Irish Tax Institute

May 2025

Pre-Finance Bill 2025 Submission

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About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 6,000 is part of the international CTA network which has more than 33,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

Executive Summary

In this submission, the Irish Tax Institute has set out legislative amendments for consideration in the drafting of Finance Bill 2025 under the following seven broad areas:

1. Enhance Ireland's competitiveness
2. Support the growth and innovation of SMEs
3. Provide adequate safeguards for taxpayers
4. Extend tax reliefs due to sunset on 31 December 2025
5. Amendments to the taxation of pensions
6. Tax technical issues arising from the implementation of Pillar Two
7. Tax technical measures required to mitigate certain unintended consequences

We have also outlined in the Appendix to this submission, a number of measures for consideration in the context of the future modernisation of capital taxes.

Enhance Ireland's competitiveness

Ireland has a world class record in attracting multinational investment, most of it from the US. While negotiations with the US administration led by the European Commission regarding the EU's response to President Trump's America First Trade Policy are still underway, it is critical that Ireland works to build new trading links and reduces Ireland's over-dependence on the US.

Creaking public infrastructure and the shortage of housing are tangible constraints that are damaging Ireland's reputation as a destination for investment. They must urgently be addressed for the benefit of all citizens. But it is critical that policymakers do not lose sight of the reality that tax is a key consideration for prospective investors in any economy. It is also one of the few variables that the Government can control in a small, open economy like Ireland. We outline below, tax measures which we believe would enhance Ireland's competitiveness and help to protect Ireland's position as an attractive place to do business.

Enhance the R&D Tax Credit

The Programme for Government contains a commitment to examine options to enhance the R&D Tax Credit. Given the mobility of R&D investment, the need for reform is urgent. In the current highly competitive trading environment, continuous benchmarking of Ireland's offering against key competitor jurisdictions is critical to maintaining existing and attracting future, high value investment in the Irish economy.

The Institute submitted a detailed response on 19 May 2025 to the Department of Finance's public consultation on the R&D Tax Credit and options to support innovation. To help formulate our response, we undertook a survey of our members who advise businesses on making R&D Tax Credit claims and businesses that carry on R&D activities in Ireland. The survey findings helped to inform our recommendations to enhance the R&D Tax Credit to ensure it remains a competitive incentive and continues to encourage additional R&D investment in Ireland.

Simplify the corporation tax code

The clarity and simplicity of Ireland's 12.5% corporation tax rate was fundamental to the creation of the modern Irish economy. It also forgave much in the tax code that has become increasingly complex over the last decade due to the OECD BEPS reform process.

At the Institute's Annual Dinner in late February, the Minister for Finance, Paschal Donohoe T.D. reiterated the Government's commitment to simplify the tax system to enhance the country's competitiveness. Delivery of this commitment is critical. We outline below, the simplification measures which we believe would enhance Ireland's competitive position as it seeks to attract foreign investment in the current uncertain geopolitical environment.

The onerous conditions associated with the participation exemption for foreign distributions which was introduced in Finance Act 2024 means the measure is unworkable for most companies. Significant improvements are needed to the legislation underpinning the exemption, in particular the 5-year lookback rule, if the exemption is to meet its intended policy aim of giving "*confidence and foresight to key stakeholders, maintaining Ireland's reputation as a business-friendly destination and encouraging companies to establish and expand their operations in Ireland*."[1]

The absence of a foreign branch exemption means there is a significant complexity associated with operating a branch structure by an Irish company and we urge that consideration of the merits of a foreign branch exemption by policymakers is progressed.

Ireland has one of the most complicated interest deductibility regimes in the EU and compliance with these rules is difficult and costly for businesses that operate here. The legislative provisions governing the deductibility of interest should be overhauled in Finance Act 2025, or Finance Act 2026 at the latest, to recognise that debt, and

[1] Department of Finance press release, 5 April 2024. https://www.gov.ie/en/press-release/a7303-minister-mcgrath-publishes-feedback-statement-on-participation-exemption-in-irish-corporate-tax-system-for-foreign-dividends/

the payment of interest thereon, is a normal commercial reality and legitimate cost of doing business.

Support the growth and innovation of SMEs

Enterprise tax measures which are more accessible to SMEs

Effective tax measures for SMEs have a significant role to play in developing a productive and sustainable indigenous sector which is essential for the diversification of Ireland's economic base.

Over the last decade, successive governments have recognised this reality by introducing a suite of tax reliefs and incentives aimed at building innovation, encouraging investment and supporting business founders who take the risk of starting a small business. However, these measures continue to fall short of their intended impact on the indigenous sector.

In our view, there must be a shift in approach by policymakers when designing tax measures for SMEs to recognise that risk is an integral part of any enterprise and that those who take it must have a fair chance of being rewarded.

Simplify the operation of share-based remuneration

Share-based remuneration can play an important role in rewarding key employees at all stages of development of a business. It can significantly reduce fixed labour costs and free up cashflow. We strongly urge for the Key Employee Engagement Programme (KEEP) to be extended beyond its current expiry date of 31 December 2025 and measures taken to improve its uptake by SMEs.

However, there are some limitations inherent in the design of the KEEP, due to State aid constraints, which inevitably hamper the take-up of the scheme. Therefore, it is essential that the significant obstacles to using other types of share-based remuneration by SMEs and start-ups are tackled such as addressing the upfront tax cost faced by employees on the receipt of a share award or on the exercise of a share option.

Provide adequate safeguards for taxpayers

Retain the option for private hearings at the Tax Appeal Commission (TAC)

We understand policymakers intend to amend the legislation underpinning the hearing of tax appeals before the TAC to address the Supreme Court judgement in

Zalewski v. Adjudication Officer & Ors[2] where it was held that a blanket prohibition on hearings at the Workplace Relations Commission (WRC) being held in public was incompatible with the Constitution.

A clear distinction must be drawn between the position which existed in the WRC and that which prevails at the TAC. Under the Taxes Acts, the default position is that the hearing of appeals before the TAC are in public and each taxpayer must request that their tax appeal hearing be held *in camera,* if they so wish.

The ability for a taxpayer to opt to have their tax appeal heard in private provides a fundamental safeguard for taxpayers wishing to appeal an assessment and must be preserved. We firmly believe that any change to the current rule which applies to the hearing of tax appeals would create a significant barrier to taxpayers using the tax appeals system.

Provide certainty regarding the 4-year time limit

The 4-year time limit is an important safeguard for taxpayers as it provides finality and closure in respect of their tax affairs. Without this safeguard, taxpayers could face the possibility of assessments from Revenue many years later with interest accumulating at a rate of 8% or 10% per annum. Additional exclusions to the 4-year time limit were introduced in 2012. Those changes, compounded by recent High Court decisions interpreting the pre-2012 regime, demonstrate that the legislation underpinning the 4-year time limit is unfairly balanced against taxpayers and we strongly urge that it is reviewed.

Impose proportionate sanctions for administrative errors

There are instances in the Irish tax code where the penalties that apply for non-compliance have a disproportionate impact on certain cohorts of taxpayers. While the Institute recognises the role of penalties in encouraging compliant behaviour by taxpayers, it is essential that the penalties which apply for a failure to comply with a tax rule are proportionate.

In our view, the penalties which apply for errors by taxpayers in complying with the requirements of the Enhanced Reporting Requirements (ERR) and the surcharge which applies for the late filing of iXBRL financial statements by large companies are disproportionate and should be reconsidered.

[2] [2021] IESC 24

Extend tax reliefs due to sunset on 31 December 2025

In addition to the KEEP, there are a number of key tax reliefs which are due to sunset on 31 December 2025 and should be extended.

The Digital Games Corporation Tax Credit, which was introduced to incentivise the development and growth of the Irish digital gaming industry, should be extended and it should be benchmarked against the incentives offered by key competitor countries to ensure Ireland can compete internationally in this sector.

Persuading highly skilled individuals and senior decision-makers to move to Ireland is challenging given the high rates of personal taxation and the intense competition for top talent across many jurisdictions. The Special Assignee Relief Programme (SARP) is a critical part of Ireland's competitive offering to attract FDI and the relocation of high-value employment to the State. Retaining SARP and continually benchmarking it against key competitor countries is essential to enable Ireland to compete for mobile talent on a global stage.

The Foreign Earnings Deduction (FED) plays an important role in encouraging and incentivising Irish businesses to export to new markets. It is important that the FED is retained given the heightened need for Irish SMEs to diversify and develop new export markets in light of the current uncertain geopolitical environment.

Amendments to the taxation of pensions

A phased increase to the level of the Standard Fund Threshold (SFT) to €2.8 million by 2029 was introduced in Finance Act 2024. But individuals with benefit crystallisation events occurring before the SFT increases take effect are denied much of the benefit of these increases. We do not believe that this was the policy intention and it should be reviewed.

In addition to the SFT which sets a lifetime limit on tax-relieved pension contributions, annual limits apply to the tax relief available on pension contributions based on an individual's age and an earnings limit of €115,000. Notably, the earnings limit was significantly reduced in 2011 and has not changed since then.

Both the Commission on Taxation and Welfare and the report on the Examination of the Standard Fund Threshold[3] recommended the age-related limits and the earnings limit to be removed on a phased basis. Work to consider the removal of these limits should be prioritised by the cross sectoral implementation group established to consider the recommendations of the Examination of the Standard Fund Threshold.

[3] Examination of the Standard Fund Threshold - Dr. Donal de Buitléir, September 2024

The curtailment in Finance Act 2024 of the BIK exemption on employer contributions to PRSAs to 100% of the employee's salary in the year of assessment disadvantages PRSA holders because the funding rules for an occupational scheme are less restrictive. This adds further complication to the pensions landscape and goes against the objective of simplification recommended by the Interdepartmental Group on Pensions Reform and Taxation.

In line with the recommendation of the Commission on Taxation and Welfare, we believe the anomalies in the tax treatment of different retirement arrangements should be eliminated, as far as possible. At a minimum, the limit on employer contributions to a PRSA which qualifies for the BIK exemption should be increased to 125% of the employee's remuneration where the employee is 50 years of age or older. This would provide more flexibility to business owners, who were unable to fund their retirement at the earlier stages of the development of their business, to make larger contributions to a PRSA as they approach retirement age.

Tax technical issues arising from the implementation of Pillar Two

Following the transposition of the EU Minimum Tax Directive, to implement the Pillar Two Global Anti-Base Erosion (GloBE) Rules into Irish law in Finance (No.2) Act 2023, a number of issues which require clarification have been identified arising from the application of the GloBE Rules. We understand from discussions with Revenue at the TALC BEPS Sub-committee that clarification of these issues would necessitate an amendment to the Irish legislation implementing the GloBE Rules. We have outlined these technical amendments in more detail in the body of this submission.

Tax technical measures required to mitigate certain unintended consequences

Arising from recent legislative changes, we have identified several tax technical measures which, in our view, require a legislative amendment in order to mitigate certain unintended consequences. Further details on these amendments have been set out in the body of this submission.

Conclusion

We have outlined the Institute Recommendations in more detail on pages 11-19. Further detailed analysis of each technical matter mentioned above has also been included in the body of this submission. Please contact Anne Gunnell at agunnell@taxinstitute.ie or (01) 6631750 if you require any further information regarding the matters raised.

Institute Recommendations

Our recommendations for Finance Bill 2025 are grouped into seven broad areas below. Further analysis on each technical matter is included in the body of this submission.

Enhance Ireland's competitiveness

Enhance the R&D Tax Credit

1. Given the mobility of R&D investment, reform is urgent. As outlined in our response to the public consultation on 19 May 2025, we believe the following legislative and administrative changes are needed to encourage increased investment in R&D and innovation in Ireland:

   Legislative Recommendations on the R&D Tax Credit

   - It is critical that the Irish R&D Tax Credit is continually benchmarked against the incentives offered by key competitor jurisdictions.

   - The R&D Tax Credit rate should be increased to preserve and attract more R&D investment by large multinationals in Ireland.

   - The limits for outsourcing to a third-party or university or institute of higher education should be increased. The restriction could be removed completely for R&D outsourced to universities/institutes of higher education to encourage greater STEM skill-sets, while qualifying R&D expenditure outsourced to third parties could be capped by reference to the company's qualifying R&D spend.

   - Put the existing concession on the use of agency/temporary staff on a legislative basis and the relevant conditions should be amended to ensure the rules reflect modern commercial practices of where such contract work is performed and its duration.

   - Permit outsourcing of R&D to a related party, capped by reference to the Irish company's own internal spend on R&D, in circumstances where Ireland is the owner and has played an active role in managing and developing internally generated IP arising from R&D activities.

   - Modernise the definition of relevant expenditure to allow expenses which are critical to R&D processes to qualify such as training and maintenance relating to R&D equipment.

- Clarify in legislation that rent can qualify as R&D expenditure.

- Reduce the 35% threshold for R&D activities carried on by a company in a qualifying building or structure under section 766D TCA 1997.

- Remove the stipulation that a building must qualify for industrial buildings allowance to meet the conditions for the credit under section 766D TCA 1997.

Administrative Recommendations on the R&D Tax Credit

- Ensure Revenue Compliance Interventions are proportionate, apply commercial awareness and are conducted in a timely and efficient manner.

- Simplify the Form CT1 (corporation tax return) to make it easier for businesses to comply with their tax obligations and have certainty over their R&D Tax Credit claims.

- Publish guidance on common errors identified on R&D Tax Credit claims and create information videos on how to complete the relevant R&D panels correctly for the benefit of all claimants.

- Use the existing in-house technical expertise within the two enterprise State agencies (i.e. IDA and Enterprise Ireland) to verify the science test in R&D Tax Credit claims.

- Introduce a pre-approval process for first time R&D Tax Credit claims by small/micro companies.

- Provide SME-friendly guidance, with step-by-step instructions on the claims process and practical studies, together with tips on how to avoid common errors in claims.

- Consultation with stakeholders in advance of updates to Revenue guidance is essential to provide more tax certainty for claimants.

- Simplify Revenue guidance relating to overhead costs.

- Reduce uncertainty by developing industry specific guidance with detailed practical instances of what R&D activities qualify and do not qualify.

Recommendations on options to support innovation

- Introduce new targeted measures to incentivise innovation in specific priority areas of digitisation and decarbonisation.

- To ensure claims are made for true innovation, the following administrative supports and requirements could be introduced:

    a. a Revenue pre-approval process for first-time claims by small/micro companies,
    b. sector specific SME-friendly guidance, and
    c. ensuring the level of documentation required to support a claim is stratified according to business size.

Simplify the corporation tax code

2. The onerous conditions associated with the participation exemption for foreign distributions which was introduced in Finance Act 2024 means the measure is unworkable for most companies. Significant improvements are needed to the legislation underpinning the exemption, in particular the 5-year lookback rule, if it is to achieve its intended objective of encouraging companies to establish and expand their operations in Ireland.

3. The legislative provisions governing the deductibility of interest should be overhauled in Finance Act 2025, or Finance Act 2026 at the latest, to recognise that debt, and the payment of interest thereon, is a normal commercial reality and legitimate cost of doing business.

4. The introduction of a foreign branch exemption is important if Ireland is to remain an attractive location for FDI and we urge that consideration of the merits of such a measure by policymakers is progressed

5. In line with the position adopted in other jurisdictions, the criteria applicable to the participation exemption for foreign distributions and the exemption for gains under section 626B Taxes Consolidation Act (TCA) 1997 should be more closely aligned. The section 626B exemption should not be limited to gains on shares of companies which are tax resident in EU or DTA countries and the trading requirement should be removed.

6. The rules concerning relief from double taxation on foreign earnings in Schedule 24 TCA 1997 continue to be relevant for companies where the participation exemption for foreign distributions does not apply. The provisions in Schedule 24 should be simplified to make them easier to understand and more straightforward to administer in practice.

Support the growth and innovation of SMEs

7. In our view, the approach to the legislative design of enterprise supports such as the Employment and Investment Incentive (EII), KEEP and Revised Entrepreneur Relief is overly defensive and ultimately undermines their policy objective. We believe there must be a shift in approach by policymakers when designing tax measures for SMEs to recognise that risk is an integral part of any enterprise and that those who take it must have a fair chance of being rewarded.

Simplify the operation of share-based remuneration

8. The KEEP should be extended beyond its current expiry date of 31 December 2025 to assist SMEs to compete with multinationals for key talent, through share-based remuneration.

9. We believe more legislative changes are needed to ensure the KEEP can achieve its policy aim of helping SMEs attract and retain key employees. These include imposing a proportionate sanction where share options are undervalued and amending the definition of a 'qualifying holding company'.

10. In addition to our recommendations on the KEEP, we believe the following legislative reforms should be implemented in respect of the taxation of share-based remuneration in Ireland:

    - Introduce measures to address the difficulties faced by employees in funding the upfront tax cost arising on the exercise of a share option or receipt of a share award. Deferring the tax arising until such time as the employee is permitted to dispose of the shares would mean that the employee is able to fund the tax arising.

    - Alternatively, remove the BIK charge on employer loans, or at a minimum reduce the 13.5% interest rate on such loans to a more commercial rate of interest, in line with the recommendation of Indecon[4], to make share-based remuneration a more viable option for many companies.

    - Consider the disapplication of the share buyback provisions in section 176 TCA 1997 in the context of share-based remuneration as the broad application of these provisions can act as an impediment to companies that wish to incentivise employees using share-based remuneration.

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[4] Indecon Review of the Special Assignee Relief Programme - Budget 2020 Report on Tax Expenditures Incorporating outcomes of certain Tax Expenditure & Tax Related Reviews completed since October 2018 – October 2019.

- Address the limitations inherent in section 128D TCA 1997 by removing the anomaly where restricted shares are exchanged for shares with equivalent restrictions and expand the scope of the section to include instruments other than shares.

- Extend the existing ‘sell to cover’ provisions in section 985A(4B) TCA 1997 to situations where an employee exercises a right to acquire shares and a taxable gain arises under section 128, which is now subject to PAYE.

- As recommended by Indecon, align the tax treatment of Restricted Stock Units (RSUs) with the rules followed in other OECD countries and the existing Irish tax treatment for share options exercised by non-residents.

- Extend the current filing deadline for employer returns of share awards, which is three months after the year end, by a least a further month, to allow sufficient time for the collation and aggregation of data.

Provide adequate safeguards for taxpayers

Retain the option for private hearings at the TAC

11. The ability for a taxpayer to opt to have their tax appeal heard in private provides a fundamental safeguard to taxpayers wishing to appeal an assessment and must be preserved. We firmly believe that any change to this rule would create a significant barrier to using the tax appeals system and should be opposed.

Provide certainty regarding the 4-year time limit

12. The 4-year time limit within which Revenue can review a tax return filed by a taxpayer and raise assessments is a critical safeguard for taxpayers as it provides finality and closure in respect of their tax affairs. It is clear from recent High Court decisions that the legislation underpinning the 4-year time limit is unfairly balanced against taxpayers and we strongly urge that it is reviewed.

Impose proportionate sanctions for administrative errors

13. A fixed penalty of €4,000 applies where an employer inadvertently omits to report, in real time, a non-taxable benefit or expense reimbursed to their employee under the ERR regime. This penal sanction for failing to comply with a reporting requirement in real time is wholly disproportionate and places an inordinate burden on smaller businesses that have limited resources. We urge that the level of penalty be reviewed and replaced with a more appropriate sanction.

14. The imposition of the 10% surcharge for the late filing of iXBRL financial statement on companies that have a strong compliance record for filing corporation tax returns and making tax payments on time is disproportionate. A more proportionate sanction would be a fixed penalty rather than a tax-geared penalty. An alternative approach could be to amend section 1065 TCA 1997 to give Revenue the discretion to mitigate the late filing surcharge in appropriate circumstances.

Extend tax reliefs due to sunset on 31 December 2025

Digital Games Corporation Tax Credit

15. The Digital Games Corporation Tax Credit should be extended and be benchmarked against incentives offered by key competitor countries to ensure that Ireland can compete internationally in the digital gaming sector.

16. The clawback provisions also need to be amended if the credit is to achieve its policy objective of incentivising increased investment by digital games development companies in Ireland.

SARP

17. The SARP is a critical part of Ireland's competitive offering to attract FDI and the relocation of high-value employment to the State. Retaining SARP and continually benchmarking the Irish regime against similar reliefs offered by key competitor countries is essential to enable Ireland to compete for talent on a global stage.

FED

18. The FED plays an important role in encouraging and incentivising Irish businesses to export to specific countries, earmarked by the Government as potential export markets. Given the current geopolitical climate, it is important that the FED is retained and improved so that it can support Irish SMEs in diversifying and developing new export markets.

Amendments to the taxation of pensions

Finance Act 2024 changes to the SFT

19. Finance Act 2024 introduced a phased increase to the level of the SFT to €2.8 million by 2029 but individuals with benefit crystallisation events occurring before the SFT increases take effect are denied much of the benefit of these

increases. We do not believe that this is the policy intention, and it should be reviewed.

Remove the age-related limits and the earnings limit on a phased basis

20. We urge that work to consider the removal of the age-related limits and the earnings limit on a phased basis is prioritised by the cross sectoral implementation group established to consider the recommendations of the Examination of the Standard Fund Threshold.

Equitable tax treatment across all pension arrangements

21. The curtailment in Finance Act 2024 of the BIK exemption on employer contributions to PRSAs to 100% of the employee's salary in the year of assessment disadvantages PRSA holders because the funding rules for an occupational scheme are a lot less restrictive. We believe the anomalies in the tax treatment of different retirement arrangements should be eliminated, as far as possible. At a minimum, the limit on employer contributions to a PRSA which qualifies for the BIK exemption should be increased to 125% of the employee's remuneration where the employee is 50 years of age or older.

Tax technical measures arising from the implementation of Pillar Two

Compensation payments for QDTT, UTPR, IIR

22. The Irish Pillar Two legislation provides for the non-taxation of payments made between members of a Qualified Domestic Top-up Tax (QDTT) filing group or an Undertaxed Profits Rule (UTPR) filing group so that where a group filer makes a payment on behalf of another constituent entity, that other constituent entity may compensate (on a tax-free basis) the filer in respect of the QDTT liability paid on its behalf. However, there may be other forms of compensation in respect of Pillar Two tax liabilities made between group members for commercial reasons. We recommend the legislation is amended to treat certain compensation payments between members of the same MNE group as disregarded for the purposes of corporation tax and dividend withholding tax (whether the payments are made by or to a group located in Ireland or elsewhere).

Loss utilisation for non-Irish group members

23. Finance Act 2024 amended section 111AW TCA 1997 imposing a loss utilisation ordering rule. The rule applies for all Pillar Two calculations including in respect of non-Irish group entities and does not take account of the fact that other countries may have rules or practices governing loss utilisation. If a

country had local ordering legislation or ordering guidance, a foreign group entity would be required to prepare one set of calculations for local corporate tax purposes, and a different set of 'notional' tax calculations for Pillar Two purposes, which over time would become very difficult to administer. Therefore, we recommend that the legislation is amended to account for situations where foreign countries have ordering rules for the use of losses forward.

Treatment of Joint Ventures

24. The definition of a joint venture in section 111AO TCA 1997 does not align with the definitions provided in Article 10.1 of the GloBE Model Rules and Article 36(1)(a) of the EU Minimum Tax Directive and should be amended.

Application of section 111B TCA 1997

25. Where OECD Administrative Guidance contains a "supplementary rule", this should apply prospectively from the date of the legislative amendment giving effect to the rule. Taxpayers should be provided with an option to apply the supplementary rule from an earlier date if so desired.

26. Where OECD Administrative Guidance contains a clarification, this should apply for fiscal years commencing after the date the OECD Administrative Guidance is added to section 111B TCA 1997 by Ministerial Order. Taxpayers should be provided with an option to apply the clarification to guidance from an earlier date if so desired.

Allocation of UTPR

27. The methodology of allocation of the UTPR top up amount between the relevant entities located in a jurisdiction is at the discretion of the jurisdiction and has no impact on the application of the URPR safe harbour rules. The methodology in section 111N TCA 1997 for the allocation of a UTPR top up amount may cause commercial issues where there are minority investors in an entity. Instead, an approach similar to that used for QDTT in relation to securitisation entities could be adopted, provided there is at least one other constituent entity in Ireland that is not part of an orphan subgroup. For example, the UTPR allocation could be made against those entities and not allocated to any of the orphan subgroup entities. Alternatively, consideration could be given to affording MNE groups discretion on how the UTPR should be allocated between group members.

Tax technical measures required to mitigate certain unintended consequences

28. Section 189 TCA 1997 exempts permanently incapacitated individuals from income tax, PRSI, USC and CGT on the income and gains arising from the investment of certain compensation payments. The legislation should be amended to allow a life assurance company or investment undertaking make payments to individuals who are entitled to the section 189 exemption without the deduction of exit tax, where an appropriate declaration has been completed, similar to the position which exists in respect of DIRT and DWT.

Residential Premises Rental Income Relief

29. Excluding tax compliant landlords from availing of the Residential Premises Rental Income Relief simply because they did not apply for and obtain a tax clearance certificate before 31 December is contrary to the objective of the relief to attract and retain small-scale landlords in the private sector. In our view, the requirement should be amended so that the obligation is for the landlord to hold a tax clearance certificate that has not been rescinded at the time that the claim for the relief is made.

Modernisation of capital taxes

30. We outline in the Appendix to this submission a number of amendments to the capital gains tax (CGT) and capital acquisitions tax (CAT) legislation that we believe should be considered in the context of any deliberations on the future modernisation of Ireland's capital taxes regimes. These broadly relate to:

    - changes to the capital taxes payment dates to one date to ease compliance;
    - regularly updating exemption thresholds and aggregation periods; and
    - amending the CAT code to reflect Ireland's changing society.

1. Enhance Ireland's competitiveness

1.1 Enhance the R&D Tax Credit

A key deciding factor in investment location decisions is the incentive available for R&D. Welcome as it was, the increase of the R&D Tax Credit rate to 30% in Budget 2024 merely maintained the value of the credit following the introduction of the Pillar Two global minimum 15% tax rate for large multinational companies. It did not improve the overall competitiveness of Ireland's offering, which has remained flat.

Meanwhile, competitor countries are either improving their regimes or introducing new incentives. The latest IMD World Competitiveness rankings, in which Ireland was placed 4th overall, highlights the comparative weakness of Irish investment in R&D. Out of 67 countries, Ireland was ranked 31st for total expenditure levels.

The Programme for Government commits to examining options to enhance the R&D Tax Credit. Given the mobility of R&D investment and uncertain global trade environment, reform is urgent. On 19 May 2025, the Institute submitted a detailed response to the Department of Finance's public consultation on the R&D Tax Credit and options to support innovation.

Our recommendations are based on the findings from our survey of members who advise businesses on making R&D Tax Credit claims and businesses that carry on R&D activities in Ireland undertaken in April 2025. Full details of the Institute's recommendations and survey findings are outlined in our response to the public consultation.

1.2 Simplify the corporation tax code

The clarity and simplicity of Ireland's 12.5% corporation tax rate was fundamental to the creation of the modern Irish economy. It also forgave much in the Irish tax code which has become increasingly complex over the last decade as a consequence of the OECD BEPS reform process.

As the Department of Finance has warned, Ireland is vulnerable to increased competition for FDI within the EU that could trigger a subsidies race in which smaller countries would lose out to the deeper pockets of larger Member States. The Annual Progress Report notes few countries are as exposed to a reversal of globalisation than Ireland.[5]

[5] Department of Finance, Annual Progress Report, May 2025

A simplified, transparent, innovative and competitive corporation tax system would bestow a significant advantage on Ireland as the fight for FDI in new markets grows more competitive. We set out below the simplification measures, which the Institute believes would enhance Ireland's competitive position, as it seeks to attract foreign investment in the current uncertain economic environment.

1.2.1 Participation exemption for foreign distributions

The onerous conditions associated with the participation exemption for foreign distributions which was introduced in Finance Act 2024 means the measure is unworkable for most companies. Significant improvements are needed to the legislation underpinning the exemption, in particular the 5-year lookback rule, for the exemption to be workable for companies and meet its intended policy aim of giving "*confidence and foresight to key stakeholders, maintaining Ireland's reputation as a business-friendly destination and encouraging companies to establish and expand their operations in Ireland*."[6]

In our submissions of 7 March 2025 and 2 April 2025 to the Department of Finance in relation to section 831B TCA 1997, we outlined in detail our recommendations for legislative changes to the participation exemption. Some of the issues raised have now been clarified in Revenue's Tax and Duty Manual[7] published this month.

However, legislative amendment continues to be urgently required in respect of the critical matters outlined below if the participation exemption is to be successful in encouraging multinational groups to choose Ireland as a headquarter location. If Ireland is considered a preferred headquarter location for multinational groups, it will result in key decision makers and significant business functions, such as treasury and IP management of multinational groups being based in the State.

5-year lookback rule

- The definition of 'relevant subsidiary' in section 831B(1) TCA 1997 includes a condition in paragraph (b) that the subsidiary did not at any time during the reference period, acquire: *"(i) another business or part of another business, or (ii) the whole or greater part of the assets used for the purposes of another business"* previously carried on by another company that was not resident in a 'relevant territory'. The effect of this condition is that no dividends paid by such a subsidiary will qualify for the participation exemption for a period of 5 years. This 5-year lookback rule is extremely onerous and will undoubtedly result in

[6] Department of Finance press release, 5 April 2024. https://www.gov.ie/en/press-release/a7303-minister-mcgrath-publishes-feedback-statement-on-participation-exemption-in-irish-corporate-tax-system-for-foreign-dividends/
[7] Revenue's Tax and Duty Manual Part 35-02-11: Participation exemption for certain foreign distributions. May 2025

Ireland losing out when companies are deciding where to locate future investment.

- We strongly urge that the definition of 'relevant subsidiary' be amended to remove the 5-year lookback rule. If policymakers take the view that it is not possible to remove the 5-year lookback rule in its entirety, at a minimum, it should be removed for acquisitions of assets or businesses by a relevant subsidiary as there is no clear policy reason why policymakers should be concerned about who a business is acquired from. In our view, there are already sufficient protections included in the anti-avoidance measures contained in the legislation underpinning the exemption.

Other qualification criteria for a 'relevant subsidiary'

- The exclusion of Ireland from the definition of 'relevant territory' means that any transfers of a business, part of a business, or the assets of a business from an Irish company to a subsidiary or its involvement in a cross-border merger with the subsidiary can result in the conditions for a 'relevant subsidiary' not being met. The definition of 'relevant subsidiary' should be amended, with effect from 1 January 2025, to address the fact that the definition of 'relevant territory' excludes Ireland.

- Confirmation is needed that where Ireland concludes a DTA with a jurisdiction for the first time, it is possible to take account of the period during which a subsidiary was resident in the DTA jurisdiction prior to the signing of the DTA, rather than imposing an additional 5-year waiting period on distributions made by subsidiaries resident in new DTA jurisdictions.

Qualification criteria for a 'relevant distribution'

- Revenue guidance confirms that distributions paid 'out of profits' do not have to also satisfy the section 626B TCA 1997 test which applies to distributions paid 'out of assets'. It would be important that this confirmation is also reflected in legislation.

- Confirmation should be provided in legislation that an offshore fund for the purposes of sub-part (V) of the definition of 'relevant distribution' does not include any 'non-equivalent' offshore fund, which is located in an 'offshore state', as defined in section 747B(1) TCA 1997 and is excluded from the offshore funds regime by virtue of section 747B(2A) and section 747AA TCA 1997.

- Confirmation should also be provided in legislation that a 'material interest' must be present before a non-resident company/unit trust scheme/arrangement can be considered an ‘offshore fund’ for the purposes of paragraph (V) of the definition of ‘relevant distribution.’

- Confirmation that a distribution will be considered a relevant distribution where it is taken into account (by means of deduction, reduction, or otherwise) in computing a tax that corresponds to a close company surcharge in the State so long as it is not deducted for the purposes of a tax in a foreign territory which corresponds to corporation tax in Ireland (other than a surcharge levied under Part 13 TCA 1997).

Qualification criteria for a parent company

- In considering whether a parent company holds a ‘qualifying participation’ in the relevant subsidiary:

    - Allow alternative forms of equity interests which are akin to ordinary share capital to be taken into account.

    - Permit shares in the subsidiary held by other group members to be taken into account in establishing whether the tests in section 831B(2)(a) are met, similar to the approach adopted in section 626B.

    - Extend the period of ownership of the shares where, for example, shares which were previously held by another company are transferred to the parent company in a no-gain/no-loss transfer in the manner provided for in paragraph 1, Schedule 25A TCA 1997. This would also be in line with the approach adopted in section 626B.

Shares held via a partnership

- Clarify that distributions from shares held by a company via a partnership, which is akin to an Irish partnership, will be regarded as taxable dividend income in respect of those shares.

- In addition, clarification is required that where a corporate partner would have qualified to claim the participation exemption had it held its proportion of the shareholding directly, that the corporate partner will also meet the shareholding requirement for the participation exemption, if the shareholding is held via a partnership.

Geographic scope

- The geographic scope of the participation exemption should be extended as confining its scope to distributions received from companies resident in the

EU/EEA and jurisdictions with which Ireland has a DTA, is too restrictive and is out of step with the approach adopted by many of Ireland's competitors for FDI. In extending the geographic scope, it would be important that this does not result in additional conditions being imposed for distributions received from companies resident in the EU/EEA and jurisdictions with which Ireland has a DTA.

- It is also essential that Ireland continues to develop its tax treaty network to ensure Irish businesses can easily access new markets without suffering double taxation and to encourage inward trade and investment from treaty partner jurisdictions.

1.2.2 Interest deductibility rules

Ireland has one of the most complicated interest deductibility regimes in the EU. The ATAD Interest Limitation Rule (i.e. 30% of EBITDA ratio rule), introduced in Finance Act 2021, was simply layered on top of existing, already comprehensive interest deductibility provisions. Compliance with these rules is difficult and costly for businesses that operate here.

We welcome the ongoing review by the Department of Finance of the interest deductibility provisions and we set out our detailed recommendations for the reform of the rules in our response to the Department's public consultation in January. However, we are concerned that there is no clarity on the timeline for completion of the review nor on the prospects for its reform.

The legislative provisions governing the deductibility of interest should be overhauled in Finance Act 2025, or Finance Act 2026 at the latest, to recognise that debt, and the payment of interest thereon, is a normal commercial reality and legitimate cost of doing business.

It is also critical that there is close engagement between the Department, Revenue and stakeholders regarding any proposed changes, with an opportunity for taxpayers and their representatives to provide feedback on draft legislative approaches. Stakeholder input will be key to ensuring any changes, when implemented, are clearly understood and do not give rise to unintended consequences.

1.2.3 Exemption for foreign branch profits

As Ireland does not have a branch exemption at present, there can be significant differences in the timing and measure of taxable income for Irish companies between the head office and branches resulting in tax uncertainty and complexity.

The Budget 2025 documents published by the Department of Finance confirmed that, in line with the *Roadmap for the Introduction of a Participation Exemption to Irish Corporation Tax*, policymakers would consider a possible exemption for foreign branch profits this year. We note from discussions at the Business Taxes Stakeholder Forum (BTSF) that consideration of the potential merits of a branch exemption is underway but the review by the Department of Finance is a multi-year project.

The introduction of a foreign branch exemption alongside the participation exemption for foreign dividends is important if Ireland is to remain an attractive location for FDI and we urge that consideration of the merits of a foreign branch exemption is progressed.

1.2.4 Section 626B TCA 1997 - capital gains exemption

In line with the position adopted in other jurisdictions, we believe that the criteria applicable to the participation exemption for foreign distributions and the exemption for gains under section 626B TCA 1997 should be more closely aligned.

We consider the exemption in section 626B should not be limited to gains on shares of companies which are tax resident in EU or DTA countries. It should be extended in the same manner as we have recommended in respect of section 831B TCA 1997.

In addition, the nature of the activity of the subsidiary should not be a deciding factor in relation to the availability of the exemption. In particular, we consider the trading requirement should be removed. This requirement artificially imposes an Irish tax concept (i.e., the distinction between trading and non-trading activities) on the operations of another subsidiary, where with a 5% shareholding, it may be difficult to ascertain if this condition is satisfied.

There appears to be no clear policy reason to limit the application of the exemption to companies that are carrying on an activity, which had it been carried on in Ireland, would have been taxed at the 12.5% rate.

1.2.5 Schedule 24 TCA 1997 – double taxation relief

The rules concerning relief from double taxation on foreign earnings in Schedule 24 TCA 1997 continue to be relevant for companies where the participation exemption for foreign distributions does not apply. The provisions of Schedule 24 are complex resulting in an onerous administrative burden being placed on companies to claim double taxation relief. Therefore, we believe the provisions in

Schedule 24 should be simplified to make them easier to understand and more straightforward to administer in practice.

We believe the varying treatment between different categories of income (for example, interest and royalties) should be removed to determine foreign tax credits and the pooling and carry forward of excess credits. Ensuring consistency of treatment across the different categories of income would simplify the current system and address much of the complexity faced by businesses in applying Schedule 24.

2 Support the growth and innovation of SMEs

2.1 Enterprise tax measures which are more accessible to SMEs

Effective tax measures for SMEs have a significant role to play in developing a productive and sustainable indigenous sector which is essential for the diversification of Ireland's economic base.

Over the last decade, successive governments have recognised this reality by introducing a suite of tax reliefs and incentives aimed at building innovation, encouraging investment and supporting business founders who take the risk of starting a small business. It is fair to say that despite the best intentions of the administrations which introduced and subsequently enhanced them, these measures continue to fall short of their intended impact on the indigenous sector.

The Institute has consistently called for legislative changes to the EII, the KEEP, the R&D Tax Credit and CGT Entrepreneur Relief to make these reliefs more accessible to SMEs and start-ups. In our Pre-Finance Bill 2024 Submission, we sought changes that we consider would release the potential of these tax measures to build a vibrant enterprise ecosystem that could rebalance the productive base of Ireland's economy.

After more than a decade of reviews and consultation processes some progress has been made but it is frustratingly slow. In this regard, we welcome recent engagement with Department of Finance officials to provide feedback on why certain recommendations made by the Institute last year in respect of the SME enterprise tax measures have not been implemented. Such feedback is important in understanding the policy rationale for not proceeding with suggested legislative reforms and informing future recommendations.

We consider the approach to the legislative design of enterprise supports can be overly defensive which ultimately undermines their policy objective. The Institute fully acknowledges and supports the responsibility of public officials to protect taxpayers' money, but the Department of Finance also has a responsibility to ensure that tax policy fosters economic growth. We believe there must be a shift in approach by policymakers when designing tax measures for SMEs to recognise that risk is an integral part of any enterprise and that those who take it must be rewarded.

2.2 Simplify the operation of share-based remuneration

Irish SMEs continue to experience difficulties recruiting and retaining skilled workers. Attracting the best talent is central to building a successful company and is crucial to the future growth and export potential of the business. Share-based remuneration can play an important role in rewarding key employees at all stages of development of a business. It can significantly reduce fixed labour costs and free up business cashflow.

2.2.1 KEEP

The KEEP was introduced by Finance Act 2017 to assist SMEs[8] to attract and retain skilled workers through the provision of share-based awards. It provides for an exemption from income tax, USC and PRSI for any gain arising on the exercise of a share option by a qualifying individual in a qualifying company.

We strongly urge that the KEEP is extended beyond its current expiry date of 31 December 2025. The KEEP gives qualifying companies the possibility to provide a financial incentive to employees, in addition to basic remuneration, linked to the future growth and success of the SME. In our view, the scheme has the potential to enable SMEs to compete with multinationals for key talent, through share-based remuneration, in circumstances where they often struggle to match the salaries offered by larger companies.

While the take-up of the KEEP has been low to date, we consider this is due to certain limitations with the operation of the scheme which can significantly impact its feasibility. While it will take some time before the full impact of the Finance Act 2022 amendments to the scheme is known, we understand from our members that there has been an increased level of interest in the KEEP since these amendments were commenced on 20 November 2023.

Notwithstanding the recent amendments to the KEEP, we believe further legislative reforms are needed to improve its feasibility, which we outlined to the Department in our recent submission on 13 May. As referenced in that submission, the two most important reforms identified from our 2022 member survey and directly from entrepreneurs in 2023 were:

i. developing an agreed ‘safe harbour’ approach to share valuation and imposing an appropriate sanction where there is an undervalue; and
ii. amending the definition of a ‘qualifying holding company’ to permit the group as a whole to be considered, rather than simply considering the holding company in isolation.

The ability to achieve as much certainty as possible regarding the share valuation of KEEP shares so that the share option price is not less than the market value of

[8] A company will be considered a micro, small or medium sized enterprise (SME) where the company employs fewer than 250 employees and its annual turnover/annual balance sheet does not exceed €50 million and €43 million respectively.

the shares at the date of grant remains one of the most significant practical issues that SMEs face when implementing the KEEP.

The absence of clear Revenue guidance means that there is an inherent risk for companies if options are not granted for market value or the market value is subsequently determined by Revenue to be higher than originally projected. In such cases, the options will not qualify as KEEP options under section 128F TCA 1997, resulting in no exemption from income tax, USC and PRSI on exercise. This risk is a significant obstacle for companies that wish to implement the KEEP.

2.2.2 Other approved and unapproved share schemes

In addition to the Institute's proposals on the KEEP outlined in our May 2025 submission, we set out detailed recommendations for amendments to the Irish legislation governing both approved and unapproved share schemes in our response to the Department of Finance's public consultation on Ireland's Taxation of Share-based Remuneration in January 2024. These include:

- Measures to address the difficulties faced by employees in funding the upfront tax cost arising on the exercise of a share option or receipt of a share award should be introduced. Deferring the tax arising until such time as the employee is permitted to dispose of the shares would mean that the employee is able to fund the tax arising.

- Alternatively, reducing the 13.5% interest rate on employer loans for the purpose of funding costs associated with the purchase of shares in share-based remuneration plans to a more commercial rate of interest to make share-based remuneration a more viable option for many companies, which would be in line with Indecon's recommendation,

- The broad application of the share buyback provisions in section 176 TCA 1997 can act as an impediment to companies that wish to incentivise employees using share-based remuneration. The disapplication of these provisions in the context of share-based remuneration should be considered.

- Section 128D TCA 1997 can be a useful relief for companies that reward key personnel with shares as it provides a reduction in the taxable value of shares that employees receive, where there is a restriction on selling those shares for a certain period. However, there are several limitations of the relief which need to be addressed such as removing the anomaly where restricted shares are exchanged for shares with equivalent restrictions and expanding the scope of section 128D to include instruments other than shares.

- The current filing deadline for employer returns, which is three months after the year end, should be extended by a least a further month to allow taxpayers sufficient time for collation and aggregation of the relevant data.

- As recommended by Indecon, the tax treatment of Restricted Stock Units (RSUs) should be aligned with the rules followed in other OECD countries and the existing Irish tax treatment for share options exercised by non-residents. This would mean that the amount of the benefit taxable in Ireland would be apportioned by reference to any part of the vesting period during which the individual is present in Ireland, rather than the full amount of the reward where the individual is resident on the date of vesting.

- Section 12 of Finance (No.2) Act 2023 amended the collection mechanism for tax on gains arising on the exercise, assignment or release of a right to acquire shares or other assets under section 128 TCA 1997 so that the gains are no longer subject to self-assessment but taxed under the PAYE system. We raised concerns with Revenue, via TALC, following the publication of the Finance Bill, as to how employers would implement this change in practice as the employees would need to be able to fund the tax liability collected through the PAYE system. The ‘sell to cover’ provision in section 985A(4B) is limited to instances where the *"employer pays emoluments....in the form of shares..."*.

- In our view, section 985A(4B) is not sufficiently broad to capture liabilities arising under section 128 as these are triggered by the employee exercising a right to acquire shares. We believe that section 985A(4B) should be amended, to put beyond doubt, that there is a statutory entitlement on employers to ‘sell to cover’ where a section 128 gain arises and is required to be subject to PAYE.

3 Provide adequate safeguards for taxpayers

3.1 Retain the option for private hearings at the TAC

The Summer Legislative Programme notes that the Heads of Bill for the Finance (Tax Appeals and Fiscal Responsibility) Bill were approved in June 2024. While the Heads of Bill have not been published, we understand that the intention is for the Bill to amend the legislation underpinning the hearing of tax appeals before the TAC to address the Supreme Court judgement in *Zalewski v. Adjudication Officer & Ors*[9]*.* The Court in *Zalewski* found that the blanket prohibition on Workplace Relations Commission (WRC) hearings being held in public was incompatible with the Constitution.

In our view, a clear distinction must be drawn between the situation which existed in the WRC and the position which prevails at the TAC. In the *Zalewski* case, it was the applicant who challenged the legislation as unconstitutional on the basis that he was not entitled to a hearing in public at the WRC. The same cannot be asserted in relation to the TAC because the default position under section 949Y TCA 1997 is that tax appeals are held in public.

Positive action must be taken by taxpayers where they wish to have their hearings in private as they are required to make an application to the TAC. If the taxpayer makes such an application, then the Appeal Commissioners must accede to the request. The Appeal Commissioners may also give a direction that a hearing, or part of a hearing, of an appeal is to be held in camera if they consider that the giving of such a direction is necessary:

(a) in the interests of public order or national security,
(b) to avoid serious harm to the public interest,
(c) to maintain the confidentiality of sensitive information,
(d) to protect an individual's right to respect for his or her private and family life, or
(e) in the interests of justice

The ability for taxpayers to opt to have their tax appeals heard in private provides a fundamental safeguard to taxpayers wishing to appeal an assessment and must be preserved. We firmly believe that any change to this rule would create a significant barrier to using the tax appeals system.

The overwhelming feedback we have received from members is that the erosion of the right to a private hearing would be massively detrimental for taxpayers and would, in practice, operate as a real disincentive to the appeal of Revenue

[9] [2021] IESC 24

assessments. Our members have reported instances of taxpayers having succeeded in their appeal before the TAC but then deciding to pay the tax rather than face the publicity associated with an appeal before the High Court.

Notably, when the Heads of Finance (Tax Appeals Commission) Bill 2015 was published in 2015, it included a proposal that tax appeal hearings would be held in public. The report of the Oireachtas Joint Committee on Finance, Public Expenditure and Reform[10] noted concerns were raised during the pre-legislative scrutiny process that taxpayers may be unwilling to pursue an appeal if their finances are to be placed in the public domain and that there may be unintended consequences as low and middle income taxpayers could be reluctant to enter an appeals process that is public.

The Report concludes that *"while the default position may be for public hearings, it is preferable, on balance, that if the appellant requests it, the hearing be held in private. Transparency can be enhanced and clarity be provided to other taxpayers and the general public, if all hearings are accompanied by written determinations as is proposed."*

We fully agree with the conclusion of the Oireachtas Joint Committee on Finance, Public Expenditure and Reform that the publication of determinations provides transparency and clarity over the tax appeals process. Since its establishment in 2016, the TAC has published over 1,000 written determinations on its website.

Where the hearing of an appeal was held in private, the determination is anonymised so as to ensure that the identity of the taxpayer is not revealed. The determinations, which are freely accessible to the public, outline in detail the background to the appeal; the evidence and submissions provided by the taxpayer and Revenue at the appeal hearing; the Commissioner's findings of material fact; the Commissioner's analysis of the issues; and the Commissioner's determination.

Furthermore, as the default position is that the hearing of a tax appeal is in public, it means any taxpayer who desires a hearing in public can have one. As is evident from the published determinations of the TAC, some taxpayers have chosen to have the hearing of their tax appeal held in public.

The principle of confidentiality has served the tax system well to date

Confidentiality underpins the regime of voluntary compliance which has been a fundamental pillar of a successful Irish tax administration system. Tax compliance

[10]https://data.oireachtas.ie/ie/oireachtas/committee/dail/31/joint_committee_on_education_and_social_protection/reports/2015/2015-04-13_report-on-hearings-in-relation-to-the-draft-general-scheme-of-the-finance_en.pdf

rates are amongst the highest internationally, with a 99% timely return/payment compliance rate for large and medium cases and 92% for all other cases.[11]

Whilst taxpayers may not always agree with Revenue's view on an issue, there is widespread confidence amongst taxpayers that their confidentiality will be respected when dealing with Revenue to resolve an issue. This understanding has been a significant contributory factor in achieving the high rates of voluntary compliance. Taking a case to appeal is simply an extension of this process, whereby an independent arbiter (the Appeal Commissioner) is seeking to determine the facts of the matter before it enters the court process.

Public hearings have a greater deterrent effect in small countries

In our view, if hearings must be held in public, it is very likely that taxpayers will be deterred from pursuing tax appeals because of the potential impact on their business and personal reputation in a small community. Notably, the only avenue for appeal where a taxpayer disagrees with a penalty levied by Revenue is to the courts. However, the feedback we have received from members is that taxpayers rarely pursue such appeals as the court hearing must be held in public.

There is mixed experience internationally as to whether tax appeal hearings are held in public. In New Zealand, a country with a similar sized population to Ireland, hearings before the Taxation and Charities Review Authority are held in private. While tax appeals before the First-tier Tribunal in the UK are heard in public, as Ireland is no bigger than a large UK city, the context for holding hearings in public is fundamentally different. In smaller societies, the prospect of being named in any proceedings with a revenue authority is a much greater deterrent for taxpayers.

We are in no doubt that removing the option for taxpayers to choose to have their appeal hearing in private would deter taxpayers from exercising their right to appeal Revenue assessments that are excessive. In particular, it could act to discourage those taxpayers who use and need the appeals system most, i.e., individuals and small/medium sized business taxpayers.

3.2 Provide certainty regarding the 4-year time limit

In general, there is a 4-year time limit within which Revenue can review a tax return filed by a taxpayer and raise assessments. Similarly, a claim for a relief for a particular tax year can generally only be made within 4 years after the tax year for which the claim for relief is made. There are some exceptions to this general rule. For example, Revenue can can raise assessments outside the 4-year time

[11] Revenue Commissioners, 2024 Annual Report

limit where the tax return for the tax year does not contain a full and true disclosure of all material facts relating to the calculation of the tax liability.

The 4-year time limit is an important safeguard for taxpayers as it provides finality and closure in respect of their tax affairs. Without this safeguard, taxpayers could face the possibility of assessments from Revenue many years later with interest accumulating at a rate of 8% or 10% per annum. It also means that taxpayers are not required to keep records indefinitely. Notably, the IMF recommends that a key governance feature to ensure adequate taxpayer safeguards in tax procedures includes placing appropriate time limitations and clear conditions on the ability of tax authorities to re-examine a tax return and issue a re-assessment.[12]

The recent High Court decisions in the cases of *The Revenue Commissioners v Tobin*[13] and *O'Sullivan v The Revenue Commissioners*[14] raise serious concerns regarding the effectiveness of the 4-year time limit in Ireland. The court in the *Tobin* case considered the scope of the obligation imposed on the taxpayer by the requirement to make a "*full and true disclosure of all material facts*" in their income tax return pursuant to section 955(2) TCA 1997 and whether the obligation can be satisfied by a taxpayer filing what they believe to be a full and true return.

Revenue successfully argued that Mr. Tobin's tax return did not contain a full and true disclosure of all material facts necessary for making the assessment and, as such, were permitted to issue an amended assessment outside of the 4-year time limit. In reaching its decision, the court held that the test for what constitutes a full and true disclosure of all material facts is an objective one and equates to the complete accuracy of the tax return. The taxpayer's subjective belief, however well founded, is irrelevant. The subsequent High Court judgement in *O'Sullivan* confirms that section 955(2) TCA 1997 should be read as an objective test.

These High Court decisions are a concerning development as they make no distinction between taxpayers who have acted fraudulently or negligently and those who have made genuine efforts to comply. Following the recent High Court decisions, it would appear that an inadvertent typo or omission by a taxpayer in completing their tax return (which in the case of the Form CT1 for 2024 is over 60 pages) could potentially result in the 4-year time limit not applying, notwithstanding that they have made every effort to be tax compliant.

The High Court judgements were based on an interpretation of section 955(2) TCA 1997 in the context of the wider Part 41 TCA 1997. These legislative provisions were replaced by the current self-assessment system in Part 41A TCA

[12] Sofrona, Lydia, Waerzeggers, Christophe and Crowley Brendan. 2025. "Strengthening Tax Governance Through Legal Design". IMF Working Paper No. 25/17. International Monetary Fund. Washington D.C., at page 31.
[13] [2024] IEHC 196
[14] [2024] IEHC 611

1997 for periods after 2012. Broader exclusions from the 4-year time limit were included at that time. For example, section 959AC TCA 1997 disapplies the 4-year time limit when a Revenue officer is not satisfied with the sufficiency of a return. In our view, that exclusion is so broad in scope it entirely undermines the general rule.

Our members are seriously concerned that a similar approach by the courts to interpreting the current post-2012 regime would effectively negate any protection afforded by the 4-year time limit. Feedback from our members indicates that following the High Court decisions, there is a perception among business internationally that Ireland does not have a statute of limitations for tax purposes.

When the 4-year time limits were introduced in 2003, the then Minister for Finance stated he was satisfied that they achieved the necessary balance between establishing a fair and uniform system for taxpayers while providing necessary protection for the Exchequer.[15] Our members disagree and following the recent High Court decisions, it is clear that the pre-2012 legislation underpinning the 4-year time limit, which had fewer exclusions than the existing regime, was unfairly balanced against taxpayers. We strongly urge that the 4-year time limit and the related exclusions are reviewed.

3.3 Impose proportionate sanctions for administrative errors

The Institute recognises the role of penalties in encouraging compliant behaviour by taxpayers. However, it is essential that the penalties which apply for a failure to comply with a tax rule are appropriate.

There are instances in the Irish tax code where the penalties which apply for non-compliance have a disproportionate impact on certain cohorts of taxpayers. There are also cases where the penalties which apply for administrative errors are entirely disproportionate and consequently, undermine the objective of the underlying tax measure.

3.3.1 ERR

Section 897C TCA 1997 which introduced ERR for employers, came into operation with effect from 1 January 2024. The section requires employers to report details of certain non-taxable payments and benefits to their staff.

We recognise the value of collecting data on non-taxable payments/ benefits for Revenue and to ensure compliance with the tax rules for such payments. However, the stipulation that this information must be reported in real-time places

[15] Parliamentary Question No. 87, 4 July 2024

a very significant administrative burden on businesses, particularly, smaller businesses.

We welcomed the Finance Act 2024 amendments to the Small Benefit Exemption to increase the maximum value of small benefits from €1,000 to €1,500 and the number of benefits that an employee can receive from two to five. While these changes have helped to address some of the challenges experienced by employers in reporting such benefits under ERR, uncertainty remains over Revenue's treatment of some food and beverages provided to employees, such as working lunches.

Revenue's view is that a working lunch may be considered a benefit within the scope of the Small Benefit Exemption in certain circumstances. In which case, how is an employer to ascribe an accurate value to the benefit each employee has enjoyed from such a lunch – did the employee have a biscuit/cake as well as a sandwich etc? The practical difficulties are significant and the implications are not trivial: if an employer fails to report a non-taxable small benefit in real-time under ERR, a fixed penalty of €4,000 can apply.

Furthermore, as the rules stipulate that only the first five benefits in any year can qualify for the exemption, any additional benefit granted later in the year by an employer will be subject to income tax, even if the cumulative value of all the benefits paid is less than €1,500. This means that a working lunch, which Revenue believes to be a benefit under the Small Benefit Exemption, could result in a voucher given to an employee at Christmas, for example as a reward for their work throughout the year, being taxable because the number of permissible benefits qualifying for the exemption has been exceeded. We do not believe that this is the policy intention.

Revenue paused the imposition of penalties for 2024 to give employers time to adjust to the new ERR rules. However, the reality is that an employer who inadvertently omits to report any small benefit or payment made to an employee of the remote working daily allowance and business travel and subsistence expenses, all of which are non-taxable, now face a €4,000 penalty even though there may be no risk of an underpayment of tax. Furthermore, as the payments/benefits must be reported in real-time, a penalty could apply even where an omission is discovered by an employer and subsequently reported to Revenue at the earliest opportunity.

In our view, such a penal sanction is disproportionate and places an inordinate burden on smaller businesses that have limited resources. We strongly urge that the level of this penalty be reconsidered and replaced with a more appropriate sanction.

3.3.2 iXBRL Financial Statements

In general, the filing of financial statements in iXBRL format is mandatory for large companies. Revenue's current administrative practice allows for the filing of iXBRL financial statements within three months after the due date for filing the Form CT1. If a company files its iXBRL financial statements outside of this timeframe, the Form CT1 is deemed to be incomplete.

Revenue's guidance currently recognises that in certain limited circumstances it may be necessary to file draft/provisional financial statements. However, Revenue recently updated its guidance[16] to note that Revenue will no longer accept draft financial statements in iXBRL format from 1 January 2026 . This will have a very significant impact for a large number of companies operating in Ireland.

The Institute acknowledges the importance of iXBRL financial statements in ensuring that Revenue has the necessary data available to perform their risk analysis of the Form CT1 filed by the taxpayer. However, there may be valid reasons why it is not possible to file final iXBRL financial statements by the due date and in most cases, when the financial statements are finalised, there will be no impact on the figures reported in the Form CT1 filed by the taxpayer.

We outline below some of the reasons why iXBRL financial statements may not be finalised by the due date:

- Firstly, and perhaps most importantly, it must be recognised that an auditor is independent of the taxpayer. The finalisation of the financial statements is dependent on the completion of the audit of the company accounts which is not within the sole control of the taxpayer. Auditors must thoroughly query and test financial data to ensure that investors, lenders, and other stakeholders can rely on the audited information.

- In some cases, the audit of the company's accounts cannot be finalised pending resolution of going concern issues. This could happen where there is a question as to the company's solvency or where there is an active fundraising round or refinancing of debt. In such a scenario, the prospect of surcharges applying would exacerbate this problem.

- There are an increasing number of taxpayers using finance shared service centres (SSCs) that are responsible for managing compliance requirements, including statutory audits, for many group entities across jurisdictions. Often, this is done for cost efficiencies but it can cause significant delays in finalising

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[16] Paragraph 3.1.4 of the *Submission of iXBRL Financial Statements as part of Corporation Tax Returns* Manual, updated May 2025.

accounts in the initial years after the SSC is established, as the accounting teams may have limited knowledge of the underlying transactions making the audit process difficult, and the local financial controllers may have departed as part of the cost saving initiative. Also, the focus of group management may be on the consolidated accounts rather than finalising the local statutory audits.

Where iXBRL financial statements are deemed to be filed late, the consequences for the taxpayer are significant:

- A surcharge of 10% of the corporation tax liability for the period can apply (which is capped at €63,485) where the iXBRL financial statements are filed outside of the 3-month concessionary period, even where a company has filed its corporation tax return and paid its corporation tax liability in full and on time. For example, if a company has a corporation tax liability of €500,000, which it pays on time, but files its iXBRL financial statements a week after the 3-month concessionary period expires, a surcharge of €50,000 can be imposed.

- The surcharge is treated as additional tax due by the company meaning statutory interest at a daily rate of 0.0219% applies to the surcharge.

- A failure to submit the iXBRL financial statements as part of the return results in an incorrect return for the purposes of section 1085 TCA 1997. This can result in the restriction of loss relief or group relief up to a maximum restriction of €158,715 and it can also potentially impact the validity of elections made on the Form CT1, such as an election under section 434(3A) TCA 1997 where the taxpayer is a close company.

In our view, the imposition of the 10% surcharge for the late filing of iXBRL financial statements on companies that have a strong compliance record for filing corporation tax returns and making tax payments on time is not a proportionate sanction. It is particularly harsh when the taxpayer has filed the relevant tax return and paid the tax liability on time, i.e., there has been no underpayment of tax.

The disproportionate nature of the surcharge is evident from a recent TAC determination which we have summarised below:

TAC Determination 42TACD2025

The appeal concerned a taxpayer who filed their corporation tax return and paid the tax due on time but failed to correctly upload their iXBRL financial statements. The relevant iXBRL file was generated but was not accepted by Revenue’s online platform. The tax agent was unaware that the upload had not been successfully completed.

As there is no facility on ROS to determine if the iXBRL financial statements for a taxpayer are outstanding, the tax agent was not immediately informed that there was an issue with the filing of the iXBRL financial statements.

In the case, Revenue issued an amended assessment which included a 10% surcharge of €13,350 for late filing even though all tax due had been paid on time and there was no loss to the Exchequer. The Commissioner appeared to accept that the taxpayer had made an honest and genuine error and had historically been compliant with their tax obligations. However, in the absence of any supervisory jurisdiction over Revenue's procedures or the conduct of Revenue, the Commissioner found that Revenue was permitted to impose the surcharge.

In our view, this TAC determination illustrates that the legislation, as currently drafted, fails to take account of taxpayers that are doing their best to comply.

In contrast to the surcharge which applies for the late filing of iXBRL financial statements, where a company files its annual return late with the Companies Registration Office (CRO), a late filing fee of €100 applies with a daily late fee of €3 accruing thereafter, up to a maximum late fee of €1,200 per return.

In the UK, the deadline for filing a company tax return and the iXBRL financial statements with HMRC is generally 12 months after the end of the accounting period. Notably, the penalty in the UK is £200 if the iXBRL financial statements are filed within 6 months of the deadline.[17] After this date, a tax-geared penalty applies, but it is levied on the tax outstanding, rather than the total tax liability.

We consider that the sanctions which apply for the late filing of iXBRL financial statements are disproportionate. A more proportionate sanction would be a fixed penalty rather than a tax-geared penalty. Tax geared penalties would continue to apply where there has been an underpayment of tax, ensuring that the Exchequer is protected.

If policymakers consider it is not appropriate to replace the surcharge with a fixed penalty, an alternative approach would be to amend section 1065 TCA 1997 to afford Revenue the discretion to mitigate the surcharge in suitable circumstances.

Revenue have a discretionary power under section 1065 to mitigate any penalty or to stay or compound any proceedings for the recovery of any fine or penalty. This legislation should be amended to specifically provide Revenue with the power to mitigate the late filing surcharge.

[17] https://www.gov.uk/company-tax-returns/penalties-for-late-filing

Currently, the late filing surcharge does not come within the scope of section 1065 as it is not considered a penalty despite the fact that it is clearly penal in nature. Clarification as to the circumstances in which Revenue would exercise their discretion to mitigate the surcharge could be set out in guidance.

In fact, in the UK, it is possible for a taxpayer to appeal the application of penalties for a late return or payment on the basis that they had a ‘reasonable excuse’. The ‘reasonable excuse’ provision only applies where there were circumstances which stopped a person from meeting a tax obligation despite having taken reasonable care to meet the obligation. Where the taxpayer can demonstrate that they had a ‘reasonable excuse’, HMRC may waive the late filing penalty. HMRC provides guidance on its website on the meaning of what can be regarded as a reasonable excuse. The meaning of the terms has also been developed through caselaw over time.

4 Extend tax reliefs due to sunset on 31 December 2025

There are a number of tax reliefs which are due to sunset on 31 December 2025. In line with the Department's Guidelines on Tax Expenditures,[18] a review of these reliefs must be undertaken by the end of the sunset period. Where the tax expenditure is a notified State aid, an application to the European Commission is required to extend the relevant relief/credit.

We note that the Department of Finance adopts the revenue forgone method for the costing of tax expenditures. This is generally estimated by comparing the revenue expected under the current structure versus the revenue expected when the tax expenditure is in place. As this approach assumes no change in the behaviour of individuals or firms, it is recognised that the method can give an exaggerated estimate of the cost of an expenditure.[19]

We consider the evaluation of tax expenditures should be done on a dynamic rather than static basis. For example, with SARP, in addition to evaluating the revenue foregone, policymakers should also consider the taxes collected from those individuals who participate in the regime as a benefit to the Exchequer which would not have arisen but for the tax expenditure (i.e., SARP).

We outline below a number of key tax reliefs which should be extended and our recommendations for the improvement of these measures.

4.1 KEEP

We strongly urge that the KEEP is extended beyond its current expiry date of 31 December 2025. However, as outlined at paragraph 2.2.1, we believe legislative reforms are needed to improve its feasibility in order to full deliver its policy objective of helping SMEs to attract and retain key employees

4.2 Digital Games Corporation Tax Credit

The Digital Games Corporation Tax Credit, which was introduced in Finance Act 2021 to incentivise the development and growth of the Irish digital gaming industry, is due to expire at the end of 2025. In our view, the credit should be extended and it should be benchmarked against incentives offered by key competitor countries to ensure that Ireland can compete internationally in this sector.

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[18] Department of Finance, Tax Expenditure Evaluation – Updated Guidelines, October 2024.
[19] Tax Expenditures, Tax Strategy Group – 19/12, Tax Strategy Group, July 2019.

We have received feedback that the onerous clawback provisions which apply for the Digital Games Corporation Tax Credit negatively impact decisions by companies on whether to locate digital games development companies in Ireland.

Section 481A(26) TCA 1997 provides for a clawback where it is found that the payment of all or some of the Digital Games Corporation Tax Credit was not authorised. In such cases, the clawback may be assessed on the company, any director of the company, or any person who is the beneficial owner or able to control more than 15% of the ordinary share capital of the digital games development company.

For the globally significant digital gaming companies to invest in Ireland, holding directors and shareholders personally liable is not workable. It would appear that the clawback provisions are based on those which apply for the Film Corporation Tax Credit even though the film industry significantly differs to the digital gaming industry in terms of how companies are structured.

We believe legislative amendment of the clawback provisions is needed if the Digital Games Corporation Tax Credit can deliver its policy objective of incentivising increased investment by digital games development companies in Ireland.

4.3 SARP & FED

SARP is a critical part of Ireland's competitive offering to attract FDI and the relocation of high-value employment to the State. Persuading highly skilled individuals and senior decision-makers to move to Ireland is challenging given the high rates of personal taxation and the intense competition for top talent across many jurisdictions. Retaining SARP and continually benchmarking the Irish regime against incentives offered by key competitor countries is essential to enable Ireland to compete for talent on a global stage.

The FED is an income tax relief available to employees who temporarily carry out their duties overseas in specific countries, earmarked by the Government as potential export markets. The FED plays an important role in encouraging and incentivising Irish businesses to export to these new markets. Given the current geopolitical climate, it is important that the FED is retained and improved so that it can support Irish SMEs in diversifying and developing new export markets.

The Department of Finance is currently evaluating the SARP and the FED to assess their continued relevance, cost, impact, and efficiency of expenditure. As part of this review process, the Department has asked the Institute to complete a questionnaire on both reliefs. To help us formulate our response to the questions posed by the Department, we are currently undertaking a survey of our members who advise businesses on making SARP and FED claims and businesses that have employees who are claiming the SARP and FED.

We will outline the survey findings and our recommendations on the SARP and FED in a follow up submission to the Department by the requested deadline for feedback of 6 June.

5 Amendments to the taxation of pensions

5.1 Finance Act 2024 changes to the SFT

Finance Act 2024 made a number of changes to the operation of the SFT, including a phased increase to the level of the SFT to €2.8 million by 2029 and then the higher of €2.8 million or an amount adjusted in line with the Earnings, Hours and Employment Costs Survey from 2030 onwards.

Individuals with BCEs occurring before the SFT increases in Finance Act 2024 take effect are denied much of the benefit of these increases due to the artificial inflation of the value of their previous BCEs under existing SFT provisions.

As the increases in the SFT incorporate a catch-up element reflecting a multi-year period of non-indexation of the SFT, the application of the indexation mechanism in paragraph 5 of Schedule 23B means prior BCEs are indexed far above the actual rate of inflation over the period between those prior events and the current BCE. We do not believe that this outcome is intended.

> *Example:*
>
> *Jane retires a pension scheme of €1m in 2024 and another pension of €1.8m in 2029.*
>
> *As a result of the operation of the formula in Paragraph 5(2) of Schedule 23B, in determining the balance of the SFT available to be used in 2029, Jane will be deemed to have already used €1.4m of her available SFT (i.e., €2.8m/€2m [current cap in 2029/previous cap at point of previous BCE] = 1.4 x €1m = €1.4m).*
>
> *This means that the SFT balance available to be used in 2029 is €1.4m resulting in a chargeable excess of €400,000.*

To address this issue, paragraph 5 of Schedule 23B should be amended to provide that any prior BCE events will be indexed to take account of the intervening increase in average wages, in a similar manner to the way in which the SFT will be inflated after 2030, under the provisions of section 13 of Finance Act 2024.

5.2 Remove the age-related limits and the earnings limit on a phased basis

In addition to the SFT which sets a lifetime limit on tax-relieved pension contributions, annual limits apply to the tax relief available on pension contributions based on an individual's age and an earnings limit of €115,000. Both the Commission on Taxation and Welfare and the report on the Examination of the Standard Fund Threshold[20] recommended the age-related limits and the earnings limit to be removed on a phased basis.

We note the confirmation by the then Minister for Finance, Jack Chambers T.D., last September[21] that a cross sectoral implementation group with the Department of Finance and Revenue, as well as other relevant state bodies/departments, would be established to consider the recommendations of the Examination of the Standard Fund Threshold. We urge that work on these issues are prioritised by the interdepartmental group.

5.3 Equitable tax treatment across all pension arrangements

Finance Act 2024 curtailed the benefit in kind (BIK) exemption on employer contributions to 100% of the employee's salary in the year of assessment. This change was intended to address concerns about a small number of cases where relatives of the business owner were employed on artificially low wages and benefited from large tax-free PRSA employer contributions.

However, it severely limits the retirement savings options of business owners who often award themselves modest pay in favour of reinvestment of available funds in the early stages of their businesses' development. As these business owners approach retirement, they are more likely to make larger contributions to build up savings they were unable to put aside at leaner stages in the business. The changes in Finance Act 2024 now rule out that option and that is unfair.

The whole purpose of abolishing BIK on employer contributions was to level the playing field with occupational pension schemes. Now, PRSA holders are disadvantaged because the funding rules for an occupational scheme, which are based on the employee's age, salary and years of service, are a lot less restrictive.

The change to PRSAs is also in direct contravention of the Commission on Taxation and Welfare's recommendation that savers should be allowed the flexibility to contribute to their retirement as and when they can afford to do so. This reflected the Commission's view that "*the taxation system should be responsive and capable of adapting to the changing nature of work and the economic environment*".[22]

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[20] Examination of the Standard Fund Threshold - Dr. Donal de Buitléir, September 2024
[21] https://www.gov.ie/ga/oraid/2f80c-opening-statement-by-minister-chambers-standard-fund-threshold/
[22] Commission on Taxation and Welfare Report, pg 159

The amendment adds further complication to the pensions landscape and goes against the objective of simplification recommended by the Interdepartmental Group on Pensions Reform and Taxation.[23]

We strongly support simplification of pensions and the Commission on Taxation and Welfare's recommendation that anomalies in the tax treatment of different retirement arrangements should be eliminated, as far as possible.

At a minimum, the limit on employer contributions to a PRSA which qualifies for the BIK exemption should be increased from 100% of the employee's remuneration to 125% of the employee's remuneration where the employee is 50 years of age or older. This would provide more flexibility to business owners, who were unable to fund their retirement at the earlier stages of the development of their business, to make larger contributions to a PRSA as they approach retirement age.

[23] Report of the Interdepartmental Pensions Reform and Taxation Group, November 2020, pg 33

6 Tax technical measures arising from the implementation of Pillar Two

Following the transposition of the EU Minimum Tax Directive, to implement the Pillar Two GloBE Rules into Irish law in Finance (No.2) Act 2023, a number of further issues, which require clarification, have been identified. We understand from discussions with Revenue at the TALC BEPS Sub-committee that clarification of these issues necessitate an amendment to the Irish legislation implementing the GloBE Rules.

6.1 Tax treatment of compensation payments for QDTT, UTPR, IIR

At present, the Irish legislation provides for the non-taxation of payments made between members of a QDTT filing group (section 111AAO TCA 1997) or a UTPR filing group (section 111AAL TCA 1997) such that where a group filer makes a payment on behalf of another constituent entity, that other constituent entity may compensate (on a tax-free basis) the filer in respect of the QDTT liability paid on its behalf.

While this is helpful, it does not address the fact that there may be a commercial need for other forms of compensation in respect of Pillar Two tax liabilities to be made between group members.

For instance, it may be the case that because of the jurisdictional blending rules, the amount of QDTT allocated between entities in a jurisdiction is different to the amount that would have been allocated had the computation of top-up tax been done on a standalone basis rather than a jurisdiction basis.

For example, two entities in Ireland might have identical amounts of GloBE income and identical amounts of adjusted covered taxes. In such a scenario, one would not expect the jurisdictional blending to have any impact on the QDTT between the entities. However, if one of those entities is entitled to a material reduction due to the substance-based income exclusion (SBIE) then the effect of the jurisdictional blending would mean that the benefit from that deduction would be shared between the two entities rather than allocated solely to the entity which gave rise to the benefit.

There may be important commercial reasons why it would be necessary for the company that gave rise to the benefit to be compensated by the other company to the tax value of that benefit. This could be the case where, for example, the two entities are located in Ireland and owned by the same MNE group but they are operated entirely independently of one another, and, therefore, there is a commercial necessity not to mix tax (or other) costs between them.

A similar issue can rise where there are minority investors in one entity in Ireland whereby the socialisation of QDTT liabilities relevant to the other entities in Ireland (or, indeed, the allocation of a UTPR top-up amount with respect to non-Irish entities owned by the majority investor but not by the minority investor) could arise. In these circumstances, there may be a commercial necessity to "true up" for any socialisation impact that might arise as a consequence of the jurisdictional blending rules.

We recommend the legislation is amended to treat compensation payments of this type between members of the same MNE group as disregarded for the purposes of corporation tax and dividend withholding tax (whether the payments are made by or to a group located in Ireland or elsewhere).

6.2 Allocation methodology of the UTPR

Neither the GloBE Rules nor the EU Minimum Tax Directive prescribe a manner for allocating the UTPR top up amount allocated to a jurisdiction between the relevant entities located in that jurisdiction. Therefore, it is within the competence of Ireland to allocate a UTPR top up tax between entities in the State in whatever manner it sees fit and this will have no impact on the application of the URPR safe harbour rules.

At present, the UTPR allocation methodology in section 111N TCA 1997 applies to the equivalent of the jurisdictional allocation key to each entity in Ireland. This approach may cause commercial issues where there are minority investors in an entity that is within scope of a UTPR allocation. This might be in a joint venture arrangement, a minority-owned constituent entity (MOCE), or where there is a small minority investor in a group company.

As outlined above, in relation to compensation payments, there may be a commercial desire or necessity to avoid socialising a UTPR cost with such an entity where there are third party investors who may be adversely affected.

One possible approach to this UTPR allocation issue would be to follow a model similar to that used in respect of QDTT for securitisation entities: so long as there is at least one other constituent entity in Ireland that is not part of an orphan subgroup, the UTPR allocation could be made against those entities and not allocated to any of the orphan subgroup entities.

A more general solution would be to give discretion to MNE groups as to how to allocate the UTPR between group members (with the current allocation mechanism retained as a backstop). This would not solve the issue in situations where there were no other entities in Ireland but it would, at least, resolve the problem in many cases.

Where there are no other entities in Ireland to which a UTPR allocation could be made, there would seem to be no other option but to allocate the Irish component of UTPR charge to the orphan sub-group. Such an occurrence may form part of a larger problem with compensation payments, as discussed above and hence, a legislative amendment may be preferable so as to make compensation payments of this type tax-free between members of the same MNE group.

6.3 Loss utilisation rule for non-Irish group members

Finance Act 2024 amended section 111AW TCA 1997 imposing a loss utilisation ordering rule. This change was necessary due to the absence of an ordering rule for Irish corporation tax purposes. However, the rule applies for all Pillar Two calculations including in respect of non-Irish group entities (for example under the IIR) and does not take account of the fact that other countries may have rules or practices governing loss utilisation.

If a country had local ordering legislation or ordering guidance, a foreign group entity would be required to prepare one set of calculations for local corporate tax purposes, and a different set of ‘notional’ tax calculations for Pillar Two purposes, which over time would become very difficult to administer.

We recommend that the legislation is amended to account for situations where foreign countries have ordering rules for the use of losses forward. For example, the following words could be added as an opening line to section 111AW(2):

> *“Where the position in relation to the ordering of the use of losses in a jurisdiction is unclear,”*

The use of the word “position”, rather than “legislation” in this context would be important as countries may have practices or guidance on such matters rather than legislation.

We would also suggest that similar wording is applied to section 111X(8)(b) TCA 1997 for the same reason.

6.4 Definition of a joint venture

Section 111AO TCA 1997 defines a joint venture as follows:

> *““joint venture” means an entity of which at least 50 per cent of its ownership interests are held directly or indirectly by* ***its*** *ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity but shall not include…”*

This definition does not align with the definitions provided in Article 10.1 of the GloBE Model Rules and Article 36(1)(a) of the EU Minimum Tax Directive. In both cases, the relevant criteria are whether the ultimate parent entities (UPEs) account for the entity via the equity method and whether a 50% ownership relationship exists.

However, in section 111AO, the test appears to be inverted, requiring the entity to identify its UPE and then to determine whether the equity method accounting is applied. By definition, an entity that is a joint venture should not have a UPE of its own, as a UPE is an entity which consolidates constituent entities on a line-by-line basis, whereas a joint venture is held via the equity method.

The definition in the GloBE Rules and EU Minimum Tax Directive both use the term "the" UPE instead of "its" UPE. While we believe it would be preferable to replace the term "its" UPE with the term "an" UPE, at a minimum, the definition should be amended to align with that provided in the GloBE Rules.

The alternative legislative amendments which could be made are:

> *"joint venture" means an entity of which at least 50 per cent of its ownership interests are held directly or indirectly by ~~its~~ an / the ultimate parent entity and whose financial results are reported under the equity method in the consolidated financial statements of that / the ultimate parent entity but shall not include…"*

6.5 Application of Section 111B TCA 1997

The Revenue Tax and Duty Manual (TDM) on Part 4A TCA 1997 includes the following commentary with respect to the impact of the OECD's Administrative Guidance on the application of the GloBE rules in Ireland:

> *"In general, OECD Administrative Guidance is interpretative in nature, i.e., providing clarity as to the operation of the OECD Pillar Two Model Rules. However, there are instances where the OECD Administrative Guidance introduces a supplementary rule. In these instances, primary legislation is required in order to give effect to the supplementary rule in Irish legislation. This is because the primary legislation cannot be construed in accordance with the Administrative Guidance if the primary legislation does not already contain the supplementary rule. Where that is the case, the primary legislation will commence in accordance with the relevant provisions of the relevant Finance Act. Where primary legislation is not required, and the OECD Administrative Guidance has been adopted either by way of inclusion in the definition of "OECD Pillar Two guidance" in section 111B(1) or by way of order*

of the Minister for Finance in accordance with section 111B(3), then it should be considered to provide certainty with regard to the application of a rule already in force and therefore a commencement date is not required in respect of that OECD Administrative Guidance (unless the Administrative Guidance provides for a specific commencement date).”

The guidance in the TDM will create significant challenges for taxpayers as there is a lack of clarity regarding which aspects of OECD Administrative Guidance currently apply, and the date from which any new OECD guidance will have effect.

As it stands, where OECD Administrative Guidance contains a “supplementary” rule, this rule will need to be added to primary legislation to be given effect (e.g., through a legislative amendment in a Finance Bill). A commencement date will be specified in the Finance Bill for OECD guidance that is considered to be a supplementary rule. All other aspects of OECD Administrative Guidance will be considered to be clarifications, effective for periods commencing on or after 31 December 2023.

Practically, this leaves taxpayers in a very unsatisfactory position. The January 2025 OECD Administrative Guidance provides an illustration of the challenges presented to taxpayers by this approach:

- Many taxpayers have already completed Pillar Two effective tax rate and top-up tax calculations as part of the audit provisioning process for FY2024.

- However, it is entirely unclear whether the January 2025 OECD Administrative Guidance contains supplementary rules that apply prospectively (i.e., from FY2025 or FY2026 onwards) or if the OECD guidance is merely clarificatory in nature.

- Taxpayers are therefore unable to determine whether the guidance (or parts of the guidance) should be applied when completing their FY2024 calculations, creating a risk that tax provisions could be misstated.

Further issues will inevitably arise when future OECD Administrative Guidance is issued. For example:

Scenario 1

A taxpayer files a GloBE Information Return (GIR) for FY2024 in June 2026. New OECD Administrative Guidance is released in July 2026 that contains a clarification applicable to periods commencing on or after 31 December 2023 (i.e., FY2024). The GIR filed by the taxpayer in June 2026 could potentially be incorrect due to the clarification outlined in the new OECD guidance.

Scenario 2

A taxpayer has prepared top-up tax calculations for audit provisioning purposes for the periods FY2024 to FY 2028 based on the relevant OECD guidance available at that time. New OECD Administrative Guidance is released in 2029 and it is determined that this guidance is a clarification of pre-existing guidance and is therefore applicable to periods commencing on or after 31 December 2023. The taxpayer must review five years of top-up tax calculations to ascertain whether the new clarification could have an impact on the top-up tax calculated for these periods. For most of these periods, GIRs would already be filed and top-up tax liabilities would have been paid.

Scenario 3

A taxpayer is preparing to submit the GIR for FY2024 in June 2026. New OECD Administrative Guidance is published in May 2026. It is not clear what aspects of the new OECD guidance are supplementary rules and what aspects should be treated as clarifications of pre-existing guidance and therefore applicable to FY2024.

In the absence of timely feedback from the Department of Finance and Revenue, the taxpayer and its advisers are required to determine what aspects of the new OECD guidance might be supplementary rules. With limited time available before the GIR filing deadline, calculations may need to be updated. The GIR filed in June 2026 may still need to be amended subsequently through no fault of the taxpayer.

Each of the scenarios presented above demonstrate how challenging the approach outlined in the TDM could be for taxpayers.

We firmly believe that the fairest approach for taxpayers would be as follows:

- ***Supplemental Rule*****:** A legislative amendment is required to give effect to a supplementary rule. The supplementary rule should apply prospectively, with an option provided to taxpayers to apply the supplementary rule from an earlier date if so desired.

- ***Clarification*****:** The clarification should apply for fiscal years commencing after the date the OECD Administrative Guidance is added to section 111B TCA 1997 by Ministerial Order. Taxpayers should be provided with an option to apply the clarification to guidance from an earlier date if so desired.

It is important that the Department of Finance clearly states that this approach will be applied, so that taxpayers receive the clarity needed to manage their compliance obligations going forward.

When new guidance is issued by the OECD, it would also be helpful if the Department of Finance and Revenue clarify what aspects of the new guidance constitute new supplementary rules so that taxpayers have certainty in the intervening period between new OECD guidance issuing and the subsequent Finance Bill.

7 Tax technical measures required to mitigate certain unintended consequences

7.1 Remove the requirement to deduct exit tax for those entitled to an exemption under section 189 and 189A TCA 1997

Section 189 TCA 1997 exempts permanently incapacitated individuals from income tax, PRSI, USC and CGT on the income arising and gains accruing from the investment, in whole or in part, of compensation payments which arise from an order under section 38 of the Personal Injuries Assessment Board Act 2003 or the institution by the individual of court proceedings in respect of personal injury claims.

A similar exemption is provided in section 189 TCA 1997 for the trustees of a trust which is established with funds raised by public subscriptions for the benefit of one or more permanently and totally incapacitated individual or individuals.

The exemption only applies to an individual whose aggregate of the income and gains derived from such compensation payments exceeds 50% of the aggregate total income and total chargeable gains (including allowable losses) of the individual for the year of assessment. Revenue's guidance on the interpretation of "permanently and totally incapacitated" indicates that an individual meeting this test is "*not capable of earning a living from any kind of work*" and the incapacity must also be permanent.

There is specific provision in the legislation which means that deposit interest retention tax (DIRT) on interest earned on bank accounts and dividend withholding tax (DWT) on dividends is not required to be withheld once the appropriate forms are completed by or on behalf of the taxpayer entitled to the exemption under section 189 or 189A.

However, a similar exemption process does not exist for life assurance exit tax or tax deducted by investment undertakings. Instead, life assurance exit tax is deducted in the normal manner and the taxpayer exempt under section 189 or 189A must make a claim for a repayment of the exit tax in accordance with section 730GA TCA 1997. Similarly, a repayment of any tax deducted by an investment undertaking must be made in accordance with section 739G.

Once the tax is repaid, the funds must then be reinvested with commissions or charges arising each time such funds are reinvested. As the individuals who qualify for an exemption under section 189, and the beneficiaries of the trusts which qualify for an exemption under 189A, are reliant on the income and gains from these investments to provide them with a sustainable source of income, it would be preferable if the payment of such commissions/charges could be avoided.

In addition, there will inevitably be a delay between the time the tax is deducted, the filing of the tax return, the refund of the tax deducted and reinvestment of the funds, meaning there is a loss of earning potential during this time. Furthermore, in cases where the 8-year deemed disposal rule applies, it is possible that part of an investment would need to be encashed to pay the tax which will ultimately be refunded.

In our view, the legislation should be amended so that, for individuals entitled to the benefit of section 189, exit tax is not required to be withheld by a life assurance company or investment undertaking where an appropriate declaration has been completed, similar to the position which exists for DIRT and DWT. This would remove the unnecessary costs associated with the tax being deducted and subsequently repaid to the taxpayer.

Notably, a facility already exists to make a payment without deduction of exit tax for specific categories of investors such as a pension scheme, a non-resident individual or charities, provided the life assurance company or investment undertaking is in possession of the appropriate declarations in advance of the chargeable event.

7.2 Residential Premises Rental Income Relief

Section 480C TCA 1997 provides for income tax relief for individual landlords of rented residential property. The objective of the relief is to provide an incentive for landlords, specifically targeted at attracting and retaining small-scale landlords in the private sector.

The legislation includes a requirement for the landlord to have been issued with a tax clearance certificate, which has not been rescinded, on 31 December in the year of assessment.

While we recognise the purpose of this requirement is to ensure that a landlord who claims the relief is tax compliant, in our view, the requirement for a landlord to hold a tax clearance certificate on 31 December of the year for which the relief is claimed is unnecessarily restrictive.

For example, a landlord may have been fully tax compliant on 31 December 2024 but they may not have held a tax clearance certificate on that date unless clearance was needed for another purpose. In many cases, individual landlords will only consider the relief when filing their 2024 income tax returns in October/November of this year as it is the first year in which a claim can be made. Excluding such tax compliant landlords from availing of the relief simply because they did not apply for and obtain the necessary certificate by 31 December 2024 is contrary to the objective of the relief of attracting and retaining small-scale landlords in the private sector.

In our view, the requirement for a landlord to hold a tax clearance certificate should be amended so that the obligation is for the landlord to hold a tax clearance certificate that has not been rescinded at the time that the claim for the Residential Premises Rental Income Relief is made. Such an amendment would mean that the landlord would be required to be tax compliant for the tax year for which the relief is claimed and up to the date of claiming the relief.

It would be important that such a provision applies in respect of claims for relief made for the tax years 2024 to 2027 inclusive. For landlords who remain in the rental market for the tax years 2024 to 2027, this approach would encourage tax compliance throughout the period and into 2028 when the last claim for relief under section 480C TCA 1997 can be made.

Appendix: Issues for consideration in the future modernisation of capital taxes

Revenue's submission to the Commission on Taxation and Welfare in 2022 outlined its plans for further modernisation and digitalisation of tax administration with a particular emphasis on capital taxes.[24] Revenue has acknowledged that the capital taxes modernisation envisaged in their submission would require legislative change, internal and external change management and would be preceded by a consultation process with stakeholders.[25]

We outline in this Appendix, amendments to the CGT and CAT legislation that we believe should be considered in the context of any deliberations on the future modernisation of Ireland's capital taxes regimes in the following three areas:

- changing the capital taxes payment dates to one date to ease compliance;
- regularly updating exemption thresholds and aggregation periods; and
- amending the CAT code to reflect Ireland's evolving society.

1. Changing the capital taxes payment dates to one date to ease compliance

1.1 CGT payment dates

Under existing rules, there are two payment dates for CGT:

- for disposals of assets during the period from 1 January to 30 November each year (the initial period), CGT on any gains arising must be paid by 15 December in the same year;
- for disposals in December (the later period) CGT on any gains arising must be paid by 31 January of the following year.

Irrespective of the payment date, a CGT return on the disposal must be filed by 31 October of the year following the disposal.

Prior to 2009, 31 days was provided to compute and pay the CGT due for both the initial period and the later period. Finance (No. 2) Act 2008 extended the initial period and reduced the timeframe for the payment of CGT due in respect of the initial period from 31 days to just 15 days.

For practitioners and taxpayers, having two CGT payment dates increases compliance costs and risk. The accurate calculation and payment of CGT on

[24] Revenue Commissioners Submission to the Commission on Taxation and Welfare, January 2022
[25] Minutes of Main TALC meeting, 28 June 2022

gains for 11 months of the year within just 15 days can prove extremely challenging in practice. In many cases, the information needed to assess whether a taxable capital gain arises, may not be available until shortly before the payment deadline. This can mean that a taxpayer is provided with little notice as to the quantum of the tax liability which must be paid.

Furthermore, the systems of foreign investment providers are often not set up to deal with mid-year reporting meaning a payment on account must be made by the taxpayer to ensure there is no exposure to an interest liability.

The Institute would welcome a review of the CGT payment dates and recommends moving from two CGT payment dates to one date i.e., 31 January in the year following the year of disposal.

1.2 CAT payment dates

The valuation date for a gift or inheritance determines the date on which CAT is payable and when CAT returns are due to be filed. Currently the 'CAT year' is split over two calendar years:

- where the valuation date is between 1 January and 31 August, the pay and file deadline is 31 October in that year (Year 1); and
- where the valuation date it is between 1 September and 31 December, the pay and file deadline is 31 October in the following year (Year 2).

Splitting the CAT year over two calendar years is administratively burdensome and inconsistent with the general approach of taxing on a calendar year basis. It can also give rise to confusion, particularly given the small gift exemption applies on a calendar year basis and the free use of property provisions operate so that a gift is deemed to be taken on 31 December of the relevant year.

The Institute would welcome a review of the 'CAT year' and recommends moving it to a calendar year basis so that the Pay and File deadline for a benefit taken between 1 January and 31 December in any year, is 31 October in the following year.

2. Regular review of exemption thresholds and aggregation periods

We welcome the amendment in Finance Act 2024 to increase CAT group thresholds. Announcing the increase in his Budget 2025 Statement, the then Minister for Finance, Jack Chambers T.D., noted the last time the Group A Threshold was increased was in Finance Act 2019 and that the increases to the thresholds were appropriate given the increases in property values in the intervening period.

In our view, as a matter of good practice, the monetary value of thresholds and exemptions should be regularly reviewed and updated to reflect inflation. In particular, we believe it would be timely to review the aspects of the CAT and CGT codes outlined below.

2.1 CAT Small Gift Exemption

The CAT small gift exemption provides that any gift an individual receives up to the value of €3,000 from any person in a calendar year is exempt from CAT. As the small gift exemption has remained at its current level since Finance Act 2003, in real terms the value of the small gift exemption has significantly reduced. We consider it would be appropriate for section 69(2) CATCA 2003 to be amended to increase the value of the small gift exemption in line with inflation since 2003.

2.2 CAT aggregation period

Currently, an individual is liable to CAT on the total of all taxable gifts and inheritances received since 5 December 1991 in excess of the relevant CAT group threshold (Group A, Group B or Group C). Notably, when the 5 December 1991 aggregation date was first introduced this meant that the aggregation period was just 10 years. As the date has not changed since Finance Act 2002, the aggregation period has now increased to 34 years.

The requirement to keep records for 34 years on all gifts/inheritances received in that period is unduly onerous for taxpayers. In many cases, such records will not be in digital format. Notably, the current 34-year aggregation period is the longest since the introduction of CAT.

In death cases, on completing the Form SA2, the taxable value of prior gifts or inheritances received by a beneficiary of the estate since 5 December 1991 under the relevant applicable threshold must be disclosed. Providing this information can be administratively burdensome for beneficiaries and such details are required even in cases where no CAT liability arises and there is no requirement for the beneficiary to file a CAT return in respect of the benefit received because they have not exceeded 80% of the relevant group threshold.

Germany operates a similar group threshold system as Ireland for inheritance and gift tax purposes with tax-free amounts between €20,000 and €500,000 applying, depending on the relationship between the testator/donor and the beneficiary. However, in contrast with the Irish position, in determining the tax due in Germany, it is only acquisitions within the last 10 years that are taken into account.

In addition, in the UK, gifts that a person makes during their lifetime are considered "potentially exempt transfers." This is because a gift is generally exempt from UK inheritance tax if the donor survives for 7 years after the date of the gift.

In our view, the aggregation period for CAT is unduly onerous for taxpayers. The aggregation period should amended so that it is only gifts/inheritances received within the last 10 years that are taken into account.

2.3 CGT indexation

CGT Indexation relief was introduced in the 1970's and continued up to the end of 2002 when it was abolished. Indexation relief meant that in calculating the gain on the disposal of an asset, the allowable expenditure (such as the cost of the asset and certain enhancement expenditure) was adjusted in line with changes in the Consumer Price Index.

The abolition of indexation relief for CGT purposes has resulted in an arbitrary wealth tax which depends on the rate of inflation. In our view, given the level of inflation in recent years, indexation relief should be restored.

3. Changes to the CAT code to reflect Ireland's changing society

As part of any review of the CAT system, it would be important to consider the appropriateness of the code in the context of a modern Irish society including:

- the prevalence of non-marital families, single parent families and divorced parents; and
- the delay in children developing their independence due to factors such as a later start to formal education and the impact of the housing crisis on children having to remain in the family home for longer.

In our view, there are a number of aspects of the CAT code which we believe should be updated to take account of Ireland's changing society.

3.1 Provision for the support, maintenance or education of a minor

Section 82(2) CATCA 2003 provides an exemption for certain payments made during the lifetime of a disponer to a minor child of the disponer, a child of a disponer who is in full-time education and is under 25 years, or regardless of age, a child who is permanently incapacitated. The payments must be made for the support, maintenance or education of the child.

The exemption was extended in Finance Act 2014 to include such payments at a time when both the disponer and the other parent of the child are deceased. This is an important extension of the exemption for children who are orphaned.

However, the exemption is not available in a death scenario where a child’s parents are divorced or in single-parent families and the surviving parent has no role in the child’s life. In these circumstances, the exemption is denied on the basis that the child has a surviving parent even though that parent may have had no role in the child’s life and may never have contributed to the support and maintenance of the child. To address this issue, we believe that section 82(4) CATCA 2003 should be amended to remove the requirement that both parents are deceased.

In addition, consideration should be given to removing the 25-year age limit where the child is in full time education given the existing protections in the legislation which ensure the exemption applies in appropriate circumstances.

3.2 Double tax on an ARF held in trust for a child

In many cases, a parent will seek to establish a trust to provide for their children following their death either because the children are minors or because they do not have the capacity to manage their financial affairs. Where an ARF is distributed to a trust for a child on the death of their parent, a double charge to tax arises. Income tax will arise on the distribution to the trust and the distribution from the trust to the child will be liable to CAT under the normal rules.

In our view, this double charge to tax is inequitable as it does not take into account the need for parents to put appropriate arrangements in place to protect their children who may not have reached the level of maturity necessary to manage their own financial affairs. We suggest that the payment of an ARF to a trust that is for the benefit of a child or children should be treated as exempt on the basis that the payment out from the trust will be subject to CAT.

3.3 Age at which a trust becomes subject to discretionary trust tax

Where a discretionary trust is established to provide for a family, the trust will come within the scope of discretionary trust tax when the youngest ‘principal object’ of the trust reaches the age of 21 years. Principal objects include the spouse and children of the disponer. Where property became subject to a discretionary trust prior to 31 January 1993, the relevant age was 25 years.

In modern society, children develop their independence at a later age than in the past due to a later start to formal education, children being more likely to remain in formal education longer, and the impact of the housing crisis resulting in children remaining in the family home for longer. In light of these changes, consideration should be given to raising the age at which a family discretionary trust becomes subject to discretionary trust tax, to when the youngest ‘principal object’ of the trust reaches the age of 25 years.

3.4 Qualified cohabitants

Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 established a redress scheme which allows a qualified cohabitant, on application to the court, to seek provision from the estate of a deceased cohabitant. On making provision for the cohabitant, the court cannot provide for a share greater than that which a spouse or civil partner would be entitled to on intestacy or by way of a legal right share under the Succession Act 1965.

To qualify as a cohabitating couple under the law, a person must show that they lived in “an intimate and committed” relationship with their former partner. This includes proving that the couple lived together for five years or more, or for two years if the couple have any dependent children. To decide whether a person was part of a cohabiting couple, the Court will also consider:

- The contributions of each person in looking after the home.
- The earning capacity of each partner, and financial dependence of either partner on the other.
- The degree to which they presented themselves to others as a couple.
- Whether there are children.

Section 88A CATCA 2003 provides for a CAT exemption in respect of gifts and inheritances taken by a qualified cohabitant on foot of a court order under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. In contrast, if a deceased person provides for their cohabitee under their will, the benefit will not qualify for the CAT exemption in section 88A and the cohabitees are deemed to be ‘strangers’ meaning the Group C threshold applies to the inheritance.

As a result, instead of providing for a cohabitee in the will, in many cases the couple will decide that the only feasible option is for the cohabitee to make an application to the court following their partner’s death, even though the couple and the wider family would prefer to deal with the estate without court interference. We consider that requiring a grieving cohabitant to make an application to the court in such a scenario is unnecessary and adds further pressure to an already over-burdened court system.

In our view, consideration should be given to amending section 88A so that where an individual fulfils the criteria to be considered a qualified cohabitant under Civil

Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the exemption would apply to the value of the benefit received up to the equivalent of the legal right share. Alternatively, consideration could be given to permitting gifts and inheritances taken by a qualified cohabitant to automatically qualify for the Group A threshold.