given the time between the assessment and the decision of the Tax Appeals Commission can be significant we would suggest that s960GA TCA97 be reconsidered.

8.3 Preparation of the Statement of Case

When a matter is disputed between Revenue and a Taxpayer, the taxpayer can make an appeal to the Appeals Commissioner. Firstly, the taxpayer must make a Notice of Appeal detailing all of the grounds for appeal which they intend to rely on. Subsequently, the taxpayer will produce a Statement of Case outlining their arguments against the assessment. This is done, even though in many cases the basis for Revenue's assessment is unclear.

This can cause a number of issues:

i. it makes it difficult for a taxpayer to decide how or even if, they should proceed with the appeal
ii. a taxpayer is prevented from introducing a new ground for appeal at a later stage unless the Appeal Commissioners are satisfied that the ground could not have been reasonably stated in the Notice of Appeal and
iii. The Statement of Case is prepared without seeing Revenue's position. We would urge that the legislation is changed so that a taxpayer can fully understand Revenue's position in advance of making a Notice of Appeal.

8.4 Rates of Interest charged on underpaid taxes

Interest is due at a daily rate of 0.0219% on late payments or payments of corporation tax that are not made in full (c. 8% per annum). This is one the highest interest rates in Europe (e.g., Italy 0.01-4%, UK 2.6%, France 2.4%). The interest rate applied to the late payment of fiduciary taxes, such as VAT and PAYE is 0.0274% (or approximately 10% p.a.). In the context of market deposit rates and indeed borrowing rates, these interest rates are penal. Ireland has a separate system for penalties which apply with respect to the underpayment of tax or late filing of returns. As such penal interest rates are not appropriate and the amount of interest charged on the late payment of tax should therefore reflect the time value of money. We would recommend that the rates of statutory interest on underpaid tax are reviewed. Furthermore, an interest charge cannot be appealed to the Tax Appeals Commission. Consideration should be given to a proportionate resolution of both difficulties.

8.5 Alternative Dispute Resolution

We would recommend the introduction of an Alternative Dispute Resolution (ADR) in the legislation as a means of resolving disputes with the Revenue Commissioners that does not involve the Tax Appeals Commission or the Courts. A mediator[62] would work with the taxpayer and the Revenue to assist in the resolution of the dispute. The ADR process should save money and time for both the taxpayer and the Revenue Commissioners. In addition, the process should reduce the current workload of the Tax Appeals Commission.

8.6 Tax Adjudicator

In our view, an independent external body such as an Adjudicator should be established which could intervene on behalf of taxpayers where there is an issue regarding Revenue's approach to a taxpayer's affairs. Currently, the Revenue complaint and review process is largely carried out internally by Revenue officials themselves which in our view is not ideal. The Adjudicator Office would investigate complaints made by taxpayers against Revenue and consider whether Revenue have applied their rules properly.

8.7 Tax Simplification

Due to the OECD BEPS project a significant amount of complex legislation has been enacted in recent years including Anti Hybrid rules, Interest Restriction Rules, CFC rules and various types of disclosure rules including DAC6 and CBCR. Also, the rules in respect of exit charges and TP have been updated. The pre-BEPS legislation is complex in its own right. When the BEPS rules are layered on top, it can be difficult to navigate the rules or provide any certainty in respect of them. This places Ireland at a competitive disadvantage with other countries. Further to that, consideration should be given to reviewing the legislation with a view to simplification. As part of that consideration could be given to the establishment of an Office of Tax

[62] This could be a tax adviser with relevant mediation qualification, not necessarily a legal professional.

Simplification, like that in the UK. However, the review should not be limited to the interaction with BEPS measures but should take account of the Irish legislation as a whole. Areas of focus could be:

- Reviewing the rules associated with financing.
- Double taxation relief provisions.
- The amalgamation of the PRSI/USC rules.
- Reviewing the offshore funds regime.
- Finance Act 2019 extended the scope of Ireland’s transfer pricing regime to SMEs albeit this was subject to ministerial commencement order. These provisions should not be commenced. There is no obligation on Ireland to apply TP rules to SMEs under EU law. Extending the TP provisions to SMEs impose costly compliance burdens on domestic businesses with limited additional tax.

9. Other matters

We would also make the following recommendations on other miscellaneous matters:

CGT:

- Ireland seeks to impose tax on the disposal of assets used in the course of the trade at the CGT rate of 33%. Regardless of whether the CGT rate is reduced or not, we would recommend that the disposal of any asset which is used in the course of a trade should be taxed at the 12.5% trading tax rate.
- Also, we would recommend that CGT rollover relief is reintroduced. Under these rules, CGT on a disposal of a business asset would be deferred where the proceeds received from the sale of property is re-invested in replacement business property.
- CGT indexation relief should also be reintroduced. The absence of indexation relief means that taxpayers are effectively paying tax on amounts that are not real profits i.e., the gain is calculated by deducting from the current market value (which takes account of inflation) the uninflated base cost. This is particularly relevant in the current high inflation environment.

Corporation Tax: The continued dual rate corporation tax system should be reviewed i.e., the 12.5% rate for trading and the 25% rate for passive income. The worldwide average statutory corporation tax rate, measured across 202 tax jurisdictions, is 22.96% with Europe having a regional average of 18.35%. Whilst Ireland's 25% rate may be considered competitive back in 2000, many governments have over time reduced rates to attract investment and ensure continued economic prosperity of their citizens. On that basis, a detailed review needs to be undertaken at this point to consider the merits of moving to the single rate of 12.5% (or 15% where respective provisions for the application of OECD's Pillar Two apply) for all income taxable in Ireland.

Offshore Funds Regime: Determining the tax treatment of income/gains arising from foreign investments can be very complex. Investors must consider whether the investment falls within Ireland's Offshore Funds regime and if it does the appropriate treatment of same. Performing this analysis is complex and requires skillsets that are not in many cases available to small investors. In addition, it may be difficult to obtain certain information to determine what regime the investment falls under. In our view the offshore fund regime should be reviewed with a view to simplifying the system.

Industrial Buildings Allowances: One of the shortcomings of the current industrial buildings allowances regime is that expenditure on many buildings do not qualify. To be clear capital allowances are available for certain building like factories, mills, and hotels. However, most buildings such as offices, call centres and retail units do not qualify for allowances. We would recommend that tax depreciation be allowed for these buildings. A condition for this relief might be a requirement that the building obtains a certain energy rating.

Trading Losses: Broadly, current year trading losses can only be set back 1 year against profits of the prior year. This is a useful relief as the trader can get an immediate tax refund. We would recommend that the ability to monetise corporation tax losses be extended by allowing for the carry back of such losses for a period of three years. (Consideration could be given to imposing a maximum amount on this relief). Currently, trading losses forward can only be set against profits of the same trade. We would suggest allowing trading losses forward to be set against other trades or passive income (whether of the respective company or the loss group of which the company is a member).

Stamp Duty: The Irish stamp duty rate on share transactions is high in comparison with other countries. For example, the stamp duty rate for share transactions in the UK is 0.5%. Consideration should be given to reducing the stamp duty rate on share transactions in Ireland.

Section 110: Section 110 TCA 97 provides for the taxation of securitisation vehicles. In order to avail of this regime, a company must, amongst other conditions, notify an 'authorised officer' in Revenue that it is or intends to be, a 'qualifying company'. Companies must submit a Form S.110 to Revenue within eight weeks of the date that they meet the conditions in the definition of “qualifying company” in S.110(1) TCA 97. If that deadline is missed, the company will not be regarded as a “qualifying company”. We would suggest that s110 notifications submitted after 8 weeks should be permitted, however, late submissions would incur fixed fines or penalties. It would be a more proportionate response to permit s110 status but impose fixed fines or penalties in such cases.

iXBRL financial statements: S.959A TCA 97 provides that iXBRL financial statements must be submitted by the 23rd day of the 9th month following the end of the accounting period. However, Revenue currently operates an administrative practice whereby iXBRL financial statements can be filed within 3 months after the due date for filing the Form CT1. Revenue guidance states that the administrative practice can be withdrawn by Revenue at any time. Given that in many cases, the filing date for financial statements in the CRO is later than the tax return date, the filing date in S.959A TCA 97 has always been impractical. The legislation should be amended to put the administrative practice on a legislative footing.

Withholding Tax: Irish Companies paying dividends to a partnership must withhold tax even if the partners in that partnership themselves would be exempt if holding shares directly. While Revenue can give a concessional treatment, it would be preferable to have this provided for in legislation.

Funds: Close company related legislation aggregates partnership interests to treat a company held by “partners” as “close”. In private equity there can be a very large number of investors. While Revenue can grant a concessional clearance on structure-by-structure basis, it would be preferrable to have a legislative concession for widely held funds.

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