Irish Tax Institute

Pre-Budget 2019 Submission

Tax policy and the administration of it can be a game changer in creating the right culture and environment.

WHAT DO IRISH BUSINESSES NEED TO INCREASE PRODUCTIVITY?

- BUSINESS ENVIRONMENT WITH TAX CERTAINTY
- ACCESS TO FINANCE
- MANAGERIAL CAPABILITY AND HUMAN CAPITAL
- INNOVATION AND R&D

BUSINESS ENVIRONMENT WITH TAX CERTAINTY

Certainty can only be achieved through clear tax rules and Revenue guidance, increased predictable and consistent tax administration and effective dispute resolution mechanisms.

There are only 8 weeks to scrutinise complex tax legislative changes from date of publication of the Finance Bill to enactment. In the UK, draft legislation is published 5 months in advance of the Finance Bill.

There are thousands of taxpayers waiting “in the queue” to have their appeals heard. The backlog is growing by 180 new tax appeals per month.

Adequate resourcing of the Tax Appeals Commission and alternative dispute resolution mechanisms are needed to deal with the backlog of tax appeals.

ACCESS TO FINANCE

A lack of internal and external finance in SMEs is hampering innovation and investment in skills.

EII – the income tax incentive for investors, plays a vital role in scaling start-ups and small business but there are many blockages within the scheme.

Capital Gains Tax is the tax that matters most to investors – Ireland has the 3rd highest rate in the OECD.

Ireland’s targeted CGT entrepreneur relief locks out ‘angel investors.’

MANAGERIAL CAPABILITY AND HUMAN CAPITAL

Irish SMEs have difficulties recruiting and retaining skilled workers.

64%↑

Wages in multinationals are 64% higher than in domestic companies. Irish SMEs and start-ups cannot match these high salary levels, hindering their growth and export potential.

Given the high personal tax rates, a workable share options regime (KEEP) is critical.

There is no SARP equivalent to help SMEs attract talent and skills they need from outside Ireland to grow their businesses.

INNOVATION AND R&D

Restrictions on outsourcing and collaboration in the R&D tax credit is at odds with best practice internationally.

Low uptake of R&D tax credit scheme among SMEs due to administrative blockers and cost of processing claims.

%

Almost half of the companies that availed of the R&D tax credit found it difficult to prepare and administer.

35%

Only 35% of companies intended to avail of the R&D tax credit in the next 18 months.

Executive Summary

Many domestic and international bodies have highlighted the need to focus on Irish owned business to build resilience in the Irish economy. The Central Bank, the Irish Fiscal Advisory Council, the National Competitiveness Council, the IMF, the OECD and the European Commission have all commented on the matter. We have made huge strides in many areas; financial services, medical devices, tech and fintech to name some but the productivity of Irish companies is declining.

Focus on Irish business

While much work has been done on enterprise policy, the need to address the productivity and prospects of Irish companies cannot be ignored. The transformative nature of technology and digitalisation makes it an imperative.

Several issues must be tackled if Irish business is to succeed and both tax policy and tax administration issues will be central to making it happen.

What Irish business needs

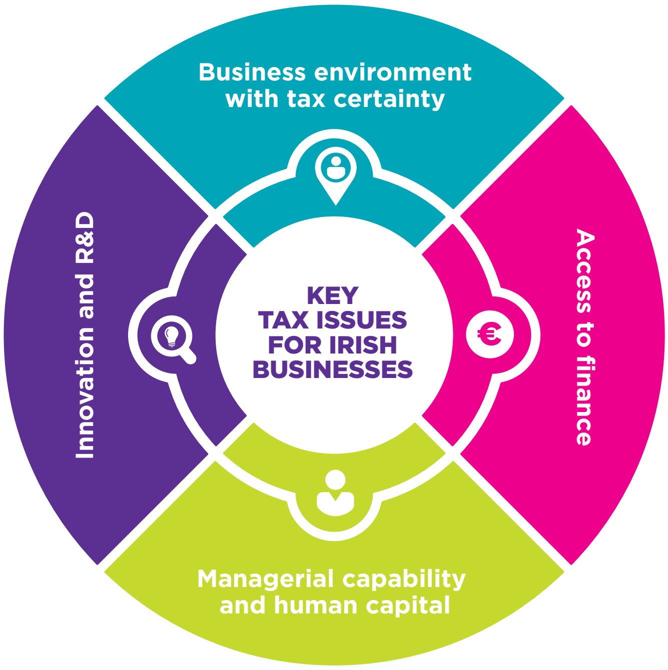
The OECD[1] warns that the resilience of the Irish economy hinges on unblocking the productivity potential of Irish businesses. The OECD says Ireland needs to give entrepreneurs what they need to grow their business. In some cases, access to finance is holding individuals back from taking the step into entrepreneurialism.

The European Commission[2] also highlights productivity issues. The IMF[3] too has stressed the need for productivity growth of Irish companies, through greater support for innovation, and enhancing partnerships of SMEs with research institutions.

The National Competitiveness Council[4] says Ireland has significant potential to increase productivity, but innovation is the key for Irish businesses to evolve into new products, markets and sectors, as well as improving management and further training.

Irish businesses need access to finance and help and expertise to make the right strategic decisions. They need finance for long-term capital investment, human capital, innovation and R&D. This will determine their future success.

It is accepted internationally that tax policy and the administration of it can be a game changer in creating the right culture and environment.



For businesses, certainty is key to confident decision making. With Brexit looming, Irish businesses need, now more than ever, certainty over their tax affairs.

The impact of tax measures such as EII, Revised Entrepreneur Relief, the workability of the R&D regime for SMEs and the effectiveness of our new share options scheme (KEEP) are central to the strategic gear shift that Ireland needs.

Against that backdrop we cannot allow our tax regime to be a blocker of what is good.

Business environment with tax certainty

Political, economic and trade changes beyond our control are bringing uncertainty to the Irish business environment and the outcome remains unknown. The OECD and the IMF[5] have identified practical tools to ensure tax certainty for business through improved tax policy and law design, consistency by tax administrations and effective dispute resolution mechanisms.

Global turbulence now gives urgency to this issue. Irish businesses need certainty over their tax affairs and this can only be achieved through clear tax rules, increased predictable and consistent tax administration and effective dispute resolution mechanisms.

The Finance Bill process

One of the key challenges in the Irish tax policy-making process at present is the insufficient time available to scrutinise and consider potential unintended consequences of legislation once policies have been announced in the Budget. With some very limited exceptions, tax legislation is not published in draft format for discussion in advance of the publication of the Finance Bill. The result is that the legislation only appears for the first time in late October and must pass through all stages of the Dáil and Seanad and be signed by the President before the end of the year.[6]

There are less than three weeks for tax law to be considered from the date of publication to when it is debated at Committee Stage in the Dáil and only two months for the entire process to be completed and the law enacted. Apart from key income tax changes and other sensitive matters, tax legislation should be published for consultation in advance of the Finance Bill.

Need for effective dispute resolution mechanisms

According to the OECD and the IMF, an effective dispute resolution regime plays a critical role in establishing certainty for businesses.

Where disputes arise over the facts of a case or the interpretation of the law, taxpayers may appeal directly to the Tax Appeals Commission. However, there is a heavy build-up of cases in the appeals system, with taxpayers waiting years to have the disputed matter resolved. Urgent action is needed to resolve the backlog in the tax appeals process.

Access to finance

Irish businesses need finance, but they remain heavily reliant on internal funds and on banks.[7] A lack of internal and external finance is hampering innovation amongst SMEs[8], not to mention investment in skills and other important areas.

There is a serious need to look at alternative financing options such as venture capital and angel investors. They are willing to undertake riskier investments. They come with the crucial ingredient that Irish businesses need, and other countries are availing of: mentoring, experience, international business contacts and a hands-on advisory role. While the tax system of other countries embraces angel investors, Ireland locks them out. Critically, Ireland's Revised Entrepreneur Relief is not available to them.

Considering Brexit, the financing constraints for SMEs are most relevant. Research shows it is likely to deter them from exporting. It also shows that Irish companies reporting to have experienced financing difficulties are less likely to engage in exporting activities.[9]

Given the severity of limited access to finance for Irish business, which requires much needed capital to innovate, to hire and train the best staff, our existing tax measures that promote investment become central. These are:

- Ireland's targeted Capital Gains Tax (CGT) relief for entrepreneurs;
- The income tax incentive for individuals who invest in Irish business – the Employment Investment Incentive (EII); and
- The income tax refund scheme available to individuals who start their own business — the Start-up Relief for Entrepreneurs (SURE).

Broadening Revised Entrepreneur Relief

The backdrop of Ireland's high CGT rate makes the analysis of the measures even more important. CGT is unquestionably the tax that matters most to investors and influences their behaviour. Ireland has the third highest CGT rate in the OECD – 13 percentage points above the OECD median.

Ireland's targeted Revised Entrepreneur Relief helps to reduce the high CGT burden on the sale of a business to a limited extent. But this tax measure is uncompetitive when compared with the UK. Entrepreneurs' relief is available in the UK at 10% on the first Stg£10 million gain compared with €1 million in Ireland. (This means the overall effective tax rate on a gain of €10 million in Ireland is 30.7% compared with 10% in the UK).

The relief locks out the important 'angel investors' who not only invest money but experience and industry expertise, a vital factor when we consider the deficit in managerial capability in Irish businesses highlighted by the OECD.

The 10% CGT reduced rate is available only to actual owners and managers of a business and not to third party investors, such as angel investors. The entrepreneur must hold at least 5% of the company's shares and have worked full-time in the business to qualify for the relief.

Need for effective EII and SURE schemes

The Institute welcomes the current consultation being undertaken by the Minister for Finance and Public Expenditure and Reform on the other financing tax measures for Irish businesses – the EII and SURE.

The EII encourages investors to place finance in early stage and small businesses that have limited funding options. They very often rely on finance from family and friends. It plays a vital role in scaling start-ups and small businesses to the next level of growth.

While the EII is a welcome scheme, there are now many blockages within it. Several design features are barriers to investment, such as splitting the tax relief into two tranches, the revised connected party rules and the annual investment limit.

The EU state aid General Block Exemption Regulations (GBER),[10] under which the EII operates, are also having a significant impact on the scheme. It adds to the cost and complexity of claiming EII. There is also a restrictive administrative process which is stifling the use of the relief.

It is particularly difficult for businesses who have been in operation for seven years to qualify for EII under the rules. Under the GBER, companies trading for more than seven years must either:

a) be entering a new geographical market with a new product or service; or
b) have previously raised BES/EII funding within their first seven years of trading.

The GBER restrictions also affect businesses that are less than seven years old in cases where they previously raised EII and now want to raise further investment. The GBER provisions are applied retrospectively to business plans prepared before its introduction, as the follow-on investment must have been foreseen in the original business plan. The business must have foreseen in that business plan, its exact financial requirements for funding throughout the first seven years if further investment utilising the EII scheme is envisaged. This is unrealistic from a commercial perspective. The SURE is an income tax refund scheme available to individuals who start their own business. But it is only available to those who were previously PAYE workers. This means that a previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for the relief. This feature of the SURE acts as a significant barrier to its effectiveness and discriminates against new business founders who were previously self-employed and are starting up another business.

Managerial capability and human capital

The OECD stresses that Ireland needs to think about how to raise the capacity of businesses to implement new ideas and technologies. The Government's National Development Planning Framework also acknowledges the role of human capital.

Research shows that managerial skills in many Irish companies are too weak to allow these businesses to identify and exploit opportunities offered by global companies on their doorsteps.[11]

Wages in multinationals are 64% higher than in domestic companies[12] and the difference is 74% for multinationals of non-EU origin. Irish SMEs and start-ups do not have the money to match these high salaries, hindering their growth and exporting potential.[13]

Need for a workable KEEP share scheme for SMEs

Under these circumstances, Irish SMEs have difficulties recruiting and retaining skilled workers and so our share option regime, the Key Employee Engagement Programme (KEEP) becomes critical. Given the high personal tax rates, a workable share option scheme that can help Irish SMEs to attract talent to grow their business is essential. But the KEEP contains limitations which are significantly impacting its feasibility and ultimately, its success in achieving its policy aim.

Issues surrounding the qualifying criteria for individuals; the design of the cap on share options and the narrow definition of a qualifying holding company under the KEEP are creating difficulties for SMEs to qualify.

New SARP regime to help SMEs attract overseas talent

As the economy approaches full employment, SMEs that are export focused and producing products and services in knowledge intensive areas need to be able to access international talent. Ireland's Special Assignee Relief Programme (SARP) is a policy tool that helps attract talent from abroad, but it effectively locks out Irish SMEs because it is available only to assignees within a multinational group. A new regime focused on SMEs should be considered.

Innovation and R&D

According to the OECD, Irish companies need to invest more in their own research and development activities because they are the drivers of productivity.

Ireland has an attractive R&D tax credit regime, but administrative blockers and the cost of processing claims, are weighing heavily on its success in terms of low take up among SMEs. Research undertaken by the Institute in 2017 found only 35% of all companies surveyed intended to avail of the R&D tax credit in the following 18 months, although this would rise to over 60% if there was more clarity around criteria for qualification. Almost half of the companies who claimed the R&D tax credit found it difficult to prepare and administer.

Of huge concern is the fact that the R&D tax credit regime restricts outsourcing and collaboration, a condition which is at odds with best practice internationally, which actively promotes outsourcing and collaboration with the university sector.[14]

Conclusion

Irish business has the significant potential to increase productivity. Supporting them to internationalise and diversify their products and markets can ensure Ireland's tax base is more resilient to the global changes beyond our control. It is now time to act. Tax policies should be implemented and administered in a seamless way that is easy to understand and apply and are barrier-free for Ireland's SMEs.

Focus on Irish business – what Ireland needs to increase productivity

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Political, economic and trade changes beyond our control are bringing uncertainty to the Irish business environment and the outcome remains unknown. **Considering Brexit, Irish businesses need, now more than ever, certainty over their tax affairs, through clear tax rules and the ability to obtain tax opinions from Revenue.** The OECD/IMF have identified practical tools[15] to enhance tax certainty: • Reducing complexity and improving the clarity of legislation through improved tax policy and law design. • Increasing predictability and consistency by tax administrations. • Effective dispute resolution mechanisms have a critically important role to play in establishing certainty.	**The Finance Bill process is so condensed that there is insufficient time to scrutinise legislation** once announced in the Budget and consider potential unintended consequences of legislative changes. According to the OECD/IMF, *"…legislative and tax policy design issues are a major source of tax uncertainty, mainly through complex and poorly drafted tax legislation."* [16] Often businesses need to obtain an opinion from Revenue where there is uncertainty over the interpretation of tax provisions. We understand from feedback from members that it can take 3-6 months to receive an answer to a technical query from Revenue Technical Service (RTS). If a business cannot obtain a timely response from RTS, this can adversely impact tax relief claims or the decision to proceed with a transaction.	• Apart from key income tax changes and other sensitive measures, **tax legislation should be published for consultation in advance of the Finance Bill**.[17] This could be done on an issue by issue basis throughout the year in the same way that consultation takes place on important policy matters. The UK's tax policy-making process facilitates scrutiny of both policy and legislation, at each stage of the budgetary process.[18] • **Revenue opinions are an inherent part of any self-assessment tax system around the world and must continue.** Revenue has recently introduced enhancements to RTS, including scope for direct engagement with an RTS expert on complex queries and tracking of queries to identify response times. Revenue intend to keep RTS under review and identify improvements.[19] It is essential that meaningful technical responses can be obtained within a timeframe that is in line with published customer standards. • To increase tax certainty for business, **a comprehensive up-to-date list of Revenue precedents should be published**.
An effective dispute resolution regime plays a critical role in establishing certainty for businesses.[20] Taxpayers may appeal directly to the Tax Appeals Commission (TAC) if they are aggrieved by an assessment or determination by Revenue. But there is a heavy build-up of cases in the appeals system.	• TAC has an overwhelming number of appeals on hand and this is increasing daily. • The cost of taking an appeal is of huge concern to taxpayers, given the high cost of interest if the taxpayer is ultimately unsuccessful. The rates of interest in Ireland (8% and 10%) are particularly high when compared with the UK, which has a rate of 3.25% (i.e. tracked at 2.5% above the current Bank of England Base Rate of 0.75%).[21]	The Institute welcomes the review of the TAC's resources which is currently underway. **It is crucial that the TAC is adequately resourced** so that it can operate as intended.

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Taxpayers are not responsible for the delays that have accumulated in the system, but they must pay for these delays, at very high interest rates, should they prove to be unsuccessful with their appeal.	Taxpayers who are waiting 'in the queue' to have their case heard risk a very high tax bill if unsuccessful due to the backlog in the system. • In most cases, taxpayers require legal representation to take an appeal, making the cost of proceeding with the appeal prohibitive for small taxpayers. • Increasingly, Revenue appeal determinations by the TAC in favour of the taxpayer to the High Court. This further increases the costs of proceeding with an appeal for taxpayers.	**Other actions also need to be taken to improve the appeals process[22]:** • A 'stop' on interest until the backlog can be resolved. • Clarity upfront on the basis for Revenue assessments. • An external mechanism to review assessments entering the appeals regime. • Alternative Dispute Resolution mechanisms (mediation or arbitration) should be introduced to reduce the backlog. The UK has a well-developed ADR regime.[23] • A 'small claims court' model for disputes on straightforward issues.
Making tax compliance as easy and cost-effective as possible is essential to maintain Ireland's competitiveness and attractiveness as a good place to do business. Ireland is rated highly in the EU and worldwide as an easy country in which to pay business taxes (4th worldwide in 2018).[24] Maintenance of Ireland's high standard and competitiveness can only be achieved by: • An ongoing focus on the delivery of quality services to business. • Minimising additional compliance costs for business.	Timely processing of taxpayer correspondence is vital to business operations. **Delays in processing VAT registration applications** can add to costs for businesses and hold up VAT refund claims. • Businesses need a VAT number promptly to invoice their sales and recover VAT on their costs. • We understand from feedback from our members that VAT registration applications can take 6 – 10 weeks to be processed. Revenue check applications extensively which can slow down the issue of a VAT number.	• **An ongoing focus on high quality responsive Revenue services for business is vital.** Improving key services for business and tax agents are core elements of Revenue's strategy over the next two years (e.g. timely query-handling and improvements to the telephone service).[25] Revenue use 'call answering time' as the measure of telephone service. HMRC are exploring new metrics, examining performance measures used by commercial call centres, customer exit surveys to gather real-time feedback on call-handling and models to estimate the cost saving to taxpayers (both call cost and opportunity cost) of shorter phone queue times.[26] It may be worth exploring such new metrics in an Irish context. • Revenue intend to introduce a two-tier approach to VAT registrations, which would allow straightforward registrations to be processed more quickly, while applications that are more complex or present a higher risk could be examined in more detail. The two-tier approach should be introduced without delay.

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Investment in electronic services, while welcome, does not displace the need for direct engagement with Revenue to obtain certainty for taxpayers on their tax affairs.	Tax compliance can be particularly burdensome for smaller employers and additional obligations should be minimised wherever possible. The introduction of **PAYE modernisation** in 2019 will significantly increase the frequency of payroll reporting and associated costs for smaller employers, many of whom currently do not use payroll software.	• The Institute welcomes Revenue's engagement with business on the new PAYE regime and Revenue's stated intention to work closely with small employers who may not have payroll software or payroll providers to enable them to fulfil their PAYE reporting obligations in a cost-effective way.[27] The smallest employers should be provided with free PAYE calculation tools to assist them to comply with the new obligations. HMRC provides free payroll software for small employers to help them comply with the UK PAYE real-time reporting regime.[28]
Minor errors or unintentional breaches of the tax rules can result in significant and disproportionate penalties. Fixed penalties that apply to breaches of tax rules were significantly increased in 2008.[29] In many cases, the penalties trebled in amount. The conditions that determine when a penalty applies also changed. It is no longer necessary for a taxpayer to "knowingly" breach the rules. If a taxpayer disagrees with a penalty Revenue is imposing, their only option is to challenge Revenue in Court.	**PAYE modernisation** will result in additional obligations on businesses, and minor breaches could result in substantial penalties. • For example, the absence of an up-to-date employee register at the business address can give rise to a fixed penalty of €4,000 (notwithstanding that this information may be held by the employer's payroll agent.)	• It is timely and necessary to **examine the proportionality of fixed penalties**, given introduction of the new real-time PAYE regime for employers. As Revenue continue to increase their focus on employers' compliance with PAYE obligations, the cumulative effect of these measures could result in the build-up of significant costs for taxpayers, which is disproportionate to any errors made, at a time when they are grappling with a new system.[30]

Access to finance

The business problem

Irish businesses need access to finance.

Irish companies remain heavily reliant on internal funds and on banks.[31]

A lack of internal and external finance in SMEs is hampering innovation and investment in skills.[32]

Considering Brexit, the financing constraints for SMEs are most relevant. Research shows its likely to deter them from exporting.

There is a serious need to look at alternative financing options.

The **Employment and Investment Incentive (EII)** is a financing tax measure for Irish businesses. It encourages investors to place finance in early stage and small businesses that have limited funding options.

EII plays a vital role in scaling start-up and small business to the next level of growth.

While the EII is a welcome scheme, there are now many blockages within it.

The cause of the problem

Policy design features of EII act as barriers to investment:

- Splitting tax relief into two tranches significantly reduces the attractiveness of the EII. Investors have no influence over whether the company will achieve the necessary employment targets to allow them to claim their second tranche of relief.
- 'Connected party' rules deny the relief to the founder and in situations where a start-up may look to family members and friends to raise investment at the outset.

  We understand that HMRC only consider linear relatives for the equivalent UK EIS scheme (e.g. spouse, civil partner, parent, and child and not brother or sister).
- R&D activities do not qualify for EII in their own right. This makes it difficult for sectors (like Medtech) to qualify for EII, where prolonged periods of R&D activity typically take place before trading begins.
- The annual investment limit is too low.
- EII operates under the EU State aid General Block Exemption Regulations (GBER)[33] which has added to the cost and complexity of the relief.
- It is particularly difficult for businesses seeking to raise a second tranche of EII funding and for businesses who wish to raise EII after they have been in operation for seven years.

A restrictive administrative process is stifling the use of EII:

- The GBER provisions are applied retrospectively to business plans prepared before its introduction.
- Backlogs in obtaining outline approval (pre-clearance) from Revenue that a company may qualify for EII.
- Significant delays in issuing tax relief certificates to investors, once they have provided finance to the EII company.

What needs to be done

EII tax policy recommendations:

- Carry out an economic analysis of the impact of the GBER on the operation of the EII.
- Provide full EII relief in year one.
- Amend EII rules to recognise R&D as a qualifying trade.
- Review the impact of the connected party rules on SME start-ups.
- Raise the €150,000 Annual Investment Limit. (The UK equivalent scheme applies a Stg£1m annual cap).[34]
- Extend EII relief to USC and PRSI.

Simplify the administration of EII:

- Additional resources should be committed to processing EII applications, as a matter of priority.[35]
- Simplify the outline approval process for the relief.
- Review the information that must be provided to Revenue to provide more clarity on the information required to support an EII claim.
- Address areas of uncertainty through enhanced Revenue guidance.
- Allow taxpayers to claim EII tax relief against their prior year tax liability. This would reduce the strain on administrative resources, as the timing of the investment would not be directly linked to the relief.

Access to finance

The business problem	The cause of the problem	What needs to be done
The **Start-up Relief for Entrepreneurs (SURE)** is an income tax refund scheme available to individuals who start their own business. But it is only available to those who were previously PAYE workers. The SURE refund can only be claimed after the investment has been made by the new business owner. There is limited public awareness of SURE.	**Restrictions in SURE are limiting its use:** • Only **29** SURE applications[36] have been received so far in 2018. • As the SURE refund can only be claimed after the investment has been made, the new business owner must find the upfront cash from elsewhere to invest in the business and pay running costs at the outset. • The individual needs to have paid sufficient income tax through the PAYE system in the previous four years to claim SURE. • A previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for SURE.	• Extend SURE to include new business founders who were previously self-employed and are starting up another business (as well as those coming from employment). • Allow the SURE refund to be claimed upfront to invest in the new business. • An extensive government information campaign should be rolled out (via the media and the Local Enterprise Offices) to promote SURE.
Capital Gains Tax (CGT) is a key determining factor for investment in businesses – it can help or hinder the process. It is the tax that matters most to investors and influences their behaviour **Ireland's CGT rate of 33% is the 3rd highest in the OECD.** Ireland's high CGT rate is restricting external investment in Irish business. It is creating reluctant business owners who may hold onto businesses beyond the point where they have capacity to grow them to the scale required to expand in to export markets. Ireland's targeted 'Revised Entrepreneur Relief', which allows for a lower 10% rate on business gains, is then important in that it helps to reduce the CGT burden on the sale of a business to a limited extent.	**Ireland's entrepreneur relief is uncompetitive when compared with the UK.** • In the UK, the relief applies to Stg£10m, while in Ireland the gain is limited to €1m. This means the overall effective tax rate on a gain of €10m in Ireland is 30.7% compared with 10% in the UK. • **Ireland's Entrepreneur relief locks out 'angel investors'** who are willing to invest money, experience and industry expertise in ambitious young companies. Business angel investment in Ireland is low compared with other countries. **Revenue's interpretation[37] of entrepreneur relief is also limiting its use** in three common situations: • Where there is a dormant company in a group. • Where a group is party to a joint venture. • Where a company/group holds investments or leases trading premises.	• Entrepreneur relief is restricted to owner-managers and locks out much-needed external investors from the possibility of a lower CGT rate. This disparity should be removed. • The €1m lifetime threshold for entrepreneur relief needs to be increased to a minimum of €10m to compete effectively with other countries for international capital. • To provide certainty for business, the legislation[38] should be amended to remove restrictions to entrepreneur relief in situations where a group holds a dormant company or has a shareholding in a joint venture company of less than 51%. • The legislation should also be amended to allow for either an apportionment of relief when a company holds investments or earns rental income or alternatively full relief to be claimed provided such activities fall below a certain level.

Managerial capability and human capital

The business problem	The cause of the problem	What needs to be done
Irish SMEs have difficulties recruiting and retaining skilled workers, hindering their growth and exporting potential.[39] The OECD[40] stresses the need for human capital. Ireland needs to think about how to raise the capacity of Irish businesses to implement new ideas and technologies. The ability of Irish SMEs to attract the right talent is crucial to their future direction. Managerial skills in many Irish companies are too weak to allow them to identify and exploit opportunities offered by global companies on their doorsteps.[41] Wages in multinationals are 64% higher than in domestic companies[42] and the difference is 74% for multinationals of non-EU origin. Given the high personal tax rates, a workable share option regime, the **'Key Employee Engagement Programme' (KEEP)** becomes critical.	**KEEP contains limitations,** which significantly impact its feasibility and ultimately, its success in achieving its policy aim: • Issues surrounding the qualifying criteria for individuals; the design of the remuneration limits and the narrow definition of a qualifying holding company are creating difficulties for SMEs to qualify. • There is no certainty that a company's share valuation of KEEP shares will be accepted by Revenue.[43]	**KEEP legislation needs to be amended:** • There is a cap on the value of share options that can be granted under KEEP. The third part of the test which requires the options to be below 50% of the employees' annual emoluments is restricting high-growth companies in start-up mode availing of the scheme and should be removed. The UK equivalent share scheme, Enterprise Management Incentive, does not cap the value of the share options by reference to the employee's annual emoluments. • The KEEP provisions envisage that an individual will be an employee of and carry out the duties for a single company. Employees who transfer to a group company should be allowed to retain their KEEP options. • Holding companies generally do not only own shares and are not always the 100% parent company, which is what is required under KEEP. The definition of a 'holding company' should be amended to adopt a similar definition to that contained within entrepreneur relief. • It is common for company share schemes to manage the delivery of shares to eligible employees under a trust arrangement. They will often make available shares for key recruits from a pool of existing shares set aside for that purpose. The flexibility to operate these common and accepted practices is not available under KEEP and that is significantly limiting the use of the regime. • A substantial challenge for SMEs wishing to operate a KEEP scheme will be to provide assured liquidity for their shares, as not all these companies are likely to be sold or listed on a stock exchange, but the KEEP does not permit the buy-back of shares. • CGT treatment does not continue to apply if the SME undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding. • 'Safe harbour' approaches to share valuation for KEEP purposes should be developed to ensure the scheme is more accessible, easily understood and capable of implementation without undue duplication of effort and cost to SMEs.

Managerial capability and human capital

The business problem	The cause of the problem	What needs to be done
There is no Special Assignee Relief Programme (SARP) equivalent regime to assist SMEs with the cost of acquiring talent from overseas. Attracting talent from overseas is important when it comes to developing start-up businesses and building entrepreneurial hubs. Finding and keeping skilled human capital is fundamental to growing Irish businesses to scale in the face of major risks and uncertainties ahead, like Brexit. SMEs that are export focused and producing products and services in knowledge-intensive areas need to be able to access international talent.	SARP provides income tax relief for certain employees who are assigned to work in Ireland from another group company abroad: • It is an assignment relief that applies only to individuals already working for an international group abroad for six months who are then assigned to Ireland. • The combination of the international assignment feature and the high salary level (€75,000) effectively precludes Irish SMEs from using the relief.	**Consideration should be given to developing a new talent regime like SARP but targeted at SMEs.** This would help SMEs attract the talent and skills they need from outside Ireland to grow their businesses. Lessons should be learned from the operational difficulties with the existing SARP scheme to ensure that the administration of any new scheme is simplified: • Customer services standards should apply to any refunds. • The period to notify Revenue of a qualifying employee should be reasonable to allow adequate time for the multiple issues that need to be addressed first when a new assignee arrives in Ireland. (Currently only 30 days under SARP). • The deadline for the employer to report qualifying employees should be in line with the income tax return deadline.
Work patterns have transformed in the past ten years in Ireland, as they have globally. Individuals are expected to travel and be more mobile in their roles both across Ireland and in foreign markets, seeking new business opportunities. Freelance work has also grown in the past ten years. Businesses with employees who do not operate out of a fixed base can struggle to understand **how to apply the tax rules on travel and subsistence expenses**. Small businesses that must operate from a home-based office but travel to clients' premises experience similar difficulties.	**Uncertainty remains over the tax treatment of a range of common business travel arrangements:** • Freelance workers • Individuals working from home • Employees working across multiple locations • Virtual office workers • Domestic and overseas secondees. • Site based workers Current tax legislation does not adequately deal with the challenges of modern working patterns and this is reflected in Revenue guidance, some of which is conflicting. A consultation on the tax treatment of travel and subsistence expenses[44] was carried out in August 2015 but no feedback has been published on the outcome of that review to date.	• **Legislation in this area urgently needs to be brought up to date** to ensure that expenses incurred for business purposes, which do not provide a personal benefit to an employee, can be reimbursed without deducting tax. • A Feedback Statement on the consultation should be published without further delay.

Innovation and R&D

The business problem	The cause of the problem	What needs to be done
Innovation is central in the strategic plans for other countries when it comes to growing their SMEs. The link between innovation and productivity has been highlighted by the OECD, IMF and the European Commission. **Ireland has an attractive R&D tax credit regime, but administrative blockers are weighing heavily on its success in terms of low take up among SMEs.** **The R&D tax credit regime restricts outsourcing[45] and collaboration, which is at odds with best practice international standards.[46]** The most impactful science can come from international collaborations between academia and industry.[47]	Irish Tax Institute research[48] shows that 75% of companies surveyed were aware of the R&D tax credit and 20% had claimed it. Of those who availed of it, **almost half found the R&D tax credit difficult to prepare and administer.** **Only 35% of all companies surveyed intended to avail of the R&D tax credit in the next 18 months.** Although **this would rise to over 60% if there was more clarity around criteria for qualification.** Existing Revenue guidance is not geared towards SMEs and contains a caveat which means businesses cannot rely on its contents.[49]	**Remove the outsourcing restrictions in the R&D tax credit regime.** **Every effort should be made to remove administrative blockers for businesses that need to claim the R&D tax credit:** • A Revenue pre-approval process would bring much-needed certainty for taxpayers and subsequently prevent disagreements and costly future audits. HMRC operates an "Advance Assurance" service for small companies submitting their first claim.[50] • Ireland needs an SME focused campaign and Centre of Excellence within Revenue, like the extensive and specialised R&D tax credit supports in the UK. • Sector specific Revenue guidance for each industry sector such as food and beverages, ICT, bio-medical, all of which engage in very different R&D processes.

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