Irish Tax Institute

January 2022

Commission on Taxation and Welfare

Response to the Public Consultation

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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 5,000 is part of the international CTA network which has more than 30,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, and the Taxation Institute of Hong Kong. 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

Chapter 1

Introduction

The Irish Tax Institute welcomes the opportunity to participate in this public consultation by the Commission on Taxation and Welfare.

A briefing document we published in January 2020, before the last general election recommended that the new government should undertake a review of our entire tax system to ensure it was fair, sustainable, and equal to the challenges facing our country.

We had no inkling then, that three weeks later, the country would be hit by a global pandemic. The tax system has played a crucial role in funnelling government funds to businesses and their workers throughout the economy during the ensuing prolonged periods of closure and disruption.

It also succeeded in collecting €57 billion in tax receipts for the Exchequer by the end of 2020, when vaccines were still a dim hope in a dark and uncertain world. Last year, that number reached a record €68.4 billion.

We learned a lot about our economy over the last two years. The resilience of our tax system is remarkable but the pandemic highlighted the unbalanced nature of the economy and our reliance on the powerful performance of the multinational sector for revenue and employment.

Joining the OECD Inclusive Framework international tax agreement constrains Ireland's ability to compete on the basis of its corporation tax rate. But there are other ways in which the Government can improve the tax system to ensure the country remains an attractive place to do business. In that context, we recommend in our submission that the Commission should consider how our tax code could be simplified and made more user-friendly.

Clear, simple, and efficient business taxes could be a real differentiator in attracting the foreign investment to our small, highly open economy. Simplification would also increase compliance and engender trust in the system among taxpayers.

The Institute recognises that the Government, needs to raise taxes to pay for the increased social provision required by the pandemic and by an aging population. Against that backdrop, it makes sense to task the Commission with reviewing our welfare system in tandem with our tax system.

The latter will undoubtedly have to pay for more expensive public services. But, in the Institute's view, it would be a mistake if this was to be the sole concern of the Commission's work.

Our tax system has significant implications for our economy and for important areas of public policy such as housing and climate action. In our submission, we make observations and recommendations for the Commission to consider in these and in other areas.

In the Institute's view, the Commission's recommendations on aspects of the tax code that affect the economy will be of fundamental importance. The record beating 2021 Exchequer returns recently reported by the Department of Finance show the resilience of our economic model. But recent history has shown how vulnerable it is to external shocks. Any development that could undermine global trade would have serious implications for our multinational sector.

The need to rebalance our economy by focusing on the growth and productivity of our domestic sector has never been more pressing. We need to capitalise on the innovation that has emerged in response to the pandemic by maximising existing reliefs to encourage investment in SMEs and make them more accessible to start-ups.

We also believe the Commission should consider the case for reducing the headline rate of Capital Gains Tax (CGT) which is a deciding factor for potential investors. Successive governments have failed to review the rate since the financial crash and at 33%, it is high by international standards. The Institute believes a reduction for active business assets would encourage innovation and productivity in our domestic sector as well as increasing the yield.

Our personal tax system is an important factor in our competitiveness. Effective personal tax rates at average salaries and above are high by international standards. Irish workers, continue to pay more income tax than workers in the UK, France, USA or Switzerland.

Successive governments have used our personal tax regime to redistribute income to lower paid workers leaving the system overly dependent on higher paid workers many of whom work in the multinational sector. In 2021, 25% of income earners paid 83% of the total income tax and USC collected[1]. Foreign multinationals accounted for 32% of employment and 49% of employment taxes in 2019.[2]

Higher quality public services and increased welfare provision will benefit all citizens. A broader personal tax base in which all taxpayers contribute according to their means would bring Ireland into line with other European countries whose systems are frequently held up as an example.

More generally, a broader tax base would correct the current over reliance on economically regressive labour taxes and tip the balance in favour of indirect taxes, such as, environmental charges which would also support the decarbonisation of our economy.

In our submission, the Institute has answered the questions on which we have technical expertise. We hope our responses are of benefit to the Commission's work and we would be happy to engage further with you on our ideas and recommendations.

1 Income Tax (Incorporating a Review of the Help-to-Buy Scheme), Tax Strategy Group – 21/02, Tax Strategy Group, September 2021.
2 Revenue Commissioners, Corporation Tax – 2020 Payments and 2019 Returns.

Chapter 2

Irish Tax Institute Recommendations

Throughout this submission we have sought to identify areas of our tax code which are not working as intended or are in need of reform and to make recommendations for improvements. A summary of our recommendations is set out below.

A. Promoting Employment

Personal Tax System

1. The Irish tax system is strongly progressive, and the tax and social welfare systems combined contribute substantially to the redistribution of income and to the reduction of income inequality. However, Ireland's high marginal tax rates apply at relatively low-income levels by international standards and the country's personal tax base is narrow. The Institute believes that all income earners should contribute to the Exchequer according to their means and that those who earn most, must contribute most. Spreading the burden according to means would lighten the load on middle income earners. It would also make the Irish personal tax system internationally competitive and incentivise work.
2. The imminent changes to the international corporation tax system mean that the attractiveness of a country's personal tax system and the cost of employers employing workers in a country will become an increasingly important factor in determining where businesses will locate. In our view, an objective of any long-term strategy aimed at attracting and retaining foreign direct investment should include reducing the marginal cost of employment in Ireland for both businesses and individuals.
3. On its introduction, just 12% of taxpayers were exempt from USC. According to Revenue, that number stood at 28% last year. We believe it is now time to revisit the original purpose of the charge which was to broaden the base of our personal taxes.
4. In our view, it is imperative that the personal tax system is simplified and that as part of that process, PRSI and USC are amalgamated.
5. We acknowledge that increased tax revenues will be necessary over the coming decades to counterbalance the costs of an ageing population and ensure there are sufficient resources to meet the cost of public services. However, any increases in PRSI must factor in the overall impact on the marginal tax rate and on the cost for employers of employing people in Ireland. Consideration should be given to introducing a cap on the level of earnings to which PRSI applies, similar to that which exists in other countries.
6. In tandem with any increases in PRSI rates, it is important that Ireland's social insurance system is simplified and reformed so that it is on par with our European counterparts in terms of the services and supports provided.

Remote Working

7. Remote working supports broader Government policy objectives to reduce transport emissions, relieve housing pressures on Irish cities and increase employment in the regions. However, facilitating this new mode of work results in additional costs for businesses and employees. Where office equipment is purchased and provided to employees to facilitate working from home, we believe a new accelerated rate of allowance of 100% of the upfront cost should be available to employers in the year in which the equipment is purchased. Where an employer pays an employee's increase in home insurance premium which arises from working from home a Benefit-in-Kind charge should not apply.
8. Revenue guidance provides that working from home will not impact an individual's claim for exemption from CGT on disposal of their Principal Private Residence. As remote working is now becoming more established, this Revenue practice should be put on a legislative footing.

Tax Treatment of Travel Expenses

9. The current rules regarding the tax treatment of business travel expenses for employees are outdated and in need of modernisation. The fundamental shift in work patterns to remote or

hybrid working has further underlined that an employer's office may not be an employee's "normal place of work" when determining when an employee can be compensated for business travel expenses without the application of Benefit-in-Kind legislation.

Commission on Pensions

10. The Commission on Pensions has put forward four potential packages for Government to address fiscal sustainability in the context of the State Pension and the Social Insurance Fund. Each of the four packages propose increases to the rate of PRSI for the self-employed. In our view, in the interests of equity, it would be important that in tandem with any increase in PRSI for the self-employed that the additional 3% USC surcharge which applies to the self-employed income over €100,000 is removed.

11. Package 4 put forward by the Commission on Pensions proposes phased increases to the rates of self-employed, employer and employee PRSI, a gradual increase in the State Pension age and Exchequer contributions to the Social Insurance Fund. We would agree with the Commission on Pensions that this is the most feasible option.

12. We agree with the Commission on Pensions' recommendation that the exemption from PRSI for those aged 66 or over should be removed. However, in our view the exemption of all social welfare payments from PRSI should also be removed.

Tax Relief for Pension Contributions

13 In our view, any further restriction on tax relief for pension contributions must be balanced against the tax treatment of unfunded pensions.

B Climate

14. The Institute believes there are existing taxation and welfare measures that may be counter-productive to Ireland's Climate Change commitments. Fossil fuel subsidies, such as the Diesel Rebate Scheme, need to be reviewed with a view to phasing out or replacing them where appropriate.

15. Opportunities to expand our existing environmental taxes need to be explored and consideration given to new incentives which will support business in reducing their carbon emissions. Consideration could be given to the introduction of targeted accelerated capital allowances to promote behavioural changes and green enhancements to the Employment and Investment Incentive Scheme (EIIS).

16. New tax measures will be needed to replace lost revenues arising from the decarbonisation of the Irish economy. Ensuring stakeholder and consumer acceptance of any new tax measure will be central to successful implementation.

17. The EU has recently moved to provide Member States with more flexibility to apply reduced and zero VAT rates and the list of goods and services for which reduced VAT rates are allowed has been updated and modernised. The new rules will also phase out preferential treatments for environmentally harmful goods. In light of the changes at EU level, we believe that it is now timely for a review of zero rating of VAT to take place and to ensure our rates are in line with EU rules.

C Housing

18 Restoring certainty to the property market by having a clear strategy to address housing supply issues is critical if we are to attract the investors we rely on to fund the development of housing.

19 We believe that any proposed intervention to address housing supply issues, whether through tax or otherwise, must also consider the longer-term impact of the intervention in the market. Changes to planning requirements, may in some instances, be a more appropriate policy lever to deal with issues in the property market than tax measures. Where tax measures are used to encourage the development of housing, it is important to ensure that the provisions align with other areas of Government policy.

20. With a view to increasing the supply of rental properties, tax measures could be used to support the refurbishment of properties which are vacant and unfit for letting. The measures could be designed to ensure support for Government policy and encouraging the increased energy efficiency of our homes.

21. Housing policy should continue to encourage owner occupation. We believe that a model such as the Central Provident Fund in Singapore or the KiwiSaver in New Zealand which permit individuals to withdraw sums from their pension savings to fund a deposit for a house may assist individuals seeking to purchase their first home while also incentivising them to start saving for a pension earlier.

22. We do not believe that a Site Value Tax based on the value of land, without regard to the value of any development or buildings on that land, is appropriate for residential property. However, we believe that there is merit in considering a Site Value Tax which would replace the existing commercial rates system. Care would need to be taken in designing such a measure to ensure that less profitable activities which are valued by communities would not become uneconomic as a result of the operation of the Site Value Tax.

23. It is important that all features of the Local Property Tax regime are reviewed at regular intervals. The tax base, rates, and any specific rules included in the design of the tax, such as exemptions and deferrals should continue to be under constant review to ensure that they are appropriate, up to date and reflect current circumstances.

D Supporting Economic Activity

24. Simplifying Ireland’s corporation tax code and making it easier to administer would enhance the country’s competitiveness. For example, the Anti-Tax Avoidance Directive (ATAD) Interest Limitation Rules introduced in Finance Act 2021 were layered on top of existing interest deductibility provisions making the operation of the rules onerous and overly complex. Taking such an approach makes it difficult for businesses to operate in Ireland and comply with their tax obligations.

25. Consideration should be given to removing Ireland’s schedular tax system and different corporation tax rates. The trading and non-trading distinction between the 12.5% trading rate and passive 25% rate creates unnecessary complexity within the Irish corporation tax code, which businesses do not have to contend with in other tax systems. Ireland should have only one rate applying to corporates.

26. The Special Assignee Relief Programme (SARP) is a critical part of Ireland’s competitive offering to attract foreign direct investment and the relocation of high-value employment to the State. Retaining SARP and continually benchmarking the Irish regime against key competitor countries is essential to enable Ireland to compete for talent on a global stage.

27. We need to ensure that Ireland’s R&D tax credit remains best in class if the country wants to continue to attract additional R&D investment in both foreign and domestic businesses.

28. For smaller businesses, there is undue cost and uncertainty involved in the claims process for the R&D tax credit which significantly reduces its attractiveness. Improvements, such as a pre-approval process for first time R&D tax credit claims by small/micro/companies and SME friendly guidance should be introduced to bring much needed certainty for taxpayers.

29. The headline rate of CGT, at 33%, is high by international standards. As the rate of CGT is a deciding factor for potential investors, if Ireland wants to attract investment in business, the country needs to reduce the rate. In our view, a reduced CGT rate of 25% should apply for active business assets.

30. Ireland’s high rate of CGT makes reliefs such as Entrepreneur Relief even more important as the relief is targeted at reducing the high CGT burden on the sale of a business in Ireland to a limited extent. However, the current design of the relief is limiting its effectiveness and amendments are needed to enhance the relief.

31. The Start-up Relief for Entrepreneurs (SURE), which is an income tax refund scheme for those who start their own business, is restricted to former PAYE employees. We recommend extending the relief to include business founders who were previously self-employed.

32. Recruiting and retaining skilled workers is central to building a successful company and is crucial to the future growth and export potential of the business. Irish SMEs and start-ups in many instances, cannot match the salaries paid by large multinationals. Even though the Key Employment Engagement Programme (KEEP) is designed to incentivise talent to take up employment in such companies, there are a number of limitations with its design that significantly affect the feasibility of the scheme. Legislative amendments are needed to address these limitations and to improve the KEEP scheme.

33. The EIIS is aimed at incentivising investment in early stage and small businesses whose funding options are limited. However, there are inherent complexities in the scheme which are impacting its overall effectiveness. Legislative and administrative changes are needed to enhance the effectiveness of the EIIS.

E Tax Expenditures

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

35. Stakeholder engagement has an important role to play in the development of both tax policy and legislation. The Institute welcomed the Government's commitment to develop a formal annual stakeholder engagement process in the January 2021 Update to the Corporation Tax Roadmap and we look forward to the formal establishment of such a process. In addition to this development, we also believe that the Finance Bill process needs to be reformed as it currently provides little opportunity for consultation to help ensure tax legislation operates as policymakers intended.

F Administration

36. Continued investment in Revenue's electronic services and IT infrastructure is critical over the years ahead to future-proof Revenue's Online Services (ROS). Taxpayers and the tax profession need to be able to avail of swift, reliable and user-friendly online services for engaging with Revenue.

37. Early consultation in advance of the introduction of any new compliance obligations is critical, to ensure the requirements are clear and achieved at the lowest possible compliance cost for taxpayers. Opportunities to simplify tax compliance with existing measures should be fully explored. One area of tax compliance in urgent need of simplification is Ireland's Offshore Funds Regime. The current regime is overly complex, and it is very difficult for individual taxpayers to correctly determine the appropriate tax treatment of income and gains arising on their investments. Another area in need of simplification is the basis of assessment for proprietary directors, to align the basis of assessment with the practical operation of PAYE and with the treatment of employees.

G Other issues

38. Technological advancements combined with the volume of information now available to Revenue mean that it is now much easier for Revenue to identify errors in taxpayers' returns. A proportionate and appropriate approach must be adopted to errors in tax returns. We believe that genuine errors should be recognised as such, and legislation should be developed to ensure such errors do not give rise to a penalty. Development of the legislation should be preceded by a collaborative approach in identifying the types of errors that typically arise in returns.

39. We believe that an independent external body should be established, that could intervene on behalf of taxpayers where there is an issue regarding Revenue's approach to handling their tax affairs and in exceptional cases where there is inherent inflexibility in the tax system, such as, interest charges, time limits and penalties.
40. Several aspects of the existing legislation underpinning the tax appeals system impose inequitable treatment between the parties to an appeal. In our view, these legislative provisions need to be reconsidered in order to restore equity to the tax appeals process and strengthen our dispute resolution procedures.

Chapter 3

General Questions & Fiscal Sustainability

What elements of the taxation and welfare systems do you feel are working well? Please elaborate below:

The 12.5% corporation tax rate has provided certainty and stability to the many global and indigenous businesses that have set up in Ireland over the last 25 years. The assurance from the EU on Ireland signing up to the OECD Inclusive Framework Agreement, that the 15% minimum corporation tax rate will apply only to companies with global revenues in excess of €750 million and the subsequent publication of the proposed Directive which will transpose Pillar Two of the agreement into EU law, means that our SMEs can continue to benefit from the 12.5% rate without any damage to their competitiveness. There must now be a renewed emphasis on maximising the innovation and productivity of Ireland's indigenous businesses.

The R&D tax credit has been instrumental in attracting additional R&D investment to this country and it is vital that it remains best in class if the Government wants to continue to attract additional R&D investment into Ireland. However, improvements to the R&D tax credit are necessary for smaller businesses as there is undue cost and uncertainty involved in the claims process which significantly reduces its attractiveness.

Now more than ever businesses across all sectors are heavily reliant on online capabilities. Revenue's online service (ROS) provides a valuable service for taxpayers and their tax agents. It is important that there is continued investment in ROS to ensure a reliable and stable system for taxpayers and the tax profession.

Consultation and meaningful engagement with stakeholders by Revenue on tax administration measures and by the Department of Finance on tax policy aspects of proposed changes in tax legislation has proven to be successful (for example, PAYE Modernisation and the implementation of the EU Anti-tax Avoidance Directives). Advance consultation can identify operational issues which can be addressed before the legislation is finalised. We believe that a more consistent approach should be adopted to engagement with the tax profession on both new tax administration initiatives and proposed tax policy changes.

What elements of the taxation and welfare systems do you feel are not working well?

Good quality public services, welfare provision and infrastructure are financed mainly from taxation and PRSI. What are the features that you think our taxation and welfare systems should have in order to meet these needs?

In your view, what main reforms are necessary so that the Irish taxation and welfare systems can embrace the opportunities and meet the challenges that Ireland may face over the next 10-15 years?

What reforms to the taxation and welfare systems should be considered to ensure the system is sustainable and resilient and that there are sufficient resources available to meet the costs of public services in the medium and longer term?

Given approaching demographic pressures and future uncertainties, future funding of public services is a critical issue. In order to meet these challenges, what is the appropriate balance between the taxation of a) earned income, b) consumption e.g., VAT and c) wealth e.g., capital acquisitions tax?

Undoubtedly, the Irish economy is highly dependent on the multinational sector. We need to rebalance the Irish economy by focusing on the growth and productivity of the country's domestic sector. Just as tax policy played a major role in attracting large multinationals to Ireland, it can be used to incentivise the step change in productivity and innovation we now need from Ireland's indigenous companies. However, the tax measures introduced in recent years to promote investment in SMEs and to assist businesses in recruiting and retaining skilled workers are not working and must be improved. In addition, we believe that consideration must be given to reducing the CGT rate for active business assets to attract investment in Irish companies.

Ireland's commitment to the OECD Inclusive Framework international tax agreement means that consideration must be given to new ways of making the Irish tax system competitive if the country wants to continue to attract foreign direct investment. We consider that simplifying the Irish corporation tax code and making it easier to administer would enhance Ireland's competitiveness.

The Irish personal tax system is strongly progressive, and the tax and social welfare systems combined contribute substantially to the redistribution of income and to the reduction of income inequality.

Ireland's high marginal tax rates apply at relatively low-income levels by international standards and the Irish personal tax base is narrow. While the introduction of USC initially broadened the base considerably, the USC base has been narrowed in recent years. A broader income tax base is more sustainable and, as the experience during the Financial Crisis shows, more robust in the event of economic shocks. The Institute strongly advocates that all income earners should contribute to the Exchequer according to their means and that those who earn most, must contribute most. Spreading the burden according to means would lighten the load on middle income earners. It would also make the Irish personal tax system internationally competitive and incentivise work.

Indeed, the forthcoming changes to the international corporation tax system mean that the attractiveness of a country's personal tax regime and the cost of employers locating workers in a country will be an even more significant factor in determining where key talent and substantial businesses locate. Therefore, an objective of any long-term strategy aimed at attracting and retaining foreign direct investment should include reducing the marginal cost of employment in Ireland for both businesses and individuals.

A key objective for the Commission should be the simplification of Ireland's tax and welfare systems. The PRSI system is complex, difficult for individuals to understand and there are many differences in the PRSI and USC bases. As both of these charges are intended to be social contributions, we believe that the ultimate objective must be to merge PRSI and USC.

Increased tax revenues will be necessary over the coming decades to counterbalance the costs of an ageing population and ensure there are sufficient resources to meet the cost of public services. Any increases in PRSI should factor in the overall impact on the marginal tax rate and on the cost for employers of employing people in Ireland. Consideration should be given to introducing a cap on the level of earnings to which PRSI applies, similar to that which exists in other countries. In tandem with increases in PRSI rates, it is important that the Irish social insurance system is simplified and is reformed so that it is on par with other European countries.

A broader tax base is necessary to correct the current over reliance on labour taxes and tip the balance in favour of indirect taxes, such as VAT and environmental charges, which would also support the decarbonisation of the Irish economy.

Environmental taxes such as motor tax, vehicle registration tax and excise duties on fossil fuels currently generate significant revenues for the Exchequer. New tax measures will be needed to replace lost revenues arising from the decarbonisation of the Irish economy. Opportunities to expand Ireland's existing environmental taxes should also be explored and consideration given to new incentives which will support business in reducing their carbon emissions.

The European Commission has identified a significant policy gap in the Irish VAT system arising from zero and reduced rates. The main reason given for charging zero or low rates of VAT on certain goods and services is to make the tax system more equitable. However, the OECD highlights that applying different rates of VAT to basic goods and necessities is an ineffective way of alleviating the burden on low-income households as wealthier households will also derive significant benefit vfrom these lower rates.[3] The OECD has recommended that Ireland move all items that are currently taxed at the zero rate to a VAT rate of 5%. As such a move would likely have adverse consequences for low-income households, it suggests that part of the revenues raised from the reform should be used for targeted transfers.[4]

Given the EU has recently moved to provide Member States with more flexibility to apply reduced and zero VAT rates, we believe that it is now timely for a review of zero rating of VAT to take place and to ensure our rates are in line with EU rules.

[3] OECD/KIPF (2014), The Distributional Effects of Consumption Taxes in OECD Countries, OECD Tax Policy Studies, No. 22, OECD Publishing, Paris.

[4] OECD Economic Survey: Ireland 2020, OECD, February 2020.

We believe the equitable taxation of wealth is better achieved through property taxes and capital acquisitions tax than an annual wealth tax. The Commission on Taxation Report 2009 noted that wealth taxes can have a negative influence on entrepreneurship by affecting the pool of capital available for start-up businesses and reducing the net return to successful entrepreneurs. Wealth taxes can cause productive capital to leave a country and also discourage foreign investment. In our view, a wealth tax could also disincentivise ownership of assets, such as farmland, which may have a high asset value but may not yield much income.

If the imposition of a wealth tax were to be considered by the Commission significant sources of wealth, such as pension rights (including unfunded pensions), must be taken into account. The actuarial valuation of the State's liability in respect of public service occupational pension schemes was calculated as €114.5 billion as of December 2015.[5] Therefore, we consider proposals for a wealth tax which fail to take account of such significant sources of wealth are inequitable. Appropriate exemptions for active business assets, including agricultural land, would also need to be considered.

According to a recent OECD report on Inheritance Taxation in OECD Countries[6], Ireland's total tax revenues sourced from inheritance, estate and gift taxes as a portion of total tax revenues at 0.68% is above the OECD average of 0.5%. The report notes that a tax on lifetime wealth transfers (which would include capital acquisitions tax) *"improves horizontal equity, by ensuring that individuals who receive the same amount of wealth pay the same amount of tax, regardless of whether they receive one large transfer or several smaller transfers. A tax on lifetime wealth transfers also improves vertical equity, particularly if tax rates are progressive, ensuring those who receive more wealth over their lifetime pay more tax than individuals who only receive a small amount."*[7]

Indexation relief for CGT purposes 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 relief was introduced in the 1970's and continued up to the end of 2002 when it was abolished. We consider that 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 current rising level of inflation, indexation relief should be restored.

[5] Spending Review 2018, Public Service Occupational Pensions in Ireland - Cash Flow, at para 2.1, Department of Public Expenditure and Reform.

[6] OECD (2021), *Inheritance Taxation in OECD Countries*, OECD Tax Policy Studies, No. 28, OECD Publishing, Paris, https://doi.org/10.1787/e2879a7d-en.

[7] Ibid at para. 3.3.1.

Chapter 4

Promoting Employment

1. What reforms to the taxation and welfare system should be considered to ensure that taxation and welfare work in tandem to support economic activity and promote employment while also supporting those most vulnerable in an equitable way?

Please outline what reforms should be considered:

2. Does Ireland's taxation and welfare system strike the right balance between maintaining the incentive to increase earnings and alleviating some of the risks of low income (poverty and deprivation)?

3. Are income supports equitable in terms of how they treat people of working age? How is this balanced with the requirement to meet differing needs?

We have set out below reforms we would urge the Commission to consider to ensure the taxation and welfare systems work in tandem to support economic activity and promote employment. In considering how the tax system can support employers and employees, we have also highlighted issues arising from the move to remote working and the modifications needed to the current rules regarding the tax treatment of business travel expenses.

An Effective Tax and Social Insurance Regime

Personal Tax System

Ireland's personal tax regime should be broadly based, simple, fair and transparent. It should support economic growth while redistributing income to lower paid workers.

Successive governments over the last two decades have used the tax system, combined with social welfare payments, to reduce income inequality. Data from the OECD shows that the Irish tax system is strongly progressive, and the tax and social welfare systems combined contribute substantially to the redistribution of income and to the reduction of income inequality. The reduction in market income inequality and poverty through social benefits in Ireland is the largest across OECD countries.[8]

However, in the Institute's opinion, there are two fundamental flaws in the system: Ireland's high marginal tax rates apply at relatively low-income levels by international standards; and the Irish personal tax base is unusually narrow.

In 2022, Irish taxpayers will be paying personal tax at marginal rates of 48.5% on salaries above €36,800 and 52% on salaries above €70,044. Meanwhile, 28% of income earners will pay neither income tax nor USC. Put simply, the cost of exempting over a quarter of workers from the tax net falls on the shoulders of modest income earners.

The Institute believes that a broader personal tax base would make the Irish system more sustainable and would reward those who work to increase their earnings. It would also bring us into line with competitor countries internationally.

The imminent changes to the international corporation tax system mean that the attractiveness of a country's personal tax system and the cost of employers locating workers in a country will become an increasingly important factor in determining where businesses will locate. In our view, an objective of any long-term strategy aimed at attracting and retaining foreign direct investment should include reducing the marginal cost of employment in Ireland for both businesses and individuals.

USC

The original intention of the Universal Social Charge (USC) was to broaden and rebuild an income tax base that had been significantly narrowed in the decade before the Financial Crisis to the point where 45% of income earners were outside of the tax net.

[8] OECD Economic Surveys: Ireland © OECD 2018, page 38.

On its introduction in 2011, just 12% of taxpayers were exempt from the charge. According to Revenue, that number stood at 28% last year.[9] In our view, it is now time to revisit the original purpose of the charge which was to broaden the base of personal taxes.

The current trend of salary increases should bring more taxpayers into the USC net, but we believe that the policy rationale for exemptions needs to be re-examined. For example, all social welfare payments are currently exempt from USC irrespective of the total income of the recipient. This includes significant Exchequer payments such as the State Pension, Maternity Benefit, Illness Benefit and Jobseeker's Benefit which are subject to income tax.

Individuals aged 70 years and over, pay a maximum USC rate of 2% provided their total income is not more than €60,000 per year. However, this income cap excludes the USC exempted State Pension.

PRSI

With 12 different rates and 11 different classes, further divided into sub-classes, the Pay Related Social Insurance (PRSI) must qualify as our most opaque charge on the tax paying population. The fact that it coexists with the more recent USC adds another layer of confusion.

USC and PRSI: two social charges but different		
Differences	**USC**	**PRSI**
Government Department Responsible	Department of Finance	Department of Social Protection
Collected at source by	Revenue Commissioners	Revenue Commissioners
Paid into	Exchequer tax revenue	Social Insurance Fund
Used for	General expenditure	Ringfenced benefits
Paid by	Employees and Self-employed	Employees, Self-employed and Employers
Entry Point	€13,000	€18,304 for employees €5,000 for self-employed No entry point for employers
Rates	5 different rates: 0.5% 2% 4.5% 8% 11%	12 different rates: *Employee/Self-employed PRSI* 0.9% 3.33% 3.9% 4% *Employer PRSI* 0.5% 1.85% 2.01% 2.35% 6.87% 8.8% 10.35% 11.05%

[9] Revenue Ready Reckoner, Pre-Budget 2022, September 2021.

Bands/Classes	5 different bands: First €12,012 €12,013 - €21,295 €21,296 - €70,044 €70,045 and above Over €100,000 for self-employed income	11 different classes: 1. A 2. B 3. C 4. D 5. E 6. H 7. J 8. K 9. M 10. P 11. S
How it operates	Cumulative annual tax	Non-cumulative/week by week basis[10]
Exemptions	All social welfare income Reduced rates apply to individuals aged 70 years (and over), if total income does not exceed €60,000 Reduced rates apply for full medical holders if total income does not exceed €60,000 Statutory redundancy payments Relief for ex-gratia termination payments subject to certain limits Childcare service relief (max. €15,000) Income subject to DIRT Rent-a-room relief (max. €14,000)	All social welfare income Individuals aged 66 or over Payments out of occupational pensions Redundancy and ex-gratia termination payments Rent-a-room relief (max €14,000)

The working group established in 2017 to consider the amalgamation of USC and PRSI submitted its report to the Minister for Finance in September 2018. We understand the report, which has not been published, acknowledges the complexity of the process and sets out a range of options as to how amalgamation could be achieved. According to the Tax Strategy Group papers published in 2019, the group concluded that all options considered involved a trade-off between simplicity in design, loss of revenue to the State overall and losses/gains at a taxpayer level.[11]

Notwithstanding the difficulties and complexities involved, in our view, it is imperative that the personal tax system is simplified and that as part of that process, PRSI and USC are amalgamated.

USC is charged on an annual cumulative basis, whereas PRSI is charged on a "week one" basis. This means that a PRSI charge only applies where the weekly thresholds are exceeded without regard to cumulative annual income. In our view, PRSI should be charged on a cumulative basis. This would be a pre-requisite for the amalgamation of PRSI and USC. Consideration would also need to be given to whether a unified USC and PRSI charge should be charged at a progressive or flat rate. Given that a progressive rate structure already exists for income tax, a flat rate system would be preferable in our view.

[10] PRSI for employees is charged on a "week-one" or non-cumulative basis. This means that the calculation of PRSI is based on the amount paid to an employee for a particular week only and does not take account of payments made in respect of any other period or other employment. This contrasts with the approach adopted for income tax and USC which are both applied on a cumulative basis.

[11] Income Tax, Tax Strategy Group – 19/03, Tax Strategy Group, July 2019.

International Comparisons

Our Tax and Social Insurance International Tables 2021 prepared in association with KPMG, are attached in Appendix I to this submission. The tables examine the tax and social insurance contributions paid in Ireland in 2021 compared with seven competitor countries: namely, France, Germany, Sweden, Singapore, Switzerland, UK, USA.

The tables highlight the progressivity of the Irish tax system. At lower levels, Ireland has the second lowest effective personal tax rate (income tax, USC and employee PRSI) of all eight countries examined. While our employee PRSI rate is comparatively low, Irish taxpayers are subject to high rates of income tax and USC. Therefore, as income levels rise, taxpayers in Ireland move quickly up the international tables.

Our tables show that the tax wedge[12] in Ireland exceeds that of countries such as the UK, the USA and Singapore at all salary levels but is less than the tax wedge in France and Sweden, primarily due to the lower levels of social insurance contributions in Ireland.

On the other hand, Ireland's social insurance benefits are low by European standards. As the Report of the Commission on Pensions noted *"The more comprehensive range of social welfare benefits available in some European countries (e.g., comprehensive public health insurance) also accounts for the higher levels of social insurance contributions elsewhere in the EU."*[13]

Furthermore, the National Economic and Social Development Office acknowledges that *"In international terms, Ireland's benefit regime is a basic security system, where benefits remain modest and there is an 'almost mechanical relationship between benefits and earnings"*[14].

The Irish system operates on a flat payment basis, whereas some EU countries pay benefits on an earnings-related basis. For example, in France, Germany and Sweden, a recipient's unemployment benefit is relative to their income in employment. This ensures that during temporary breaks in employment, recipients can maintain their normal living standard, including paying their mortgage and utility bills, while searching for alternative employment.

Another key differentiating factor of the Irish social insurance system is that there is no cap or limit on the social security contributions payable irrespective of the income of the taxpayer. In other EU Member States, there is a limit on the social contributions payable. For example, in Germany, pension and unemployment insurance contributions are payable up to an income ceiling of €85,200.

OECD statistics show that the level of public social spending in Ireland at 13% of GDP, is considerably lower than the OECD average of 20% and is a fraction of the spend in France (31% of GDP), Sweden (25.5% of GDP) or Germany (25.9% of GDP).[15] Within the EU, the average level of expenditure on social protection benefits[16] relative to GDP in 2019 was 26.9%, with Ireland ranking behind all other EU Member States.[17]

The OECD has noted that there was a sharp decline in the spending-to-GDP ratio between 2010 and 2019 in Ireland and states that this *"is related to a jump in GDP in 2015"*[18]. Therefore, the public social spending per capita would appear to be a more appropriate measure than GDP. However, using public social spending per capita as the measure, Ireland at USD$10,783 continues to rank behind France (USD$13,225), Sweden (USD$13,049) and Germany (USD$12,467)[19].

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12 The tax wedge is generally considered to be the difference between what employees take home in earnings and what it costs to employ them. It looks at income taxes paid by an employee and social contributions levied on both employees and their employers. The higher the tax wedge, the higher labour supply costs that will be incurred by an employer to produce the same service or product, compared to another country.

13 Report of the Commission on Pensions, The Pensions Commission, para. 13.3.2.

14 The Future of the Irish Social Welfare System: Participation and Protection, No. 151 November 2020, National Economic and Social Development Office.

15 OECD Social Expenditure Database https://www.oecd.org/social/expenditure.htm

16 Social protection benefits are transfers to households, in cash or in kind, intended to relieve them of the financial burden of several risks and needs as defined in the European System of integrated Social Protection Statistics (ESSPROS).

17 Social protection statistics - social benefits, Eurostat, November 2021 https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social_protection_statistics_-_social_benefits#Social_protection_benefits_in_cash_and_in_kind

18 https://www.oecd.org/els/soc/OECD2020-Social-Expenditure-SOCX-Update.pdf

19 OECD (2022), Social spending (indicator). doi: 10.1787/7497563b-en (Accessed on 04 January 2022).

Remote Working

The last 21 months have demonstrated that remote working can deliver benefits for businesses and employees alike and it is likely to become a permanent feature in the modern working environment. Remote working also supports broader Government policy objectives to reduce transport emissions, relieve housing pressures on capital cities and increase employment in the regions.

Home Office Equipment Costs

Facilitating this new mode of work results in additional costs for businesses in supporting their employees to work-from-home (WFH) effectively. Employers must provide their employees with safe and suitable home office equipment including the computer hardware and ergonomically designed equipment to enable them to perform their duties effectively and safely. Often, the business will be incurring these costs in duplicate where employees are working partly at home and partly in their employer's premises.

The majority of these costs for businesses represent capital items. Therefore, the costs are not deductible as a business expense upfront in the year they are incurred but may qualify for capital allowances at a rate of a 12.5% of their cost over 8 years.

We believe a new accelerated rate of allowance of 100% of the upfront cost should be available to employers in the year in which the office equipment is purchased and provided to employees to facilitate WFH. This relief could be a targeted scheme that is limited to equipment to facilitate remote working, as opposed to a wider accelerated allowances regime for plant and machinery, such as that available in the UK.

Many employers have already incurred significant costs during the pandemic on home office equipment to enable their employees WFH. In recognition of this expense, qualifying equipment purchased in 2020 and 2021 should qualify for this new accelerated relief once introduced, by way to a tax deduction for the Tax Written Down Value (TWDV) of such assets.

Insurance Costs

Issues around insurance and legal liability arising in a WFH context are not yet fully clear as this is an evolving area.[20] However, it is likely that WFH will increase the cost of insurance for employers and/or employees. For businesses, any increases in insurance premiums arising from changes to policy coverage may be deductible as an expense incurred wholly and exclusively for the purposes of their trade. However, an equivalent deduction is not available to an employee if their home insurance premium increases due to WFH. Where an employer pays an employee's increase in home insurance premium which arises from WFH this should not be treated as a taxable payment and should be paid by the employer without application of a Benefit-in-Kind charge.

Administration for Employees in Claiming Remote Working Expenses

The introduction of WFH has improved the work/life balance and reduced commuting times and costs from many employees. However, there are costs associated with this new way of working. Employees must absorb additional utility costs in electricity and heating and broadband bills - costs which would otherwise be incurred by their employer. While it is helpful that tax relief for e-working has been placed on a legislative footing and enhanced[21], the relief is administratively cumbersome relative to the amount of tax relief that can be claimed. Employees claiming the relief must retain receipts and submit these receipts to Revenue to claim the relief in "real-time" from 2022.

Administrative complexity can act as a barrier to taxpayers claiming reliefs to which they are entitled. A longer-term view should be taken of ways to assist taxpayers with the costs of working remotely to include simpler administration of the relief. The uptake on remote working tax relief may be instructive in determining whether the current method of claiming relief needs to be simplified.

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[20] In a recent German ruling a man who was on his way from his bedroom to the home office (one floor below) slipped and injured his back and was entitled to claim insurance from his employer on the basis that it was a workplace accident. https://www.bsg.bund.de/SharedDocs/Pressemitteilungen/DE/2021/2021_37.html

[21] Section 114A Taxes Consolidation Act 1997, inserted by Finance Act 2021.

Remote Working – Implications for PPR Relief

Revenue has clarified in guidance that working from home will not impact an individual's claim for exemption from CGT on disposal of their Principal Private Residence (PPR) under section 604 Taxes Consolidation Act 1997 (TCA 1997). As remote working is now becoming more established, this Revenue practice should be put on a legislative footing.

Tax Treatment of Travel Expenses

The current rules regarding the tax treatment of business travel expenses for employees are outdated and in need of modernisation. The fundamental shift in work patterns to remote or hybrid working has further underlined that an employer's office may not be an employee's "normal place of work" when determining when an employee can be compensated for business travel expenses without the application of Benefit-in-Kind legislation.

In 2015, the Department of Finance conducted a public consultation to gather views on modernising the current travel expenses regime for employees. A Feedback Statement on the outcome of this consultation has yet to be published. In responding to this consultation, the Institute outlined how the tax rules on the tax treatment of travel expenses are based on outdated case law and work practices, which are based on the assumption that the employer's office is the employee's place of work. Modernisation of the tax rules is even more urgent now that remote working has become more established. We raised a number of suggestions in our 2015 response[22] that remain relevant.

We suggested that an alternative approach to the tax treatment of travel expense is adopted to:

1. Allow expenses to be reimbursed without deduction of tax when incurred by an employee/director, while representing the interest of their employer and where the expense is incurred wholly and exclusively for the purpose of the business. This mirrors the rule for deduction of expenses incurred for the purposes of a trade i.e., the wholly and exclusively test.
2. Section 114 TCA 1997, should specify that travel from a home-based office is not precluded from qualifying as an allowable expense simply because an employee or director's place of work also happens to be their home.
3. Section 114 should reflect the fact that travel expenses to a temporary work location are allowable provided the period of continuous work at the temporary work location does not, or is not likely to, exceed 24 months. We believe that the term "continuous work" should reasonably be determined by reference to whether the employee spends 40% or more of their time there. The UK applies such a "24-month rule" to take account of the additional costs that would otherwise arise for the employee.

With the introduction of remote work, companies have maximised the use of technology, by necessity, to facilitate interaction where physical meetings could not be held. There is likely to be an ongoing reduction in business travel as a result. In addition, there is strong support for the green agenda and minimising unnecessary travel in the future. However, business travel where necessary is an important part of a business's operation and growth and there is a need for clear, certain and updated rules to reflect the new ways of working.

4. What changes to the social insurance system should be considered to ensure sustainability into the medium to longer term? (Please note the recommendations of the Pensions Commission and NESC Report 151 on the future of the Irish social welfare system)

Ireland's rapidly changing demographic profile has significant implications for Government policy across the spectrum, including taxation.

As a result of the ageing of the population and increasing life expectancy, the number of pensioners has been increasing steadily over the past decade and is projected to increase significantly into the

[22] Irish Tax Institute Submission to Department of Finance Public Consultation on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders, September 2015.

future. Simultaneously, the ratio of the working age population to the older population is changing. Currently there is about 4.5 working age people to every pensioner. By 2031, this is expected to fall to 3.5 working age people to every pensioner and by 2051, to 2.3 working age people to every pensioner.

Expenditure on State Pensions has increased significantly over the past decade. Social Insurance Fund expenditure on State Pensions was less than €5 billion in 2010 and over €7.4 billion in 2020. Unless social insurance payments are reduced or PRSI contributions are increased in the medium term, substantial payments from the Exchequer will be required to meet the exponential cost of an ageing population.

The Report of the Commission on Pensions examines sustainability and eligibility issues with the State Pension and the Social Insurance Fund. The Commission put forward four potential packages[23] for Government to address fiscal sustainability which each included two or more policy levers:

- Increasing the rate of self-employed PRSI (Class S);
- Increasing the rate of employees and employer PRSI (Class A);
- Pension age increase; and
- Exchequer contributions.

Each of the four packages put forward by the Commission on Pensions propose that PRSI for the self-employed would increase from 4% to 10% initially by 2030 and then to the higher rate of Class A employer PRSI (currently 11.05%).

If the Commission does not accept the need to amalgamate PRSI and USC, in our view, in the interests of equity, it would be important that irrespective of which package is adopted that the additional 3% USC surcharge which applies to the self-employed income over €100,000 is removed in tandem with the increase in PRSI for the self-employed.

The Report notes that by a significant majority, the Commission on Pensions recommends Package 4 which applies all four of the policy levers, i.e., phased increases to the rates of self-employed, employer and employee PRSI, a gradual increase in the State Pension age and Exchequer contributions. We would agree with the Commission on Pensions that Package 4 is the most feasible option however it is our strong view that any increases in PRSI must factor in the overall impact on the marginal tax rate and on the cost for employers of employing people in Ireland. Consideration should be given to introducing a cap on the level of earnings to which PRSI applies, similar to that which exists in other EU Member States.

Given the redistributive nature of the social insurance system, it is important that the principle of an Exchequer contribution to the Social Insurance Fund should be maintained to reflect a commitment to social solidarity.

The Commission on Pensions also recommends maintaining the exemption from PRSI on all social welfare payments and removing the exemption from PRSI for those aged 66 or over. It proposes that all those over State Pension age should pay PRSI on a solidarity basis (Class K) on all income currently subject to PRSI.

We agree with the Commission on Pensions' recommendation that the exemption from PRSI for those aged 66 or over should be removed. However, in our view, the exemption of all social welfare payments from PRSI should also be removed.

Tax Relief for Pension Contributions

Ireland, similar to many countries, utilises the tax system to encourage workers in the private sector to save for retirement. In the UK, the final report from the Mirrlees Review, *Tax by Design*,[24] considered the need to incentivise saving for retirement and concluded: "*While achieving neutrality between*

[23] Table 1: Reform packages to address fiscal sustainability, page 11, Report of the Commission on Pensions, The Pensions Commission, October 2021.

[24] Mirrlees, J., 2011. Tax by Design: The Mirrlees Review, Oxford: Institute for Fiscal Studies and Oxford University Press.

different forms of saving and investment is our general aim, there may be a good case for treating pension saving more generously. Behavioural evidence suggests that people tend not always to make decisions in far-sighted and rational ways. Individuals with inadequate retirement savings are also more likely to draw on costly state benefit programmes in retirement. Encouraging them to save in a pension when young makes this less likely."

Any review of the cost of pension tax relief must take account of the tax paid on the drawdown of a pension at a later date. In principle, equity requires that people in receipt of the same income in real terms over their lifetime should pay the same amount of tax. Under the present system those with fluctuating income pay more than those whose income accrues more evenly. From this perspective, the relief for pension contributions can be viewed as a form of income averaging rather than a tax relief.[25]

A number of changes were introduced in 2011 to pension tax relief including the application of PRSI and USC to pension contributions; the reduction in employer PRSI relief on employee pension contributions by 50%; a reduction in the annual earnings limit for which tax relief is allowed on an employee's pensions contributions from €150,000 to €115,000; and a reduction in the Standard Fund Threshold from €5 million to €2.3 million.

In our view, any further restriction on pension tax relief must be balanced against the tax treatment of unfunded pensions. The 2020 Report of the Interdepartmental Pensions Reform & Taxation Group noted that public service pension entitlements are generally unfunded operating on a Pay As You Go basis, though public service employees make mandatory contributions and additional superannuation contributions towards their pension. As such, no explicit employer contributions are made annually. The Report concludes *"any alteration in the tax treatment of explicit contributions made by employees and employers would result in horizontal inequity if not paralleled with regard to the State's implicit contributions."*[26]

[25] This does not include tax relief on lump sums which may be regarded as a tax expenditure.

[26] Report of the Interdepartmental Pensions Reform & Taxation Group 2020, Department of Finance, November 2020, at para 5.58.

Chapter 5

Climate

1. As Ireland moves to a low carbon economy, what should be the role of the taxation and welfare system in:
   a) taking advantage of opportunities?
   b) mitigating the risks?
   c) in meeting Ireland's emissions targets?
2. Are there existing taxation and welfare measures that are counter-productive to Ireland's climate change commitments?

To what extent are these justified in the Irish context and are any reforms necessary?

In line with the European Commission's *European Green Deal* and the *'Fit for 55 Package'*, Ireland's *Programme for Government: Our Shared Future*[27] commits to achieving a 51% reduction in Ireland's overall green-house gas emissions from 2021 to 2030 (based on 2018 levels), and to achieving net-zero emissions no later than 2050. These legally binding objectives are set out in the *Climate Action and Low Carbon Development (Amendment) Act 2021*.

On 14 July 2021, the European Commission adopted a proposal[28] for a revision of the *Energy Taxation Directive* (ETD), which establishes the framework conditions for the taxation of electricity, motor and aviation fuels and most heating fuels in the EU. If adopted, the provisions of the ETD will be required to be transposed into Irish law.

The main changes proposed to the ETD include the following;

- fuels will be taxed according to their energy content and environmental performance rather than their volume,
- the way in which energy products are categorised for taxation purposes will be simplified to ensure that fuels most harmful to the environment are taxed the most,
- exemptions for certain products and home heating will be phased out, so that fossil fuels can no longer be taxed below minimum rates while ensuring support for vulnerable households to protect against energy poverty, and
- fossil fuels used as fuel for intra-EU air transport, maritime transport and fishing will no longer be fully exempt from energy taxation in the EU.

The Institute notes that existing fossil fuel subsidies, such as the Diesel Rebate Scheme, need to be reviewed with a view to phasing out or replacing them with renewable alternatives. We also note that in the Climate Action Plan 2021, the Government has committed to annual reviews and reform of current environmental taxes to ensure they support Ireland's emissions reduction targets.

The Institute welcomes this commitment and believes opportunities to expand our existing environmental taxes need to be explored and that consideration should be given to new incentives which could support businesses in reducing their carbon emissions.

New tax measures will also be needed to replace lost revenues arising from the decarbonisation of the Irish economy. Ensuring stakeholder and consumer acceptance of any new tax measure will be central to successful implementation. In addition to raising replacement revenues through environmental taxes, we believe it is timely for a review of zero rating of VAT to take place and to ensure our rates are in line with EU rules.

Review of Existing Measures Not Aligned to Ireland's Climate Change Commitments

In 2019, €3 billion was raised in energy taxes, €0.4 billion was spent on environmental subsidies related to energy and emissions and fossil fuel subsidies were €2.4 billion.[29] Fossil fuel subsidies include reduced tax rates as well as direct subsidies, for example, the lower excise duty on auto diesel.

[27] Programme for Government: Our Shared Future, Department of the Taoiseach, June 2020.
[28] Proposal for a Council Directive, restructuring the Union framework for the taxation of energy products and electricity (recast), European Commission, 14 July 2021.
[29] Fossil Fuel Subsidies, Central Statistics Office, March 2021.

Over the years, relief schemes have been put in place to support business sectors which are heavily reliant on fuel as a business input. These include measures such as, Marked Gas Oil (MGO), farmers double income tax relief under section 664A TCA 1997 in relation to farm diesel, the VAT refund scheme for business diesel expenditure and the Diesel Rebate Scheme. These measures recognise the important role which sectors like haulage and agriculture, among others, play in the economy. However, in order for Ireland to meet its carbon emissions targets, these sectors must be encouraged to move away from fossil fuels.

A 2019 ESRI research paper[30] examining the impact of removing fossil fuel subsidies and increasing the carbon tax in Ireland analysed the environmental and economic impact of removing eight different fossil fuel subsidies. The paper found that the removal of seven of the subsidies would have negligible impacts on overall economic activity and households' welfare, the exception being the removal of household energy allowances (such as allowances for electricity, gas, and fuel) which would impact poorest households hardest.

The research found that among various scenarios of subsidy removal, removing the subsidies for auto diesel and marked gas oil would result in the largest emissions reductions overall (with most emission reductions coming from the transport, agricultural and construction sectors).

To ensure Ireland's Climate Change commitments are achieved, we consider that the gradual phasing out of fossil fuels subsidies, such as those mentioned above, must be done in tandem with support measures to incentivise the use of greener fuels and technology. Appropriate policy design will be vital to ensure the removal of fossil fuel subsidies does not disproportionately disadvantage poorer households or impacted sectors of the economy.

Expansion of Existing Environmental Taxes

Despite the economic impact of COVID-19, green-house gas emissions in Ireland decreased by only 3.6% in 2020, demonstrating the scale of the decarbonisation challenge for Ireland over the coming decade.

The pathway to achieving net-zero emissions no later than 2050 involves a gradual phasing out of fossil fuels from the economy and a greater reliance on electricity supplied as a renewable energy. This change will result in a significant loss to the Exchequer as tax revenue from existing environmental taxes on fossil fuels fall. Opportunities to modify and expand existing environmental taxes as consumer behaviour changes must be explored.

Motor Taxes

Both Vehicle Registration Tax (VRT) and motor tax are taxes based on the CO_2 emissions of the motor vehicles. Analysis by the Climate Change Unit in the Department of Public Expenditure and Reform in 2019[31] estimated that achieving the targets set out in the 2019 Climate Action Plan would result in annual revenue losses of €500 million by 2030 due to less revenue from motor tax, VAT, and fuel excises.

As the proportion of electric vehicles in the national fleet increases, the average yield from VRT and motor tax per car will decline. We believe these taxes should be kept under continuous review and appropriate changes implemented as necessary to the manner in which they are calculated to ensure their design reflect the realities of having a majority national fleet of EVs.

Excise Duties on Fuel

In addition to VRT and motor tax, the Irish Exchequer also receives tax revenues from excise duties on fuel. Fuel taxes generate receipts primarily from transportation activities (primarily road transportation) and the heating of buildings.

[30] The impacts of removing fossil fuel subsidies and increasing carbon tax in Ireland, Economic and Social Research Institute (ESRI), December 2019.

[31] Kevany, L. (2019), Spending Review 2019: Incentives for Personal Electric Purchase, Climate Change Unit, Department of Public Expenditure & Reform, August 2019.

At present, there is a lower rate of excise applied to diesel than petrol. The excise rate for petrol is 54.2c per litre and the excise rate for diesel is 42.6c per litre. This means that the diesel excise gap is 11.6 cents.

We believe the difference in excise for petrol and diesel should be reviewed and the rates should gradually be equalised. The Tax Strategy Group has set out a pathway for the equalisation of excise rates over 5 years, resulting in an additional €81m per year and a cumulative yield of €397m over the 5-year period.[32]

Electricity Tax

Electricity Tax is an excise duty that is charged on supplies of electricity. Currently, there is no Electricity Tax payable on domestic use of electricity and there is a range of other reliefs such as for electricity generated from renewable sources.

Electricity Tax receipts contributed just €2.1 million to the Exchequer in 2020. The low level of receipts is due to the low tax rate and the wide range of reliefs available. The rate of electricity tax charged in Ireland at €1 per Mwh is amongst the lowest in the EU. As the share of electricity generated by renewables increases, so does the quantum of reliefs available, reducing the overall yield.

The average price for household electricity including taxes in the second half of 2020 in the EU was €0.2134 per kilowatt hour (kWh). Despite the relief from Electricity Tax for household usage, Ireland is among the EU Member States with higher electricity prices.

The Institute would support the removal of the exemption from Electricity Tax for domestic use. However, given Ireland has higher electricity prices than most EU countries, appropriate policy design is vital to ensure the removal of this exemption does not disproportionately disadvantage lower income households.

Plastic Tax

Currently, the Environmental Levy on Plastic Bags (or Plastic Bag Levy) is 22 cent per shopping bag. Retailers pay this levy to Revenue, who collect the levy on behalf of the Department of Communications, Climate Action and Environment.

The Plastic Bag Levy has been successful in influencing behavioural change and is a widely accepted tax by consumers. The levy was not intended to be a revenue-generating levy and any increases to the Plastic Bag Levy may only result in a modest increase to the overall revenue collected as the likely impact would be a further reduction in the use of plastic bags.

Ireland transposed[33] the Single Use Plastics (SUP) Directive[34] in April 2021 banning certain single use plastics. The 2021 Climate Action Plan commits to ensuring that all plastic packaging is reusable or recyclable by 2030 and to increase Ireland's capacity to recycle packaging waste by 70%, and plastic packaging waste by 55% by 2030.

The scope for further taxes around single use plastics could be explored. For example, the UK Plastic Packaging Tax will take effect from 1 April 2022 and applies to plastic packaging manufactured in, or imported into, the UK where the plastic used in its manufacture is less than 30% recycled.

New Measures to Support Business in Changing Behaviour

Accelerated Capital Allowances to Promote Long-term Behavioural Change

The agricultural sector is the largest emitter of green-house gas emissions in Ireland with 37%[35] of all green-house gas emissions in 2020. The Irish position differs from most other European countries where agriculture related green-house gas emissions are typically closer to 11% of total emissions.

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[32] Climate Action, Tax Strategy Group – TSG 19/04, Tax Strategy Group, July 2019.

[33] Single-Use Plastics publication, Department of the Environment, Climate and Communications, April 2021.

[34] Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

[35] Latest emissions data, Environmental Protection Agency, September 2021.

In our view, consideration should be given to introducing targeted measures such as accelerated capital allowances to support the agricultural sector in reducing green-house gas emissions. The Commission could also consider leveraging off existing agricultural incentives and reliefs to make them more targeted towards carbon-friendly activities.

Encouraging firms to invest in Industry 4.0 capabilities is in line with the Government's strategy to support the digital transformation of the manufacturing sector and its supply chain. We believe that any enhancements to this area should also consider how to promote long-term behavioural change to support the low carbon economy by linking accelerated capital allowances to energy efficient equipment.

Green Enhancements to the Employment Investment Incentive Scheme (EIIS)

We believe that enhancements to the EIIS could assist Ireland in achieving its Climate Change commitments by helping to ensure businesses become energy neutral. EIIS could also be used as a policy lever to encourage investment in high-risk ventures which support green/energy efficient projects.

However, a number of amendments to the EIIS would be required to achieve this objective.

(i) Amend the definition of a qualifying company for EIIS to include Relevant Renewable Energy Community (REC)

The Renewable Energy Support Scheme (RESS) provides support to renewable electricity projects in Ireland and aims to encourage growth of the green economy, generate sustainable employment, and ultimately benefit the consumer, as renewables become more cost effective. Companies, joint ventures and communities that wish to participate in renewable energy projects should be supported in their endeavours. In most Community-Led Projects, the Renewable Energy Community (the "Relevant REC") is structured as a Company Limited by Guarantee without a share capital (CLG). The CLG is regarded as a company for the purposes of EIIS.

An unintended consequence of these terms and conditions means where the Relevant REC of a Community-Led Project is structured as a company (which under RESS must hold 51% of the shares in the renewable energy project company), it will be precluded from raising funds under the EIIS. Effectively to be a "qualifying company" for the purposes of EIIS, the company cannot be owned by more than 51% corporate shareholders.

We recommend a technical amendment to section 490 (3)(a)(ii) TCA 1997 to ensure that a "qualifying company" for the purposes of EIIS includes a Relevant REC for Community-Led Projects under the RESS.

(ii) A carve out in "qualifying trading activities" for green/energy efficient specific projects

To promote investment in green/energy efficient specific projects by companies, we believe there should be a carve out in "qualifying trading activities" for green/energy efficient specific projects that would permit companies that would not normally qualify for EIIS, to raise EIIS finance for investment in such products and help their business to become energy neutral.

Companies carrying on green energy activities are considered qualifying companies for EIIS, where they produce energy from renewable sources and have made an application for a connection to a grid.

Consideration could also be given to permitting companies that do not carry on "relevant trading activities" per se for the purposes of EIIS, to avail of EIIS finance to invest in ringfenced green energy efficient products to improve their carbon footprint.

For example, many commercial retail centres may wish to install PV solar panels on the rooftops of premises to source power for the building and become energy neutral. While capital allowances are available for energy efficient equipment, this does not solve the funding issue for many companies that wish to invest in such energy efficient specific projects. If a carve-out in "qualifying trading activities" was permitted for investment in ringfenced green/ energy efficient projects, consideration could be given to restrict the capital allowances available on the equipment to the extent of the amount of EIIS relief obtained, similar to the treatment for normal grants.

3. What changes should be made to the taxation system to ensure longer term fiscal sustainability given the expected impact of the continued decarbonisation of the Irish economy, in particular the impact of reducing tax revenues from energy, carbon and motor taxes?

Prior to the pandemic, the Irish Exchequer received circa €4.5 to €5 billion annually in tax receipts from motor tax, Vehicle Registration Tax, fuel excises, VAT, and the Carbon Tax. The bulk of receipts from these taxes comes from fuels used in road transport and to a lesser extent the heating of buildings.[36] Therefore, the scale of the proposed 'electrification' of the national car fleet will entail significant losses of revenue to the Exchequer.

The Institute supports the Government's commitment to reach a Carbon Tax of €100 per tonne of carbon dioxide emitted by 2030. Since its introduction, Carbon Tax has generated revenues of over €4 billion for the Exchequer. However, as carbon pricing is one of the ways in which the Government is incentivising the shift to more renewables to achieve net-zero emissions no later than 2050, Ireland will have 'expiring' carbon taxes and this lost revenue will need to be replaced.

Therefore, in addition to amending and/or extending existing environmental taxes, new measures will be needed to replace lost revenues arising from the decarbonisation of the Irish economy. Ensuring stakeholder and consumer acceptance of any new taxation measure will be central to the successful implementation of any new charge. In addition to raising replacement revenues through environmental taxes, we believe that it is timely for a review of zero rating of VAT to take place and to ensure our rates are in line with EU rules.

Consider New Environmental Taxes

Road Usage Charge

The Commission could consider the introduction of road user charging, which would allow users to pay based on kilometres driven using a device in their car, as one way to replace some of the taxes lost from expiring carbon taxes.

The charge could be aligned with the polluter pays principle by linking the emissions of the car with the number of kilometres travelled. However, equity concerns arise where there is no public transport alternative to using a private vehicle as will be the case in certain rural areas. Cross-border travel would have to be considered. In addition, mitigation measures would need to be examined for the sectors most impacted by such a charge, for instance, the road haulage sector.

Care would need to be taken in developing such a measure to ensure that it is compatible with EU law, in particular in the area of data protection and privacy.

Congestion Charges

Congestion charging provides the opportunity to specifically target the areas experiencing the heaviest volumes of traffic, congestion and air and noise pollution.

London has operated a congestion charge since 2003, and more recently, the ULEZ (ultra-low emissions zone). The congestion charge applies a daily rate for almost all vehicles entering the London zone, while the ULEZ applies specific charges to vehicles not meeting certain emissions standards. Similar charging regimes are in place in other European cities, with some applying every time a motorist enters a charging zone rather than a daily charge.

Broad acceptance of congestion-based charges may be an issue as it gives rise to equity issues between those who can easily afford the charges and those who cannot. Other concerns about

[36] Climate Action, Tax Strategy Group – 21/09, Tax Strategy Group, September 2021.

congestion charging include the effects on neighbourhoods that are just outside the charging zone (increased car parking demands, traffic build-up, air pollution, etc.) and the adequacy of public transport networks. However, we believe that the Commission should consider the case for congestion charges in improving overall general public health, promoting the low carbon economy and raising additional taxes to replace emissions and fossil fuel-based taxes.

Review the VAT Base

In 2020, VAT accounted for approximately €12.4 billion or approximately 22.2% of the overall tax yield to the Exchequer.[37] In 2021, VAT receipts increased to €15.4 billion.

The Irish VAT system has a standard rate of 23%. However, the use of reduced rates and exemptions substantially narrows the VAT base. Ireland's narrow VAT base is the fifth smallest in the EU.

As of 1 January 2021, 23 of the 27 EU Member States have a standard VAT rate of 20% or higher and the average standard rate in the EU is 21.5%. Ireland has the joint 4th highest standard rate of VAT in the EU, at 23%.

The zero rate of VAT accounts for 11.3% of activity and applies to most food, books, children's clothes and shoes, and oral medicines. Only nine EU Member States apply a zero rate to activity and Ireland's application is the largest.

At 13.5%, Ireland has the 4th highest reduced VAT rate in Europe. However, we apply reduced rates to an extensive range of activity relative to other Member States.

The second reduced VAT rate of 9% is the fourth highest second reduced VAT rate in Europe, although only 18 Member States use a second reduced VAT rate.

The main policy justification for zero or low VAT rates on certain goods and services is equity. As low-income households spend a higher proportion of their income and expenditure on basic commodities, it is argued that low or zero rates on such items have desirable income distribution effects. But the Institute believes this is an inefficient and costly strategy because reduced rates of VAT benefit all consumers, irrespective of their circumstances.

The OECD has recommended[38] that Ireland further broaden the tax base and improve the efficiency of the tax system by moving from five different VAT rates to three. It suggested that one aspect of this reform would be moving all items that are currently taxed at the zero rate to a VAT rate of 5%. As such a move would likely have adverse consequences for low-income households, it suggests that part of the revenues raised from the reform should be used for targeted transfers. Revenue's Ready Reckoner[39] shows that increasing the zero rate from 0% to 5% would yield €579 million in additional revenues whereas increasing the rate to 9% would yield €1,042 million.

The EU has recently moved to provide Member States with more flexibility to apply reduced and zero VAT rates and the list of goods and services for which reduced VAT rates are allowed has been updated and modernised. The new rules will also phase out preferential treatments for environmentally harmful goods.

In light of the changes at EU level, we believe that it is now timely for a review of zero rating of VAT to take place and to ensure our rates are in line with EU rules.

[37] Value Added Tax, Tax Strategy Group – TSG 21/10, Tax Strategy Group, September 2021.
[38] OECD Economic Survey: Ireland 2020, OECD, February 2020.
[39] Revenue Ready Reckoner – Post Budget 2022, Revenue Commissioners, November 2021.

Chapter 6

Housing

1. Taking into account previous taxation related interventions in the housing market, what role do you think the taxation and welfare systems have to play in contributing to the long-term supply of housing?

Please outline your views:

Tax-related Interventions in the Property Market

There have been many interventions in the Irish property market through tax measures in recent Finance Acts. Some of the interventions were intended to address affordability, some were focussed on increasing supply, and others were fiscal (including revenue raising) measures. A summary of these recent interventions is set out below.

Tax measure	**Type of intervention**	**Description**
10% rate of stamp duty on the acquisition of certain residential property	Supply / Affordability	Section 31E of the Stamp Duties Consolidation Act (SDCA) 1999 was introduced in Finance (Covid-19 and Miscellaneous Provisions) Act 2021 which gave effect to a Financial Resolution passed on 19 May 2021. Section 31E charges a higher 10% rate of duty on the acquisition of individual residential units such as houses and duplexes, but not to apartments, where a person acquires at least 10 such units during any 12-month period. The purpose of the 10% rate of duty is to discourage the purchase of multiple residential units by any one individual or entity in the context of the current housing crisis and the ongoing shortage of housing for owner-occupier purchasers. There are limited exceptions to the 10% rate of duty for certain types of 'social housing'.
Zoned Land Tax	Supply	A new Zoned Land Tax was introduced in Finance Act 2021 and will replace the Vacant Site Levy. The tax will become chargeable from 1 January 2024 onwards. It will apply to land which is serviced and zoned for residential development in circumstances where the land has not been used for the development of housing.
Non-resident landlords brought within charge to corporation tax	Fiscal	Finance Act 2021 introduced provisions to bring non-resident corporate landlords within the charge to corporation tax. The measure was introduced in conjunction with the introduction of ATAD Interest Limitation Rules from 1 January 2022 onwards, to ensure that non-resident corporate landlords would be within scope of the new rules.

		Previously, non-resident corporate landlords that did not carry on a trade in the State through a branch or agency were within the charge to income tax at the standard rate of 20%, rather than corporation tax. By contrast, Irish resident companies are liable to 25% corporation tax on Irish rental income. Finance Act 2021 amends section 25 TCA 1997 to increase the rate of tax for non-resident corporate landlords from 20% to 25%, equalising the position with Irish-resident companies.
IREF anti-avoidance rules	Fiscal	Finance Act 2019 introduced an income tax charge payable by an IREF where certain interest and debt thresholds are breached.
Changes to the REIT regime	Fiscal	Finance Act 2019 introduced a number of changes to the REIT regime to increase the level of tax collected on property gains by REITs.
Pre-letting expenses	Supply	Finance Act 2017 introduced a new provision which permits a deduction for pre-letting expenses (capped at €5,000 per vacant premises) incurred by an individual on previously vacant residential properties brought to the rental market. Finance Act 2021 extended the provision which was due to expire on 31 December 2021 to 31 December 2024.
Increased stamp duty rate for non-residential property	Fiscal	Finance Act 2017 increased the rate of stamp duty on transfers of non-residential property from 2% to 6%. This was followed by a further increase in the rate of stamp duty in Finance Act 2019 from 6% to 7.5%.
Residential Development Stamp Duty Refund Scheme	Supply / Affordability	In tandem with the introduction of the increased rate of stamp duty for non-residential property, Finance Act 2017 introduced the Residential Development Stamp Duty Refund Scheme. The Scheme provides for the refund of a portion of stamp duty paid on the acquisition of non-residential land where that land is subsequently developed for residential purposes.
IREF withholding tax and changes to the securitisation regime under s110 TCA 1997	Fiscal	Finance Act 2016 introduced a 20% withholding tax on returns on investment made by certain investors in Irish regulated funds which hold IREFs. A fund is considered to be an IREF where at least 25% of the market value of its assets is derived (directly or indirectly) from IREF assets. IREF assets are: (a) Irish land or property (b) shares in a REIT (reals estate investment trust); (c) shares deriving their value or greater part of their value from (a) or (b); (d) specified mortgages, and (e) units in an investment undertaking which meets the definition of an IREF.

		Finance Act 2016 also amended section 110 TCA 1997 to restrict the ability of such companies to take a tax deduction for profit dependent interest on profits derived from Irish property.
Help to Buy scheme	Affordability	Finance Act 2016 introduced the Help to Buy scheme, which is an incentive for first-time buyers to buy newly built homes. It only applies to properties that cost €500,000 or less. The Help to Buy incentive scheme gives a refund of income tax and Deposit Interest Retention Tax (DIRT) paid in Ireland over the previous 4 tax years.
Vacant Site Levy	Supply	The Vacant Site Levy was introduced in the Urban Regeneration and Housing Act 2015 and was intended to tackle what was perceived as "land hoarding". The Planning and Development (Amendment) Act 2018 increased the rate of the levy from 3% of the market value of a vacant site to 7%. The Vacant Site Levy is administered by local authorities. Persistent difficulties experienced in the administration of the levy including resourcing issues, uncertainty in interpreting the provisions of the 2015 Act, and challenges in identifying vacancy and ownership detail resulted in an inconsistent approach to implementing the levy across different areas.[40]
Seven-year CGT exemption	Supply	Finance Act 2012 introduced an exemption from CGT for gains arising on the disposal of land and buildings situated in Ireland (or any other EEA state) where the asset had been held for a seven-year period. This provision was intended to incentivise the purchase of property as a long-term investment at a time when there were few sales. Finance Act 2017 subsequently reduced from seven years to four years the holding period to avail of the CGT exemption. The amendment was intended to stimulate the supply of property to the market from 1 January 2018.
Introduction of the Real Estate Investment Trusts (REIT) regime	Supply	The tax regime for the operation of REITs in Ireland was introduced in Finance Act 2013. One of the primary reasons for the introduction of the REIT regime was to attract new sources of non-bank financing to the Irish property market, at a time when the market was stagnating due to the fiscal crisis and property market crash. It was intended to reduce dependence on bank financing in the property market. The REIT structure was viewed as a practical model to introduce international capital to the property market as the REIT model is recognised and understood by institutional investors throughout the world.[41]

[40] Challenges in implementing and administering the Vacant Site Levy, Parliamentary Budget Office, Publication 29 of 2020.

[41] Real Estate Investment Trusts, Irish Real Estate Funds and Section 110 Companies as they invest in the Irish Property Market, Tax Strategy Group – 19/02, Tax Strategy Group, July 2019.

Living City Initiative	Supply / Affordability	The Living City Initiative is a tax incentive scheme that applies in certain ‘special regeneration areas’ in the centres of Dublin, Cork, Limerick, Galway, Waterford and Kilkenny. The scheme provides for tax relief for qualifying expenditure incurred on both residential and certain commercial refurbishment and conversion work.
Mortgage interest relief for landlords	Fiscal / Supply	Finance Act 2009 restricted to 75% the amount of mortgage interest which could be claimed against rental income. Full mortgage interest relief was subsequently restored on a phased basis between 2016 and 2019.
Phasing out of legacy property incentives and capital allowances	Fiscal	Finance Act 2006 introduced provisions for the phasing out of many tax-based legacy property reliefs by 31 July 2008. The reliefs which were phased out included, urban renewal relief, town renewal relief, rural renewal relief, multi-storey car parks, hotels, living over the shop scheme, sports injury clinics, park-and-ride, registered holiday cottages, student accommodation, and general rental refurbishment schemes, specified residential units for nursing homes, third-level educational buildings and Mid-Shannon Corridor Tourism Infrastructure Investment Scheme. Finance Act 2012 provided that passive investors who claimed accelerated capital allowances arising under any of the property or area-based tax incentive schemes that existed would no longer be able to use the capital allowances after the tax life expired where the tax life ended after 1 January 2015. Where the tax life of a scheme ended before 1 January 2015, the investor would not be able to carry forward the allowances into 2015 and beyond. Finance Act 2012 provisions did not restrict ‘Section 23’ type relief. Section 23 Relief is granted against Irish-source rental income for expenditure incurred on the cost of purchase, construction, conversion or refurbishment of rented residential accommodation in a tax incentive area. The latest date on which qualifying expenditure had to be incurred under schemes which qualified for Section 23 Relief ended on 31 July 2008.
80% Windfall Tax	Fiscal	The 80% Windfall Tax applied to profits or gains arising from disposals of development land to the extent that those gains were attributable to the rezoning of land. It was introduced as part of the National Asset Management Agency (NAMA) Act 2009 and subsequently abolished in Finance Act 2014.

A Clear Strategy is Needed to Restore Certainty in the Property Market

Many of the recent legislative changes are designed to address supply issues. Certain interventions were targeted at specific transactions resulting in significant uncertainty amongst investors in the Irish property market.

Feedback we have received from our members suggests that banks will generally only lend up to 60%/65% of the cost of a development project with the result that developers must make up the funding gap by sourcing alternative debt financing. This makes the role of institutional investors in funding the supply of housing in Ireland even more important. Such investors carry out a detailed analysis before making their decision to invest in the Irish market. However, recent interventions in the market through tax measures have eroded the confidence of institutional investors who have made their decision to invest in the market based on certain parameters. In addition, the upcoming review of ICAVs is causing further uncertainty and is also impacting investment decisions.

Resolving funding issues for developers is a key component in any strategy to address current housing supply issues. In our view, restoring certainty to the market by having a clear and settled strategy to address housing supply issues is critical for Ireland to attract the investors the country relies on to fund the development of housing.

Consideration could also be given to the introduction of a domestic funding model to encourage the development of housing. Such a model could potentially draw on elements of the EIIS to encourage investment by taxpayers in development projects.

We believe that any proposed intervention to address housing supply issues, whether through tax or otherwise, must also consider the longer-term impact of the intervention in the market. For example, the introduction of rent pressure zones was intended to moderate the rise in rents and create a stable and sustainable rental market. However, the measure has made the letting of residential property very unattractive leading to a tightening of supply in the rental market. The unintended consequences of policy decisions need to be carefully examined before implementation.

Changes to planning requirements, may in some instances, be a more appropriate policy lever to deal with issues in the property market than tax measures. The recent introduction of increased stamp duty on certain residential property is intended to act as a deterrent to institutional investors. However, the feedback we have received from our members is that the measure has caused uncertainty and is likely to discourage investment in the wider Irish property market by such investors, which will ultimately impact the future supply of rental properties.

Where tax measures are used to encourage the development of housing it is important to ensure that the provisions align with other areas of Government policy. For example, the Residential Development Stamp Duty Refund Scheme (SDRS) provides for a refund of stamp duty for land that is subsequently developed for residential purposes. One of the conditions to qualify for the refund is a requirement that housing units account for at least 75% of the total surface area of the land. But frequently planning requirements make it impossible to meet the 75% test. Many of these cases involve the development of social and affordable units.

In our view, aligning the SDRS with planning requirements could reduce the costs of construction of residential units on that land.

Tax measures could be used to support the refurbishment of vacant properties currently unfit for letting. The measures could be designed to ensure they align with the Government's home energy efficiency policy.

2. Should the taxation system have a role in supporting or promoting any specific form of housing tenure (e.g., home ownership, rental), or should it remain neutral?
3. What in your view is the role that taxation should play in housing affordability?

In our view, housing policy should continue to encourage owner occupation.

Along with stamp duty and VAT, development levies add significant cost to the purchase of newly built homes. In a situation where there is a housing crisis, we believe that there is a strong argument for the reduction of development levies.

The current Central Bank mortgage rules coupled with prevailing high rents, means that first time buyers find it very difficult to accumulate savings for a deposit without parental support. Tax measures have been introduced to address affordability issues for first time buyers, such as the Help to Buy Scheme. However, it is important that such measures are kept under review to ensure they are fulfilling their policy objective. While affordability measures may be expedient in the short term, over time the market will react and therefore, it is important that the longer-term impact of the intervention on the market is also considered.

Consideration could be given to introducing a model similar to the Singapore's Central Provident Fund (CPF).[42] The CPF is a mandatory social security savings scheme funded by contributions from employers and employees which may be used to fund the retirement, housing and healthcare needs of the employee.

Individuals may withdraw a proportion of their savings to fund the purchase of a house. This is based on the principle that if an individual owns their own home they are contributing towards their income in retirement as they will not have to pay rent.

A similar scheme known as the KiwiSaver operates in New Zealand. The KiwiSaver is a voluntary retirement saving scheme which permits individuals who have been members of the scheme for at least three years to withdraw funds to purchase their first home.

We believe that a model along these lines could assist first time buyers whilst also incentivising them to start saving for a pension earlier.

4. Following the introduction and recent amendments to the Local Property Tax (LPT) and the commitment in Housing for All to introduce a new taxation measure to activate vacant land for residential purposes, do you consider there is a role for a Site Value Tax in Ireland? (A site value tax is an annual property tax based on the value of land, without regard to the value of any development or buildings on that land.)

We do not believe that a Site Value Tax (SVT) based on the value of land, without regard to the value of any development or buildings on that land, is appropriate for residential property.

While most people would have an understanding of the market value of their property, it is likely that they would have little understanding of the site value. Furthermore, it would be difficult to gain public acceptance of the principle that the same liability should apply to two homes which are very different in terms of size and fit-out solely because they are built on similar sites.

In our view, the Local Property Tax (LPT) which is based on the market value of a residential property is preferable to a SVT. However, as detailed below, it is important that the LPT regime is reviewed at regular intervals to ensure that it continues to provide a stable and sustainable yield in the medium and long-term.

In addition to the LPT, the new Zoned Land Tax introduced in Finance Act 2021, which will replace the Vacant Site Levy, will apply to serviced land zoned for residential development that has not yet been used for the development of housing. Furthermore, one of the actions under the Government's Housing for All Plan is to collect data on vacancy levels in residential property with a view to introducing a Vacant Property Tax.

In circumstances where we have a LPT and we will soon have a Zoned Land Tax and a Vacant Property Tax, we do not believe that there is a role for a SVT in relation to residential property or land which is serviced or zoned for residential development. However, when the Zoned Land Tax and the Vacant Property Tax are introduced, their impact should be carefully monitored to ensure their policy objectives are met.

The National Competitiveness Council has proposed that a SVT could replace the commercial rates system as a source of local authority funding to be administered on a self-assessment basis, with oversight by the Revenue Commissioners.[43]

[42] For further information see https://www.mom.gov.sg/employment-practices/central-provident-fund/what-is-cpf

[43] The National Competitiveness Council, Submission to the Department of Finance Public Consultation, The Potential of Taxation Measures to Encourage the Development of Zoned and Serviced Land, April 2015.

We would agree that there is merit in considering a SVT which would replace the existing commercial rates system. However, in designing such a SVT, care would need to be taken that less profitable activities which are valued by communities would not become uneconomic as a result of the operation of the SVT.

Local Property Tax

As stated above, in our view it is important that all features of the LPT regime are reviewed at regular intervals. We welcome the changes introduced in Finance (Local Property Tax) (Amendment) Act 2021 and the revaluation of properties which took place last year. The tax base, rates and any specific rules included in the design of the tax, such as exemptions and deferrals should continue to be under constant review to ensure that they are appropriate, up to date and reflect current circumstances.

The yield from LPT should be maintained to ensure that Ireland's overall tax base remains as broad as possible. There should also be certainty for taxpayers, while avoiding large and sudden increases in tax liabilities. The option for low-income homeowners to defer payment of LPT is crucial and the income thresholds should continue to be periodically reviewed and revised in line with the Consumer Price Index, as proposed in the Thornhill report.[44]

LPT applies to all residential properties in the State (other than certain exempt properties) and is calculated on the market value of the property on a self-assessment basis. Currently, there is no deduction for mortgage interest for income tax purposes. If increases to the rate of LPT are contemplated going forward, in our view, it would be appropriate to allow outstanding mortgage debt as a deduction when calculating the value of a residential premises for LPT purposes. This would mean that LPT would be a tax on the equity held in a home and would avoid those in negative equity being liable for LPT. In adopting such an approach, it would be important that a review of property valuations takes place every four years in accordance with the Finance (Local Property Tax) (Amendment) Act 2021 to ensure that mortgage repayments are taken into consideration at regular intervals.

[44] Review of the Local Property Tax, Dr Don Thornhill, July 2015.

Chapter 7

Supporting Economic Activity

1. How can Ireland maintain a clear, competitive, sustainable, and stable taxation policy with regard to its attractiveness to Foreign Direct Investment (FDI) in light of the rapidly changing global environment?

In October 2021, the Government confirmed it would join the OECD Inclusive Framework agreement to reform international tax rules to address the challenges arising from the digitalisation of the global economy. The announcement came following confirmation that the proposed minimum effective tax rate had been set to a precise rate of 15%.

The Minister also confirmed that he had received assurances from the European Commission that:

(i) the proposed EU Directive to transpose the OECD agreement will be faithful to the agreement and not go beyond the international consensus; and

(ii) maintaining the 12.5% corporation tax rate for businesses out of scope of the OECD agreement does not present any difficulties.

The confirmation that Ireland would join the OECD Inclusive Framework agreement and the commitment from the EU that the EU Directive will not seek to go beyond that agreement, brought much needed certainty and stability to businesses.

In addition, the assurance from the EU that the 15% rate will apply only to companies with global revenues in excess of €750 million means that Irish SMEs can continue to benefit from the 12.5% rate without any damage to their competitiveness.

Tax certainty is critical to business and investors. Over the last 25 years, Irish government agencies have used the certainty and stability of Ireland's regime to great effect in promoting Ireland and encouraging inward investment. It is crucial that in making the changes required as part of the global tax reform process, the Irish policy response brings long-term certainty and clarity to business.

While joining the OECD Inclusive Framework agreement reduces the scope of competition in corporate tax, there are other ways in which the Government can improve the tax system and make Ireland an attractive place to do business.

For example, a clear, simple and efficient tax system would not only benefit business, it would also increase compliance. Improvements to the tax system can make Ireland a more attractive place to do business.

Simplifying the Irish corporation tax code and making it easier to administer would enhance the country's competitiveness. These are key characteristics that should underpin any effective tax regime, and, in both respects, Ireland falls short in some respects. For instance, ATAD Interest Limitation Rules introduced in Finance Act 2021 were layered on top of existing interest deductibility provisions making the operation of the rules onerous and overly complex. This makes it difficult for businesses to operate in Ireland and comply with their tax obligations.

Consideration should be given to removing Ireland's schedular tax system and different corporation tax rates. The trading and non-trading distinction between the 12.5% trading rate and passive 25% rate creates unnecessary complexity within the Irish corporation tax code, which businesses do not have to contend with in other tax systems. Ireland should have only one rate applying to corporates particularly as global consensus on a minimum effective tax rate of 15% has now been agreed.

Certainty around Ireland's corporation tax system would also encompass providing certainty in how the Research & Development (R&D) tax credit will interact with a new effective tax rate of 15%. Given the mobility of R&D investment projects, we need to ensure that Ireland's R&D tax credit remains best in class, if the Government wants to continue to attract additional R&D investment in this country. The R&D tax credit will be even more important going forward to attract and retain investment.

The implementation of a global minimum tax rate, on top of the adoption of extensive measures contained in the Anti-Tax Avoidance Directives, including controlled foreign company rules, to protect against foreign base erosion risks, diminishes the need for a worldwide corporate tax system. In this regard, we welcome the recent launch by the Department of Finance of a public consultation on moving to a territorial corporate tax system including consideration of a participation exemption and/or branch exemption regime.

The attractiveness of Ireland's personal tax system and the cost of employing workers in Ireland will become an increasingly important factor for companies in deciding where to invest and locate their business. Feedback from our members would suggest that a marginal rate of tax (including social insurance contributions) set at 50% would help to attract highly skilled and mobile labour to Ireland.

The Irish system of taxation of share options and Restricted Stock Units are overly complex in comparison with the approach taken in other jurisdictions. For Ireland to be competitive in this area, the taxation of share-based remuneration needs to be simplified and aligned with other competitor countries.

Special Assignee Relief Programme

The Special Assignee Relief Programme (SARP) is a critical part of Ireland's competitive offering to attract Foreign Direct Investment (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 our key competitor countries is essential to enable Ireland to compete for talent on a global stage.

Independent analysis of SARP has clearly and consistently demonstrated that it delivers value to the Irish economy through job creation and business expansion and that there is a strong policy rationale for its retention[45] with a Benefit-to-Cost Ratio of 1.8[46]. The number of jobs linked to SARP has increased while the cost of the scheme to the Exchequer has decreased, since the re-introduction of a cap on salaries qualifying for the relief in Finance Act 2018. In 2019, SARP Employer Returns were submitted by 461 employers.[47] 862 jobs were created or retained in 2019 because of SARP, an increase from 584 in 2018.

The economic benefits of SARP extend beyond increased employment, with figures showing SARP companies paid over €2.5 billion in corporation tax and €1.9 billion in PAYE taxes in 2017 alone.[48]

However, the attractiveness of SARP remains vulnerable to competitive pressures. Many other jurisdictions offer similar and often more attractive regimes to attract foreign executives, such as the Netherlands, France, and Portugal. Therefore, it is imperative that SARP is retained and benchmarked on a regular basis against the top competitor jurisdictions for FDI and for senior decision-makers to ensure Ireland remains competitive. This is even more critical now as the 12.5% corporation tax rate is no longer a core competitive offering.

In addition, we recommend:

- To provide certainty to businesses, SARP should be extended beyond its expiry date of 31 December 2022 for a 10-year period to December 2032. This would assist businesses to plan longer-term projects with the knowledge that SARP will remain a core offering.
- In an environment where there are high employment levels and skills shortages in some key areas, consideration should be given to allowing "new hires" to qualify for SARP. A minimum salary threshold and skills requirement could be applied so the relief would not displace the employment of Irish individuals or encourage recruitment of less costly employees from abroad.
- Ease of administration is important in ensuring tax reliefs work as intended and there are opportunities to simplify the SARP regime. Several administrative aspects of SARP, underpinned by legislation, can impede the operation of the relief. For example:
    - Failing to notify Revenue of a SARP employee's assignment in the State within 90 days of taking up the employment can result in the loss of the full SARP relief for 5 years.
    - The timeframe for employers to submit annual SARP-related returns means, that in practice, returns must be amended more than once as the employer's SARP return for a tax year is due by

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

[46] Page 39, Budget 2020 Report on Tax Expenditures Incorporating outcomes of certain Tax Expenditure & Tax Related Reviews completed since October 2018, Department of Finance, September 2021.

[47] Special Assignee Relief Programme Statistics for 2019, Revenue Commissioners, June 2021.

[48] Page 38, Budget 2020 Report on Tax Expenditures Incorporating outcomes of certain Tax Expenditure & Tax Related Reviews completed since October 2018, Department of Finance, September 2021.

February of the following year. However, at this point, it is too early to provide accurate data to Revenue on SARP claims when the SARP employee's tax return will not yet have been prepared. This can also generate additional queries from Revenue to employers. A longer timeframe to file the employer return would be more practical.

- In benchmarking SARP against equivalent regimes, care should be given to ensuring the Irish regime reflects emerging working arrangements and international norms regarding the types of remuneration that qualify for relief, for example, share-options and Restricted Stock Units which are used extensively as part of the remuneration of high-performing employees and executives.

2. How can the taxation environment support indigenous enterprise, particularly small and medium sized enterprises (SMEs) to be productive, to innovate and be competitive internationally? Please specify:

Enhancements to the R&D Tax Credit Regime

The R&D tax credit plays a critical role in supporting innovation in Ireland's indigenous businesses. The *Report of the SME Taskforce: National SME and Entrepreneurship Growth Plan*[49] identifies enhancements needed to the R&D tax credit to incentivise increased investment in innovation by our SMEs, such as, redefining the qualification requirements for the R&D tax credit by broadening the definition of innovation to include 'process innovation' and 'organisational innovation'. We believe this enhancement would ensure Ireland's R&D tax credit regime is considered best in class.

Revenue's recently updated guidance has significantly impacted the attractiveness of the R&D tax credit for SMEs and has significantly narrowed the circumstances where rent may be included as qualifying expenditure on R&D. Rental costs are a substantial cost for most small and micro sized companies, and therefore the disallowance of rent as qualifying expenditure on R&D significantly diminishes the attractiveness of the R&D tax credit for such companies. Legislative clarification is necessary to confirm rent is a qualifying cost for the purpose of the R&D tax credit and ensure that the credit can continue to encourage investment in innovation by Irish business.

Limits in the R&D tax credit regime for outsourcing, restrict collaboration among Irish businesses and, crucially, between businesses and third-level institutions. No outsourcing restriction is required under the OECD Modified Nexus rules for the Knowledge Development Box (KDB). We believe the outsourcing restrictions in the R&D tax credit regime should be removed. This would be in keeping with Government policy to foster collaboration between academia and private business.

A pre-approval process for first-time R&D tax credit claims by small/micro companies could be introduced to bring much needed certainty for taxpayers.

We believe consideration should be given to condensing the 3-year R&D tax credit refund to one year for SMEs. Smaller companies that are carrying out R&D activities tend to be cash constrained and accelerating the refund for these businesses would be very beneficial to them, with only a timing cost for the Exchequer.

New measures to enhance the R&D tax credit for small and micro companies, including increasing the R&D tax credit rate from 25% to 30% and enhancing the method of calculation of the payable credit, were introduced in Finance Act 2019. These measures are subject to a commencement order, as the enhancements to the R&D tax credit for small and micro companies require State aid approval from the European Commission. It would appear that State aid approval of the measures in their current form is not forthcoming and some changes to the measures will be necessary.[50] We look forward to the introduction of the modified measures for small and micro companies as soon as possible, however, it is essential that such measures do not impose an undue administrative burden for small and micro companies.

Capital Gains Tax Rate

The headline rate of CGT, at 33%, is high by international standards. A high CGT rate can result in delays in selling investments that have large unrealised gains. Reduced capital gains taxes can

[49] Report of the SME Taskforce: National SME and Entrepreneurship Growth Plan, Department of Enterprise, Trade and Employment, January 2021.

[50] See response to Parliamentary Question, Budget 2022, Dáil Éireann Debate, Tuesday, 21 September 2021.

encourage entrepreneurship because the capital gain payoff from a successful start-up is improved relative to employment.

Given the low level of receipts in recent years it is reasonable to ask if the high rate is having a dampening effect on productivity and growth in the SME sector. We know from previous experience that reducing the CGT rate can stimulate activity and increase the yield to the Exchequer.

As the rate of CGT is a deciding factor for potential investors, if Ireland wants to attract investment in business, the rate needs to be reduced. In our view, a reduced CGT rate of 25% should apply for active business assets.

Key Reliefs from Capital Taxes for SMEs and Entrepreneurs

Key reliefs, such as CGT Entrepreneur Relief, CGT Retirement Relief, CAT Business Relief and Agricultural Relief support indigenous enterprises and farming businesses and each have separate and distinct policy objectives.

CAT Agricultural Relief and Business Relief are key to ensuring that CAT does not create a barrier to the transfer of agricultural property and business property by way of gift or inheritance which could otherwise result in businesses being wound up and assets having to be sold to pay a CAT liability.

CGT Entrepreneur Relief recognises the value of encouraging and developing Irish high-growth companies. It is a key incentive intended to embolden entrepreneurs to invest, sell, move on and to re-invest in new business ventures and create employment. Indecon has recognised that the relief may limit any distortionary effects of more favourable capital gains taxation in other countries.[51]

CGT Retirement Relief promotes the timely transfer of family businesses from one generation to the next and from one entrepreneur to the next, when the transferor is approaching retirement age.

CGT Entrepreneur Relief

Ireland's high rate of CGT makes reliefs such as Entrepreneur Relief even more important as the relief is targeted at reducing the high CGT burden on the sale of a business in Ireland to a limited extent. The relief allows for a lower 10% CGT rate on business gains, but this is subject to a lifetime limit of €1 million.

Feedback we have received from members and directly from entrepreneurs is that the current design of the relief is one of the key contributing factors to holding back the indigenous entrepreneurial ecosystem. The existing lifetime limit of €1 million provides little incentive to grow a business beyond a certain level in Ireland and generate more employment. In our view, the €1 million lifetime threshold needs to be increased to compete effectively with other countries for international capital.

Entrepreneur Relief requires that an individual must spend at least 50% of his/her time working for the company continuously for three out of the five years prior to the disposal to qualify for the relief. Typically, 'angel investors' mentor and support several companies at the same time and therefore, they cannot possibly satisfy this working time requirement. Consequently, the relief locks out these important external investors, who not only invest money but provide experience and industry expertise, which are vital factors when considering the deficit in managerial capability in Irish businesses as highlighted by the OECD.[52]

The current restrictions on Entrepreneur Relief rule out the possibility of external investors benefiting from the 10% rate. Therefore, any investor who makes a gain will have to pay one third of that gain in CGT, and this is a real barrier to investment in Ireland. If the conditions attaching to CGT Entrepreneur Relief were changed, it could make the difference between angels, venture capital investors and others deciding to take the risk of investing in an Irish company or not. In our view, the legislation should be amended to permit much-needed external 'angel investors' avail of Entrepreneur Relief.

There are also technical issues with the current Entrepreneur Relief legislation[53] (as interpreted in Revenue's Operational Manual)[54] which are limiting the availability of the relief in five common situations. These limitations and our recommendations for addressing these issues are outlined in Appendix II.

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[51] Indecon Evaluation of the Revised Entrepreneur Relief, 1 October 2019 at page 142.
[52] OECD Ireland Country Report, OECD, March 2018.
[53] Section 597AA Taxes Consolidation Act 1997.
[54] Revenue Operational Manual 19.06.02B – Capital Gains Tax Revised Entrepreneur Relief.

Maintaining international competitiveness as a place to invest is important, as capital has become highly mobile. The rate of CGT can affect the willingness of angel investors or venture capitalists to fund both start-ups and growth companies. Unless the headline CGT rate for active business assets is reduced the existing limitations with Entrepreneur Relief will continue to act as a barrier to investment in Irish business.

3. With regard to starting, scaling or growing a business in Ireland:
    a. what features of the current taxation system work well?
    b. what features do not work well and how can these be improved?

The Employment and Investment Incentive Scheme (EIIS) is an income tax incentive for individuals to invest in Irish business and the Start-Up Relief for Entrepreneurs (SURE) is an income tax refund scheme for individuals who start their own business. The Key Employment Engagement Programme (KEEP) is an employee share scheme for SMEs. Each of these reliefs have an important role to play in supporting the growth of indigenous business. However, limitations in the design of these incentives are limiting their effectiveness.

EIIS

The EIIS is an important source of finance for early stage and small businesses that often have limited funding options available to them. The EIIS can provide support to viable and fundamentally sound Irish SMEs and start-up businesses with short-term financing at a reasonable rate of return to help them grow and develop.

EIIS relief is very valuable for companies and investors but the inherent complexities of availing of the scheme can act as a significant barrier to expansion. As the scheme rules in many cases do not reflect commercial investment norms in today's world, our members report of instances where the scheme has hampered a company's ability to grow and expand, or accelerate their ability to do so, which is contrary to the spirit of the scheme.

The Institute has responded to various public consultations carried out by the Department of Finance on the EIIS, most recently in February 2021[55], and a number of the recommendations made in those submissions for the improvement of the scheme remain relevant.

Whilst the changes introduced in Finance Acts 2018, 2019 and 2021 have, for the most part, enhanced the scheme, the EIIS continues to be very complex and a burdensome scheme to administer. Further amendments are necessary to ensure the effectiveness of the EIIS for start-ups and smaller businesses in particular.

These are:

- A streamlined EIIS administrative process for small and micro companies.
- A carve-out from the connected party rule linked with a control test.
- Remove the exclusion of holding company structures.
- Recognise additional exit strategies for EIIS investors.
- Commit appropriate and adequate resourcing to EIIS applications.
- Apply more proportionate monetary sanctions for administrative errors or the late filing of a return.
- Provide a 4-year holding period for all EIIS investments.
- Allow the offset of capital losses.
- Amend the employment conditions.

Further detail on these recommendations is set out in Appendix III to this submission.

[55] Irish Tax Institute, Employment Investment incentive, Response to Department of Finance Public Consultation, February 2021.

SURE

SURE, which is an income tax refund scheme for those who start their own business, is restricted to former PAYE employees. We recommend extending the relief to include business founders who were previously self-employed.

Under SURE, the individual needs to have paid sufficient income tax through the PAYE system in the previous four years. 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 relief. Apart from discriminating against self-employed workers, this restriction acts as a significant barrier to the effectiveness and applicability of SURE.

In addition, feedback from our members suggests that there is little awareness of this incentive, particularly among people who have recently left employment and are looking to quickly start up a new business. We believe promoting this incentive would increase uptake and in turn encourage entrepreneurship and job creation.

KEEP

KEEP 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. Several amendments were made to KEEP in Finance Act 2019, however, these changes continue to be subject to a Ministerial commencement order as State aid approval is required.

We believe further legislative amendments are needed to improve the feasibility of the KEEP. There are a number of limitations in the design of the KEEP and in our view, the policy intention of KEEP helping SMEs attract and retain key employees, can only be achieved if these limitations are addressed.

In summary, we recommend the following amendments:

- Amend the definition of a ‘qualifying holding company’.
- Develop an agreed ‘safe harbour’ approach to share valuation and impose an appropriate sanction where there is an undervalue.
- Amend the conditions regarding remuneration, in particular for 2020 and 2021, to take account of situations where employees’ hours may have been reduced or employees temporarily laid off because of the COVID-19 restrictions.
- Create liquidity in KEEP shares by allowing a company to buy-back KEEP shares.
- Amend the employment conditions for a ‘qualifying individual’, in particular for 2020 and 2021, to take account of situations where employee hours may have been reduced or temporarily laid off because of the COVID-19 restrictions.
- Allow the continuing availability of the relief should the SME (e.g., holding company and its subsidiaries) undergo a corporate reorganisation during the period in which the KEEP share option rights are outstanding.
- Provide ‘roll over relief’ of KEEP share options.

Further detail on these recommendations is set out in Appendix IV to this submission.

Chapter 8

Tax Expenditures

1. How do you think the process of reviewing taxation measures and taxation expenditures is currently functioning? How well defined do you think the benchmark taxation system is in Ireland?

The Department of Finance and Revenue both adopt the initial revenue forgone method for costing 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.[56]

We consider the evaluation of tax expenditures should be done on a dynamic rather than static basis. For example, with SARP, in addition to considering the revenues 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 relief).

2. How do you think the process of taxation expenditure review could be improved?

Importance of Stakeholder Engagement

Stakeholder engagement has an important role to play in the development of both tax policy and legislation and can minimise the risk of unintended consequences arising on the implementation of any tax measures.

The Institute welcomed the Government's commitment to develop a formal annual stakeholder engagement process in the January 2021 Update to the Corporation Tax Roadmap and we look forward to the formal establishment of such a process.

In addition to this development, we also believe that the Finance Bill process needs to be reformed as it currently provides little opportunity for consultation which could help to ensure tax legislation operates as policymakers intended.

Commitment to Establish a Formal Annual Stakeholder Engagement Process

In establishing the annual stakeholder engagement process, the Institute would recommend the following:

- The process should mirror the key stages in the annual tax policy formulation and legislative process. As detailed below, there is little or no room for consultation in the Finance Bill process as it stands. Earlier and frequent consultation with the Department of Finance at the drafting stage in the Spring and either side of the deliberations of the Tax Strategy Group would ensure that the insights and expertise of those directly affected by policy proposals are taken into account.
- In the case of complex issues of significant economic impact, the process should allow for subgroups to undertake detailed, tax technical work.
- On a practical level, we believe individual meetings with targeted groups work better than larger meetings involving several organisations. This is the process adopted by the OECD and the European Commission and although, it may be more demanding on the time of officials, it is, in our experience a more productive and efficient method of engagement, especially on tax technical issues.
- To ensure the transparency of the process, submissions and any responses or papers arising could be made public. Consideration could be given to the publication of agreed minutes, as is the practice for the Tax Administration Liaison Committee (TALC).

The New Zealand Generic Tax Policy Process which has been in operation since 1994, is universally regarded as a best-in-class tax and social policy stakeholder engagement framework. Given the

[56] Tax Expenditures, Tax Strategy Group – 19/12, Tax Strategy Group, July 2019.

commonalities in our systems of public administration, we would strongly recommend such a model be considered in the design of any new engagement process.

Reform the Finance Bill Process

One of the key challenges in the Irish tax policymaking process is the legislative timetable. The window between the Budget and the publication of the Finance Bill is simply too narrow for the scrutiny that might detect potential unintended consequences of legislation.

Only in very exceptional instances, is tax legislation published in draft format in advance of the publication of the Finance Bill. By and large, the legislation is publicly available in mid-October and must pass through all stages of the Oireachtas and be signed by the President before the end of the year.

This allows less than three weeks for consideration of often complex tax law from the date of publication to Committee Stage in the Dáil and only two months for the entire process to be completed and the law enacted. The issue is compounded when new tax provisions are introduced into the Finance Bill at Committee and Report Stages.

Inevitably, the result is law that fails to deliver on policy objectives and that requires clarification through Revenue guidance or, at worst, resort to the courts. Apart from key income tax changes and other political or market sensitive matters, the Institute can see no reason why tax legislation should not be published for consultation in advance of the Finance Bill. In the UK, draft legislation is published several months in advance of their Finance Bill.

Post-implementation Review of Tax Law

We recommend that an independent Commission, which may or may not be part of the new domestic stakeholder framework to be established, should be given responsibility by Government for analysing major tax policy changes post implementation and publishing the results.

Separate Taxes Management Act for Legislation Conferring Revenue Powers

We recommend that legislation conferring powers on the Revenue Commissioners currently contained in the Direct Tax Code, Indirect Tax Code and Capital Tax Code be consolidated into a Taxes Management Act and that this Act be amended in future years in a legislative cycle independent of the Finance Bill cycle.

3. Please give examples of taxation expenditures that you believe run counter to public policy/ are badly designed?

4. Please provide examples of taxation expenditures that you believe work well, either in Ireland or internationally?

The R&D tax credit has a critical role to play in supporting innovation in our indigenous enterprises and in attracting investment from multinationals. It is critical that Ireland's R&D tax credit remains best in class if the Government wants to continue to attract additional R&D investment in this country. In addition, enhancements are needed to the R&D tax credit to incentivise increased investment in innovation by our SMEs which we have set out in Chapter 7 of this submission.

Recruiting and retaining skilled workers is central to building a successful company and is crucial to the future growth and export potential of the business. Irish SMEs and start-ups in many instances cannot match the salaries paid by large multinationals. Even though the KEEP is designed to incentivise talent to take up employment in such companies there are a number of limitations with its design that significantly affect the feasibility of the scheme. These limitations, which we have outlined in Chapter 7 of this submission, are significantly affecting the feasibility of the scheme.

The EIIS is aimed at incentivising investment in early stage and small businesses whose funding options are limited. However, there are inherent complexities in the scheme which are impacting its overall effectiveness. We have summarised our recommendations to enhance the effectiveness of the EIIS in Chapter 7 of this submission.

Chapter 9

Administration

1. How can modernisation of the taxation and/or welfare administrations evolve to best meet customer needs in a satisfactory manner while respecting data rights and ensuring secure and reliable tax collection?

What do you see as the implications of modernisation for taxpayers either positive or negative?

2. What improvements in service quality and delivery could be achieved by integrating (elements of) the taxation and welfare administrations?

Are there any risks arising from such integration?

Tax administration is continually evolving to exploit the potential of new and innovative technologies and to enable tax authorities to secure tax revenues in an efficient manner. The OECD Forum on Tax Administration (FTA) report on "Tax Administration 3.0" has set out a long-term vision for the digital transformation of tax administration, where tax administration will become a seamless and frictionless part of businesses processes over time.

Irish Revenue has already taken steps to pursue this ambitious goal, for example, with the introduction of real-time reporting of payroll in 2019. Delivery of successful PAYE modernisation was achieved through engagement with stakeholders at every step of the process from initial design to implementation. This engagement should form a template for stakeholder engagement on further fundamental changes to tax administration processes.

Continued investment in Revenue's electronic services and IT infrastructure is also critical over the years ahead to future-proof Revenue's Online Services (ROS). Taxpayers and the tax profession need to be able to avail of swift, reliable and user-friendly online services for engaging with Revenue. Delivery of high-quality services that meet the needs of stakeholders can only be achieved through close collaboration between Revenue and the tax profession.

Equally, early consultation in advance of the introduction of any new compliance obligations is critical, to ensure the requirements are clear and achieved at the lowest possible compliance cost for taxpayers. Practical input from the outset on draft legislation and related Revenue guidance can minimise the risk of unintended consequences and administrative complexity arising from the implementation of any new measures.

Opportunities to simplify tax compliance should be fully explored. The Institute has regularly raised aspects of the tax regime that merit simplification, such as:

- The tax treatment of non-resident landlords. The current regime can exclude an individual non-resident taxpayer from the option to file their own tax return by requiring them to engage an Irish-based Collection Agent to submit the landlord's tax return and pay any related taxes.
- The requirement for non-resident individuals to obtain a Personal Public Service Number (PPSN) to facilitate the filing of a tax return. Stamp Duty Regulations require the inclusion of tax reference numbers for all parties to an instrument in a Stamp Duty Return. This means that non-resident individuals must obtain a PPSN and register this number with Revenue as a tax reference number, solely to facilitate the filing of a Stamp Duty return. In contrast, non-resident corporate entities that are not Irish tax registered and do not have a tax liability, other than for Stamp Duty, can be provided with a tax reference number by Revenue solely for the purposes of filing a Stamp Duty return.
- The requirement to provide information and obtain tax clearance on the disposals of certain assets intra-group even if such a disposal is not subject to a tax charge (i.e., the requirement to obtain CGT clearance via the "CG50" process).
- Exemption from CGT. At present capital gains of less than €1,270 per annum are exempt from CGT. This requires individuals to do a calculation to see if their gains are under the limit. It would be simpler to have a small disposals limit, for example €5,000.
- The administrative processes relating to tax refunds in respect of internationally mobile employees with Irish contracts of employment. The change in working practices arising from the pandemic is likely to result in a greater number of employees working for Irish employers

while based outside the State. In such circumstances, a taxpayer may be entitled to a refund of taxes deducted from their Irish employment income through the payroll, depending on their tax residence position. The process for claiming such refunds and the timeframe for their issue should be clearer.

Two areas of the Irish tax regime in urgent need of simplification are Ireland's Offshore Funds Regime and the basis of assessment for taxing PAYE income of proprietary directors, outlined below.

Simplifying the Offshore Funds Regime

The investment market has expanded exponentially over recent years with a wide array of investment products and platforms now available to investors. Diverse and international investment portfolios, once the preserve of high earners engaging professional brokers, are now accessible to a much broader cohort of taxpayers.

However, determining the correct tax treatment of income and gains arising from foreign investments can be very complex. Investors must consider whether the investment falls within Ireland's Offshore Funds regime (outlined in Chapters 2, 3 and 4 of Part 27 TCA 1997). Performing the requisite analysis to determine whether the investment is in an offshore fund and the relevant tax treatment is costly and time consuming and the analysis may often be incomplete due to the lack of full information on the investment products. Most private investors do not have the skillset or access to the tools required to ascertain the correct tax treatment.

Individual products are continually developed so there is no set list of products and their treatment for taxpayers to review. Revenue has endeavoured to provide guidance and decision trees to assist taxpayers and professional advisers to determine the tax treatment based on a fund's characteristics, but the usefulness of this approach is limited. There is no guarantee that if a taxpayer uses their best efforts to determine the correct treatment that interest and penalties will not apply if they get it wrong.

Equally, Revenue can change its views on the tax treatment of certain types of investment. For example, in September 2021 updated Revenue guidance was published on the tax treatment of Exchange Traded Funds, requiring taxpayers to consider whether such investments could come within the Offshore Funds Regime which up to now was not required.

We believe that the Offshore Funds Regime should be overhauled to simplify the regime and support tax compliance.

Aligning the Basis of Assessment for Proprietary Directors PAYE Income with Employees

Finance Act 2017 amended the basis for assessing income tax on PAYE income (Schedule E emoluments) so that such emoluments would be assessed to tax by reference to the year in which they were paid by an employer to the employee (known as the "receipts basis"). Previously the statutory basis for taxing emoluments was by reference to the year in which the emoluments were earned by the employee ("the earnings basis").

This amendment was made in preparation for the introduction of PAYE Modernisation from 1 January 2019 to align the practical operation of PAYE with the statutory basis for taxing employees. However, the basis of assessment for proprietary directors' emoluments (i.e., directors who own or control more than 15% of the share capital of a company) was not altered even though proprietary directors are liable to PAYE on their emoluments.

Proprietary directors continue to be assessed to tax on the "earnings basis" on their PAYE income and this adds complexity in completing their income tax returns where income is received in a different year to which it is earned. For example, directors' fees or a bonus may be paid to a director after the financial year end of their employer company but paid in respect of that financial year. Such payments are liable to PAYE through the payroll and included on a payroll submission to Revenue when they are paid to the director but are assessable to income tax for the year in which the fees or bonus was earned.

Before the introduction of PAYE modernisation, a Supplementary P35 (PAYE End of Year Return) was typically filed that would include details of the income and related tax deducted which was earned for a prior year but paid out in a subsequent tax year to proprietary directors, so the pay and tax could be allocated to the correct year in assessing the director to income tax. However, PAYE modernisation removed the P35 process.

Revenue cannot identify from payroll submissions the amount of pay and tax deducted in one year that relates to a prior year to be included in a proprietary director's prior year income tax return. Therefore, a proprietary director's income tax return on ROS cannot be accurately pre-populated by Revenue with their Schedule E income.

Instead, the director must provide a detailed breakdown of pay and a "true estimate" of the tax and USC deducted through the payroll which relates to the income assessed under the "earnings basis".

A key benefit of PAYE modernisation for taxpayers was that PAYE earners would have real-time access to information on their pay and tax deducted on Revenue's online systems and pre-population of this data in income tax returns would reduce the compliance burden for taxpayers. However, this benefit has not been realised for proprietary directors because of the continuing requirement to report their emoluments on their income tax returns using the "earnings basis".

The rationale for maintaining a distinction between the treatment of proprietary director and employees is unclear. Proprietary directors' emoluments are subject to PAYE in the same manner as emoluments paid to employees. In the vast majority of cases, PAYE will have been withheld and paid on proprietary directors' emoluments, prior to the filing of their income tax returns. So, in general, the information provided on their emoluments in the tax return is included to meet a reporting requirement.

Revenue will already have received details of the emoluments and tax deducted through the payroll submissions, as the employer company must account for the payroll taxes to Revenue within six months of the company's year-end and the director will not obtain credit for tax deducted from their emoluments unless it has been paid to Revenue (sections 996 and 997A TCA 1997). The company's corporation tax return, filed within nine months of accounting period end, will also include information on directors' emoluments which can be used as a cross checking mechanism by Revenue on directors' emoluments, if considered necessary.

We believe that the distinction between proprietary directors and employees should be removed to simplify tax compliance. Consideration should be given to aligning the basis of assessment for proprietary directors with employees so that both cohorts of taxpayers are assessed to tax on Schedule E emoluments on the "receipts basis".

Chapter 10

Other Issues

In the paragraphs that follow we have outlined our recommendations for changes necessary to ensure there is a proportionate and appropriate approach to errors in tax returns, and the need to provide independent oversight of the Irish tax system. We have also identified measures which we believe are necessary to restore equity in the Irish tax appeals process.

A Proportionate and Appropriate Approach to Errors in Tax Returns

Tax authorities worldwide are investing significant resources in developing and exploiting electronic opportunities to improve service delivery and tax compliance. At the same time, EU and OECD initiatives have resulted in tax authorities receiving a wealth of information on taxpayers' affairs from external sources and cross-border exchanges of information. These developments present opportunities for tax authorities and taxpayers in supporting and simplifying tax compliance.

However, they also vastly improve the ability of tax authorities to gather more information on a taxpayer's affairs and leverage this data to identify any potential anomalies in tax returns quickly and easily using data analytical tools. Yet, the corresponding safeguards for taxpayers who make genuine errors in their tax returns have not improved.

Tax is complex and human errors in completing tax returns are inevitable. Taxpayers do not have access to the sophisticated tools and technology available to Revenue to be able to avoid or easily identify errors. As a result, taxpayers can be exposed to sizeable penalties for genuine mistakes if Revenue identifies an error from a review of their tax return or during a compliance intervention.

Irish tax legislation and the *Code of Practice for Revenue Audits and other Compliance Interventions*, recognises that a tax default arising from an "innocent error" will not result in a penalty. However, the circumstances in which Revenue will accept that an innocent error has occurred are quite limited. Its application depends on the quantum of the tax underpayment, the frequency of the error, a taxpayer's compliance record[57] and the judgment of the Revenue officer dealing with the taxpayer.

In reality, genuine errors may occur more than once due to the nature of the error. For example, if an incorrect VAT rate is applied to the sale of a product due to an error in coding the product in a business's IT system, the error will invariably be repeated. Similarly, a genuine error on the application of PAYE in the payroll is likely to occur for more than one employee. Notwithstanding that such errors may be genuine errors, they may not qualify as "innocent errors" and as such penalties apply.

The level of penalties that can apply are quite sizeable, calculated as either a percentage of the tax underpaid or a fixed sum for each breach of tax regulations. Simple oversights, such as an employer not applying the latest Revenue Payroll Notification issued by Revenue when processing the payroll can leave a business liable to a penalty of €4,000 for each breach. In addition, the only avenue for a taxpayer to appeal against a penalty is to pursue the matter through the Courts system which is a public and an expensive process.

At the same time, Revenue continues to revise its approach to compliance interventions to leverage its technological capabilities. A new Compliance Intervention Framework currently being designed by Revenue for roll-out from May 2022 will exclude taxpayers in certain circumstances from the right to make an "unprompted qualifying disclosure" on discovery of an error, which allows the taxpayer to pay the minimum level of penalty for a tax default. Under the new framework, in general, if Revenue has identified an issue in a taxpayer's return the taxpayer may be automatically exposed to a higher penalty as fewer opportunities to make an unprompted qualifying disclosure will be available.

It will not even be necessary for Revenue to communicate directly with the taxpayer about an error in their return before the opportunity to make an unprompted qualifying disclosure is withdrawn. Communication about a tax issue via a message on the Revenue website or in the media can suffice. If the taxpayer does not appreciate the significance of Revenue's correspondence or communications,

[57] Paragraph 3.3, Code of Practice for Revenue Audits and Other Compliance Interventions.

the taxpayer could also face publication and potential prosecution if they do not subsequently make a "prompted qualifying disclosure" within the required timeframe, where relevant. In such circumstances, Revenue may proceed with the intervention and issue a tax assessment with limited input from the taxpayer.

Ireland enjoys an exceedingly high voluntary tax compliance rate and a strong culture of compliance, as evidenced each year in Revenue's Headline Results and in the recent strong level of compliance with LPT obligations.[58] Against such a backdrop, it is unclear why a change is considered necessary to Revenue's long-standing approach which permits an unprompted qualifying disclosure to be made unless the taxpayer is under a Revenue Audit or Investigation. The new Framework in effect will result in a doubling of penalties in many circumstances where a taxpayer's behaviour has not changed.

Fair treatment of taxpayers is a cornerstone of the Irish tax system and central to Revenue's mission statement.[59] A key element of treating taxpayers fairly is to maintain a clear distinction between taxpayers who are trying their best to comply with often complex and detailed tax obligations and taxpayers who have chosen not to comply with their tax obligations.

However, the current limited recognition of taxpayer error means that genuine mistakes by highly compliant taxpayers can be liable to a penalty. We believe that genuine errors should be recognised as such, and legislation should be developed to ensure such errors do not give rise to a penalty. Development of the legislation should be preceded by a collaborative approach in identifying the types of errors that typically arise in returns.

Furthermore, we believe that where Revenue is making an enquiry into a taxpayer's return, there should be an obligation on Revenue to make every effort to engage with a taxpayer at an early stage in the process and before a taxpayer's right to make a qualifying disclosure is denied.

Independent Oversight of the Irish Tax System

Independent oversight in all areas of public administration is commonplace in mature democracies. We can learn from what other countries have done to create an appropriate balance between the fair and the efficient collection of taxes. The UK, the USA and Australia have each put in place systems to deal with taxpayer's complaints at an individual level and also to identify systemic issues within their respective tax authorities. Such an oversight model does not currently exist in Ireland and the Institute believes it is necessary to ensure taxpayers' rights are safeguarded in circumstances where a one rule fits all approach does not work.

Where a taxpayer has a complaint regarding Revenue's approach to handling their tax affairs and has exhausted Revenue's complaints procedures at local and divisional level, the first port of call should be the existing Internal or External Review process. However, statistics show that the take up of the Internal or External Review process is negligible, with an average of less than two cases referred for Internal Review and 14 cases referred for External Review annually.[60] Such a low take up either demonstrates there are no problems or there is a lack of confidence with the Internal and External Review process. The Institute believes the latter to be the case in view of the international comparatives.

A taxpayer who is unhappy with the outcome of an Internal or External Review can make a complaint to the Ombudsman. But tax advisers do not generally avail of this option for their clients, with statistics showing that a maximum of 3% of complainants are represented by an agent. Before considering a complaint, the Ombudsman requires that the complainant must have made reasonable efforts to resolve the matter directly with Revenue. However, it is unclear whether this means that the taxpayer must first have availed of the Internal or External Review process.

The Tax Appeals Commission (TAC), whilst arguably accessible for most taxpayers from a cost perspective, is limited in its remit. For example, there is no right of appeal to the TAC in respect of issues concerning Revenue behaviour, such as, unreasonable delay on the part of Revenue, nor can the TAC consider the application of penalties.

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[58] Revenue Preliminary Headline Results 2021, January 2022.
[59] Role of Revenue https://www.revenue.ie/en/corporate/information-about-revenue/role-of-revenue/index.aspx
[60] For the 5-year period from 2014 to 2018.

The penal rate of interest charged on the late payment of tax is often a deterrent for taxpayers in considering any appeal. Statutory interest is charged on the late payment of tax in Ireland at rates of 8% and 10%. In contrast, HMRC in the UK currently impose interest at a rate of 2.75%.

Whilst taxpayers and Revenue must comply with the legislation, it must be recognised that exceptional circumstances can arise which will necessitate flexibility. Currently, there is no accessible appeal mechanism available to taxpayers where the application of interest on the late payment of tax, a statutory time limit or penalties, although in accordance with legislation, is entirely inappropriate considering the exceptional circumstances of the taxpayer.

In our view, there is a lack of confidence in the existing complaints process available to taxpayers to effectively deal with taxpayers' complaints regarding Revenue's approach to handling their tax affairs, such as, poor customer service or inconsistencies in the interpretation of legislation. An effective oversight model to address such complaints is necessary to ensure taxpayers rights are safeguarded and that an appropriate balance is maintained between the fair and the efficient collection of taxes.

The use of Revenue's care and management provisions during the COVID-19 crisis demonstrates that Revenue can use these powers to address situations where the strict application of tax legislation would result in inequitable consequences. However, Revenue has exercised these powers to generally apply flexibility to all taxpayers, rather than granting discretion for a taxpayer's individual circumstances.

It must be recognised that the exceptional circumstances of individual taxpayers may also warrant the use of these powers and to ensure that measures, such as statutory interest, time-limits and penalties, which are intended to encourage tax compliance, do not result in harsh or unintended consequences.

We believe that an independent external body should be established, that could intervene on behalf of taxpayers where there is an issue regarding Revenue's approach to handling their tax affairs and in exceptional cases where there is inherent inflexibility in the tax system, such as, interest charges, time limits and penalties.

Measures to Restore Equity to the Irish Tax Dispute Resolution Procedures

Several aspects of the existing legislation underpinning the tax appeals system impose inequitable treatment between the parties to an appeal. We would suggest that these legislative provisions be reconsidered to restore equity to the tax appeals process and strengthen our dispute resolution procedures.

Rates of interest charged on underpaid taxes

We strongly urge that the rates of statutory interest on underpaid tax are reviewed to ensure the rate imposed is more commensurate with the cost of borrowing. In the UK, the interest rate for late payment of tax is 2.75%[61], tracked at 2.5% above the current Bank of England base rate. The current European Central Bank (ECB) rates are minus 0.50% for deposits and 0.25% for marginal lending. In the last ten years the highest ECB deposit rate was 0.75% (in 2011) and the highest lending rate was 2.25% (again, in 2011). This clearly shows, in our view, that the current statutory interest rates for late payment of taxes of between 8% and 10% per annum cannot be justified by reference to the time value of money.

We firmly believe that the reduced interest rate of 3% that will be imposed in Period 3 of the Debt Warehousing Scheme represents a fair and reasonable rate of interest which should apply to all underpayments of tax. This rate recompenses the Exchequer and acts as a disincentive to late payment and it could be tracked to prevailing ECB market rates, to ensure it reflects the actual cost to the Exchequer.

[61] From 4 January 2022.

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

Section 960GA TCA 1997, which was introduced in Finance Act 2020, provides that where a taxpayer appeals an assessment issued by Revenue and discharges the disputed tax liability pending the appeal hearing but subsequently wins the appeal, no interest shall be paid on the tax refunded. In our view, this provision is unfair and has tipped the balance in the appeals process to the detriment of the taxpayer. Interest payable on tax refunded to a taxpayer following a successful appeal should be restored.

The absence of sanctions on the respondent for non-compliance with a direction of an Appeal Commissioner

An Appeal Commissioner can dismiss a tax appeal where there has been a failure by the taxpayer to comply with a direction to file a Statement of Case or an Outline of Arguments. In contrast, there is no corresponding sanction for Revenue should they fail to abide by a direction from an Appeal Commissioner. In the interests of promoting fair and equal treatment of both the taxpayer and Revenue, neither party should be allowed to frustrate the progress of a tax appeal.

We believe that there should be some form of legislative sanction for instances where Revenue does not fully comply with a direction from an Appeal Commissioner. One means of achieving this could be to stop the "interest clock" from a date to be appointed by the Appeal Commissioner where the respondent has not complied with a direction. This would ensure that the appellant is not penalised through additional interest charges for the action or inaction of the respondent.

Preparation of the Statement of Case

A taxpayer must outline in their Notice of Appeal all of the grounds for appeal which they intend to rely on in their appeal. Indeed, a taxpayer is prevented from introducing a new ground for appeal at a later stage unless the Appeal Commissioners are satisfied that the ground could not have been reasonably stated in the Notice of Appeal.

Based on the feedback we received from members, often a taxpayer may not have full information on Revenue's basis for the assessment when filing their Notice of Appeal. For example, an assessment may be based on estimated figures without a full explanation from Revenue as to how these figures were derived.

Notwithstanding that the taxpayer will have set out all of the grounds for appeal in the Notice of Appeal, they may then be required to produce a Statement of Case without being provided with any additional information which would assist them in understanding the rationale for Revenue's assessment. This can make it difficult for a taxpayer to decide how or even if, they should proceed with the appeal. Often the basis for the assessment may only become apparent after Revenue has provided their Statement of Case or Outline of Arguments.

In the interests of justice, taxpayers should have a clear understanding of the basis for Revenue's assessment at an early stage to help inform their decision on whether to proceed with an appeal of the assessment. This could be achieved by amending section 949Q TCA 1997 to ensure the onus is on Revenue to provide a Statement of Case first, before one is provided by the taxpayer. This would be similar to the position in the UK Tax Tribunal regime where the taxpayer must submit a Notice of Appeal but the onus to prepare a Statement of Case falls on HMRC.

Alternative Dispute Resolution

To assist with alleviating congestion in the tax appeals system, consideration could be given to introducing an Alternative Dispute Resolution (ADR) mechanism. There is widespread international recognition of the benefits brought by alternative approaches to resolving disputes such as independent mediation.

Sections 949H and 949W TCA 1997 permits the Appeal Commissioners to invite parties in dispute to consider a negotiated settlement and to stay proceedings if agreement is possible. This could facilitate the use of an ADR process which in turn could help to reduce the waiting times for appeal and the associated costs and anxiety for taxpayers that can be experienced when taking an appeal case at present.

Implementation of agreements reached under MAP

Section 959AA (2A) TCA 1997 permits a Revenue officer to amend an assessment to give effect to an agreement reached between the Irish competent authority and the competent authority of another jurisdiction under the Mutual Agreement Procedure (MAP). However, the section does not accommodate the claiming of reliefs that would have been available at the time the return was originally filed where the deadline for claiming the relief has expired (for example, loss carry back or group relief). In our view, this does not align with the policy intention that section 959AA seeks to achieve.

We believe that Section 959AA TCA1997 should be amended to ensure, in giving effect to a Mutual Agreement Procedure that any relevant time limits may be disregarded to ensure a taxpayer can be put in the same position they would have been, had the original filed return reflected the outcome of the agreement reached.

Appendices

Appendix I

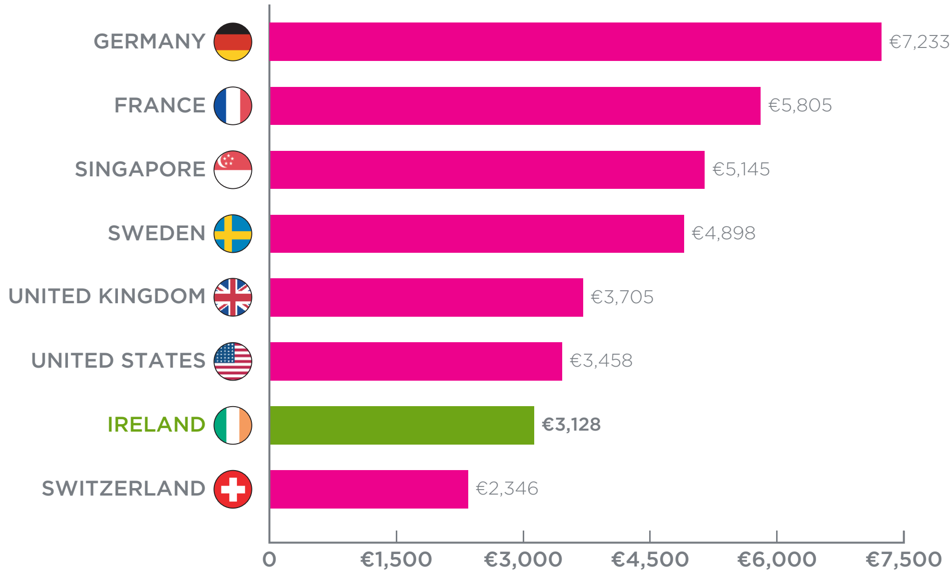
Tax and Social Insurance International Tables 2021

in association with KPMG

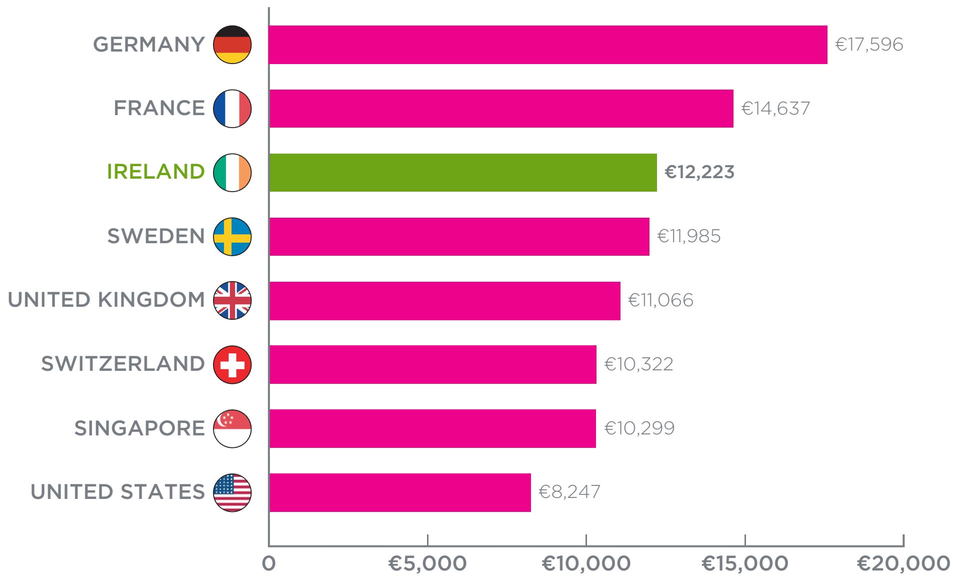
Personal Tax 2021 - Ireland v Competitor Countries

- Our personal tax tables compare the personal tax position (income tax, USC and employee PRSI) of employees in Ireland with competitor countries[62].
- At lower levels, Ireland has the second lowest effective personal tax rate of all eight countries examined.
- Whilst the rate of employee PRSI is low in Ireland compared with the countries examined, Irish employees are subject to high rates of income tax and USC. Therefore, as income levels rise, taxpayers in Ireland move quickly up the international tables.
- In 2021, Irish taxpayers were paying personal marginal tax rates of 48.5% on salaries above €35,300 and 52% on salaries above €70,044.

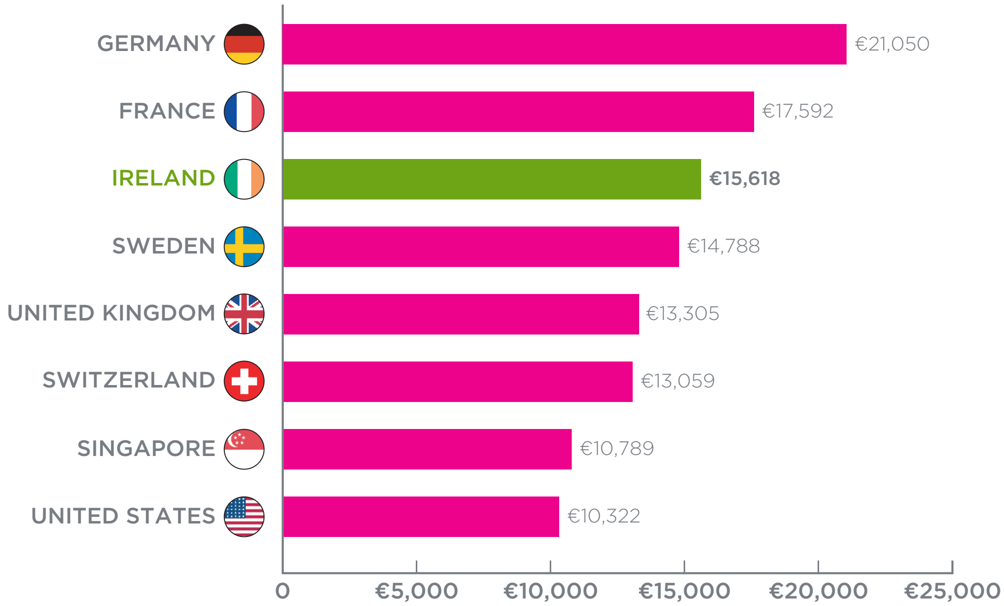
€ Tax paid at salary level of €25,000



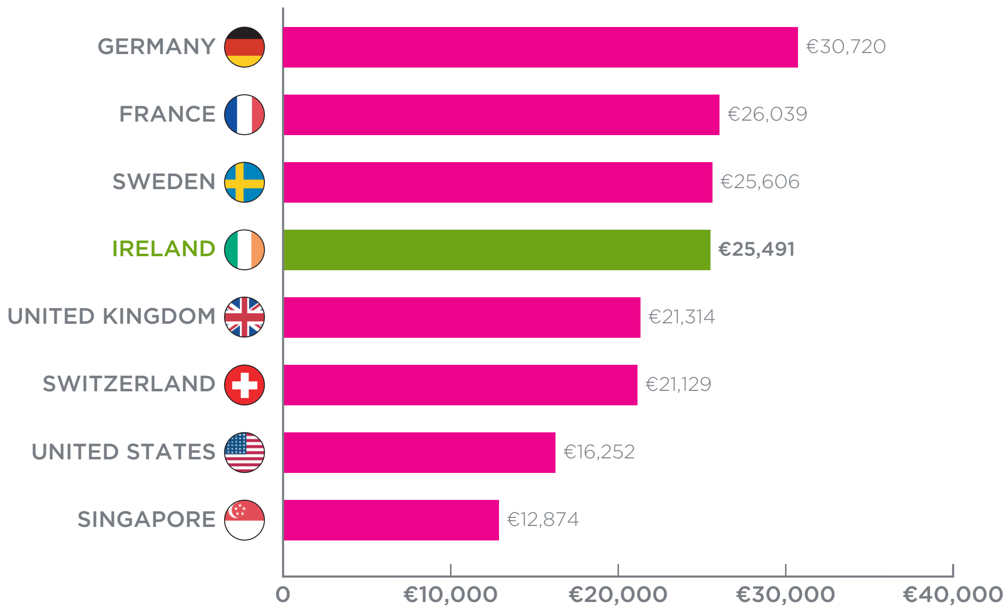
€ Tax paid at salary level of €48,000



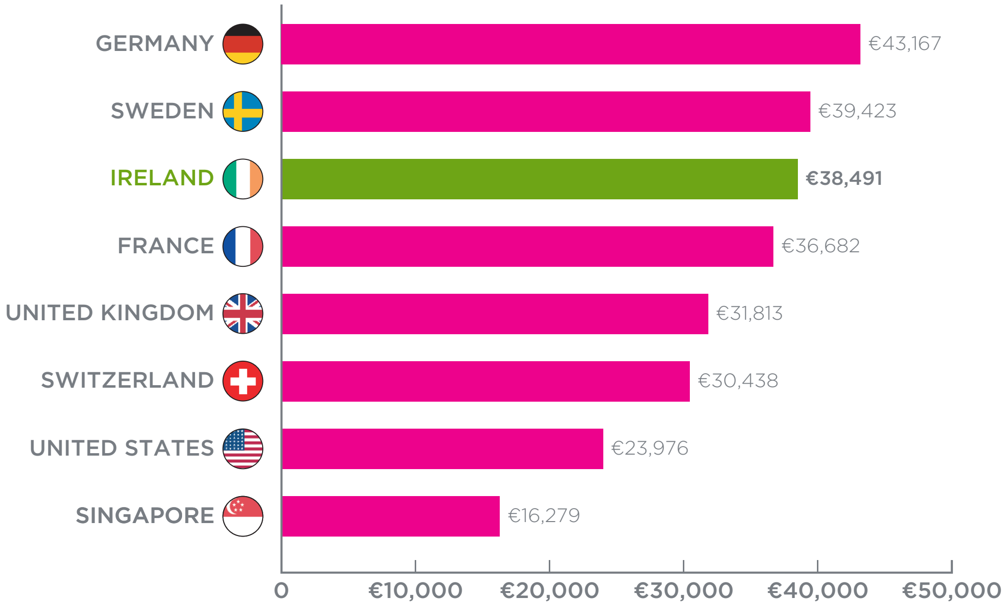
Tax paid at salary level of €55,000



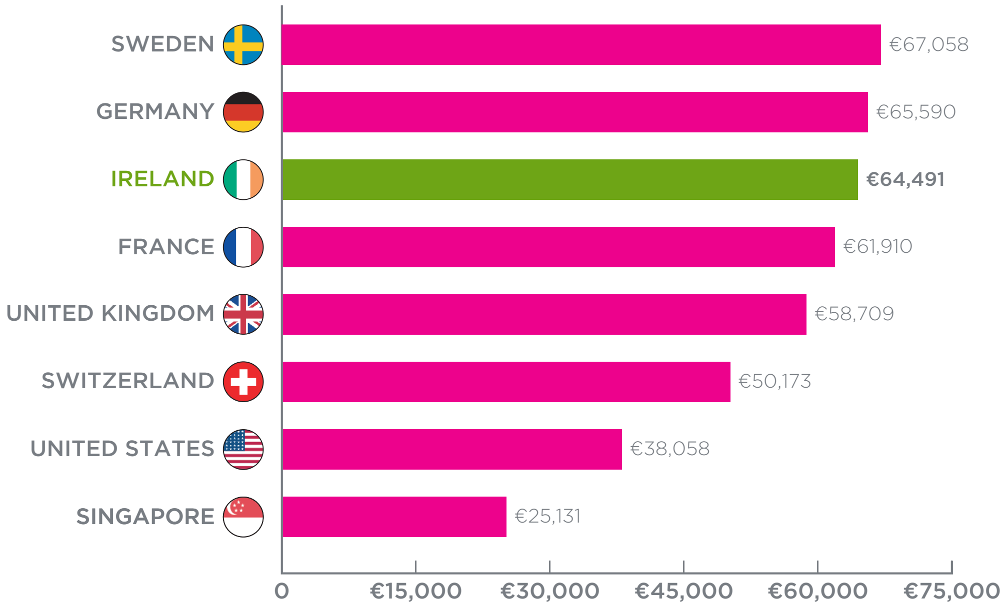
Tax paid at salary level of €75,000



Tax paid at salary level of €100,000



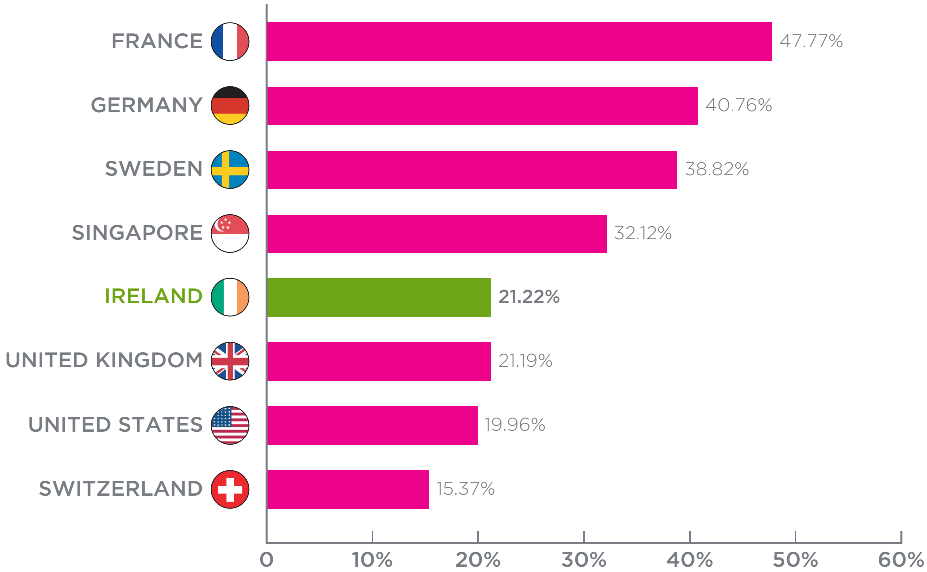
Tax paid at salary level of €150,000



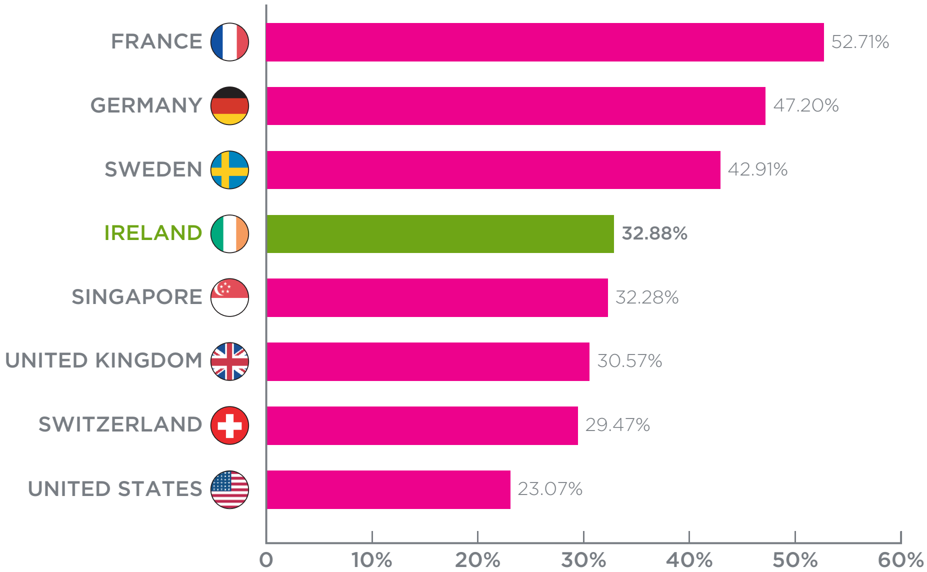
Tax Wedge 2021 - Ireland v Competitor Countries

- The tax wedge is generally considered to be the difference between what employees take home in earnings and what it costs to employ them. It looks at income taxes paid by an employee and social contributions levied on both employees and their employers.
- The higher the tax wedge, the higher labour supply costs that will be incurred by an employer to produce the same service or product, compared to another country.
- The tax wedge in Ireland is higher than in the United Kingdom, the United States and Switzerland at all salary levels; but is lower than the tax wedge in France and Sweden, primarily due to the difference in social insurance contributions.

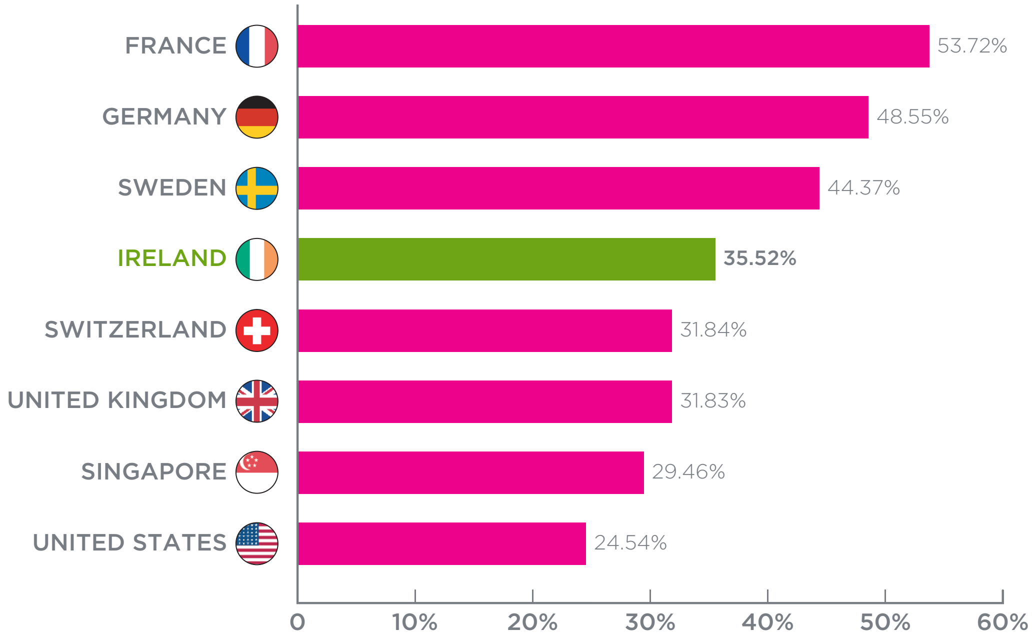
Tax wedge at salary level of €25,000



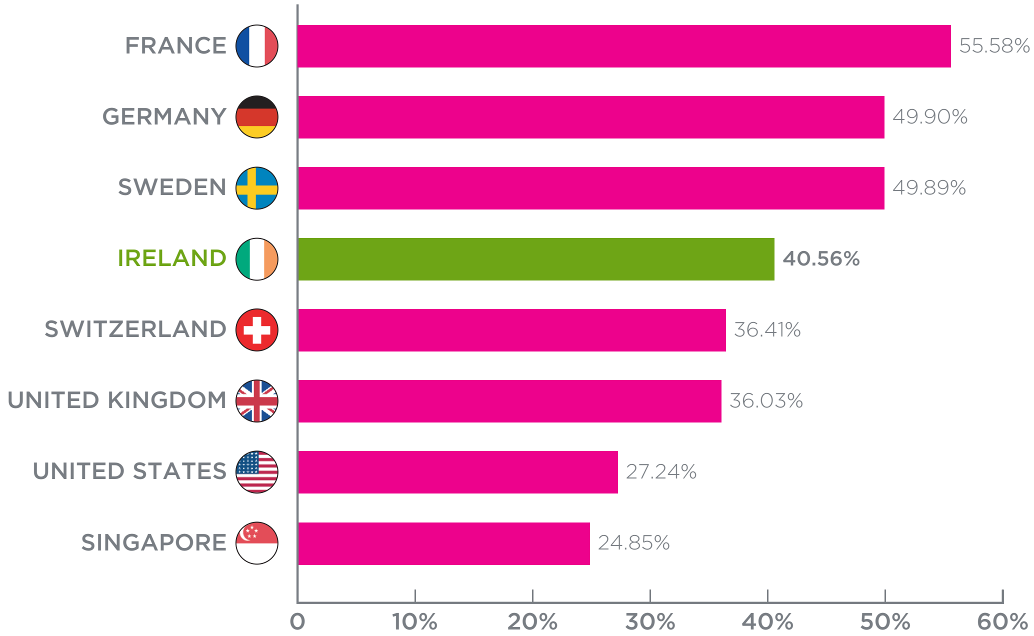
Tax wedge at salary level of €48,000



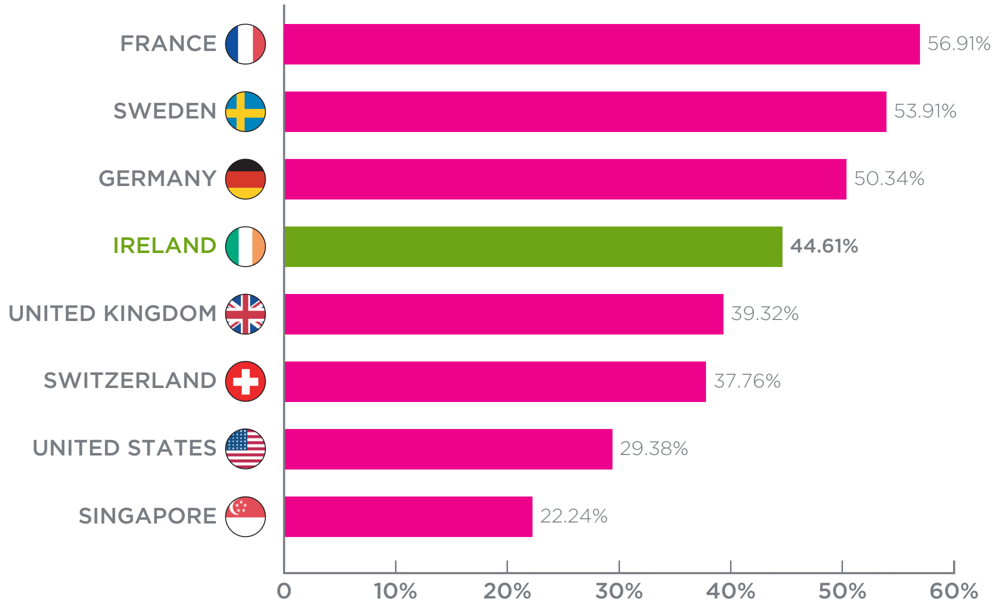
€ Tax wedge at salary level of €55,000



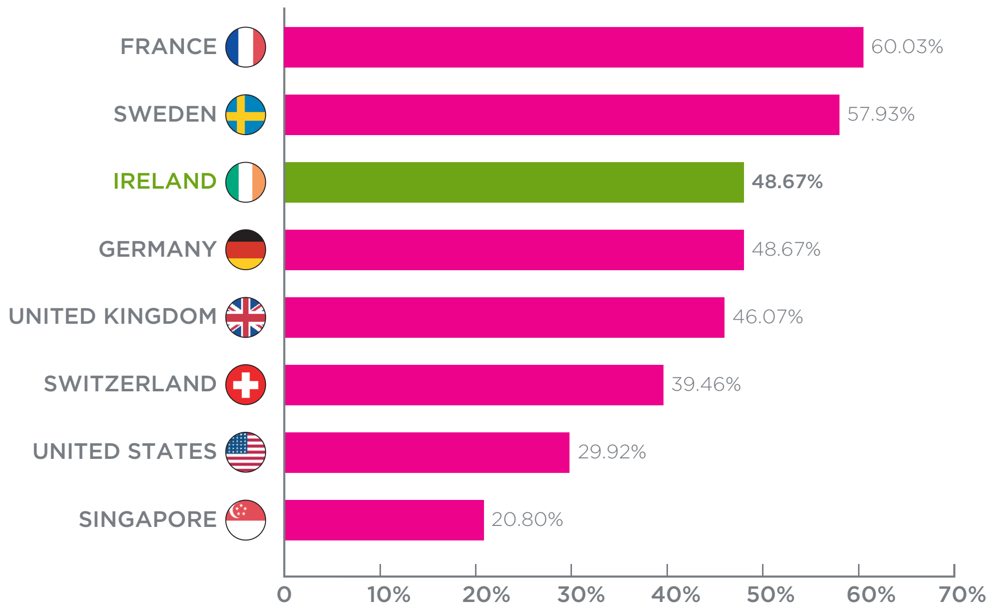
€ Tax wedge at salary level of €75,000



Tax wedge at salary level of €100,000



Tax wedge at salary level of €150,000



62 The tables contained in this document are based on indicative net income calculations prepared on the following assumptions:

- Employee is a single person, tax resident in the relevant country
- Employee is liable to social security contributions
- Employee has no children or other dependents
- Earnings represent cash salary only
- Property and wealth taxes are not included

Appendix II

CGT Entrepreneur Relief - Technical Issues

There are technical issues with the current CGT Entrepreneur Relief legislation[63] (as interpreted in Revenue's Operational Manual),[64] which are limiting its use in five significant situations:

1. **Where there is a dormant company in a group**

   According to Revenue's Operational Manual, Entrepreneur Relief is not available in situations where a dormant company is present in the group. This is a very significant limitation to the relief because a subsidiary company can commonly become dormant over time.

   This might happen where the company has ceased to trade or where the trade has been transferred to another group company and the company cannot be wound up or liquidated due to company law legislation for the protection of creditors. A group company could have dozens of trading subsidiaries, out of which only one is dormant, yet the relief is completely denied to the entrepreneur in this situation.

   We recommend that the legislation is amended to remove restrictions to Entrepreneur Relief in situations where a group holds a dormant company.

2. **Where a group is party to a joint venture**

   One of the conditions of Entrepreneur Relief is that all subsidiaries must be minimum 51% subsidiaries for the relief to apply. If a group is party to a joint venture and holds less than 51% of the joint venture company, this again can result in full denial of the relief.

   We recommend that the legislation is amended to remove restrictions to Entrepreneur Relief in situations where a group has a shareholding in a joint venture company of less than 51%.

3. **Where a company/group holds investments or leases trading premises**

   When either the holding of investments or the leasing of trading premises takes place within a group company, this can exclude an entrepreneur from claiming Entrepreneur Relief.

   In the current low interest rate climate, it is common for businesses to invest cash generated from trading activities rather than leaving it on deposit. This results in them holding investments.

   Similarly, many companies who expect high growth in the short-term will often buy or lease premises that exceed their current needs but will meet their future expectations. These businesses will occasionally rent the excess space out to a third party until they need to expand into the space.

   Both these activities are efficient from a commercial perspective. They improve cash flow, while utilising the companies' assets to their full potential. Yet they can impact on this important tax relief.

   We would ask that consideration be given to either apportioning relief in circumstances where there is a mix of investments and qualifying activities (similar to the Retirement Relief provisions[65]) or to allow the relief in full where non-trading activities are below a certain *de minimis* level. This is the approach adopted in the UK, where Entrepreneur's Relief is available on the sale of shares in a holding company, provided non-trading activities in the group do not comprise of more than 20% of the group's overall activities.

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[63] Revised Entrepreneur Relief, Section 597AA TCA 1997
[64] Revenue Operational Manual 19.06.02B – Capital Gains Tax Revised Entrepreneur Relief
[65] Section 598 TCA 1997

4. Where a holding company of a trading company is liquidated

The legislation does not specify whether Entrepreneur Relief is available on a liquidation. Revenue's guidance on Entrepreneur Relief only refers to situations where the liquidated company is carrying on a qualifying business at the date the liquidator is appointed.

However, it is unclear whether Entrepreneur Relief can apply on the liquidation of a qualifying holding company, for example;

(a) where the trading company has been sold and a holding company is being liquidated to access the sales proceeds; or
(b) where the trading company continues to trade and a holding company is being liquidated for administrative / commercial purposes.

We recommend that the legislation is amended to ensure that the existence of a holding company does not prevent a claim for Entrepreneur Relief in a liquidation scenario.

5. Where EIIS funds are raised by a company

A founder of a company funded using shares issued under the Employment and Investment Incentive Scheme (EIIS) may be denied Entrepreneur Relief on disposal of their shares in certain circumstances.

This issue arises because Entrepreneur Relief requires the vendor to own 5% of the ordinary share capital of a company. Often, EIIS shares do not have voting rights and have limited dividend and winding up entitlements. However, such EIIS shares may be considered to be ordinary share capital for tax purposes, as section 2 TCA 1997 defines ordinary share capital as "*all the issued share capital (by whatever named called) of a company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company*".

This means, for example, if a founder shareholder owned 100 €1 ordinary shares but the company also had 500,000 €1 A ordinary shares in issue from a previous EIIS, a disposal of the founder's shares may not qualify for Entrepreneur Relief, as the legislation is silent on whether to consider the number of shares in issue or the nominal value of the shares in issue, when applying the 5% shareholding test.

We recommend that the legislation be amended to confirm that shares which qualified for relief under Part 16 TCA 1997, with the exception of shares qualifying for SURE, should be ignored for the purposes of meeting the 5% shareholding test for CGT Entrepreneur Relief. Clarification would also be welcome on whether it is the number of shares or the nominal value of shares that is relevant when determining the 5% test.

Appendix III

Institute Recommendations to enhance the Employment Investment Incentive Scheme (EIIS)

The Institute's response to the Department of Finance Public Consultation on the EIIS in February 2021 included several tax policy and administration recommendations for the improvement of the EIIS.[66] Several of these recommendations remain relevant; a summary of which is outlined below.

1. Enhanced support for start-ups through EIIS

Introduce a streamlined administrative process for small and micro companies to help them avail of EIIS finance, by adopting non-mandatory template forms (for business plans, cash flows etc.) which would ease the extensive administrative burden for them.

2. Amend the connected party rules

In our view, there should be a carve-out from the connected party rule linked with a control test, so that shares and share options granted to non-executive directors or other key employees will not automatically result in them being disqualified from being a qualifying investor.

3. Permit holding company structures

The exclusion of holding company structures is causing genuine businesses to be precluded from EIIS funding. Typically, founder holding companies are established before raising EIIS finance is even a consideration. These structures are inadvertently borne out of genuine commercial arrangements, sometimes as a result of partnerships or Joint Ventures (JVs) arising from incubator programmes or due to the understanding of founders as to market norms and investor expectations on certain structures. In limited cases, the structure can be a legacy from a previous failed venture.

The exclusion of founder holding companies from the EIIS is in stark contrast to other funding sources (including Enterprise Ireland and other Government funding) where founder holding company structures are permitted and in fact, are encouraged in certain sectors. Furthermore, the General Block Exemption Regulations (GBER),[67] which sets out the conditions which the EIIS as a state aid must satisfy, does not prohibit holding companies.

4. Exit strategies for EIIS investors

We believe the EIIS should recognise exit strategies for investors beyond what is provided by way of a share redemption under section 508R (9) TCA 1997 or trade sale, given the high commercial risks investors assume.

5. Resourcing

Appropriate and adequate resourcing must be committed to processing EIIS applications. Dedicated full-time staff who understand the complicated rules of the scheme, together with staff who have commercial knowledge and experience in dealing with businesses, must be assigned to ensure consistency in dealing with applications in a timely manner. An appropriate Revenue customer service standard should apply for EIIS applications.

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[66] https://taxinstitute.ie/wp-content/uploads/2021/02/2021-02-12-ITI-Response-to-the-Public-Concultation-on-EII.pdf

[67] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible internal market in application of Articles 107 and 108 of the Treaty

6. Impact of non-compliance

We believe it would be more proportionate for a monetary penalty to be imposed, rather than a clawback of the entire EIIS relief, as a sanction for an administrative error or the late filing of a return.

7. 7-year rule for investments

Consideration should be given to having a 4-year holding period for all EIIS investments. If the 7-year rule for investments up to €500,000 is retained, we believe only a partial clawback should occur between years 5 to 7. At the very least, the first €250,000 beyond year 4 should not suffer a clawback, instead of the entire EIIS relief claimed.

8. Broaden the interpretation of financial intermediary

In our view, the definition of financial intermediary for the purposes of the 7-year window for firms in difficulty should be broadened beyond regulated bodies.

9. Allow the offset of capital losses

Capital losses, net of tax relief already received, incurred on EIIS investments should be allowable, in line with the recommendation made by Indecon in their 2018 evaluation of the scheme.

Section 26(b) Finance Act 2021 reintroduced a condition in section 502(5) TCA 1997 regarding increases in employment or expenditure on R&D. The condition must be satisfied three years after the year in which the eligible shares are issued. Failure to satisfy the condition will result in a partial withdrawal of the EIIS relief.

This condition was removed in 2019 following the removal of second stage relief for shares issued after 8 October 2019. The removal of the condition was in line with the stated objective at that time to increase the efficiency and effectiveness of the scheme. The reintroduction of the condition further adds to the administrative burden and does not take account of the fact that businesses may pivot and change their business models during the interim period.

Section 502(5) TCA 1997 requires an increase in (a) both the number of employees and the total remuneration of employees, or (b) the expenditure on R&D. The requirement to increase both the number of employees and the total remuneration of employees can be problematic and would also appear to be contrary to section 496(2)(a) TCA 1997, which states that EIIS is for the creation or maintenance of employment.

In our view, it would be more appropriate if a company were deemed to have fulfilled the employment condition if they satisfied either of the tests i.e., an increase in the number of employees under section 502(5)(a) or an increase in total remuneration under section 502(5)(b)) TCA 1997.

Appendix IV

Institute Recommendations to enhance the Key Employee Engagement Programme (KEEP)

KEEP was introduced by Finance Act 2017 to assist SMEs[68] 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. However, there has been a relatively low uptake of the scheme.[69]

Several amendments were made to KEEP in Finance Act 2019, following the public consultation undertaken by the Department of Finance in 2019. These changes are subject to a Ministerial commencement order as State aid approval is required.

We believe further legislative amendments are needed to improve the feasibility of the scheme. In our view, the policy intention of KEEP, which is to help SMEs attract and retain key employees, can only be achieved if these limitations are addressed. We have outlined the limitations below together with our recommendations for reforms to the existing legislation.

1. Amend the definition of a 'qualifying holding company'

While the amendments introduced by Finance Act 2019 are welcome and are likely to go some way to increasing the number of groups that can now qualify for KEEP, there are certain conditions attaching to the new definitions of 'qualifying holding company' and 'qualifying group' that will also hinder certain groups availing of the scheme.

For example, it is common for a new business to start up as a single trading entity, then, as the business grows and expands into new territories or delivers new products, it can become necessary for commercial reasons to incorporate another entity. Often, such new entities are established as subsidiaries of the original trading company. As the business activities expand, the original company often continues to carry on the existing trade but also evolves into a holder of the shares in the new trading subsidiary.

Generally, such businesses would not put a company in place whose sole or main business is that of holding shares, as the stage of development of the business may not warrant it or it may not be commercially necessary to do so, particularly given the complexity and cost that can be involved in undertaking a group restructure to put a holding company in place.

Many businesses that wish to set up a KEEP scheme are prevented from doing so because of the restrictive definition of a 'qualifying holding company' under the rules of the scheme.

The following conditions for a 'qualifying holding company' are particularly problematic:

- A qualifying holding company for KEEP purposes cannot be a trading company. If it is trading, it is not a qualifying holding company, even if it is wholly or mainly holding shares in trading subsidiaries.
- Company structures with an intermediate holding company may not be regarded as a qualifying company if there is no qualifying subsidiary held directly by the ultimate

[68] 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.

[69] The latest available data is that 10 companies granted share options qualifying for the Key Employee Engagement Programme (KEEP) to 87 key employees during 2018 – Response to Parliamentary Question, 5 December

holding company. By way of comparison, Revenue guidance[70] for Revised Entrepreneur Relief (section 597AA TCA 1997) acknowledges that structures with a double holding company are not precluded from that relief.

- A holding company can only hold shares in a qualifying subsidiary and a "relevant subsidiary" and no other companies. A "relevant subsidiary" is one in which the qualifying holding company holds more than a 50% interest in the ordinary share capital. Therefore, if the holding company had a 50% joint venture interest in another company it cannot be a qualifying holding company, even if it had a qualifying subsidiary that was a qualifying company.

We believe that the definition of a qualifying holding company should be amended to permit the group as a whole to be considered, rather than simply considering the holding company in isolation. This could be achieved by amending the wording of the definition of a 'qualifying holding company' at subsection (c) to state that it means a company where *"the business of the company, its qualifying subsidiary or subsidiaries, and as the case may be, its relevant subsidiary or subsidiaries, taken together consists wholly or mainly of the carrying on of a trade or trades."*

This approach would be similar to the approach taken for the Capital Gains Tax (CGT) holding company exemption in section 626B TCA 1997.

In addition, the legislation is unclear as to whether it is possible to issue KEEP options in a single company within a group that meets the "qualifying company" tests or whether it is necessary for the group, of which the qualifying company is part, to be a "qualifying group". This should be clarified in the legislation.

2. Develop an agreed 'safe harbour' approach to share valuation and impose an appropriate sanction where there is an undervalue

One of the most significant practical issues that SMEs face when implementing KEEP is the ability to achieve as much certainty as possible that the valuation conditions have been met. For example, that the share option price is not less than the market value of the shares at the date of grant.

Currently, there is no guidance on how to determine what market value is for the purposes of KEEP. If qualifying options are not granted for market value or the market value is subsequently determined by Revenue to be higher than originally projected, the options would not qualify as KEEP options under section 128F TCA 1997, resulting in no exemption from income tax, USC and PRSI on exercise.

Comprehensive guidance on share valuations is required to support companies adopting the scheme. This would make the process more accessible, easily understood, and capable of implementation without undue duplication of effort and cost.

In addition, where options are granted at an undervalue, we believe that a more proportionate sanction would be for a charge to income tax to arise on the exercise of the options on the difference between the market value at the date of grant and the option price. This would allow the options to remain qualifying share options, but it would also enable Revenue to collect income tax on the portion of the gain attributable to the undervalue.

The income tax arising on exercise could be collected under the same mechanism as section 128 TCA 1997 (i.e. a charge to income tax under Schedule E is imposed on any gain realised by a director or employee from a right granted to him/her, by reason of his/her office or employment, to acquire shares or other assets in a company).

3. Amend the conditions regarding remuneration

Currently, the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, must not exceed

[70] Tax and Duty Manual Part 19-06-02b - Revised entrepreneur relief

€100,000 in any one year of assessment, €300,000 in all three years of assessment or 100% of the annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted.

Linking the amount of share options that can be awarded under KEEP to the employee's annual emoluments restricts high growth companies in start-up mode availing of the scheme. Often in start-up businesses employees and directors would have lower salaries, compared with larger multinationals, which can prohibit such companies under KEEP offering equity as an incentive for these individuals to stay in the business.

We suggest that rather than discriminating in practice against the remuneration strategies of these companies and the mix of cash-based and equity-based remuneration that they offer employees, the KEEP measures should simply set absolute values, such as those included in subparagraph (i) and (ii) of part (d) of section 128F (1) TCA 1997.

We believe that such an amendment to the qualifying limit of 100% of the annual emoluments of the qualifying individual is particularly needed in 2020 and 2021 to ensure that employees are not adversely affected by receiving a lower salary because of the Covid-19 restrictions on the economy.

This would take account of situations where an employee's salary has reduced because of reduced working hours or a temporary layoff. It would also address situations where employees, who are temporarily absent from work due to maternity or paternity leave, are limited in terms of the relief which may apply, as often their salary levels would be reduced during this time.

4. Creating liquidity in KEEP shares by allowing a company buy-back of shares

A substantial challenge for SMEs wishing to operate a KEEP scheme is to provide assured liquidity for their shares, as not all such companies are likely to be sold or listed on a stock exchange. SMEs may need to consider how to create a market in the absence of a third-party exit, such as the owner, other employees, or the company itself buying back the shares from an employee.

In general, a company buy-back of shares is treated as income rather than capital. However, section 176 TCA 1997 provides that CGT treatment can apply to a buy-back or redemption of shares if it is for the benefit of the trade. The KEEP provisions include a *bona fide* commercial reason test[71] to be met as part of the scheme's requirements. We recommended that section 176 TCA 1997 should be amended to reflect that a buy-back of shares acquired under KEEP can be expected to meet the conditions for the benefit of the trade test in that section. An alternative approach would be for the KEEP legislation to be amended to permit CGT treatment to apply to a buy-back or redemption of shares in certain circumstances without meeting the conditions of Part 6, Chapter 9 TCA 1997.

5. Amend the employment conditions for the 'qualifying individual'

Changes introduced by Finance Act 2019 allow individuals working part-time or who have flexible working arrangements to be regarded as qualifying individuals.[72] The amendments also allow for the movement of qualifying individuals between qualifying companies within the group. While these changes are welcome, the amendments to the legislation would appear to preclude an employee who has been temporarily absent from work, for example, due to maternity or paternity leave, from qualifying for the relief.

Many employees have been put on part-time or reduced hours or temporarily laid off because of the COVID-19 restrictions on our economy and the SME sector. Under section 128F TCA 1997, an employee is required to work at least 30 hours per week to be a qualifying individual

[71] Section 128F (11) Taxes Consolidation Act 1997
[72] This amendment is subject to a Ministerial Order

for KEEP.[73] We believe this condition should be amended for 2020 and 2021 to take into account the impact of COVID-19 on these employees, so that they can remain within the scheme where their hours have been reduced or they have been temporarily laid off as a direct result of the COVID-19 restrictions.

6. Where a SME undergoes a reorganisation

The current KEEP legislation does not provide for the continuing availability of the relief in the event of the SME (e.g., holding company and its subsidiaries) undergoing a corporate reorganisation during the period in which the KEEP share option rights are outstanding. We would suggest amending the KEEP legislation to include similar provisions to those contained within the Revised Entrepreneur Relief legislation,[74] which seeks to address reorganisations[75] that might affect the entitlement of a 'qualifying individual' and a 'qualifying company' to meet the scheme requirements.

7. Provide 'roll over relief' of KEEP share options

We believe that section 128F TCA 1997 should be amended to provide 'roll over relief' of KEEP share options, similar to that provided in section 128(8)(a) TCA 1997. Where share rights are exchanged between directors and employees or a company grants a new right in exchange for the surrender of an original right, the new right and the original right are looked at as one for the purpose of the charge to tax under section 128 TCA 1997. This 'roll over relief' effectively means that the tax charge arises at the point of exercise of the new right with the history of the original share right is taken over in respect of a future exercise of the new right.

A similar relief is not included in KEEP legislation. In our view, section 128F should be amended to provide 'roll over relief' in respect of KEEP share options. This would apply where during the exercise period, a transaction is entered into which results in the share capital of a company being acquired, and unexercised KEEP share options are exchanged or assigned for new options in the acquiring company.

In such circumstances, we believe that if the acquiring company meets the qualifying company/group criteria set out in the legislation, the future exercise of the new replacement options should qualify for relief with the history of the original share option being taken over for the purposes of determining the charge to tax.

[73] Finance Act 2019 amendments, subject to Ministerial Order, changed this to 20 hours per week with the employee and/or director dedicating not less than 75% of their work time to the qualifying company
[74] Section 597AA (1) (b) (i) and (ii) Taxes Consolidation Act 1997
[75] Corporate reorganisations under section 586 and 587 Taxes Consolidation Act 1997