KPMG

KPMG pre-Budget 2022 submission

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Introduction

Ireland and its communities have overcome unprecedented challenges over the past 12 months. As Ireland now looks with hopeful eyes to move beyond these immediate challenges, the vista is one of considerable uncertainty but also, we believe, opportunity.

Contents:

Global tax landscape

The OECD Inclusive Framework two pillar proposals look to fundamentally reshape the global tax landscape for the world's largest businesses; KPMG broadly supports this project and believe that global multilateral tax reform is required in order to face and overcome the tax challenges created by digitalisation. However, it is also clear that Ireland, as a small, open economy with a successful history of attracting and retaining substantial operations of many of these businesses, may be impacted by these measures to a greater extent than many other countries in the world. Formulating and communicating Ireland's response to these proposals is undoubtedly a challenge.

KPMG supports the position of the Department of Finance that the Irish 12.5% rate of corporation tax is fair and within the ambit of healthy competition. In addition, we endorse the Minister's position that any OECD agreement, particularly in relation to a global minimum effective tax rate, needs to work for small as well as large economies, should not become a mechanism for tax harmonisation and that any agreement must create certainty for countries and businesses. On this basis, we support the approach taken by the Department in reserving on the recent Inclusive Framework statement on BEPS 2.0.

We also support Ireland's continued engagement in the OECD project; it will be crucial that Ireland continues to monitor developments in this area and remains agile in order to adapt and succeed as further challenges arise. However, we are also cognisant of the reality that an agreement may be struck between a significant majority of the Inclusive Framework members which includes a 15% global minimum tax rate. If this occurs and the US Congress approves comparable proposals, we consider it will be in Ireland's best interests to change its tax rate for affected companies to the new global minimum rate. In such circumstances, the other factors that are taken into account in location decision making will assume greater relative importance than they have in the past.

In this context, cost competitiveness, developed infrastructure (including housing), the availability of a skilled workforce and access to markets such as that available by EU membership will continue to be important factors for businesses making location decisions, as will other tax considerations. In this regard, we also believe there is considerable opportunity for Ireland to improve, and indeed excel, in order to maintain its status as one of the best small countries in the world in which to do business.

Housing

The housing crisis continues to be a defining challenge for the country, as it continues to adversely impact Irish communities and those living here. In addition, in an environment where the country must work harder than before to attract mobile individuals and businesses, our housing crisis may well be the determinative factor which prevents future investors and workers from relocating here unless urgent action is taken to resolve this. In this regard, measures aimed at increasing the supply of houses and reducing the cost of housing for people living here must be a priority for this Government. The Government's recently released housing policy plan, *Housing for All*, is a very significant policy document with a wide range of specific actions designed to improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

We have set out in our submission proposals which we believe could successfully complement the *Housing for All* plan and deliver a much-needed increase in the supply of housing.

Attracting and retaining talent

Digitisation and improvements to technology allow business to be conducted from anywhere in the world, reducing the importance of physical location. In addition, the post-Covid-19 environment is one in which we expect to see a strong drive by individuals to have flexibility as to how and where they work, and mobile labour could become of greater importance than ever before. At the same time, BEPS developments in the context of Pillar Two, transfer pricing, controlled foreign company rules and tax treaty provisions mean that preserving corporation tax benefits for international businesses operating in Ireland is increasingly dependent on having key personnel and decision makers located in Ireland. Therefore, the attractiveness of a country's personal tax regime and the cost to employers of locating people in a country is highly likely to be an even more significant factor in determining where key talent and substantial businesses base themselves. We believe that Ireland will need to give greater attention to this aspect of our overall tax system in order to be competitive when attracting and retaining mobile workers as well as international businesses hoping to avail of this talent pool.

Other tax factors

Other tax factors that will influence location decisions will be the stability of the tax regime and the ease and related cost of compliance (made easier where undue complexity is minimised). In this regard, it will be important to ensure that Ireland's tax system is clear and transparent, and that its expanded framework of anti-avoidance rules form an integrated whole, rather than a patchwork of overlapping measures. Undertaking the necessary reform to identify and remove obsolete or unnecessarily complex measures will be key in reducing the cost of tax compliance in Ireland, a factor which will come under increased focus for businesses making investment decisions in the future.

Domestic entrepreneurship

While much attention may be focused on how Ireland might best continue to attract international investment, increasing challenges in the international tax landscape also act to reemphasise the importance of driving and supporting our domestic entrepreneurship. Entrepreneurs, both domestic and foreign, can and do move location based on the taxation environment, and marginal entrepreneurial investment can be significantly influenced by targeted, pro-growth tax policies. Incentivising and supporting domestic entrepreneurship must become a key focus for Irish tax policy, both as a means of stimulating economic growth and also to maintain Ireland's reputation as an international hub of innovation and collaboration.

Sustainability

From a sustainability perspective, the pandemic has exemplified the massive disruption which may arise as a result of changes to our environment. In this regard, we believe that Ireland must continue to strive to meet its ambitious targets to limit climate change and support the Government's goal of net zero emissions by 2050. It is our view that targeted tax measures can produce significant and positive changes in consumer and business behaviour, and in this regard we have included a number of suggestions which we believe would be impactful in this space.

New areas of competition

Finally, Ireland must continue to review how other countries in the world are adapting to the new global tax landscape. Indeed, we believe that some jurisdictions (e.g. Hong Kong, Switzerland) are already examining how they may adapt their grant and subsidy regimes in reaction to the OECD two Pillar proposals. Acknowledging that EU State Aid considerations may affect our ability to respond to some changes that may emerge in non-EU countries, it will in our view be extremely important for Ireland to ensure those aspects of our overall regime that we can control, such as those mentioned here, are as attractive as possible in this environment.

Executive Summary

Competitiveness

The housing crisis in Ireland risks significantly impairing Ireland's competitiveness as a destination for the location of mobile talent and substantial business. In this regard we recommend that:

a. VAT on the supply of new houses is temporarily removed or reduced to encourage developers (and perhaps State bodies) to bring more affordable housing to the market as soon as possible

b. Targeted measures are introduced aimed at incentivising the use of land for residential development, specifically that CGT rollover relief and indexation relief are reformed and reinstated

c. Irish property investors are given a stronger platform to participate in the Irish housing market (and in particular with respect to small and medium sized developments) by removing existing barriers to investment and helping to level the playing field with large international investors

d. An incentive scheme is created that would encourage individuals and communities to contribute savings towards investments aimed at increasing Ireland's housing stock

e. The Help to Buy scheme is extended

f. Support is provided for apprenticeships and training in the construction sector to address the shortage of skilled personnel in this area

g. Extend the time allowed to complete residential units under Section 83D SDCA 1999

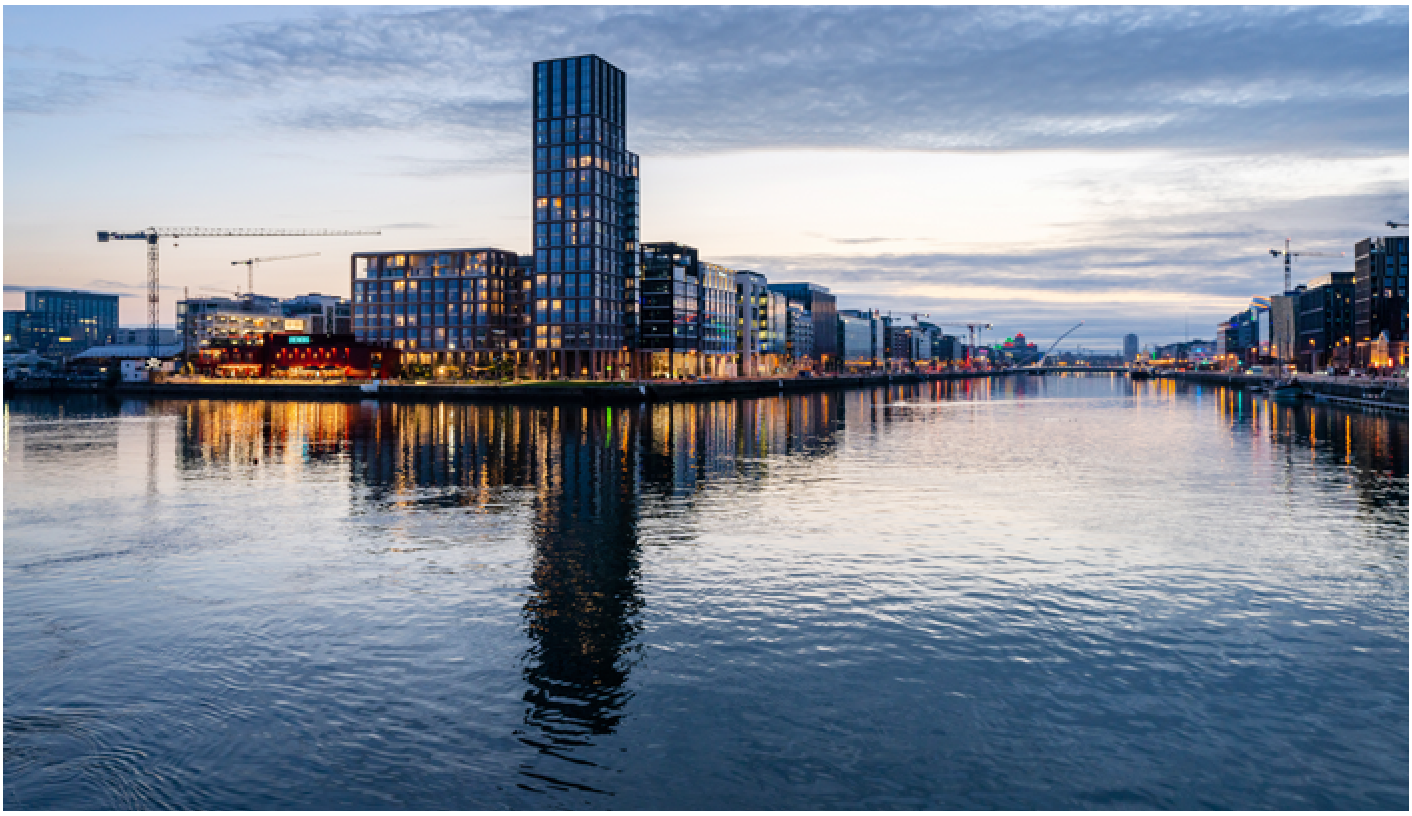
In addition, Ireland should develop an international brand of having a clear, simple, and transparent tax system for taxpayers by:

a. Establishing an Office of Tax Simplification

b. Removing measures rendered obsolete post-ATAD1, -ATAD2, and -BEPS 2.0

c. Ensuring fairness between taxpayers and Revenue in tax appeals, and establishing a dispute resolution mechanism aimed at timely resolution of disputes

d. Continuing to consult taxpayers and practitioners with respect to new legislation



Attractiveness

We recommend improving the attractiveness of Ireland as a destination for talent and substantial business by implementing targeted enhancements to existing tax incentives, transforming Ireland into a talent hub. In this regard, we propose:

a. Improving the attractiveness and accessibility of Ireland's R&D Tax Credit regime, including by expanding its qualifying fields to reflect emerging technologies and areas of research, as well as by undertaking a review of the R&D tax credit rules to support R&D tax credits being treated as *"refundable income tax credit"* for GloBE purposes

b. Specific enhancement to SARP for skilled R&D professionals

c. General enhancement to SARP by removing the earnings cap, increasing the value of the relief, and extending the period during which non-Irish domiciled employees can avail of SARP and complementary reliefs

In addition, BEPS 2.0 is likely to erode some of the relative attractiveness of our corporate tax regime from the point of view of attracting foreign direct investment into Ireland. In this context, other tax and non-tax factors will assume a greater weighting for businesses looking to establish substantial operations here. This challenge arrives at a time when, post-Covid pandemic, many workers in high-value roles are seeking greater flexibility regarding how and where they work, including in another country than where their employer is based. As a result, we believe it will be essential that Ireland is competitive with respect to the cost of employment, both for employers and employees, going forward. We would note that our cost of employment for higher earners is unattractive compared with many other countries and is likely to require attention. Indeed, a move by well-paid mobile employees out of Ireland could have a disproportionate impact on income tax receipts given the highly progressive nature of our income tax system.

Sustainability

The availability of electricity sourced from renewable energies, the existence of an embedded electric vehicle infrastructure, sustainable housing, and a thriving green economy will be important factors when considering Ireland's relative attractiveness in the future. In this regard, we suggest introducing tax measures aimed at:

a. Supporting ESG investing by incentivising ESG investment including via Irish pensions

b. Supporting green innovation by enhancing our R&D tax credit for research in renewable energies and other green technologies

c. Supporting sustainable housing by incentivising the retrofitting of energy inefficient homes

d. Mobilising risk capital for green enterprises by incentivising individuals and companies to invest in the sector

e. Supporting sustainable transport in Ireland by incentivising the transition of Ireland's existing transport fleet to electric and hybrid vehicles

f. Supporting green agriculture by incentivising farmers to adapt their land and businesses to more sustainable practices

We also recommend that tax revenues from carbon taxes are ring-fenced for expenditure on projects and incentives intended to contribute to Ireland's net zero carbon emissions target.

Encouraging and supporting domestic entrepreneurship

In the context of an uncertain global business landscape, the importance of encouraging and supporting indigenous Irish business and entrepreneurs cannot be overstated. We recommend that the Government undertake a bold review of its existing incentives and supports for SMEs and entrepreneurs based here, and in particular we recommend that:

a. Indigenous SMEs are put on an equal footing with multinational companies in terms of attracting international talent by extending SARP relief to new hires

b. Our CGT rules are updated to encourage investment in SMEs, including:

    i. Introducing a new CGT rate of 20% for founders, private investors, VCs or Angel Investors who invest in non-property SMEs

    ii. Enhancing CGT entrepreneur relief by increasing the lifetime limit, extending the 10% rate to qualifying dividends, and allowing passive investors to avail of the relief

    iii. Improving the EII scheme in line with the recommendations of the SME Taskforce Report, while also introducing changes aimed at increasing the effectiveness of the relief in terms of stimulating investment in SMEs by simplifying the rules and improving certainty for participating taxpayers and businesses alike

c. Transfer pricing should not be extended to include SMEs within its scope

d. Ireland's transfer pricing regime should be reframed to exclude transactions between domestic taxpayers

Competitiveness

Housing

Ireland's ability to compete with other jurisdictions on corporation taxes will become increasingly constrained as international pressure mounts to achieve a convergence of national tax rates and rules. As a result, other factors of relevance to international business and investors will likely become key areas of intense global competition in the future. The housing crisis in Ireland is already a significant negative factor for foreign investors looking to establish substantial operations here and may well be a determinatively negative factor for future prospective investors unless urgent action is taken to resolve this. In this regard, we welcome the recent publication of the Government's *Housing for All* plan, which is an important first step in this regard.

Outlined below are various proposals which we believe complement the Government's housing strategy and will improve the supply of housing in Ireland or act to reduce the cost of housing in Ireland.

a. VAT cost of property:

We recognise that Ireland faces technical challenges under the current framework of European Union VAT Directives in adopting a zero or indeed a further reduced VAT rate on the supply of new housing. However, we believe that the economic impact of removing VAT from new houses (while still allowing recovery of VAT on construction costs) would fundamentally alter the economics of the house building project in this marketplace and would encourage developers (and perhaps State bodies) to move now and take on the other uncertainties present in the marketplace. We believe the notion of a temporary, say 5-year, removal of the VAT cost on new houses could be a very significant factor in bringing more affordable supply to the market. In this regard, we recommend the implementation of a targeted scheme allowing a rebate of VAT to certain persons on the purchase of new houses[1]. This preserves the VAT regime for the suppliers of housing but allows a temporary market intervention for purchasers which could have a dramatic impact on affordability and take-up.

In addition to the above proposal, we recommend:

- The lowest possible rate of VAT on supplies of new residential housing should be introduced at the earliest opportunity. In this regard, the existing 9% rate is a possible benchmark, though a lower rate is recommended. Where a reduction in rate is not possible, an alternative mechanism for this may be the introduction of a grant or rebate to homebuilders, assuming that this can be implemented in a manner that achieves a similar outcome for home purchasers.
- Ireland should actively monitor and support European Commission proposals to liberalise the range of VAT rates available to member states[2]. Such proposals should provide Ireland greater flexibility in its choice of an appropriate VAT rate to apply to the supply of new housing which meets a critical social need.

b. Targeted measures to incentivise the use of land for residential development

As outlined in the 2018 National Planning Framework, the location of housing is crucial in ensuring that development is sustainable and meets the significant demand for housing in our towns and cities. In addition, ensuring that sufficient housing is available in urban areas can help achieve Ireland's goals with respect to tackling climate change, as well as reducing commuting times, congestion, and pollution.

As a result, we have set out below a number of proposals which we think would effectively increase the supply of land for residential development, particularly in urban areas where the greatest need for such supply exists:

- Reform and reinstate CGT rollover relief:
  We suggest that the Government should reintroduce rollover relief from capital gains tax for businesses with respect to the amount of the proceeds received from the sale of real property which is re-invested in another replacement property (i.e. new site and/or building) where that property is used in the trade of the enterprise. We believe that not only would this free up land in city centre locations ideal for residential development, but it would also enable businesses to move to more suitable locations where they would be able to expand further without being impeded by a capital gains tax liability which they may struggle to pay along with the cost of a replacement premises.
- Reinstate indexation relief:
  In the context of low capital gains tax rates, the abolition of inflation relief given through the indexation of the base cost of assets for capital gain tax purposes was not considered to be a major negative. However, in the case of established long-term businesses, the impact of the lack of inflation relief is becoming very significant, with particular relevance for assets with an intrinsic long life such as real estate assets. The result

[1] A similar mechanism has been successful in the Home Renovation Incentive.

[2] Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax, 18 January 2018.

is that disposal of real estate assets that have been held for many years is disincentivised, even where that real estate is not immediately needed within the business owning it. We recommend that indexation relief is re-established to counter the penal effects of the current 33% capital gains tax over an uninflated base.

c. Levelling the playing field for Irish landlords:

To meet Ireland's significant housing needs, a mix of residential developments will be required, including medium-sized developments which are not typically investment targets of international institutional investors. However, we believe that by removing existing disincentives, Irish investors could be provided with a stronger platform to participate in the housing market, particularly with respect to developments where, at present, the business case to support the supply of housing by either domestic landlords or large international investors is challenging.

In this regard, we believe the Schedule D, Case V system of taxation of rental income, particularly in the context of professional or corporate property owners, is outdated and the taxation of professional landlords should be reformed to ensure that active rental businesses (say >10 residential units) are taxed as trades rather than as passive income generators. We believe that this would align Ireland's tax regime with the commercial reality of today's business environment for large scale letting of residential property units and remove a strong disincentive for Irish investors considering investment in Irish residential property developments. In this regard, we urge that legislation is introduced to:

- Apply Case I principles to the calculation of rental income for large scale rental businesses.
- Eliminate the close company surcharge for active residential landlords.
- Apply the 12.5% trading corporation tax rate to active rental businesses.

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- Extend CAT BPR for active property rental businesses.
- Consider allowing a tax depreciation deduction for the cost of construction of PRS and buy-to-let developments.
- Apply 2% stamp duty on transfers of residential zoned land, with a clawback if that land is not subsequently developed into residential property within 5 years from the date of purchase.

With respect to our stamp duty proposal above, the upfront stamp duty cost of acquiring land for development in Ireland is a significant financing hurdle and one which is far more likely to be prohibitive for small- and medium-sized professional landlords compared with large institutional investors. At present, Section 83D Stamp Duties Consolidation Act 1999 provides for a refund of stamp duty of up to 5.5% where land is acquired and subsequently developed for residential purposes. However, this requires those acquiring land with the intention of developing residential property to suffer an increased stamp duty upfront cost associated with this acquisition. We believe lowering the upfront cost on the acquisition of residential-zoned land would act to lower the financing hurdle for small- and medium-sized residential developments and stimulate increased supply of housing as a result.

d. Incentivise local investment in residential developments

Ireland's ongoing housing crisis creates substantial challenges for Irish society, and its timely resolution is a matter of the utmost importance for Ireland and its communities.

We believe that local investment which contributes to the development of homes in Ireland should be actively encouraged by the Government. Such local investment should be targeted at increasing the supply of housing in Ireland, while also working to return value created through such investment to Irish communities. In addition, it would allow communities the opportunity to participate in initiatives aimed at resolving the Irish housing crisis, giving participants a sense of agency in combatting a defining challenge of Irish society today.

In this regard, we recommend that the Government explore schemes through which Irish individuals could be incentivised to contribute savings towards investments aimed at increasing the country's housing stock. Preferably, this scheme would be open to all individuals and would operate akin to a saving scheme operated through participating retail banks, credit unions and other financial services providers, thereby opening participation in the scheme to all members of the community. Investment in the scheme could be incentivised by means of an exemption from DIRT for returns earned on participants' investments.

e. Extend Help to Buy relief

Help to Buy relief is currently available with respect to first-time buyers who either buy or self-build a new residential property before 31 December 2021.

We strongly recommend that the Government extend the Help to Buy relief beyond the above date, as we believe that the relief is effective in providing assistance to first-time buyers to acquire property.

f. Support apprenticeships and training in the construction sector

We strongly support proposals to provide additional incentives and supports to assist in training and apprenticeships for trades and skilled personnel in the construction sector.

Many of our clients in the construction sector have observed that there is currently a shortage of certain skilled tradespeople and apprentices in Ireland, and that this is having a significant impact on construction activity. Given the urgent need to increase the supply of housing in Ireland, it is essential that all necessary supports are implemented to incentivise hiring and training of apprentices in order to ensure that this demand may be met in the future. In this regard, we welcome the commitment in the *Housing for All* plan to expand the current construction sector workforce.

g. Extend the time allowed to complete the construction of residential units under Section 83D SDCA 1999

Finance Act 2020 extended the time limit allowed to complete construction of residential units from 24 to 30 months in order to qualify for a stamp duty refund under Section 83D SDCA 1999.

In his Budget speech announcing the change, the Minister noted that the changes were proposed *"due to the impact on the sector of Covid-19,"* amongst other issues.

Given the further restrictions which were again in place for a significant portion of 2021, we'd suggest that a further extension of the time limit be included in Finance Act 2021. In this regard, we would recommend an extension of 6 months at a minimum, though longer would be preferable given the substantial disruption to construction activity during the year.

Consider establishing an Office of Tax Simplification

As noted in our introduction, tax certainty will likely become an area of increasing global competition in an environment where the ability of countries to compete on tax rates and incentives is constrained.

It will be essential for both FDI and indigenous business that Ireland is a leader in maintaining a simple, clear and efficient tax system which reduces the administrative costs and burdens of both the Revenue Commissioners and taxpayers to the greatest extent possible. The need to undertake a broad review of Ireland's tax legislation with this aim in mind is only increased given the seismic shifts in Ireland's tax legislation in recent years, as well as those changes which may yet be required as a result of further changes to the global tax landscape.

In this regard, we propose that consideration is given to the establishment of an Office of Tax Simplification. We would note the successful establishment of such an office in the UK, which has advised regarding the simplification of various areas of UK tax, including inheritance tax; employee benefits and expenses; capital gains tax; and everyday tax for small businesses.

As a specific example of the potential value-add that such an office could bring, Ireland's offshore funds regime is hugely complex and creates significant uncertainty for taxpayers, including even those who receive expert tax advice in this area. Given the ever-increasing popularity of retail investment globally, this is an area that should be an immediate priority for such an office.

Remove obsolete measures

Ireland has for many years had a very competitive corporation tax regime, but also a very robust tax regime in terms of providing protections from base erosion.

An example of this is Ireland's position on EU ATAD interest limitation measures – that existing measures in Irish law provide equivalent protections to those prescribed under ATAD.

The measures that Ireland has or will be required to have as part of EU / OECD initiatives (e.g. ATAD, BEPS 2.0) do not take account of pre-existing measures in Irish law (and which other jurisdictions did not have) that also seek to achieve largely the same objectives, i.e. to prevent base erosion.

In our view, a review should be conducted, in consultation with taxpayers, of what internationally agreed measures have been inserted into Irish law to meet the same objectives as pre-existing measures with a view to removing pre-existing measures which one might say are now obsolete. Otherwise, Ireland's tax regime risks becoming overly complex and uncompetitive internationally as a result of needlessly going beyond the

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requirements of international standards and its competitor jurisdictions.

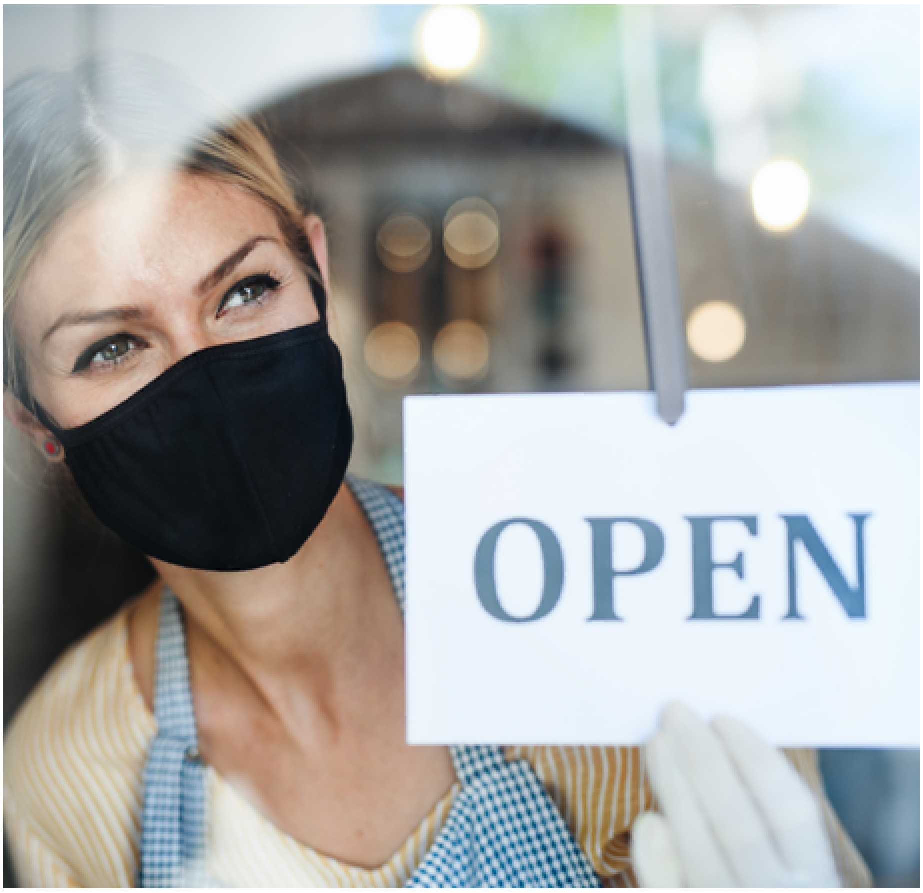
Improve efficiency and fairness in taxpayer disputes

Finance Act 2020 introduced two amendments which are objectively unfair and unbalanced against taxpayers who appeal against a tax assessment. The introduction of such measures (outlined below) directly impairs Ireland's brand as a pro-business environment in which to participate, and as a result impairs our global competitiveness at attracting business.

a. Section 69, Finance Act 2020 – no interest for a taxpayer that wins an appeal

Section 69 of Finance Act 2020 denies interest on the repayment or refund of tax where the taxpayer has successfully appealed an assessment but has made a payment to Revenue (or the Collector General) in respect of the disputed tax without prejudice to their appeal. This can be contrasted to a scenario where a taxpayer loses an appeal having not paid the disputed tax, where they should be subject to interest at a rate of c. 8% per annum on the amount of the underpayment.

In addition to this being particularly one-sided against the taxpayer, it also lessens the incentive for Revenue to expedite disputes with taxpayers as 100% of the risk on interest is with the taxpayer. We suggest that a fair and balanced system would be to treat Revenue and the taxpayer in the same manner i.e. same rate of interest for both sides. Where the matter is a genuine technical dispute there is a good case that this rate should be 0%. Where the position taken by either side is held by the court to be frivolous or vexatious there is a good case that the rate should be something like Euribor + 2% - a rate often used for default in payment in commercial contracts.

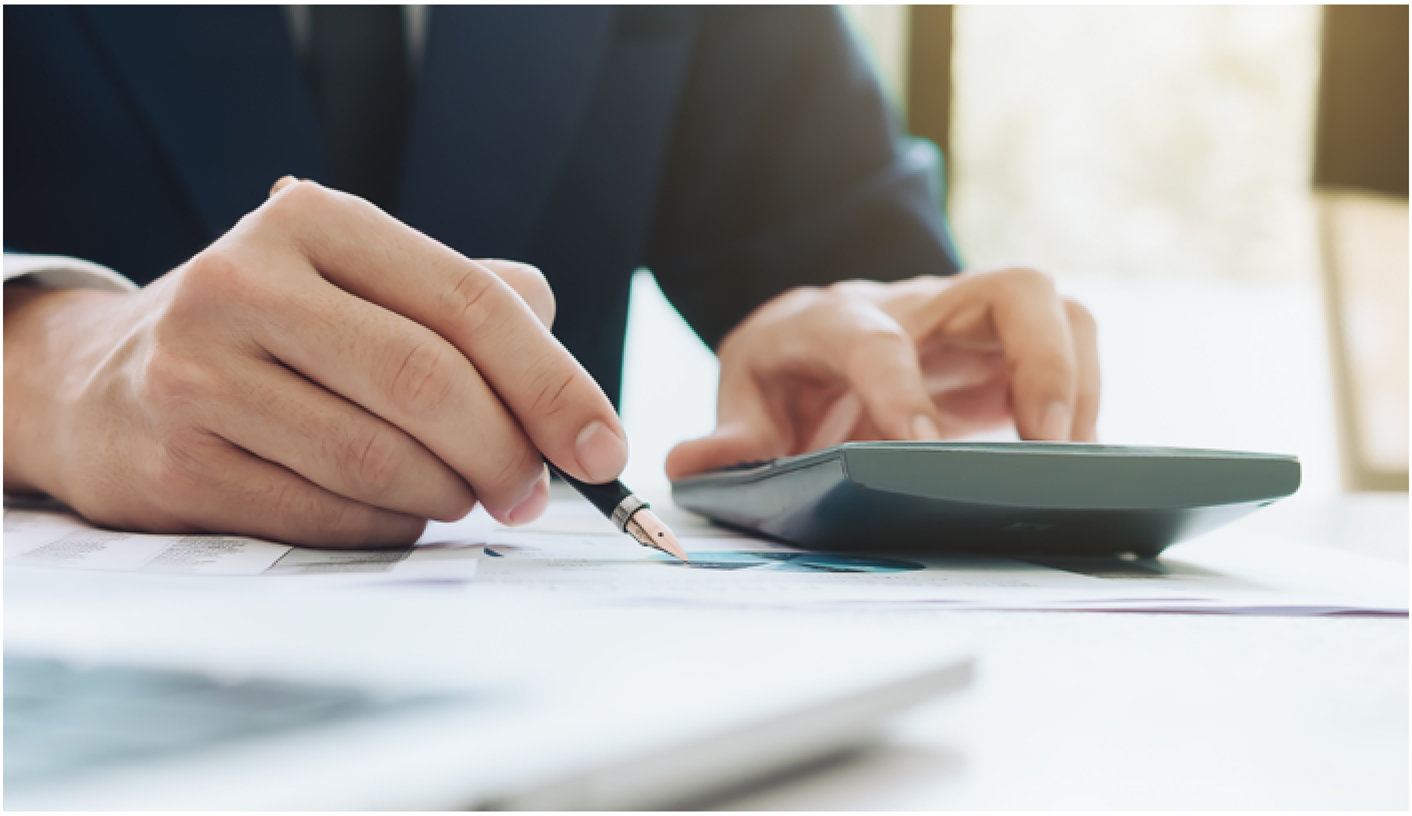


b. Dismissal of an appeal – Finance Act 2020 amendment to section 949AV

Section 58(1)(b) of Finance Act 2020 amends section 949AV TCA 1997 to provide additional powers to the Appeal Commissioners as to when they can dismiss an appeal. The new powers allow the Appeal Commissioners to dismiss an appeal when either party to the appeal fails to comply with a direction given to them under section 949Q(1), TCA 1997 (requesting a Statement of Case) and section 949S(1) TCA 1997 (requesting an Outline of Arguments).

This amendment is one-sided against the taxpayer, as it can only penalise the taxpayer where either party does not comply with the direction. Given the taxpayer is the person who appeals against a tax assessment, to dismiss the appeal is to hold in Revenue's favour. Affording the Appeal Commissioners such powers where the taxpayer has failed to comply with a relevant direction is reasonable. However, should the Revenue fail to comply with the same direction, if the Appeal Commissioner dismisses the appeal, it will result in the additional liability to tax becoming due and final on the taxpayer.

We suggest that section 949AV TCA 1997 should be amended to be balanced and to provide the Appeal Commissioner with the ability to uphold an appeal where Revenue fails to comply with a relevant direction.



c. Introduce a mediation process for disputes between Revenue and taxpayers

In addition to the above recommendations, we would support the favourable comments made by Chairperson of the Tax Appeals Commission, Ms Marie-Claire Maney, regarding the creation of a mediation and alternative dispute resolution process for disputes between Revenue and taxpayers[3]. We agree with Ms Maney's comments that such a process could only assist and facilitate Irish individual taxpayers, as well as businesses, and would welcome further consideration of the proposal by Government.

[3] Committee of Public Accounts debate - Thursday, 8 July 2021

Continue to consult taxpayers and practitioners with respect to new legislation

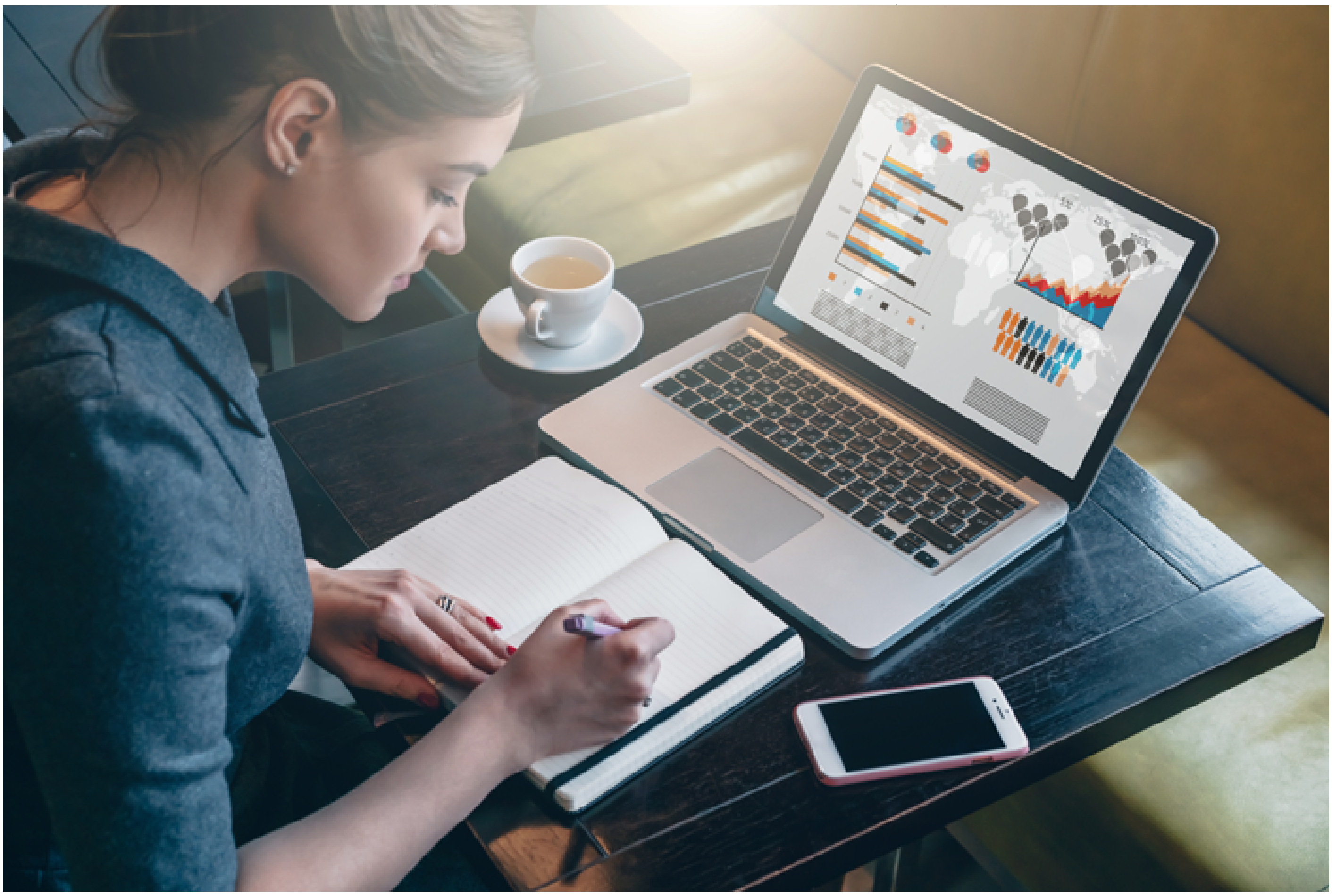
We welcome the expanded use of public consultations by the Department of Finance with respect to various recent tax matters.

Such consultations are an important tool in seeking to ensure that newly implemented tax measures operate in the manner intended, with improved ease of application for taxpayers and practitioners as a result.

We recommend that the Department of Finance continues to engage with the public with respect to developments in the Irish tax landscape in the future (for example, with respect to the implementation of the DWT real-time reporting regime, if and when this occurs).

In addition, an increasingly important factor in relation to the competitiveness of a regime is certainty – a long lead and consultation time from the announcement of potential changes in law enhances the certainty of the Irish tax system. Preferably, draft legislation would also be included in consultations, providing the public the opportunity to comment on such draft legislation prior to the release of the Finance Bill each year, and in turn providing greater certainty for taxpayers regarding proposed legislation.

Attractiveness



Improve Ireland's R&D Tax Credit

The OECD Report on Pillar Two Blueprint suggests that the treatment of tax credits and Government grants for the purposes of the GloBE rules should broadly reflect their financial accounting treatment. The result of this is that refundable tax credits, grants and subsidies should typically be treated as income (as opposed to a reduction in covered taxes paid) for the purposes of calculating an enterprise's effective tax rate for GloBE purposes.

Where this treatment is reflected in the final GloBE rules, refundable tax credits, such as the R&D tax credit in Ireland, along with grants and subsidies, will be increasingly important in terms of attracting global investment in a post-BEPS 2.0 environment. Indeed, several countries (including Switzerland and Singapore) have publicly stated that they may expand their offerings in these areas to attract foreign investment.

With respect to Ireland's ability to attract global business through an expanded use of grants and subsidies, it is important to recognise the legal (e.g. EU State aid) and fiscal constraints on Ireland excelling in this area. As a result, it will be important that any measures implemented by Ireland in this regard are targeted and effective in attracting business, while also being compliant with EU law.

In this regard, we strongly recommend that certain targeted improvements are made to the R&D tax credit regime to ensure that the relief continues to offer a strong incentive to businesses to establish substantial operations here involving a highly skilled workforce. Where successful, we believe Ireland could distinguish and enhance our reputation as a global centre of excellence for research and innovation, which would in turn create a positive feedback loop when seeking to attract further such operations here.

We recommend:

- A review of the mechanism by which the R&D tax credit is refundable, in order to ensure that it meets the conditions to be considered to be a *"refundable income tax credit"* under the GloBE rules. One possible means of achieving this would be to ensure that the R&D tax credit is relievable against the company's payroll tax liabilities, as a first option.
- Amending the wording of section 766(1)(a) TCA 1997 to "wholly and exclusively <u>for the purposes</u> of R&D activities", rather than "wholly and exclusively <u>in the carrying on by it</u> of R&D activities", in order to align the definition of "expenditure on R&D" with the original policy intention. This amendment would also provide greater clarity and certainty to claimants of the relief with respect to qualifying costs.
- We suggest an automatic refund of cash claims by compliant taxpayers for claim amounts below a de minimis threshold of, say, €50,000. This change in administrative process would not affect Revenue's right to audit and review the claims but would reduce delays within the system currently experienced by claimants.
- Consideration should be given to expanding the list of qualifying fields beyond the existing science and technology categories. For example, we recommend that consideration is given to expanding the list of qualifying fields to include specific reference to research into technologies such as artificial intelligence and other emerging technologies, many of which are currently included under *"computer sciences and other allied subjects".* Specific reference would bring further clarity to those undertaking research into these areas that they can qualify for the R&D tax credit.

Enhance SARP to attract R&D skilled professionals to Ireland

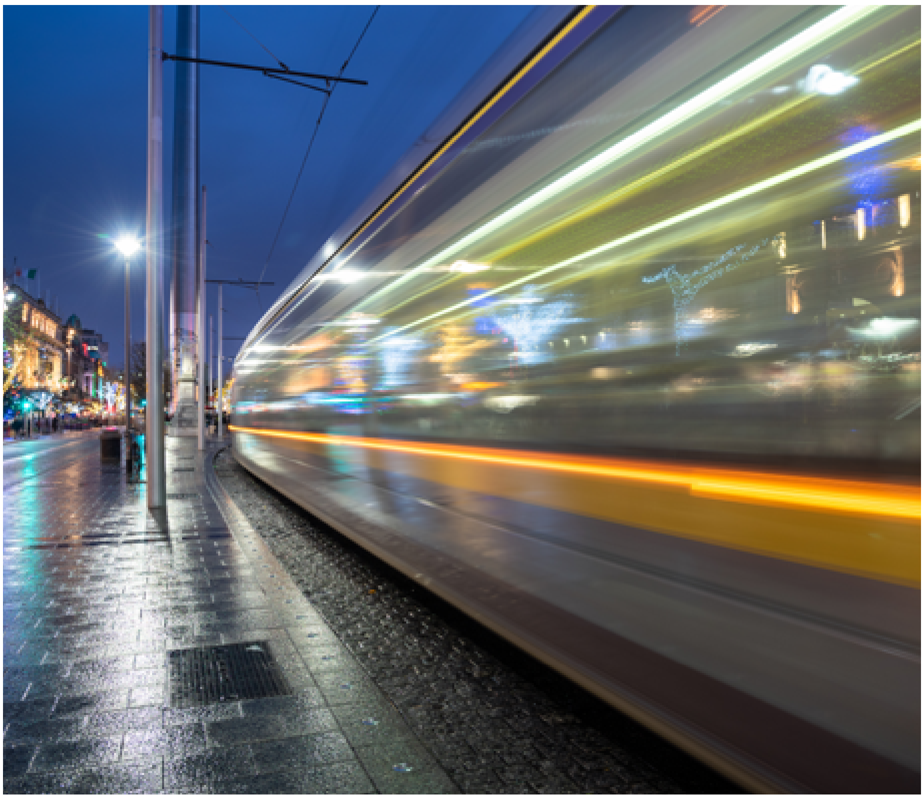
In addition to the above enhancements to Ireland's R&D tax credit regime, we believe that targeted enhancements to the SARP regime aimed at attracting valuable R&D professionals would act to further establish Ireland as a talent hub for innovation and research.

Specifically, key talent involved in R&D activities could be attracted to Ireland by applying an approach similar to that currently in place in Sweden, in which certain key foreign employees (defined by reference to where there is a skills shortage in Sweden) may qualify for an income tax reduction and their employers for a lower rate of employer contributions[4].

[4] A Road Map For SME And Entrepreneurship Policy In Ireland (2019), OECD Publishing

We propose a similar approach is applied here, in which all remuneration of employees engaged in R&D is taxed at the standard rate, irrespective of the amount of the individual's salary. This could be implemented as an enhancement to the existing SARP regime.

We would note that, while there are existing measures included in the R&D Tax Credit regime aimed at reducing the tax burden of R&D professionals, these are little used. From our experience, this is predominantly as a result of the complexity of these measures and the administrative difficulty associated in implementing them. Therefore, it would be important that the proposed enhancement to SARP is provided for and implemented with administrative ease in mind, in order for the incentive to work as intended.



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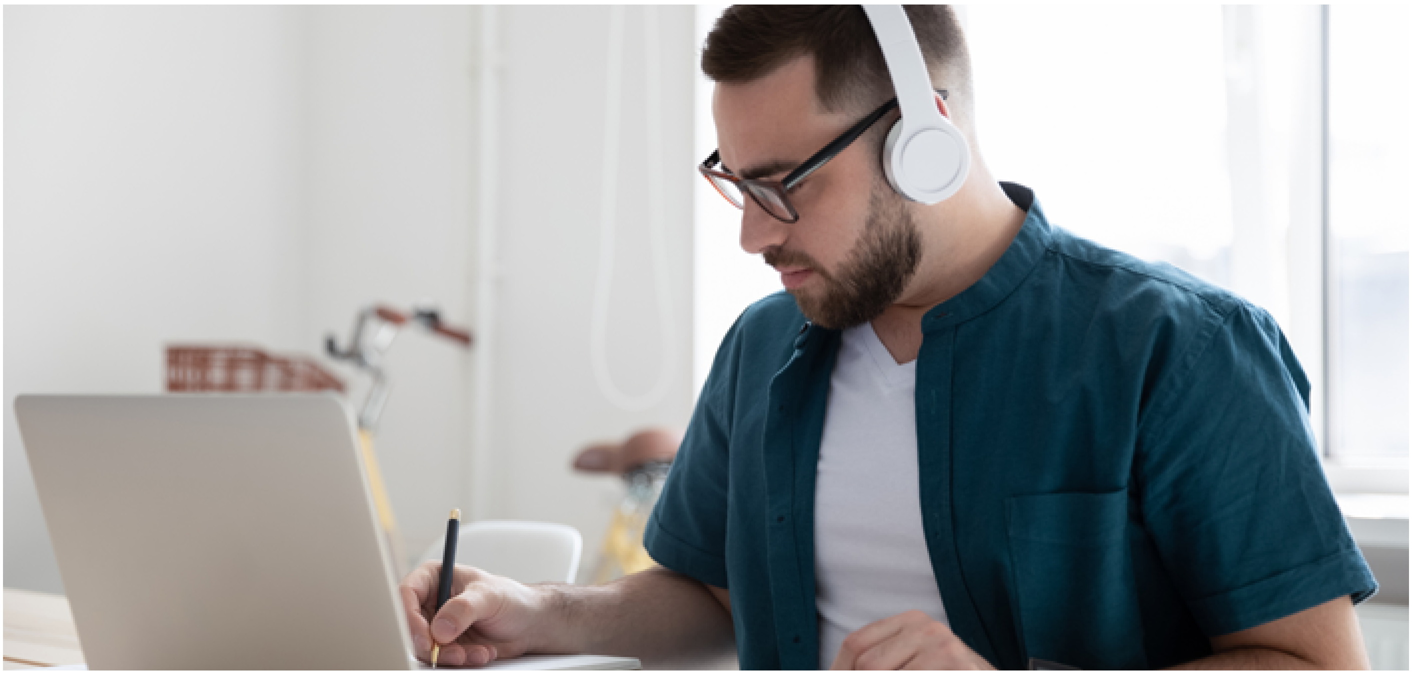


Further enhancements to the SARP regime

In a post-BEPS 2.0 environment, Ireland's attractiveness for foreign investment will be increasingly impacted by our ability to attract and retain talent and executives from across the globe. As a result, our success at attracting business will be closely tied with how successful we are at attracting individuals to relocate and work here. It is in this context that we recommend below that Ireland should undertake a broad review of our personal tax regime, and in particular the marginal tax cost for Irish workers and employers, with a specific goal of making Ireland competitive when attracting people to live and work here.

We also believe that the SARP regime should be enhanced to play a stronger role in attracting talent and executives to Ireland. In this regard, we recommend the following improvements to the existing SARP regime:

a. Remove the €1m cap

   The introduction of the €1m cap on the amount of income that could benefit from the relief limits the effectiveness of the regime in attracting senior executives to live in Ireland, relative to other locations. We strongly recommend that this cap should be removed.

b. Increase the qualifying period from 5 years to 10 years for non-Irish domiciled individuals

c. The rate of relief under SARP should also be increased for non-Irish domiciled individuals, and it should apply to USC and PRSI as well as income tax.

d. Extend the CAT exclusion for non-Irish domiciled individuals from 5 years to 10 years also to ensure coordination between the reliefs

Non-Irish domiciled individuals coming to Ireland and availing of SARP are significantly less likely to substantially avail of Ireland's social welfare, health or free education benefits while here. Therefore, it is reasonable that the value of the relief and the period during which it is available should increase to reflect the relative cost-benefit impact that such individuals have whilst in Ireland.

It would be important that any such extension also applies to complementary reliefs, such as the CAT exemption for non-domiciled individuals, to ensure a coordinated approach is applied to the taxation of mobile workers coming to Ireland.

We believe it is important the impact of the above proposals should be modelled using a dynamic, rather than static, analysis (i.e. it should model the benefits of increased overall revenues and wealth creation that such changes should bring as a consequence of increasing the number of people within the system, rather than only quantifying the foregone tax revenues from lower rates). For example, the SARP regime is intended to attract employment and business of substance to Ireland which may not otherwise have arisen without the regime; to apply a static analysis in determining the value of the relief would be to entirely ignore that many people availing of the regime would not pay any tax in Ireland if the regime was not in place as they would not have come to Ireland. It would also ignore the additional allocation of profits to their Irish employer as a result of their employment in Ireland and the trickle down effect in the economy.

Improve Ireland's personal tax regime

Ireland has a highly progressive personal tax system, and as a result high earners are subject to very high marginal rates of tax.

We believe that being attractive with respect to personal and capital taxes will become essential in a post-BEPS 2.0 environment. Although the final form of the two-pillar framework remains unclear, the BEPS 2.0 proposals are likely only to increase the importance and value of attracting and maintaining substantial businesses in Ireland, in particular given the impact that any substance-based carve-out included in the proposals will have on the tax efficiency of the world's largest businesses. As a result, we expect that a key factor affecting businesses' investment decisions in this new environment will be a location's ability to attract and retain high-value talent and executives. In this context, the comparative attractiveness of Ireland's personal tax regime will become an important factor for businesses looking to expand or maintain substantial operations here in the future.

In addition, the relative importance of Ireland's personal tax regime in this regard is only likely to be exacerbated by the fundamental change to working practices precipitated by the Covid-19 pandemic, as workers seek to avail of greater flexibility regarding how and where they work. Indeed, this is likely to be most pronounced for people carrying on high-value roles who in many cases may be able to require their employer to facilitate their preference to work from a different country than where their employer is based. We are already seeing some employers seeking to attract high-value talent by facilitating such work practices, and that such arrangements are being put in place with respect to existing employees in many businesses in Ireland.

Finally, in addition to the need to be attractive for individuals looking to work here, Ireland must also be an attractive to employers.

With respect to the above, we would make the following observations:

- The marginal rate of tax applying to higher income levels in Ireland is uncompetitive in comparison to other countries both inside and outside the EU. We would note that many countries achieve a more competitive marginal rate of tax on high earnings by imposing a cap on the earnings base on which social security is operated.
- Similarly, other countries inside and outside the EU have a more competitive cost of employing high earners than Ireland. Again, this can be achieved in a number of ways, including by applying a limit to the earnings base on which employer social security contributions are levied (e.g. Germany, Spain, Greece, and Singapore), or applying a fixed contribution per employee regardless of their earnings (e.g. Denmark). We would be concerned that Ireland's lack of competitiveness in this area may act to disincentivise the creation of high-value jobs in Ireland, impacting the number and scale of substantial businesses created here.

As with our comments above regarding possible improvements to the SARP regime, we believe that any analysis of the impact of changes to the personal tax regime should be dynamic rather than static, in order to more accurately effect the effect of such changes on the Irish exchequer and broader economy.

Sustainability

Undoubtedly, Ireland's ambitious environmental targets will present challenges to Irish businesses and communities. However, it is also clear that the importance of meeting these goals cannot be overstated. Achievement of these targets is not only an imperative in the context of fighting climate change, but their achievement is also crucial in order for Ireland to maintain its attractiveness as a location, particularly as both businesses as well as individuals strive to reduce their carbon profiles. In our view, the availability of electricity sourced from renewable energies, the existence of an embedded electric vehicle infrastructure, sustainable housing, and a thriving green economy will be important factors when considering Ireland's relative attractiveness in the future.

Ireland has previously demonstrated the power of tax policy in delivering societal change and environmental impact in the form of the plastic bag levy introduced in 2002. We believe that tax policy is uniquely placed as a tool to promote sustainable behaviour from consumers and business alike. In this regard, we have set out below proposals which we believe would have the greatest impact on the creation of a sustainable future for Ireland:

Attractiveness

a. Supporting ESG investing

By crafting tax policy to incentivise and support investment in sustainable businesses, Ireland can exert a significant and determinative influence on business to implement environmentally and socially sustainable practices. In this regard, we propose that Ireland levers the important role that pensions can play in influencing the ESG profile of companies globally. A possible approach would be to increase the tax-free lump sum payable on retirement where some or all of the lump sum is derived from approved ESG funds, providing a strong incentive to scheme members and managers to include ESG funds in their portfolios.

b. Supporting green innovation

Irish tax policy should support and encourage innovation targeted at developing green technologies and other solutions which contribute to achieving our ambitious climate action targets. Moreover, we believe that Ireland should strive to establish itself as an international hub for R&D activities in the areas of sustainability and carbon reduction. In this regard, we recommend enhancing our existing R&D tax credit regime allow for a 30% credit with respect to expenditure incurred with respect to R&D activities undertaken with respect to solar, wind, hydro, or biomass energy technologies, as well as other green technologies (for example, soluble or compostable materials for packaging, air filtration methods, ocean cleaning technology, etc.).

c. Support for sustainable buildings

Due to a mixture of regulatory requirements and market demand, newly constructed property in Ireland is very often constructed to very high levels of energy efficiency. However, there remains a considerable challenge ahead to bring Ireland existing residential and commercial property stock to comparable levels of efficiency and sustainability. In this regard, we have identified a number of possible opportunities:

- Introduce an income tax credit with respect to expenditure incurred on improving a home's energy efficiency rating.
- Reintroduce mortgage interest relief in respect of borrowings used in the acquisition, improvement or repair of properties with a BER of B3 or better.
- Where an individual incurs expenditure to improve a home's BER to at least a B3 level, this expenditure should be deductible from the taxable value of the relevant property for Irish CAT purposes where the property subsequently comprises part of a disposition.
- Allow a double deduction against Case V rental income for expenditure incurred on improving a rental property's BER to at least a B3 level in the year in which the expenditure is incurred.

d. Mobilising green risk capital

A fundamental challenge being faced by early or growth stage enterprises in the green space is being able to attract and retain the risk capital required to build their business. In this regard, Ireland should strive to establish itself as an international hub for climate innovation, creating an environment where innovators in the green economy and their investors are incentivised and supported. In this regard, we propose:

- The introduction of an exemption from tax on interest earned by individuals on "green" bonds which are issued to enterprises to fund initiatives which contribute to meeting Ireland's ambitious carbon emissions targets.
- Ireland's existing reliefs, principally EIIS and CGT entrepreneur relief, should be enhanced with respect to investments in enterprises in the green economy[5].
- Relief under section 486B TCA 1997 should be reintroduced and targeted to attract investment into the renewable energy sector and other enterprises in the green economy that the market is less active in.

e. Supporting sustainable transport

The National Development Plan sets a target of having a minimum of 500,000 electric vehicles on the road by 2030, noting that additional charging infrastructure will be required to cater for this planned growth. Given that it is estimated that the transport sector accounted for approximately 40% of Irish CO^2 emissions in 2018, delivery on this target will likely be key to achieving the nation's broader climate goals. In this regard, we propose:

- The introduction of an income tax credit with respect to the cost of installing EV charging facilities.
- Transition of Ireland's existing transport fleet to EVs could be incentivised by offering a partial income tax credit with respect to EV charging costs.
- With respect to VRT relief on electric vehicles:
  - The maximum OMSP at which full VRT relief can be claimed should be increased from €40,000 to €60,000.
  - The maximum amount of relief available should be increased from €5,000 to €7,500.
  - VRT relief should be reintroduced for hybrid and plug-in hybrid vehicles.

f. Supporting green agriculture

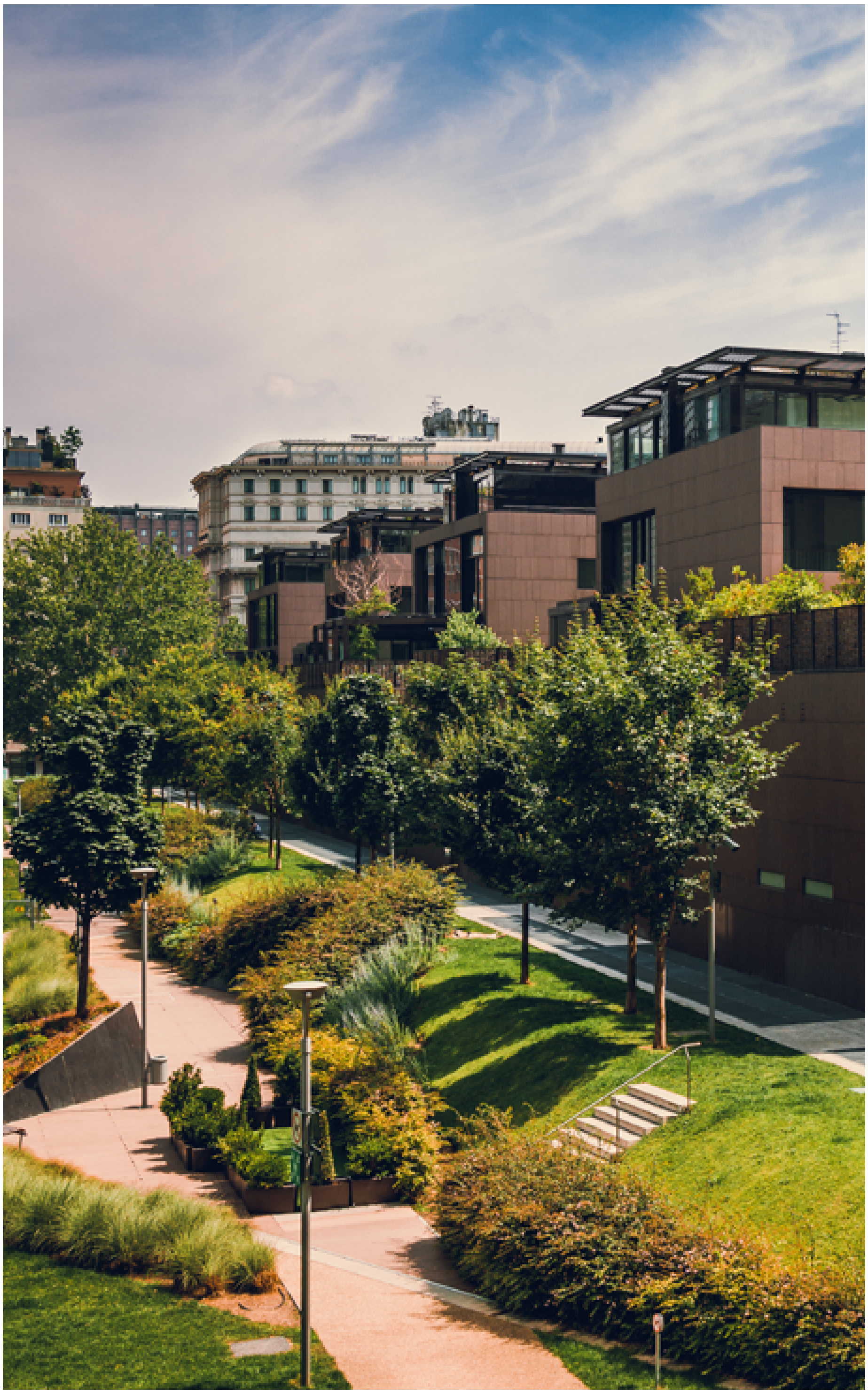
[5] Please see our recommendations in the submission's "Encouraging and supporting domestic entrepreneurship" section for further details of possible enhancements to EIIS and CGT entrepreneur relief in this regard.

The agriculture sector offers both some of the biggest challenges and opportunities for climate action in Ireland. Irish farmers should be supported where they decide to adapt their business and land in ways that contribute to Ireland's sustainability goals. In this regard, a key challenge for many farmers (particularly those nearing retirement) arises with respect to the tax implications of adapting their land and business to sustainable practices. This challenge could be alleviated through:

- Enhancements to CGT retirement relief to ensure relief remains available in circumstances where a farmer makes their land available to deliver renewable energy through solar, wind or anaerobic digestion, or who re-wilds their land, increase wetlands or plants native trees.
- A removal of the restriction on the proportion of agricultural land on which solar panels can be installed while remaining eligible for CAT agricultural relief. At present, section 89(1B)(d)(i) CATCA 2003 provides that land should not be regarded as agricultural land where solar panels are installed on greater than half the total area. This obstacle to adapting land to the production of renewable energy should be removed.

g. Ring-fencing of carbon tax receipts

We propose that tax revenues derived from carbon taxes should be ring-fenced for expenditure on projects or incentives intended to contribute to Ireland's net zero carbon emissions target. In this way, Ireland could create a "virtuous cycle" in the area of climate action and support future improvements in Ireland's sustainability profile while reducing our reliance on fossil fuels.



Encouraging and supporting domestic entrepreneurship

Make SARP available to indigenous businesses

Improved workforce mobility in a post-Covid world offers Ireland an opportunity to attract talent to the country, potentially helping transform Ireland into a hub for global talent across a wide range of fields. As outlined above, we believe that the SARP regime offers employers a powerful tool to attract talent to Ireland, particularly where it is enhanced as recommended above.

However, the SARP regime is currently closed to Irish indigenous businesses as it does not apply to new hires. We agree with the conclusion of the SME Taskforce Report[6] that a more level playing field should be created between indigenous businesses and large multi-national companies in terms of the measures available to assist with staff mobility and talent retention. In this regard, we strongly support that report's recommendation that the SARP regime should be opened to new hires (SME Taskforce Report Action 2.6.4).

[6] Report of the SME Taskforce: National SME and Entrepreneurship Growth Plan (2021)ishing

Change Ireland's CGT rules to encourage investment in SMEs

We agree with the statement in the SME Taskforce Report that creating a taxation system that supports the creation and growth of new enterprises, and the re-investment of entrepreneurial capital in Irish enterprise is of critical importance to the growth of Ireland's SME sector.

In this regard, we would strongly support that report's recommendation that a reduced CGT rate (e.g. 20%) is introduced for founders, private investors, VCs or Angel Investors who invest in non-property SMEs. (SME Taskforce Report Action 1.4.1)

In addition to the above measure, we believe that significant incremental investment in Irish businesses could be encouraged by enhancing CGT Entrepreneur relief as follows:

a. Increase the lifetime limit

We believe that increasing the lifetime limit should reduce the risk of Irish entrepreneurs basing themselves and their businesses abroad. This is particularly important where the high standard rate of capital gains tax otherwise continues to apply on the disposal of investments in Irish SMEs.

b. Provide for the same rate (10%) on dividends paid to entrepreneurs from qualifying companies

Extending Entrepreneur Relief to dividends should remove the current incentive for entrepreneurs to sell out at an early stage in the business's development and should support the possibility of founder entrepreneurs remaining in Ireland and holding their interests in the business as the business grows and matures.

A possible means of implementing the above proposal would be to extend the 10% rate to dividends up to the lifetime limit. The lifetime limit available on an ultimate sale of the business could then be reduced by the amount of dividends to which the 10% rate was previously applied.

c. Allow passive investors to qualify

Opening Entrepreneur Relief to passive investors would, in our view, incentivise private investors to inject capital into start-ups, encouraging entrepreneurship and supporting growth in Ireland's SME sector.

Improve the EII scheme

We welcome and echo the recommended enhancements to Ireland's EII scheme suggested in the SME Taskforce Report, including:

- Allow CGT losses for lossmaking EIIS investments. (SME Taskforce Report Action 1.6.1)
- Offer full CGT relief on profits on EIIS investments made for a year. (SME Taskforce Report Action 1.6.2)
- Change EIIS structure to allow VC investments via Limited Partnerships. (SME Taskforce Report Action 1.6.3)

More broadly, it will be crucial that the EII scheme rules are simplified, and that greater certainty is provided for companies and individuals participating in the scheme. At present, the provisions of the EII scheme are complex and can be difficult for start-ups to understand and the penalties for getting it wrong can be steep. Improving certainty for participating companies could substantially increase uptake of the relief. In this regard, we recommend:

- The EII scheme provisions should be amended such that where a company has provided correct and complete information to Revenue, a confirmation that it is eligible for EII Scheme can be issued to the company. This would be similar to the operation of the equivalent UK EIS rules.
- The holding company rules should be amended to allow for subsidiaries of other companies to avail of the relief. This could be used to attract minority investment in specific subsidiaries that form part of a wider group.
- The connected party rules should be relaxed in line with the UK approach of only applying them where the individual holds a 30% interest in the EIS company. Relaxing the connected party rules would ensure that Ireland remains competitive in this space and also ensure that individuals are not prevented from availing of the scheme due to unduly strict rules.

Encouraging and supporting domestic entrepreneurship

Do not introduce TP for SMEs

Finance Act 2019 updated Ireland's transfer pricing regime to adopt the 2017 OECD Guidelines that applied at that date. It also significantly extended the scope of Ireland's transfer pricing regime to include non-trading arrangements and certain domestic arrangements.

Provisions extending the scope of transfer pricing to SMEs are subject to ministerial commencement order.

We are strongly of the view that these provisions should never be commenced. There is no obligation on Ireland to do so under EU law or commitments to the OECD, and doing so would impose costly compliance burdens on largely domestic businesses with limited (if any) additional revenue to the exchequer. It could, in fact, reduce revenue to the exchequer by increasing costs to SMEs and limiting their ability to invest and grow. This would appear to be in direct contradiction to the Government's stated objective of supporting growth in SMEs and ensuring the *"tax system remains supportive of the SME sector"*[7].

Reframe Ireland's transfer pricing regime to not apply transfer pricing to transactions between domestic taxpayers

Section 15 of Finance Act 2020 introduced a complete re-write of section 835E, which provides for an exclusion from transfer pricing for certain domestic non-trading transactions. A Report Stage amendment was made to the Finance Bill 2020 which provides that the commencement of the new section 835E is subject to ministerial order.

[7] Programme for Government, 2020

Ireland should be striving to excel in providing a clear and simple tax system for businesses. As outlined in our October 2020 submission[8], we believe that the new section does not operate as intended and is contrary to Government policy. Therefore, we strongly recommend that this section is not brought into operation in the future.

Rather, we propose that a new domestic transfer pricing exclusion should be introduced which is simple, easily applied and in line with the stated intent of the legislation. In this regard, we recommend that Ireland reframes its transfer pricing regime to not apply transfer pricing to transactions between domestic taxpayers. To the extent necessary, this could be supplemented by a simple anti-avoidance rule, rather than relying on a complex legislative exemption to achieve a similar, yet less effective, result.

In this regard, we would note that this is a matter of particular importance for Ireland and its taxpayers, given the potential scope for domestic transfer pricing adjustments to arise on intra group arrangements is higher in Ireland than in other European countries simply because they adopt a different approach to tax grouping arrangements for direct tax purposes (for example, in the Netherlands transactions occurring between members of a tax grouping are entirely ignored for tax purposes).

The difference in corporation tax rate between the 12.5% rate of tax on trading income and the 25% rate of tax on non-trading income also means that the application of transfer pricing to non-trading income could result in an outcome which is not neutral for transactions between two taxpayers within the scope of Irish corporation tax.

[8] KPMG Submission to the Department of Finance dated 27 October 2020

According to the OECD, the purpose of transfer pricing is to enable countries in *"protecting their tax base while not creating double taxation or uncertainties that could hamper foreign direct investment and cross-border trade"*[9]. These objectives are clearly not met by the current transfer pricing domestic exemption introduced in Finance Act 2019, as a significant amount of uncertainty exists with respect to the operation of the existing domestic exemption and double taxation may arise on a wide range of domestic transactions. In addition, the OECD's explanatory notes to its 2011 model transfer pricing legislation confirms that the model legislation in this regard is drafted so as not to apply to purely domestic transactions[10].

We would also note that CJEU case law findings on German transfer pricing provisions which do not apply to transactions between domestic taxpayers suggest that the non-application of transfer pricing to such transactions is not in breach of EU fundamental freedoms.

Therefore, it should be possible for the Irish transfer pricing regime to exclude intra-Ireland transactions between domestic taxpayers, while remaining compliant with EU freedoms and protecting against cross-border profit shifting and base erosion practices.

[9] Transfer Pricing Legislation – A Suggested Approach (June 2011), OECD

[10] Ibid

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