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Expert Evidence Before the Tax Appeals Commission: Duties, Pitfalls and Developments

Irish Tax Institute

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Gabrielle Dillon gives us the latest VAT news and reviews the following VAT cases:

VAT Cases

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Aidan Clifford, ACCA Ireland, outlines the key developments of interest to Chartered Tax Advisers (CTA).

Legal Monitor

Jessica Lewis and **Mary Dineen** details Acts passed, Bills initiated and Statutory Instruments of relevance to CTAs and their clients.

Tax Appeals Commission Determinations

Catherine Dunne lists of all TAC determinations published, including tax head, if case stated and key issues considered.

Feature Articles

President's Pages

Shane Wallace
Irish Tax Institute President

Introduction

This is my fourth "President's Pages", and as I look back over the last few months I am struck by both how busy it has been and how my time as Irish Tax Institute President has flown by. From liaising with members, speaking to students and attending meetings with policy-makers, the impact made by the Institute at every level is clear to see, and that is something we can all be proud of.

Appearance at Oireachtas Finance Committee

At the end of March the Institute was invited to attend the Joint Oireachtas Finance Committee to discuss the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2024. The invitation came on the back of submissions that the Institute had made to the Committee in relation to the proposed amendments to the way in which hearings are held at the Tax Appeals Commission (TAC). Our submissions included a summary of more than 220 detailed responses to a survey that was undertaken in December 2025 and that found profound concerns among members about privacy and the effective functioning of the tax system should the proposals proceed. We also included a Senior Counsel legal opinion confirming that nothing in the case of *Zalewski v Adjudication Officer & ors* [2021] IESC 24 mandates the proposed changes, as well as comprehensive comparative research on the tax dispute resolution processes that exist in other EU Member States, demonstrating that Ireland's current regime sits comfortably within the European norm. It was clear from our appearance at the Committee that the majority of members present agreed with our position.

Report of Finance Committee on TAC

The subsequent report of the Oireachtas Finance Committee, published on 8 May, noted that the Committee:

> "very much agrees with the consensus of both legal and financial stakeholders that the tax appeal system does not need to be changed, and if it were changed in line with the current proposal it would have an extremely negative impact upon taxpayers' willingness to seek independent review of Revenue decisions and assessments".

In its report, the Committee made clear its view that the proposed change would undermine the appeals process by causing potential appellants

not to appeal for fear of personal or commercially sensitive details being brought into the public domain. The Committee report made two primary recommendations, the first being that the Minister for Finance make no change to the existing provisions in respect of public or private TAC hearings. Under the second, the Committee recommended assessing the degree to which the proposed changes will make Ireland's tax system more punitive compared to European peers, potentially discouraging international investors. The Institute welcomed the Committee's report and again urged the Minister and the Department of Finance not to proceed with the planned changes to private hearings at the TAC.

Visit to UCD – Thomas Kettle Award

In April I was delighted to be presented with the Thomas Kettle Award by the Economics Society in UCD. The presentation gave me a great opportunity to speak to students about my own journey into tax advisory, what it means to serve as President of the Institute and the role we play in public policy, and why getting involved in professional organisations such as the Irish Tax Institute can fundamentally shape careers.

Annual Conference

Almost 400 delegates attended the Institute's Annual Conference in Galway at the end of April. This year's theme, "Navigating Complexity", was very apt, given the uncertain world in which clients operate, the challenges that instability presents, and the enormous demands that it places on Chartered Tax Advisers (CTA). Feedback from the conference cited the practical and informative sessions, which covered everything from real estate and R&D to cyber-security and compliance. A huge thank you to all of our speakers, whose valuable contributions helped to make the Annual Conference such a success. As always, the conference proved to be an excellent opportunity to catch up with colleagues and to share knowledge and experiences. The date for next year's conference has already been set, and it will take place on 16 and 17 April in The Galmont Hotel, Galway.

Pre-Budget Submission

Owing to Ireland's upcoming Presidency of the Council of the European Union, the Institute sent its Pre-Budget Submission to the Minister for Finance and his officials slightly earlier than usual this year. Geopolitical instability is casting a shadow over the global economy at present, and the conflict in the Middle East has introduced new volatility. Although Ireland is in a relatively good position to absorb some of the initial shock, a sustained period of high energy and transportation costs, inflationary pressure and market volatility would be far more challenging. Taxation remains one of the most effective policy levers available to the Government in Budget 2027. By strengthening the competitiveness of the tax system – through expanding key reliefs, supporting innovation, simplifying administration, incentivising investment and protecting taxpayers – the Government can reinforce Ireland's position as a leading location for business and talent.

Joint Conference with Revenue

In May we welcomed more than 160 delegates to the ITI/Revenue Joint Conference, held in my hometown of Kilkenny. The conference, typically held every three years, underscores the importance of the tax profession and Revenue working together in an ever-evolving tax administration system. It is a unique event that provides attendees with an opportunity to connect with CTA colleagues and senior Revenue personnel to discuss current and emerging tax administration issues. We are grateful to all those who participated and attended.

Tax Talk Episode

In the latest episode of Tax Talk, "Tax Controversy – Complexity in Compliance", host Donal O'Donovan spoke to Sandra Brennan, Tax Controversy Partner in EY Ireland, about the often-misunderstood area of tax controversy, what it encompasses and the part that it plays in a fair tax system.

Conclusion

As this is my last "President Pages", I would like to thank my colleagues and fellow Council Members for their support during the past year. I have thoroughly enjoyed my year as President and all that it entailed, from collaborating with members and Institute stakeholders to presiding over the annual Conferring Ceremony – a real highlight.

I would like to express my gratitude for the support of my Deputy President, Brian Brennan; my Vice-President, Ian Collins; and our immediate Past President, Aoife Lavan. I want to thank my own colleagues in Deloitte, whose support enabled me to take up the position. I would also like to thank the fantastic team at the Institute for their assistance during this very busy year.

Of course, I want to thank our members, who continuously engaged with us throughout the year, providing us with invaluable feedback and insight, as well as volunteering their time to the Institute in many valuable ways. I look forward to continuing my contribution to the Institute and supporting our new President in his upcoming term.

Chief Executive's Pages

Martin Lambe
Irish Tax Institute Chief Executive

Thank you to members who renewed their membership for the 2026/2027 subscription year. If you have not paid yet, I would ask you to do so through your dashboard as the deadline has passed. Reduced rates are available for members who are unemployed, on maternity leave or retired.

Continuing Professional Development

Our Spring and Summer programme provided plenty of topical CPD for members to avail of. In addition to two conferences, there was the opportunity to hear from experts in managing wealth, pay and file, and other compliance-focused areas.

Annual Conference

"Navigating Complexity" was the apt theme of Annual Conference 2026, which took place over 1.5-days in sunny Galway. The conference, attended by some 400 Chartered Tax Advisers (CTA), provided

technical information and practical scenarios, covering a range of topics including VAT, partnership law, cyber-security and tax appeal determinations.

The atmosphere was convivial as delegates connected during the networking breaks and enjoyed the lunchtime wellness session on nutrition for working life, with useful tips from fellow CTA and registered dietician, Jill Leavy.

Thank you to our experts, the delegates and my own team for making this event so successful.

Joint Conference

In May together with Revenue, we hosted the joint conference joint conference in partnership with Revenue, welcoming more than 160 delegates to Kilkenny. The full-day schedule underscored the importance of continued collaboration between Revenue and the tax profession in an ever-evolving tax administration system.

Bringing CTAs and senior Revenue personnel together, the six sessions discussed current and emerging tax administration issues, including:

- Revenue's approach to debt management and supporting timely compliance;
- VAT modernisation and ViDA implementation;
- a pilot engagement framework for high-wealth individuals and the learnings from existing structured engagement such as the Co-Operative Compliance Framework, TALC and the Branch Network;
- avoiding common errors in R&D tax credit claims;
- Pillar Two implementation and key messages before the first filings in June;
- agent awareness of cyber-security risks; and
- the opportunities and challenges that AI and emerging technology present for tax administration.

Thank you to everyone for their engagement throughout the day – our expert speakers and attendees alike.

Delving into Tax Controversy

As mentioned, the complexity in tax continues to rise both domestically and internationally,

making compliance more difficult. In the most recent episode of Tax Talk, host Donal O'Donovan was joined by Sandra Brennan, a Tax Controversy Partner in EY Ireland. During the conversation Sandra reflected on the reality of disputes with tax authorities, the future of compliance and the opportunities to look out for. Listen to the podcast episode now.

Finance (Tax Appeals and Fiscal Responsibility) Bill 2025

Our representations on the proposed changes to the tax appeals process continued. Representatives from the Institute appeared before the Joint Oireachtas Committee, where they detailed the issues that could arise if the proposed legislation is enacted. Before the appearance the Institute undertook comprehensive comparative research on the tax dispute resolution processes in 20 EU Member States and commissioned a Senior Counsel legal opinion confirming that nothing in the case of *Zalewski v Adjudication Officer & ors* [2021] IESC 24 mandates the proposed changes.

In May the Joint Committee published its report on the proposed legislation. We welcome the report, in particular the recommendation for no change to the existing right of taxpayers to request a private hearing before the Tax Appeals Commission. We will continue to urge the Minister and the Department of Finance to maintain the status quo.

Pre-Budget and Pre-Finance Bill Submissions

Giving consideration to the Government's upcoming term of the EU Presidency, we submitted our extensive Pre-Finance Bill 2026 Submission and our Pre-Budget 2027 Submission in April. We believe that Budget 2027 presents the Government with an opportunity to address areas where tax policy may be working against its own objectives. With this and our members' concerns in mind, we urged the Government to:

- strengthen Ireland's competitiveness,
- support the growth of the indigenous sector,
- encourage retail investment and
- ensure adequate safeguards for taxpayers.

You can read both submissions on taxinstitute.ie.

EU Presidency

With the focus of the EU presidency on simplification, we organised a Tax Talk episode to discuss what this might look like for the next six months. Joining host, Donal O'Donovan, were Minister of State for European Affairs, Thomas Byrne TD, and Sasha Kerins, Tax Partner at Grant Thornton. They discussed the complex and overlapping tax rules which have created an administrative burden for member states as well as the efforts to simplify tax rules, reduce red tape and enhance European competitiveness. Listen to the episode now.

Upgrades to www.taxinstitute.ie

Acting on feedback from members, we implemented a series of system upgrades to our corporate website, www.taxinstitute.ie, to improve overall performance and user experience. As part of the upgrades, a single sign-on was introduced across all of our systems, including the member dashboard, Blackboard, TaxFind and *Irish Tax Review*. Now you can sign in using the same credentials to access your Irish Tax Institute accounts. Other upgrades included an improved look and feel, filters on the store page and a searchable submissions page.

Thank you for your patience as the upgrades were pushed through. We are committed to continuing to enhance the website for the benefit of all users to deliver a more efficient online experience.

Recognition

During the Annual Conference dinner we took time to recognise a couple of members for their important contributions. The first award to be presented was the Norman Bale Award. *Irish Tax Review* is an online journal on taxation with authoritative, expertly written tax technical articles. This award recognises the article of the year, and for 2025, the winner was John Cuddigan of RDJ LLP for his article "Finance Act 2024: Retirement Relief – Really, Mind the Cap". Congratulations on the well-deserved award.

Shane Wallace, Institute President, presenting the Irish Tax Review Norman Bale Award to John Cuddigan of RDJ.

We also had the pleasure of presenting a fellowship to Baker Tilly's Brendan Murphy. Brendan has been a great supporter of the Institute over many years and has contributed significantly to tax education as both an expert speaker and an author. Thank you, Brendan, and congratulations on this recognition.

Shane Wallace, Institute President, presenting a fellowship to Brendan Murphy of Baker Tilly.

Exams and Results

In recent weeks our Autumn students, who sat exams in April and May, received their results. Congratulations to our Tax Technician, Diploma in Tax, and all our Chartered Tax Adviser (CTA) students.

Our Summer students are busy finishing lectures and studying for their exams in August. We wish them well with their preparation and in the exams.

Direct Tax Cases: Decisions from the Irish Courts and Tax Appeals Commission Determinations

Mark Ludlow
Senior Associate – Tax, RDJ LLP

	Topic	Court
01	**Income Tax: *Falkenthal v The Revenue Commissioners* [2026] IECA 41**	Court of Appeal
02	**Corporation Tax: *Accenture Global Solutions Limited v The Revenue Commissioners* [2026] IEHC 305**	High Court
03	**Income Tax: 20TACD2026 – Taxability of Termination Payment**	Tax Appeals Commission
04	**Income Tax: 22TACD2026 – Joint Assessment/Separation**	Tax Appeals Commission
05	**Income Tax: 28TACD2026 – Section 997A: PAYE Credit Denied – Director with Material Interest**	Tax Appeals Commission
06	**Income Tax: 42TACD2026 – PRSA Election Filed Late**	Tax Appeals Commission

01 Income *Tax: Falkenthal v The Revenue Commissioners* [2026] IECA 41

In this judgment the Court of Appeal (McDonald J (judgment) with Pilkington J and O'Moore J (concurring)) considered an appeal from the High Court. The history of the case was protracted, with the underlying facts concerning a notice of opinion issued on 12 November 1998 under s811 TCA 1997 to challenge a tax advantage in the sum of £31,252.80 claimed in respect of partnership film losses for the tax year 1996/1997. The appellant lost his s811(7) appeal before the Appeal Commissioners and the Circuit Court (in 2004). A High Court case stated was withdrawn pursuant to a settlement dated 16 October 2012, under which the appellant agreed to be bound by the Circuit Court judgment. Revenue subsequently treated the notice of opinion as final and conclusive, withdrew the loss relief and issued an amended notice of assessment for €34,583.70. The appellant sought to re-litigate the matter and appealed on the basis of time-limit arguments under ss955 and 956 TCA 1997, as well as appealing the inspector's refusal under s933(1)(c). Revenue relied on s811(5)(d) and s811(5A) to say that his routes of appeal were barred.

The questions before the Court of Appeal were whether s811(5)(d) disapplied the Part 41 appeal provisions, including ss933, 955 and 956 TCA 1997, once an s811 notice of opinion had become final and conclusive; and whether s811(5A) disapplied the Part 41 time limits for raising assessments.

The Court of Appeal held, in dismissing the taxpayer's appeal, that:

- The wording of s811(5)(d) was clear and unambiguous and was sufficient to disapply all Part 41 appeal rights, including ss933(1)(c), 955 and 956, without expressly naming Part 41, as it stated "[n]otwithstanding any other provision of the Acts, where… their opinion that the transaction is a tax avoidance transaction were to become final and conclusive…no right or further right of appeal shall lie under the Acts".
- The court also rejected the taxpayer's time-limit aguments:

  It distinguished the current facts from those in the Supreme Court's judgment in *The Revenue Commissioners v Hans Droog* [2016] IESC 55, noting that: first, *Droog* did not address s811(5)(d), with the court holding that the "notwithstanding any other provision of the Acts" formulation in s811(5) is "much more specific" than the "at any time" formulation of s811(4), which was what had been considered in *Droog*; and, second, the s811 opinion in *Droog* had never become final and conclusive, whereas in the present case it had. Having found that the rights of appeal under Part 41 were disapplied by s811(5)(d), it was unnecessary for the court consider the issue of whether s811(5A) applies retrospectively, and so the court's subsequent comments on s811(5A) were *obiter* (the court expressed agreement with the Court of Appeal's decision in *Hanrahan v the Revenue Commissioners* [2024] IECA 113 that s811(5A) and s130(2) of the Finance Act 2012 apply to assessments or amended assessments made on or after 28 February 2012 regardless of the underlying chargeable period).

  - The court also rejected the taxpayer's contention that those time-limit points under s955(2) could not have been raised by him in his earlier s811(7) appeal, noting that such points could have been advanced by the taxpayer under s811(7)(c) (which required the Commissioner to determine what was "just and reasonable" having regard to all the circumstances) and indeed such points had been raised in the *Droog* decision (on which the taxpayer had sought to rely), with the Court of Appeal concluding that "[t]hat strongly suggests that time points were capable of being addressed by way of appeal under s. 811(7) if they were relevant".

02 Corporation Tax: *Accenture Global Solutions Limited v The Revenue Commissioners* [2026] IEHC 305

In this case the High Court (Bolger J) considered an appeal by Revenue from the Tax Appeals Commission (TAC). The taxpayer, Accenture, held group intellectual property (IP) centrally and licensed it to foreign operating entities in exchange for royalties. Local laws in those jurisdictions required the operating entities to withhold foreign royalty withholding tax (FWHT) at source on gross royalties paid to Accenture. Accenture had no branches or permanent establishments in those jurisdictions. During the relevant periods, Accenture was loss making for Irish corporation tax purposes, and as a result it would have obtained no benefit from claiming a credit under Schedule 24 TCA 1997 for the foreign tax withheld, as it had no Irish tax liability against which to apply that credit. Accordingly, Accenture chose not to claim that credit but, instead, treated the FWHT as a trading expense and claimed a deduction for it under s81 TCA 1997, which, if allowed, would have increased its trading losses, which it could then have carried forward to set against future profits or sought to surrender to other entities in the group. It made an expression of doubt in each return in respect of that treatment. Revenue denied the deductions, and Accenture appealed those decisions. The TAC allowed Accenture's appeal, finding that FWHT was a tax on income but could, nonetheless, be

deducted under s81(2)(a) where Schedule 24 credit was unavailable.

Revenue appealed that TAC determination to the High Court by way of case stated. Bolger J in the High Court distilled the questions into three core issues:

(1) the interaction between s77(6B), s81 and Schedule 24, i.e. whether Schedule 24 is the exclusive regime for relief from FWHT, rendering s81 unavailable;

(2) whether the TAC erred in allowing a deduction under s81 for FWHT; and

(3) whether certain factual findings and inferences were unsupported by the evidence or were unreasonable.

The court held, in allowing Revenue's appeal, that the TAC had erred in law.

With regard to the first core issue, the High Court accepted Revenue's argument that Accenture could not claim a deduction for FWHT under s81 because the Oireachtas had enacted a specific statutory regime providing for relief from FWHT. Revenue had argued that the maxim *generalia specialibus non derogant* supported its contention that the specific legislative regime for the provision of relief from FWHT contained in ss77(6B), 826 and 826A and Schedule 24 had to be applied in preference to a general provision on the deductibility of trading expenses in s81(2)(a), further noting that s81(2) also stated that it was "subject to the Tax Acts" (which Revenue contended included the provisions concerning Schedule 24).

The court, agreeing with this position, concluded that the Commissioner erred in finding that Accenture was entitled to seek an s81 deduction where no credit was available to it under Schedule 24. The Act makes clear and specific provision for relief from double taxation, thereby rendering s81 inapplicable in circumstances where Accenture's Schedule 24 calculation yielded no relief. The fact that the statutory regime did not yield any benefit to the taxpayer does not mean that that regime did not apply:

> "The intention of the Oireachtas was to enact a specific and limited arrangement to prevent the same income being taxed in Ireland and in the foreign jurisdiction whereby an Irish taxpayer could be relieved of their Irish tax obligations by reference to foreign tax that had been incurred. It was not intended, nor were these provisions enacted, to compensate a taxpayer for having suffered a tax liability abroad. To allow Accenture to move from a Schedule 24 claim for relief, where the calculation produced a zero amount of relief, to a claim for a section 81 deduction in respect of a trading loss, would move impermissibly beyond that clear legislative intent" (paragraph 36).

The court also considered whether FWHT as a tax on Income was deductible under s81. The court held that the Commissioner's emphasis on the calculation of FWHT on gross income as a basis for her conclusion that FWHT must be incurred by Accenture to earn or profit from the trade was misplaced and wrong in law. The test is whether the money was expended for the purpose of **earning** the profit. The court cited the decision of Lord Davies in *Strong & Co v Woodifield* [1906] AC 448 / [1906] TC 215 and stated:

> "[t]he Commissioner's determination focused on 'profits' but much less on Lord Davies' reference to 'earning'...The correct legal test focuses on earning the profits, which is very different to focusing on the consequences of having earned a profit or on the application of those profits" (paragraph 44).

The court noted that the fact that FWHT was imposed on income rather than profit does not determine whether FWHT was expended for the purpose of earning profit. The Commissioner's conclusion that Accenture suffered FWHT for the purpose of enabling it to carry on and earn profit in its trade "put the cart before the horse" (paragraph 62).

The Commissioner found that FWHT was a tax on income and is therefore applied after the earnings are made. Bolger J held that a tax on income cannot also be an expense incurred to earn gain. It cannot be rendered into that which it is not and never was, simply because it was charged by a foreign jurisdiction. The fact of an Irish taxpayer having suffered a foreign tax allows it to apply for relief pursuant to the regime established by s826 and Schedule 24 but does not render what is a non-deductible tax into a deductible expense.

The court recognised that that there are taxes that are deductible, such as rates, stamp duty and employer PRSI. However, it held that those deductible taxes are all fundamentally different from a tax on income, as the FWHT here was found to be, as they are incurred before any income is earned, whereas FWHT is imposed on income that has been earned. The Commissioner erred in relying on the fact that the State imposes many such compulsory deductions that are permissible s81 deductions without properly distinguishing what is a tax on income from those deductible taxes.

The Commissioner further erred in finding support for her view that a tax on income should be deductible under s81 from what she observed was the deductibility of digital services tax. The court noted that digital services tax is not an Irish tax and that the Commissioner could not have properly made the broad and generalised observation that digital services tax is a tax on income and therefore comparable to the FWHT at issue in this case in the absence of any evidence or submissions about how that tax operates in the jurisdiction in which it may arise.

Finally, regarding whether certain factual findings and inferences were unsupported by the evidence or were unreasonable:

- On question one Bolger J held that Accenture had and made a choice about how it would license its IP in foreign jurisdictions without having a permanent establishment there, as a consequence of which it incurred FWHT. The FWHT did not have to be incurred. Accenture could have conducted its trade without incurring FWHT by establishing permanent establishments in the jurisdictions in which it wished to license its IP. FWHT, as a tax on income, was not incurred for the purposes of earning profit but was, rather, an application of Accenture's income, from which profit would eventually be calculated. It was therefore inaccurate to say that FWHT was "part and parcel" of Accenture's business activities or a foreseeable condition of earning income and gains.
- On question two, which concerned the evidence about the law on FWHT in Argentina, Bolger J held that Revenue did not call an expert to challenge Accenture's expert on Argentinian FWHT and so did not find that the Commissioner could be said to have made an error of law in respect of that question.

03 Income Tax: 20TACD2026 – Taxability of Termination Payment

In this determination the Tax Appeals Commission (TAC) considered the tax treatment of a termination payment in circumstances where the payslip provided to the appellant had included an amount of €19,340 described as "Ex Gratia" and an amount of €112,795 described as "Ex Gratia Taxable". The appellant's employment had been exempt from both employer and employee PRSI in Ireland by virtue of an A1 Portable Document (as social insurance contributions were being made in another EU Member State). The questions before the TAC were:

- whether the payment of €112,795.93 was an ex gratia payment taxable under s123 TCA

1997 or was, instead, a statutory redundancy payment exempt under s203 TCA 1997 by reference to the Redundancy Payments Act 1967 (RPA 1967);

- whether, because the appellant had paid social insurance contributions in another EU Member State (rather than in Ireland), he was entitled under EU Regulation 883/2004 to be treated as if he had paid PRSI in Ireland for the purposes of s7(1)(b) RPA 1967; and
- whether the payment could, alternatively, fall within the exemption in s192A TCA 1997 as a payment under a relevant employment law.

The TAC held, in finding for Revenue and dismissing the taxpayer's appeal, that:

- On the facts, the payment did not fall within any of the exemptions contained in s201 TCA 1997 and was taxable under s123.
- The payment could not be categorised as a statutory redundancy payment as the appellant could not satisfy s7(1)(b) RPA 1967 (which requires that an employee be "an employed contributor in employment which was insurable for all benefits" under the Social Welfare Acts immediately before termination) because his employment was PRSI-exempt by reason of the A1 Certificate. Furthermore, EU Regulation 883/2004 did not assist, as statutory redundancy is not among the branches of social security covered by Article 3 of the Regulation, so the equal-treatment principle in Article 4 did not apply.
- On the facts, s192A did not apply.

04 Income Tax: 22TACD2026 – Joint Assessment/Separation

In this determination the Tax Appeals Commission (TAC) considered entitlement to the joint assessment basis. The appellant and his wife were jointly assessed for income tax purposes from their year of marriage (redacted) up to and including the tax year 2024. The appellant was nominated as the assessable spouse during those years.

Over time their marriage deteriorated, and between 2023 to 2025 they resided in separate bedrooms in the family home. In 2025 the appellant left the family home permanently, but the appellant and his wife were not divorced, nor were they separated under an order of a court or by deed of separation, and neither of them had given written notice withdrawing the election for joint assessment during 2024. Somehow these facts came to the attention of Revenue, which formed the view that the appellant and his wife had separated in 2023 in circumstances likely to be permanent and so removed them from the joint assessment basis in or before the tax year 2024.

The question before the TAC was whether the appellant was entitled to joint assessment for 2024 in circumstances where: (1) the couple had separated in fact in 2023 in circumstances likely to be permanent but (2) no written notice withdrawing the s1018 election had been given in or before 2024.

The TAC held, in finding for Revenue and dismissing the taxpayer's appeal, that:

- Section 1018(1) makes joint assessment available only where spouses are living together within the meaning of s1015(2).
- Under s1015(2) TCA 1997 a spouse is treated as not "living with" the other where they are "in fact separated in such circumstances that the separation is likely to be permanent".
- Although written notice withdrawing the joint assessment election could not operate retrospectively for 2024, the absence of withdrawal did not of itself confer entitlement to joint assessment.

- The Commissioner found as a fact that the couple had separated in 2023, with irretrievable breakdown of the marriage likely; accordingly, the wife was not "living with" the appellant during 2024, and joint assessment was unavailable regardless of the absence of a formal written withdrawal.

05 Income Tax: 28TACD2026 – Section 997A: PAYE Credit Denied – Director with Material Interest

In this determination the Tax Appeals Commission (TAC) considered an appeal against amended assessments for 2020 and 2021 issued on 26 February 2025, removing PAYE and USC credits on the basis that the employer company (Company 1) had failed to remit employer taxes (PREM) to Revenue. The appellant was a director (but not a shareholder) of Company 1 and its controlling company. The shareholders of both companies were his mother (34%) and two brothers (33% each). Company 1 went into liquidation in January 2023, leaving outstanding PREM liabilities of €162,000 (2020) and €152,000 (2021).

The question before the TAC was whether s997A TCA 1997 applied to deny the appellant credit for PAYE deducted from his emoluments, on the basis that he held a "material interest" in Company 1 through the connected-person rules in s10 TCA 1997.

The TAC held, finding in favour of Revenue and dismissing the taxpayer's appeal, the following:

- The appellant's brothers are "relatives" within s10 TCA 1997, making the appellant "connected" with them. Between them his brothers held 66% of Company 1, exceeding the 15% threshold in s997A(1)(b). The appellant therefore had a "material interest" in Company 1.
- Section 997A(3) is written in mandatory terms ("shall") and expressly states that no credit for deducted tax is to be given where the employer has outstanding PREM liabilities and the taxpayer holds a material interest.
- Although the Commissioner accepted the evidence provided by the appellant in relation to his position within Company 1 and expressed sympathy for the appellant's position, she held that the legislation afforded her no discretion to disapply the provisions of s997A.

06 Income Tax: 42TACD2026 – PRSA Election Filed Late

In this determination the Tax Appeals Commission (TAC) considered an appeal against Revenue's refusal to allow a claim for 2023 income tax relief in respect of a €17,950 contribution to a personal retirement savings account (PRSA) on the ground that the election was made out of time.

The contribution was made in August 2024. The appellant made repeated, unsuccessful attempts to file an amended return through myAccount before both the 31 October 2024 and the extended 14 November 2024 deadlines but, owing to technical difficulties with the Revenue website, was not able to do so, and the return was ultimately filed on 19 November 2024 (five days late). Revenue refused the claim for relief on the PRSA pension contribution on 27 November 2024.

The question before the TAC was whether the appellant was entitled to the relief under s787C(3) TCA 1997 where the underlying contribution was made in time but the election

was filed after the extended deadline of 14 November 2024, owing to alleged technical difficulties with Revenue's online system.

The TAC held, in dismissing the taxpayer's appeal, that s787C(3) TCA 1997 requires that both the contribution and the election be made "on or before" the specified return date. The election was made on 19 November 2024, after the extended deadline of 14 November 2024.

Although the Commissioner accepted the appellant's evidence of technical difficulties, he held that s787C makes no allowance for such difficulties, regardless of their cause, and noted that the TAC is a creature of statute with jurisdiction limited to determining whether tax is correctly assessed in accordance with TCA 1997 and with no equitable power or discretion to disapply a statutory provision.


Direct Tax Cases: Decisions from the UK Courts

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	Topic	Court
01	**Capital Allowances – Windfarm Survey Expenditure**	UK Supreme Court
02	**Withholding Tax – Treaty Exemption on Interest**	England and Wales Court of Appeal
03	**Income Tax – Overdrawn Director's Loan**	First-tier Tribunal

01 Capital Allowances – Windfarm Survey Expenditure

In *Orsted West of Duddon Sands (UK) Limited and others v Revenue and Cu*stoms [2026] UKSC 12 the Supreme Court considered whether costs incurred by Orsted group companies on environmental surveys and studies carried out during the planning and design of offshore windfarms qualified for capital allowances. During the course of planning and designing their windfarms, they spent considerable sums on surveys and studies investigating various aspects of the environment in which the windfarms would be constructed. These costs were claimed as qualifying capital expenditure "on the provision of plant". The Court of Appeal decision was discussed in "Direct Tax Cases: Decisions from the UK Courts", *Irish Tax Review*, 38/2 (2025).

The First-tier Tribunal had allowed the appeals in part, holding that studies that "directly related to the necessary design" of the windfarms qualified for allowances. The Upper Tribunal reversed this, concluding that none of the surveys and studies constituted qualifying expenditure, drawing a distinction between the physical activity of constructing plant and the intellectual effort of design. The Court of Appeal allowed Orsted's appeal in large part, holding that the UK capital allowances legislation covered costs of design as well as installation and that eligible expenditure extended to costs of studies that informed such installation or design.

However, the Supreme Court allowed HMRC's appeal, delivering a unanimous judgment holding that the requirement that expenditure be "on the provision" of plant suggests a close connection between the expenditure and the plant itself. The primary cost is the purchase price. Other costs, such as transport and installation, can be included, but the costs of carrying out surveys and studies that provide the business with advice about how to choose or design plant fell "well outside the limiting curve". The court rejected the argument that the broad purpose of incentivising investment in plant and machinery justified a wider construction, noting that such breadth was a "very blunt instrument" for providing incentives. Ultimately, none of the surveys and studies in dispute qualified for capital allowances.

02 Withholding Tax – Treaty Exemption on Interest

The Court of Appeal case of *HMRC v Burlington Loan Management DAC* [2026] EWCA Civ 461 concerned the tax treatment of approximately £90.8m of post-administration interest received by Burlington Loan Management DAC (BLM), a company resident in Ireland, in respect of a debt claim in the administration of Lehman Brothers International (Europe) (LBIE). BLM had purchased the rights to the claim in February 2018 from SAAD Investments Company Ltd, a Cayman Islands-resident company, via a third-party broker. The issue was whether BLM's entitlement to receive the interest was exempt from UK withholding tax by virtue of Article 12 of the UK–Ireland double taxation agreement (DTA). The Upper Tribunal decision was discussed in "Direct Tax Cases: Decisions from the UK Courts", *Irish Tax Review*, 37/3 (2024).

HMRC contended that the exemption under Article 12(1) was disapplied by the anti-abuse provision in Article 12(5), which provides that the exemption shall not apply where it was "the main purpose or one of the main purposes" of any person concerned with the assignment of the debt claim to "take advantage of" Article 12 by means of that assignment. HMRC argued that because BLM's profitability on the transaction was entirely dependent on its assumed ability to reclaim UK withholding tax under Article 12(1), obtaining that benefit must have been a main purpose of BLM in entering into the assignment.

Both the First-tier Tribunal (FTT) and the Upper Tribunal held that Article 12(5) was not engaged. The FTT found that BLM's sole purpose was to realise a profit by reference to the difference between its purchase price and the cash-flows received, and that BLM's ability to benefit from Article 12(1) was merely part of the "setting" in which it made its offer. The FTT distinguished the transaction from treaty-shopping arrangements, noting that in an outright sale the seller does not retain any ongoing economic interest in the flow of income from the debt claim.

The Court of Appeal dismissed HMRC's appeal, holding that the concept of having a purpose to "take advantage of" Article 12(1) required something more than simply obtaining the benefit of it. It could not be an abuse for a taxpayer resident in a contracting state to acquire a debt claim in the expectation that it would enjoy the exemption from tax that the DTA expressly provides. BLM was an independent entity that had conducted a business of acquiring claims in the LBIE administration over a considerable period and had acted at arm's length throughout. Its reliance on Article 12(1) was entirely in accord with the objects and purposes of the UK–Ireland DTA, which sought to promote the movement of capital between the two states by eliminating double taxation.

03 Income Tax – Overdrawn Director's Loan

In *Boulton v HMRC* [2026] UKFTT 583 (TC) the First-tier Tribunal (FTT) dismissed the taxpayer's appeal against an assessment imposing tax on the release of a director's loan account.

The liquidators of the company identified an inconsistency between the director's loan account figure shown in the most recently filed accounts and the figure appearing in the statement of affairs prepared on liquidation. After pursuing the taxpayer for the balance shown in the accounts, the liquidator ultimately agreed to accept a reduced sum under a settlement deed but informed the taxpayer that the remaining balance had

been "effectively written off" and that this sum should be reported on his next self-assessment return. The taxpayer did not include the amount on his return, contending that, because the settlement deed contained an express non-admission of liability, there was no formal debt forgiveness.

The FTT held that the combination of the settlement agreement and the liquidator's advice to the taxpayer confirmed that the debt had been written off. The sum assessed by HMRC was supported by the company's accounts and the settlement sum. The taxpayer's appeal was dismissed.


International Tax Update

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01 BEPS: Pillar Two Recent Developments

Global Minimum Tax Implementation Toolkit

The OECD Forum on Tax Administration has released a new document, the Global Minimum Tax Implementation Toolkit, offering practical guidance to help jurisdictions apply the Pillar Two global minimum tax (GMT) rules in a consistent and coordinated manner. As noted in the document, the Toolkit is intended to support tax authorities as they implement the GloBE framework and manage the related administrative demands. The Toolkit is organised into five modules covering scoping, legislative design, administration, compliance and information exchange.

Module 1: Assessing in-scope MNE groups and revenue

Jurisdictions are encouraged to use country-by-country (CbC) reports as the starting point for identifying in-scope groups, while recognising limitations such as currency translation differences. A simplified approach for estimating potential top-up tax revenue is outlined.

Module 2: Legal implementation

Three implementation methods are described:

- cross-referencing Inclusive Framework materials,

- repetition of Model Rules and
- rewriting rules to align with domestic law.

Each approach has trade-offs between consistency, flexibility and administrative burden. The Toolkit also recommends including an interpretative clause to ensure that domestic rules align with the Model Rules.

Module 3: Organising and planning for implementation of the GMT

Tax authorities are advised to develop a comprehensive implementation plan covering governance, staffing, IT systems and budget. The Toolkit stresses the importance of training specialist staff and sets out IT best practices, including support for the GIR XML schema (requiring local filing of the global minimum tax information return (GIR) in the agreed XML format).

Module 4. Framework on compliance procedures

Best practices include:

- streamlined registration, ideally one-time and online,
- centralised GIR filing and aligned deadlines,
- domestic top-up tax returns that avoid duplicating GIR data,
- payment deadlines aligned with filing dates; and
- penalties that are proportionate, avoid per-data-point fines and include transitional relief.

Module 5. Exchange of information

The Toolkit explains how the GIR Multilateral Competent Authority Agreement enables automatic exchange of GIR data, allowing groups to file once and have information disseminated to relevant jurisdictions. Tax authorities are encouraged to activate exchange relationships early and implement full validation rules from the outset.

Next steps

The first GIR filings – for groups with a 31 December 2024 year-end – are due by 30 June 2026. The OECD notes that jurisdictions continue to collaborate to address coordination challenges, including delays in portal readiness.

OECD Peer-review of Pillar Two

The OECD Inclusive Framework (IF) plans to launch peer-reviews of countries' domestic minimum-tax rules by the end of 2026 to verify consistency with the Pillar Two GloBE standards. Alongside this, the IF is preparing updates to the GloBE information return to integrate the "side-by-side" provisions. The OECD Secretariat is also working to broaden the network of jurisdictions participating in the Multilateral Competent Authority Agreement for GloBE data exchange, with the first exchanges expected in December 2026.

The OECD Secretary-General has also delivered the latest tax update to G20 Finance Ministers and central bank governors, highlighting progress on implementing the global minimum tax, improvements in tax transparency and continued efforts to support developing countries.

US priorities for implementing side-by-side package

US Treasury officials have indicated that their primary focus in the ongoing OECD Pillar Two work is ensuring smooth global adoption of the side-by-side (SBS) framework. Their aim is to provide jurisdictions with clear, workable guidance so they can implement the SBS provisions without facing technical uncertainties or gaps.

The Treasury is currently addressing several complex issues, including the interaction between existing US rules and the SBS mechanism, the treatment of transition-year starting points, intragroup financing considerations and necessary updates to the GloBE information return.

Brazil requests OECD recognition under side-by-side regime

Brazil has formally asked the OECD to acknowledge the country as eligible for the Pillar Two side-by-side (SBS) regime. According to officials from the Brazilian Federal Revenue Service, a response from the OECD is anticipated around mid-year. The request was publicly confirmed on 23 March by the head of the agency's International Relations Office.

The SBS approach is viewed as particularly beneficial for Brazilian multinationals. Brazil is the first jurisdiction – other than the United States – to submit an official application for recognition under this mechanism. At present, the safe harbour applies exclusively to US-parented groups.

Under the SBS rules companies headquartered in qualifying jurisdictions are exempt from two central elements of Pillar Two: the income inclusion rule (IIR) and the undertaxed profits rule. However, the regime does not remove the requirement to apply a qualified domestic minimum top-up tax (QDMTT). As a result, Brazil's own QDMTT (the Adicional da CSLL) would continue to apply to Brazilian-headed multinational groups.

The Brazilian tax authority also noted that it is still uncertain whether the OECD will request legislative adjustments in Brazil as a condition for granting recognition. For the moment, changes to Brazil's existing controlled foreign company rules (Tributação em Bases Universais) appear less likely. No short-term amendments are expected, and the introduction of an IIR in Brazil is not currently being considered.

Curaçao: Pillar Two strategy change

Curaçao's Ministry of Finance has announced a shift in its Pillar Two policy direction, confirming that the jurisdiction will not introduce a qualified domestic minimum top-up tax (QDMTT) at this stage. The decision reflects concerns that a domestic minimum tax could undermine the island's appeal to investors, particularly US-based multinational groups.

Instead of adopting a QDMTT, Curaçao intends to apply the income inclusion rule with retroactive effect from 1 January 2025. The implementation of the undertaxed profits rule will be deferred, as the Government expects limited practical benefit and anticipates significant challenges in administering and enforcing the rule.

Belgium extends first QDMTT and IIR deadlines to 30 September 2026

On 3 April 2026 the Belgian tax authorities announced another extension of the first-year filing deadlines for both the qualified domestic minimum top-up tax (QDMTT) return and the income inclusion rule (IIR) return. Both filings may now be submitted up to 30 September 2026.

QDMTT return

- For calendar-year groups with a 31 December 2024 year-end, the new deadline is 30 September 2026.
- For groups with fiscal years ending on or before 30 September 2025, the new deadline is 30 September 2026.
- For groups with fiscal years ending after 30 September 2025, the standard deadline applies (11 months after fiscal year-end).

IIR return

- For calendar-year groups with a 31 December 2024 year-end, the new deadline is 30 September 2026.
- For groups with fiscal years ending on or before 31 May 2025, the new deadline is 30 September 2026.
- For groups with fiscal years ending after 31 May 2025, the standard first-year deadline applies (18 months after fiscal year-end).

GloBE information return

The GIR deadline remains unchanged:

- For calendar-year groups (31 December 2024 year-end), the deadline is 30 June 2026.

- For groups with other fiscal year-ends, the standard first-year deadline applies (18 months after fiscal year-end for accounting periods beginning before 31 December 2024).

Implications for multinational groups

The extended deadlines for the QDMTT and IIR filings give taxpayers additional time to prepare their first Pillar Two submissions. At present, Belgium's electronic filing platform is not yet operational, and the finalised forms and technical specifications have not been released (although draft versions are available). Further procedural guidance will be issued by the Belgian authorities in due course.

Despite the extensions, taxpayers should continue progressing their Pillar Two compliance work. Importantly, the GIR deadline has not been postponed. For calendar-year groups, the GIR must still be filed by 30 June 2026, meaning that groups need to ensure that data for Belgian constituent entities is complete and ready for reporting.

Australia releases expanded guidance on application of Pillar Two minimum tax rules

The Australian Taxation Office (ATO) has released an updated set of materials explaining how Australia's global and domestic minimum tax (DMT) rules operate under Pillar Two. The expanded guidance, published on 12 March 2026, provides multinational enterprise (MNE) groups with additional clarity on scope, entity classification and compliance expectations.

A major feature of the update is a more detailed explanation of how Pillar Two interacts with Australia's tax consolidation regime. The ATO now provides guidance on identifying constituent entities within consolidated groups, allocating top-up tax, handling intra-group eliminations, and addressing issues such as misaligned fiscal years and restatements of prior-period financial information. The guidance also expands on the treatment of more complex structures – including joint arrangements, permanent establishments, flow-through entities and dual-resident entities – and clarifies how income, taxes and jurisdictional effective tax rates (ETRs) should be calculated.

The ATO also discusses the timing and impact of foreign income tax offsets, including how post-filing adjustments and amended foreign assessments may influence GloBE ETR outcomes and potential top-up tax liabilities. The update incorporates the OECD's safe harbour framework and outlines new filing obligations, including the GloBE information return and separate income inclusion rule, undertaxed profits rule and DMT returns.

The ATO stresses that MNE groups should prioritise data readiness, governance processes and system capability before the first filing cycle.

Maltese Government exempts constituent entities from Pillar Two filing obligations

The Maltese Government has issued an amendment to Subsidiary Legislation 123.212 – the European Union Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups. The amendment confirms that constituent entities located in Malta will not be required to submit a top-up tax information return to the Commissioner for Tax and Customs.

In addition, where relevant, Maltese constituent entities will also be relieved of the obligation to notify the Commissioner of the identity and jurisdiction of the entity responsible for filing the top-up tax information return on behalf of the group.

These changes apply to qualifying multinational enterprise groups and large-scale domestic groups for financial years beginning on or after 31 December 2023 (i.e. the 2024 financial year).

The full text of the European Union Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups (Amendment) Regulations, 2026 – introduced through Legal Notice 48 of 2026 on 20 February 2026 – is available in the Official Gazette.

02 OECD Tax Developments

General update on DPI MCAA

The OECD has continued to expand the list of jurisdictions participating in the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived Through Digital Platforms (DPI MCAA). According to the OECD's most recent published information, Austria and France signed the DPI MCAA on 17 March 2026 and 30 March 2026, respectively. This brings the total number of signatories to 35.

The purpose of the DPI MCAA remains unchanged from the OECD's original 10 November 2022 announcement: the agreement enables participating jurisdictions to automatically exchange information collected by digital platform operators regarding income earned by platform sellers in the sharing economy and the gig economy and from the sale of goods. The annual exchange of this data is intended to support both tax administrations and taxpayers in ensuring the accurate and efficient taxation of platform-derived income.

OECD Secretary-General Tax Report to G20 Finance Ministers and central bank governors (G20 United States, April 2026)

The OECD released its latest tax report on 16 April, outlining recent developments and emerging trends across several core areas: implementation of the global minimum tax and the broader BEPS agenda; the future international tax framework in a digitalised economy; expanding tax transparency initiatives; tax policy and economic growth; global mobility; and tax administration and certainty.

The report notes that Pillar Two implementation continues to advance worldwide, supported by new simplifications such as safe harbours and additional administrative guidance. Many jurisdictions have already enacted their rules or are close to doing so.

Momentum is also increasing around multilateral solutions for taxing the digital economy, with further changes expected as discussions progress. The report highlights the growing scope of international reporting frameworks, including the extension of transparency rules to real estate holdings and to crypto-assets under the Crypto-Asset Reporting Framework, which may lead to higher compliance obligations and greater scrutiny for taxpayers.

The OECD also draws attention to the rising prevalence of remote work and cross-border mobility, which can heighten permanent establishment exposure and create new compliance challenges. In parallel, tax administrations are making greater use of digital tools, data analytics and cross-jurisdictional information sharing, resulting in more sophisticated and coordinated audit activity.

03 European Commission Tax Developments

Commission calls on OECD to relaunch discussion on Pillar One and reveals upcoming actions on tax matters

Gerassimos Thomas, Director-General for Taxation and Customs Union at the European Commission, has confirmed that the Commission remains deeply engaged in international tax discussions, particularly those concerning the taxation of the digital economy. He noted that both the Commission and EU Member States have long been preparing for

either the Pillar One Multilateral Convention or, if necessary, domestic alternatives. Thomas emphasised that progress now depends on the OECD, calling for negotiations to be relaunched.

In terms of the Commission's own agenda, Thomas highlighted several forthcoming initiatives:

- Further work on Pillar Two implementation within the EU, including additional simplifications for in-scope groups. These proposals are expected to be released during summer 2026.
- Ongoing analysis of tax incentives related to housing, as well as measures connected to the Savings and Investment Union.
- Publication of two major studies, one examining the taxation of high-net-worth individuals and the other focusing on tax issues in the financial sector. The Commission does not intend to propose legislative measures on these topics.

Thomas outlined these priorities on 17 March 2026 during his opening remarks on the second day of the EU Tax Symposium in Brussels.

Commission presents proposal for EU Inc.: unlocking the full potential of the Single Market for Europe's entrepreneurs

From a tax perspective, the European Commission's EU Inc. proposal introduces a harmonised framework for EU-wide employee stock option plans (EU-ESO). Chapter VIII (Articles 78 and 79) sets out the tax treatment of warrants issued under these plans:

- Deferral of taxation: Income arising from warrants issued under an EU-ESO is not considered taxable at grant, vesting or exercise.
- Tax point on disposal: Taxation occurs only when the shares acquired through the warrant are sold.
- Taxable amount: The taxable income is the difference between the fair market value of the shares at disposal and their acquisition price. This amount is taxed under national law.
- Non-discrimination rule: Member States must ensure that warrants and resulting shares issued under an EU-ESO receive tax treatment at least as favourable as that applied to domestic employee stock options or similar instruments, provided all legal conditions are met.

The proposal will now be examined by the European Parliament and the Council, with the aim of reaching agreement by the end of 2026. Once adopted, the Regulation would apply 12 months after entry into force, allowing time for Member States and companies to prepare.

04 Belgium: Capital Gains Tax on Shares and Crypto-assets

Belgium has enacted new legislation introducing a capital gains tax on disposals of shares and crypto-assets. The tax applies at progressive rates ranging from 1.25% to 10%, depending on the circumstances. The reform also brings in a 10% withholding tax on certain financial instruments and insurance-based investment products.

05 India: Tax Authorities Relax Rigours of GAAR for Investments Acquired Before 1 April 2017

The Indian Central Board of Direct Taxes (CBDT) has issued a notification confirming that the general anti-avoidance rules (GAAR) will not apply to income arising from the transfer of investments acquired before 1 April 2017 — the "grandfathered" shares. The amendment and accompanying explanatory statement clarify that capital gains on disposals of such pre-2017 investments fall outside the scope of the GAAR. This clarification follows the Supreme Court's observations in its decision in *Authority of Advance Rulings (Income Tax) and Others v Tiger Global International II Holdings and Others* (Civil Appeal Nos 262, 263 and 264 of 2026), where the court noted that capital gains on grandfathered shares could still be subject to GAAR if they formed part of a broader abusive arrangement.

Supreme Court decision in *Tiger Global*

This decision marked a major shift in India's approach to treaty eligibility, substance and the GAAR. Key findings from the judgment include:

- A tax residency certificate (TRC) is not conclusive evidence of residency: The court held that a TRC is only an eligibility document, not conclusive proof of residence. It described the TRC as "non-decisive, ambiguous and ambulatory" and confirmed that tax authorities may conduct their own enquiry into substance and control.
- GAAR overrides treaty benefits: GAAR takes priority over treaty provisions. The court emphasised that what is grandfathered are investments, not arrangements, meaning that even pre-2017 structures may be reviewed if tax benefits arise after 1 April 2017.
- Indirect transfers are taxable in India: The court held that gains from selling foreign shares deriving substantial value from Indian assets are taxable in India and that the India–Mauritius treaty's grandfathering applies only to direct transfers of Indian shares.
- Commercial substance is critical: The taxpayer bears the burden of proving genuine commercial substance. The court stressed that longevity or documentation alone is insufficient where real control lies outside the treaty jurisdiction, and authorities will examine the "head and brain" of the arrangement over its form.
- Impermissible avoidance arrangements: Where prima facie evidence suggests that a structure was designed primarily to avoid tax, and the taxpayer cannot rebut this, the arrangement may be categorised as an impermissible avoidance arrangement under GAAR. Domestic law amendments enabling stricter scrutiny prevail over earlier circulars or rulings.

By issuing this notification the CBDT has effectively relaxed the stricter implications of the ruling and reassured foreign investors that historical structures will not face GAAR scrutiny, even as the *Tiger Global* judgment continues to shape India's broader substance-over-form and anti-avoidance approach.

06 Netherlands: Tax Administration Clarifies PE Definition Under Pillar Two Rules

The Dutch tax administration has released new guidance explaining how the concept of a "treaty permanent establishment" (verdragsvaste inrichting) should be interpreted for the purposes of Article 1.2(1)(a) of the Minimum Tax Act 2024 (Wet minimumbelasting 2024; MTA). Under the statutory definition, a PE qualifies as a treaty PE only where:

- the entity is regarded as having a permanent establishment in the source jurisdiction under the relevant tax treaty and
- the source jurisdiction attributes income to that PE and taxes it in a manner comparable to Article 7 of the OECD Model Convention.

The guidance addresses two specific interpretive questions relevant to determining whether PE income satisfies these conditions:

- whether the source jurisdiction must actually impose tax on the PE income under its domestic legislation and
- what form of taxation is required to meet the statutory standard.

On the first point, the tax administration clarified that it is not enough for the treaty to allocate taxing rights to the PE jurisdiction. The income must also be subject to tax under that jurisdiction's domestic rules.

On the second point, the tax administration stated that the income must be taxed on a net basis, consistent with the separate-entity approach embedded in Article 7 of the OECD Model. A gross-basis withholding tax would not satisfy this requirement. The taxation should also be broadly aligned with how resident taxpayers are taxed in that jurisdiction.

07 UK: Supreme Court Narrows Capital Allowances for Development-Stage Expenditure

The UK Supreme Court has unanimously found in favour of HMRC in the long-running capital allowances dispute culminating in *Ørsted West of Duddon Sands and Others v Commissioners for His Majesty's Revenue and Customs* [2026] UKSC 12. The taxpayers, who develop and operate offshore windfarms, had incurred substantial expenditure on environmental, geological and other site-specific studies that were essential for project design and for securing regulatory approvals. HMRC rejected claims for capital allowances on these costs, and the Supreme Court has overturned the earlier Court of Appeal ruling, holding that such studies do not amount to expenditure "on" the provision of the windfarms and therefore fall outside the scope of qualifying capital expenditure.

The court did not attempt to define the precise boundary between costs that do and do not relate to the provision of plant but concluded that Ørsted's development-stage studies were clearly on the non-qualifying side of that line. After the Court of Appeal's earlier decision, HM Treasury had paused its planned consultation on the tax treatment of development expenditure, and an updated consultation is now expected. The Supreme Court's narrow interpretation, combined with the remaining uncertainty around borderline cases, is likely to prompt closer scrutiny of development-phase costs on major infrastructure projects and may influence HMRC's approach more broadly. (See also "Direct Tax Cases Decisions UK Courts" in this issue.)

VAT Cases & VAT News

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VAT Cases

01 Supply of Services for Consideration and Taxable Amount: General Court Judgment

On 11 February 2026 the General Court issued its decision in ***Centrul Român pentru Administrarea Drepturilor Artiștilor Interpreți (Credidam) v Cristian General Serv SRL*** T-643/24 in relation to the interpretation of Articles 2(1)(c), 24(1), 25(a) and (c), 73 and point (a) of the first paragraph of Article 78 of the VAT Directive. The case involved Credidam, a Romanian collective management organisation responsible for collecting and distributing fees for copyright and related rights, and Cristian General Serv SRL (CGS), which operated a guest house. It was claimed that CGS communicated protected works (phonograms and audiovisual programmes) to the public without obtaining a licence. Credidam claimed that CGS owed fees, including VAT, for using protected works without a licence over a three-year period. Romanian law and related methodologies (Law on Copyright and Related Rights) require users who communicate protected works without a licence to pay three times the standard remuneration amount. Credidam tripled the fee that CGS would have been liable to pay if it had had a licence and considered that VAT should be charged on the total amount of that remuneration.

The regional court dismissed Credidam's claim and provided that CGS had not conducted any commercial activity during the period under review and had not communicated the protected works to the public. It also rejected Credidam's request to compel CGS to conclude a licence agreement, on the basis of the principle of freedom of contract and the closure of the guest house. Credidam appealed the decision, and in the course of the appeal proceedings the court referred two questions.

First, it sought clarification on whether the holders of related rights supply services for consideration when their protected works are communicated to the public by an unlicensed user, even though they cannot oppose such communication and their remuneration results from national law and related regulatory provisions. Second, it sought clarification on whether VAT should apply to the total remuneration, including the surcharge for unlicensed use.

With regard to the first question referred, the court emphasised that a supply of services for consideration exists when there is a legal relationship between the provider and the recipient, involving reciprocal performance where the remuneration received must be the actual consideration for the service supplied to the recipient, i.e. there must be a direct link between the service and the payment. It referred to the Advocate-General's opinion in the case, wherein he stated that the concept of "legal relationship…pursuant to which there is a reciprocal performance" must be given a broad interpretation. By reference to previous cases, the court stated that the mere use of a regulated service may give rise to a legal relationship between the person holding the rights enabling the supply of that service and the person who has used it. In considering the concept of "remuneration", it stated that the total absence of payment of the sums due does not constitute an obstacle to the finding of reciprocity of rights and obligations resulting from the economic transaction in question.

The direct link existed where Credidam acted on behalf of the rights holders under the legislative framework provided by the Law on Copyright and Related Rights. The court held that the unlicensed communication of protected works constitutes a supply of services for consideration under the VAT Directive where there is a legal relationship and a direct link between the supply made and the remuneration payable. It will be for the referring court to verify that the supply of services satisfies the criteria set out by prior case law.

With regard to the second question, the court had to determine whether VAT should be levied only on the remuneration that would have been payable to Credidam, on behalf of the holders of related rights, if the user of the protected works had had a licence, or whether it should be levied on three times that remuneration (as calculated by Credidam under the methodology provided for by the Law on Copyright and Related Rights).

The court noted from earlier case law that the taxable amount for the supply of services for consideration is the consideration actually received by the taxable person for that purpose. "That consideration constitutes the subjective value, namely the value actually received, and not an estimated value based on objective criteria".

In this case the increase in the remuneration payable by users of protected works who do not have a licence is the direct consequence of the unlicensed communication of those works (as per the provisions of the Law on Copyright and Related Rights). The court ruled that VAT applies to the total remuneration owed (namely, three times the price that the user would have been required to pay in the case of licensed communication to the public), including the surcharge for unlicensed use. It indicated that the surcharge is part of the "agreed price" and reflects the direct link between the service provided and the consideration received.

This ruling reinforces the principle that VAT is levied on the actual consideration received for a service, regardless of whether the transaction was lawful or not. It also demonstrates that a broad interpretation is given to the concept of supply of services for consideration, and therefore VAT is applied to a wide range of transactions that may include those covered by legal obligations or regulatory frameworks.

02 Right to Deduct Input VAT, and Formal and Substantive Conditions: General Court Judgment

The General Court published its judgment on 11 February 2026 in ***I. S.A. v Dyrektor Krajowej Informacji Skarbowej*** T-689/24. I. S.A. sought an advance tax ruling from the Polish tax authority in relation to the deduction of VAT on supplies of gas and electricity to it. The provisions requiring interpretation were Articles 167, 168(a) and 178(a) of the VAT Directive, together with the principles of neutrality of VAT, effectiveness and proportionality.

I.S.A. is a Polish company that operates as a clearing and settlement house for transactions involving gas and electricity. It is regarded as the purchaser and reseller of goods involved in stock exchange transactions and appears as such on the invoices. It is therefore obliged to pay input and output VAT. Purchases were made by I. S.A., and it incurred input VAT, but the invoices were received by I. S.A. only in the VAT period after the VAT period in which the purchases had been made. It requested an advance tax ruling to confirm whether it could deduct input VAT for those purchases made in a given VAT period, even if the invoices documenting those purchases were received in the following VAT period but before submitting the tax return for the earlier period.

The Polish tax authority denied this request on the grounds that the right to deduct VAT arises only when the taxable person holds the invoice during the VAT period in which the deduction is claimed (i.e. the formal conditions were not satisfied). I. S.A. argued that the Polish law was inconsistent with the VAT Directive. I. S.A. challenged the decision, and in considering the issues, the referring court had doubts regarding the possible incorrect transposition of the above-mentioned Articles into national law. Under the Polish provisions there is an additional condition for the right to deduct to arise – namely, the need to hold an invoice or customs document at the date the tax is settled, which means that the right of deduction is delayed.

The question referred was whether Articles 167, 168(a) and 178(a) of the VAT Directive, along with the principles of VAT neutrality, effectiveness and proportionality, preclude national legislation that prevents a taxable person from asserting their right to deduct input VAT for a period during which the substantive conditions for exercising that right were met, if they had not yet received the corresponding invoice during that period but received it before submitting the return.

The court reiterated the principles and rules around input VAT recovery and specifically indicated that the right of deduction is an integral part of the VAT scheme and in principle may not be limited if the material and formal requirements or conditions to which that right is subject are respected by taxable persons wishing to exercise it. In particular, that right is normally exercisable immediately in respect of all the taxes charged on input transactions. The court distinguished between the substantive conditions that must be satisfied (e.g. the taxable transaction must have occurred, and the goods/services must be used for taxable activities) and the formal conditions necessary for exercising the right of deduction (e.g. holding an invoice).

The court noted that the:

> “distinction between the substantive and formal conditions governing the right of deduction is important, since, according to settled case-law, the fundamental principles of VAT neutrality and proportionality require deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements”.

The court has also specified that non-compliance with formal requirements, which

may be remedied, is not sufficient to call into question the proper functioning of the VAT system. The right of deduction therefore arises independently of the holding of an invoice, which amounts to only a formal condition for the exercise of that right.

The Polish provisions established an additional condition for the right of deduction to arise: the requirement to hold an invoice or customs document at the date the tax is settled in respect of the period for which that right is exercised, even if, on that date, the substantive conditions, including the carrying out of the taxable transaction, were satisfied.

The court reiterated that the right to deduct VAT must, in principle, be exercised during the same tax period in which it arises, provided the taxable person holds the invoice at the time of submitting the tax return.

The court stressed that VAT neutrality ensures that taxable persons are relieved of the burden of VAT in carrying on their economic activities. Delaying the right to deduct VAT until the next tax period, even when the invoice is received before submitting the return, would be in violation of this principle. The court also found that the Polish law imposes an unnecessary and disproportionate restriction on the right to deduct VAT, as it creates a financial burden on taxable persons by delaying the deduction.

The court held that Articles 167, 168(a) and 178(a) of the VAT Directive and the principles of VAT neutrality and proportionality:

> "the principles of VAT neutrality and of proportionality must be interpreted as precluding national legislation under which a taxable person may not assert his or her right to deduct input tax in a return submitted for a period in which he or she satisfied the substantive conditions for exercising that right if, during that period, he or she had not yet received the corresponding invoice, even though he or she did receive the invoice before submitting the return".

With reference to Article 273, the court noted that although Member States can impose measures to ensure the correct collection of VAT and prevent evasion, such measures must comply with the principle of proportionality and cannot systematically impede the right of deduction.

The judgment reinforces the principle that the right to deduct VAT arises when the tax becomes chargeable, and holding an invoice is only a formal requirement for exercising that right.

03 Multi-purpose Vouchers – Virtual Money of an Online Video Game: CJEU Judgment

The Court of Justice of the European Union delivered its judgment on 5 March 2026 in the case of ***MB "Žaidimų valiuta" v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos*** C-472/24. The case concerned the interpretation of Article 135(1)(e) of the VAT Directive, which provides exemption for:

> "transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest".

MB Žaidimų valiuta's (MB) primary activity consists of buying and reselling the virtual currency of an online video game called Runescape ("Gold") in exchange for traditional currencies. Before creating an account in the Runescape game, players must accept rules

according to which neither ownership of their own account nor ownership of the goods connected with the game (including "Gold") are transferred to them. The "Gold" itself confers certain rights in the online video game and obliges the game operator to provide certain services.

After an audit, the tax authority treated the exchange transactions carried out by MB as comprising taxable supplies of services. MB challenged the decision and argued that "Gold" should be classified as a virtual currency and that, as a result, transactions involving the exchange of "Gold" for traditional currencies should be exempt from VAT (following the *Hedqvist* C-264/14bitcoin case) or, in the alternative, that the "Gold" should be regarded as multi-purpose vouchers (MPV). The tax authority argued that because "Gold" can be used only in an online video game, it cannot be classified as a virtual currency and therefore the economic activity carried out by MB is not a virtual currency trading activity or a financial service. It also argued that "Gold" cannot be classified as a MPV as it is issued by the game creator and not by MB.

The questions referred were whether Article 135(1)(e) of the VAT Directive must be interpreted as meaning that transactions consisting in the exchange, for payment purposes, of real currency for units of virtual money that can be used only in an online video game are covered by that VAT exemption. If not, must Article 30a(1) and (3) be interpreted as meaning that those units of virtual money, where they give access to certain functionalities in that game, constitute a "voucher" – in particular, an MPV – with the result that VAT must be levied on the margin.

In the *Hedqvist* case the court held that transactions involving non-traditional currencies (i.e. currencies other than those that are legal tender in one or more countries), in so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions. The exemption may cover transactions in non-traditional currencies where two cumulative conditions are satisfied: the currencies have been accepted by the parties to a transaction as an alternative to legal tender, and those currencies have no purpose other than to be a means of payment.

The court noted that the "Gold" has no purpose other than to be used within an online video game and that it therefore does not constitute a currency accepted outside that game as a means of payment to obtain real goods or services. The conditions of use of that game provide that the products linked to the game, including "Gold", do not belong to the players. Therefore, subject to verification by the referring court, "Gold" does not satisfy the two conditions and the exemption cannot apply.

Article 30a(1) imposes two cumulative conditions for an instrument to be classified as a voucher. First, the voucher must be an instrument in respect of which there is an obligation to accept it as consideration or part-consideration for a supply of goods or services. Second, the goods or services to be supplied or the identities of their potential suppliers must be indicated either, on the instrument itself, or in related documentation, including the terms and conditions of use of that instrument.

The Advocate-General had observed that because it constitutes one of the elements of an online game, "Gold" is in itself akin to an electronic service forming an integral part of that game. The court noted that "Gold" constitutes the consumable benefit, i.e. the service received by the beneficiary and used as such by the beneficiary in the online video game. Therefore, the first condition is not satisfied as "Gold" does not serve to procure a subsequent consumable benefit in the form of another, as yet unspecified, service and cannot be regarded as a voucher. As it is not a voucher, it cannot be classified as an MPV. The court held that "Gold" must be

classified as an electronic service and that the taxable amount of transactions consisting of the exchange, for payment purposes, of currencies for that "Gold" must be the full consideration received for its sale, not only the margin.

The case specifically dealt with virtual money used exclusively in online games but not virtual currencies, which may have broader applications outside of such games. As virtual currencies evolve, we may see further cases on this issue.

04 Vouchers – Customer Loyalty Programme: CJEU Judgment

On 5 March 2026 the CJEU published its judgment in the case of ***Skatteverket v Lyko Operations*** *AB* C-436/24, which related to the interpretation of Articles 30a (voucher provisions) and 73a (taxable amount provision) of the VAT Directive. Lyko Operations AB (Lyko) sells haircare and beauty products in physical shops and online. Lyko plans to develop a customer loyalty programme and sought a ruling from the Swedish tax authority on how the programme should be treated for VAT purposes.

Lyko's customers (private individuals) will be able to opt in to the programme at no extra cost and will receive points for each purchase of products from Lyko's ordinary range, which they can then redeem for items in the "points shop". Points will be redeemable only in connection with a new purchase of products from the ordinary range, and the items in the points shop will be regularly reassorted and include items from that range. The products will mainly be of low value and will be subject to different VAT rates. Each product will be priced in points, and the pricing will be such that customers will be able to obtain products from the points shop for a value equivalent to about 2% to 10% of their initial purchase. Each point redeemed by a customer will be linked to the total purchases made in the month in which the point was accrued. The points will not be redeemable for money or purchasable for money, and points will be personal and non-transferable. Products in the points shop will also not be available in return for a combination of points and payment in money. Any points acquired will be lost if not used within two years.

Lyko sought confirmation of whether the loyalty programme entailed the supply of a "voucher" to its customers and, more specifically, a "multi-purpose voucher". It also sought clarification of how, if it is classified as a voucher, the taxable amount should be calculated when the points are redeemed in return for products in the points shop, as the customer will not make any specific payment for the voucher and that voucher will not be assigned any monetary value. The tax authority confirmed that the loyalty programme did not entail the transfer of vouchers to customers, as the points issued under that programme had no specific monetary value and were awarded to customers for no consideration.

Both parties brought an action to the Supreme Administrative Court, which referred two questions to the CJEU. The first was whether an instrument in the form of points awarded under a customer loyalty programme – where customers earn points based on the amount spent on purchases and can use those points to obtain additional goods from the seller's range when making a future purchase –constitutes a "voucher" as defined in Article 30a. The second question was how, if the points are considered "vouchers", the taxable amount under Article 73a should be determined when the points are redeemed for goods from the seller.

Article 30a defines what a voucher (as an instrument) is for VAT purposes and essentially sets out two cumulative conditions. The first condition is that there is an obligation to accept the voucher as consideration or part-consideration for a supply of goods or services. The second condition is that the voucher itself

or related documentation (including the terms and conditions of use) indicates the goods or services to be supplied or the identities of the potential suppliers.

In this case it appeared that the second condition was satisfied, so the question is whether the first condition is also satisfied, i.e. whether there is an obligation to accept the instrument as consideration or part-consideration for a supply of goods or services. The court noted that to satisfy the first condition there has to be an obligation for the operator presented with the instrument to accept it as consideration or part-consideration for a supply of goods or services.

Here the points awarded to Lyko's customers are to be used in its points shop, in combination with a new purchase of products from Lyko, and the points allow those customers to obtain products of low value that Lyko offers for sale. Therefore, there is no obligation for the supplier to accept the points as consideration for a supply of goods. The court therefore held that the instrument does not appear to satisfy one of the two cumulative conditions necessary for it to be classified as a "voucher" within the meaning of point 1 of Article 30a of the VAT Directive. As the instrument does not meet the definition of voucher, it is neither a single-purpose voucher nor a multi-purpose voucher, within the meaning of points 2 and 3 of Article 30a of that Directive. The second question did not need to be answered based on the answer to the first question.

This case highlights the importance of an instrument satisfying the cumulative conditions set out in the legislation in order for it to be considered a voucher in the first instance for VAT purposes. Once it is considered to be a voucher, then further consideration is required to ascertain whether it is a single or multi-purpose voucher.

05 Deduction of Input VAT Due in Respect of Intra-Community Acquisition: CJEU Judgment

The Court of Justice of the European Union (CJEU) published its judgment on 12 March 2026 in ***Aptiv Services Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*** C-521/24, in relation to the refusal by the Hungarian tax authority of the right to deduct input VAT for intra-Community acquisitions (ICAs) of goods. Aptiv Services Hungary Kft. (Aptiv) received invoices in 2021 for ICAs made between 2016 and 2018. Owing to the late receipt of the ICA invoices from its suppliers and late registration of the invoices in its accounts, Aptiv exercised its right to deduct VAT in its 2021 tax returns (when it received the invoices). The Hungarian tax authority refused the input VAT deduction on the basis that the right to deduct could be exercised only through a self-correction procedure for the tax periods when the ICAs occurred. The self-correction period for 2016 and part of 2017 had, however, expired. Aptiv argued that the substantive conditions for the right to deduct VAT were satisfied and that the fact that certain formal requirements had not been fulfilled could not deprive it of that right.

The court had to consider the interpretation of Articles 168(c), 178(c) and (d) and 179–182 of the VAT Directive, in conjunction with the principles of fiscal neutrality, effectiveness and proportionality. The referring court asked the CJEU (the latter reformulated the questions) whether the VAT Directive provisions and the principles of fiscal neutrality, proportionality and effectiveness allow national legislation and practices to deny VAT deductions when the taxable person exercises their right of deduction in a later tax period due to delayed receipt of invoices, provided the right is exercised in good faith and within the limitation period.

In considering the questions, the court reiterated a number of principles: the right to deduct VAT is a fundamental principle of the VAT system and should not be limited if substantive conditions are met; a right to deduct input VAT arises at the time when the deductible tax becomes chargeable; and the right to deduct VAT is subject to compliance with the substantive and formal conditions laid down by the VAT Directive.

In the case of ICAs, VAT becomes chargeable on issue of the invoice, or on expiry of the time limits provided for in the VAT Directive. The substantive conditions to be satisfied are that the ICAs must have been effected by a taxable person, that person must also be liable for the VAT payable on those ICAs and the goods in question must be used for the purposes of that person's taxable transactions.

The formal requirements relate to matters such as the obligations relating to accounts, invoicing and filing returns. Holding a valid invoice is a formal condition for input VAT recovery. The court noted that Article 167 provides that the right to deduct VAT arises at the same time as the tax becomes chargeable, but Article 178 provides that the right can be exercised only when the taxable person holds an invoice. Therefore, two cumulative conditions have to be satisfied: the right to deduct VAT has arisen, and the taxable person is in possession of the relevant invoices.

Under Articles 180 and 182 the right to deduct may be accepted even where the right was not exercised in respect of the tax period during which that right arose. The court stated that this is subject to compliance with the conditions and the procedures laid down by national legislation. In Aptiv's case the two cumulative conditions were satisfied only in 2021 (subject to national court's verification), but under the Hungarian rules the deduction cannot be taken in the VAT period in which the invoices were received.

Hungarian VAT legislation requires taxable persons to use a self-correction procedure to deduct VAT for ICAs if invoices are received late, but this procedure has a time limit. With reference to the principle of neutrality, the court noted that this principle requires that input tax deduction must be allowed if the substantive requirements are met, even if formal requirements are not fully complied with, provided the tax authority has sufficient information to determine that the substantive conditions have been met.

The court held that the exercise of the right to deduct VAT relating to ICAs in the tax period during which the taxable person, acting in good faith and within the applicable limitation period, actually received the invoices necessary for the exercise of that right appears to comply with Articles 168(c), 178(c) and 179 of the VAT Directive, read in the light of the principle of fiscal neutrality, even where that tax period is subsequent to that during which those acquisitions were made and the right to deduct VAT is exercised beyond the period within which the self-correction procedure provided for by national law could be implemented.

Aptiv was unable to use other procedural mechanisms, such as self-correction or special refund procedures, owing to the time limitations or the rejection by the tax authority.

The court also considered the principles of equivalence and effectiveness and indicated that Member States may impose limitation periods for VAT deduction but such limitations must comply with these principles. The principle of effectiveness requires that national rules do not make the exercise of the right to deduct VAT practically impossible or excessively difficult. Refusing VAT deduction solely because it was exercised in a later tax period, when the taxable person received the necessary invoices, the court noted, violates the principle of effectiveness.

The court indicated that national measures aimed at preventing tax evasion must not undermine the right to deduct VAT or the neutrality of VAT, especially when the

taxable person acts in good faith and within the limitation period. It ruled that the VAT Directive and the principles of fiscal neutrality, proportionality and effectiveness preclude national legislation or practices that refuse VAT deductions in cases when the taxable person acts in good faith and within the limitation period.

This case highlights the importance of ensuring that VAT rules do not impose excessive formalities that hinder or prevent the exercise of the right to deduct VAT, provided the substantive conditions are met. This would be subject to the taxable person acting in good faith and claiming the refund within the statutory time limits.

06 VAT Refund Orders/VAT Registration/Second-Hand Goods Margin Scheme: TAC Determinations

Determination date	TAC reference	VAT provisions at issue	Matter at issue	TAC findings
12/1/2026	15TACD2026	Sections 3, 9(1), 24(1), 84 and 87 VATCA 2010 (and equivalent provisions of the VAT Directive); Reg. 20(2) VAT Regulations 2010; Article 8 of NI Protocol	VAT assessment raised on the basis that the appellant was not entitled to apply the margin scheme to the importation of second-hand mobile phones and other electronic goods to the State	The appellant did not meet the burden of proof to demonstrate its compliance with the requirements of the margin scheme and its entitlement to apply the scheme to the goods sourced from the supplier
15/1/2026	21TACD2026	Sections 5(1)(a) and 65 VATCA 2010	Refusal to grant VAT registration number	The appellant demonstrated the capacity to trade from the State; pursuant to s5 the Commissioner found that the appellant is an accountable person
03/02/2026	36TACD2026	Sections 2, 4(1), 5, 6, 86 and 103(1) VATCA 2010; SI 201 of 2012, VAT (Refund of Tax) (Flat-rate Farmers) Order 2012	Refusal to repay to the appellant (flat-rate farmer) VAT incurred on acquisition of a three-phase power take-off (PTO) generator	The outlay on the PTO generator was not outlay relating to “construction”, “extension”, “alteration” or “reconstruction” of the dairy building, and refusal to grant the refund was upheld

Determination date	TAC reference	VAT provisions at issue	Matter at issue	TAC findings
04/02/2026	37TACD2026	Sections 2, 4(1), 5, 6, 86 and 103(1) VATCA 2010; SI 201 of 2012, VAT (Refund of Tax) (Flat-rate Farmers) Order 2012	Refusal to repay to the appellant (limited company; flat-rate farmer) VAT incurred on acquisition of a three-phase power take-off (PTO) generator	The outlay on the PTO generator was not outlay relating to "construction", "extension", "alteration" or "reconstruction" of the dairy building, and refusal to grant the refund was upheld
25/02/2026	41TACD2026	SI 428 of 1981, Value Added Tax (Refund of Tax) (No. 15) Order, 1981	Refusal of a claim made for a refund on the purchase of "qualifying goods" for the use of persons with a disability	The domestic wastewater treatment system did not meet the requirements of a "qualifying good" for the purposes of the VAT Refund Order 1981

VAT News

Ireland

Revenue eBrief No. 035/26, "Emergency Accommodation and Ancillary Services"

The Tax and Duty Manual (TDM) has been updated to reflect the cancellation of all waivers of exemption (under Finance Act 2025 all waivers of exemption were cancelled with effect from 23 December 2025).

Revenue eBrief No. 059/26, "How to Protect Your Business from Becoming Involved in VAT Fraud"

The TDM has been updated under section 2 to provide updated guidance in relation to examples of actions that can be taken in carrying out due diligence tests when establishing a trading relationship with a supplier or a customer.

Revenue eBrief No. 086/26, "VAT Treatment of Guest and Holiday Accommodation"

This eBrief contains updates in relation to two TDMs after amendments were made to the Value-Added Tax Consolidation Act 2010 by Finance Act 2025. The TDM on the "VAT Treatment of Guest and Holiday Accommodation" has been updated to include guidance on multiple supplies arising from the application of second reduced rate of VAT to restaurant and catering services. The 9% rate will apply with effect from 1 July 2026. The TDM on the "VAT Treatment of Restaurant and Catering Services" has been updated to highlight that the second reduced rate of VAT applies to such services with effect from 1 July 2026.

EU

ViDA

On 3 March 2026 the Group on the Future of VAT held its 51st meeting, wherein updated explanatory notes on the three strands of the VAT in the Digital Age (ViDA) package were discussed. The minutes outline the various issues discussed under each strand, as the explanatory notes are still in draft form. They also indicate that an online joint Group on the Future of VAT (GFV)/VAT Expert Group (VEG) meeting will take place on 25 June 2026 to discuss new versions of the explanatory notes. A last online joint GFV/VEG meeting is planned for 19 November 2026 to finalise the explanatory notes (for publication in 2027). An online joint GFV/VEG meeting is also planned on 28 May 2026 (TBC) to present the studies on the challenges of VAT beyond ViDA and on financial services.

Electronic invoicing in public procurement

The European Commission has launched a public consultation on the revision of Directive 2014/55/EU on electronic invoicing in public procurement. The consultation invites stakeholders to provide feedback on possible measures to update the current framework.

> "The revision will explore ways to improve the harmonisation and interoperability of eInvoicing, streamline processes and reduce administrative burdens for businesses operating across borders. The initiative aims to ensure a future-proof and fully interoperable eInvoicing framework that better supports both public administrations and businesses."

The deadline to provide feedback is 10 June 2026.

eInvoicing standard

CEN, which is the EU National Standard Body, approved the revised ViDA-aligned European eInvoicing standard EN 16931-1:2026. This EN standard sets out the technical specifications for the content and format of eInvoices.

Investigative bodies

On 5 May 2026 the Council of the European Union provisionally agreed to strengthen cooperation with EU investigative bodies the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF). The new framework will give EPPO and OLAF more direct access to key VAT data on cross-border business transactions in the EU, including information held by Eurofisc, the EU's anti-VAT fraud network. The new rules take the form of a regulation amending Council Regulation 904/2010 on administrative cooperation and combating VAT fraud. Once the European Parliament has adopted its opinion on the file, the Council will proceed to formally adopt the new rules.

Accounting Developments of Interest

Aidan Clifford
Advisory Services Manager, ACCA Ireland

Charities Regulator Issues Internal Control Guidelines

Last year the Charities Regulator published updated guidance on internal financial controls for charities. The guidance provides some practical checks and processes to help charities to manage their finances and protect the funds entrusted to them. To make the guidance easier to use, the Regulator has now published an internal financial controls checklist template that charities can download and use. The checklist is available in Word format, so charities can adapt it to suit their own needs.

Registering as ACSP in the UK with Companies House

Companies House in the UK has a plan that anybody filing with it would have their identity verified before filing. This would include third parties filing on behalf of others, such as accountants filing for their clients. This was to be achieved by requiring all 7m UK directors to be individually identified and all third-party agents filing on behalf of UK companies to register as an ACSP with Companies House, with registration requiring identification of the principals running the ACSP.

Accountants wishing to file annual returns or other returns with Companies House as an agent for their client must therefore register as an ACSP. New guidance has been issued on the process for registering. The deadline was postponed and is now “no earlier than November 2026”.

However, the issue with registering when the applicant does not have a business address in the UK is still not resolved at the time of writing. The profession continues to lobby for a change in the regulations to allow Irish-resident agents to register as an ACSP, and in the meantime the directors of a UK company can file their own returns, under the guidance of an accountant, without the use of an ACSP.

The State of the Irish Economy

The Department of Finance and the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation jointly published the Annual Progress Report 2026, which was widely reported on in the media. Most of the report is caveated with an assumption that the Middle East war would be “a short and fairly contained conflict, with relatively limited lasting damage to energy infrastructure”, a brave assumption in hindsight. Based on that assumption, inflation is projected to be 3.3% and modified domestic demand is projected to increase by around 2% this year, with employment expanding by 1.6%. However, under the “severe scenario” assumption, annual inflation is projected to be 4.6%, potentially reaching 6.5% in Q4 of 2026.

EFRAG Publishes Sustainability Report (VSME Based)

The European Financial Reporting Advisory Group (EFRAG) has published its first Sustainability Report, covering 2025. Prepared under the Voluntary Standard for SMEs (VSME), this report presents the EFRAG's environmental, social and governance (ESG) performance. It was prepared using the VSME Digital Template and Converter, developed by the EFRAG Secretariat in 2025.

In related news, the credit union trade associations in Ireland have produced a VSME report example for credit unions – see this link.

The EFRAG has also launched a series of three educational videos to support SMEs in complying with the VSME disclosure requirements.

AML Factsheet

Accountancy Europe has issued a high-level factsheet on the Sixth Anti-Money Laundering Directive. The Directive mostly comes into effect next year, but the exact requirements will depend on the transcription of the Directive into Irish law.

UK Audit and FRC News

The UK's Financial Reporting Council (FRC) has issued new guidance to support auditors in applying auditing standards in a more proportionate and efficient way for small and medium-sized enterprises (SMEs). The FRC is also planning to develop a "technology sandbox" to enable smaller audit firms to explore the use of artificial intelligence (AI) in corporate reporting, and to establish a new working group with the professional bodies to promote more consistency in how audits of SMEs are supervised.

Other developments at the FRC include:

- A change is being introduced to its audit supervisory model in the UK. The new approach places more emphasis on a firms' systems of quality management.
- It has published updated guidance on "comply or explain" reporting by companies that choose to depart from provisions of the UK Corporate Governance Code.
- Guidance was issued on audit firm adoption of emerging AI technologies – see this link.

Small Self-Administered Pension Schemes

The derogation for one-member arrangement pension schemes ended on 21 April 2026. This means that such schemes now have to appoint a risk and internal audit function, and there are minimum experience and qualification requirements for scheme trustees, additional investment rules and risk assessment requirements. This will render most one-member schemes uneconomic and force them to transfer to a master trust or similar. See this link.

IFRS Newsletter

The March newsletter from the International Financial Reporting Standards Foundation (IFRS Foundation) is available at this link. It includes examples on reporting uncertainties in financial statements and a new accounting model to reflect how financial institutions manage interest rate risk. The International Sustainability Standards Board is also featured in the newsletter, with articles looking at amendments to IFRS S2 Climate-related Disclosures and additional tools to assist in IFRS sustainability reporting.

Auditing and Assurance

Chartered Accountants Ireland published Guidance for Audit Evidence and Documentation. The guide discusses many of the issues that are arising in practice, including compliance with International Standard on Quality Management 1, risk assessment, evidence of challenge and professional scepticism, auditing a construction industry client, group audits and statutory duty confirmations.

Fraud

The UK National Crime Agency's latest SARs in Action e-zine discusses how payment diversion fraud in property sales and company impersonation fraud work. Company impersonation fraud is how fraudsters attempt to gain credibility by misusing well-known accountancy brand names. Examples include using professional service firms' addresses as a registered office for suspect companies without permission, faking audit reports and filing these with financial statements at Companies House. Fraudsters are also known to use logos and names of accountants on investment prospectuses to give the impression that the firm had provided assurance about the claims made about the projected returns and/or existence of the assets backing the "investment product". A case is discussed where the fraudsters set up a domain that allowed them to create both a website and email addresses that used a variation of the name, and the real logo, of a large accounting firm.

Artificial Intelligence

The Institute of Chartered Accountants of Scotland has published research titled Generative AI and Professional Judgement in Accounting. The research looks at how a mid-tier accounting practice used AI and how it managed this process. Included are examples of the use of AI in identification of acquisition targets, internal audit benchmarking, review of board minutes in an audit assignment and extracting information from Companies House.

The Chartered Institute of Internal Auditors has published Artificial Intelligence and Internal Audit: Opportunities, Risks and Future Directions. The paper includes an overview of representative use cases demonstrating practical application of AI by internal audit professionals. It also looks at managing issues such as "hallucinations", variability and output reliability, as well as assurance over AI use.

Implementation of EU Law in Ireland

Information on how EU law is implemented in Ireland, the transposition of Directives and a list of all 2026 pending transpositions are available at this link.

Financial Conditions of Credit Unions, 2025

The Central Bank of Ireland published the annual Financial Conditions of Credit Unions Report for 2025. It provides a picture of a sector in good health and showing resilience in the face of systemic shocks and heightened volatility in recent years. The publication aims to inform credit union boards and management in carrying out their own strategic analysis and decision-making.

IFRS 18 Endorsed by European Union

The new accounting standard has been issued by the International Accounting Standards Board to improve how companies present and disclose information in financial statements. It replaces IAS 1 and introduces defined categories in the statement of profit or loss (operating, investing, financing), requires disclosure of management-defined performance measures, and enhances guidance on aggregation and disaggregation. The aim is to improve comparability, transparency and consistency across companies' financial reporting. The new standard is effective for periods beginning on or after 1 January 2027 (early application is permitted). See this summary of the requirements.

IAASA Review of Financial Statements

The Irish Auditing and Accounting Supervisory Authority (IAASA) has published a paper summarising financial reporting examinations completed in 2025 and outlining key issues raised with companies as part of its corporate reporting supervision. The examinations covered the annual and halfyearly reports of issuers listed primarily on Euronext Dublin. Bank of Ireland Group plc, Barclays Bank plc, Cairn Homes plc, FBD Holdings plc, Glanbia plc, Kenmare Resources plc, Kerry Group plc and Kingspan Group plc are some of the household names that were included in the reviews. A total of 28 voluntary undertakings were secured from the companies reviewed.

Amendments to FRS 102

Some companies use "adapted" formats for their FRS 102 financial statements, which allow them to closely align the FRS 102 formats to IFRS formats. However, IFRS has changed after the introduction of IFRS 18, and the UK's Financial Reporting Council has issued amendments to FRS 102 to reflect these changes. Companies that do not choose to adapt their financial statement formats under FRS 102 will not be impacted by these amendments.

Digital Operational Resilience Act (DORA)

DORA is a European Union Regulation that requires financial institutions to strengthen their IT security and operational resilience. It requires banks, insurers and financial firms to manage cyber risks, report incidents, test digital resilience and oversee third-party technology providers to ensure that the financial system remains stable during disruptions. However, a simple, 50-word

summary of the requirements belies the enormity of the task that DORA requires a financial institution to undertake.

To assist companies with their DORA compliance journey, the Central Bank of Ireland held a DORA Register of Information (RoI) Collection 2026 Industry Briefing" session regarding the upcoming 2026 Register of Information preparation and submission process. Briefing slides and a recording from this session are at this link. There is also a Register of Information website, which should assist in achieving DORA compliance.

Review of Professional Accounting Bodies' Governance Frameworks

The Irish Auditing and Accounting Supervisory Authority has reviewed the governance arrangements for the accounting bodies in Ireland. See PABs' Governance of Regulatory Frameworks.

Private Equity Investment in Accountancy

Small practices are usually sold to an internally grown replacement employee, a larger practice or, increasingly, a "consolidator". Once a practice exceeds a certain critical mass, the additional option of selling to private equity arises. The International Federation of Accountants released new global research analysing the growth of private equity investment in professional accountancy firms and its potential implications for the future of the profession.

IAASA Audit Monitoring Outcomes

The Irish Auditing and Accounting Supervisory Authority (IAASA) publishes reports on the quality assurance review of firms that audit public-interest entities. There are seven firms that perform statutory audits of such entities in Ireland: BDO, Deloitte, EY, Forvis Mazars, Grant Thornton, KPMG and PricewaterhouseCoopers. The most common areas for improvement noted in the reviews were in respect of engagement quality reviews and the audit of financial statement disclosures. The IAASA undertook 24 (2024: 31) inspections of individual audit files in these seven firms in 2025. Of these, 21 (2024: 25) were graded as good audits, three (2024: five) required improvement, and none (2024: one) required significant improvement. Read the full report at 2025 QAR Reports – IAASA.

Audit Exemption Thresholds in Europe

Accountancy Europe published analysis and findings regarding audit exemption thresholds in Europe. The research looks at the implementation across Europe of the recent Directive (the Commission Delegated Directive (EU) 2023/2775) increasing the exemption limits. Ireland's limits are as follows.

	Balance sheet	Turnover	Employees
Single company	€7.5m	€15m	50
Group	€7.5m net; €9m gross	€15m net; €18m gross	50
EU maximum	€7.5m	€15m	50

Thresholds in other countries range from Finland's three or fewer employees, turnover of €200,000 and balance sheet of €100,000 to those of Denmark and the Netherlands, which, like Ireland use the EU maximum limits. The research notes that some EU countries have reduced limits but offer the option of an audit or an "extended review" and then have an absolute requirement for audit above a certain limit. The UK is noted as setting its limits at £8.7m for balance sheet, £17.5m for turnover and 50 employees.

Large Energy User Action Plan

The Minister for Enterprise, Tourism and Employment, Peter Burke TD, and the Minister for Climate, Energy and the Environment, Darragh O'Brien TD, have published a Large Energy User Action Plan (LEAP). The core of the strategy is to locate new large energy users, such as semiconductors, pharmaceuticals, precision engineering and data centres, near renewable energy sources.

Sustainability Reporting by Companies

The European Securities and Markets Authority has published a thematic note on sustainability-related reporting by companies. The paper calls for four reporting principles to be followed when undertaking sustainability reporting: accurate, accessible, substantiated and up to date. It also lists examples of good and poor reporting.

Guide to Employing Part-Time Employees

Minister Alan Dillon has signed a revised Code of Practice on Access to PartTime Working into law. The updated code provides practical guidance to help employers and employees agree parttime arrangements that support flexible, inclusive and modern workplaces.

UK Sustainability Assurance News

The UK's Department for Business and Trade has published the outcome of its consultation on proposals for an oversight regime for assurance of sustainability-related financial disclosures. The UK appears to be proposing that anybody providing sustainability assurance be required to be regulated and supervised. In Ireland, by contrast, only public-interest entity (PIE) sustainability assurers will be regulated and supervised.

EU's Anti-Money Laundering Authority

The Anti-Money Laundering Authority (AMLA) launched a number of consultations on its proposed new rules for AML supervision in Europe, including in the non-financial services sector, which includes accountants in practice. The consultations can be accessed online via the AMLA's Public Consultations Webpage. To remind readers, the AMLA is the new single EU AML regulator and will be responsible ultimately for how accountants and tax advisers will be regulated for AML and, more immediately, how the financial services sector is regulated for AML.

The AMLA has also launched a data collection exercise to test risk assessment models for the financial sector. This exercise will allow for it to select up to 40 EU financial institutions to enjoy direct supervision from the AMLA, while the remaining, smaller financial institutions will be regulated by the various national regulators across the EU, which will themselves be supervised by the AMLA. There is more detail about the AMLA's plans in its Single Programming Document (SPD) for 2026–2028.


Legal Monitor

Jessica Lewis
Senior Foreign Registered Lawyer, Arthur Cox
Mary Dineen
Tax Director, Arthur Cox

Selected Acts Signed into Law from 1 February to 30 April 2026

No. 1 of 2026: Credit Review Act 2026

The purpose of the Act is to provide for the establishment of a body to be known as An tSeirbhís um Athbhreithniú Creidmheasa and to provide for its functions; the review by that body of certain credit decisions; the appointment of a chief executive officer of that body to be known as the Credit Reviewer; the repeal of s210 of the National Asset Management Agency Act 2009 and the revocation of guidelines issued under that section; consequential amendments of other enactments; and related matters.

No. 3 of 2026: Residential Tenancies (Miscellaneous Provisions) Act 2026

The purpose of the Act is to require the provision of certain information to a tenant and the Residential Tenancies Board on the commencement of a residential tenancy; to oblige tenants to allow access to a dwelling for purposes connected with an intended transfer of the dwelling; to make provision in relation to the setting of rents under residential tenancies; to provide for, and limit, the circumstances in which landlords can terminate certain tenancies of dwellings, including during and at the end of a tenancy of minimum duration; to provide for the frequency with which rent reviews may occur; to require certain information to be included in the residential tenancies register and the published register; to provide for the sharing of certain information by the Residential Tenancies Board with the Minister for Social Protection, the Revenue Commissioners (and, in this regard, the Revenue Commissions may request in certain circumstances that the Residential Tenancies Board supply them with information, including tax reference numbers, of the owner, landlord or tenant of a dwelling where the Revenue Commissions consider that it is necessary and proportionate for the performance by them of their functions) and Sustainable Energy Ireland - the Sustainable Energy Authority of Ireland; to repeal certain provisions of the Residential Tenancies Act 2004; for those purposes to amend that Act; to provide for certain changes in relation to the eligibility for financial contributions under the Civil Law (Miscellaneous Provisions) Act 2022; for those purposes to amend that Act; to amend provision in relation to short-term letting constituting material change in use requiring development consent; for that purpose to amend the Planning and Development Act 2000 and the Planning and Development Act 2024; and to provide for related matters.

No. 6 of 2026: National Oil Reserves Agency (Amendment) Act 2026

The purpose of the Act is to reduce the levy on petroleum products from €0.02 to €0.001 per litre from 1 April 2026 to 1 June 2026. The Act amends the rate of levy under s37 of the National Oil Reserves Agency Act 2007 and allows for that rate to be extended for a further period by order of the Minister for Climate, Energy and the Environment.

No. 7 of 2026: Protection of Employees (Employers' Insolvency) (Amendment) Act 2026

The purpose of the Act is to amend the Protection of Employees (Employers' Insolvency) Act 1984; to give further effect to Directive 2008/94/EC of the European Parliament and of the Council of 22 October

2008 on the protection of employees in the event of the insolvency of their employer; to make provision for the deeming of employers to be insolvent in certain circumstances; to make further provision on the treatment of employees whose employer enters into an insolvency arrangement; to make further provision for the manner of calculation of certain payments made out of the Social Insurance Fund to certain employees in respect of insolvent employers; to amend the Employment Equality Act 1998; and to provide for related matters.

Selected Bills Initiated from 1 February to 30 April 2026

Bill 30 of 2026: Mineral Oil Tax (Emergency Cost of Living Reduction) Bill 2026

The Bill aims to provide emergency powers for the temporary reduction of mineral oil tax on certain fuels including home heating oil (kerosene used other than as a propellant), petrol and auto-diesel (heavy oil used as a propellant) and green diesel (marked gas oil) for the purpose of alleviating cost of living pressures; to provide for the extension of such reductions by order of the Minister for Finance; and to provide for related matters.

Bill 35 of 2026: Child Maintenance Bill 2026

The Bill aims to provide for the administrative assessment, by the Revenue Commissioners, of liabilities of certain persons to pay periodic maintenance in respect of a child; to provide for a standard methodology for making such an assessment; to provide for the enforceability of such assessments in certain circumstances; to empower the Revenue Commissioners to depart from a standard methodology for making an assessment of child maintenance in certain circumstances; to provide for updated assessments of child maintenance in certain circumstances; to prohibit, in the interests of the common good, the making of certain applications to court unless certain circumstances apply; to provide for appeals from certain determinations and decisions of the Revenue Commissioners; and to provide for related matters.

Bill 38 of 2026: Life Annuity (Ireland) Bill 2026

The Bill aims to provide for the establishment and regulation of Life Annuity agreements for homeowners, to provide for consumer protections and to provide for related matters. The Bill requires that the Revenue Commissioners shall issue guidance on treatment of payments received, capital acquisitions tax implications and stamp duty.

Selected Statutory Instruments from 1 February to 30 April 2026

SI 39 of 2026: Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Jobseeker's Benefit (Self-Employed)) Regulations 2026

These Regulations amend the qualifying conditions for Jobseeker's Benefit (Self-Employed) to provide that a self-employed person may qualify for Jobseeker's Benefit (Self-Employed) if they do not have self-employment contributions and income in the Governing Contribution Year but have employment contributions and earnings in that year, subject to meeting the other conditions of the scheme.

SI 64 of 2026: Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2026

These Regulations provide for financial service providers to be liable to pay an annual levy in respect of the services provided by the Ombudsman to the financial services industry. The Office of the Financial Services and Pensions Ombudsman may issue levy notices, and in respect of this, appeals may be made to the Ombudsman within 90 days. The Regulations impose certain obligations to supply information to the Office of the Financial Services and Pensions Ombudsman, to enable

it to assess the levy payable by financial service providers. They also provide for the calculation of the levy contribution payable by each category of financial service provider for the year ended 31 December 2026.

SI No. 67/2026 - Residential Tenancies (Miscellaneous Provisions) Act 2026 (Commencement) Order 2026

This Order appointed 28 February 2026 as the date on which sections 1, 3, 10, 15 and 24 of the Residential Tenancies (Miscellaneous Provisions) Act 2026 (the Act) come into operation and it appointed 1 March 2026 as the date on which sections 2 , 4 , 5 , 6 , 7 , 8 , 9 , 11 , 12 , 13 , 14 , 16 , 17 , 18 , 19 , 20 , 21 , 22 , 23 and 30 of the Act come into operation.

SI No. 68/2026 - Residential Tenancies Act 2024 (Prescribed Form) Regulations 2026

These Regulations, which came into operation on 1 March 2026, prescribe the following:

(a) Part 1 of the Schedule to these Regulations prescribes the form for the purposes of an application to the Residential Tenancies Board (RTB) to register a tenancy under section 134 of the Residential Tenancies Act 2004 (the Act of 2004);

(b) Part 2 of the Schedule prescribes the acknowledgement letters and the statement of rights and obligations to issue from the RTB to a landlord and a tenant for the purposes of section 135 of the Act of 2004, upon registration of a tenancy;

(c) Part 3 of the Schedule prescribes the notice for the purposes of updating tenancy information, including rent changes, on the RTB's Register of Tenancies under section 139 of the Act of 2004;

(d) Part 4 of the Schedule prescribes the Notice of Rent Review for the purposes of section 22 of the Act of 2004 to be given to the tenant and the RTB when changing a rent amount;

(e) Part 5 of the Schedule prescribes the notice of exemption from the rent increase restrictions on tenancy commencement for the purposes of section 19(5B) of the Act of 2004 to be given to the tenant and the RTB where an exemption is claimed when setting a rent at the start of a new tenancy (i.e. first time tenancy between parties);

(f) Part 6 of the Schedule prescribes the notice of exemption from the rent increase restrictions on rent review for the purposes of section 19(5B) of the Act of 2004 to be given to the tenant and the RTB where an exemption is claimed when changing a rent amount during a tenancy on rent review.

SI No. 80 of 2026: European Union (Markets in Financial Instruments) (Amendment) Regulations 2026

These Regulations amend the European Union (Markets in Financial Instruments) Regulations 2017 by substituting Regulation 4(1)(r) to exclude central securities depositories except as provided for in Article 73 of Regulation (EU) No. 909/2014. They also replace Regulation 36(4) to require investment firms to publish client limit orders that are "large in scale compared with normal market size" unless the Central Bank of Ireland directs otherwise. These Regulations come into operation on 31 August 2026.

SI No. 81 of 2026: European Union (Markets in Financial Instruments) (Amendment) Regulations 2026

These Regulations replace subparagraph (3) of paragraph 1 of Schedule 3 of the European Union (Markets in Financial Instruments) Regulations 2017 to permit an investment firm to deposit client funds or financial instruments with a third party in a jurisdiction the applicable law of which prevents the investment firm from complying with certain requirements of the European Union (Markets in Financial Instruments) Regulation 2017 where the investment firm considers it necessary to do so in order to be able to provide investment services and activities

to clients. This is dependent on written acknowledgement from the third party that any client funds or financial instruments deposited by the investment firm with that third party are held by the investment firm for the benefit of its clients, internal recordkeeping, and written disclosure to clients explaining the necessity, insolvency arrangements and the limited application of the European Union (Markets in Financial Instruments) Regulations 2017. These Regulations come into operation on 31 August 2026.

SI No 85 of 2026: Taxes (Offset of Repayments) Regulations 2026

These Regulations are being made under sub-section (5) of s960H of the Taxes Consolidation Act 1997. That section empowers the Revenue Commissioners to offset repayments due to a person against outstanding liabilities of the person. They replace the existing regulations (Taxes (Offset of Repayments) Regulations 2002 (SI 471 of 2002)) to remove or update obsolete references, as applicable. They also provide for the order of offset against numerous tax heads that have been legislated for since the existing regulations were introduced in 2002, including Local Property Tax, Residential Zoned Land Tax, Defective Concrete Products Levy and Pillar Two taxes.

SI No. 112 of 2026: Finance Act 2004 (Section 91) (Deferred Surrender to Central Fund) Order 2026

This Order is made under s91 of the Finance Act 2004, which permits the carry-over of a limited proportion of unspent voted capital expenditure from one financial year to the next. The relevant ministerial functions have transferred to the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation. The Order specifies the sums, amounting in the aggregate to €180,593,000, to be carried forward and applied to the relevant capital supply services and purposes in 2026.

SI 151 of 2026: Taxes Consolidation Act 1997 (Living City Initiative) (Special Regeneration Area) (Sligo) Order 2026

This Order provides for the designation of a "Special Regeneration Area" in Sligo under the Living City Initiative. This is a scheme of property tax incentives provided for in Chapter 13 of Part 10 of the Taxes Consolidation Act 1997. The scheme provides for tax relief for qualifying expenditure incurred on the conversion or refurbishment of qualifying premises in the qualifying period.

SI No. 152 of 2026: Taxes Consolidation Act 1997 (Living City Initiative) (Special Regeneration Area) (Athlone) Order 2026

This Order provides for the designation of a "Special Regeneration Area" in Athlone under the Living City Initiative. This is a scheme of property tax incentives provided for in Chapter 13 of Part 10 of the Taxes Consolidation Act 1997. The scheme provides for tax relief for qualifying expenditure incurred on the conversion or refurbishment of qualifying premises in the qualifying period.

SI 153 of 2026: Taxes Consolidation Act 1997 (Living City Initiative) (Special Regeneration Area) (Dundalk) Order 2026

This Order provides for the designation of a "Special Regeneration Area" in Dundalk under the Living City Initiative. This is a scheme of property tax incentives provided for in Chapter 13 of Part 10 of the Taxes Consolidation Act 1997. The scheme provides for tax relief for qualifying expenditure incurred on the conversion or refurbishment of qualifying premises in the qualifying period.

SI 154 of 2026: Taxes Consolidation Act 1997 (Living City Initiative) (Special Regeneration Area) (Letterkenny) Order 2026

This Order provides for the designation of a "Special Regeneration Area" in Letterkenny under the Living City Initiative. This is a scheme of property tax incentives provided for in

Chapter 13 of Part 10 of the Taxes Consolidation Act 1997. The scheme provides for tax relief for qualifying expenditure incurred on the conversion or refurbishment of qualifying premises in the qualifying period.

SI No. 155 of 2026: Taxes Consolidation Act 1997 (Living City Initiative) (Special Regeneration Area) (Drogheda) Order 2026

This Order provides for the designation of a "Special Regeneration Area" in Drogheda under the Living City Initiative. This is a scheme of property tax incentives provided for in Chapter 13 of Part 10 of the Taxes Consolidation Act 1997. The scheme provides for tax relief for qualifying expenditure incurred on the conversion or refurbishment of qualifying premises in the qualifying period.

SI No. 181 of 2026: European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2026

These Regulations, together with SI 182 of 2026, transpose Directive (EU) 2024/927 (AIFMD II) into Irish Law. They give effect in Irish law to the amendments introduced at EU level in 2024 and embed the Directive's core reforms at national level, including important changes relating to liquidity management tools for UCITS (undertakings for collective investment in transferable securities) and openended alternative investment funds (AIFs) and the harmonised EU framework for AIFs engaged in loan origination. These Regulations (other than Regulation 14, which comes into operation on 16 April 2027) came into operation on 1 May 2026.

SI 182 of 2026: European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2026

These Regulations give effect in Irish law to Directive (EU) 2024/927 and implement the UCITS reforms. They are closely related to SI No. 181 of 2026 and form part of a corresponding legislative package introducing coherent EU measures aimed at improving fund resilience and investor protection including alignment with the new EU framework for alternative investment funds engaged in loan origination. These Regulations (other than Regulation 10, which comes into operation on 16 April 2027) came into operation on 1 May 2026.

Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

Published from 1 February to 30 April 2026

Income Tax

02TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

03TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

04TACD2026

Appeal regarding income tax assessed on rental income; inclusion of grounds of appeal in notice of appeal; evidence to support deductions/ reliefs.

s97 TCA 1997; s268 TCA 1997; s327AP TCA 1997; s949I TCA 1997

Case stated requested: Unknown

06TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

07TACD2026

Appeal regarding late filing of Form11

s1084(2)(a) TCA 1997; s959AF TCA 1997

Case stated requested: Unknown

09TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

17TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

18TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

19TACD2026

Appeal regarding application of the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

20TACD2026

Appeal regarding treatment of ex gratia payments on redundancy

s123 TCA 1997, s192A TCA 1997, s7(1)(b) RPA 1967

Case stated requested: Unknown

22TACD2026

Appeal regarding retrospective withdrawal of joint assessment for income tax

s1015 TCA 1997, s1016 TCA 1997, s1017 TCA 1997, s1018 TCA 1997

Case stated requested: Unknown

23TACD2026

Appeal regarding refund of emergency tax over multiple employments

s15 TCA 1997, s19 TCA 1997, s112 TCA 1997, s461 TCA 1997, s472 TCA 1997

Case stated requested: Unknown

28TACD2026

Appeal regarding assessment to income tax for company director

s10 TCA 1997; s997A TCA 1997

Case stated requested: Unknown

29TACD2026

Appeal regarding tax treatment on payment of pension arrears

s112 TCA 1997

Case stated requested: Unknown

42TACD2026

Appeal regarding late claim for relief on PRSA contribution

s787C TCA 1997; s959A TCA 1997

Case stated requested: Unknown

Income Tax & USC

40TACD2026

Appeal regarding underpayment of income tax and USC where employer did not deduct PAYE correctly on the income

s112 TCA 1997; s531AL TCA 1997; s531AM TCA 1997; s960C TCA 1997

Case stated requested: Unknown

32TACD2026

Appeal regarding amended notices of assessment where appellant was deemed resident in Ireland and not Northern Ireland and in receipt of rental income

s18 TCA 1997; s65 TCA 1997; s819 TCA 1997

Case stated requested: Unknown

VAT

15TACD2026

Appeal regarding application of Margin Scheme on the importation of second-hand mobile phones and other electronic goods from Northern Ireland

s3, s9, s24, s84, s87 VATCA 2010; Art 2, 4, 20, 200, 226, 313, 314

Case stated requested: Unknown

21TACD2026

Appeal regarding refusal to grant VAT registration

s5 VATCA 2010

Case stated requested: Unknown

36TACD2026

Appeal regarding refusal of a VAT refund claim by a flat-rate farmer of VAT for a fixed generator.

Value-Added Tax (Refund of Tax) (Flat-rate Farmers) Order 2012 (SI 201/2012)

Case stated requested: Unknown

37TACD2026

Appeal regarding refusal of VAT refund claim by a flat-rate farmer for a fixed generator.

Value-Added Tax (Refund of Tax) (Flat-rate Farmers) Order 2012; s2 VATCA 2010; s4 VATCA 2010; s5 VATCA 2010

Case stated requested: Unknown

41TACD2026

Appeal regarding definition of qualifying aids on appliances (a domestic wastewater treatment system)

Value Added Tax (Refund of Tax) (No. 15) Order, 1981

Case stated requested: Unknown

VRT

10TACD2026

Appeal regarding the open market selling price (OMSP) in respect of the calculation of VRT

s132 and 133 Finance Act 1992 (as amended)

Case stated requested: Unknown

Stamp Duty

25TACD2026

Appeal regarding application of the four-year statutory limitation period

s83D SDCA 1999

Case stated requested: Unknown

38TACD2026

Appeal regarding application of the four-year statutory limitation period

s83D SDCA 1999

Case stated requested: Unknown

CGT

26TACD2026

Appeal regarding CGT due on sale of investment property

s28 TCA 1997; s31 TCA 1997; s541 TCA 1997; s546 TCA 1997; s552 TCA 1997

Case stated requested: Unknown

PAYE

01TACD2026

Appeal regarding the application of an income tax exemption for a termination payment made on account of disability

s123 TCA 1997; s201 TCA 1997

Case stated requested: Unknown

16TACD2026

Appeal regarding tax underpayment following incorrect application of Home Carers Tax Credit

s466A TCA 1997

Case stated requested: Unknown

24TACD2026

Appeal regarding over-repayment of income tax and USC

s15 TCA 1997; s19 TCA 1997; s112 TCA 1997; s461 TCA 1997; s472 TCA 1997

Case stated requested: Unknown

33TACD2026

Appeal regarding application of Single Parent Child Carer Credit

s462B TCA 1997

Case stated requested: Unknown

Help to Buy

13TACD2026

Appeal regarding quantum of clawback relief for Help to Buy Scheme

s477C TCA 1997

Case stated requested: Unknown

35TACD2026

Appeal regarding application of the Help to Buy scheme where the Loan to Value ratio exceeded 70% when extension built

s477C TCA 1997

Case stated requested: Unknown

Customs & Excise

08TACD2026

Appeal regarding repayment of Value-Added Tax and Customs Duty paid on the importation of a private used motor vehicle to Ireland from the United Kingdom

s119(1)(h) VATCA 2010; Art 116 - 120 and Art 174 of Regulation (EU) No 952/2013

Case stated requested: Unknown

30TACD2026

Appeal regarding application of Returned Goods Relief

Article 203 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

Case stated requested: Unknown

Customs & Excise, VAT & Income Tax

27TACD2026

Appeal regarding excise duty, income tax and VAT assessment on purchase and sale of marked gas oils

s94 Finance Act 1999; s96 Finance Act 1999; s99(10) Finance Act 2001; s153 Finance Act 2001; s59 VATCA 2010; s18 TCA 1997

Case stated requested: Unknown

LPT

05TACD2026

Appeal regarding repayment of LPT outside four-year statutory limitation period

s2 Finance (Local Property Tax) Act 2012; s26 Finance (Local Property Tax) Act 2012

Case stated requested: Unknown

34TACD2026

Appeal regarding interpretation of liable person for LPT

s2 LPT 2012; s11 LPT 2012

Case stated requested: Unknown

39TACD2026

Appeal regarding interpretation of liable person for LPT

s2 LPT 2012; s11 LPT 2012

Case stated requested: Unknown

Artists Exemption

11TACD2026

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

12TACD2026

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

14TACD2026

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

31TACD2026

Appeal regarding the application of the artists' exemption

s195 TCA 1997

Case stated requested: Unknown

Mark O'Sullivan
Tax Partner, Matheson LLP
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Expert Evidence Before the Tax Appeals Commission: Duties, Pitfalls and Recent Developments

Introduction

> *"For every expert, there is an equal and opposite expert" – Arthur C Clarke*

Although the renowned science-fiction novelist was, no doubt, referring to experts in the world of science, his comment could equally describe what happens in many tax disputes. Differences of opinion in specialised fields are increasingly common, particularly given the technical complexity and constant evolution of tax rules. Despite this, it remains critical for instructing lawyers, tax advisers and experts themselves to understand the duties owed by expert witnesses in tax cases.

Expert evidence is becoming increasingly important in the determination of tax disputes

before the Tax Appeals Commission (TAC). The heightened focus of the Irish Revenue Commissioners (Revenue) on complex and technical transfer pricing investigations, research and development ("R&D") tax credit audits and the implementation of the OECD's global minimum tax rules will likely lead to a new wave of disputes before the TAC. Given the growing complexity, there will be increased reliance on expert witnesses to establish issues of fact before the TAC, particularly in relation to accounting, economics and foreign law.

This article examines recent decisions of the TAC, the Irish courts and the UK courts to provide a brief summary of the role of evidence in a tax dispute and gives an overview of the law and common pitfalls associated with expert evidence.

Tax Appeals Commission and Evidence

Appeals against assessments and decisions of Revenue concerning taxes are heard and determined by the TAC, an independent statutory body established by the Finance (Tax Appeals) Act 2015. In a tax appeal before the TAC the onus is on the taxpayer to demonstrate, on the balance of probabilities, that an assessment raised is incorrect.[1]

Evidence before the TAC

The rules regarding the admission of evidence at the TAC generally follow the Rules of the Superior Courts (RSC). Proceedings before the TAC offer greater flexibility, and the TAC may admit evidence whether or not such evidence would be admissible in the superior courts (s949AC TCA 1997). For example, whereas hearsay evidence is not usually admissible in court proceedings, it may be admissible at the TAC, subject to the usual rules of natural justice (s917M(4) TCA 1997).

Why expert evidence matters

TAC hearings resemble court hearings, and parties can invite expert witnesses to give written and oral evidence. TAC determinations are final and conclusive (s949AP(1) TCA 1997), and appeals can be made only to the High Court by way of case stated on a point of law (s949AP(2) TCA 1997). As it is the fact-finding tribunal in a tax appeal, findings of fact by the TAC can be overturned by the High Court only where there was insufficient evidence to support those findings[2] or where a finding was based on an error of law.[3] Parties cannot seek to introduce or prove new facts on appeal. Accordingly, it is crucial that a taxpayer proves all relevant facts and challenges any facts asserted by Revenue in the TAC proceedings. This was demonstrated in *Thomas McNamara v Revenue Commissioners* [2023] IEHC 15, where the High Court dismissed the taxpayer's arguments that Revenue's expert report should have been excluded on the basis of a number of deficiencies. In dismissing the arguments, the High Court placed emphasis on the taxpayer's failure to raise concerns on the report presented by Revenue's expert until the hearing of the matter before the TAC: "*it had been open to the appellant to raise these issues well in advance of the appeal hearing*". Similarly, in the UK case *BlackRock Holdco 5, LLC v HMRC* [2024] EWCA Civ 330, the Court of Appeal dismissed HMRC's challenge to the findings of the First-tier Tribunal (FTT) on expert evidence concerning a transfer pricing issue in respect of intra-group loans. The court held that, although the FTT could have expressly addressed differences between the experts, it was entitled to prefer one expert's evidence over the others.

Although the Superior Courts cannot consider an appeal against expert evidence with a view to forming their own opinion on the underlying facts, they can assess whether the TAC's approach to expert evidence discloses an error

1 This proposition follows a long line of Irish authority and was recently confirmed by the Court of Appeal in *J.S.S., J.S.J., T.S., D.S. and P.S v A Tax Appeal Commissioner* [2025] IECA 96.

2 *Mara v Hummingbird Limited* [1982] ILRM 421 and *Ó Culachain v McMullan Brothers Ltd* [1995] 2 IR 217; approved in *Inspector of Taxes v Cablelink Limited* [2003] 4 IR 510.

3 See *Hegarty, Geary and Ward v The Revenue Commissioners* [2026] IEHC 59.

of law. In the recent case of *Hegarty, Geary and Ward v The Revenue Commissioners* [2026] IEHC 59 *("Hegarty")* the High Court agreed with the taxpayers' submissions that the manner in which the TAC reached conclusions on expert evidence amounted to an error of law.

Expert Evidence: Hegarty

In *Hegarty* the TAC found in favour of Revenue that certain transactions entered into by the taxpayers were primarily undertaken to secure tax advantages and, therefore, fell foul of the anti-avoidance provisions in s811 of the Taxes Consolidation Act 1997 (TCA 1997).

In reaching that conclusion the Commissioner considered expert evidence presented by both parties. On the basis of that evidence, the TAC concluded that it could not identify any commercial motive for the transactions, apart from the deemed tax advantage.

On appeal the High Court held that the TAC's reasoning failed to take account of both parties' expert evidence that the transactions could be seen as having a commercial purpose of hedging. The court held that the TAC's approach amounted to an error of law because:

- The conclusion was unsustainable on the facts: it was not open to the TAC to conclude that Revenue's expert was "unwilling to agree that the transactions of a type undertaken by the Appellants was hedging" where that expert had accepted, on four specific occasions, that the transactions could be described as hedging.
- No clear reasons were given for preferring one expert's evidence: although it was open to the TAC to prefer one expert's evidence over the other, it was an error of law not to provide a reasoned analysis explaining why the taxpayer's expert evidence was discounted.

Expert Witness

Duty to the court

It should be noted that the duty of an expert is to the court, not the expert's instructing party.[4] Although the TAC is not bound by the RSC, it is prudent to follow them, given that appeals against TAC determinations are heard by the Superior Courts and the proceedings in those courts will be subject to the RSC.

Independence and impartiality

The duty of independence and impartiality has been emphasised by the Irish courts on several occasions, particularly in *Duffy v McGee* [2022] IECA 254 and *O'Leary v Mercy University Hospital Cork* [2019] 2 IR 478. Accordingly, experts should include an express attestation in their report acknowledging this duty.[5] The Irish courts have noted that experts should be mindful not to be perceived as a "hired gun" for the taxpayer. In *Duffy v McGee*, a non-tax case, the Court of Appeal held that lack of objectivity, impartiality and independence may, and in an appropriate case will, go to admissibility of the evidence, not merely to the weight to be given to the evidence.

Core duties of an expert witness

The Supreme Court in *O'Leary v Mercy University Hospital Cork* and the Court of Appeal in *Duffy v McGee* confirmed that the principles applying to expert witnesses are broadly aligned with those established in the UK case *National Justice Compania Naviera SA v Prudential Assurance Company Ltd* [1993] 2 Lloyd's Rep 68 ("Ikarian Reefer"). It is clear from the Ikarian Reefer principles that the duties of an expert witness are not static in nature nor limited to the report; rather, the expert's duties extend to proactively engaging with the report, the report produced by the other side and other relevant developments beyond the confines of the case. The principles established in Ikarian Reefer are summarised below:

4 Order 39, rule 57(1), of the Rules of the Superior Courts provides that "it is the duty of an expert to assist the Court as to matters within his or her field of expertise".

5 Order 39, rule 57(2), provides that an expert report delivered to the court must contain a statement acknowledging the duty owed to the court by the expert.

- Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation (per *Lord Wilberforce in Whitehouse v Jordan* [1981] 1 WLR 246 at 256).
- An expert witness should provide independent assistance to the court by way of objective, unbiased opinion on matters within their expertise. An expert witness should never assume the role of an advocate.
- An expert witness should state the facts or assumptions on which the opinion is based and should not omit material facts that could detract from the concluded opinion.
- An expert witness should make it clear when a particular question or issue falls outside their expertise.
- If an expert's opinion is not properly researched because insufficient data is available, this must be stated and the opinion identified as provisional. Where an expert cannot assert that a report contains the truth, the whole truth and nothing but the truth without qualification, any such qualification should be stated in the report.
- If, after exchange of reports, an expert changes their view on a material matter, having read the other side's expert report or for any other reason, the change of view should be communicated (through legal representatives) to the other side without delay and, where appropriate, to the court.
- Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or similar documents, these should be provided to the opposing party at the same time as the exchange of reports.

Qualifications of an expert witness

There is no fixed definition of an expert witness, and there are no prescribed qualifications. In *Galvin v Murray* [2000] IESC 78 Murphy J held that "in general terms, an expert may be defined as a person whose qualifications or expertise give an added authority to opinions or statements given or made by him within the area of his expertise". Strictly, an expert does not need a formal qualification or professional experience, provided they can demonstrate specialist knowledge of the area on which they have been asked to give evidence. The expert must, however, be able to establish the basis for that specialist knowledge, and the opposing party may challenge whether the expert has the relevant knowledge or qualifications.

Admissibility

There is no test for admissibility of expert evidence in Ireland – for example, there isn't a specific threshold of reliability before evidence can be admitted. This contrasts with the position in the United States, where courts apply a test of whether the evidence constitutes knowledge that "will assist the trier of fact to understand or determine a fact in issue" (the "Daubert rule").[6]

In Ireland, admissibility itself does not guarantee the acceptance of evidence. Evidence faces two hurdles: (1) it must be admissible and (2) it must be sufficiently reliable. The Irish courts have, on occasion, refused to admit novel scientific evidence where its reliability had not been sufficiently established.[7] Furthermore, the Irish Supreme Court has also confirmed that the court is not obliged to accept the evidence of an expert witness even when not contradicted.[8]

Common Pitfalls

In *Duffy v McGee*, expert evidence was excluded in its entirety on account of the expert's "abject failure to comply with the most basic obligation of an expert, namely, to be objective and impartial". The court identified a number of aspects of the

6 Established by the US Supreme Court in *Daubert v Merrell Dowell Pharmaceuticals, Inc.,* 509 U.S. 579 (1993).

7 *People (DPP) v Kelly* [2008] IECCA 7.

8 *Donegal Investment Group Ltd v Danbywiske* [2017] IESC 14.

evidence giving rise to serious concern, including that the expert (a toxicologist):

- attempted to give an opinion on Irish law, which the court described as "entirely beyond his competence and entirely inappropriate for a supposedly independent expert";
- purported to give an opinion on psychiatric and medical reports outside his competence as a toxicologist;
- relied on two industry-commissioned papers that were not independently peer-reviewed; and
- accused the plaintiffs of lying, deceiving and misrepresenting evidence in the case.

Although *Duffy* involved an obvious breach of duty by the expert, the duty of objectivity and impartiality involves more than avoiding conscious or unconscious bias. An expert owes a duty to ascertain the surrounding facts and to give evidence in the context of those facts, whether or not they support the proposition that the expert has been asked to advance.[9]

This duty was considered in the context of accountancy experts in *Emerald Meats Ltd. v Minister for Agriculture* [2012] IESC 48:

> "It is important that experts, and particularly accountancy witnesses, do not simply accept their client's instructions as to certain matters and then construct calculations on the basis of those instructions. If that is all that is done, then the expert report is no more than the provision of a very expensive calculator. The court is entitled to expect that such experts will apply their critical faculties and their expertise to the case being made by their clients."

Foreign law and Irish law

It is well established in Irish law that expert witnesses can give evidence on foreign law. In fact, interpretation of foreign law is often a fundamental issue in Irish tax disputes. This was recently illustrated in *Revenue Commissioners v Susquehanna* [2024] IEHC 569, where the High Court considered the TAC's analysis of expert evidence in detail. On appeal, the Court of Appeal was critical of the Commissioner's determination on the expert evidence, finding that it did not engage with, or seek to resolve, differences between the experts.

Foreign law is treated as a matter of fact to be established in the Irish courts in the ordinary way by sworn evidence of that fact, not a matter of law.[10] This can raise complex issues where rules or guidelines established by a supranational body (e.g. the OECD) are incorporated into Irish law.[11] Although expert evidence is not admissible on matters of Irish law,[12] there can be areas where expertise overlaps with issues adjacent to Irish law. In such cases experts should take care not to stray into legal interpretation (no different from the toxicologist in *Duffy v McGee*). For example, it may be appropriate for an expert to explain economic principles relevant to transfer pricing, or accounting principles relevant to Pillar Two, but not to opine on the meaning or application of Irish statutory provisions.

In *Downtul Ltd (in liquidation) v Companies Act* [2025] IEHC 358 a chartered accountant and insolvency practitioner with more than 25 years' experience purported to offer expert evidence on topics such as directors' obligations in situations of pending insolvency, corporate governance requirements and an alleged requirement to obtain written legal advice before issuing proceedings. The court held that such evidence was not within the scope of qualified independent expert opinion because it concerned matters of law and legal interpretation, not matters of accounting expertise.

In *Perrigo Pharma International DAC v McNamara* [2020] IEHC 552 a foreign law

9 *Fitzpatrick v DPP* (unreported, High Court, 5 December 1997).

10 *Walsh v National Irish Bank Limited* [2013] 1 IR 294.

11 See, for example, s835D TCA 1997 which incorporates the OECD Guidelines into Irish law.

12 *O'Brien v Clerk of Dáil Éireann* [2016] 3 IR 384.

expert sought to give evidence in relation to the language used in a tax certificate issued by the Department of Finance. The court upheld objections that the witness had no expertise in Irish law and that evidence on how a document should be interpreted was inadmissible.

In the UK case *Deloitte v HMRC* [2016] UKFTT 479 the FTT ruled that certain sections of an expert report dealing with regulations, standards and fiduciary duties affecting the insurance industry were inadmissible because expert evidence that veers into interpretation of legislation and case law is more likely to hinder than assist the tribunal. The FTT also held that contested matters of law are more efficiently addressed through legal submissions rather than expert evidence.

TAC Determinations

Although determinations of the TAC are not binding precedents, the approach of Commissioners in previous cases illustrates some of the practical issues that can arise in respect of expert evidence in tax appeals.

R&D tax credit

In 162TACD2023 the Appeals Commissioner considered the taxpayer's expert evidence to be unhelpfully vague because the opinion on entitlement to R&D credits was based on whether the research "stood up" or "made sense". The Commissioner expected expert evidence on the application of s766 TCA 1997 to address whether the work satisfied each element of the five-limb test set out in that provision.

In 165TACD2025 Revenue challenged whether expenditure incurred on the development of an aggregated service desk and portal, through which virtually accessible services could be availed of by customers, amounted to "expenditure on research and development" under s766 TCA 1997. Revenue objected to the taxpayer's first expert, a software engineer, on the basis of the expert's involvement in the preparation of some or all of the taxpayer's replying documents.

Referring to the Ikarian Reefer principles, the Commissioner decided to focus instead on the taxpayer's other expert witness on the basis that it is "essential that an expert's impartiality and objectivity not be in doubt". The Commissioner noted at page 138 of his determination that he also had the benefit of evidence from two other experts in the field.

Transfer pricing

In Ireland's only transfer pricing case to date (59TACD2024) Revenue raised objections to the admission of expert reports on the basis that some of that evidence referred to OECD guidance that was incorporated into Irish law by virtue of s835D TCA 1997. Revenue also submitted that it would be prejudiced because it would not be feasible to cross-examine the expert on all aspects of the reports, and that cross-examination should be limited to matters of fact, not matters of law.

The Commissioner considered that the appropriate course was to consider the expert reports and determine what was admissible (i.e. what did not amount to legal interpretation), rather than excluding the reports in their entirety (or large portions of them). The taxpayer and Revenue also agreed that Revenue would not be expected to cross-examine the expert on issues of law or on the legal interpretation of OECD guidance, and that the taxpayer would not argue that Revenue's failure to put such issues to the expert was significant (at pages 77–80 of the determination).

Although expert witnesses provide valuable assistance to the TAC, taxpayers and experts should be aware that admissibility issues may arise where a report strays into legal interpretation of OECD guidance or Irish law. It is therefore important to consider the legal principles governing expert evidence before drafting or submitting an expert report. Experts should also remember that their primary duty is always owed to the court, not to the party instructing them, and ensure that they are appropriately qualified and fully aware of their duties.

Key Takeaways

Expert reports and proactive engagement

Expert witnesses should produce a written report in support of their evidence and proactively engage with competing expert evidence, rather than relying primarily on oral evidence at the hearing. In *McNamara v Revenue Commissioners* [2023] IEHC 15 the taxpayer's expert did not produce a valuation report but instead gave oral evidence regarding perceived shortcomings in Revenue's expert report. The absence of a competing report meant that the TAC had to address issues in Revenue's report "on the hoof". The High Court was satisfied that any errors were more than corrected by adjustments made by the TAC. Barrett J noted (at paragraphs 58 and 59):

> "The fact that these adjustments had to be made 'on the hoof', as it were, during the course of the hearing before the TAC, was solely due to the fact that the appellant chose to stay silent, when he was aware of the inaccuracies in the report for years prior to the appeal hearing...Litigation and disputes such as this before the TAC, are two-way streets. Parties cannot complain about an issue which could have been resolved had they chosen to engage proactively with the process."

Challenging expert evidence

It is important to challenge expert evidence at the earliest stage, in writing, by way of a counter-report, or by cross-examination before the TAC. Given that a TAC determination can be appealed only by way of case stated on a point of law, it is difficult to dispute expert evidence in the High Court on appeal. In *TUI UK Ltd v Griffiths* [2023] UKSC 48 the UK Supreme Court held that the trial judge and Court of Appeal erred in their treatment of the appellant's uncontroverted expert evidence.

Although the Supreme Court accepted that the evidence left questions unanswered, it held that it was unfair for the respondent to advance detailed criticisms of the appellant's expert evidence in closing submissions where it had not cross-examined the expert or adduced its own expert evidence.

Conclusion

Expert evidence plays a key role in discharging a taxpayer's burden of proof in tax appeals, and failure to consider evidentiary requirements and to engage appropriate experts can have significant consequences. Expert evidence should be considered early in the appeals process, given the fact-finding role of the TAC. Experts should be fully aware of their duty to the court and their duty to be objective and independent. To fulfil these duties effectively, an expert report should set out:

- the scope of the matters on which the expert has been asked to opine;
- the facts or assumptions on which the opinion is based;
- the reasons for the opinion, including evidence that alternative views were considered; and
- appendices containing any documents or sources referred to in the report.

Experts should stay within the scope of the evidence that they have been asked to provide and avoid addressing matters that fall outside their expertise or that amount to Irish law. Experts should not limit their engagement to producing the report but should engage proactively with the appeal process and, in particular, the expert reports produced by the other side. Failure to comply with these duties can result in exclusion of evidence and adverse costs orders, as well as reputational damage for both the expert and the instructing advisers.

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Electric Vehicle Charging and VAT: Who Knew It Would Be So Complex?

Introduction: EV Transition, Energy Volatility and Why VAT Matters

Ireland's transition to electric vehicles (EVs) is gathering momentum, driven by climate targets and sustainability commitments, meaning that there is a consequent need for increased public charging infrastructure and investment. But beyond environmental considerations, geopolitical developments have now contributed to significant fuel price volatility, prompting many businesses to reassess the long-term viability of combustion-engine fleets. For electricity suppliers, charge point operators and e-mobility service providers, this shift presents both a commercial opportunity and operational complexity.

When it was introduced in Ireland in 1972, VAT as a concept did not envisage a time when EV charging would not just be a reality but, in the coming years, more of a necessity as Ireland aims to meet its climate emissions targets. The challenge for VAT legislation and principles is to keep up to date with ever-evolving commercial developments, as noted in the e-commerce

world over the last decade and the increased globalisation of our economy.

However, ultimately, when one breaks it down to "brass tacks", the VAT treatment of EV charging still relies on the core principles, i.e. is there a "supply" of goods/services for consideration, to/from whom the supply is made and where the supply takes place. It is these most central points that VAT turns on , and how one should frame any discussion from a VAT perspective in this area.

As more businesses consider the switch to EVs, whether in full or as part of a staged fleet transition strategy, the indirect tax consequences come sharply into focus. VAT now plays a critical role in shaping EV charging supply-chain considerations and costs, cross-border operations, financial modelling and infrastructure investment. The extension of the 9% VAT rate on electricity to 31 December 2030 strengthens the economic case for electrification but also places pressure on suppliers to ensure that the correct VAT treatment is applied as business models evolve. Furthermore, Ireland is in a unique position in that it operates in two tax jurisdictions on a border-free island, which adds greater complexity to the VAT position – particularly, as Northern Ireland is considered for VAT purposes as outside the EU for supplies of services and within the EU for supplies of goods. Allied to this is the commercial desire for customer experience to be streamlined to allow for greater promotion of EV charging, meaning that the VAT considerations must also be addressed in a practical light.

In this changing environment a clear understanding of VAT rules is no longer optional: it is essential for any business operating in the EV charging sector or contemplating EV adoption.

Electricity as a Supply of Goods: The Foundation of the EU VAT Framework

Following the VAT treatment of the supply of electricity throughout the EV charging supply chain was a source of some difficulty until a landmark ruling by the Court of Justice of the European Union (CJEU) – *Digital Charging Solutions* C-60/23 – which definitively clarified the VAT treatment of EV charging across the EU. First, and importantly, the CJEU determined that electricity is tangible property, and charging an EV is therefore a supply of goods for VAT purposes, not a service.

This classification aligns with Ireland's existing rules, which have long treated electricity as a supply of goods. However, in practice, EV charging complicates this seemingly simple distinction because of multi-party arrangements, bundled platform services and cross-border charging activity.

Why this matters for businesses

This distinction determines the place of supply, invoicing rules, VAT registration obligations and VAT recovery rights. These all directly impact cost models for EV fleets, workplace charging installations, and charging arrangements across borders – particularly important for businesses operating across the island of Ireland.

The New EV Charging Supply-Chain Model Under EU Law

Just as importantly, the CJEU ruling also clarified how VAT flows through the EV charging ecosystem. A typical charging transaction involves:

- a Charging Station Owner (CSO), sometimes the same person as the Charging Point Operator (CPO);
- aCPO supplying electricity,
- an e-mobility service provider (eMP) acting as intermediary and
- the end user (EV driver) consuming the electricity.

Whilst industry practice may distinguish between CSOs and CPOs (who can be the same person), CJEU case law does not tend to draw a formal distinction between infrastructure ownership versus operation and instead focuses on the economic and contractual roles of each

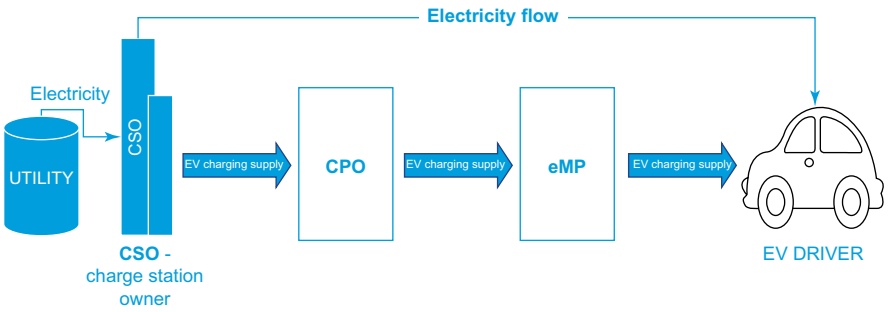

Fig. 1: EV charging supply chain (source: EU VAT Committee, Working Paper No. 1012, taxud.c.1(2021)2099876, p. 3).

party in determining whether they are making a supply of electricity for VAT purposes.

The CJEU has held that two separate VATable supplies of electricity occur:

- CPO to eMP and
- eMP to EV driver,

with the eMP treated as a commissionaire (agent) acting in its own name but on behalf of the driver; the eMP is therefore deemed to both receive **and** supply the electricity (back-to-back supplies).

However, the CJEU provided further guidance in so far as if eMPs also provide platform-type services (e.g. subscription fees, authentication card fees and digital access services to the charging network), these may be separate VATable services if provided for a fixed fee and, therefore, potentially subject to different place-of-supply rules and VAT rates.

Why this matters for businesses

The CJEU's ruling has determined the VAT architecture around the EV charging supply chain, which has direct effect in Ireland and in each other EU Member State, and therefore Irish businesses operating in this space (e.g. CPOs and eMPs) across multiple jurisdictions should review their VAT obligations, including:

- VAT registration obligations outside of the Republic of Ireland[1],
- the need to correctly identify the underlying supply for mixed or bundled charging packages,
- invoicing requirements (differences between business-to-businessand business-to-consumer),
- the potential to avail of the VAT One Stop Shop (OSS) scheme,
- currency and foreign exchange considerations and
- the impact of e-invoicing and real-time reporting with upcoming VAT in the Digital Age (ViDA) changes.

Furthermore, eMPs have been confirmed as part of the supply chain rather than providers of VAT-exempt credit or financing services (as was the case in the *Vega International* C235/18 and *Auto Lease Holland* C185/01 cases), which provides for greater VAT recovery entitlement – a welcome distinction for businesses.

Irish companies using EVs across multiple charging networks – particularly, those with larger fleets and high levels of travel – should now ensure that:

- valid VAT invoices are obtained identifying the correct supplier to support VAT recovery,

1 Note that from 1 January 2027, the EU's VAT in the Digital Age (ViDA) reforms will extend the VAT One Stop Shop (OSS) to business-to-consumer supplies of electricity, including EV charging, allowing VAT to be reported via a single registration and return while remaining due in the Member State of consumption. This should be considered by Irish business operating across the EU.

- roaming agreements recognise non-Irish VAT rules,
- service fees are treated correctly and
- VAT recovery is maximised for fleet charging costs.

This is especially significant on the island of Ireland, where cross-border travel is routine and charging may occur in multiple jurisdictions, resulting in various complexities for both suppliers and customers, with different VAT obligations and treatments applying. In addition, it must be borne in mind when operating within the UK that the UK is no longer bound by the decision of the CJEU after 31 December 2020.

Ireland's VAT Treatment of EV Charging and Why It Matters Now

In Ireland the supply of electricity (including EV charging) is subject to VAT at the second reduced rate of 9% (extended to 31 December 2030 as part of Budget 2026). This long-term extension provides welcome rate stability for operators planning multiyear investment in charging infrastructure.

This is a substantial saving compared with the VAT embedded in petrol and diesel, which are subject to the standard 23% VAT rate. Furthermore, in the geopolitical environment at the time of writing and with significant excise and carbon taxes, the lower VAT rate on electricity improves EV fleet economics and can materially shift cost–benefit analysis in terms of ownership and operating cost in favour of electrification. Businesses carrying out feasibility studies or fleet-replacement modelling should factor in this VAT differential, particularly in light of the current geopolitical environment.

Ireland has committed to reducing greenhouse gas emissions by 51% by 2030 and to reaching net-zero emissions no later than 2050 under the Climate Action and Low Carbon Development (Amendment) Act 2021.[2] The Climate Action Plan is updated annually, and carbon budgets revised every five years, which reflects the Irish Government's acknowledgment that action and review are needed to stay on path to achieve its net-zero targets

Transport is central to this challenge, with electrification a key lever to achieve targets, including the Government's policy targeting almost 1m EVs on Irish roads by 2030.[3] This focus on EVs creates a parallel and urgent requirement for investment in related infrastructure, including enhanced nationwide charging networks, electricity grid reinforcement and further public transport electrification. This challenge presents significant opportunities for the construction, engineering and energy sectors, which are necessary to deliver critical infrastructure, support skilled employment and drive economic growth.

These changes will materially reduce traditional Exchequer revenue streams – particularly, fuel excise duties and carbon taxes. A balance may be required to ensure that the capacity to fund infrastructure investment and upkeep remains. Although unlikely to be welcome by taxpayers, governments may be tempted to consider alternative taxation measures. For example, in the UK Autumn Budget of 30 November 2025 the Government confirmed that:

- EV drivers will face a new pay-per-mile tax called electric vehicle excise duty starting in April 2028.
- This tax is specifically intended to fill the financial shortfall created because EV drivers do not pay fuel duty, which currently raises around £25bn per year in the UK[4].

Why this matters for businesses

The landscape is shifting and, with it, the regulatory regimes. Governments everywhere

2 Department of Climate, Energy and the Environment, "Ireland's ambitious Climate Act signed into law" (23 July 2021); Sustainable Energy Authority of Ireland, "Ireland's Energy Targets", available at https://www.seai.ie/about/irelands-energy-targets.

3 Department of Transport, "Electric Vehicle Policy Pathway: Working Group Report 2021", available at electric-vehicle-policy-pathway.pdf.

4 House of Commons Research Briefing, "Electric vehicle excise duty (eVED)", available at CBP-10607.pdf.

are seeking to manage the drive towards a greener economy to forestall the impact of climate change but will be aware of the budgetary constraints that will emerge if the shift to EVs is successful. Already, several EU Member States are curtailing reliefs on the purchase of EVs, with the relief in Ireland currently in place only until the end of 2026[5].

Therefore, if new taxes are introduced to deal with the potential shortfall in excise duty, this could result in additional compliance issues for businesses, especially those in the transport sector, if they too shift to EVs. This shift will present both opportunities and challenges, and will need to be monitored by businesses to ensure that they are prepared for any eventualities.

Complexity in an Island-of-Ireland Context Regarding VAT

Although the shift to EVs seems inevitable, albeit at a pace that may prove slower than originally intended, complexity arises in relation to the place-of-supply rules for electricity in Ireland, particularly, given the border between the Republic of Ireland and Northern Ireland and the fact that Northern Ireland is considered an EU Member State only with respect to goods under the Northern Ireland Protocol.

Electricity is considered a good for Irish VAT purposes (as confirmed by the CJEU), but it can follow the place-of-supply rules for services in certain circumstances, i.e. supplies to taxable dealers. Irish VAT legislation provides that where electricity is supplied to a customer **other than** a taxable dealer,[6] the place of supply shall be deemed to be the place where that customer has effective use and consumption of those goods. In the context of EV charging, customers are generally not taxable dealers, and so the question arises of whether eMPs are required to track and monitor where customers have effective use and consumption of electricity.

The answer to this question is complicated by the two VAT jurisdictions on the island of Ireland, given the possibility of customers charging in one jurisdiction and consuming the electricity in another.

The CJEU has not yet opined on this place-of-supply question in the context of EV charging. Despite this, the EU VAT Committee's unanimously agreed position – that the place of supply is simply the physical location of the charging terminal – provides a fair, workable and technically sound solution, in our view.

Why this matters for businesses

Adopting this approach avoids the impractical expectation that suppliers should be required to monitor vehicle movements after charging and ensures consistent treatment across the EU. The decision removes doubt and ambiguity in EV charging supply chains – a welcome move.

For Irish businesses operating in the two VAT jurisdictions on the island of Ireland and with high levels of cross-border movement, this interpretation is not only administratively essential but also represents the most implementable approach pending any future CJEU clarification.

Comparing Ireland and the UK: A Growing VAT Divergence

As outlined above, after Brexit, Northern Ireland remains an EU Member State with respect to goods, and therefore UK VAT policy remains relevant to Irish businesses, especially those operating cross-border (both eMPs and customers).

Although Ireland applies a straightforward 9% VAT rate to all electricity supplies (including

5 Ireland provides relief from Vehicle Registration Tax (VRT) for battery electric vehicles, currently granting a reduction of up to €5,000 on qualifying new cars. This relief is legislated to apply to vehicles registered on or before 31 December 2026, after which it is due to expire unless extended.

6 Section 31(1)(a) of the Value-Added Tax Consolidation Act 2010 defines a "taxable dealer" as "an accountable person whose principal business in respect of supplies of…electricity, received by that person, is the supply of those goods for consideration in the course or furtherance of business and whose own consumption of those goods is negligible".

EV charging), the UK operates a two-rate system whereby VAT at 5% applies to certain "qualifying use", which includes:

- domestic use or
- use by a charity otherwise than in the course or furtherance of a business.

All other supplies of electricity are subject to UK VAT at the standard rate of 20%.

In 2021 HMRC published its policy on EV charging[7], stating that the 20% VAT rate applies to EV charging; HMRC considered that the *de minimis* provisions did **not** apply to supplies made at EV charging stations outside the home (e.g. on-street or public EV charge points).

However, a recent decision of the First-tier Tribunal (FTT) – *Charge My Street Limited* v *HMRC* [2026] UKFTT 318 (TC) – held that the 5% reduced rate applies to EV charging where the supply does not exceed the *de minimis* threshold of 1,000 kWh per month to a person at **any** premises. At the time of writing, we understand that the FTT decision has been appealed by HMRC, and therefore VAT at 20% continues to apply to EV charging outside the home in the absence of updated published guidance.

Why this matters for businesses

The difference in VAT rates between Ireland and the UK complicates the VAT position for EV charging and, in particular, for Irish businesses operating cross-border:

- CPOs and eMPs serving both jurisdictions face pricing, financial modelling and invoicing complexity; billing system updates where VAT rates change; and potential dual VAT registration obligations, resulting in increased administrative demands.
- Businesses reimbursing staff for charging in both the Republic of Ireland and Northern Ireland must manage mixed VAT rates, affecting both reimbursement policies and expense management.
- The VAT recovery position for businesses incurring VAT on both sides of the border needs to be monitored closely, particularly, around any established VAT refund claims and time limits.
- From a commercial perspective, the divergence between the Republic of Ireland and Northern Ireland can also influence driver behaviour, charging location preferences and long-term fleetmanagement strategies.

What Might Come Next for Ireland? Shift Towards EVs?

Geopolitical instability has contributed to higher fuel prices, with no end in sight. EV charging has become a hot topic and a potential way to address increasing prices for those businesses operating combustion-engine fleets.

This may be an opportune moment for policy-makers to consider whether further incentives are warranted to reinforce EV adoption alongside existing measures, such as reduced vehicle registration tax (VRT) rates and exemptions, lower motor tax and favourable benefit-in-kind (BIK) rules.

From a VAT perspective, specifically, would there be merit in enhancing VAT recovery rules on qualifying passenger motor vehicles and increasing the 20% VAT recovery threshold for EVs?

It goes without saying that more investment in EV charging infrastructure is required to further this agenda, and without that the shift towards EV adoption will be impacted.

Conclusion: A More Defined, But Still Evolving, VAT Framework for EV Charging

We now live in a world of constant change, with increased necessity to focus on alternative

7 HMRC, "VFUP3100 - Treatment of supplies of electricity and piped gas: general", available at www.gov.uk/hmrc-internal-manuals/vat-fuel-and-power/vfup3100.

energy options. Making EV charging practical from an operational perspective will be crucial. The CJEU judgment in the *Digital Charging Solutions* case has provided much-needed clarity for the EV charging industry by determining that:

- The supply of EV charging is a supply of goods.
- The charging supply chain involves two deemed supplies.
- eMPs are deemed suppliers engaged in VATable activities.
- Digital services may be treated as separate taxable supplies.
- Cross-border charging must follow the place-of-supply rules for goods.

Combined with the 9% VAT rate on electricity, rising fossil-fuel costs, VRT and BIK incentives, and strong Government support for lower-emissions transport, VAT is now a strategic factor in fleet transformation and operational business decisions.

Aside from the green agenda, sustainability and geopolitical instability, this is an area of VAT legislation and interpretation that will need to flex with advancements in this space, something that will need to be managed in accordance with the EU VAT landscape. It will be important for businesses to keep a close eye on future developments.

As the EV landscape continues to evolve, businesses will need to monitor regulatory, technical and policy developments closely to ensure continued compliance and to optimise their tax position.

EV charging and VAT – who would have thought it could be so complex? We hope that the above sheds some light on this evolving area and that, as we move forward, there is continuing collaboration amongst policy makers and key stakeholders regarding the practical considerations of the VAT position.

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Valuation Considerations from a Deal Advisory Perspective

This article outlines the practical components of a robust valuation exercise and the role of management in ensuring that the valuation withstands scrutiny.

Elements of a Credible Valuation Report

A credible valuation report should deliver a clear and defensible opinion of value in line with requirements set by the International Valuation Standards Council (IVSC), International Financial Reporting Standards (IFRS) and any additional regulatory requirements that may apply in the circumstances. Given the framework prescribed by the IVSC standards, valuation reports are generally organised into the sections outlined below.

Business overview and context

A valuation report should include:

- a description of the business and operating model;
- the ownership structure and rights attaching to each class of share;
- an overview of the market, sector and competitive position; and

- any other important business information that might influence value, such as strategic developments, key customers and contracts.

The most important element of the business overview and context section is the credibility of information. Management plays a key role in providing company documentation, while valuation analysts must reliably illustrate the main factors influencing value using that documentation.

Financial information and earnings normalisation

The financial position of the company must be presented and include, at a minimum:

- three years of statutory financial statements;
- the company's most recent management accounts, reconciled to financial statements;
- normalised earnings analysis from management, including adjustments for non-recurring items, related-party charges and remuneration structures;
- forecasts, budgets and projections, including documented underlying assumptions; and
- working capital and capital expenditure requirements.

The financial information provided will be key in assessing the valuation method that will be selected to value the company.

Valuation methodology and evidence base

The report should:

- set out the stated methodology, rationale and any valuation cross-checks;
- explain how valuation multiples were sourced, screened and adjusted;
- identify comparable companies and transactions and justify exclusions; and
- document the cost of capital, discount rate and any adjustments.

The valuation methodologies are explained using examples in the next section.

Assumptions, limitations and valuation conclusions

A robust valuation report:

- clearly states the valuation date and standard of value (i.e. such as market value as defined by IVSC or any other standard used);
- outlines any limitations, instances of incomplete data or information reliance; and
- provides a reasoned conclusion, linking evidence to the final value or value range.

Any important limitations or caveats should also be outlined in the beginning of the report to maintain transparency with the reader.

Determining the Most Appropriate Valuation Methodology

The choice of valuation methodology depends on a number of factors, including the business model, the financial profile and the availability of information. There are three primary approaches to valuation: the cost approach, the market approach and the income approach.

Cost approach

The cost approach is most appropriate for companies where tangible assets, such as property, plant and equipment, form the core value of the business. This method involves calculating the total value of the assets less liabilities and any relevant costs. Assets such as property are marked to market, and any deferred tax is normally considered. It is commonly used for property-related investment companies and for businesses in wind-down or restructuring scenarios. The cost approach can be used as a cross-check for other valuation methods.

Market approach

The market approach involves looking to the market for comparable companies and precedent transactions relevant to the subject business. Typically, the market approach uses a multiple of earnings such as EBITDA

Table 1: Cost approach example.

Manufacturing company	€'000
Property (marked to market)	7,000
Other tangible assets	4,000
Working capital	1,000
Short-term liabilities	(4,000)
Long-term liabilities	(3,000)
Deferred taxation	(500)
Equity value (7,000 + 4,000 + 1,000 – 4,000 – 3,000 – 500)	**4,500**

Table 2: Market approach example.

Services company	€'000
Adjusted EBITDA [1]	2,000
EBITDA multiple range	6.0x – 7.0x
Selected multiple	6.5x
Enterprise value [2] (2,000 x 6.5x)	13,000
Less: net debt	(3,000)
Equity value (13,000 – 3,000)	**10,000**

[1] In many circumstances a weighted average adjusted EBITDA is used (i.e. using a blended EBITDA over a number of years).

[2] It is common to cross-check the enterprise value to other specific approaches or benchmarks depending on the company such as revenue multiples or other industry specific benchmarks.

(earnings before interest, tax, depreciation and amortisation), and it can quickly provide an indication of value but is effective only when there is sufficient reliable market data. The market approach is often used as the primary approach.

Income-based approach

An income-based approach, such as discounted cash-flow, can be used as the main valuation approach, depending on the circumstances. It captures the time value of money and can incorporate growth expectations and risk-adjusted discount rates through calculation of the company's cost of capital.

Below is an example of an income approach performed on the projected cash-flows of a distributions company. In this example the valuer has determined that, having regard to the risk profile of the business and the uncertainty of the projected cash-flows, a discount rate of 20% represents an appropriate estimate of the company's weighted average cost of capital.

Purpose of the Valuation

The purpose of a valuation is critical for a valuer and should be a determinant of the scope, methodology and assumptions applied.

Table 3: Income-based approach example.

Distribution company	€'000
Weighted average cost of capital (WACC) [1]	20%
Terminal growth rate [2]	2%
Terminal value cash-flow [3]	1,800
Terminal value calculation [4] (1,800 x (1 + 2%) / (20% – 2%))	10,200

	FY26 €'000	FY27 €'000	FY28 €'000	FY29 €'000	Terminal year €'000
Five-year projected cash-flows	1,200	1,400	1,600	1,700	1,800
Terminal value					
Present value calculation	1 / (1 + 20%)	1 / (1 + 20%)^2	1 / (1 + 20%)^3	1 / (1 + 20%)^4	1 / (1 + 20%)^4
Present value factor (20% WACC)	0.8333	0.6944	0.5787	0.4823	0.4823
Present value of cash-flows [5]	1,000	972	926	820	4,919
Enterprise value	1,000 + 972 + 926 + 820 + 4,919				8,637
Less: net debt					(3,000)
Equity value	**8,637 – 3,000**				**5,637**

[1] The discount rate (WACC) will typically include any adjustments for risk determined by the valuer.
[2] Terminal growth rate is the constant rate at which a company's cash-flows are expected to grow indefinitely beyond a specific forecast period.
[3] Terminal value cash-flow is the final year cash-flow in the model used in calculating the terminal value.
[4] The terminal value represents the estimated value of a business or asset beyond an explicit projection period under the assumption that it will continue to operate indefinitely. It is a key component of a discount cash-flow analysis.
[5] The present value of cash-flows of €4,919 is calculated by multiplying the terminal value (€10,200) by the present value factor (0.4823).

Valuations prepared for tax purposes

A valuation prepared for tax purposes, such as a corporate reconstruction, is framed by reference to statutory requirements and the concept of open-market value. In this context the analysis focuses on the company's underlying financial position, sustainable earnings and asset base, with adjustments for non-commercial or non-recurring items. The assumed sale in the open market is based on a sale between a hypothetical willing seller and a hypothetical willing, prudent and cautious buyer. Consideration is given to factors such as minority discounts and restrictions on transfer which may be contained in the constitution and/or the shareholders' agreement. The valuation will prioritise methodologies that are robust and supportable from a financial perspective with clear documentation of assumptions to withstand scrutiny from tax authorities.

Valuations for implementation of employee share schemes

When preparing valuations for employee share schemes, the valuer needs to carefully consider growth potential, liquidity constraints and the rights attached to the shares being issued. Employee share schemes usually employ bespoke financial instruments created within a private company's capital structure that are designed to deliver value only on certain performance, hurdle or exit conditions. Growth shares are a widely used mechanism and require the company to be valued, as well as the underlying growth share. Option pricing models and probability-weighted expected return methods (PWERM) are generally employed to value growth shares. PWERM is a forward-looking valuation model used to estimate fair value of a company's equity or share classes.

Valuations for court

These valuations are objective, evidence-based and capable of withstanding adversarial scrutiny. Key considerations include clearly defining the valuation purpose and basis of value and ensuring that all methodologies and assumptions are transparent and defensible. The valuer must also document sources and sensitivities in a manner suitable for cross-examination, adhere to requirements on agreed scope and reporting, and ensure that the resulting opinion reflects an independent, fair and supported assessment of value.

Information Requirements and the Role of Management in a Valuation Scenario

A high-quality valuation is possible only where accurate and timely information is available. As mentioned above, this should include, at

Table 4: Information requirements.

Information	Description
Company information	Official company documentation such as the company constitution, shareholding register, articles of association, shareholders' agreements and any other documentation relevant to the shareholding structure.
Financial statements	At least three years of auditedfinancial statements up to the valuation date.
Management accounts	Management's set of accounts that reconcile to financial statements, including normalised earnings analysis such as adjustments for non-recurring items, related-party charges and remuneration structures.
Forecasts/ projections	Management forecasts and projections for at least three years of future earnings, including, where possible, any planned capital expenditure, working capital requirements and projections of depreciation. The underlying assumptions should be readily available to the valuer.
Detailed schedules	Schedules that provide a breakdown of revenue, costs, non-current assets and liabilities, current assets and liabilities, and any additional schedules that are kept by management.
Contracts/ agreements	Customer contracts, supplier agreements and any other relevant contracts between the company and public or private institutions.
Other relevant information	The valuer will typically ask for additional information where it is required, such as sector-specific KPIs (key performance indicators), tax information and legal requirements.

a minimum, three years of statutory financial statements and the most recent management accounts. Table 4 sets out the core information required to prepare a valuation report.

After the information is collected by the valuer an investigative process is performed to review normalised earnings, as required for the market approach, and identify any one-off items or other items to adjust. Both the accounting and the operational side of the business are examined. The following exercises will be performed, among others.

Accounting-related matters

These include:

- reconciliation of management accounts to statutory financial statements;
- evaluation of capitalisation policies (e.g. such as reviewing capitalisaton of employee costs) and to ensure that EBITDA is not under or overstated; and
- assessment of normalisation adjustments to determine whether they are fair and reasonable.

Management plays an essential role in ensuring that the financial data is accurate, complete and presented in a way that supports the chosen valuation methodology. The finance team can assist with reconciliations, clarifying accounting treatments and explaining unusual or non-recurring items.

Operational matters

These include:

- assessment of dependency on key personnel and intellectual property;
- review of working capital management, including debtor recoverability and supplier terms;
- analysis of customer concentration and the durability of earnings; and
- evaluation of operational efficiency and supply-chain robustness.

Management inputs are essential for identifying factors that may not be apparent from the financial statements alone. These may include operational dependencies, regulatory changes and shifts in customer demand. Open communication between the valuer and the management team helps to ensure that the report reflects both the quantitative data and the qualitative factors that define the business's performance, strategy and future outlook.

Sector-specific matters

Sector-specific information is also assessed, for example:

- technology and intellectual property (IP)-rich businesses:
  - that ownership of IP is verifiable,
  - R&D pipeline and capitalisation processes and
  - customer acquisition metrics, such as churn and lifetime value;
- manufacturing businesses:
  - capacity utilisation,
  - supplier concentration risk and
  - energy and input-cost sensitivity;
- early-stage businesses:
  - cash-flow and cash runway,
  - quality of projections and
  - sensitivity analysis to small changes in margins or customers.

Role of management

The involvement of management, such as company directors, the chief financial officer and the finance team, is central to producing a balanced and accurate valuation. Directors must provide strategic context by articulating elements such as the company's competitive advantage, growth plans and exposure to market risks. The accuracy and completeness of the information provided during the valuation preparation phase underpin the credibility of the valuation itself.

Conclusion

A well-prepared valuation report provides clarity and confidence for all stakeholders. It must reflect the purpose of the exercise, apply the most appropriate methodology and be supported by accurate, timely information. Engagement from management throughout the process ensures that both the financial and the operational drivers of the business are fully represented and considered. By adhering to recognised standards and maintaining a disciplined approach, a well-thought-out valuation can provide a defensible report that can stand up to scrutiny.

Ciaran Ramsay S.C.
Member of the Inner Bar

The Decision of the High Court in *Hegarty & Ors v Revenue Commissioners* [2026] IEHC 59

Introduction

On 5 February 2026 Quinn J in the High Court delivered his judgment on this case stated from the Tax Appeals Commission (TAC) concerning the application of the general anti-avoidance rule (GAAR) contained in s811 of the Taxes Consolidation Act 1997 (TCA 1997). The case involved arrangements entered into by Messrs Hegarty, Geary and Ward with Schroders bank. The arrangements concerned gilt forward contracts (GFCs) and foreign exchange contracts for difference (FXCDs). The Appeal Commissioner had determined the appeal in favour of the Revenue Commissioners, but Quinn J found that there were a number of errors of law in the determination and that, consequently, it could not stand. Although s811 has been replaced by s811C for transactions entered into since 2014, many of the considerations regarding how to identify a "tax avoidance transaction" remain very similar in the present legislation. As the High Court judgment in the case runs to 77 pages, I attempt to distil and consider briefly the principal issues below.

Background

- The taxpayers engaged in transactions involving GFCs and FXCDs in 2007/8.

The contracts had similar trade, expiry and settlement dates, lasting between four to eight weeks.

- The transactions resulted in a gain on GFCs and a loss on FXCDs, roughly offsetting each other.
- The gains on GFCs were exempt from capital gains tax (CGT) under s607 TCA 1997.
- The taxpayers claimed losses on FXCDs as allowable for CGT, and they were offset under s31 TCA 1997 against gains from other assets.
- Revenue issued notices of opinion under s811, challenging the arrangements.
- The Appeal Commissioner found that the transactions were entered into primarily for a tax advantage, were not for commercial purposes and involved a misuse of relief; consequently, the Commissioner had held that the opinions of Revenue under s811 stood.

Issues in the Case Stated

The judgment of the High Court deals with, *inter alia*, the following issues:

- the role of the High Court in a case stated;
- what is financial hedging and how to review expert evidence on hedging;
- how does a Commissioner/judge prefer one expert over another;
- tax purpose and absence of commercial purpose;
- the burden of proof; and
- the relief exclusion in s811(3)(a)(ii), including the purpose of specific reliefs – in this case s31 and s607.

The Court's Role in a Case Stated

Revenue argued that under the somewhat unusual provisions of s811(1)(b) the court should "step into the shoes" of the Appeal Commissioner and decide the case itself based on the papers. That provision stated that, in determining an appeal or answering a case stated under s811(7), one should read "Appeal Commissioner" or "High Court", as appropriate, in the place of "Revenue Commissioners" in s811(2) and (3). Notwithstanding those provisions, Quinn J declined to step into the shoes, stating that in accordance with well-established principles on cases stated (and also citing the minority decision of McKechnie J in *Revenue Commissioners v O'Flynn Construction and ors.* [2013] 3 IR 533), the function of the High Court is to advise on points of law, not to re-evaluate factual or expert evidence.

Hedging and the Correct Approach to Expert Evidence

An expert on financial products for each of Revenue and the taxpayers had given evidence before the Appeal Commissioner. There was a dispute regarding whether the Revenue expert had or had not made a "concession" on the question of whether the arrangements involved hedging. Quinn J said that Revenue's expert accepted that the transactions could be seen as hedging, which had not been properly considered by the Appeal Commissioner. Quinn J decided that the Commissioner's conclusion that Revenue's expert was unwilling to accept that there was hedging was unsustainable. I do not propose to delve further into that specific factual issue in this article. What is, perhaps, of wider interest and application is that the court emphasised (based on established case law) the need for a decision-maker to set out clear reasons for preferring one expert's evidence over another's. In this case the court said that the Commissioner had failed to engage with the reasoning and conclusions of the taxpayers' expert and had failed to properly address that evidence. This amounted to an error of law by the Commissioner.

Tax Purpose and Absence of Commercial Purpose

The High Court considered that the previous errors had a domino effect on the correctness of the Commissioner's determination. The Commissioner had concluded that while there was a tax purpose for the transactions (generating exempt gains and allowable losses),

there was no commercial purpose. However, Quinn J said that the Commissioner's basis for discounting hedging as a (possible) commercial purpose was flawed as the Commissioner misunderstood the expert evidence on hedging. Consequently, the court said that there was no basis for the Commissioner's decision that there was no commercial purpose for the transactions. The transactions involved real GFCs and real FXCDs, with actual gains and losses, not fictitious or unreal transactions and outcomes. The Commissioner's finding was an error of law as the only reason given for the Commissioner's conclusion was that he "was unable to identify any commercial motive for the investment". In addition, there was a related error in that the Commissioner and Revenue conflated the issue of whether there was a commercial purpose to the transactions with the separate issue of whether the two sets of transactions (the GFCs and FXCDs) had to be taken together or could be viewed separately.

The Burden of Proof

The court moved on to the question of the relief exclusion in s811(3)(a)(ii). That exclusion provides that a transaction shall not be a tax avoidance transaction if the purpose of the transaction was to obtain the benefit of a relief without misusing or abusing the relief having regard to its purpose. The Commissioner had determined that there is a positive obligation on the taxpayers to demonstrate that there was no misuse or abuse of s31 and there was an obligation on the taxpayers to set out the purpose of s31. However, the Court of Appeal in *Hanrahan v Revenue Commissioners* [2024] IECA 113 (judgment delivered after the decision of the Commissioner in the present case) had already explained:

> "It is difficult to see how any particular burden, other than one of seeking to persuade by way of argument that as a matter of law the transaction is not one that falls foul of s. 811 TCA, could arise in such a situation. Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation."

Quinn J said that the Commissioner's approach to the burden of proof as regards the relief exclusion was an important error of law that subsequently impacted the actual analysis undertaken by the Commissioner of the relieving provisions at issue.

The Relieving Provisions: Misuse and Abuse of s31 and s607?

The purpose of a relief in the context of s811(3)(a)(ii) has been at the core of all reported GAAR cases to date – *O'Flynn Construction* and *Hanrahan*. The 2024 Court of Appeal decision in *Hanrahan* had already considered the purpose of s31 (in that case in the context of s549, which is irrelevant in the present case). The Court of Appeal had been assisted by the earlier, 2011 Supreme Court majority decision of O'Donnell J in *O'Flynn Construction*, which set out the criteria to be considered. In *Hanrahan* the Court said:

> "While we accept that the background is the decision in *McGrath v McDermott* and that s. 86 (and s. 811) reversed that decision, that reversal was in the sense that there is now **general anti-avoidance legislation which permits the form, substance and outcome of the transaction to be addressed having regard to purpose**. It was not a reversal of every aspect of *McGrath v McDermott*." (emphasis added).

In the present case Quinn J said that the judgment of O'Donnell J in *O'Flynn Construction* explains that s86 Finance Act 1989 (read s811 TCA 1997) allows the court and Revenue to look to substance as well as

form and to consider the results and purpose of transactions and the means used to obtain those results. In terms of ascertaining the purpose of the relieving provision (s31), Quinn J continued:

> "[106]…In *Hanrahan* it was important that the term 'allowable losses' in section 31 was understood in light of the wider CGT framework, including sections 546 and 549, which were key in that case (section 549 does not arise for consideration in this case though). By virtue of those deeming provisions the taxpayer had created an artificial loss and the Court concluded that those specific arrangements constituted a misuse or abuse of the relieving provisions and therefore fell with section 811 as tax avoidance…[107]. Applying the principles of statutory interpretation discussed above requires that section 31 be considered in its statutory context… These provisions demonstrate the overall CGT framework in TCA 1997 considers 'allowable losses' to be the mirror of 'chargeable gains'."

This is important. In that regard Quinn J noted that s545(3) provides: "Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain" and s546 provides:

> "(2) Except where otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed. (3) Except where otherwise expressly provided, the provisions of the Capital Gains Tax Acts which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain and part not**,** shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly."

Quinn J concluded by stating that he did not wish to foreclose on what the actual conclusion should have been of an application of these provisions to the facts found, but said that the Commissioner did not properly analyse the purpose of s31 and s607 in relation to the transactions. A proper purposive analysis requires considering not just their tax outcome but also whether the transactions undermine the legislative intent. The court criticised the incorrect interpretative approach used by the Commissioner, such as imagining what the Oireachtas could have envisaged.

Overall Legal Conclusions

Quinn J concludes that there were multiple legal errors in the Commissioner's determination. Although a number of errors were identified, what the correct answer is to each issue was not decided by Quinn J as it was not necessary for him to do so to answer the questions posed in the case stated. Like any GAAR case, which deals with complex tax legislation, issues and arguments, this is an important decision and merits review and consideration. The decision demonstrates, again, how rigorous the analysis under the s811 process is required to be. The extent of the court's role was questioned. The particular facts as regards hedging in this case are complex and disputed and may not be of very broad interpretation to other fact patters (that remains to be seen). The precision needed in identifying the presence or absence, and weight of, commercial purposes is exacting. The clarity brought by the earlier *Hanrahan* decision and this decision to the question of the burden of proof and when/to whom it applies is welcome. The question of the purpose (and possible misuse/abuse) of the relieving provisions at issue in an s811(3)(a)(ii) dispute can be one of considerable difficulty and debate. I understand that the judgment of Quinn J will be appealed further.

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Beyond the Will: How the Succession Act 1965 Shapes Irish Tax Outcomes

Abstract

Estate planning is routinely structured by reference to the Capital Acquisitions Tax Consolidation Act 2003 and the Taxes Consolidation Act 1997. Yet many of the most significant tax outcomes in an estate are determined not by tax legislation but by the operation of the Succession Act 1965 (the "Act"). Statutory entitlements, estate administration constraints and claims arising under the Act may materially alter the destination, timing and nature of assets passing on death, with direct tax consequences for CAT exposure, relief availability and the overall effectiveness of the succession plan.

This article examines the principal points of intersection between the Act and Irish tax outcomes in practice. For the private client practitioner, understanding those intersections is not merely legal background; it is essential to advising with a clear understanding of the risks, the practical constraints and the extent to which they can be mitigated.

Introduction

The Act is the cornerstone of Irish succession law. It establishes statutory rights that operate independently of, and at times in conflict with, a testator's expressed wishes. A will may be technically coherent from a tax perspective and yet fail to operate in the manner intended because statutory entitlements, court powers or default succession rules intervene to alter who takes, when they take and in what form they take.

For private client practitioners, succession planning and tax planning must proceed in parallel. A structure conceived without regard to the Act may be technically coherent and fiscally well designed and still fail to achieve what the testator intended.

Estate Boundaries: The Architecture of the Analysis

Before any other analysis is possible, one question must first be addressed: what assets form part of the deceased's estate? The answer is fundamental because the Act applies only to assets owned beneficially by the deceased at the date of death and capable of passing under the will or on intestacy.

Certain assets, often of significant value, fall outside the estate entirely. Life assurance policies written in trust pass in accordance with the terms of the trust rather than under the will. Assets held in joint tenancy pass by survivorship. In each case the asset falls outside the estate and outside the testamentary structure that the adviser may have assumed was in place.

That distinction has practical consequences. An asset outside the estate cannot be directed by will to a particular beneficiary. Nor can it necessarily be relied on for succession planning designed around the availability of agricultural relief or business relief or the intended composition of residue. If the asset passes otherwise than anticipated, the tax analysis built on that assumption may no longer hold.

The starting point for any estate planning exercise must therefore be a complete asset review identifying clearly which assets fall within the estate and which do not. Until that exercise has been undertaken, the adviser does not yet know what property is actually capable of passing under the succession structure being proposed.

The Surviving Spouse's Legal Right Share

The legal right share conferred by s111 of the Act is perhaps the most significant statutory constraint on testamentary freedom encountered in practice. Section 111 provides that, irrespective of the terms of a will, a surviving spouse is entitled to a fixed share of the net estate, with priority over all devises and bequests. That share is one-half of the net estate where the deceased leaves no issue and one-third where issue survive. That entitlement arises automatically on death and does not depend on the making of provision under the will. Where no provision is made, the legal right share automatically vests and will effectively override the testamentary structure, requiring the spouse's entitlement to be satisfied from the estate in priority to other beneficiaries.

The share is calculated by reference to the net estate – gross assets less debts, liabilities and administration costs – and excludes assets that fall outside the estate entirely, including assets passing by survivorship.

Where a will makes testamentary provision for the spouse, the spouse must elect whether to take that benefit or the legal right share. The election is governed by s115, which imposes a time limit of six months from receipt of written notification of that right, or one year from the first taking out of representation, whichever is later. The personal representative is required to notify the spouse in writing of the right to make that election. Until that process is complete, the position remains fundamentally uncertain.

The significance of s111 lies in its capacity to alter the distribution of an estate and, in turn, the entire tax analysis built around that distribution. A legal right share election by the surviving spouse may fundamentally alter both the composition of the assets available for

distribution and the value flowing to individual beneficiaries. Assets may need to be realised; specific bequests may abate or fail.

In estates comprising farms or family businesses the consequences may be particularly significant: a legal right share claim may require value to be extracted from an estate in a way that places direct pressure on assets central to the estate plan and on assets that do not divide easily, resulting in the sale of those assets and the loss of tax reliefs.

The adviser must address legal right share exposure at the very outset and advise the testator accordingly. Unless the possibility of election has been removed, the structure must allow for the legal right share being claimed. The Act does, however, permit that uncertainty to be addressed during the testator's lifetime by way of renunciation, thereby allowing a succession plan to proceed on a firmer basis.

Section 113 of the Act permits a spouse's legal right share to be renounced, either in an ante-nuptial contract made in writing between the parties to an intended marriage or, after marriage, by a written renunciation made during the testator's lifetime. A renunciation properly obtained during the testator's lifetime may remove a significant source of uncertainty from the succession plan, particularly where the estate includes a farm, business or other asset that would be vulnerable to disruption if the legal right share were later claimed. Given its significance, it should be entered into only on the basis of independent legal advice received by the renouncing spouse.

It should not be assumed that the position can be resolved after death. If renunciation has not occurred during the testator's lifetime, the succession plan must proceed on the basis that a claim to the legal right share remains a real prospect.

Section 117: Claims, Disruption and the Limits of Planning

Sub-section 117(1) of the Act gives a child of the deceased a statutory right to apply to the court for provision from the estate. Where the court is of the opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by the will or otherwise, it may order that such provision be made from the estate as the court thinks just. In considering the application, the court must approach the matter from the standpoint of a prudent and just parent and have regard to the position of each of the children of the testator and any other circumstances it considers relevant.

Sub-section 117(6) (as amended) sets a strict time limit for applications, which must be brought within six months of the first taking out of representation.

The significance of s117 for tax purposes lies in two distinct but related respects: the potential outcome of the proceedings themselves and the effect that the claim may have on the administration of the estate while proceedings are pending.

Administration during proceedings

Once an application is issued under s117, distribution of the estate will generally be deferred pending determination of the claim. The executor's role becomes one of preservation as much as administration, and the estate may remain in a state of uncertainty for a considerable period. Assets cannot safely be transferred to beneficiaries under the will until the claim has been resolved, whether by agreement or by court order.

The consequences are most acute where the estate includes a farm or family business. The personal representative's authority to deal with such assets during administration is limited, and where entitlement to the asset is effectively in issue, the ability to take decisions necessary for its ongoing operation may be constrained. The very asset around which the succession plan was built, and in respect of which agricultural or business relief was expected to apply, may decline in value or cease to remain commercially viable.

The tax consequences of a court order

Where the court makes an order under s117, the provision directed is treated for CAT purposes as a benefit taken from the deceased, with the child's entitlement arising on death and taxed accordingly under the Capital Acquisitions Tax Consolidation Act 2003. The Group A threshold is available in the normal way. The amount or form of the provision directed by the court will determine the CAT exposure.

A court order requiring a monetary payment to a child from an estate that holds illiquid assets – a farm, a business or an investment property – may require a disposal. In such circumstances the tax cost of satisfying the s117 order may be considerably greater than the face value of the provision directed.

Advisers engaged in succession planning where there is an adult child who has been substantially excluded from the estate must give due consideration to the s117 risk and the implications for the estate.

Where the risk is material, lifetime planning may offer a more reliable solution than testamentary provision alone, although that course is not unconstrained. Section 121 permits the court to examine dispositions made within three years of death where those dispositions were made with a view to defeating or diminishing the entitlements of a spouse or child under the Act.

Advancements Under Section 63

Section 63 of the Act governs the treatment of lifetime advancements made by a parent to a child. The provision may arise both on intestacy and under a will. It operates as the default rule, subject to any contrary intention expressed or appearing from the circumstances of the case.

The significance of the provision lies in its interaction with lifetime transfer planning. A parent may transfer substantial assets to one child during lifetime without intending that transfer to affect the ultimate division of the estate. Section 63 may, nevertheless, require those benefits to be brought back into account and, in doing so, alter the basis on which equality between children is assessed on estate distribution.

The definition of advancement in s63(6) is broader than might first be assumed. It extends beyond outright gifts of property to include portions; settlements; marriage portions; payments made to establish a child in a profession, trade or business; and, in some circumstances, education costs. What a family may have regarded as informal support can later become legally relevant in the distribution of the estate.

The advancement is valued at the date it was made rather than at the date of death. Where the advanced asset has appreciated – as will frequently be the case with land or business assets – the recipient child benefits from the historical valuation.

Section 63(5) places the onus of proving that an advancement was made on the person asserting it, unless the advancement has been expressed in writing by the deceased. Where there is no such written acknowledgement, the absence of documentation can become significant if siblings later dispute whether a lifetime transfer was intended as an advancement at all.

A well-drafted will should address the application of s63 expressly. Whether the testator intends that prior lifetime provision should be disregarded or brought into account, that intention should appear clearly from the will.

Section 55: Appropriation

The power of appropriation conferred by s55 of the Act permits a personal representative to appropriate any asset of the estate in or towards satisfaction of any share in the estate. The statutory power is, however, subject to procedural requirements: notice must be given to beneficiaries and, in certain circumstances, their consent obtained before an appropriation can be made. These requirements can create delay and difficulty in estates where a prompt and commercially coherent distribution is important.

Well-drafted wills frequently include an express power of appropriation that dispenses with the statutory notice and consent requirements. Where such a power is in place, the personal representative has considerably greater flexibility. Where it is absent – whether because the will is silent or the deceased died intestate – the statutory procedure applies with the constraints that it entails.

Where appropriation is available, whether by statute or by express power, it is a useful but often overlooked planning tool. In an estate comprising assets of different character it allows the personal representative to allocate assets between beneficiaries in a manner that is both commercially coherent and tax efficient.

Revocation by Marriage, Changing Circumstances and Lapse

Section 85 provides that a will is revoked by the subsequent marriage of the testator except where it has been made in contemplation of that marriage. The revocation operates automatically and without reference to intention.

Divorce, by contrast, does not revoke a will. It is therefore crucial that wills are revisited as circumstances change.

As a general rule, a gift fails where the beneficiary predeceases the testator. Section 98 creates an important exception where the deceased beneficiary was a child or other issue of the testator and leaves issue surviving the testator. In such circumstances the gift does not lapse but instead takes effect as if the beneficiary had died immediately after the testator, unless the will provides otherwise.

The section is often misunderstood. The surviving issue do not necessarily take the gift. Rather, the gift is preserved for the estate of the deceased beneficiary and devolves thereafter under that beneficiary's own will or intestacy. Section 98 itself operates only in the absence of contrary testamentary intention. A carefully drafted will may therefore disapply the statutory position and substitute an alternative succession arrangement.

These provisions illustrate a broader point. A will drafted against one family and financial landscape may, many years later, operate in circumstances entirely different from those that existed when the will was prepared. Subsequent marriage, changing family circumstances, the death of beneficiaries and the statutory rules governing succession on death may each alter the eventual distribution of an estate in ways not originally contemplated.

Intestacy

Intestacy remains more common than many assume. Where a person dies without leaving a valid will, the estate devolves under Part VI of the Act in accordance with a fixed statutory order. A surviving spouse or civil partner takes the entire estate where there is no issue; where issue survive, two-thirds passes to the spouse or civil partner and the remaining one-third devolves among the issue. In default of a surviving spouse or civil partner and issue, the Act prescribes the order in which more remote relatives are entitled to take.

The statutory class of issue extends to both marital and non-marital children, as well as children who have been legally adopted. Foster children and stepchildren who have not been adopted are excluded, regardless of the nature or duration of the relationship with the deceased.

This is one of the clearest examples of the divergence between succession law and tax treatment. A stepchild may qualify for the Group A threshold for CAT purposes and yet have no entitlement on the intestacy of a stepparent.

Intestacy is a rigid statutory scheme and will often produce a distribution bearing little resemblance to anything that the deceased would have chosen. Any attempt to repair the position after death, whether by disclaimer or deed of family arrangement, depends on the cooperation of beneficiaries, whose interests

may not coincide. For that reason intestacy should be treated as a planning risk, not a fallback.

Conclusion

For the private client tax adviser the significance of the Act lies in the fact that it determines the legal entitlement on which the tax consequences rest. That is why the Act cannot be treated as something secondary to the tax analysis. Statutory entitlements, claims on the estate and failures in testamentary planning may each alter the destination of assets and the resulting tax position. For the adviser, the Act is therefore not peripheral to the tax exercise but one of its principal determinants.

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"Mixed Contracts": VAT and RCT – Recent Developments

Introduction

This article deals with two recent updates to Revenue's Tax and Duty Manual (TDM) Part 18-02-01. The TDM primarily relates to relevant contracts tax (RCT). However, due to the interaction of VAT and RCT, the TDM also includes comments related to VAT.

Legislation

The parts of RCT and VAT legislation that are most relevant to the updates to the TDM are:

- Sections 530 and 530A of the Taxes Consolidation Act 1997 (TCA 1997) – these sections set out the rules for applying RCT.
- Section 16(3) of the Value-Added Tax Consolidation Act 2010 (VATCA 2010) – this section applies a VAT reverse charge to the provision of certain "construction operations" (as defined in RCT legislation) where the services are received by a "principal" (again, as defined in RCT legislation). Although not referenced in the TDM, s16(5) VATCA 2010 could also be relevant as this section applies a VAT reverse charge to "construction work" provided by a supplier to a connected party in certain circumstances (irrespective of whether that connected party is a principal).

- Section 47 of VATCA 2010 – this section deals with the rate(s) of VAT that apply to "composite" and "multiple" supplies, which are defined in s2 VATCA 2010.
- Schedule 3, paragraphs 9, 9A, 9B, 14 and 15, of VATCA 2010 – these paragraphs apply a reduced rate of VAT (13.5% or 9% depending on the circumstances) to the sale of immovable goods, to the development of immovable goods and to work on such immovable goods, including the installation of fixtures.

Background to the TDM Updates

By way of context, in recent years there has been a significant increase in the number of residential units in Ireland being acquired by public bodies, such as local authorities. Public bodies are generally considered as a principal (for RCT purposes). The residential units (including houses and apartments) are typically acquired for social housing use and are generally purchased in one of three ways:

Scenario 1: Purchase of existing completed residential units by the public body.

Scenario 2: Purchase of land by the public body followed by construction of the residential units via a development agreement between the public body and a builder. These transactions are sometimes referred to as forward fund transactions.

Scenario 3: Agreement entered into between a vendor/developer and the public body under which the public body agrees to purchase residential units only when construction has been completed. These transactions are sometimes referred to as forward purchase transactions.

It has generally been accepted that RCT is not relevant under Scenario 1 above (i.e. a "straightforward" purchase of existing residential units). Similarly, it has usually been clear that RCT applies under Scenario 2 above (i.e. where a public body acquires land and then pays a builder/developer to construct houses or apartments on that land, RCT and VAT reverse charge apply to the payments for the construction work, which are typically identified as a separate amount in the construction services agreement).

However, the application of VAT and RCT to the purchase of residential units by public bodies under Scenario 3 is more complex and became a matter for debate. On the one hand, based on the legal agreements, this could be viewed as two separate supplies to the public body, being a supply of land and a supply of construction services. Furthermore, it was argued in some cases that RCT should apply to the full amount of the payment due under the contracts and that VAT reverse charge should apply to the full amount of the consideration payable in accordance with the RCT treatment. An alternative view was that, given that ownership of the land/units transferred only after the construction was completed, there was, in substance, a single supply for VAT purposes (being the sale of a completed property), and therefore the vendor was obliged to charge VAT on the full consideration for the sale in accordance with the rules for sales of new property. This led to challenges in completing certain property transactions as the parties (and their advisers) sought to protect their position in relation to the appropriate RCT and VAT treatment.

Interactions with Revenue

In late 2023 and early 2024 the matter was discussed at a number of Direct and Indirect Tax TALC meetings. A number of submissions were made by the Irish Tax Institute setting out the view that RCT should not be relevant where completed houses/apartments were ultimately conveyed to a public body and that the vendor is the party obliged to account for the VAT arising on such sales (as, in substance, the transactions represent the sale of completed properties). It is worth noting that in some cases the construction of the residential units is already completed when the agreement with the public body is entered into.

In late 2024 and early 2025, while acknowledging that every transaction and

contract should be considered on its own merits, Revenue issued replies to the various submissions outlining its view that RCT applies in cases where a contract/agreement includes certain wording related to the provision of construction services. However, Revenue also noted that RCT should be applied only to the portion of the payment that is in respect of construction operations – i.e. RCT does not apply to the consideration attributable to the sale of land/site even if the land sale is made under the same contract under which the purported construction operations are supplied. As a result, it was indicated that the consideration should be apportioned between the amount attributable to the land (which is not subject to RCT) and the amount attributable to the construction work (which is subject to RCT).

The concept of splitting the consideration under a single contract for RCT purposes was seen by many as a departure from the generally understood position that RCT technically applied to all payments made under a relevant contract where construction operations are provided under that contract. This understanding was based on the view that RCT obligations arise from the contract itself rather than the individual components within a contract (s530 TCA 1997). This is consistent with Revenue's (now retired) Guidance Note dealing with RCT and VAT for school boards of management, which contained the following statements:

> "In considering whether a payment is subject to RCT, the contract under which the payment is being made must be examined to determine if it is a relevant contract. If it is a relevant contract, then all payments under that contract must be subject to RCT...If any part of a contract is a relevant operation then all payments under the contract are within the scope of RCT".

June 2025 Update

After a number of requests for clarification, Revenue ultimately updated the TDM referred to above in June 2025. The wording inserted in the TDM (at paragraph 3.1(a)) is as follows:

> "The question of whether a contract entered into by a principal contractor (including a Local Authority or an Approved Housing Body) for the acquisition of a property is a relevant contract will depend on the terms and wording of each individual contract. There can be multiple scenarios and multiple ways a contract(s) can be structured. The key question from an RCT viewpoint is whether the particular contract(s) comes within the definition of relevant contract in section 530(1) TCA 1997. Generally speaking, where the contract is for the acquisition of a completed property and the contract contains no provision regarding the construction of the property then there is no relevant contract between the parties and RCT does not apply. If, however, the contract does include an undertaking by a contractor to carry out construction operations, then the payments for the construction operations come within the scope of RCT. Contracts which include terms and wording along the following lines –
>
> - The Employer is desirous of constructing housing units on the site in accordance with the plans (where the principal/Approved Housing Body/Local Authority is defined as the Employer in the contract).
> - The Contractor has agreed to carry out the works in accordance with the plans for the contract price (where the Contractor is defined as the construction company).
> - The Contractor will for the contract price build and completely finish in a good, substantial and workmanlike manner to the Employer the works on the site in accordance with the Plans.
> - The 'works' are defined as 'the construction of the units pursuant to the planning permission and specified in the plans together with

such ancillary works and services as required for such use and/or enjoyment of the units and as may be necessary to render the units habitable when completed, including such works necessary to ensure all associated common areas, roads, footpaths, access routes, infrastructural works and services, benefitting the Site are completed to a standard acceptable for taking charge by the Local Authority'.

- 'Contract Price' is defined as 'the sum of €xxxx being the price of the works and the assurance of the units'.

indicate that a relevant contract for construction services exists and therefore RCT should be applied to the payments stated as the contract price. Nevertheless, every case needs to be decided on its own merits by examining the contracts and agreements that are in place between the parties.

Where a contract provides for both construction services and the supply of land, only the construction services provided for in the contract are subject to RCT. Section 16(3) VATCA 2010 provides that the supply of the construction services is subject to the VAT reverse charge. Where the contract provides for a single consideration to cover both the construction services and the sale of the land, then, in order to determine the amount applicable to the construction services, the consideration needs to be apportioned by the principal. RCT and the VAT reverse charge apply to the consideration for construction services. RCT and the VAT reverse charge do not apply to the consideration for the sale of the land. In every case, it is necessary to examine the actual contract in order to determine the position."

The new wording inserted in the TDM confirmed Revenue's view that RCT applies in cases where the contract includes an undertaking by a contractor to carry out construction operations and that RCT should apply only to the portion of the payment related to the provision of the construction operations. In relation to VAT, the updated guidance also notes that where RCT applies to only a portion of the consideration, two separate VAT treatments should be applied. The guidance notes that in respect of the consideration attributable to the construction operations provided, VAT reverse charge should apply. In relation to the portion of the consideration attributable to the sale of the site/land the TDM notes that the vendor should account for VAT on the relevant consideration. Where a single price has been commercially agreed between the parties, there is then a need for that price to be split between the portion subject to RCT and the portion not subject to RCT.

Although the updated guidance provided some clarity in relation to these scenarios, certain difficulties remain in applying the guidance. For example:

- Where the two parties have agreed a single price for a supply it may be problematic to agree the split of that price to reflect two separate supplies with different RCT and VAT treatments.
- In relation to the kind of transactions envisaged by Scenario 3 above, regardless of the RCT position, it could still be argued that the economic reality is that a completed property is being supplied rather than any "construction service" (for VAT purposes) being provided to the purchaser by the seller (given that ownership of the property passes only after the construction is completed). As mentioned above, in many of the cases the relevant houses/apartments may already have been completed when the vendor enters into the contract with the public body, making it even more likely that the supply is that of completed houses or apartments (i.e. a supply of goods) for VAT purposes.
- There are many kinds of transactions under which a seller agrees to supply goods to a customer before the goods are ready for supply. Take, for example, a person pre-ordering a new car from a motor dealer that will be manufactured, customised (e.g. specific paint colour), delivered and

ultimately supplied at some point in the future. When that new car is finally supplied to the customer by the motor dealer, that supply is accepted as a single supply of goods (i.e. a car). It would not typically be suggested that the car dealer is supplying a manufacturing/assembly or painting service etc. with a separate supply of goods. Although it is appreciated that the legal contracting relating to supplies of property may be more complex (with significant focus on the construction of the residential units), it would seem that the same overall principle should apply.

- Irrespective of the RCT analysis, the VAT treatment of any transaction must take account of the general principles of EU law and the case law of the Court of Justice of the European Union. The case law on composite and multiple supplies (which is largely reflected in s47 VATCA 2010) emphasises whether the average customer considers that they are buying one composite or indivisible supply or, rather, separate supplies. It seems strongly arguable that in most cases a contract to sell completed residential units such as a block of apartments to a public body should be a composite supply for VAT purposes and should therefore follow a single VAT rate/ treatment (per s47 VATCA 2010).

Notwithstanding the above, the updated TDM outlined Revenue's position on the VAT and RCT treatment of such contracts and enabled parties to progress many transactions based on the stated position outlined. In relation to VAT, it is also helpful that the rate of VAT that applies to the sale of developed land (or the sale of newly completed houses/apartments) is generally the same (before 8 October 2025 and after 25 November 2025) as the rate of VAT that applies to the supply of construction services. As a consequence, the quantum of VAT due in respect of such transactions is generally not impacted by the split VAT treatment but merely which party is obliged to account for the VAT to Revenue.

As an aside, anyone who has paid a penalty in respect of the non-application of RCT where some of the payment related to anything other than the provision of construction operations may want to consider whether an application to have some or all of the penalty refunded is appropriate.

February 2026 Update

In February of this year the TDM was further updated with additional wording, as follows:

> "A similar position applies to other types of mixed contracts, these would include for example:
>
> - a contract to supply design and build services to a principal,
> - a contract for the supply and installation of systems in a building or structure.
>
> In both of the above examples the contract contains elements which are within the scope of RCT and elements which are not. In the first example, design work is not within the definition of construction operations in section 530 (design work depending on the facts and circumstances and who the service is supplied to may come within PSWT), however the build services are within the definition in section 530. In the second example the supply of materials is not within the definition of construction operations in section 530, however the installation work is.
>
> Where the contract provides for a single consideration to cover both the RCT and non-RCT elements, the consideration needs to be apportioned by the principal with RCT applying to the part of the consideration relating to construction operations."

The additional wording inserted in the TDM would appear to extend the requirement to split the application of VAT and RCT to a wider range of transactions. This raises a significant number of potential questions:

- It may raise questions on the VAT rate applying to such supplies. For example, it has generally been accepted that the supply and

installation of a system comprising fixtures (such as a fire alarm system or security system) in a building is subject to VAT at the reduced rate (currently 13.5%), subject to the application of the "two-thirds rule". This is on the basis that the supply and installation qualifies for the reduced VAT rate under Schedule 3 of VATCA 2010 as either work on immovable goods or the installation of a fixture, subject to the "two-thirds rule". In cases where RCT and VAT reverse charge apply, the "two-thirds"[1] rule is generally disregarded (as the customer may not know if the "two-thirds rule" is breached or not), with the recipient self-accounting for the VAT arising on the full supply-and-install price at the reduced rate (per s41(4) VATCA 2010 and Revenue guidance[2]). However, the updated guidance, which indicates that a "contract for the supply and installation of systems" should now be split for RCT and VAT purposes, might now suggest that such transactions comprise two separate supplies for VAT purposes. If it is now the case that RCT applies to only a portion of the payment and there are two separate VAT treatments (i.e. a supply of goods and a supply of installation services), this calls into question whether the reduced rate of VAT would apply to the supply of the goods element and whether the supplier should charge and account for that VAT. This would represent a significant departure from the current treatment typically applied to many transactions.

- It is also not clear what the VAT position would be if RCT does not apply to transactions such as the ones referred to above (i.e. if the purchaser is not a principal contractor). In respect of supply-and-install contracts, is it now the case that this should still be regarded as a single supply/install with the vendor accounting for VAT at the reduced rate (subject to the "two-thirds rule") or are there also two separate supplies for VAT purposes (potentially with two separate VAT rates)?
- The use of the term "materials" in the TDM is also concerning. Many services (such as repair work) involve the provision of goods/materials. Again, typically, the VAT rate applying in such cases is based on the nature of the service as a whole rather than there being a supply of a service and a separate supply of goods.
- For existing contracts it may be difficult to amend current invoicing arrangements and RCT treatments mid-contract (some contracts, such as public–private partnership arrangements, are often for terms exceeding 25 years, and there are many such contracts in place currently).

Takeaways

- Further submissions to Revenue may be made in respect of the matters referred to above.
- Careful consideration is needed for anyone (vendors and purchasers) involved in transactions potentially impacted by the above. Purchasers may need to consider whether they should operate RCT on the full value of a contract or only a portion of that amount. In addition, purchasers may now be expected to pay VAT to sellers where previously it would have been expected that the VAT reverse charge would apply. For sellers, they need to consider if they should potentially be accounting for VAT on certain supplies where it would have been expected that the VAT reverse charge would apply. Where a split in the VAT treatment arises, sellers also need to consider the rate of VAT that they should be charging.
- Before making any changes to treatments currently adopted, it is worth bearing in mind that there has been no change to either VAT law or RCT law associated with the above updated guidance contained in the TDM.

1 Readers will likely be aware that, with some exceptions, under the "two-thirds rule" (included in s41 as well as Schedule 3 paras 9(1) and 15(2) VATCA 2010), where the value of movable goods provided under an agreement for the supply of services exceeds two-thirds of the total consideration under the agreement, the VAT rate that applies to the supply is determined by the VAT rate that applies to the goods, rather than the VAT rate applying to the services.

2 Services taxable at the rate of the goods (the two-thirds rule).

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Revenue Commissioners' Update: Customs Reform: Agreement Reached on Significant Reform of EU Customs Rules

Background

Following political agreement on 26 March 2026, the EU Customs Reform Package sets out the most far-reaching changes to the administration of EU customs since the Customs Union was created. The measures aim to strengthen protection of the Single Market by enabling Member States to act in a more unified way and by better addressing the pressures created by fast-growing e-commerce and wider geopolitical shifts.

Core structural changes include a new EU Customs Authority, an EU Customs Data Hub that will operate as a single EU customs IT platform, an enhanced trusted trader scheme and revised obligations for online platforms that sell goods into the EU. The package also provides for significant penalties where ecommerce operators systematically fail to meet their customs obligations. The first operational phase of the EU Customs Data Hub is planned for mid-2028 and will initially cover e-commerce consignments.

Removal of €150 Customs Duty Exemption Threshold

Given the immediate challenges posed by low-value parcels, a transitional measure will apply from 1 July 2026. A fixed customs duty of €3 per item will be due on business-to-consumer consignments valued at under €150 that enter the EU, largely via e-commerce. The measure addresses competitive imbalances for EU traders and concerns relating to safety and the environment, and will remain in place until the EU Customs Data Hub is live for these flows, after which normal customs duties will apply. Where goods are returned to the seller, customs duty and VAT will not be refunded. However, VAT collected via the VAT Import One Stop Shop (IOSS) will be refunded to the business. If the goods are faulty, both customs duty and VAT may be refunded.

Introduction of EU Handling Fee

A separate EU handling fee will be introduced on 1 November 2026 to help meet the rising cost of processing e-commerce goods within the Union. The European Commission will set the level of this fee and review it every two years. This fee is distinct from, and additional to, the €3 fixed duty described above.

Next steps

Although political agreement has been reached further technical detail will be confirmed during the drafting of relevant implementing and delegating acts. Regarding the removal of the €150 customs duty exemption threshold, Revenue has commenced an extensive changemanagement programme with key stakeholders and consumers.

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Focus on UK and Northern Ireland Tax

Introduction

The beginning of 2026 has seen targeted legislative enactments and administrative updates to the UK tax landscape, with a number of important tax changes coming into effect from the start of the new tax year, on 6 April, and affecting millions of individuals and businesses across the UK. The beginning of the year has also seen the Government intensify its drive to close the tax gap, via expansion of HMRC's powers and resources, signalling a tougher stance on compliance. This article distils the most consequential developments across corporation tax, personal taxes, indirect taxes and inheritance tax.

Corporation/Business Taxes

Although there have been no major new announcements pertaining to the business tax landscape in the first half of 2026, a number of corporation tax changes took effect from

6 April 2026 that businesses should be aware of. These are summarised below:

- Loan to participators – the rate applied to loans made to participators (directors/shareholders) increased from 33.75% to 35.75% from April 2026. This increase is directly linked to the rise in the higher rate of dividend tax, as the Government aligns the tax charge on company loans with the tax shareholders would pay if they withdrew funds as dividends.
- Reduced writing-down allowances – the WDA for the main plant and machinery pool reduced from 18% to 14% from 1 April 2026 for businesses within the charge to corporation tax. For accounting periods that span this date, a hybrid WDA rate will be applied (based on the number of days before and after 1 April 2026).
- Increased late-filing penalties – the flat-rate corporation tax late-filing penalties doubled from 1 April 2026 and are now as follows:
  - up to three months late: £200 penalty, increased to £1,000 for the third consecutive late return; and
  - more than three months late: £400 penalty, increased to £2,000 for the third consecutive late return.

The tax-geared penalties for late filing remain unchanged.

One other notable development relates to research and development (R&D) tax relief – specifically, the launch by HMRC of a new advance assurance pilot for SME R&D claimants, which aims to give smaller businesses the opportunity to seek pre-submission clarity on specific aspects of a claim before filing. The scheme is HMRC's attempt to help address the misconception that R&D tax relief applies only to pharmaceutical companies and technology/software businesses and ultimately increase claims by companies from outside these sectors. Businesses that operate in the UK across software development, engineering, food production, manufacturing and many other sectors can qualify for enhanced R&D allowances and thus are strongly encouraged to take time to consider their applicability, rather than simply assuming they are not available.

Income Tax and National Insurance Contributions

Making Tax Digital for Income Tax

Arguably, the most significant tax event of the new tax year is the roll-out of the first phase of Making Tax Digital for Income Tax – bringing the Government's flagship initiative for digitalising the tax system to nearly 900,000 self-assessment taxpayers. Phase 1, which started on 6 April 2026, applies to individuals earning more than £50,000 from self-employment or property income. The threshold will decrease to £30,000 from 6 April 2027, and to £20,000 from 6 April 2028. Over this three-year period 2.9m self-assessment taxpayers will be brought within the programme.

Taxpayers who meet the earnings criteria will need to keep digital records and submit quarterly updates and an end-of-period statement through compatible software. HMRC released useful guidance in December 2025 (Making Tax Digital for Income Tax - GOV.UK - https://www.gov.uk/) to assist impacted individuals, which clarifies eligibility, exemptions and the steps required to get started.

Mandatory payrolling of benefits-in-kind

Although this is almost a year away, businesses should be aware that from 6 April 2027 mandatory payrolling will apply to most benefits-in-kind, with the notable exceptions of employer-provided living accommodation and beneficial loans, which will continue to be reported via P11D. Employers that operate a UK payroll should review the transitional guidance and software specifications released by HMRC to ensure that their systems are compatible and ready to incorporate any changes required to meet these new requirements.

Changes to Voluntary National Insurance for people living and working abroad

From 6 April 2026 the ability to pay voluntary Class 2 National Insurance Contributions (NICs) for those working abroad has ceased.

To continue making UK voluntary contributions from the 2026/27 tax year, those living and working abroad will need to make a new application under Class 3 (i.e. at the higher rate), and the application conditions will be tighter, requiring applicants either to have lived in the UK for 10 consecutive years or to have paid at least 10 years of NICs while in the UK. These more onerous conditions may risk leaving some unable to achieve 10 "qualifying years" and therefore left with no UK state pension entitlement. Those impacted are advised to review and/or take advice on their individual position, as the previous three-year time limit is retained in certain scenarios. It is understood that HMRC will write to those whom it believes are affected in July 2026.

Indirect Taxes

New VAT relief for donation of surplus goods to charity

From 1 April 2026 businesses can donate surplus goods to registered charities without triggering a VAT charge. The relief covers items of up to £100 each in value (excluding alcohol, tobacco and vaping products), with a higher, £200 limit for appliances, furniture, flooring and computers. The introduction of this relief addresses a long-standing inconsistency in the tax system and lowers the cost of doing business while enabling businesses to support their local communities.

Trade and tariffs

Further tariff changes will be introduced this year as the UK's network of free trade agreements (FTAs) expands. The UK–India FTA, once in force, will bring tariff reductions and eliminations for importers and exporters for certain goods. In addition, the upgraded UK–South Korea FTA, announced in December 2025, is expected to enter into force later this year, which guarantees 98% tariff-free trade between the UK and South Korea (mirroring the terms that the EU holds with South Korea) and aims to increase exports, protect jobs and promote economic growth.

Notable Court Decisions

Hotel La Tour – Supreme Court decision on VAT recovery on share sales

The Supreme Court has delivered its judgment on the long-running VAT case of *Revenue and Customs v Hotel La Tour* [2025] UKSC 46, which related to the contentious issue of input tax recovery on share sales. The taxpayer was a holding company that disposed of its wholly owned subsidiary by way of an exempt share sale to fund a new hotel that would generate taxable income. The First-tier and Upper Tribunals supported the company's claim that VAT on professional fees was linked to future taxable services and thus the VAT was not a cost component of the exempt supply. However, the Court of Appeal and now the Supreme Court found that these costs were attributable to the exempt share sale, making the input tax not recoverable. The judgment of the Supreme Court also rejected the taxpayer's arguments in respect of VAT grouping and cost components and has brought clarity to the rules for VAT recovery on share sales.

Charge My Street – First-tier Tribunal decision on VAT rate for public electric vehicle charging

The First-tier Tribunal (FTT) released its judgment in the case of *Charge My Street v Revenue and Customs* [2026] UKFTT 318 (TC), ruling in favour of the taxpayer. The case considered whether the 5% reduced VAT rate for domestic supplies could apply to the electricity supplied at various public charging points for electric vehicles (EVs), which the FTT concluded it did, in principle, but to what extent a taxpayer's supplies qualify for the reduced rate still needs to be agreed with HMRC. Indeed, HMRC announced that it is going to appeal the decision as its position remains that standard rate VAT should apply to electricity supplied through public EV charging infrastructure.

Nonetheless, the decision is an important step for the EV sector in applying the reduced rate of VAT to public EV charging. The outcome of the appeal

could have significant implications for both public EV charging providers and consumers, and ultimately businesses that have brought EVs within their car fleets – one to watch!

Inheritance Tax

Reform of agricultural and business property relief

In a surprise announcement before Christmas, the Government stated that from April 2026 the proposed £1m cap on 100% relief for agricultural and business property relief (APR and BPR) would be raised to £2.5m, with any excess benefiting from only 50% relief, producing an effective 20% inheritance tax charge above the threshold. Crucially, the allowance is transferable between spouses and civil partners, allowing up to £5m of qualifying assets to pass free of inheritance tax in many cases. Although the increase in the cap has been widely welcomed by the farming community and those whose relevant property falls within the increased £2.5m threshold, the same is not true for owners of large farms, trading groups and investment structures, where the increase in the cap does not significantly move the dial.

For the latter cohort the new APR/BPR rules represent a fundamental change in estate planning assumptions, which, coupled with the reduction in relief for AIM-listed shares to 50% from April 2026, may result in many long-standing inheritance tax mitigation strategies being undermined or made completely obsolete. Impacted taxpayers are strongly advised to reconsider their estate tax planning without delay.

Other Developments

Registration of tax advisers with HMRC

In the last UK tax update article, the requirement for tax advisers to register with HMRC was first discussed. An online registration system for agent services accounts has now gone live, replacing the previous registration process.

Registration is a staged process – when a business needs to register will depend on its circumstances. Broadly, a business will need to register for an agent services account from 18 May 2026 unless one of the following applies:

- If a business already has a Self-Assessment or Corporation Tax account, it will need to register from 18 August 2026.
- If a business only provides third-party payroll services on behalf of clients and does not interact with HMRC in any other way; it will need to register from 18 November 2026.
- If a business is a financial services organisation; it will need to register from 31 December 2026.

A business can use the online service to register from 18 May 2026 even if it is not required to do so until a later date. To register, firms and named relevant individuals must meet certain requirements, including compliance with their own tax obligations.

HMRC has also provided some clarity around the number of relevant individuals whom a business is required to name, confirming that it depends on how many officers (defined as directors, partners and any equivalent roles) that a business has. HMRC has confirmed that if a business has five officers or fewer, they will all be treated as relevant individuals. If a business has six officers or more, the business will need to name all relevant individuals (i.e. broadly, those involved in managing, organising or making decisions regarding the tax adviser activities of the organisation). If there are not five individuals who fall within the definition of a relevant individual, the business must nominate other officers to bring the total number of relevant individuals to at least five.

For overseas tax advisers – for example, tax advisers who predominantly operate in the Republic of Ireland but advise on cross-border matters and thus need to be able to communicate with HMRC – these businesses will need to be able to send authenticated evidence to HMRC when registering for an agent services account to prove that the conditions for registration are met. To show their authenticity, any documents sent to HMRC will need to be notarised by an independent and qualified notary (or an equivalent professional).

Yann Harrison
Highfield Private Clients

Convertible Preference Shares and the Meaning of Ordinary Share Capital for Irish Tax Purposes

Introduction

The interaction between venture capital preference share structures and tax relief qualification thresholds has received comparatively little attention in Irish tax commentary despite its potentially significant practical consequences for founders and investor companies. This article considers whether cumulative redeemable convertible preference shares (CRCPS), including those commonly used by Enterprise Ireland (EI) and private investors, may constitute "ordinary shares" for the purposes of s597AA or "ordinary share capital" for the purposes of s626B of the Taxes Consolidation Act 1997 (TCA 1997). In particular, it examines how conversion rights, variable dividend mechanics and participation entitlements may unintentionally dilute founders and holding companies below the 5% thresholds required for revised entrepreneur relief and the holding company exemption. Drawing on Irish statutory provisions and persuasive UK authority, the article explores whether the legislation establishes a genuinely "bright dividing line" in assessing the extent of a person's interest in the ordinary share capital of a company or whether, in practice, the classification is less certain.

Although ss597AA and 626B TCA 1997 employ different terminology, the practical operation of the reliefs requires close examination of overlapping concepts, including "ordinary shares", "ordinary share capital" and "equity holders", each of which draws directly or indirectly on different statutory definitions.

Enterprise Ireland Investments and CRCPS Features Generally

Securing private sector investment for early-stage companies with scaling or international ambition is challenging. As the Irish Government's trade and innovation

agency, EI plays a critical role in bridging this gap as a common source of finance and other development supports. When investing directly, the agency's strategy has been to take an equity stake in exchange for funding, using CRCPS as its standard investment instrument. Repayable advances and convertible loan notes (CLNs) have also been employed, with CLNs largely replacing CRCPS in recent times. The agency's most recently published Annual Report, for 2024, noted that at the end of that year it held 4,003 investments in approximately 1,968 client companies. Given the historical propensity for the use of CRCPS, it is reasonable to assume that a significant number of EI's stable of investee companies retain that type of investment on their balance sheet.

Generally, EI-specific CRCPS provide for a fixed cumulative preferential dividend of 8% per annum on the amount paid up on each convertible share (including share premium), but with such dividend reducible to a lower rate of 3% per annum and retroactively applied from the date of issue of the CRCPS where EI determines to its reasonable satisfaction that subscription monies have been properly used and vouched.

As holder of the CRCPS, EI usually has the right to convert some or all of its investment into ordinary shares, the right to require the investee company to redeem all or part of its investment, and priority right to any payment of dividend on any other class of shares in the capital of an investee company. In the event of the winding up of the investee, EI generally has a right to repayment of paid-up capital and share premium, together with arrears of accrued dividends, with such right's being in priority to the payment of dividends, or repayment of capital, to any other shareholders. Thereafter, EI is not normally entitled to participate in the distribution of remaining assets.

The Statutory 5% Tests

It is common knowledge that, among other conditions, to avail of revised entrepreneur relief in respect of a holding of shares in a company whose business consists wholly or mainly of carrying on a qualifying business, one must be, or have been, the beneficial owner of not less than 5% of the company's ordinary shares for a continuous period of not less than three years at any time prior to the disposal of those shares. Equally, it is accepted that, subject to a tax residence precondition and a trading requirement being met, a gain accruing to an investor company in respect of the disposal of shares, within a continuous period of 12 months throughout which the investor company has held, or within two years of the most recent time that the investor company held, not less than 5% of the ordinary share capital in an investee company will not be a chargeable gain. The investor company must also be beneficially entitled to not less than 5% of the investee's profits available for distribution to equity holders and, on a winding up of the investee, the same percentage of the company's assets available for distribution to equity holders. Where all other conditions are met, what constitutes "ordinary shares" or "ordinary share capital" is what is at issue in ss597AA and 626B TCA 1997, respectively.

Section 626B(1)(b)(i)(B) provides that certain other provisions of TCA 1997 – namely, ss413 to 419 – are to be applied for the purposes of determining whether a company has the requisite 5% holding, and in this regard s413 provides that an equity holder is a person that holds ordinary shares in a company, where ordinary shares are defined as "all shares other than fixed-rate preference shares". When the meanings of ordinary and fixed-rate preference shares are imported by cross-reference to s626B TCA 1997, one can conclude that, for the purposes of the section, ordinary shares are all shares other than shares:

- issued wholly or partly for new consideration;
- which do not carry any conversion right into shares of any other description or right to acquire additional shares;
- which do not carry dividend rights other than dividends of a fixed amount or at a fixed-rate percentage of the nominal value of the shares representing no more than a

reasonable commercial return on the new consideration received by the company for the issue of the shares; and

- which, on repayment, carry rights to no more than the new consideration.

Revised entrepreneur relief is conditional on a minimum holding of ordinary shares. It is assumed that nothing turns on the fact that reference is to ordinary shares rather than ordinary share capital. Indeed, this may explain why s597AA TCA 1997 offers no definition for "ordinary shares" and why Revenue guidance uses the terms interchangeably. For lack of alternative, it may be reasonable to assume that regard be had to the definition of ordinary share capital contained in s2 TCA 1997, that is, "all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company" (a meaning that, strictly, applies to the interpretation of the Income Tax Acts and the Corporation Tax Acts). If so, ss597AA and 626B TCA 1997 hold in common that ordinary shares shall include all issued share capital of a company, other than that which has a right to fixed-rate dividends only.

Judicial Interpretation of "Ordinary Share Capital"

Regarding what constitutes fixed-rate dividends, two UK cases may be of persuasive, authority in this jurisdiction. Both concerned s989 of the Income Tax Act 2007 ("the UK Act"), which section provides the meaning of ordinary share capital for the purposes of the section,[1] and which meaning bears striking similarity to that contained in s2 TCA 1997.
In *Revenue and Customs Commissioners v McQuillan* [2017] UKUT 344 (TCC) the Upper Tribunal held that, as a basic premise, "ordinary share capital" includes all of a company's issued share capital unless the shares in question fall within the excluded class of shares, that is, shares (i) the holders of which have a right to a dividend at a fixed rate and (ii) which dividend is exhaustive of the right to share in the company's profits. To be in the excluded class, shares must therefore have a right to a dividend. Regarding what constitutes a fixed rate, the Upper Tribunal held that even if zero could be a fixed rate, it could only give rise to a right to no dividend or, as the court put it, "no right to a dividend at all". It held as "circular and flawed" the contention that shares with no right to a dividend could be regarded as having a right to a dividend at a fixed rate of 0%. From this one can deduce that shares carrying a right to a dividend at a fixed positive rate, however negligible, would not constitute ordinary share capital.

In *Revenue and Customs Commissioners v Warshaw* [2020] UKUT 366 (TCC) the Upper Tribunal held that the purpose of the definition of ordinary share capital was to produce "a bright line between issued share capital which is ordinary share capital and that which is not". As it is a definition that by its terms is formalistic in nature, the court held that a "'fixed rate' requires the rate of dividend to be expressed as a fixed percentage or amount per share". Consequently, it held that cumulative preference shares with rights to compound accrued, but unpaid, dividends did not carry a right to a dividend at a fixed rate, the compounding right making the base to which a 10% dividend rate was to be applied a variable one.[2] Accordingly, where both the percentage element and the base amount to which that percentage is to be applied are fixed, the shares shall not be ordinary share capital.

In both *McQuillan* and *Warshaw*, as the shares in question did not carry rights to a dividend at a fixed rate, they were not the kind of shares excluded from the definition and so constituted

1 "'Ordinary share capital'", in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits".

2 For example, in year 1 a preference share would accrue a dividend of 10% x its subscription price (say, €100) = €10, being 10% of the subscription price of €100. However, in year 2 the preference share would accrue a dividend of 10% x its subscription price (€100) + aggregate of unpaid dividends (€10) = €11, being 11% of the subscription price of €100. The compounding nature of the right makes the base to which the 10% dividend rate is applied a variable, rather than fixed, one.

ordinary share capital. For a dividend to be one at a fixed rate, both the rate of the dividend and the nominal value of the share to which it applies must be fixed. It is assumed that, as has been noted is often the case with EI CRCPS, a reduced fixed rate, retroactively applied from the date of issuance of the shares, would not, in itself, affect the characterisation of the dividend as fixed. This point is not free from doubt. It is clear from the UK authorities that shares carrying a dividend right that is expressed as a fixed rate plus a contingent or variable amount to provide compensation by way of "interest" for unpaid dividends shall not be fixed-rate preference shares, even for years in which the contingent or variable amount does not in fact fall due. An amount that may vary cannot be fixed. Decisions of UK courts are only of persuasive assistance in the interpretation of comparable Irish statutes and cannot override the proper construction of Irish legislation by Irish courts.

Participation Rights and Dividend Exhaustion

Regarding the second part of the s2 definition of "ordinary share capital"– specifically, the right of shareholders "to share in the profits of the company" – two further UK cases may be instructive. *Bielckus & Others v HMRC* [2016] UKFTT 271 (TC) considered whether redeemable preference shares gave the holders of those shares additional rights to share in the profits of a company beyond their fixed-rate dividend entitlement once fixed-rate dividends were in arrears. *Re Isle of Thanet Electric Supply Co* [1950] Ch. 161 considered whether rights to participate in the profits of a company as set out in its constitution were exhaustive, the rights in question being dividend rights and rights to participate in a liquidation. Company law recognises a prima facie presumption that all shares rank equally (*Birch v Cropper, Re Bridgewater Navigation Co Ltd* [1889] 14 App Cas 525), the actual rights attaching to shares being a matter of construction of a company's constitutional document or shareholders' agreement. Where documents expressly regulate share rights, those rights are exhaustive and rebut the presumption of equality. In *Thanet* the Court of Appeal held that where, and to the extent that, a company's constitutional document sets out the rights attached to a class of shares, those rights are exhaustive.

As generally constituted, EI CRCPS are limited to priority to payment of dividend on any other class of share and, on a winding up, to repayment of paid-up capital (including share premium, if any) together with arrears of accrued dividends. Shareholder agreements and investee companies' constitutions routinely state that, as the holder of the CRCPS, EI shall at no time be entitled to receive dividends in excess of the fixed-rate dividend. On the basis of *Bielckus* and *Thanet*, EI's share rights are exhaustive. The agency has no other right to share in the profits of an investee company and, in that regard and if applying UK jurisprudence, its shareholding should not constitute ordinary share capital.

Implications for Holding Company Exemption

It is not unusual for forward-looking founders to hold all or part of their shareholding via a holding company, specifically with a view to availing of the exemption from tax in the case of gains on certain disposals of shares on their future sale of, and exit from, a business. For shareholdings to qualify for the relief, two tests must be satisfied: a "parent company" test and a point- in- time test regarding the residency of the investee and trading status of the investee (or trading status of the investor company, the investee company plus any other companies of which the investor company is the parent company). As tax residency and trading status will be matters of fact, they are not addressed further. The "parent company" test is itself a three-limbed test, with both retrospective focus and a two-year tail.

A company shall be a parent company in relation to another company in which

- it directly or indirectly holds not less than 5% of the company's ordinary share capital;
- it is beneficially entitled to not less than 5% of profits available for distribution to equity holders of the company; and

- it is beneficially entitled to not less than 5% of the assets of the company available for distribution to equity holders on a winding up.

The conditions operate cumulatively. If any one is not met, the test is failed and it is unnecessary to consider the remaining conditions.

For the purposes of the first limb, ordinary share capital has the meaning given by s2 TCA 1997, and the case law discussed above is relevant. Consequently, the exemption may not be available to the holder of shares in a company where there are also preference shares in issue which have any of the following characteristics:

- the preference shares carry no dividend entitlement;
- the dividend rate, or the base to which that rate is applied, is variable; or
- the shares participate in surplus assets beyond the return of capital and accrued dividends on a winding up.

For the purposes of the second and third limbs, "equity holder" is construed by reference to that term's meaning in s413 TCA 1997, that is, any person who holds shares in a company other than fixed-rate preference shares. However, fixed-rate preference shares in this instance cannot carry "any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities". This could bring CRCPS generally, and EI CRCPS specifically, within the meaning of ordinary shares for the purposes of the second and third limbs of the parent company test in s626B TCA 1997, with implications for the availability of the relief from tax on any chargeable gain accruing and, consequently, the efficacy of plans to use monies realised, after sale, to seed subsequent ventures.

Take, for example, TradeCo, a joint venture vehicle incorporated in Ireland on 1 January 2024. The company's share capital initially consisted of 100 €1 ordinary shares, of which ParentCo beneficially owned five shares, representing 5% of the company's ordinary share capital. On 1 June 2024 an external investor subscribed €750,000 for 750,000 €1 CRCPS. The CRCPS carried a cumulative fixed-rate preferential dividend of 6% per annum and were convertible at the option of the holder into ordinary shares at any time before their redemption.

TradeCo carried on a trade throughout the relevant period and was at all times resident for tax in Ireland. The company was successful beyond all reasonable expectation, and on 1 June 2026 its entire issued share capital was acquired by a third-party purchaser. Before completion, the investor exercised its rights, resulting in ParentCo's effective economic interest being diluted to below 5%.

On the face of it, ParentCo should satisfy the ordinary share capital requirement in s626B(1)(b)(i)(I) TCA 1997 throughout the relevant holding period. The CRCPS carried a fixed dividend calculated by reference to a fixed base amount and therefore would not constitute ordinary share capital for the purposes of s2 TCA 1997. However, because the definition of "equity holder" in s413 TCA 1997 extends beyond the holders of ordinary shares to include holders of shares carrying rights to conversion into shares or securities of any other description, difficulties arise for ParentCo. If the existence of conversion rights is sufficient to dilute ParentCo's entitlement to profits or assets available for distribution to equity holders below the relevant 5% threshold, ParentCo may well fail the second and third limbs of the parent company test in s626B(1)(b)(i) TCA 1997, notwithstanding that its ordinary shareholding remained unchanged for all but the last few weeks of the relevant period. If this interpretation is correct, the gain accruing to ParentCo on disposal of its shares would fall outside the holding company exemption regime.

Although the definition of an equity holder includes preference shareholders carrying conversion rights, the 5% profit and asset distribution tests are framed by reference to

beneficial entitlement. Arguably, in applying the second and third limbs of the parent company test, regard should be had to the holder's actual economic participation rights under the company's constitutional documents and any shareholders' agreement, rather than purely numerical dilution arising from contingent or unexercised conversion rights, but this point is not free from doubt.

Revised Entrepreneur Relief and Founder Dilution Risk

Revised entrepreneur relief may not be available to ordinary shareholders where there are preference shares in issue and, in relation to those preference shares in issue:

- the shares carry no dividend entitlement;
- the constitutional documentation or shareholders' agreement fixes only a dividend percentage but not the underlying amount;
- the documentation is silent regarding participation in surplus assets on a winding up beyond return of capital and accrued dividends; or
- a conversion right is, or has been, exercised within three years of incorporation.[3]

The unavailability of the relief would give rise to an incremental capital gains tax liability at 23% as a consequence on a gain of up to €1.5m.

Take, for example, Companies A and B, both incorporated on 1 January 2022 and capitalised with €1,000 in ordinary shares of €1 each by their respective founders. Both companies sought and raised private investor finance on 1 January 2024. Company A issued 100,000 5% CRCPS of €1 each. Company B did likewise. Each company's CRCPS were "limited to priority to payment of dividend on any other class of share and, on a winding up, to repayment of paid-up capital (including share premium, if any) together with arrears of accrued dividends".

Neither company expected to have sufficient distributable reserves to pay dividends for the first number of years. In recognition of this fact, and in response to pressure brought to bear by its investor to provide a return by way of "interest" on unpaid dividends, Company B's constitution provided that:

> "each Preference Share shall have the right to a fixed cumulative preferential dividend (the 'Preference Dividend') which shall accrue on a daily basis from the issue of the Preference Share at the rate of five per cent per annum on the aggregate of (i) the subscription price of such Preference Share and (ii) the aggregate amount of Preference Dividend that has previously compounded and not yet paid. The Preference Dividend accruing on each Preference Share shall be compounded on each anniversary of its dividend commencement date to the extent not previously paid."

On 31 January 2026 the shareholders of Companies A and B received offers to acquire their entire issued share capital for €5m. Notwithstanding the similarity of the circumstances, the outcome for founder B will be significantly different from that for founder A. Company B's preference shares carry rights to compound accrued, but unpaid, dividends, the compounding right making the base to which the 5% dividend rate applied a variable one. As shares not carrying rights to a dividend at a fixed rate, Company B's CRCPS are not the kind of shares excluded from the s2 TCA 1997 definition and so constitute ordinary share capital from the date of their issue. Although Company B's founder was the beneficial owner of a holding of 100% of the company's ordinary shares from 1 January 2022 to 31 December 2023, this was diluted to approximately 0.10% from 1 January 2024. Consequently, Company B's founder will not have owned at least 5% of the company's ordinary shares for a continuous

3 Particularly where the quantum of new shares issued by reference to the preference shareholders' exercise of conversion rights materially alters and adversely affects the founder's capital interest, irrespective of change in voting or governance rights.

period of not less than three years at any time before their disposal, and revised entrepreneur relief will not apply. In comparison, Company A's founder will have owned 100% of that company's ordinary shares throughout, and revised entrepreneur relief will give rise to a comparative capital gains tax saving of €345,000.

Conclusion

Section 2 TCA 1997 provides a clear description of the shares to which it applies, in and of itself. To borrow from the Upper Tribunal in *McQuillan*, the description establishes a "bright dividing line" between those shares that will and will not be reckoned in assessing the extent of a person's interest in the ordinary share capital of a company. Cases that are similar in terms may fall squarely on opposite sides of the line, with potentially severe consequences arising from relatively subtle differences. The interaction between conversion rights, economic participation and ordinary share capital creates an interpretive uncertainty as the legislation is currently drafted. Careful pre-investment structuring and drafting are therefore essential if the future availability of revised entrepreneur relief and holding company exemption treatment are not to be inadvertently compromised. Where pre-existing structures are involved, it is essential that those arrangements be reviewed in detail before advice is provided to clients on the availability of reliefs. Analysis may identify that the statutory conditions have not been met and, although commercially unwelcome, early identification is considerably more advantageous than discovering shortcomings in the course of a Revenue intervention, where the consequences will invariably include tax underpayments, interest and penalties. The well-advised may be assisted to fall the right side of the divide even if, on occasion, it is more a fuzzy boundary than bright dividing line.

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Recent TAC Determinations Reinforce Strict Approach to R&D Tax Credit Time Limits

Introduction

Two recent determinations of the Tax Appeals Commission (TAC) have highlighted the strict statutory approach being applied to time limits in the context of research and development (R&D) tax credit claims. The Commissioners' decisions in 236TACD2025 and 50TACD2026 serve as important reminders that procedural requirements under s766 and s766C TCA 1997 are not mere administrative formalities. Failure to comply with prescribed filing deadlines will result in the permanent loss of valuable R&D tax credits (currently equal to 35% of a company's qualifying expenditure on R&D activities).

The TAC decisions will be of interest to all companies claiming R&D tax credits irrespective of size or profitability, given the potential for valuable credits to be denied on procedural grounds. The impact may be particularly acute for companies relying on R&D tax credit repayments as a source of funding, and early-stage or loss-making businesses, where cash repayments are often commercially significant.

Overview of the Cases

236TACD2025: R&D credit claim filed out of time

In 236TACD2025 the taxpayer (through their adviser) submitted an amended CT1 on 27 December 2023 claiming an R&D tax credit for the 2022 accounting period under s766C TCA 1997. The taxpayer's adviser also attempted to submit the required "Specified Return" through Revenue's MyEnquiries platform on 28 December 2023 while abroad with poor internet connectivity. However, the required attachment was not successfully uploaded. A "Specified Return" form was required only for R&D tax credit claims relating to 2022, where companies were claiming under transitional rules (i.e. where they were claiming the R&D tax credit under s766C for the first time).

Revenue refused the claim on the basis that it was "precluded from allowing" the R&D credit outside the statutory 12-month deadline in s766(5) and s766C(9) TCA 1997, as the prescribed information (which was contained in the Specified Return) had not been validly submitted within the deadline set out in the legislation.

The TAC upheld Revenue's position. The Commissioner reiterated that the burden of proof rests with the taxpayer and relied on the principle set out in *Menolly Homes v Appeal Commissioners and another* [2010] IEHC 49 that "Revenue law has no equity" and tax reliefs must be applied strictly in accordance with the legislation. The Commissioner found the wording of s766(5) and s766C(9) to be "plain and self-evident", confirming that both the claim and the required supporting information must be submitted within 12 months of the relevant accounting period.

While acknowledging the financial consequences for the taxpayer, the TAC concluded that the 12-month time limit is mandatory and does not permit exceptions. As the required information had not been successfully submitted before the deadline, no valid claim existed.

This case serves as an important reminder that companies must ensure not only that an amended CT1 is filed on time but also that all required attachments are successfully submitted and evidenced before the statutory deadline expires.

Readers should also remain cognisant of the requirement to submit pre-filing notification forms for companies making R&D tax credit claims for the first time.

50TACD2026: Repayment election subject to strict deadline

In 50TACD2026 the taxpayer was seeking to avail of the repayment mechanism provided for under s766(4B) TCA 1997, whereby a company could elect to have any unrelieved excess R&D tax credit (i.e. credit in excess of its corporation tax liability) paid out by Revenue, where such excess remains after offset against current- and prior-period corporation tax liabilities. Under this provision any excess credit qualifying for repayment was discharged in three equal instalments over three years.

Although the taxpayer had submitted a valid R&D tax credit claim in its corporation tax return for the relevant accounting period, the failure to make an election to access the staged repayment mechanism meant that the statutory conditions to obtain payment of the excess credit were deemed not to be satisfied within the statutory 12-month filing deadline. This is despite s766(4B) TCA 1997 itself not containing any specific reference to the 12-month time limit for repayments.

Revenue initially processed and paid the refunds before later reviewing the position and issuing amended assessments to withdraw the repayments. Revenue argued that although the underlying R&D credit claim itself had been made on time, the legislation separately requires a valid repayment election to be made within the prescribed timeline.

The taxpayer argued that an administrative error led to the repayment being omitted from the relevant CT1 field, notwithstanding a clear intention to obtain the refund. The taxpayer contended that the omission should not prevent access to the repayment mechanism

and that denying the repayment created a disproportionate financial consequence, given that Revenue had already processed the refund (paras 23, 24 and 45 of *50TACD2026*).

The TAC upheld Revenue's position. The Commissioner concluded that the statutory framework requires both the R&D credit claim itself and any repayment election to be made within the legislative deadline. The TAC found that the Commissioner did not have discretion to disapply the statutory time limits and noted Revenue's position that it was legislatively precluded from allowing a late repayment claim, even where the omission arose from an administrative error and Revenue had initially processed the repayment (paras 20, 29, 46, 47 and 48 of *50TACD2026)*.

Although the taxpayer retained the benefit of the credit as a carry-forward against future corporation tax liabilities, the cash repayment mechanism was denied owing to the failure to make the repayment election in time.

This case is particularly important as it confirms that a valid R&D tax credit claim does not in itself entitle a company to repayment of any excess credit, as a separate election is required, within a specified timeframe. Companies should therefore ensure that all repayment elections and associated filing steps are completed correctly and within the applicable deadline, as the loss of repayment treatment can have a significant impact on cash-flow.

Key Themes and Takeaways for Companies

These two TAC determinations reinforce the strict approach adopted in relation to procedural compliance within the Irish R&D tax credit regime.

Strict interpretation of filing deadlines

Both cases confirm that the 12-month filing deadline in s766 and s766C TCA 1997 is mandatory. The TAC held that the Commissioner does not have the discretion to disapply statutory deadlines, even where taxpayers have acted in good faith or encountered practical filing difficulties.

A consistent theme across the two cases is the TAC's strict interpretation of the statutory time limits contained in the R&D tax credit regime. Companies should treat R&D tax credit filing deadlines as absolute and allow adequate time for review, troubleshooting and submission checks.

The burden of proof rests with the taxpayer

In 236TACD2025 the TAC reiterated that the burden of proof rests with the taxpayer to demonstrate that a valid claim was made in time. Companies should retain clear evidence of all submissions, including ROS acknowledgements, MyEnquiries confirmations and uploaded attachments.

Revenue processing does not guarantee entitlement

The decision in 50TACD2026 also confirms that Revenue may revisit and withdraw repayments, even where refunds were initially processed and paid. Receipt of an R&D tax credit repayment from Revenue should not be viewed as confirmation that a claim is fully protected from future challenge or review. Revenue retains the right to audit a claim within the statutory four-year time limit.

Increasing complexity of the CT1 process

Although both determinations focused on statutory deadlines, they also highlight the growing practical complexity associated with R&D tax credit compliance obligations.

The corporation tax return process has become significantly more detailed in recent years. The CT1 form now extends to more than 70 pages, with over 100 individual fields relating to an R&D tax credit claim, spread across approximately 17 panel groupings within Part 10 and the R&D section alone contains 71 separate panels requiring detailed financial and

administrative disclosures. As a result, the scope for administrative error, omitted information or incomplete elections has increased considerably, particularly where filings are being prepared close to the statutory deadline.

Both cases demonstrate that relatively minor procedural failures – such as omitted attachments, unsuccessful uploads or missed repayment elections – can ultimately prevent access to valuable cash tax benefits.

Given the increasing complexity of the CT1 process, companies should ensure that robust timeframes, review processes and quality control procedures are built into the preparation and filing of R&D tax credit claims. In practice, this may include:

- preparing claims well before filing deadlines;
- implementing detailed R&D tax credit filing checklists;
- undertaking secondary reviewer checks;
- validating that all attachments and elections have successfully uploaded; and
- retaining contemporaneous evidence of ROS and MyEnquiries submissions.

For many companies these cases reinforce the importance of treating R&D tax credit compliance as commanding specialist knowledge and requiring careful coordination between finance teams, technical personnel and tax advisers.

Conclusion

These determinations come at a time when the Irish R&D tax credit regime continues to evolve. In recent years legislative changes have sought to enhance the value of the regime, including increases to the credit rate and changes to payment mechanisms.

Despite these developments, Revenue continues to place significant focus on technical compliance with the statutory framework governing both eligibility and procedural requirements. Although the outcomes may appear harsh in circumstances where taxpayers sought to avail of the relief in good faith, the determinations underline a clear message: strict compliance with statutory filing requirements is essential.

For companies claiming Irish R&D tax credits the cases provide a timely reminder that managing the compliance process is just as important as establishing technical eligibility of the underlying R&D activity. Businesses should therefore ensure that internal governance, adviser coordination and filing procedures are sufficiently robust to mitigate the risk of procedural failures that could ultimately jeopardise significant cash tax benefits.

Notwithstanding this, it is clear from the TAC determinations reviewed in this article that the absence of mechanisms to permit the correction of genuine procedural errors after the 12-month statutory deadline can give rise to disproportionate outcomes, whereby otherwise valid claims are denied.

To address this issue, one potential solution may be to introduce an additional 12-month window to allow taxpayers to rectify legitimate procedural errors in their R&D tax credit claims after the 12-month deadline has expired. Any such mechanism would likely require companies to communicate the reasons for the correction and demonstrate that the original claim was filed within the 12-month time limit in good faith. This allowance for genuine errors to be corrected would ensure that companies are not unfairly penalised for administrative mistakes. It is important to note that no such mechanism is currently in place under the Irish R&D tax credit scheme.

News & Moves

Deloitte Appoints Eight New Partners Including 2 New Tax Partners

Deloitte has appointed eight new partners including two new Tax Partners across its Irish business, highlighting the depth of talent in the organisation and reinforcing its commitment to helping clients navigate a period of significant transformation across industries and markets.

Shane Kerins: Business Tax Advisory (Tax & Legal) is a Chartered Tax Adviser with over 16 years' experience. He advises clients across a range of industries specialising in working with Irish head-quartered businesses and individuals on all aspects of tax including M&A, foreign expansion, residency planning, succession planning and group reorganisations. Shane has a particular focus on emerging technology and has worked with companies ranging from start-ups to unicorns.

Frances Lenihan: Business Advisory (Tax & Legal) is a Tax Partner with over 15 years' experience specialising in corporate and international tax. Frances works with multinational companies and Irish PLCs on a range of international tax matters. Part of Deloitte Ireland's Pillar Two Leadership, she actively leads complex Pillar Two advisory and compliance engagements. The Irish tax Desk in Deloitte US was recently led by Frances, where she gained extensive experience on international tax matters. Her diverse client portfolio is across a range of industries with a particular focus on life sciences. Frances is a Chartered Accountant (FCA) and a Chartered Tax Adviser (CTA).

David Shanahan: Head of Tax & Legal has worked at Deloitte for over 20 years, advising clients across a range of industries. He specialises in working with Irish HQ businesses & private equity firms on all aspects of tax including M&A, foreign expansion and group reorganisations. David previously spent 2 years leading Deloitte's Irish Tax Desk in New York. David is a Chartered Tax Adviser (CTA).

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