Irish Tax Institute

April 2026

Pre-Finance Bill 2026 Submission

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About the Irish Tax Institute

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

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

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

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

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

Irish Tax Institute - Leading through tax education

Executive Summary

In this submission, the Irish Tax Institute has set out legislative amendments for consideration in the drafting of Finance Bill 2026 in relation to five broad areas:

1. Strengthen Ireland's competitiveness
2. Support the growth of the indigenous sector
3. Encourage retail investment
4. Proposed changes to the tax collection and appeals process
5. Tax technical measures required to mitigate certain unintended consequences

Strengthen Ireland's competitiveness

Ireland is a small and highly globalised economy which has greatly benefited from significant inward investment. But geopolitical instability and the acceleration of deglobalisation are reshaping global trade, investment, and industrial policy. As the Tánaiste and Minster for Finance, Simon Harris TD said at the Institute's Annual Dinner in February, *"the current level of uncertainty underscores the need to control what we can control and influence at a domestic level*".

Tax has been a key component in Ireland's success in in attracting foreign direct investment (FDI) and it remains an influential factor for prospective investors. It is one of the few levers that the Government has in its control in the prevailing disruptive geopolitics. We outline below, tax measures which we believe would strengthen Ireland's competitiveness and help to protect Ireland's position as an attractive place to do business.

Enhance the R&D Tax Credit

The incentive available for R&D is a key deciding factor in investment location decisions. While we welcome the Budget 2026 increase in the rate of the R&D Tax Credit from 30% to 35%, given the mobility of R&D investment, it is critical that the

Irish R&D Tax Credit is continually benchmarked against the incentives in key competitor jurisdictions.

We are encouraged by the recent publication of the R&D Compass and establishment of an R&D Tax Credit and Innovation Working Group by the Department of Finance, on which the Institute has been an active participant. We strongly urge that the rules which apply for sub-contracting to related parties; universities/institutes of higher education; third parties; and agency/temporary staff are broadened in Finance Bill 2026 to ensure the credit remains a competitive incentive and continues to encourage additional R&D investment in Ireland.

In particular, we believe that consideration should be given to permitting outsourcing of R&D to a related party in circumstances where Ireland is the owner and has played an active role in managing and developing internally generated IP arising from R&D activities ensuring that the value of the outputs and associated returns will accrue to the Irish entity. A cap on the amount of related spend which qualifies could be set by reference to the Irish company's own internal spend on R&D.

It is also important that consideration of a tax measure which supports innovation is progressed.

Simplify the corporation tax code

In our view, a simplified, innovative and competitive corporation tax system would bestow a significant advantage on Ireland in attracting FDI.

The Department of Finance's Feedback Statement on Phase One of Reform of Ireland's Taxation Regime for Interest acknowledges that reform of the taxation regime for interest is needed to help safeguard Ireland's competitiveness, to provide administrative simplification and give greater certainty to Irish businesses, while continuing to ensure that Ireland's tax system for interest is fair and sustainable.

In responding to the Feedback Statement in January, the Institute highlighted the strong feedback received from members that the changes outlined in the Strawman

Proposal would not provide the simplification required to address Ireland's excessively complex interest deductibility rules and protect Ireland's competitiveness.

We understand from our recent meetings with the Department of Finance that policymakers are now considering alternative proposals to reform the rules on interest deductibility and that draft legislation will be published in the autumn with a view to legislating for changes in Finance Bill 2027. It is important that the Department continues to engage with stakeholders to ensure that meaningful simplification of the interest regime can be achieved to protect Ireland's competitiveness.

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

In line with the position adopted in other jurisdictions, we believe that the criteria applicable to the participation exemption for foreign distributions and the exemption for gains under section 626B TCA 1997 should be more closely aligned. The trading requirement should be removed as a condition of the section 626B exemption, and the relief should not be limited to gains on shares of companies which are tax resident in EU or Double Taxation Agreement (DTA) countries.

Support the growth of the indigenous sector

Reduce the administrative burden

In recent years, there has been a sustained rise in the level of regulation of businesses, with an increased number of forms required to be completed and new processes to be implemented by businesses. The cumulative administrative burden associated with such regulation places a significant strain on the scarce resources available to many SMEs.

The Enhanced Reporting Requirements (ERR) places a substantial administrative burden on businesses, in particular SMEs, as they are required to report details of certain non-taxable payments and benefits to their staff in real-time. It is our firm view that the reporting in real-time of such payments and benefits is overly burdensome. Amending the rules so that the same data must be reported after the month end would reduce the burden for business while ensuring that the policy objective of the measure continues to be achieved as Revenue would continue to receive the data on a timely basis.

Simplify the operation of share-based remuneration

Share-based remuneration can play an important role in rewarding key employees at all stages of development of a business. It can significantly reduce fixed labour costs and free up cashflow. While the take-up of the Key Employee Engagement Programme (KEEP) has been low to date, we consider this is due to certain limitations with the operation of the scheme which can significantly impact its feasibility. Developing an agreed ‘safe harbour’ approach to share valuation so that an appropriate sanction applies where there is an undervalue would improve the feasibility of KEEP.

It is also important that the significant obstacles to using other types of share-based remuneration by SMEs and start-ups are tackled, such as addressing the upfront tax cost faced by employees on the receipt of a share award or on the exercise of a share option.

Encourage retail investment

Both the EU Savings and Investment Union and the Programme for Government recognise the importance of growing retail investment. In this regard, we welcome the recent announcement by the Tánaiste of a proposed new Personal Investment Account in Ireland. The Institute recently participated in the first Annual Savings and Investments Forum, and we look forward to continued engagement with the Department of Finance on the tax aspects of this scheme. We firmly believe that by taking account of the retail investor's needs and preferences, the tax system can be

tailored to encourage retail investors to channel savings into productive investments which will in turn play a pivotal role in bridging the funding gap for the future.

The Institute has previously made recommendations on the changes needed to the taxation of fund investments in our response to the Funds Sector 2030 public consultation. We support the recommendations in the Funds Sector 2030 Report to prioritise the simplification and consolidation of the tax regime for offshore funds, and to reform the taxation of Irish-domiciled funds and life products, with similar amendments to be made to the equivalent products in EU, EEA and OECD territories, to bring the regime into closer alignment with the taxation on other savings and investment products. Full implementation of these important recommendations is needed to grow retail investment in Ireland.

Proposed changes to the tax collection and appeals process

eWithholding Tax (eWHT)

In January, the Institute submitted its response the joint public consultation by the Department of Finance and Revenue on a proposed new eWHT regime.

While the Institute supports modernising tax administration, any steps to modernise tax administration in Ireland should focus first on ensuring that the existing tax compliance architecture is efficient, effective and robust before embarking on creating a new compliance model which would require extensive IT investment.

In addition, any significant reform must be carefully considered including assessing its wider economic implications and whether it would be an improvement on the current tax administration regime. As framed, the eWHT regime could affect Ireland's competitiveness, increase business costs and impact cashflow for the self-employed and for businesses. It is also not clear that the changes proposed would align with Government policy to support economic growth, investment in infrastructure and housing.

Retain the option for private hearings at the Tax Appeal Commission

Head 5 of the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2025 (Tax Appeals Bill) which was published in November proposes to make fundamental changes to the tax appeals process because of the 2021 Supreme Court judgment in the case of *Zalewski v. Adjudication Officer & Ors*[1].

As outlined in the Institute's submission in response to the public consultation by the by the Joint Committee on Finance, Public Expenditure, Public Service Reform and Digitalisation, as part of the pre-legislative scrutiny of the Tax Appeals Bill 2025, our members have very serious concerns with the proposed amendment to section 949Y TCA 1997, which would grant discretion to the Appeal Commissioners to decide whether a tax appeal hearing should be held 'in camera' (i.e. a private hearing). The Institute is also very concerned with the proposed amendment to section 949AO(4) TCA 1997 which would allow the Appeal Commissioners to determine if there are "special and limited circumstances" to justify redaction of determinations.

The Institute has obtained an opinion from Senior Counsel on the constitutional requirement for the changes proposed under Head 5 of the Tax Appeals Bill. As outlined in our follow-up submission to the Joint Committee, the legal opinion the Institute has received confirms that there is nothing in the *Zalewski* case which mandates the change to tax appeals before the Tax Appeals Commission (TAC), as proposed in the Tax Appeals Bill.

If the legislative amendments in the Tax Appeals Bill are implemented, as proposed, the only option available for a taxpayer who disagrees with Revenue's interpretation of the law which has resulted in the tax assessment, may be a public hearing at the TAC. This is not a desirable outcome as it removes a critical safeguard for taxpayers and tips the balance of power further in favour of Revenue.

It is essential that policymakers recognise the unique nature of tax disputes and ensure that any legislative changes preserve the right to privacy. We firmly believe

[1] [2021] IESC 24

that the proposed changes risk fundamentally undermining taxpayer rights and the integrity of the tax appeals system. Removing the entitlement to have a TAC hearing in private and limiting the redaction of determinations would discourage genuine appeals and erode the essential balance between the interests of taxpayers and the State. The changes would also make Ireland an outlier compared with the privacy protections which exist in the procedures for resolving tax disputes in other EU Member States.

Tax technical measures required to mitigate certain unintended consequences

Provide certainty regarding preliminary tax payment obligations for large companies

The preliminary corporation tax (PT) rules for larger companies require them to have paid 90% of their tax liability for an accounting period over one month before the end of that period. But it can be difficult for companies to determine with accuracy what 90% of their final tax liability for the accounting period will be as a forecasting exercise is necessary.

Where, despite best efforts, a company underestimates its profitability for the period, it is penalised. The due date for the payment of the full corporation tax liability is accelerated with statutory interest applying irrespective of the fact that the profits may not have actually been earned or anticipated by the due date. In our view, this treatment is inequitable, and changes are required to the PT rules to ensure that companies can have certainty regarding their PT obligations.

Tax technical issues arising from the implementation of Pillar Two

We welcome the establishment of a subgroup of the Business Tax Stakeholder Forum (BTSF) to consider the implementation of the OECD Pillar Two “Side by Side” Package in Finance Bill 2026. We look forward to continuing our engagement with Department and Revenue officials as the drafting process for transposing the Side by Side Package into Irish law progresses over the months ahead.

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

Conclusion

We have outlined the Institute Recommendations in more detail on pages 12-21. Further detailed analysis of each technical matter mentioned above has also been included in the body of this submission. Please contact Anne Gunnell at agunnell@taxinstitute.ie or (01) 6631750 if you require any further information regarding the matters raised.

Institute Recommendations

Our recommendations for Finance Bill 2026 are grouped into five broad areas below. Further analysis of each technical matter is included in the body of this submission.

Strengthen Ireland's competitiveness

Enhance the R&D Tax Credit

1. Ireland's sub-contracting rules for the R&D Tax Credit are more restrictive than many competitor countries. The rules which apply for sub-contracting to related parties, universities/institutes of higher education; third parties; and agency/temporary staff should be broadened to ensure the credit remains a competitive incentive and continues to encourage additional R&D investment in Ireland.

    a. Consideration should be given to permitting outsourcing of R&D to a related party in circumstances where Ireland is the owner and has played an active role in managing and developing internally generated IP arising from R&D activities ensuring that the value of the outputs and associated returns will accrue to the Irish entity. A cap on the amount of related spend which qualifies could be set by reference to the Irish company's own internal spend on R&D.

    b. In keeping with Government policy to foster collaboration between academia and private businesses, the restriction on qualifying R&D expenditure outsourced to universities/institutes of higher education should be removed to encourage the development of STEM skillsets.

    c. Qualifying R&D expenditure outsourced to third parties should be capped by reference to the company's qualifying internal R&D spend rather than the existing limits.

d. The existing Revenue concession which allows expenditure on agency/temporary staff for R&D activities to qualify should be put on a legislative basis and the current conditions should be amended to reflect the commercial realities of R&D projects.

2. It is important that consideration of a tax measure which supports innovation is progressed. Potential options to introduce an innovation incentive related to digitisation and decarbonisation should be examined. It is important that any new tax incentive would be considered compliant with the Pillar Two GloBE Rules and the US Foreign Tax Credit Regulations. It is also critical that any new incentive would not in any way impact on the existing R&D Tax Credit.

Simplify the corporation tax code

3. Reform of the taxation regime for interest is needed to help safeguard Ireland's competitiveness, to provide administrative simplification and give greater certainty to Irish businesses. It is important that the Department of Finance continues to engage with stakeholders to ensure that meaningful simplification of the interest regime can be achieved.

4. We believe that the proposed amendments to section 247 Taxes Consolidation Act (TCA) 1997, which were outlined in the Department of Finance's Feedback Statement on Phase One of Reform of Ireland's Taxation Regime for Interest, should be legislated for in Finance Act 2026. These include removing the common director requirement and the requirement to flow money through the bank account of intermediate group entities, where funds are used by connected companies.

5. Sections 247 and 249 TCA 1997 should be streamlined to remove conditions that do not have a clear policy rationale. A reformed, principle-based section 247 and 249, which enables companies to claim relief for interest as a charge for interest paid on borrowings incurred for valid commercial purposes, would significantly reduce the complexity faced by companies operating in Ireland.

6. An interest deductibility rule for Schedule D Case III and IV should be introduced. A deduction should be allowed for interest equivalent incurred, to the extent that the related debt is employed during the relevant period for a purpose intended to give rise to income chargeable under Case III or IV, or which would be so chargeable, but for a relief or exemption provided for in the Taxes Acts.

7. Taxpayers should be permitted to offset Case III and IV losses against both Case III and IV profits on a current year and carry forward basis so that these losses are not stranded and the regime can operate in a coherent manner.

8. The rules governing the Interest Limitation Rule (ILR) €3 million *de minimis* threshold should be amended to allow the first €3 million of exceeding borrowing costs to be excluded from the ILR, rather than imposing the ILR on all net interest expense where the threshold is breached.

9. The period within which a company may elect to form an interest group should be extended to four years after the end of the accounting period to which the election relates to allow taxpayers more time to assess the merits of electing into an interest group. It would also align with the four-year time limit contained in section 959V TCA 1997.

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

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

Support the growth of the indigenous sector

Reduce the administrative burden

12. The ERR rules which require the reporting in real-time of certain non-taxable payments and benefits is overly burdensome. Amending the rules so that the same data is reported after the month end would reduce the burden for business while ensuring that the policy objective of the measure continues to be achieved, as Revenue would continue to receive data on a timely basis.

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

Simplify the operation of share-based remuneration

14. Legislative changes are needed to ensure the KEEP can achieve its policy aim of helping SMEs attract and retain key employees. These include legislating for a safe harbour approach to share valuation so that an appropriate sanction applies where there is an undervalue and amending the definition of a ‘qualifying holding company’.

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

    - Introduce measures to address the difficulties faced by employees in funding the upfront tax cost arising on the exercise of a share option or receipt of a share award. Deferring the tax arising until such time as the

employee is permitted to dispose of the shares would mean that the employee is able to fund the tax arising.

- Alternatively, remove the BIK charge on employer loans, or at a minimum reduce the 13.5% interest rate on such loans to a more commercial rate of interest, in line with the recommendation of Indecon[2], to make share-based remuneration a more viable option for many companies.

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

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

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

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

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

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

Encourage retail investment

16. Full implementation of the recommendations of the Funds Sector 2030 Report on the taxation of fund investments is needed to grow retail investment in Ireland. These are:
    - prioritising work on simplifying and consolidating the tax regime for offshore funds; and
    - reforming the taxation of Irish-domiciled funds and Irish-domiciled life products, with similar amendments made to the equivalent products in EU, EEA and OECD territories, to bring the regime into closer alignment with the taxation on other savings and investment products, including:
        a. removing the eight-year deemed disposal requirement
        b. aligning the Investment Undertakings Tax and Life Assurance Exit Tax rate of tax with the CGT rate
        c. allowing a limited form of loss relief
        d. repealing the 1% Life Assurance Levy

Proposed changes to the tax collection and appeals process

Retain the option for private hearings at the TAC

17. An opinion obtained by the Institute from Senior Counsel confirms that there is nothing in the *Zalewski* case which mandates the change to tax appeals before the TAC which is proposed in Head 5 of the Tax Appeals Bill. As a result, we consider the approach advocated for in the Tax Appeals Bill regarding the publicity of hearings before the TAC goes further than is constitutionally or legally necessary and we strongly urge that it is reconsidered.

18. Removing the entitlement to have a TAC hearing in private and limiting the redaction of determinations would discourage genuine appeals and erode the essential balance between the interests of taxpayers and the State. The changes would also make Ireland an outlier compared with the privacy protections which exist in the procedures for resolving tax disputes in other EU

Member States. It is essential that policymakers recognise the unique nature of tax disputes and ensure that any legislative changes to the tax appeals process preserve the right to privacy.

eWHT

19. We believe the proposed eWHT regime could affect Ireland's competitiveness, increase business costs and impact cashflow for the self-employed and for businesses. We outline below six key recommendations based on the concerns raised by members regarding the scope and implications of the reform envisaged:

- Further work by the Department of Finance and Revenue is needed to clarify the scope of the eWHT proposal and what tax leakage it is attempting to address. Based on the preliminary information made available with the consultation, we would question whether such a substantial reform at this juncture is warranted or wise.

- The application of eWHT to the platform economy should be paused until the specific compliance issues in question, DAC7 implications, and VAT in the Digital Age (ViDA) commitments are fully defined. If policymakers decide to proceed, a detailed Strawman Proposal should be developed to outline the intended design and scope of eWHT for platform operators.

- The use of a personalised rate rather than a flat rate of withholding tax could result in the unintended disclosure of an individual's personal circumstances. The GDPR implications of such a measure would also need to be fully considered.

- It is imperative the 0% Relevant Contracts Tax (RCT) withholding tax rate is retained for compliant resident and non-resident subcontractors. Its removal would have serious implications for the cost and delivery of critical housing

and infrastructure projects, which would be at odds with the Government's National Development Plan.

- A full review of professional services withholding tax (PSWT) should be conducted to determine whether the regime remains appropriate before expanding its scope or altering its operation.

- A cautious approach should be adopted to expanding withholding tax, mirroring the approach taken in modernising Ireland's administration of VAT. It is important that international experience is reviewed first so that Ireland can learn from any mistakes in design and implementation of withholding taxes before taking policy decisions which would have far reaching consequences for Ireland's competitive position. Providing a long lead-in time and financial supports for businesses to adapt to any new regime would also be necessary.

Tax technical measures required to mitigate certain unintended consequences

Provide certainty regarding preliminary tax payment obligations for large companies

20. In our view, changes are required to the PT rules to ensure that companies can have certainty regarding their PT obligations. Amendments which could be considered include:

- Removing the look-back applying to the first instalment of PT (PT1): Where a company fails to meet the 90% threshold on the second instalment of PT (PT2) interest should apply only to the shortfall, and no look-back should apply if PT1 was paid correctly based on 50% of the prior-year liability.

- Providing a top-up window: Large companies should be given the opportunity to make a top-up payment to their PT2 within a defined period

after the end of the accounting period when the profit for the period is known, without exposure to interest.

- Increasing the threshold: The €200,000 threshold to be considered large company for the purposes of PT has not been indexed for 18 years. This lack of indexation has inadvertently pushed many Irish SMEs into the "large company" regime. Increasing the threshold to €1 million would significantly reduce the compliance and cashflow burden on the SME sector.

- Introducing a transition rule for first time large companies: Consideration could be given to introducing a transition rule for companies which satisfy the criteria for "large companies" for the first time so that they are only subject to the PT large company rules from year 2. This would ensure such companies are not unfairly penalised where they inadvertently fail to comply with their PT obligations because they do not know that they have exceeded the €200,000 threshold until after the payment date for PT1 has passed.

Tax technical issues arising from the implementation of Pillar Two

21. The penalties which apply for the late filing of GloBE Information Return (GIR) or Notification of Filer are particularly severe and excessive in the case of a group with multiple Irish constituent entities. In our view, the legislation should be amended to provide for an outcome similar to the penalties applicable in group filing scenarios for the late filing of GloBE Returns.

22. An overall cap should be placed on the penalties which may apply to the Irish constituent entities of an MNE Group for the late filing of GloBE Returns, irrespective of the number of constituent entities and whether or not they have formed a Qualified Domestic Top-up Tax (QDTT) Group or an Undertaxed Profits Rule (UTPR) Group.

23. The legislation should be amended to clarify that once the GIR is filed in an appropriate jurisdiction the Irish filing requirements are satisfied. This could be achieved by amending both section 111AAI(2) and section 111AAI(5) TCA 1997 to remove the references to filing by the specified return date.

1. Strengthen Ireland's competitiveness

1.1 Enhance the R&D Tax Credit

The incentive available for R&D is a key deciding factor in investment location decisions. While we welcome the Budget 2026 increase in the rate of the R&D Tax Credit from 30% to 35%, given the mobility of R&D investment, it is critical that the Irish R&D Tax Credit is continually benchmarked against the incentives in key competitor jurisdictions. We outlined our detailed recommendations on the R&D Tax Credit in our response to the Department of Finance's public consultation in May 2025.

We are encouraged by the recent publication of the R&D Compass and establishment of an R&D Tax Credit and Innovation Working Group by the Department of Finance to discuss the work ongoing in this area. The first two meetings of the Working Group focused on the subcontracting provisions for the R&D Tax Credit and potential options for a measure to support innovation. We have summarised below our recommendations on each of these issues and look forward to continued engagement with the Working Group in the weeks ahead on this important area for Irish businesses.

Sub-contracting provisions

The R&D Compass notes that the Department has decided that it would be beneficial to conduct an in-depth review of sub-contracting as a whole, rather than looking at each element individually, to ensure a coherent approach to any further development of this aspect of the R&D Tax Credit.

Ireland's sub-contracting rules are more restrictive than many competitor countries. These restrictions discourage companies engaged in R&D from considering outsourcing as an option even though it can be more efficient and cost-effective**.** The rules which apply for sub-contracting to related parties; universities/institutes of higher education; third parties; and agency/temporary

staff should be broadened to ensure the R&D Tax Credit remains a competitive incentive and continues to encourage additional R&D investment in Ireland.

Related parties

Consideration should be given to permitting outsourcing of R&D to a related party in circumstances where Ireland is the owner and has played an active role in managing and developing internally generated IP arising from R&D activities, ensuring that the value of the outputs and associated returns will accrue to the Irish entity. A cap on the amount of related spend which qualifies could be set by reference to the Irish company's own internal spend on R&D which would restrict the cost of such a measure. Such a change would ensure the R&D regime continues to be grounded in real substance-based activity, further supporting the carrying on of development, enhancement, maintenance, protection and exploitation (DEMPE) functions in Ireland.

We consider that this approach would strengthen investment in high value R&D activity and the level of skilled workers based in Ireland. It could be transformational in how companies' structure and scale R&D out of Ireland, helping position Ireland as a strategic location for future R&D investment decisions.

We outline below how this change could help Irish companies position themselves as a global hub for future R&D activity:

- **"Ireland-first" scaling of R&D teams:** Companies will expand existing Irish teams first, before building out parallel capability in other jurisdictions, where the Irish entity can fully participate in global R&D activity.

- **Increased critical mass at Irish sites:** Participation in a broader range of R&D activity will drive sustained team expansion, deeper capability development, and long-term site growth in Ireland.

- **Stronger allocation of incremental investment to Ireland:** Companies will be incentivised to direct additional employees and investment to Ireland where the full scope of R&D activity can be recognised within the incentive framework.

- **Ireland as the 'control tower' for global R&D programmes:** Many strategic R&D programmes are globally distributed by design (spanning multiple disciplines and skillsets). Even where Ireland is leading the architecture, programme management and IP creation, elements of execution sit across multiple international sites. Allowing related-party R&D would enable Ireland to formally anchor and lead these global programmes, rather than fragmenting ownership across jurisdictions.

- **Direct impact on strategic R&D investment decisions:** Return on investment is a real factor in determining where programme ownership sits. If Ireland cannot efficiently incorporate related-party R&D, there is a structural bias toward locating programme ownership elsewhere. If enabled, Ireland becomes significantly more competitive as the location to win and retain end-to-end programme mandates, particularly for next-generation R&D programmes.

- **Direct job creation impact in Ireland:** Where Ireland owns the programme, the highest value work is anchored here, which directly increases employment in Ireland. In particular, programme ownership leads to growth in:

    - Senior engineering, scientific and technical leadership roles
    - System architecture and product definition teams
    - Programme and portfolio management functions
    - Customer-facing engineering and co-development roles

  These roles are typically not replicated elsewhere when Ireland leads the programme. Instead, global sites execute under Irish programme leadership. In effect, enabling related-party R&D would increase both the scale and

seniority of jobs in Ireland, rather than displacing them. All of this would have a compounding long-term employment impact. As Irish teams scale and deepen their capabilities, companies will continue to build on this base, creating a sustained and cumulative increase in high-value employment in Ireland.

- **Strengthen IP creation and retention in Ireland:** This approach ensures Ireland remains the strategic centre for IP, with global execution supporting it rather than displacing it. This is also important when considering that relief under section 291A TCA 1997 relief (capital allowance for intangible assets) will soon begin to expire for many multinational companies that have chosen to locate IP in Ireland. There is a real and increasing risk that the value Ireland derives from existing R&D and IP ownership models will gradually erode unless further targeted supports are introduced.

- **Competitiveness relative to other jurisdictions:** Other countries are increasingly structuring incentives around full value-chain ownership, not just localised spend. If Ireland can support globally orchestrated R&D with clear Irish ownership, it materially strengthens its position in internal investment decisions.

- **Broader strategic alignment:** This proposal is strongly aligned with Ireland's ambition to position itself as a leader in various sectors. The ability to anchor globally distributed R&D programmes in Ireland is increasingly a determinant of where long-term ecosystem investment, partnerships, and high-skilled talent clusters form. This also aligns with Government strategy of fostering greater collaboration between industry and academia.

In the absence of this change, globally distributed R&D programmes will continue to be structured such that ownership sits in jurisdictions where the full value chain can be recognised within the incentive regime. In that scenario, Ireland risks being positioned as an execution site rather than the programme owner, with fewer

senior technical and leadership roles located here, reduced IP ownership and lower long-term strategic importance within organisations.

We firmly believe that this change would materially shift internal investment decisions toward Ireland as the preferred location to lead complex, global R&D programmes, with a direct and positive impact on high-value job creation.

Universities/institutes of higher education

The level of qualifying expenditure incurred by a company when R&D is subcontracted or outsourced to a third-party or university or institute of higher education should be increased, above the current limits of 15% of in-house R&D expenditure or €100,000 (whichever is greater). This would be in keeping with Government policy to foster collaboration between academia and private businesses. The restriction could be removed completely for R&D outsourced to universities/institutes of higher education to encourage greater STEM skillsets.

Third parties

Outsourcing to third parties is particularly common in the food, pharmaceutical and biotech sectors. It is also common in the SME sector because small enterprises often do not have the capacity in-house to carry out the required R&D activity. We recommend that qualifying R&D expenditure outsourced to third parties should be capped by reference to the company's qualifying internal R&D spend rather than the existing limits.

Agency/temporary staff

We believe that the existing Revenue concession which allows expenditure on agency/temporary staff for R&D activities to qualify should be put on a legislative basis and that the current conditions should be amended to reflect the commercial realities of such projects. The six-month requirement is not tenable as most R&D projects are for a longer duration.

The condition requiring agency staff to work on the company's premises can also be problematic in the context of R&D activity where specialist workers such as software developers, prefer to undertake freelance contract work from their own desks. These individuals have highly technical skills which are not required once the R&D project is finalised.

Options to Support Innovation

To ensure that any innovation support is cost-effective for taxpayers, adds value to the economy, drives growth, and ensures high-quality employment, consideration should be given to targeting several key objectives that align with broader policy goals such as the green and digital transitions. Innovation is quite broad and therefore, policymakers could examine the option to introduce an innovation incentive related to digitisation and decarbonisation.

It would be important that any new tax incentive would be considered compliant with the Pillar Two GloBE Rules and the US Foreign Tax Credit Regulations. It would also be critical that any new incentive does not in any way impact on the existing R&D Tax Credit.

Regarding digitisation, policymakers should consider activities that involve analysing, selecting and low-level implementation of established technological solutions that advance existing products and processes. For example, this may include low level integration of established digital technologies into existing platforms, deploying automation, analytics, cybersecurity and AI using established technologies and methodologies with known outcomes.

Decarbonisation is a critical part of Government policy as Ireland is continually challenged to achieve its 2030 carbon emissions targets. It is also an ever-increasing matter of importance for companies with a carbon intensive footprint as part of their Corporate Social Responsibility. The analysis, selection and implementation of decarbonisation solutions that deliver advancements in the form of measurable emissions reductions for companies should be captured in any new innovation tax incentive.

From a State aid perspective, we consider preferable for the new incentive to be structured as a non-selective, cross-sectoral measure applicable to all companies engaged in digitisation and decarbonisation activity i.e., it should not be industry or sector specific.

1.2 Simplify the corporation tax code

Ireland is a small and highly globalised economy which has greatly benefited from significant inward investment. But geopolitical instability and the acceleration of deglobalisation are reshaping global trade, investment, and industrial policy. The Annual Progress Report notes few countries are as exposed to a reversal of globalisation than Ireland.[3]

At the Institute's Annual Dinner in February, the Tánaiste and Minister for Finance stated that *"the current level of uncertainty underscores the need to control what we can control and influence at a domestic level."* In our view, a simplified, innovative and competitive corporation tax system would bestow a significant advantage on Ireland in the fight for FDI.

We set out below the simplification measures, which the Institute believes would enhance Ireland's competitive position, as it seeks to attract foreign investment in the current uncertain economic environment.

1.2.1 Interest deductibility rules

The Department of Finance's Feedback Statement on Phase One of Reform of Ireland's Taxation Regime for Interest acknowledges that reform of the taxation regime for interest is needed to help safeguard Ireland's competitiveness, to provide administrative simplification and give greater certainty to Irish businesses, while continuing to ensure that Ireland's tax system for interest is fair and sustainable.

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

In responding to the Department's Feedback Statement in January, the Institute highlighted the strong feedback from members which was that the Strawman Proposal would not provide the simplification required to address Ireland's excessively complex interest deductibility rules and protect Ireland's competitiveness.

We emphasised members' concerns that the proposed new interest deductibility rule would be overly restrictive and that *bona fide* Case I deductions for interest that qualify under the current rules may not qualify under the Strawman Proposal outlined in the Feedback Statement. This would lead to increased costs for businesses. We stressed the inherent subjectivity of the proposed "profit motive" test would introduce further complication and significant uncertainty for taxpayers.

We understand from our recent meetings with the Department of Finance that following the responses received from stakeholders to the Feedback Statement, the Department is now considering alternative proposals to reform the rules on interest deductibility, which would include retaining the existing rules for Case I and Case II and introducing a "wholly and exclusively" test for Schedule D Case III and Case IV. We note that the Department expects to publish draft legislation in the autumn for consideration by stakeholders with a view to legislating for these changes in Finance Bill 2027.

For a vast cohort of Case I taxpayers the alternative proposals which were outlined by the Department at our meeting will do little to enhance their position from either a competitiveness or simplification perspective. It is important that the Department continues to engage with stakeholders to ensure that meaningful simplification of the interest regime for this cohort of taxpayers can be achieved to protect Ireland's competitiveness.

Section 247 TCA 1997

We believe that the proposed amendments to section 247 which were outlined in the Strawman Proposal should be legislated for in Finance Act 2026. These included removing the common director requirement and the requirement to flow money

through the bank account of intermediate group entities, where funds are used by connected companies.

However, these amendments alone would not represent meaningful simplification of section 247 TCA 1997 and it is imperative that sections 247 and 249 TCA 1997 are streamlined to remove conditions that do not have a clear policy rationale. Many of the rules in sections 247 and 249 were developed in response to specific concerns amongst policymakers in relation to identified base erosion risks. However, extensive reforms have been implemented in Irish legislation over recent years to eliminate opportunities for base erosion.

Considering the extensive protections against base erosion which now exist in the Irish corporation tax code, several conditions associated with section 247 relief and section 249 recovery of capital rules are no longer necessary and should be removed.

In our response to the public consultation in January 2025, we outlined several provisions which should be amended, including:

a. Section 247(4) disallows relief where the loan is first used for "*some other purpose*" before being applied for a qualifying purpose. Confirmation should be provided that entering a swap to exchange the currency of the borrowing into another currency, to apply the proceeds of a borrowing for a qualifying purpose, is not considered to be for "*some other purpose*", as such a step is ancillary to deploying the funds for a qualifying purpose.

b. Section 247(4E) denies interest relief as a charge in respect of interest on an intra-group loan used to finance the purchase of certain assets from another group company. Consideration should be given to simplifying or removing this measure as the ATAD ILR applies a limitation cap to both group and third-party borrowings.

c. Section 247(4A)(b), which prevents relief being available where an investing company borrows from a third party and that third party receives an equivalent

funding from a company connected with the investing company, should be reviewed. This provision is widely drafted, with the result that if a company in a group has funds on deposit with the same financial institution that is lending to another group member, relief under section 247 may be restricted.

d. Given the protection afforded by section 817A TCA 1997, we consider that the specific anti-avoidance provision in section 247(2B) is unnecessary and should be removed. Relief under section 247 applies where money is used to acquire or lend to holdings companies which ultimately own trading companies. Relief for interest on loans used to acquire rental companies is also available under section 247 but not if it is a multiple holding company structure. The policy rationale for the distinction between trading and rental companies is unclear and should be reconsidered.

e. The very broad scope of the recovery of capital rules in section 249 means common steps taken by Irish companies to tidy up balance sheets of group companies to simplify forecasting and monitor compliance with the ILR or similar interest limitation rules in other jurisdictions, can trigger the deemed recovery of capital provisions in circumstances which are wholly unrelated to the borrowing in question. We believe that the impact of the recovery of capital rules in section 249 is disproportionate and needs to be reconsidered.

f. The rules concerning double holding company structures, which were introduced in Finance Act 2017, should be reformed as they are unnecessarily complex and do not always operate as intended. It would be helpful if it were possible to reorganise at investor company level without triggering a deemed recovery of capital. In addition, the re-investment provisions available to intermediate holding companies should also be available to section 247 companies.

Interest deductibility rule for Schedule D Case III and IV

It is important that the Department of Finance proceeds with the introduction of an interest deductibility rule for Schedule D Case III and IV. A deduction should be

allowed for interest equivalent incurred, to the extent that the related debt is employed during the relevant period for a purpose intended to give rise to income chargeable under Case III or IV, or which would be so chargeable, but for a relief or exemption provided for in the Taxes Acts. It is essential that this rule would be simple to apply in practice and would not impose an excessive compliance burden on taxpayers.

In conjunction with the introduction of the new interest deductibility rule for Case III, it will be necessary to delete section 70(3) of TCA 1997. For the taxation of income and profits chargeable under Case III to operate effectively going forward, expenses (not just interest) would need to be deductible for Case III purposes on the same basis as they are deductible for Case IV purposes.

We understand that in contrast to the position that exists for Case I losses, the Department does not intend to permit the offset of Case III losses against non-Case III income earned in the accounting period on a value basis, to carry such losses back to the preceding accounting period or to allow them to be used under the group relief provisions.

At a minimum, it would be important that taxpayers are permitted to offset Case III and IV losses against both Case III and IV profits on a current year and carry forward basis so that these losses are not stranded and the new regime can operate in a coherent manner.

Amendment of the ILR *de minimis* exemption

Under the current rules, the ILR includes a *de minimis* exemption for Irish companies with net interest expenses of less than €3 million. The €3 million threshold applies on a per company basis. Where members of a group have elected to form an interest group for the purposes of the ILR, the *de minimis* €3 million threshold applies to the interest group, as a whole, and not to each individual company.

Under the Strawman Proposal, the rules governing the €3 million *de minimis* threshold would be amended to allow the first €3 million of exceeding borrowing

costs to be excluded from the ILR, rather than imposing the ILR on all net interest expense where the threshold is breached, as is currently the case. We welcome this proposal to remove the restrictive cliff edge effect of the *de minimis* threshold and believe it would be beneficial for some companies.

The Strawman Proposal also put forward a €6 million *de minimis* threshold to apply on a worldwide group basis alongside the €3 million *de minimis* threshold which applies on a per company or per interest group basis. We consider that the proposed new €6 million worldwide group threshold would be very restrictive for large groups with multiple Irish entities in the group. It would cause significant difficulties for capital intensive industries, which by their nature are debt intensive, and industries where it is commonplace for debt to be ringfenced by entity for commercial reasons, for example, renewable energy projects, infrastructure and real estate.

While the Strawman Proposal indicated that the proposed group-based threshold is intended to prevent against excessive fragmentation of debt amongst member companies, we consider the existing transfer pricing rules and the general anti-avoidance rules are sufficient to prevent such an outcome.

As this group-based threshold is not required under ATAD, which forms the basis for the Irish ILR, introducing such a provision unilaterally has the potential to make Ireland uncompetitive compared with the ILR regimes in other EU Member States.

We understand that there is an ongoing review of ATAD at EU level and that a Tax Omnibus Directive, which is intended to simplify several EU Directives including ATAD, is expected to be published by the European Commission in the first half of 2026. It is important that Ireland does not act pre-emptively to legislate for changes that have not yet been adopted at EU level, in particular where such changes would likely reduce the country's attractiveness as an investment location. In this regard, we welcome the confirmation from the Department of Finance at a recent meeting of the BTSF that their intention is to await the proposed Tax Omnibus Directive before legislating for any changes to the ILR *de minimis* exemption.

Extending the period to elect into an ILR interest group

The Feedback Statement included a proposal to amend the legislation underpinning the ILR to allow a company to form an interest group, where an election is made within a period of two years after the end of the accounting period to which the election first relates. In our view, the period within which a company may elect to form an interest group should be extended to four years after the end of the accounting period to which the election relates to allow taxpayers more time to assess the merits of electing into an interest group. It would also align with the four-year time limit contained in section 959V TCA 1997. We would urge that the extension of the period within which a company may elect to form an interest group is legislated for in Finance Bill 2026.

To ensure that the extended timeline to allow a company to elect into an interest group operates as intended, consequential amendments would be necessary to the timelines for making the group and equity election ratios. The group/equity ratio elections, where made, must be made by a relevant entity on or before the specified return due date. This is not difficult where the relevant entity is a single company and not in an interest group. However, if the relevant entity becomes part of an interest group later, it may be unclear whether the election required for group/equity ratio purposes will have been properly made. To avoid uncertainty, the timeline for making the group/equity ratio election should be aligned with the timeline for the interest group election.

1.2.2 Exemption for foreign branch profits

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

We note from discussions at the BTSF that the introduction of an exemption for foreign branch profits would involve substantial work because of the consequential amendments that would need to be implemented. We would welcome further engagement with stakeholders in 2026, either through meetings or a Feedback

Statement, regarding the potential legislative amendments which would be required with a view to legislating for the exemption in Finance Bill 2027.

1.2.3 Section 626B TCA 1997 - capital gains exemption

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

We consider the exemption in section 626B should not be limited to gains on shares of companies which are tax resident in EU or DTA countries. Similar to the position which applies for section 831B TCA 1997, section 626B should be extended to include gains on shares of companies which are tax resident in non-DTA countries but are resident in a territory which generally imposes foreign withholding tax on distributions (other than a country on the EU list of non-cooperative jurisdictions) and are not generally exempt from foreign tax.

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

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

2 Support the growth of the indigenous sector

2.1 Reduce the administrative burden

In recent years there has been a sustained rise in the level of regulation of businesses, with an increased number of forms required to be completed and new processes which must be implemented by businesses. The cumulative administrative burden associated with measures such as ERR and auto-enrolment can place a significant strain on the scarce resources available to many SMEs.

In this regard, we welcome the commitment in the Government's Action Plan on Competitiveness and Productivity to introducing a 'Red Tape Challenge' across Government to significantly reduce regulation for SMEs, reflecting the European Commission's commitment to simplify and reduce the administrative burden for SMEs by 2029.

The Institute has been an active participant at the Cost of Business Advisory Forum which is considering issues that can lead to higher costs for businesses in Ireland, any associated regulatory or infrastructural issues that merit a changed approach, and those steps that could be taken to mitigate these issues. As we outlined at a recent meeting of the Forum, one key tax measure which we believe merits a changed approach is ERR.

ERR, which took effect on 1 January 2024, places a substantial administrative burden on businesses, in particular SMEs, as they are required to report details of certain non-taxable payments and benefits to their staff in real-time. It is our firm view that the reporting in real-time of such payments and benefits is overly burdensome. Amending the rules so that the same data is reported after the month end would reduce the burden for business while ensuring that the policy objective of the measure continues to be achieved, as Revenue would continue to receive the data on a timely basis.

Amending ERR in this manner would also align with the commitment in the Government's Action Plan on Competitiveness and Productivity to significantly

reduce regulation for SMEs and to identify regulations to be removed or reduced without impacting on policy objectives.

Recent amendments to the Small Benefit Exemption have helped to address some of the difficulties in reporting benefits under ERR. The strict conditions outlined in Revenue's updated guidance last year on the provision of staff meals clarifies the limited circumstances where an employer may provide a meal to an employee.[1]

Despite these developments, we are increasingly aware of small, local businesses and restaurants losing business from companies that no longer want to reward staff with small tokens of appreciation such as a staff lunch at a local restaurant on the retirement of a colleague or flowers/chocolates to mark special occasions due risks associated with contravening reporting obligations. We believe this loss of business starkly contradicts other Government measures which were taken in Budget 2026 to support small restaurants and businesses.

A fixed penalty of €4,000 applies where an employer inadvertently omits to report in real-time a non-taxable benefit or expense reimbursed to an employee under the ERR system, even though there may be no risk of an underpayment of tax. This penal sanction for failing to report in real-time is wholly disproportionate and places an inordinate strain on the limited resources of smaller businesses. The penalty should be replaced with a more appropriate sanction.

2.2 Simplify the operation of share-based remuneration

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

2.1.1 KEEP

The KEEP has the potential to enable unquoted SMEs to use share-based remuneration to attract and retain key employees in circumstances where they struggle to match the salaries offered by larger companies.

While we welcome the extension in Finance Act 2025 of KEEP for a further three years to 31 December 2028, we believe legislative reforms are needed to improve the feasibility of the KEEP, which we outlined to the Department in our submission of May 2025. As referenced in that submission, the two most important reforms identified from our 2022 Member Survey and directly from entrepreneurs in 2023 were:

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

The ability to achieve as much certainty as possible regarding the share valuation of KEEP shares so that the share option price is not less than the market value of the shares at the date of grant remains one of the most significant practical issues that SMEs face when implementing the KEEP.

One of the key recommendations contained in the June 2024 *Report of the TALC Sub-committee on Simplification of Business Reliefs for SMEs* was that Revenue would review its published guidance in relation to the valuation of unquoted shares to ensure clarity for all stakeholders. However, Revenue confirmed to practitioners in December 2025[4] that they had carried out an internal review of their guidance and that no substantive updates will be made to Revenue's published guidance.

[4] https://www.revenue.ie/en/tax-professionals/talc/main-talc-minutes/2025/talc-minutes-120225.pdf

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

As Revenue has now confirmed that they will not be amending their guidance on share valuations, we would urge policymakers to consider legislating for a safe harbour approach to share valuation and impose an appropriate sanction where there is an undervalue.

We believe that where options are granted at an undervalue within say a certain percentage of the Revenue determined value (e.g. 75%), 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 KEEP 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).

2.1.2 Other approved and unapproved share schemes

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

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

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

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

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

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

- As recommended by Indecon, the tax treatment of RSUs should be aligned with the rules followed in other OECD countries and the existing Irish tax treatment for share options exercised by non-residents. This would mean that the amount of the benefit taxable in Ireland would be apportioned by reference

to any part of the vesting period during which the individual is present in Ireland, rather than the full amount of the reward where the individual is resident on the date of vesting.

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

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

3 Encourage retail investment

A key goal of the EU Savings and Investment Union is to grow retail investment across the EU. The Programme for Government also recognises the need to unlock retail investment and opportunities to grow this sector in Ireland. We understand from the Funds Sector 2030 Implementation Plan that it is intended to publish a Roadmap in early 2026 which will set out a proposed approach to simplify and adapt the tax framework to encourage retail investment.

The Institute previously made recommendations on the changes needed to the taxation of fund investments in our response[5] to the Funds Sector 2030 public consultation. We endorse the recommendations in the Funds Sector 2030 Report on the changes needed to the taxation of fund investments. These include prioritising work on simplifying and consolidating the tax regime for offshore funds.

It also recommended reforming the taxation of Irish-domiciled funds and Irish-domiciled life products, with similar amendments made to the equivalent products in EU, EEA and OECD territories, to bring the regime into closer alignment with the taxation on other savings and investment products, including:

- removing the eight-year deemed disposal requirement;
- aligning the Investment Undertakings Tax and Life Assurance Exit Tax rate of tax with the CGT rate; and
- allowing a limited form of loss relief.

It is our firm view that implementation of these important recommendations is needed to grow retail investment in Ireland. In this regard, we welcome the Finance Act 2025 reduction in the rate of tax from 41% to 38% that applies to Irish and equivalent offshore funds (including Irish domiciled Exchange Traded Funds (ETFs)) and to Irish and certain foreign life assurance polices. While this is an important step in the right direction, it is essential the recommendation to align the

[5] Irish Tax Institute response to the Department of Finance Consultation on the Funds Sector, September 2023.

Investment Undertaking Tax and Life Assurance Exit Tax rate of tax with the 33% CGT rate is fully implemented.

We recently participated in the first Annual Savings and Investments Forum and look forward to continued engagement with the Department of Finance on the tax aspects of the proposed new Personal Investment Account. We firmly believe by considering the retail investor's needs and preferences, the tax system could be tailored to encourage them to channel savings into productive investments thereby playing a pivotal role in bridging the funding gap for the future. It will also enable the Government to boost participation in capital markets and increase the flow of domestic savings into Irish and European enterprises.

4 Proposed changes to the tax collection and appeals process

4.1 eWithholding Tax

In January, the Institute submitted its response the joint public consultation by the Department of Finance and Revenue on a proposed new eWithholding Tax (eWHT) regime.

In our submission, we noted that the scope of the proposed reform and the specific tax risks which the eWHT regime seeks to address remain unclear. While the Institute supports modernising tax administration, we stressed that priority should be given to ensuring that the existing tax compliance architecture is efficient, effective and robust before embarking on creating a new compliance model which would require extensive IT investment.

In addition, any significant reform must be carefully considered including assessing its wider economic implications and whether it would be an improvement on the current tax administration regime. As framed, the eWHT regime could affect Ireland's competitiveness, increase business costs and impact cashflow for the self-employed and for businesses. It is also not clear that the changes proposed would align with Government policy to support economic growth and investment in infrastructure, and housing.

Feedback from members raised significant concerns with the scope and implications of the reform envisaged. These include:

- Whether Ireland intends to unilaterally move ahead of international agreements by introducing an eWHT for the platform economy and the territorial scope of such a tax.

- The cashflow impact on Irish businesses of expanding withholding tax.

- The consequences of removing the 0% RCT rate on funding of critical housing and infrastructure construction projects and accessing specialist expertise from overseas.

- The compliance and administrative costs the proposal would impose on Irish businesses.

We outline below six key recommendations based on the concerns raised by members.

- Ireland has very strong tax compliance rates[6] and a reputation as a good place to do business. This reputation is critical to attracting FDI and the growth of domestic businesses. Further work by the Department of Finance and Revenue is needed to clarify the scope of the proposal and what tax leakage it is attempting to address. Based on the preliminary information made available with the consultation, we would question whether such a substantial reform at this juncture is warranted or wise and therefore, should not be implemented.

- The proposal lacks clarity on how eWHT would apply to the platform economy and its territorial scope. We recommend pausing this strand of the proposal until the specific compliance issues in question, DAC7 implications, and ViDA commitments are fully defined. If policymakers decide to proceed, a detailed Strawman Proposal should be developed to outline the intended design and scope of eWHT for platform operators.

- We do not agree with a proposal to accelerate the payment of tax by the self-employed. Cash is the lifeblood of business and individuals are familiar with their obligations under the current regime and can plan accordingly. The use of a personalised rate rather than a flat rate of withholding tax could result in the unintended disclosure of an individual's personal circumstances. The GDPR implications of such a measure also need to be fully considered.

[6] Revenue Headline Results 2024, Timely compliance rates exceed 90% for business taxes across the tax base https://www.revenue.ie/en/corporate/press-office/annual-report/2024/headline-results-2024.pdf

- It is imperative the 0% RCT withholding tax rate is retained for compliant resident and non-resident subcontractors. Its removal would have serious implications for the cost and delivery of critical housing and infrastructure projects, which would be at odds with the Government's National Development Plan.

- A full review of PSWT should be conducted to determine whether the regime remains appropriate before expanding its scope or altering its operation.

- We urge policymakers to adopt a cautious approach to expanding withholding tax, mirroring the approach taken in modernising Ireland's administration of VAT. It is important that international experience is reviewed first so that Ireland can learn from any mistakes in design and implementation of withholding taxes before taking policy decisions which would have far reaching consequences for Ireland's competitive position. There is a myriad of practical administrative issues that need to be considered before introducing any reform which would require extensive consultation with business. Providing a long lead-in time and financial supports for businesses to adapt to any new regime would also be necessary.

4.2 Retain the option for private hearings at the TAC

Head 5 of the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2025 (Tax Appeals Bill) which was published in November proposes to make fundamental changes to the tax appeals process because of the 2021 Supreme Court judgment in the case of *Zalewski v. Adjudication Officer & Ors*[7].

As outlined in the Institute's submission in response to the public consultation by the Joint Committee on Finance, Public Expenditure, Public Service Reform and Digitalisation, as part of the pre-legislative scrutiny of the Tax Appeals Bill 2025,

[7] [2021] IESC 24

our members have very serious concerns with the proposed amendment to section 949Y TCA 1997, which would grant discretion to the Appeal Commissioners to decide whether a tax appeal hearing should be held 'in camera' (i.e. a private hearing).

The Institute is also very concerned with the proposed amendment to section 949AO(4) TCA 1997 which would allow the Appeal Commissioners to determine if there are "special and limited circumstances" to justify redaction of determinations.

Nothing in *Zalewski* mandates the proposed changes to tax appeal hearings

As outlined in our follow-up submission to the Oireachtas Joint Committee, the Institute has obtained a legal opinion from Senior Counsel on the constitutional requirement for the changes proposed under Head 5 of the Tax Appeals Bill. The legal opinion confirms that there is nothing in the *Zalewski* case which mandates the change to tax appeals before the TAC, as proposed in the Tax Appeals Bill.

Currently, the legislation provides for all TAC appeals to be heard in public by default. However, where a taxpayer makes a request for a private hearing, the appeal must be heard in private. Under the Tax Appeals Bill, while the default position for public hearings would remain unchanged, the approach to private hearings would be significantly altered. Rather than giving the taxpayer a mandatory entitlement to a private hearing, it is proposed that the Appeal Commissioners would be given discretion to determine whether the appeal should be heard in private.

The core constitutional requirement which emerges from *Zalewski* is that the legislation must provide the possibility of a hearing in public. But Justice O'Donnell was clear in his judgment that public hearings were by no means an absolute requirement and that it may be permissible to have a presumption in favour of private hearings at first instance. It was simply the absolute ban on public hearings at the Workplace Relations Commission (WRC) that rendered section 41(13) of the Workplace Relations Act 2015 unconstitutional.

The legal opinion we have received confirms, by taking the view that TAC hearings constitute the administration of justice and that appeals must therefore by default be held in public, with the Appeal Commissioners (rather than the taxpayer) having discretion to decide whether to allow for a hearing to be held 'in camera', the Heads of Bill has over-interpreted the effects of *Zalewski*.

According to the legal advice, while a court would likely find that TAC appeal hearings constitute the administration of justice for the purposes of Article 34 of the Constitution, there is nothing in the judgment in *Zalewski* which casts an obvious constitutional doubt on the current approach to the privacy of TAC hearings.

Indeed, the Supreme Court expressly states in *Zalewski* that it may be possible to have a presumption in favour of private hearings. However, the current tax appeals regime does not even go this far, as the default position is that tax appeals will be heard in public. Considering the express recognition by the Supreme Court in *Zalewski* for private hearings, it is difficult to see how the current approach could plausibly be said to be unconstitutional.

Constitutionally protected privacy interests are particularly relevant when it comes to sensitive financial information relating to a party's tax affairs, which requires consideration to be given to what constitutes an appropriate constitutional balance between those interests and the open justice principle.

We firmly believe that an appropriate balance between open justice and confidentiality is afforded with the current approach which provides that once a tax appeal hearing is held in private, the Appeal Commissioner's determination of that appeal is anonymised to ensure the identity of the taxpayer is not disclosed. TAC Determinations, which are freely accessible to the public, outline in detail the background to the appeal; the evidence and submissions provided by the taxpayer and Revenue at the appeal hearing; the Commissioner's findings of material fact; the Commissioner's analysis of the issues; and the Commissioner's determination.

The publication of detailed anonymised determinations strikes a careful balance between transparency and privacy, allowing non-binding precedents to develop and scrutiny to occur. It ensures that the wider public can understand how decisions are made, how the law is applied, and what reasoning underpins those decisions. Public scrutiny of TAC operations is also provided through the publication of Annual Reports and Oireachtas oversight.

The essential rationale of *Zalewski* is that proceedings which involve the determination of rights and liabilities must have a sufficient level of procedural fairness and integrity necessary to safeguard constitutional rights and values. It is our firm view that public hearings are not necessary to secure transparency and would in fact risk undermining the right of taxpayers to fair procedures. As a result, we consider that the approach advocated for in the Heads of Bill regarding the publicity of hearings before the TAC goes further than is constitutionally or legally necessary and we strongly urge that it is reconsidered.

International comparisons

While the procedures for resolving tax disputes differs across jurisdictions, we have sought to compare the processes which currently exist at the TAC in Ireland with similar bodies/tribunals in other EU Member States[8] and other common law jurisdictions (including Australia, Canada, New Zealand and the UK), which are independent from the tax authority in that country. Our research indicates that, within the EU, private hearings and appeal proceedings which are conducted largely or entirely in writing, thereby limiting public disclosure, are common, and that the publication of anonymised decisions is the norm, not the exception.

We outlined the detailed findings of our research in our letter of 11 March to the Tánaiste and in our December submission to the Joint Committee.

The key themes emerging from our research are:

[8] The Institute collated information on the options available to taxpayers for the resolution of tax disputes in 20 EU Member States. Our research is based on information we have obtained directly from tax professionals and fellow tax institutes located in the Member States and supported by information available online.

- The approach taken to tax appeal hearings varies significantly across the EU and internationally. Some EU Member States hold tax appeal hearings in private and some hold hearings in public, while other Member States decide tax appeals through written proceedings.

- Private hearings are the established norm amongst our peer jurisdictions. Akin to the position which currently exists in Ireland, in six other EU Member States where tax appeal hearings are undertaken, it is generally possible for a taxpayer to have a private hearing. Notably, these include Members States with populations like Ireland such as, Cyprus, Denmark, Finland, and Slovenia. In Australia and New Zealand, which like Ireland are common law jurisdictions, tax appeal hearings are also generally held in private. This demonstrates that the availability of private hearings in tax disputes is neither unusual nor inconsistent with modern standards of transparency and accountability.

- In addition, in three of the EU Member States which we reviewed (i.e. Italy, Slovakia and Spain), our understanding is that the proceedings are mostly conducted in writing. Such an approach limits the public disclosure of details of a taxpayer's private affairs. In fact, in Slovakia, the outcome of the written proceedings is subject to tax secrecy and is not made public.

- Of the EU Member States that generally hold tax appeal hearings in public, all except one country, Italy, provide the taxpayer with either, the option for a review of the underlying tax issue before appealing the matter to an independent tribunal/body, or the option to avail of arbitration. Similarly, common law jurisdictions which have public hearings of tax appeals such as Canada and the UK, also provide robust alternative avenues to taxpayers to resolve their dispute in private before resorting to a public hearing of their appeal. This is in stark contrast with the position in Ireland where the TAC is the sole avenue available for a taxpayer to resolve disputes regarding tax

assessments with Revenue.[9]

- The overwhelming trend across the EU Member States which we reviewed is that published tax appeal decisions, where publication occurs at all, are anonymised or redacted to protect taxpayer privacy. Our analysis indicates that approximately 85% of the EU Member States we reviewed either do not publish decisions in tax appeals or, where decisions are published, they are anonymised/redacted to protect the privacy of the taxpayer. This figure rises to 95% for decisions in tax appeals concerning individuals. Our research indicates that just one EU Member State (i.e. Italy) publishes tax appeal decisions that include the private data of individuals.

If the legislative amendments in the Tax Appeals Bill are implemented, as proposed, the only option available for a taxpayer who disagrees with Revenue's interpretation of the law which has resulted in the tax assessment, may be a public hearing at the TAC. This is not a desirable outcome as it removes a critical safeguard for taxpayers and tips the balance of power further in favour of Revenue. Removing the privacy option at this stage in the appeals process would leave taxpayers more exposed than their counterparts in most comparative jurisdictions, where disputes may be resolved confidentially during earlier phases of the appeal process.

Public hearings would detrimentally impact the tax appeals process

The ability to appeal tax assessments is fundamental to the integrity and effectiveness of the Irish self-assessment tax system. Self-assessment relies on taxpayers accurately reporting their liabilities, but it also presumes that errors or disputes can be resolved fairly. An effective appeals process provides a critical safeguard, ensuring that taxpayers have recourse when they believe an assessment is incorrect. This mechanism not only protects individual rights but also reinforces confidence in the system. If taxpayers feel unable to access the

[9] Revenue's guidance on its Complaint and Review Procedure (CS4) confirms that once a Revenue assessment has issued, the quantum of that assessment cannot be considered under the CS4 procedure. https://www.revenue.ie/en/corporate/documents/customer-service/cs4.pdf

appeals process because of privacy concerns, trust in the fairness of tax administration will be undermined, weakening voluntary compliance, the cornerstone of self-assessment.

On average, of the determinations issued by the TAC over the past four years, approximately 20% were in favour of the taxpayer. This clearly demonstrates that in a significant number of cases, where a taxpayer genuinely disagrees with an assessment, pursuing an appeal leads to a different and fairer outcome. However, an overwhelming majority of our members who regularly advise on tax appeals believe that if the decision regarding whether an appeal hearing should be held 'in camera' or in public is at the discretion of the Appeal Commissioner rather than the taxpayer, more taxpayers will decide to pay a liability that they consider to have been incorrectly assessed, rather than proceed with a public hearing.[10]

Genuine appellants paying Revenue's assessment prematurely, not because Revenue have the stronger legal argument, but because the commercial, privacy and reputational concerns are too high, fundamentally undermines the basis of a case being taken on merit. It also means the balance of power shifts further away from the taxpayer, who may be punished in the court of public opinion for daring to contest an assessment, and towards the State.

Requiring private individuals, sole traders and small and medium sized businesses to expose their affairs publicly risks discouraging legitimate appeals. Feedback from our members indicates that this cohort are the taxpayers most likely to decide to pay a Revenue assessment that they consider to be incorrect rather than proceed with a hearing, if the decision to have a private hearing is at the discretion of the Appeal Commissioner. Unlike large corporates, these taxpayers typically lack the resilience to absorb the consequences of public scrutiny, be it media attention, commercial speculation, or damage to future trading relationships.

[10] Irish Tax Institute Survey on Proposed Changes to Tax Appeal Hearings, December 2025, based on 223 respondents – 190 were tax advisers working in practice and 33 were tax advisers working in the corporate sector.

It is evident from the legal opinion we have received that there is nothing in *Zalewski* which would require the changes proposed under Head 5 of the Tax Appeals Bill. As a result, the proposed changes to the current regime would seem to be matters of policy preference, rather than constitutional requirements and we strongly urge that they are reconsidered.

Matters to be addressed should changes to proposed appeals proceed

As we have outlined above, it is our strong view that the proposed move towards public hearings and limiting the circumstances in which determinations may be redacted would be detrimental for taxpayers seeking an independent review of their tax assessment by the TAC. However, if policymakers decide to proceed with the changes to the tax appeals process, then at a very minimum, it is imperative that the following matters are addressed both in the legislation and prior to its commencement:

- An independent form of Alternative Dispute Resolution (ADR), such as independent binding arbitration, must be established in legislation in tandem with the move to public hearings so that an alternative avenue to resolve tax disputes in private is available to taxpayers where they disagree with Revenue.

- The grounds for an 'in camera' hearing should be expanded. Consideration should be given to including the right to privacy in respect of a taxpayer's financial affairs and personal reputation as additional factors the Appeal Commissioner must take into account when considering whether a private hearing is necessitated.

- The taxpayer should have the flexibility to make an application to the Appeal Commissioner for an 'in camera' hearing after they have received Revenue's Outline of Arguments, as it is only at this point that they can understand the full extent of the evidence they will be required to produce at the hearing to prove their case.

- In cases where the Appeal Commissioner decides a private hearing is warranted, the determination issued following that hearing should also be redacted, as is currently the case.

- To remove ambiguity and to ensure there is consistency between the Appeal Commissioners regarding when an 'in camera' hearing will be granted, the TAC should publish guidelines on the factors to be considered in determining whether the grounds for a private hearing apply. These guidelines must be kept under consistent review and updated regularly.

Removing the entitlement to have a TAC hearing in private and limiting the redaction of determinations would discourage genuine appeals and erode the essential balance between the interests of taxpayers and the State. The changes would also make Ireland an outlier compared with the privacy protections which exist in the procedures for resolving tax disputes in other EU Member States.

If policymakers are of the view that increased transparency around the hearing of tax appeals is constitutionally required because of the decision in *Zalewski*, a potential option which could be considered is the approach adopted in family law proceedings. Members of the media can attend family law proceedings and report on what occurs, on an anonymised basis, when granted permission by the presiding judge. Those who are permitted to attend are subjected to restrictions on what they may report, and this must be done on an anonymised basis to protect the identities of the parties involved.[11] Adopting a similar approach to tax appeal hearings would increase transparency whilst continuing to ensure taxpayer confidentiality is maintained.

Hearings before the Financial Services and Pensions Ombudsman

The Financial Services and Pensions Ombudsman (FSBO) is an independent, service that helps resolve complaints from consumers, including small businesses and other organisations, against financial service providers and pension providers.

[11] https://www.oireachtas.ie/en/debates/question/2025-12-11/494/

The FSPO's complaint process[12] has two stages:

1. an informal complaint resolution process which includes mediation; and
2. a formal complaint resolution process which involves a formal investigation and can include an oral hearing.

Prior to the enactment of the Financial Services and Pensions Ombudsman (Amendment) Act 2025, hearings before the Financial Services and Pensions Ombudsman (FSPO) were required to be heard in private and decisions were anonymised.

Following the decision in *Zalewski,* the Financial Services and Pensions Ombudsman (Amendment) Act 2025 was enacted making several changes to the legislation underpinning the FSPO complaint's process including:

- **Hearings**: The legislation provides for the Ombudsman to decide, on their own motion or on application by or on behalf of a party to a complaint, and having consulted with the parties to the complaint and having considered the nature or circumstances of the complaint and whether it is in the interests of justice to do so, whether an oral hearing should be conducted in public.

- **Mediation*:*** The legislation stipulates that mediation must be conducted in private.

- **Decisions of the Ombudsman:** The legislation permits the Ombudsman to identify the parties when publishing decisions if an oral hearing was conducted in public as part of the investigation.

As part of the Pre-Legislative Scrutiny of the General Scheme of the Financial Services and Pensions Ombudsman (Amendment) Bill 2023, the FSPO, Mr Liam Sloyan, appeared before the Joint Committee on Finance, Public Expenditure and

[12] https://www.fspo.ie/our-services/#collapseTwo

Reform, and Taoiseach. In his Opening Statement to the Committee[13], Mr Sloyan clearly recognised the risk that public hearings could discourage potential complainants from making complaints against their financial service providers or pension providers and the importance of consultation with the parties in deciding whether to hold a hearing in public or in private:

> *"…taking account of the fact that confidential and sensitive personal data are generally at the heart of the vast majority of FSPO complaint investigations, we consider that it is appropriate and in the best interests of complainants in particular that a statutory amendment, as provided for in head 8 of the general scheme, must include the potential for a hearing in public, where considered appropriate, rather than introducing public hearings as the default position. Although some complainants may indeed desire a public hearing, many complainants value maintaining privacy over their financial affairs. The FSPO recognises the risk of discouraging potential complainants from making complaints against their financial service providers or pension providers, which might thereby reveal a broader or indeed potentially systemic issue or conduct. Such reticence may be because they are unwilling to risk the disclosure to the public of their private financial details. The potential impact of complainants not being willing to pursue a complaint to the FSPO could be very significant. I consider that in fulfilling my functions pursuant to section 12(1) to investigate complaints in "an appropriate manner proportionate to the nature of the complaint", the potential to conduct hearings in public must be introduced in a manner which recognises this proportionate approach to investigations, such that I may decide to hold a hearing in public or in private, having consulted the parties."*

It is important to note that the FSPO's Oral Hearing Guidelines[14] provide that the decision regarding whether a hearing will be conducted in public will be taken following consultation with the parties.

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[13] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2023-05-10/4/

[14] https://www.fspo.ie/our-services/Oral-Hearing-Guidelines-2025.pdf

In contrast, it is unclear to what extent an Appeal Commissioner will be required to consult with a taxpayer in exercising their discretion to decide whether it is necessary to allow for a hearing to be held 'in camera'. Our understanding is that the proposed Irish legislation may mirror the position in the UK. However, the grounds for privacy have been narrowly interpreted and strictly applied in the UK.

Furthermore, we understand the fact that financial affairs are private will not be considered as a sufficient reason for an appeal to be heard in private like the position which exists for tax appeals to the First Tier Tribunal in the UK. Adopting such an approach in Ireland would have a very significant adverse impact on the willingness of taxpayers to take a tax appeal.

It is noteworthy that hearings before the FSPO are not very common with the FSPO typically undertaking less than 10 hearings per year.[15] This is partly because the procedures of the FSPO greatly encourage mediation between the parties on a voluntary basis. Indeed, section 58 of the Financial Services and Pensions Ombudsman Act 2017 requires the FSPO to try, as far as possible, to resolve a complaint by mediation. In 2022, 82% of complaints received by the FSPO were closed without proceeding to a formal investigation. This focus on early resolution of complaints is in stark contrast to the position for tax appeals where a hearing before the TAC is the sole avenue available for a taxpayer to resolve disputes regarding tax assessments with Revenue.

It is critical that policymakers recognise the unique nature of tax disputes and ensure that any legislative changes preserve the right to privacy. We firmly believe that the proposed changes risk fundamentally undermining taxpayer rights and the integrity of the tax appeals system.

[15] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2023-05-10/4/

5 Tax technical measures required to mitigate certain unintended consequences

5.1 Provide certainty on preliminary corporation tax payment obligations

The preliminary corporation tax (PT) obligations for companies vary depending on whether the company is considered to be a large company or a small company. A company is a large company for the purposes of PT if its corporation tax liability was above €200,000 in the previous accounting period.

Large companies pay their preliminary tax in two instalments. The first instalment (PT1) is payable within six months of the beginning of the accounting period (but no later than the 21st day of the month, or the 23rd day if paid online). The second instalment (PT2) is payable 31 days before year-end (subject to being no later than the 21st or, if paid online the 23rd day of the month).

The PT1 payment must be a minimum of:

- 50% of the corporation tax liability for the preceding accounting period or
- 45% of the corporation tax liability for the current accounting period.

PT2 must bring the total PT payment up to at least 90% of the final liability for the current accounting period. Any balance of tax outstanding must be paid on or before the company's specified tax return filing date.

It can be difficult for companies to determine with accuracy what 90% of the final tax liability for the accounting period will be as a forecasting exercise is necessary. The final month of a company's accounting period can be volatile. For example, a currency fluctuation or an unexpected contract can significantly impact the final tax liability for the period.

Where a company fails to meet its PT obligations, statutory interest is applied at a daily rate of 0.219%. However, interest is not simply charged on the element of

the underpayment of PT2. Instead, interest is calculated in accordance with an accelerated payment schedule with the legislation specifying that:

- 45% of the current year tax liability is deemed to have been due in month 6 of the accounting period, and
- 100% of the current year tax liability is deemed to have been due in month 11 of the accounting period.

This means that if a company underestimates its profitability when it pays PT2, it is penalised so that there is an acceleration of the entirety of its corporation tax to month 11, with 45% of that liability deemed to have arisen in month 6. The fact that the profits may not have actually been earned or anticipated by the respective instalment dates is irrelevant. In our view this treatment is inequitable and the policy rationale for this approach is unclear.

Example

- A company with a calendar year end estimates it will have a €10 million tax liability for the period.
- In November it pays PT2 so that the total preliminary tax paid for the period is €9 million (90% of estimated tax liability).
- In December it signs a contract that had not been expected to complete until the following January. This contract means that the final tax liability for the period increases to €12 million.
- The 90% test has been failed, and interest applies on the “underpayment” as if 45% of the tax was due in June and 100% of the tax was due November.

The PT rules for large companies can be problematic for Irish SMEs that unexpectantly come within their scope for the first time. For example, an SME may discover that its tax liability is €201,000 for the prior year when finalising its accounts and tax return in September resulting in it satisfying the criteria to be considered a ‘large company’ for the first time. At this point the company would

have already missed payment of PT1 for the current year, as it was not anticipating being considered a ‘large company’. In such circumstances, the company will have inadvertently defaulted on its PT obligations and will be subject statutory interest.

Except in very limited circumstances, once the PT2 deadline passes, there is no meaningful mechanism for companies to make a top-up payment after year-end and once actual figures are known. In an effort to avoid the possibility of statutory interest applying, some companies choose to err on the side of caution and make a protective overpayment of PT.

In our view, changes are required to the PT rules to ensure that companies can have certainty regarding their PT obligations. Amendments which could be considered include:

- **Removing the look-back applying to PT1:** Where a company fails to meet the 90% threshold, interest should apply only to the shortfall on PT2, and no look-back should apply if PT1 was paid correctly based on 50% of the prior-year liability.

- **Providing a top-up window:** Large companies should be given the opportunity to make a top-up payment to their PT2 within a defined period after the end of the accounting period when the profit for the period is known, without exposure to interest.

- **Increasing the threshold:** The €200,000 threshold to be considered large company for the purposes of PT has not been indexed for 18 years. This lack of indexation has inadvertently pushed many Irish SMEs into the “large company” regime. Increasing this threshold to €1 million would significantly reduce the compliance and cash-flow burden on the SME sector.

- **Introducing a transition rule for first year large companies:** Consideration could be given to introducing a transition rule for companies which satisfy the

criteria for “large companies” for the first time so that they would only be subject to the PT large company rules from year 2. This would ensure such companies are not unfairly penalised where they inadvertently fail to comply with their PT obligations because they do not know that they have exceeded the €200,000 threshold until after the payment date for PT1 has passed.

5.2 Tax technical measures arising from the implementation of Pillar Two

We welcome the establishment of a subgroup of the Business Tax Stakeholder Forum (BTSF) to consider the implementation of the OECD Pillar Two “Side by Side” Package in Finance Bill 2026. We look forward to continuing our engagement with Department and Revenue officials as the drafting process for transposing the Side by Side Package into Irish law progresses over the months ahead.

In addition, there are several issues arising from the transposition of the EU Minimum Tax Directive, to implement the Pillar Two GloBE Rules into Irish law in Finance (No.2) Act 2023, which have been identified by our members as requiring clarification. We understand from discussions with Revenue at the TALC BEPS Sub-committee that clarification of these issues necessitate an amendment to the Irish legislation implementing the GloBE Rules.

5.2.1 Level of penalties for GIR returns

Under section 111AAAB(2) TCA 1997, failure by a constituent entity to file any GloBE return (i.e., an Income Inclusion Rule (IIR) return, UTPR return or QDTT return) by the specified return date will give rise to a penalty of €10,000. Where a QDTT Group and an UTPR Group is formed, the penalties for non-filing of each of these returns is applicable to the filing entity only. Similarly, for the IIR return, the penalty is applicable to the filing entity only.

In contrast, under section 111AAAB(1), failure by a constituent entity to file the GloBE Information Return (GIR) (or Notification of Filer as appropriate) on time

will give rise to a penalty, for each and every constituent entity, of €10,000 for each complete month of delay subject to a maximum of 48 months.

The impact of this could be very significant for groups with large numbers of entities. For example, for a leasing group with 200 Irish special purpose vehicles which have formed QDTT and UTPR groups, the total penalty for late filing of a GloBE return will be €30,000 regardless of the length of the period of delay.

In contrast, the penalty for late filing of the GIR/Notification of Filer will equate to a monthly penalty of €2 million for each complete month of delay subject to a cap of €96 million. This is the case even if a designated local entity has been appointed to file the GIR/Notification of Filer on behalf of all Irish constituent entities in the group.

We do not believe that the approach which has been adopted to the GIR and Notification of Filer late filing penalties is in line with OECD guidance or the EU Minimum Tax Directive.

The OECD Consolidated Commentary to the GloBE Rules[16] provides:

> *"Article 8.1.8 requires that the laws of each jurisdiction with respect to penalties, sanctions, and confidentiality of the returns (including the information in the returns) shall also apply to the GloBE Information Return. In the case of penalties and sanctions, this means that domestic penalties and sanctions would apply if the GloBE Information Return is not submitted on time or if there is any false or incomplete information. Jurisdictions are free to extend existing penalties or sanctions (as well as any penalty or sanction mitigation provisions) or to create new ones for the GloBE Information Return. New penalties and sanctions in respect of the GloBE Information Return should be commensurate with penalties or sanctions in respect of other*

[16] OECD (2025), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti Base Erosion Model Rules (2025): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/a551b351-en.

information returns and other information return filing obligations in the jurisdiction."

Article 46 of the EU Minimum Tax Directive provides as follows:

"Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, including those pertaining to the obligation of a constituent entity to file and pay its share of top-up tax or to have an additional cash tax expense, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive."

We consider that €10,000 per month penalty imposed for late filing of a GIR/Notification of Filer is disproportionate to, and not commensurate with, the penalty levels applicable in group filing scenarios for the late filing of GloBE returns.

No tax is due in connection with the filing of the GIR and if a GloBE tax liability (meaning IIR top-up tax, UTPR top-up tax, or domestic top-up tax) is underpaid there are dissuasive tax penalties applicable to same (including surcharges for late filing of GloBE returns if applicable, late payment interest and tax geared penalties). However, the level of penalties that a group might suffer due to the application of penalties on a per entity basis as illustrated above is extremely punitive and clearly excessive.

We urge that the GIR/Notification of Filer late filing penalties, which are particularly severe and excessive in the case of a group with multiple Irish constituent entities, be reviewed. In our view, the legislation should be amended to provide for an outcome similar to the penalties applicable in group filing scenarios for the late filing of GloBE Returns.

In addition, an overall cap should be placed on the penalties which may apply to the Irish constituent entities of an MNE Group for the late filing of GloBE Returns

(irrespective of how many entities there are and whether or not they have formed a QDTT Group or UTPR Group).

5.2.2 GIR filing obligations

Under section 111AAI(1) TCA 1997 the GIR must be filed in Ireland by each Irish constituent entity. By way of exception to this, each Irish constituent entity does not have to file the GIR if:

- an appointed designated local entity files the GIR on or before the applicable return date on behalf of each constituent entity under section 111AAI(2); or
- the UPE or a designated filing entity is located in a jurisdiction that has competent authority exchange agreement in effect with Ireland for that fiscal year files a correct and complete GIR in that jurisdiction on or before the applicable return date (section 111AAI(5)).

Where a designated local entity or the UPE/designated filing entity files, the Irish constituent entities must still file a Notification of Filer with the Revenue outlining certain details of the entity who filed the GIR.

Under section 111AAAB(1) TCA 1997, failure by a constituent entity, designated local entity, UPE or designated filing entity (as the case may be) triggers a penalty for each and every constituent entity, of €10,000 for each complete month of delay subject to a cap of 48 months.

Thus, if a designated local entity or the UPE/designated filing entity files a GIR one day late, no penalty should apply as no complete months will have elapsed. However, there appears to be an unintended drafting issue with the relevant legislation which means in such a circumstance the constituent entities concerned could still be subject to monthly penalties.

This is because the exceptions, outlined above, where a constituent entity does not have to file a GIR if a designated local entity files (section 111AAI(2)) or the

UPE/designated filing entity files (section 111AAI(5)) are framed as only applying where the designated local entity or the UPE/designated filing entity files the GIR on or before the specified return date.

Consequently, if the designated local entity or the UPE/designated filing entity files the return late (even by one day), it would appear that the Irish constituent entities are not exempt from having to file a GIR. Without that exemption then even where the designated local entity or the UPE/designated filing entity files the return late, the obligation on the constituent entities to file their own GIR continues and, as a result, monthly penalties continue to apply under section 111AAAB(1).
We do not believe this is intended or that it is in line with the EU Minimum Tax Directive.

The EU Minimum Tax Directive at recital 22 provides:

> *"The primary responsibility of filing the top-up tax information return should lie with the constituent entity itself. A waiver of such responsibility should however apply where the MNE group has designated another entity to file the top-up tax information return. It could be either a local entity, or an entity from another jurisdiction that has a competent authority agreement in place with the Member State of the constituent entity*."

Article 44(2) of the EU Minimum Tax Directive provides:

> *"A constituent entity located in a Member State shall file a top-up tax information return with its tax administration in accordance with paragraph 5. Such return may be filed by a designated local entity on behalf of the constituent entity."*

Article 44(3) of the EU Minimum Tax Directive provides:

> *"By way of derogation from paragraph 2, a constituent entity shall not have the obligation to file a top-up tax information return with its tax administration if such return has been filed, in accordance with the requirements set out in*

paragraph 5, by: (a) the ultimate parent entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located; or (b) the designated filing entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located."

It is important that the legislation is amended to clarify that once the GIR is filed in an appropriate jurisdiction, the Irish filing requirements are satisfied. This could be achieved by amending both section 111AAI(2) and section 111AAI(5) to remove the references to filing by the specified return date.

Amending the legislation in this manner would mean that penalties for late filing would continue to apply so long as the GIR is not filed but the exemption for the Irish constituent entities from having to file their own GIR would apply even if the return were filed late by the designated local entity or the UPE/designated filing entity.