

**Irish Tax
Institute**

Irish Tax Review

The Journal of the Irish Tax Institute

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ALSO IN THIS EDITION

- The Rights and Obligations of Cohabitants on Death Under the 2010 Act
- CAT Implications of *US-Situs* Assets and Exposure to US Estate Tax
- *Flaherty v Revenue Commissioners*: When Is a Contract “Conditional”?
- Clearing the Succession Hurdle: Using Growth Shares to Pass Value to the Next Generation
- VAT Grouping Reforms: Navigating the New Territorial Landscape
- Too Close for Comfort: Practical Close Company Considerations
- Protecting a Deal: W&I and Tax Insurance in Irish M&A Transactions
- Finance Act 2025 and the Irish Housing Market: Tax Measures to Stimulate Residential Supply
- Tax Litigation: Is It Time to Consider Mediation?



Interview with Brian Brennan, President of the Irish Tax Institute

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Editor's Pages

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Regular Articles

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

Mark Ludlow

- » In *Falkenthal v The Revenue Commissioners* [2026] IECA 89 the Court of Appeal considered whether a taxpayer would have to pay Revenue's costs in circumstances where he had failed in his appeal.
- » *Revenue Commissioners v Chili Bagan Restaurant Limited* [2026] IEHC 379 is an appeal by way of case stated whereby the questions before the High Court were whether the TAC had erred in law in finding as a fact that the taxpayer had unutilised CT losses, in failing to adhere to the burden of proof in making that finding and in relying on evidence that was not properly admitted on the appeal.
- » *Revenue Commissioners v Avaya International Sales Limited* [2026] IEHC 448 considered an appeal by way of case stated from a determination of the TAC concerning the deductibility of foreign royalty withholding tax.
- » In *O'Sullivan Fabrications Limited v The Revenue Commissioners* [2026] IEHC 488 the High Court considered the procedure for drafting the case stated on an appeal from TAC to the High Court.
- » 53TACD2026 considered a lead appeal against an amended assessment to income tax raised on the basis that a transfer of assets from a company to its members gave rise to a distribution chargeable under s130 TCA 1997.

- » 82TACD2026 considered an appeal against Employment Wage Subsidy Scheme (EWSS) assessments.
- » 94TACD2026 considered whether a software developer's income from two companies over the years 2007 to 2016 should be taxed as employment income under Schedule E or self-employment income under Schedule D.

Direct Tax Cases: Decisions from the UK Courts

Stephen Ruane and Patrick Lawless

UK Cases

- » *Cogefin (Bermuda) Ltd & Ciardi v HMRC* [2026] UKFTT 1108 (TC) considered whether Cogefin, a Bermuda-incorporated company, was resident in Bermuda or in the United Kingdom for corporation tax purposes during the accounting periods from 1999 to 2017.
- » In *The Executors of K Beresford v HMRC* [2026] UKUT 285 (TCC) the Upper Tribunal considered whether shares in Ninecourt Ltd qualified for business property relief from inheritance tax.
- » In *Professional Game Match Officials Ltd v HMRC* [2026] UKFTT 654 (TC) the First-tier Tribunal considered whether match officials engaged by PGMOL under individual match appointments were employed for tax purposes.

International Tax Update

Louise Kelly and **Dylan Reilly** summarise recent international developments

- » BEPS: Pillar Two Developments
 - » An updated version of consolidated commentary on the global minimum tax has been published by the OECD/G20 Inclusive Framework on BEPS.
 - » The OECD is piloting a coordinated methodology enabling tax authorities to leverage global minimum tax filings to identify low-risk multinational enterprise (MNE) groups eligible for audit exemption.
 - » The OECD has released a paper offering preliminary findings on how multinational enterprises have adjusted their operations after the adoption of the global minimum tax.
- » OECD Tax Developments
 - » The OECD released the 2026 edition of “Corporate Tax Statistics”, a major reference work examining corporate income taxation globally.
 - » The OECD released a stakeholder consultation document entitled “Special Considerations for Intra-group Services”, addressing proposed modifications to Chapter VII of the “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations”, concerning the transfer pricing treatment of intra-group services.
- » European Commission Tax Developments
 - » The European Commission introduced a tax omnibus initiative intended to streamline elements of the EU direct tax framework and reduce cross-border compliance burdens for enterprises.
 - » The European Commission has released a proposal to modernise the EU Directive on Administrative Cooperation in the Field of Taxation (DAC).

- » The European Commission released its Annual Report on Taxation, which is an indicator-based analysis of recent trends in EU tax systems.

- » In the UK, the HMRC has released draft legislative language for public feedback regarding an automatic exemption for foreign permanent establishments.

VAT Cases & VAT News

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

VAT Cases

- » *Stellantis Portugal, S.A. v Autoridade Tributária e Aduaneira* C-603/24, relates to VAT and transfer pricing adjustments. The case arose out of proceedings regarding a VAT liability for supplies of repair services for motor vehicles that were provided to other companies of the group.
- » *Staatssecretaris van Financiën v Fiscale Eenheid Stichting X c.s.* T-444/25, dealt with the interpretation of Articles 11, 132(1)(b) and (g) and 133(a) of the VAT Directive in proceedings between Eenheid Stichting X c.s. (tax entity X – a VAT group) and the Dutch tax authority, which had imposed VAT on X for services carried out by one member of the VAT group.
- » *AY v Anexartiti Archi Dimosion Esodon* T-356/25, related to the interpretation of Articles 204 and 205 of the VAT Directive and the principle of proportionality.
- » *Veronsaajien oikeudenvalvontayksikkö v A Oy* T-184/25, examined interpretation of Article 135(1)(b) to (d) of the VAT Directive. The proceedings arose because of a request for a tax ruling by A Oy on the VAT treatment of credit sold to a third company and services for the management of credit and the management of credit guarantees relating to the credit sold.
- » 63TACD2026 examined the refusal to allow a reclaim of VAT on purchase of a new coach

- » 67TACD2026 and 69TACD2026 considered the refusal to repay to the appellant (flat-rate farmer) VAT incurred on acquisition and installation of milking equipment
- » 75TACD2026 examined the refusal to repay VAT incurred in the acquisition and installation of egg processing equipment
- » 78TACD2026 considered the decision of the respondent to require the appellant company to provide a security bond

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

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Bonnie Hickey examines the rights and obligations of cohabitants on the death of their partner under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

67 CAT Implications of US-Situs Assets and Exposure to US Federal Estate Tax

Lisa Cantillon and **Jessica Beall** examine Irish CAT and US federal estate tax exposure for Irish residents holding US assets, highlighting situs rules, spousal mismatches, treaty relief and key compliance obligations.

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Kyle Bradshaw considers the decision of the Supreme Court in *Flaherty v Revenue Commissioners* [2026] IESC 4.

88 Clearing the Succession Hurdle: Using Growth Shares to Pass Value to the Next Generation

Alan Greally examines the tax-efficient structuring of growth shares in a succession-planning context, considers non-tax factors

involved when implementing growth shares, outlines the valuation methods and discounts for growth shares for tax purposes, and explores the availability of reliefs.

99 VAT Grouping Reforms: Navigating the New Territorial Landscape

Eva Baker and **David Duffy** explain recent changes to the Irish and UK VAT grouping rules, which create both challenges and opportunities for businesses with cross-border structures and make it important to reassess VAT positions and compliance obligations.

106 Too Close for Comfort: Practical Close Company Considerations

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Trish McCarvill explains warranty and indemnity insurance and tax insurance – how they work, when they are used, what they cost and how to put them in place.

121 Finance Act 2025 and the Irish Housing Market: Tax Measures to Stimulate Residential Supply

John Perry reviews the changes relating to residential property in Finance Act 2025, which constitute one of the most comprehensive real estate tax packages in recent history – combining incentives, penalties and targeted structural supports.

128 Tax Litigation: Is It Time to Consider Mediation?

Jeananne McGovern discusses how mediation and other forms of alternative dispute resolution could be effective in tax litigation, recent High Court developments regarding mediation and what tax practitioners need to consider given the potential impact of head 5 of the Finance (Tax Appeals and Fiscal Responsibility) Bill 2025 on in camera hearings before the Tax Appeals Commission.

Interview with New Institute President, Brian Brennan



On 3 September 2026 Brian Brennan was inaugurated as the 51st President of the Irish Tax Institute. Brian has been a Council Member since 2016 and has chaired the Institute's Policy and Technical Committee since 2021.

Brian is a Tax Partner in KPMG, where he has worked since his graduation from Athlone IT with a BA in Accounting and Finance and ACCA final examinations. He spends his time equally between Dublin and the United States, where he specialises in cross-border mergers and acquisitions, aviation financing, leasing, structured finance and private equity structures.

Before taking up his role as President, Brian sat down with Donal O'Donovan, Business Editor at

the *Irish Independent*, who hosts the Institute's Tax Talk podcast series. He spoke about his career to date, his experience on the ground in the US and his priorities for the year ahead as President.

Ahead of his inauguration, Brian also paid tribute to outgoing Institute President, Shane Wallace, for his work and dedication over the past 12 months and congratulated his fellow Council Members Ian Collins and Oonagh Carey on their appointments as Deputy President and Vice President, respectively.

You can listen to Brian's podcast interview here, and below is an edited transcript of that interview.

Donal O'Donovan: Hello, you're listening to Tax Talk, a podcast series from the Irish Tax

Institute, which explores current issues in the world of taxation. I'm your host, Donal O'Donovan. Each year the Institute elects a new President to take the helm, and here to talk to me today is Brian Brennan, Tax Partner in KPMG, who will shortly take up the mantle as the 51st President of the Institute. Brian is a Mayo man, based between Dublin and the United States. He specialises in cross-border mergers and acquisitions, aviation financing, leasing, structured finance and private equity structures, which will give us plenty to talk about. Good morning, Brian.

Brian Brennan: Good morning, Donal. How are you?

Donal O'Donovan: I'm very good. It sounds like you ought to be tired with that sort of a workload. Tell us about your current role.

Brian Brennan: I'm a Tax Partner in KPMG Ireland and I'm based in the Financial Services department. One of the areas I specialise in is leasing and asset management. Part of my role involves me spending 50% of my time in the United States, working and heading up the US tax desk. A lot of the role is working with our US colleagues and local-based private equity firms that are looking to invest in Europe, invest in Ireland, investing in aviation assets and transportation more broadly. So my role is to explore those opportunities, and to try and win as much work on the US side as possible. I also have an existing client base that is quite broad, around asset management – leasing, in particular – private equity and servicing those clients.

Donal O'Donovan: In terms of a team, you're part of the Irish team, you're part of the US market. How does that work?

Brian Brennan: I have one person who works for me, a Director, when I'm in the US. He is focused more on business development and he also specialises on the consulting side. I am fortunate also that I have a very strong team based here in Dublin working on the clients that I've assigned them to.

Donal O'Donovan: So you're out there, you're winning the work, but the work has to be done.

Brian Brennan: Yes, we have a good team, good support with my fellow Partners in FS [Financial Services] Tax, and as I said, I'm fortunate that I have a pretty strong team that can run with a lot of things.

Donal O'Donovan: And what is that work, typically? What would that involve? Is it deal to deal? Is it more long term with the asset?

Brian Brennan: To take on the M&A [mergers and acquisitions] stuff, it's deal to deal. But then for a lot of our clients it's recurring work. We have a number of clients that have portfolios of assets, and they have to manage and service those assets. There's the day-to-day interaction and getting advice – it might be on selling something, buying something, doing new financing, raising new equity. The team will be constantly engaging with clients and working and giving advice on those transactions.

Donal O'Donovan: We all kind of know that the aircraft assets tend to be registered in Ireland now; they're Irish assets and they're taxed in Ireland. Is that, in terms of the tax side of things, what you're looking at typically? Then is there a mix of European?

Brian Brennan: It would be mixed. If I look at it with most of our clients, and let's just give an example: if they're US headquartered or the fund, the PE [private equity] fund is based in the US, they'd be both Irish and US. Then there's a whole international element around, well, where are the assets based? Where are they leased to? And managing all those international taxes. So we would liaise on a regular basis with the broader international network and we have a big team of people that would be doing that on a regular basis.

Donal O'Donovan: You're a Mayo man. Congratulations. Long time coming. High finance, accountancy, mergers and acquisitions. They're not typical in the Mayo economy. So what's the background there?

Brian Brennan: They're not. I have a very different background to a lot of, say, my fellow partners and a lot of my peers in that a lot of people would have come in and done the graduate programme. I didn't. When I joined the firm back in 2004 I came in as a qualified senior. I had done my accountancy exams in college, so I had a slightly different route. I [did] Accounting and Finance in Athlone and in my final year I did ACCA [Association of Chartered Certified Accountants], so that when I had finished college I was a fully qualified accountant. I was working in Mayo for a small firm called Burleigh Accountancy Group.

My parents had their own construction business, and Michael Kelly and Eamon Mongey, who are the

main principals in Burleigh Accountancy Group, would have been their accountants. I was working with them for a while and then, because I wanted to focus on tax, I started doing the Part 2 [CTA] myself when I was in Mayo. Then Conor O'Brien, who is a former partner and would have been a mentor of mine in KPMG, hired me back in 2004.

Donal O'Donovan: Not the typical route. I suppose you would have graduated in the late 1990s/early 2000s?

Brian Brennan: I graduated college in 2003. It's interesting because KPMG merged with Arthur Andersen in 2002, and there's some partners in Arthur Andersen, like Colm Rogers and Liam Lynch, who would have followed the same route actually. I suppose Arthur Andersen had a history of bringing through partners along the same path, and I was one of the fortunate ones that got chosen by Conor, thankfully.

Donal O'Donovan: And once you were in KPMG and on the tax side of things, you very much stuck with that, then?

Brian Brennan: Yes, I did. Even when I was in college, the one subject that appealed to me and that I liked was tax. I can always remember even as a teenager growing up at home, when it'd be 10 o'clock at night, the accountants would be coming and doing the VAT returns or payroll or RCT [relevant contracts tax], and I always used to have an interest. Once I started going to college I actually started doing the books for my parents' company. Then Michael Kelly lived just over the road from my parents' house, and to be fair to him, he invested a bit of time in me. He used to sit down with me at weekends or in the evenings and review what I had done. So I just enjoyed it. I like the numbers side of things. In college the appealing thing for me was transactions and looking at a problem, and it is solution focused. "Okay, here's an issue. There's a tax bill. Any way we can try and manage that tax bill?".

The other thing for me was that I wanted to do my own thing. It was very easy, you know, in the west of Ireland [when] your parents had their own business, very easy to settle into that and stay there and work there. There were loads of opportunities there, but I wanted to do my own thing. When I was in secondary school I used to love it. I used to get up in the mornings and work with my father, and in the evenings, or if we were busy at the weekends, I enjoyed that side of things. So even when I was in secondary school

I thought if I get the opportunity to go to college, I'll go and I'll do my own thing. But if not, if college doesn't work out for me, I'll go off and I'll do an apprenticeship as an electrician or something.

Donal O'Donovan: Life took a different direction. And I guess you just continually doubled down on that?

Brian Brennan: Yes, it started as I said, I had an interest in tax when I was in college. Got the ACCA exams out the way. I had a good day in my tax paper – I placed first in the world in that. And I said, "right, I'm going to go off and focus on tax". That's when I started doing the Part 2 tax, the Institute course. I used to drive up and down to Galway two nights a week doing the course in NUIG. A few of the lecturers in college asked me to do up a CV, and they sent it around to a few people, and my CV landed on the desk of Conor O'Brien in KPMG. He rang me up. He said "I want you to come up to Dublin for an interview". I can clearly remember going up, sitting in his office for the interview, and he said "listen, I didn't bring you the whole way from Mayo for nothing. We're offering you a position. When can you start?". And it just went from there.

Donal O'Donovan: How did you find that, then?

Brian Brennan: The first six months were a steep learning curve. When I went in I was sitting in a bay with Associates around me. Some of them were at the same level exam-wise per se, but they had three-plus years' experience in terms of working with banks, insurance companies, leasing companies, et cetera. So, for me, it was a very steep learning curve, even just getting used to how people did things within the organisation, because, if you can imagine, you went from dealing with small-time – basically tilers, supermarkets, pubs, construction companies – to dealing with billion-dollar aviation companies, for example. It was a steep learning curve, but it was a great challenge. To be fair to KPMG, the support was there, and it was kind of just put your head down and get on with it, you know.

Donal O'Donovan: And that background, the one-on-one relationship with the tiler or whoever has got their own business, they take their business just as seriously?

Brian Brennan: Absolutely. I'll be honest – it gave me a great foundation, even just in terms of the basics and understanding how things operate, payroll tax or corporate tax and even accounting –



I used to do account preparation. So even to this day I have a really good understanding of accounts and debits and credits and all that. It was a great foundation. But, as I said, the first six months were a steep learning curve. After that – and I always say this to my people: “we will promote people that perform” – I was only in the door not even 18 months and I was promoted to Manager. And then, just under two years later, Associate Director, which is equivalent to Senior Manager; then Director and Partner. I’m a Partner now for 10 years. It is a great firm to progress in; the opportunities are there and the growth is there.

Donal O’Donovan: And the firm has been growing all the time, you’re growing all the time.

Brian Brennan: Yes, growing all the time. And the one thing I loved about my time going up through the ranks was, particularly, working with the likes of Conor O’Brien, Tom Woods, Brian Daly, Pat O’Brien. I used to love getting out in the market and meeting people and trying to win work, and

I was given the autonomy to do that, which was great. It’s a really good learning curve, hence why I spend half my time now in the US. It’s a great way to try and build your book, build a bit of a profile for yourself in the market whilst at the same time you’re working on transactions, you’re gaining great experience.

Donal O’Donovan: On the US, that’s not an easy workload. Just physically to be in two places.

Brian Brennan: It’s not. It’s funny because the Head of my Department asked me recently how I am finding it. The thing is that you’re trying to manage your clients, you’re trying to manage your team here. As I said, I am blessed. I have such a good team, and they know how I operate. Then you’re trying to deal with what you have on your desk over in the US and what’s in your pipeline. You set yourself KPIs [key performance indicators], and I have these targets and I want to try and achieve these targets. But I also have a family as well, so I’m trying to balance that. So you’re juggling a lot of balls. I love being busy.



I've always loved being busy. From one end of the week to next, it just flies, but you manage it.

Donal O'Donovan: On the family side, you're based in Dublin.

Brian Brennan: Based in Dublin, I live out in Howth. I have two kids: one is nearly 17 and the other is nine, so they're easy enough to manage. They're still in school. It's still important that I spend time at home.

Donal O'Donovan: And culture-wise, how did you end up going over there, the US tip of the spear?

Brian Brennan: It really started off with the clients I was working with, and over the last number of years I'd make a trip to the US once a quarter and I'd meet clients that I work with on certain targets. Then it just grew from there. It went from once a quarter to doing one week every month. We were having successes and building relationships. I'll put it this way, you're not going to walk into a private equity fund on Wall Street and an hour later walk out with a million dollars' worth of work – that

just doesn't happen. That's not reality. You have to build up relationships. You have to know and explore what opportunities they're looking at. They also need to learn about what services you can offer – what skills and expertise you have. So a lot of what we do is working around that.

Donal O'Donovan: But you found that being present works?

Brian Brennan: Yes, being present, there's no competition to having face time with clients. It's one thing dealing with a client and working on a transaction, you can do that on Teams calls, but it's another thing going over to try and meet somebody for the first time and to talk about what your experience is, the skills, the expertise your firm has, the types of transactions that your firm has worked on. Nobody's going to give you the time of day on Teams, so you have to be over there on the ground, meet with them, go for lunch, et cetera.

Donal O'Donovan: What is typically the first meeting then? Is it coffee? Is it lunch? Is it dinner?

Brian Brennan: It depends. Sometimes you get a referral, for example. Other times it might be just meeting someone for a coffee. Other times it could be at a conference, and you bump into someone and they say “listen, if you’re around New York next week, we can have a meeting”, for example. So it varies. It really does vary, you know, and sometimes it’s just where we have an existing relationship with people and we keep in touch. Sometimes it’s being at the right place at the right time.

Donal O’Donovan: So the live events, the conferences, the seminars, things like that, they matter to you?

Brian Brennan: Oh, they do. Yes. It’s all about trying to have a profile, building the firm’s profile and getting out in the marketplace. There was a partner in KPMG, who is retired now, but he always had a saying, which is a great saying, “the best way to win new work is to look after the work that’s on your desk”. He’s absolutely right. But, at the same time, to grow, you need to be out there in the marketplace and to try to understand what people are working on, what people are focusing on, what are the markets thinking about. Whether it’s tariffs, the war in the Middle East, what’s going on in Ukraine, you need to understand what people are focusing on and what’s keeping people awake at night, the next thing that’s coming. Because you always want to be in the pipeline. You always want to try and be a step ahead if you can.

Donal O’Donovan: What is coming down the track? You’re there, you’re on the ground in the US. They’ve had 18 months, I suppose, of a new departure in terms of trade, tariffs, uncertainty. What’s the mood there in corporate America?

Brian Brennan: It’s interesting. With some people you talk to the Middle East or what’s happening with tariffs doesn’t come up in conversation. You have to be very careful of who your audience is, because whilst you may have views of the current President, the person that’s in front of you may have very different views. You generally don’t broach that subject unless it’s raised by the other side of the table. But a lot of the people we talk to, they’re all deals focused, so they’re all trying to make money, whether it’s in an upturn or a downturn.

As I said, I do a lot of work in aviation. It’s cyclical, it’s a very dominant sector, there’s always opportunities – whether the markets are in a

downturn or there is huge growth in the market. People are always looking for opportunities. So the types of deals you work on over time can vary. As I said, you’re always interested to see what people are looking at. What’s going on in the marketplace in terms of who’s looking to buy, who’s looking to sell, what’s coming to market? What are people’s views on the capital markets, on interest rates? Do we think we’ll see a spike in interest rates? Or where’s the new finance coming from? And it never fails to amaze me the amount of new money that’s coming to market at the moment. It is phenomenal. There is loads of capital that these guys have to deploy and that’s all they’re interested in.

Donal O’Donovan: And the weight of that capital means that deals are going to get bigger?

Brian Brennan: Correct. The thing is that they’ve got capital that they have to deploy, so we have to go and put it to work. It’s interesting, when you work through them, they’ve got certain IRR [internal rate of return] targets, and it’s a great learning experience to work through a deal from start to finish and see how they actually work out. Will this particular transaction meet our returns? What do we need to do? What special sauce or ingredient do we need to bring to this deal so that we can reach our targets, basically from an IRR perspective?

Donal O’Donovan: Tax will be some of that, of course?

Brian Brennan: Tax is always a factor. Sometimes tax is left to the last minute. But you’re seeing it more and more now – it’s coming into deals where they’re looking at their pricing, their models, they’re trying to price tax in.

The tax world has changed. In the last 15 years the amount of international tax reform has been absolutely phenomenal. It always has been a focus, but it’s a real key focus now.

Donal O’Donovan: You’re quite busy at work. You’re quite busy at home. You have a fair bit on your plate and you’re traveling. Why, tell me, have you decided to go for the Presidency of the Institute?

Brian Brennan: It’s a good question. I’ve been on Council for about 10 years. There are parts of the job you really enjoy doing and giving your time to certain things, and this is one of the things I have thoroughly enjoyed, my 10 years on Council. The people I’ve met with, they’re in competitor firms,



legal firms, people from industry. It's fascinating the people that you meet. I've thoroughly enjoyed working with those people. It's one aspect of the job that is very different to servicing clients, for example. But it's important that tax professionals out there have an advocate and have a voice.

Obviously, a country like Ireland, we're export driven, so we're very reliant – if you look at our corporate tax receipts – very reliant on FDI [foreign direct investment], et cetera. So tax policy is really important, and I enjoy that that side of it. The opportunity came up to go for President, and I said “yeah, why not?”. It's a one-year term, and the personal satisfaction you get from it is what was appealing to me.

Donal O'Donovan: And you've done 10 years, so you've been in around the committees?

Brian Brennan: Yes, I've been on the Finance and Admin Committee. I was Chair of the Policy and Technical Committee for a number of years, and obviously I've been on the Executive Committee the last two years as well.

Donal O'Donovan: We're into Budget season now. We're about a month out. In terms of the Institute, what's the interplay of the Institute and the Budget process?

Brian Brennan: Every year we make our Budget submission to the Department of Finance, and then each year we have an opportunity to meet with the Minister and Department of Finance. There's a meeting next week with them to discuss the Budget. The Institute's role, which is a very important role, is getting views from our members, getting people involved from a tax policy perspective, and that starts with the Budget and then leads into the Finance Bill.

But this process has evolved over the last number of years where we see a lot more consultations by the Department of Finance. We're very heavily involved in liaising with members, getting their views, getting their feedback, drafting our submissions, getting our submissions in, and also, more importantly, getting in front of the relevant people to explain the reasons why we've set out certain matters within our submissions.

Donal O'Donovan: What would you like to see in the 2027 Budget and the Finance Bill?

Brian Brennan: There's couple of things I'd like to see. One key thing for me is that Ireland remains competitive; the world that we're operating within now is a Pillar Two world. We need to remain competitive, and there's a number of things we

need to do to enhance our competitiveness. For example, enhancing the R&D tax credit regime has been a phenomenal success for the country, but we can't rest on our laurels and we need to continue to refine and enhance that to make sure it's as attractive as possible for a lot of FDI. And I'd like to see something done on capital gains tax. The current rate we have is one of the highest within the OECD at the moment, and I'd like to see that reduced.

Donal O'Donovan: The officials in the Department will say "well, we can't afford to lose that amount of income".

Brian Brennan: I think that's the wrong approach because it's a behavioural change. The default scenario is that if we reduce rates, we're going to reduce receipts. I think it's going to have an opposite effect, and the history is there. If you look at when we reduced our CGT rate from 40% to 20%, our Exchequer receipts increased. If you look at what Charlie McCreevy did with our corporate tax rate, our Exchequer receipts have just kept going in one direction. The history is there, and as I said, more importantly, there's going to be a behavioural change. We talked previously about the comments from Taoiseach Micheál Martin about CAT [capital acquisitions tax] and looking to try and reform CAT because of the amount of receipts they're receiving. A lot of that is driven by the fact that people are not moving on assets. So, for example, there are farms, there are businesses in Ireland where people aren't moving on because they don't want to have to pay the 33%. It's prohibitive. Whereas if we reduce the rate, I think it'll be far more appealing to people to actually start moving on assets.

The other thing I would love to see – I think it's penal for anyone to be paying income tax over 50%. I think we should get to 50% and maybe even below it. That would be something I'd like to see. People have to be able to get out of bed in the morning and feel that there's an incentive. With the current Government, one of the things they had on their agenda was to try and abolish USC [universal social charge]. We definitely won't see a complete abolishment of it, but we need to see some reduction. You have to try and put something back into people's pockets.

Donal O'Donovan: That's particularly acute at the moment because we know living costs are outpacing wage increases.

Brian Brennan: Yes, and it's one thing to increase the minimum wage, but for a small business, the first thing they're thinking about is "oh my God, my cost has gone up straight away". That has a knock-on impact on the person on the street, because if business costs are going up, it means the products that they're buying are going to be increasing, the services that they're acquiring are increasing, so it's having a domino effect.

Donal O'Donovan: In terms of the Institute itself, the year ahead, what would you like your legacy to be?

Brian Brennan: For me, because I work in the corporate tax space primarily, I would love to see some reform around corporate tax. There's been a big project the last number of years around the interest deductibility rules. I'd love to see those reformed. Obviously, there's been a lot of change, we've introduced an interest limitation rule as part of the OECD/EU ATAD measures, but I'd like to see the current rules reformed.

We need to simplify things. It's overcomplicated. There are too many anti-avoidance measures. I think we should have just a simple rule: all interest is deductible, subject to cap of 30% of EBITDA [earnings before interest, taxes, depreciation and amortisation]. We're trying to make Ireland as attractive as possible for foreign direct investment. I'd like to see that simplified.

I'd like to see other simplification in terms of the overall administration, and that's both on corporate tax and income tax. But, particularly with corporate tax, I'd like to see us try and move to a scenario where we have consolidated tax returns. I'd like to see some simplification in terms of our rates. We have [multiple] different rates for corporates. We don't need that. I think for any corporate that's engaged in a trade, one rate – you're either at 12.5% if you're trading, or if you're in Pillar Two it's 15%. We need to simplify that. As I said, we need to ensure that Ireland remains as attractive as possible. So there are some of the key things I want to try and focus on during my presidency,

Donal O'Donovan: Brian Brennan, Tax Partner at KPMG, incoming President of the Irish Tax Institute. Thank you very much. It's been absolutely fascinating.



Chief Executive's Pages

Martin Lambe

Irish Tax Institute Chief Executive

On 3 September the Institute's Annual General Meeting took place, where Brian Brennan became our 51st President. Brian joined Council 10 years ago and has served on several Committees, including as chair of the Policy and Technical Committee.

Brian, Tax Partner with KPMG Ireland, advises domestic and international clients on cross-border mergers and acquisitions, aviation financing, leasing, banking and tax-based fundraising. He has significant experience of leading large, multi-country teams in delivering tax advice to his clients, including leading international tax teams on large-scale mergers and acquisitions transactions.

Before taking on the role of President, Brian sat down with our Tax Talk podcast host, Donal O'Donovan, to discuss his unique route into Tax Advisory, his career so far and his priorities for the year ahead. Listen now or read the edited transcript in this issue of *Irish Tax Review*.

Council 2026-27

As Brian takes over as President, Shane Wallace becomes the Immediate Past President after a very busy year guiding the Institute. During his term Shane opened three conferences, extensively represented taxpayers on the proposed changes to the tax appeals process and talked to recently qualified CTAs, as well





Shane Wallace, Immediate Past President, congratulating Brian Brennan, Institute President, on his new role.

as third-level students, about the opportunities offered by Tax Advisory. On behalf of the wider Institute I would like to thank Shane for his leadership throughout his time on Council and as President.

Ian Collins moves into the role of Deputy President, and Oonagh Carney joins the Executive working group as Vice President. Additionally, we welcome two new members to Council – Nancy Fallon of KPMG and Tom Power, BL.

We would also like to thank Peadar Andrews, who steps down from Council, for his years of commitment and guidance. We wish Peadar the best in the future.

Education

Applications are open for all three of our Autumn 2026 courses, which will begin in the coming weeks. Numbers across all programmes

are steady so far, and you can still apply at taxinstitute.ie.

During September, students who sat their exams in August received their results. Congratulations to everyone who passed their exams, and we look forward to seeing our successful Part 3 students at the Conferring Ceremony this November.

It is that time of year again when our team travels across the country attending career fairs to promote a career in Tax Advisory. Over the next few weeks our representatives will talk to third-level students about the opportunities offered by a career in Tax Advisory, the resilience of the profession with the advancement of AI and tips on applying for graduate roles or internships.

The newest edition of our third-level textbook, *Irish Taxation: Law and Practice*, is available for purchase in physical and digital

format. Used as the basis of our Tax Trainee Induction Programme and by lecturers across Ireland, this publication remains a popular, vital asset for tax education.

Competitions for Students

As part of our outreach to second- and third-level students, we are running two competitions to support students' understanding of how tax affects the world around them.

This year we relaunched our Transition Year (TY) competition – Your Take on Tax. Focusing on Ireland's Presidency of the Council of the European Union, the competition invites TY students to work in teams and take on the role of policy-makers to investigate and address a current challenge affecting EU Member States.

After the Budget 2027 announcement, undergraduates are asked to put themselves in

the role of Minister for Finance as part of the Fantasy Budget competition. With the support of their lecturers, students will analyse three measures and propose a new measure of their own that they believe should have been in the Budget.

Budget 2027

Tax remains one of the most effective policy levers available to the Government. At our meeting with the Tánaiste and Minister for Finance, Simon Harris TD, to discuss our Pre-Budget 2027 Submission, we emphasised that if the Government strengthens the competitiveness of the tax system, it can reinforce Ireland's position as a leading location for business and talent. This is possible through expanding key reliefs, supporting innovation, simplifying administration, incentivising investment and protecting taxpayers.



L-R: Anne Gunnell, Institute Director of Tax Policy and Representations; Simon Harris, Tánaiste and Minister for Finance; Brian Brennan, Institute President; and Shane Wallace, Institute Immediate Past President.

The discussion was constructive, and we hope to see our recommendations in the package announced on 6 October. For Budget 2027 we will be hosting a two-part webinar series getting the reactions of our panel – Brian Brennan, Geraldine Magnier of Ildiro Analytics and Fergal O'Brien of Ibec – and hearing the technical review the next morning.

Representations

Over the summer, Institute representatives attended meetings and forums, including the National Economic Dialogue, to ensure that our members stay informed and that their concerns are represented. At the same time, the team responded to several consultations on various topics, including Pillar Two and e-withholding tax.

In August the Minister for Enterprise, Tourism and Employment, Peter Burke TD, published the *Cost of Business Advisory Forum* report. On behalf of the Institute and our members, our Director of Tax Policy and Representations, Anne Gunnell, actively participated in the forum, which brought together regulators, business owners, retailers, tourism operators, professional bodies and representative groups with the aim of reducing the cost of running a business and addressing delays that may impact business operations in Ireland. We were delighted to see that many of our recommendations were taken on board and included in the final report.

Professional Services

The Autumn/Winter continuous professional development programme is now well



under way. With a wide range of topics and a mix of online and in-person seminars, the programme provides something for all member categories.

The Tax Trainee Induction Programme on-demand content went live at the end of August, with a live workshop on 11 September in the Institute's offices. Designed to enable trainees to add value from day one of their careers, the programme remains popular for new Tax Advisory recruits. It is available on demand for those starting later in the year.

Coming up is a six-part transfer pricing programme, beginning in November, as the demand for knowledge in this area grows. In terms of in-person events, we are hosting a workshop aimed at non-CTAs on invoice processing, and our annual hybrid farming conference will be back in Portlaoise. I am delighted to confirm that we will be hosting an in-person conference in both Cork and Dublin. Covering an essential part of the work of a CTA – representing taxpayers – the conference

has a stellar panel experienced with the ins and outs of engaging with Revenue, the mechanisms for dispute resolution and deciding whether to take an appeal.

On the publications side, two annual titles were published as ebooks: *Finance Act 2025 – The Professional's Guide* and *Taxation Summary*. The latter publication is included as part of your membership of the Institute. Thank you to our authors and editors for sharing your expertise.

New TaxFind

Ensuring that our services keep abreast with developments in not only the tax world but also technology is important. As a result, our leading tax research database, TaxFind, was upgraded this summer. Using a better platform with the same trusted content, TaxFind now offers users an enhanced interface, advanced search functionality and an optional AI mode. So far, the feedback has been very positive. If you would like to receive a demonstration of the new platform, please contact Evelyn Delehanty.



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

Mark Ludlow
Senior Associate – Tax, RDJ LLP

	Topic	Court
01	Costs in Tax Appeals: <i>Falkenthal v The Revenue Commissioners</i> [2026] IECA 89	Court of Appeal
02	Corporation Tax: <i>Revenue Commissioners v Chili Bagan Restaurant Limited</i> [2026] IEHC 379	High Court
03	Corporation Tax: <i>Revenue Commissioners v Avaya International Sales Limited</i> [2026] IEHC 448	High Court
04	Case Stated Procedure: <i>O’Sullivan Fabrications Limited v The Revenue Commissioners</i> [2026] IEHC 488	High Court
05	Income Tax – Distribution on Change in Share Rights: 53TACD2026	Tax Appeals Commission
06	Employment Wage Subsidy Scheme: 82TACD2026	Tax Appeals Commission

01 Costs in Tax Appeals: *Falkenthal v The Revenue Commissioners* [2026] IECA 89

In this judgment the Court of Appeal (McDonald J (judgment) with Pilkington J and O’Moore J (concurring)) considered whether a taxpayer would have to pay Revenue’s costs in circumstances where he had failed in his appeal. The court determined that the question of the costs of the appeal must follow its earlier substantive judgment dismissing the taxpayer’s appeal ([2026] IECA 41).

Having dismissed the taxpayer’s appeal and affirmed the High Court order, the court had indicated that Revenue was presumptively entitled to its costs under s169(1) of the Legal Services Regulation Act 2015 (“the 2015 Act”) but invited the appellant to make written submissions if he wished to argue for a different costs order. The appellant duly did so, relying on delay in the underlying s811 TCA 1997

process, an alleged lack of clarity in the amount assessed and an asserted public-interest dimension to the litigation.

The question before the court was whether any of these grounds displaced the presumptive entitlement of the successful party (Revenue) to its costs under s169 of the 2015 Act. The Court of Appeal held, in awarding Revenue the costs of the appeal, that:

- The delay in the underlying process was of no relevance to costs. The appellant had been a party to the process throughout, was intimately familiar with the facts, was in a position to seek to expedite matters himself and had raised no concern about delay during the process. The issues in the appeal were legal in nature, and the appellant did

not identify how any delay disadvantaged him in presenting his case.

- The discrepancy between the amount identified in the original s811 notice of opinion and the amount ultimately assessed did not affect the legal issues determined and, in any event, operated in the appellant's favour; it could not, therefore, found a reduction in costs.
- The appellant could not be said to have brought the case to advance a public interest. There was nothing to suggest that he was doing other than advancing his

own and other, similarly situated taxpayers' private interests, and the decision could not be said to have systemic importance, given the small number of affected taxpayers and the amendment or repeal of the relevant provisions since the notice issued.

- Accordingly, there were no countervailing circumstances to displace the presumptive position under s169 that costs follow the event, and Revenue was entitled to the costs of the appeal, to be adjudicated in default of agreement.

02

Corporation Tax: *Revenue Commissioners v Chili Bagan Restaurant Limited* [2026] IEHC 379

In this case the High Court (Dignam J) considered an appeal by Revenue by way of case stated from a determination of the Tax Appeals Commission (TAC). After an audit, Revenue raised assessments to VAT and corporation tax (CT) against the taxpayer, including a 10% surcharge for negligent CT returns. The taxpayer appealed to the TAC on grounds concerned with the reliability of Revenue's underlying figures; it did not raise the availability of unutilised CT losses as a ground of appeal. At the hearing the TAC asked Revenue whether the taxpayer had unutilised losses; Revenue indicated that it would investigate, but the TAC was then told that the position had been confirmed because the taxpayer had itself submitted CT return summaries after the hearing. On the basis of that post-hearing material, the TAC found that the taxpayer had €378,293 in unutilised CT losses, and it reduced the CT assessments, and the associated surcharges, to nil. Revenue was not asked for its position on that material before the finding was made.

The questions before the High Court were whether the TAC had erred in law in finding as a fact that the taxpayer had €378,293 in unutilised CT losses, in failing to adhere to the burden of proof in making that finding and in relying on evidence that was not properly admitted on the appeal.

The court held, in allowing Revenue's appeal, that:

- The question of unutilised losses had not been raised by the taxpayer as a ground of appeal and was not addressed in any substantive way at the hearing; no application had been made to expand the grounds. The TAC, accordingly, erred in law in making a finding of fact on an issue that was not properly before it, and in relying on information that was not relevant to any issue in the appeal.
- Even if the issue had properly been before the TAC, it erred in admitting and relying on the post-hearing CT returns and company accounts as evidence of unutilised losses without affording Revenue any opportunity to address or challenge that material, notwithstanding that Revenue was likely to have disputed both the existence and the non-utilisation of the claimed losses. The relaxed evidential rules applicable to TAC appeals under s949AC TCA 1997 do not permit a departure from the basic requirements that evidence be relevant to an issue in the appeal and that the other party's position be sought before it is relied on.
- The burden of proof in a TAC appeal rests on the taxpayer, according to *Menolly Homes Limited v The Appeal Commissioners and*

the Revenue Commissioners [2010] IEHC 49 and *McNamara v Revenue Commissioners* [2023] IEHC 15. The line of tort authorities relied on by the taxpayer concerning the shifting of the onus of proof – *Hanrahan v Merck Sharp & Dohme (Ireland) Limited* [1988] IESC 1 and *Rothwell v The Motor*

Insurers Bureau of Ireland [2003] IESC 16 – had no application in the context of a tax appeal. The TAC correctly identified that the burden rested on the taxpayer but failed to apply or enforce it, by accepting the post-hearing documentation as sufficient proof of unutilised losses without further scrutiny.

03 Corporation Tax: *Revenue Commissioners v Avaya International Sales Limited* [2026] IEHC 448

In this case the High Court (Bolger J) considered an appeal by Revenue by way of case stated from a determination of the Tax Appeals Commission (TAC) concerning the deductibility of foreign royalty withholding tax (FWHT). The taxpayer, Avaya, licensed technology solutions to foreign licensees, some of whom were required by local law to withhold tax at source on the gross royalties paid to Avaya. Avaya had no branch or permanent establishment for corporation tax purposes in any of the relevant foreign jurisdictions and was not in a corporation tax-paying position during the relevant periods, its liability having been sheltered by R&D tax credits and trade charges. Avaya claimed a deduction under s81 TCA 1997 for the FWHT incurred in all jurisdictions except Argentina; Revenue denied the deduction. The TAC allowed Avaya's appeal, finding that Avaya was entitled to an s81 deduction for FWHT in all jurisdictions save Argentina.

Ten questions of law were referred for the opinion of the High Court, distilled by Bolger J into:

- the interaction between the double taxation regime (s77(6B), s826, s826A and Schedule 24 TCA 1997) and s81;
- whether FWHT is deductible under s81 as a trading expense;
- whether the Appeal Commissioner erred in relying on comparisons to other deductible taxes, rates and charges (including digital services tax); and
- whether certain findings and inferences of fact were unsupported by the evidence.

The court held, in allowing Revenue's appeal on all ten questions, that:

- Schedule 24 constitutes a stand-alone and exclusive statutory regime for relief from double taxation, following Bolger J's own reasoning in *Accenture Global Solutions Limited v The Revenue Commissioners* [2026] IEHC 305. Where a Schedule 24 calculation yields no relief, it is not possible to seek a deduction under s81.
- FWHT, being a tax on income charged on gross royalties after they are earned, is properly characterised as an application of profits rather than money expended for the purpose of earning them, and so does not satisfy the test for deductibility under s81(2)(a), as established in *Strong v Woodfield* [1906] AC 448 and the subsequent authorities considered in *Accenture*. The Commissioner erred in focusing on the gross nature of the royalty payments and the compulsory character of the tax rather than on whether it was incurred in earning profit or was an application of profit once earned.
- The Commissioner erred in drawing support from the deductibility of other compulsory charges (such as rates, stamp duty and employer PRSI, which are incurred before income is earned) and from an unsupported comparison to digital services tax, a foreign tax on which no evidence had been led regarding its operation or characterisation.
- There was no evidence before the TAC capable of supporting its finding that Avaya could not conduct its trade without incurring

FWHT. Avaya's own witness accepted that he was not familiar with the withholding tax regimes or rates in the relevant jurisdictions and could speak only to his "understanding" of the position, which was insufficient to discharge the burden of proof resting on

Avaya. As in *Accenture*, Avaya's choice to license its intellectual property without establishing a permanent establishment abroad, rather than being an unavoidable feature of its trade, gave rise to the imposition of FWHT.

04

Case Stated Procedure: *O'Sullivan Fabrications Limited v The Revenue Commissioners* [2026] IEHC 488

In this case the High Court (Jordan J) considered the procedure for drafting the case stated on an appeal from the Tax Appeals Commission (TAC) to the High Court. The TAC had upheld Revenue's Employment Wage Subsidy Scheme assessments against the taxpayer after a hearing on 4 September 2024. The taxpayer sought a case stated under s949AP TCA 1997, and having considered representations from both parties on the draft case stated under s949AQ(3), the Commissioner deleted two of the proposed questions (as concerning findings of fact only) and amended two others to focus better the points of law in dispute. The taxpayer's notice requesting the case stated, and its representations on the draft, had at no point sought inclusion of the transcript of the oral hearing, nor challenged any finding of primary fact made by the Commissioner.

By motion, the taxpayer sought orders:

- admitting the transcript of the oral evidence before the TAC into the case stated and
- requiring the questions posed in the case stated to be augmented and rephrased to reflect the issues in a "neutral, balanced, fair and transparent" manner.

The court held, in dismissing the taxpayer's motion in its entirety, that:

- The transcript is not required to be included in a case stated, and its inclusion arises only in the limited circumstance where a question

posed specifically challenges a primary finding of fact for want of supporting evidence, on the basis of *Glynn v Revenue Commissioners* [2021] IEHC 780 and the curial deference principles in *Ó Culachain v McMullan Brothers Limited* [1995] 2 IR 217. As the taxpayer had not challenged any primary finding of fact, and had never sought inclusion of the transcript at the appropriate procedural stage under s949AQ, there was no basis to admit it.

- The Commissioner was entitled, having regard to representations received from both parties under s949AQ(3) and (4) TCA 1997, to delete, amend and consolidate the proposed questions so as to focus properly the points of law, according to *Revenue Commissioners v Getty Images International ULC* [2025] IEHC 268. There is no statutory entitlement to further rounds of representations once the case stated is finalised, and no breach of fair procedures had occurred.
- The taxpayer's complaint that the questions were phrased in a manner prejudicial to it was, in substance, an attempt to revisit unchallenged findings of fact; the questions were properly grounded in those unchallenged findings, and the case law cautions against treating applications to amend the questions in a case stated as routine.
- The taxpayer had not established any basis for either form of relief sought, and the motion was dismissed in full.

05

Income Tax – Distribution on Change in Share Rights: 49TACD2026

In this determination the Tax Appeals Commission (TAC; Commissioner Noone) considered a lead appeal against an amended assessment to income tax raised on the basis that a transfer of assets from a company to its members gave rise to a distribution chargeable under s130 TCA 1997.

The appellant was a minority shareholder and director of a company. In December 2005 a shareholder (the decision is heavily redacted, but it would seem to be another corporate) subscribed for ordinary shares in the company at a premium, and the shareholders then passed a special resolution altering the rights attaching to the ordinary and A ordinary shares, so that the right to vote and to participate in a surplus on winding up (including the share premium account) moved from the ordinary shares to the A ordinary shares held by the appellant and other A ordinary shareholders. The company was wound up shortly afterwards, and the appellant received a distribution of €378,900, net of liquidation costs, from the share premium account. The respondent assessed the appellant to income tax of €185,508, being tax on his pro rata entitlement of €394,697 in the share premium account. The appeal had been stayed pending the High Court's decision in *Hughes v Revenue Commissioners* [2019] IEHC 807, which concerned a materially identical scheme, and was heard as a lead appeal after the lifting of that stay.

The questions before the TAC were:

- whether the special resolution effected a “transfer” of an “asset” by the company “to its members” within the meaning of s130(3)(a) TCA 1997;
- whether the share premium account was properly income taxable in the appellant's hands;
- whether any “new consideration” within the meaning of s135(1)(a) TCA 1997 had been

given by the appellant so as to reduce the amount chargeable;

- and whether the TAC had jurisdiction to consider that the transaction was better captured by capital gains tax than income tax.

The TAC held, in dismissing the appeal, that:

- The Commissioner was bound to apply the High Court's judgment in *Hughes* to the substantively identical facts of this appeal, there being no material factual distinction between the scheme considered in *Hughes* and the scheme adopted by the company in this case.
- On the basis of *Lee v Revenue Commissioners* [2021] IECA 18 and the reasoning in *Hughes*, the TAC's jurisdiction is confined to determining whether the assessment properly reflects the statutory charge under the provision actually relied on; it is not open to the Commissioner to consider whether capital gains tax would have been a “better fit” for the transaction.
- According to *Hughes*, share rights conferring voting rights and entitlement to participate in a surplus on winding up are separable, valuable assets capable of being moved from one class of shares to another; the extinguishment of such rights attaching to one class and their simultaneous creation in another class, effected by special resolution, constitutes a “transfer by” the company to its members for the purposes of s130(3)(a) TCA 1997, and there is no requirement that the transfer be received by a member in that member's capacity as such.
- The share premium account was, consistently with *Hughes* and notwithstanding *Re Permanent TSB Group Holdings plc* [2015] IEHC 500, income taxable in the hands of the appellant, as the taxable event was the special resolution altering the members' entitlement to that account, not the subsequent distribution on the company's liquidation.

- No new consideration within the meaning of s135(1)(a) TCA 1997 was given by the appellant; a diminution in the value of his shareholding in the controlling company was not consideration provided by him to the company whose share rights were transferred, and in any event, any such consideration would itself have been provided out of the assets of a company and so excluded from the definition of new consideration.
- Accordingly, the amended assessment to income tax for 2005 in the amount of €185,508 was correctly raised and was affirmed. A case has been requested to be stated for the opinion of the High Court.

06

Employment Wage Subsidy Scheme: 82TACD2026

In this determination the Tax Appeals Commission (TAC) considered an appeal against Employment Wage Subsidy Scheme (EWSS) assessments totalling €8,872,812 for the period September 2020 to June 2021. The respondent raised the assessments on the basis that the appellant had incorrectly claimed entitlement to the EWSS by dividing its overall turnover between purportedly separate “individual business divisions” under Appendix I of the Main Guidelines on the operation of the Employment Wage Subsidy Scheme (the scheme’s guidelines), so as to satisfy the required 30% decline in turnover or customer orders by reference to only part of its business. The respondent’s position, supported by expert evidence, was that the appellant had not established formally structured, distinct business divisions with clearly defined and separate management structures, and that no employees had in fact been assigned to the division said to have suffered the qualifying decline.

The question before the TAC was whether the appellant had established, on the evidence, that it operated formally structured and distinct business divisions with clearly defined management structures entitling it to assess EWSS eligibility

by reference to only part of its overall turnover, under Appendix I of the scheme’s guidelines and the Emergency Measures in the Public Interest (Covid-19) Act 2020.

The TAC held, in dismissing the appeal, that:

- The respondent’s expert evidence was to be preferred; the appellant had not demonstrated the existence of clearly distinct management structures for the division said to justify separate treatment of its turnover.
- Even if it were accepted that a division existed, no staff had in fact been assigned to it, and there was no rational commercial basis demonstrated for its existence as a separate unit for the purposes of the scheme.
- In any event, even if the appellant’s turnover had properly been divided as it contended, the resulting figures would still not have satisfied the 30% decline threshold required for eligibility under the scheme.
- Accordingly, the EWSS assessments totalling €8,872,812 were correctly raised and were affirmed. A case has been requested to be stated for the opinion of the High Court.



Direct Tax Cases: Decisions from the UK Courts

Stephen Ruane Partner and Leader, Tax Solutions Centre, PwC Ireland
Patrick Lawless Director, Tax Solutions Centre, PwC Ireland

	Topic	Court
01	Corporation Tax – Tax Residency	First-tier Tribunal
02	Inheritance Tax – “Wholly or Mainly” Test for Business Property Relief	Upper Tribunal
03	PAYE/PRSI – Contract of Service Versus Contract for Services	First-tier Tribunal

01 Corporation Tax – Tax Residency

In *Cogefin (Bermuda) Ltd & Ciardi v HMRC* [2026] UKFTT 1108 (TC) the First-tier Tribunal considered whether Cogefin, a Bermuda-incorporated company, was resident in Bermuda or in the United Kingdom for corporation tax purposes during the accounting periods from 1999 to 2017. Cogefin had been incorporated in 1996 and was owned by the Poole Family Trust, of which Mr Giuseppe Ciardi was the economic settlor and beneficiary. The company had Bermudian-resident directors, but HMRC contended that Mr Ciardi exercised central management and control from the UK. After an investigation and a disclosure made through the Liechtenstein Disclosure Facility, HMRC issued assessments for corporation tax, imposed penalties for failure to notify chargeability and issued a personal liability notice to Mr Ciardi.

The FTT identified four principal issues: whether Cogefin was resident in the UK or Bermuda; whether the discovery assessments for 1999 to 2013 were validly made; whether penalties had been validly imposed and, if so, whether the behaviour was careless or deliberate; and whether Mr Ciardi was an officer

or shadow director to whom any deliberate failure could be attributed.

In addressing residence, the tribunal applied the established principle that a company is resident where its “central management and control is actually located” and that this is “entirely a question of fact”. Having reviewed the documentary and witness evidence, the tribunal found that the Bermudian directors did not make decisions “at the level required for central management and control to be located in Bermuda”. It held that they “undertook administrative functions to ensure that Cogefin could and did undertake Mr Ciardi’s proposals”, which they “effectively treated as decisions made by him”. The FTT further found that the directors “did not apply their minds as directors to making decisions in respect of those proposals”. Although there were “a very few instances” in which the directors appeared to have made relevant decisions, the tribunal held that these did not alter the overall position. It therefore concluded that Cogefin “was not resident in Bermuda at any time during the periods under appeal but was, instead, resident in the UK only”.

02 Inheritance Tax – “Wholly or Mainly” Test for Business Property Relief

In *The Executors of K Beresford v HMRC* [2026] UKUT 285 (TCC) the Upper Tribunal considered whether shares in Ninecourt Ltd qualified for business property relief from inheritance tax. The statutory question was whether the company’s business consisted of “wholly or mainly” the making or holding investments. A similar test appears in Irish capital acquisitions tax legislation for business relief. The FTT decision was discussed in “Direct Tax Cases: Decisions from the UK Courts”, *Irish Tax Review*, 37/4 (2024).

As before the First-tier Tribunal, the main point of dispute was the character of the income earned from the company’s serviced-office operations. The parties were agreed that the income from floors let on conventional commercial leases was investment income. The issue was whether the “facility fee” paid by serviced-office occupiers should also be treated as income derived from the making or holding of investments or whether it pointed instead to a trading or non-investment business.

Ninecourt’s principal asset was a London office building. Two floors were let on standard leases, and the remaining floors were operated as serviced offices through an agent, Orega Management Ltd. The serviced-office occupiers paid two types of fees: a facility fee, covering the right to use office space, together with standard services; and a contract services fee, charged for additional services. The FTT had regarded the contract services fee as trading income but held that the facility fee was investment income. Because the facility fee represented a significant part of the company’s receipts, its classification was decisive in

determining whether the business as a whole was mainly investment based.

The executors argued on appeal that the FTT had erred in law in its treatment of the serviced-office business. They contended that the FTT had approached the case from an incorrect starting point that exploiting land is presumptively investment activity and had failed properly to assess the business “in the round”. They also challenged the FTT’s conclusion that the essential nature of the facility fee related to the provision of space rather than a broader package of services. HMRC argued that the FTT had been entitled to conclude that the core of the arrangement was the grant of rights to occupy office space and that the additional services did not change the essential character of the receipts.

The Upper Tribunal held that the FTT had made a limited error of law in treating certain items – such as heating, electricity and air conditioning – as investment management activities, when they were more properly characterised as services supplied to occupiers. However, the Upper Tribunal concluded that this error did not alter the fundamental analysis. Re-making the decision, it held that the facility fee was still properly characterised as income from the exploitation of land. Looking at the business as a whole, the tribunal found that Ninecourt’s business remained mainly one of making or holding investments, so the shares did not qualify for business property relief. The appeal therefore succeeded only to the extent that an error of law was identified; in substance, the executors’ challenge failed, and HMRC’s position was upheld.

03 PAYE/PRSI – Contract of Service Versus Contract for Services

In *Professional Game Match Officials Ltd v HMRC* [2026] UKFTT 654 (TC) the First-tier Tribunal considered whether match officials engaged by PGMOL under individual match appointments were employed for tax

purposes. The dispute had a long procedural history. The FTT in 2018 and the Upper Tribunal in 2020 had both held that the referees were not employees. In 2021, however, the Court of Appeal allowed HMRC’s appeal.

The Supreme Court in 2024 upheld that outcome and held that, for each individual match appointment, there was an irreducible minimum of mutuality of obligation and a sufficient framework of control. The Supreme Court also held that this did not resolve the status issue and remitted the case to the FTT to determine whether, taking the full facts into account, the contracts were contracts of employment or contracts for services.

In its decision, released on 1 May 2026, the FTT held that the match appointments were contracts for services and not contracts of employment. The tribunal stated that the question at this stage was to assess the relationship “in the round” and determine what the overall picture showed. It considered the nature of the obligations created by each appointment, the extent and significance of control, and other features of the relationship.

The tribunal found that the obligations between PGMOL and the referees were limited to particular match appointments. Referees could decline appointments. They could also withdraw from accepted appointments or seek changes without consequences that the tribunal considered typical of employment. The

tribunal described the obligations as “episodic” and “suffused with choice”.

The FTT also considered the degree of control exercised by PGMOL. It found that PGMOL operated a system of appointments, assessments, coaching, monitoring, training and fitness requirements. However, it held that this control was largely regulatory in character and reflected the structure within which professional refereeing took place. It found that PGMOL’s role was to apply standards and processes within that framework. The tribunal also noted that the referees’ on-field decisions remained their own.

The tribunal further considered the wider factual setting. It found that the referees were not integrated into PGMOL beyond what was necessary for the organisation of matches and the operation of the officiating system. It also found that many referees had other principal occupations and were not financially dependent on refereeing income.

Having considered the relationship as a whole, the FTT concluded that it was not one of employment. It said that the result was not “finely balanced”. The appeals were therefore allowed, and the referees were held to be self-employed for tax purposes.



International Tax Update

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01 BEPS: Pillar Two Recent Developments



Global minimum tax: Updated 2026 version of consolidated commentary released

On 28 May 2026 the OECD/G20 Inclusive Framework on BEPS released a refreshed iteration of its consolidated commentary addressing the Pillar Two global minimum tax provisions, incorporating previously disseminated authoritative administrative direction. The consolidated commentary underwent its most recent revision in May 2025.

The revised version integrates administrative direction endorsed and disseminated by the Inclusive Framework up to May 2026. This encompasses the direction contained in the “side-by-side package” of 5 January 2026, featuring the enduring streamlined effective tax rate safe harbour, an extension of the transitional country-by-country reporting safe harbour, the substance-based tax incentive safe harbour and the side-by-side framework.

It also reflects supplementary administrative direction released in May 2026 addressing

the application of the transitional undertaxed profits rule safe harbour to groups operating “52-53 week” fiscal year structures.

OECD develops risk-based audit framework for global minimum tax compliance

The OECD is piloting a coordinated methodology enabling tax authorities to leverage global minimum tax filings to identify low-risk multinational enterprise (MNE) groups eligible for audit exemption. The Deputy Director of the OECD Centre for Tax Policy and Administration, Achim Pross, outlined the approach at a conference in Munich on 10 July.

Under the proposed framework, tax administrations would categorise MNE operations using the GloBE Information Return (GIR) – the mandatory annual filing under Pillar Two – into risk buckets:

- jurisdictions with qualified domestic minimum top-up tax safe harbours,

- those with transitional country-by-country (CbC) reporting safe harbours and
- *de minimis* cases.

Authorities would then assess confidence in the group's Pillar Two control environment, review discretionary positions and uncertain interpretations, and apply risk indicators to identify potential schemes. Groups presenting no material risks could be removed from audit scope. The framework aims to standardise risk assessment across administrations and reduce unnecessary audits, although it may lack legal enforceability. This initiative forms part of the second phase of the Amsterdam Dialogue, a Forum on Tax Administration programme adapting CbC reporting and international compliance assurance experiences to Pillar Two requirements.

MNE responses to the global minimum tax

The OECD has released a paper offering preliminary findings on how multinational enterprises (MNEs) have adjusted their operations after the adoption of the global minimum tax (GMT). The study examines documented behavioural shifts by MNEs in relation to the €750m revenue threshold that determines applicability. Using a comparative methodology, the research draws on consolidated financial statements and corporate structure information from the Orbis database, employing a comparative analysis approach that isolates MNEs positioned marginally above and below the eligibility threshold.

The investigation assesses whether the GMT has influenced MNE tax burdens, capital expenditure and workforce levels, and whether organisations modified their strategies in anticipation of implementation. The analysis incorporates sectoral and organisational variation to identify which business categories and industries account for observed patterns. Additionally, the study uses findings on tax rate impacts to project potential government revenues generated during the GMT's inaugural operational year. Some key findings are outlined below.

Effective tax rate increases

The implementation of the GMT resulted in statistically significant rises in consolidated effective tax rates (ETRs) among in-scope MNEs. Previously low-taxed MNEs experienced an increase in consolidated ETRs of approximately 1.7 percentage points, while the increase for all in-scope MNEs averaged 1.4 percentage points.

Differential impacts across MNE types

The GMT's impact on ETRs proved stronger for MNEs potentially more exposed to top-up taxation. The increase in ETRs was concentrated in MNEs operating in sectors with higher tax-planning intensity, in MNEs with substantial intangible asset shares and in MNEs with comparably elevated profit-to-substance ratios. Specifically, MNEs in sectors identified as having greater propensity for aggressive tax planning demonstrated an ETR increase of 2.9 percentage points, whereas firms in lower tax-planning sectors showed statistically insignificant effects. Similarly, MNEs in the top quartile of intangible asset intensity experienced a 2.3 percentage point increase, while those in the bottom quartile showed no significant response.

No negative investment or employment effects

The paper finds no evidence that the GMT significantly reduced investment or employment at the MNE group level, or that firms changed their behaviour in anticipation of the reform during 2022–2023, when reform details were available but rules had not taken effect. The absence of short-run real economic effects is consistent with several potential explanations, including the design of the GMT's substance-based carve-out, which may limit its effect on marginal tax rates and protect profits associated with substantial economic activity.

Revenue generation

The GMT is estimated to have increased corporate income tax revenues by €79–109bn in 2024, equivalent to an increase of 2.4–3.4%

of global corporate income tax revenue. These short-term estimates are somewhat lower than *ex ante* projections but of a similar order of magnitude. The revenue effects are likely to evolve as jurisdictions complete implementation, the substance-based carve-out is gradually reduced, and the undertaxed profits rule and “side-by-side agreement” become fully operational.

Implementation and structural considerations

The analysis found no evidence of announcement effects on ETRs, investment or employment during the post-announcement, pre-implementation period (2022–2023). However, significant implementation effects emerged in 2024, after the GMT’s entry into force. The paper also found no statistically significant changes in MNE structures, such as subsidiary counts or presence in investment hubs, suggesting that structural reorganisations may require longer timeframes to materialise.

Differences by Implementation status

MNEs subject to income inclusion rules (IIRs) in their headquarters jurisdiction

demonstrated stronger ETR responses than MNEs headquartered in jurisdictions without IIRs. MNEs that were subject to IIRs experienced an estimated treatment effect of 2.9 percentage points on consolidated ETRs, approximately two-thirds larger than the full sample average. MNEs that were not subject to IIRs showed a weaker response of 1.3 percentage points, reflecting that only a fraction of total profits may be covered by the GMT where qualified domestic minimum top-up taxes alone apply.

Limitations and future research

The results represent short-run effects based on the first year of implementation and may evolve as both firms and jurisdictions continue adjusting to the new regime. MNEs might adjust their behaviour only gradually over time. Although in-scope MNEs did not appear to have changed their total investment in response to the GMT, they could have reshuffled their activities across jurisdictions. Complementary analysis using jurisdiction-level data will be important to determine the extent of such reallocation responses.

02 OECD Tax Developments



OECD Corporate Tax Statistics 2026

The OECD released the 2026 edition of “Corporate Tax Statistics”, a major reference work examining corporate income taxation globally. The publication synthesises extensive data on how corporations are taxed, tracks the financial operations of multinational enterprises (MNEs) and documents strategies used to shift profits and erode tax bases (BEPS).

The report functions as a monitoring tool for tax-avoidance patterns, drawing on multiple metrics:

- corporate income tax levels and rates,
- tax collection figures,

- actual effective tax rates paid and
- government incentives targeting research and development and technological advancement.

A distinctive feature is its inclusion of anonymised and consolidated country-by-country reporting (CbCR) information, which aggregates the tax and business positions of thousands of multinational groups around the world. The 2026 iteration expands on previous versions by incorporating anonymised and aggregated CbCR data from nearly 9,400 MNEs with headquarters across more than 60 countries, alongside enhanced regional classifications for numerous jurisdictions. These enhancements enable deeper and more reliable

examination of how critical financial metrics, including profits, income streams and tax payments, are distributed internationally. Key findings of the report are outlined below.

Corporate tax revenue trends

The contribution of corporate tax revenues to overall tax revenues remained elevated in 2023, after increases were observed in 2022. In 2023 the share of corporate tax revenues as a percentage of total tax revenues decreased marginally from 17.8% to 17.3% on average across 135 jurisdictions covered in the database, while the share as a percentage of gross domestic product (GDP) declined slightly from 3.6% to 3.5%. However, these levels remained substantially elevated relative to 2021 values.

Over the longer term, corporate tax revenues as a share of GDP have demonstrated convergence across income groups. In low-income jurisdictions, corporate income tax revenues increased from 0.8% of GDP in 2000 to 3.1% in 2023, approaching the average level in high-income jurisdictions of 3.6%.

MNE contribution to tax revenues

The proportion of revenues raised from large MNEs has expanded significantly in recent years. Large MNEs constitute a key source of corporate tax revenue, contributing an average of 44.5% of total corporate tax revenues in 2023, up from 42.8% in 2017 across the 60 jurisdictions providing CbCR data.

Statutory tax rate stabilisation

Continued evidence indicates stabilisation of corporate tax rates. Statutory corporate income tax rates (STRs) remained stable over the period between 2020 and 2026, arresting the downward trend that characterised the preceding two decades, although average STRs remain at levels substantially below historical averages. The average STR remained constant at 21.2% in both 2020 and 2026, with slight yearly variations throughout the period. The average combined (central and sub-central government) STR for all BEPS Inclusive Framework jurisdictions covered declined from 28.0% in 2000 to 21.5% in 2019.

Research and development tax incentives

Tax subsidies for research and development (R&D) investments remain relatively stable, with a modest increase in subsidies through income-based tax incentives in the most recent year. The generosity of expenditure-based tax incentives for R&D has stabilised in recent years, with the average subsidy reducing effective average tax rates for R&D by 34.8% in 2025. The uptick in income-based tax support reflects the introduction of certain new regimes and enhanced generosity in select jurisdictions, although some countries have curtailed support levels. R&D tax incentives are frequently deployed to stimulate R&D and innovation activity within jurisdictions, though certain tax incentives also reflect competitive pressures to attract highly mobile intangible assets.

Profit location mismatches

Suggestive evidence persists regarding mismatches between the location of reported profits and observed indicators of MNE activity. Certain high-level indicators of mismatches demonstrate a modest increase in recent years, but they remain below earlier peaks and continue to be substantially more pronounced in investment hubs than in other jurisdictions. Although such patterns could indicate continuing base erosion and profit shifting behaviour, the report notes that these data may be influenced by economic turbulence during periods of elevated inflation in 2023.

OECD consultation on intra-group service transfer pricing

On 1 June 2026 the OECD released a stakeholder consultation document entitled “Special Considerations for Intra-group Services”, addressing proposed modifications to Chapter VII of the “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations”, concerning the transfer pricing treatment of intra-group services.

The discussion draft invites stakeholder input on refreshing and enhancing existing principles for applying the arm’s-length

standard to services, supplemented by an annex containing more than 20 new illustrative scenarios.

The proposed amendments are not intended to alter the fundamental principles governing transfer pricing analysis of intra-group services. At this stage the discussion draft

does not reflect consensus and aims to present stakeholders with proposals for evaluation and specific inquiries.

Stakeholder feedback on the discussion draft was requested by 22 July 2026, and a public forum is anticipated at the OECD in Paris during November 2026.

03 European Commission Tax Developments



EU tax simplification omnibus

On 24 June 2026 the European Commission introduced a tax omnibus initiative intended to streamline elements of the EU direct tax framework and reduce cross-border compliance burdens for enterprises. Regulatory alignment across EU Directives is critical, as inconsistent Member State implementation strategies, combined with the Pillar Two and FASTER Directives, have rendered certain provisions obsolete.

The omnibus initiative encompasses targeted modifications to six Council Directives: the Interest and Royalties Directive, the Parent-Subsidiary Directive, the Tax Merger Directive, the Anti-Tax Avoidance Directive, the Tax Dispute Resolution Mechanisms Directive and the FASTER Directive.

Key proposed amendments

- **Anti-Tax Avoidance Directive** modifications include a new R&D allowance enabling deduction of qualifying R&D expenditure on plant, machinery and tangible assets (excluding land and buildings) in the year of incurrence or within four subsequent periods. Assets must serve exclusively R&D purposes for a minimum three-year period. The interest limitation framework establishes a mandatory 30% EBITDA ceiling across all Member States, a €3m safe harbour for the initial three years with annual inflation adjustment, and full deduction where EBITDA declines 50% year on year. Controlled foreign company (CFC) rules will focus exclusively on Model A (passive income), eliminating Model B (low-taxed non-genuine subsidiaries). General anti-abuse rules are expanded to encompass withholding taxes and Pillar Two top-up taxes.
- **Parent-Subsidiary Directive (PSD)** changes eliminate the 10% shareholding minimum, extending withholding tax exemptions to all cross-border intra-EU profit distributions. Pension entities are included regardless of legal form. Prior authorisation requirements are removed in favour of self-assessment with *ex post* controls. Withholding tax repayment claims are permitted within two years, with refunds due within one year.
- **Tax Merger Directive** amendments expand merger definitions to include simplified structures without new share issuance, incorporate divisional separations, and include cross-border entity conversions enabling tax deferral where assets maintain departure Member State connections.
- **Interest and Royalties Directive (IRD)** changes eliminate the 25% shareholding threshold, extending exemptions to all intra-EU interest and royalty payments. Prior authorisation is removed. Double non-taxation safeguards require withholding tax or deduction denial where recipients operate in zero-tax jurisdictions, except where subject to Pillar Two or equivalent rules.
- **Tax Dispute Resolution Mechanisms Directive** modifications clarify “affected person” definitions for multi-entity disputes and replace simultaneous submission

requirements with 30-day submission windows.

- **FASTER Directive** amendments adjust scope to maintain relief procedures where exemptions are claimed under amended IRD or PSD provisions.

Member State concerns

The Commission's first discussion, on 13 July, revealed Member State concerns such as the lack of country-by-country impact data, the proposed CFC carve-out for Pillar Two groups, the removal of participation thresholds under the PSD and IRD, the inclusion of the R&D allowance, the use of delegated acts and the mandatory 30% EBITDA cap.

EU Directive governing administrative cooperation (DAC) recast

On 24 June 2026 the European Commission released a proposal to modernise the EU Directive on Administrative Cooperation in the Field of Taxation (DAC). The initiative aims to enhance the DAC framework's internal consistency, operational accessibility and proportionality, for taxpayers, intermediaries, reporting entities and tax authorities.

The proposal would consolidate the existing DAC framework and its successive amendments into a unified legislative instrument. It would simultaneously introduce modifications to streamline designated reporting obligations, eliminate reporting deemed to generate minimal supplementary value, and strengthen the calibre and accessibility of information disseminated among EU Member States, while preserving existing safeguards against tax fraud, evasion and avoidance.

The Irish Presidency of the Council of the European Union has designated the tax simplification agenda as a priority and seeks to advance substantially, and ideally finalise, the DAC modernisation initiative by the conclusion of its presidency (i.e. by the end of 2026). This timeline would necessitate transposition into national legislation by the end of 2027, with operational commencement in 2028.

EU Member States are evaluating the proposed amendments to intermediary and taxpayer definitions in the recast DAC, and at a 16 July Council tax working group meeting concerns emerged that revised definitions could shift reporting obligations from intermediaries to taxpayers and potentially compromise data quality.

The Commission's proposal expands "intermediary" to include legal structures (partnerships, trusts, foundations) that design, market or manage reportable cross-border arrangements. It also narrows "relevant taxpayer" to those implementing the first step of such arrangements.

The impact assessment notes that intermediaries currently file approximately two-thirds of DAC 6 disclosures (on potentially harmful arrangements), with taxpayers filing one-third. Although the broad intermediary definition ensures extensive advisory ecosystem coverage, it has created reporting overlap and duplication.

The Commission indicated that reporting obligations remain unchanged, but strengthened professional secrecy protections, after rulings by the Court of Justice of the European Union, may reduce intermediary filings and increase direct taxpayer reporting.

European Commission publishes latest Annual Report on Taxation

The European Commission released its Annual Report on Taxation, which is an indicator-based analysis of recent trends in EU tax systems. It takes stock of taxation and tax-related trends in EU Member States. In a context of further macroeconomic shocks and uncertainty, the interplay between tax design, tax incentives and policy goals is explored, featuring the cases of work incentives and the tax instruments rolled out under the Clean Industrial Deal. The report comprehensively reviews recent developments in the tax mix, notably shifts across tax types and tax bases and medium-term prospects. Recent tax policy initiatives at both EU and national

levels are summarised. The final chapter is a deep-dive into social and economic determinants of tax compliance from the perspective of the taxpayer. Key insights from the executive summary include the following:

- In terms of macroeconomic outlook the EU economy is entering a period of slower growth.
- Accelerating decarbonisation remains a central EU policy objective.
- Tax revenue (including social contributions) in the EU increased to 39.4% of GDP in 2024, with gains in 22 Member States.
- Tailwinds supporting corporate income tax and VAT revenues in most Member States contrast with headwinds affecting environmental and property taxes.

The report also notes that several EU tax policy initiatives, currently under

discussion, can be instrumental in improving competitiveness and attaining other key policy objectives. References were made to the simplification omnibus on taxation and the proposal to recast the Directive on Administrative Cooperation in the Field of Taxation (DAC). In July 2025 the Commission adopted a proposal for a revision of the Tobacco Taxation Directive, grounded in internal market and revenue considerations while supporting public health objectives. The Commission continues to support efforts by the Council to reach agreement on the revision of the Energy Tax Directive, following up on the proposal presented in July 2021.

There are also auxiliary taxation elements in other ongoing EU proposals with a broader scope, such as the EU Inc. proposal (a starting point for the EU's 28th regime), the Recommendation on Savings and Investment Accounts and the tax incentives to support the Clean Industrial Deal.

04

UK: Mandatory Overseas Permanent Establishment Exemption



On 13 July 2026 HMRC released draft legislative language for public feedback regarding an automatic exemption for foreign permanent establishments (PEs). This initiative builds on a Government statement from May 2026 indicating that UK corporations would be obligated to exclude income and losses tied to overseas PEs from their corporation tax liability, converting the current voluntary “foreign branch exemption election” into a compulsory measure.

The revised approach eliminates the discretion previously available to businesses: companies will no longer be able to decide whether to opt in to a PE exemption from UK taxation or remain under the standard regime, whereby

UK corporations pay corporation tax on overseas PE income (with offsetting credits for foreign taxes paid).

Under the new legislation, earnings from overseas PEs will fall outside the UK corporation tax net, and associated losses cannot be used to reduce UK-source income. The framework preserves certain elements of the current, optional regime, notably anti-diversion safeguards modelled on the UK's controlled foreign company framework.

The draft legislation states that the revised framework will apply for tax years commencing on or after 1 January 2027. Feedback on the draft is requested by 13 September 2026.



VAT Cases & VAT News

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VAT Cases

- 01 Supply of Services Effected for Consideration – Transfer Pricing Adjustments** CJEU Judgment
- 02 VAT Group – Exemptions for Certain Activities in the Public Interest** General Court Judgment
- 03 Tax Representative Appointed as Person Liable for Payment of VAT – Joint and Several Liability** General Court Judgment
- 04 Exemptions – Services for the Management of Credit and Credit Guarantees** General Court Judgment
- 05 VAT Refund Orders/Security Requirement** Tax Appeals Commission

01 Supply of Services Effected for Consideration – Transfer Pricing Adjustments: CJEU Judgment

The CJEU delivered its judgment on 13 May 2026 in the case of **Stellantis Portugal, S.A. v Autoridade Tributária e Aduaneira** C-603/24, which is the fourth case relating to VAT and transfer pricing adjustments referred to the court recently. The facts in this case arose before the consolidation of the VAT Directive, so the case refers to the provisions of the Sixth VAT Directive – in particular, Article 2(1) and Article 11. The case arose out of proceedings between Stellantis Portugal, S.A., the legal successor of Opel Portugal, Lda. (formerly, General Motors Portugal (GMP)), and the Portuguese tax authority regarding a VAT liability for supplies of repair services for motor vehicles that GMP provided to other companies of the General Motors group (“GM group”).

Article 2(1) provided that the supply of goods or services effected for consideration within

the territory of the country by a taxable person acting as such is subject to VAT. Article 11 outlined the provision relating to the taxable amount, which shall be:



“(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies”.

The GM group comprised companies that were the original equipment manufacturers (OEMs) that manufactured motor vehicles and parts and accessories and/or supplied them to other companies belonging to the GM group and to

companies that were national sales companies/national sales organisations (NSCs/NSOs), which distributed the products supplied in a defined geographical market. GMP operated as an NSC/NSO in Portugal. It purchased motor vehicles from EU-established OEMs and sold those motor vehicles to independent dealers operating in Portugal, which then sold the vehicles to the final customers.

Where the motor vehicles were affected by defects resulting from the production process or from anomalies covered by the warranties offered by the manufacturer or were the subject of procedures related to roadside assistance, the customers presented the motor vehicles to the dealers, so that the dealers would repair those vehicles at their premises. The dealers invoiced GMP for the costs of the repairs plus VAT. GMP informed the OEMs of the costs borne by it for the distribution of the motor vehicles and the parts and accessories supplied by those OEMs. The costs included the costs of the repairs plus GMP's operating costs (e.g. costs of staff, electricity and marketing).

The GM group companies had concluded an agreement in 2004 that related to the fixing of the transfer prices (TPs) of motor vehicles within the group. Under the agreement the prices of the motor vehicles, parts and accessories sold by the OEMs to the NSCs/NSOs could be adjusted to guarantee the NSCs/NSOs a predetermined profit margin. It provided that the TPs of the products were determined by deducting from the sale prices to third parties (e.g. dealers) the amount corresponding to the related distribution costs and the predetermined profit margin of the NSC/NSO concerned. The initial TPs were determined in respect of each reference period based on applying a gross margin discount to the expected external sale prices. At the end of each reference period a TP adjustment was made to increase or reduce the actual profit margin of that NSC/NSO in order that it be the same as the predetermined profit margin. This was done to guarantee that the actual financial results of the NSCs/NSOs were consistent with the predetermined profit margin. The TP

adjustment was evidenced by a credit or debit note sent by the OEMs to GMP.

The Portuguese tax authority considered that GMP had provided repair services to the OEMs and that these should be subject to VAT. This was on the basis that, in its view, the OEMs were responsible for remedying the defects and the anomalies and for the repairs. It also found that the costs of repairs were initially borne by GMP, which then passed on the costs of repairs to the OEMs by way of a TP adjustment. GMP submitted that the TP adjustments provided by the OEMs to GMP did not constitute remuneration in respect of services consisting in the repair of those vehicles.

The question referred was whether a TP adjustment constituted consideration for a supply of services, where the adjustment was set out in the agreement between the group companies (to ensure that the NSC/NSO obtained a predetermined profit margin on the resale of the motor vehicles) and it was evidenced by a credit/debit note and calculated on the basis, *inter alia*, of the costs incurred by the acquiring company (the NSCs/NSOs) in connection with the repair by third parties of those motor vehicles.

The CJEU reiterated that there is a supply of services carried out for consideration only if there is a direct link between that supply of services and the consideration actually received by the taxable person. Such a direct link is established where there is a legal relationship between the provider of the service and its recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of those services constituting actual consideration for an identifiable service supplied to the recipient.

In this case the OEMs sold motor vehicles to GMP, which GMP then resold to independent dealers established in Portugal, which were then responsible for the sale of the motor vehicles to the final customers. The dealers carried out repairs of the motor vehicles and invoiced the price of those repairs to GMP.

GMP then informed the OEMs of the costs that it had incurred in relation to the repairs, together with other operating costs. Referring to the 2004 agreement between the group companies, the court noted that this was the only legal relationship between GMP and the OEMs, that the agreement fixed the TPs of the motor vehicles sold by the OEMs to GMP and that the TP adjustments were to guarantee that GMP obtained a predetermined profit margin. The court stated that the agreement did not provide that GMP was obliged to provide repair services for consideration. It noted that it is for the referring court to establish if the TP adjustments represent consideration received by GMP for repair services.

The CJEU noted that for a payment to be subject to VAT, there must be a direct, non-voluntary and quantifiable link between the service provided and the payment received. If the payment is uncertain or voluntary, this link is broken. In this case the TP adjustments included both the repair costs invoiced by independent dealers to GMP and GMP's operating costs. Therefore, the repair costs are only one factor in the adjustments. Depending on the significance of the costs relative to initial TPs, adjustments can result in either credit notes or debit notes between OEMs and GMP. GMP's various distribution-related costs, including repair costs, are considered only to ensure a predetermined profit margin. The court noted that GMP is not guaranteed reimbursement for all of these costs by the OEMs and commented that any link between GMP's repair services and the TP adjustments is, at best, indirect.

The court referred to the earlier case of *Arcomet C-726/23*, where it was found that the uncertain nature of the provision of any payment is such as to break the direct link

between the service provided to the recipient and any payment that may be received. Accordingly, for such a link to be established, that payment must not be voluntary or uncertain or difficult to quantify.

There is no evidence that GMP acted on behalf of OEMs or participated in a supply of services by dealers to OEMs. Therefore, attributing repair costs to OEMs does not automatically create a taxable event for VAT purposes under Article 6(4) of the Sixth Directive.

If the adjustments are not remuneration for repair services but are, instead, amendments to the purchase price of motor vehicles, it is for the national authorities to assess the impact on the taxable amount for VAT, by reference to Article 11 of the Sixth Directive.

The court held that the TP adjustments do not constitute consideration in respect of a supply of services effected for consideration, unless there is a legal relationship characterised by reciprocal commitments relating to the supply by the acquiring company of services to the selling company and the payment by the selling company of remuneration in respect of those services in the form of such an adjustment, establishing a direct link between the supply of those services and that adjustment.

This case highlights the importance of understanding the legal relationship between the parties to a transaction – in particular, intra-group transactions – and how this is demonstrated through written contracts/agreements. As with previous case law, the court reiterated that for there to be a supply of services for VAT purposes, there is a requirement for reciprocal obligations and there must be a direct link between an identifiable service and consideration received.

02

VAT Group – Exemptions for Certain Activities in the Public Interest: Judgment of the General Court

On 10 June 2026 the General Court delivered its judgment in the case of ***Staatssecretaris van Financiën v Fiscale Eenheid Stichting X c.s.***

T-444/25, which dealt with the interpretation of Articles 11, 132(1)(b) and (g) and 133(a) of the VAT Directive in proceedings between Fiscale

Eenheid Stichting X c.s. (tax entity X – a VAT group) and the Dutch tax authority, which had imposed VAT on X for services carried out by one member of the VAT group. Article 11 covers the VAT grouping provisions, and Article 132(1) relates to the exemption for:



“(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature...(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people’s homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing.”

By virtue of Article 133, the granting of the exemptions can be made subject to certain conditions (e.g. the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed but must be assigned to the continuance or improvement of the services supplied).

X is in a VAT group comprising two foundations and three limited liability companies governed by Dutch law. Each is involved with various aspects of care for people with intellectual disabilities who are admitted to residential care homes or who stay in another form of accommodation. Only one of the two foundations is duly recognised as a body that admits persons to a facility for the purpose of care, and it is the only member of the VAT group that is recognised as a body devoted to social wellbeing for the purposes of the Dutch exemption of the supplies of goods and services of a social nature. One of the three companies (company Y) provides services consisting of day and night supervision, remotely from the care location and using

various technical means, of persons with intellectual disabilities who reside in a care institution or other form of accommodation where care is provided.

The VAT group declared and paid output VAT on the services provided by company Y to third parties. The VAT group subsequently argued that the services provided by company Y to third parties were exempt. The Dutch tax authorities rejected that claim on the ground that company Y is neither a recognised body that admits persons to a facility for the purpose of care nor a body devoted to social wellbeing (“relevant body”), and therefore it did not satisfy all of the conditions for eligibility of the exemptions. The VAT group submitted that because company Y was part of a VAT group, the conditions for exemption had to be assessed at the level of the VAT group and not at the level of each of its members. It argued that that it was sufficient for a single member of the VAT group to be recognised as a relevant body for the VAT group to be recognised as such in its entirety. The tax authority, on appeal, claimed that the question of whether the exemptions were applicable should not be assessed at the level of the tax entity but in relation to the specific legal person providing the services in question.

The question posed was whether a VAT group can be treated as qualifying for the exemption where only one of its members satisfies all of the conditions of that exemption, in the provision of services to third parties by a member that does not satisfy the conditions.

The court considered whether VAT exemptions for public-interest activities under the VAT Directive should be assessed at the VAT group level as a whole or at the level of the individual group member providing the service. The court noted that where VAT grouping applies, the members are treated as a single taxable person and cannot be treated as (separate) taxable persons within the meaning of Article 9(1). Therefore, a supplier belonging to a VAT group cannot be treated, individually, as a separate taxable person from the taxable person

constituted by the VAT group. The court stated that, as a result, supplies of services made by a third party to a member of a VAT group must be considered to have been made not to that member but to the actual VAT group to which that member belongs. The corollary is that supplies of services to a third party by a member of a VAT group must be regarded as having been made by the VAT group. The court pointed out that the question of whether a member may be regarded as a separate taxable person from the taxable person constituted by the VAT group is different from the question of the conditions under which such a VAT group may rely on those exemptions.

With reference to Article 132(1)(b), it was noted that two cumulative conditions must be satisfied for hospital and medical care and closely related activities offered by an entity other than a body governed by public law to be eligible for exemption from VAT. The first condition relates to the services supplied and requires that they be undertaken under social conditions comparable with those applicable to bodies governed by public law. The second condition relates to the status of the establishment supplying those services and requires the operator to be a hospital, a centre for medical treatment or diagnosis or another duly recognised establishment of a similar nature. Similarly, under Article 132(1)(g) two cumulative conditions must be satisfied, namely, the nature of the services provided must be closely linked to welfare and social security work, and the supplier of the services must be a body governed by public law or another body recognised as being devoted to social wellbeing by the Member State concerned. The court stated that it follows from the wording of Article 132(1)(b) and (g) that Member States are to exempt certain transactions carried out by duly recognised “establishments” or “bodies” from VAT.

Although a VAT group is treated as a single taxable person for VAT purposes, this does not mean that all group members automatically qualify for exemptions where only one member meets the necessary conditions. The court emphasised that VAT exemptions, particularly

those based on the status or recognition of the service provider (such as being a recognised medical or social welfare institution), must be interpreted strictly. The VAT Directive requires that the specific supplier of the service meets all exemption conditions. The conditions for exemption, such as being a duly recognised establishment or body devoted to social wellbeing, must be satisfied by the actual member providing the service, not just by any member of the VAT group. Allowing a VAT group to benefit from exemptions based on the status of just one member would undermine the objectives of the VAT Directive and violate the principle of fiscal neutrality. This would create unjustified differences in VAT treatment between operators inside and outside VAT groups.

The court concluded that a VAT group can claim the relevant VAT exemptions for services provided to third parties only if the specific member supplying those services individually meets all of the legal requirements for exemption. It held that:



“Article 132(1)(b) and (g) of the VAT Directive, read in conjunction with Article 11 of that directive, must be interpreted as meaning that a VAT group formed on the basis of Article 11 may rely on the exemptions provided for in Article 132(1)(b) and (g) of that directive only where the supplies of services in question are provided to third parties by a member of that group which itself satisfies all the conditions for the application of those exemptions, including those requiring that the supplier, where it is not a body governed by public law, be a medical care institution duly recognised by the Member State concerned and a body recognised by that State as being devoted to social wellbeing”.

It is important that VAT group members correctly identify which group member supplies services to third parties and which satisfies any conditions of an exemption, and that invoicing procedures are followed to ensure that exemption is applied appropriately.

03

Tax Representative Appointed as Person Liable for Payment of VAT – Joint and Several Liability: Judgment of the General Court

The General Court delivered its judgment on 8 July 2026 in the case of **AY v Anexartiti Archi Dimosion Esodon** T-356/25, which related to the interpretation of Articles 204 and 205 of the VAT Directive and the principle of proportionality. The case arose out of proceedings between AY, a Greek customs agent, and the Greek tax authority, which had taken precautionary measures against AY in respect of the payment of VAT due in Greece by O (Italian company). Article 204 of the VAT Directive provides for the appointment of a tax representative for non-established traders. It provides that if there is no mutual assistance agreement between the Member State of establishment and the Member State where the transaction occurs, the person liable for payment of VAT is to be a tax representative appointed by the non-established taxable person. Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

AY operates as a customs agent and is registered in Greece as the tax representative of O, an Italian company. AY was appointed as the tax agent of O in Greece (under a power of attorney) and is responsible for the “tax representation of the company”, which includes filing returns and payment by and on behalf of the company of the amounts fixed by the customs and tax authorities in the name of the company.

O is registered for VAT in Italy and Greece, and its main business activity consists in the marketing of cellulose (a raw material intended for the production of toilet paper). It stores goods acquired from Finland in various storage facilities in Greece. Intra-Community supplies made using its Greek VAT identification number to Bulgarian and Italian customers and using its Italian VAT identification number to Greek customers were the subject of a tax audit. The tax authority undertook protective measures

against O and AY, which included the freezing of part of the deposits that they held in credit institutions in Greece. AY sought to have that decision annulled on the basis that she disputed her registration as tax representative of O and her incurring joint and several liability in respect of that company’s tax debts.

In its preliminary observations the court noted that the VAT Directive does not contain a general definition of the concept of “tax representative” but that it is apparent from Article 204(1) that it refers specifically to the tax representatives appointed as the persons liable for payment of the VAT.

A number of questions were referred to the General Court, and the second question was dealt with first.

The second question referred was whether Article 204 prevents a tax representative of a taxable person established in another Member State from being held liable for a VAT payment even if that representative is not involved in the taxable transactions.

In considering the provisions of Article 204, the court noted that this provision allows Member States to permit a taxable person to appoint a tax representative as the person liable for VAT in compliance with national rules. The provisions of Article 204 do not require the tax representative to be involved in the taxable transactions to be liable for VAT. Member States have discretion to set conditions and procedures for such appointments, but the court noted that the absence of a requirement for involvement in transactions does not violate the VAT Directive.

The court considered the purpose and context of Article 204 and related provisions, which aim to ensure efficient VAT collection, especially when the parties to the transaction are in different Member States. In this context appointing a local

tax representative as liable for VAT assists tax authorities recover VAT more efficiently, as the representative is more accessible than a non-established taxable person. With reference to the principles of legal certainty and proportionality, the court noted that these principles must be respected by Member States in exercising the powers provided by Article 204 when setting the conditions for appointing tax representatives. Imposing a requirement that the representative must participate in the transactions would limit the effectiveness of VAT collection and the VAT Directive's objectives; however, not requiring such participation supports the VAT Directive's goal of efficient VAT recovery.

In answering the second question the court held that Article 204 must be interpreted as not precluding a tax representative of a taxable person established in another Member State from being regarded as liable for payment of the VAT, within the meaning of that provision, even though that tax representative is not involved in the taxable transactions carried out by the taxable person, provided that the tax representative has been appointed as such by that taxable person.

The first question referred was whether Article 205, interpreted in light of the principle of proportionality, prevents a tax representative (who is not appointed as the person liable for VAT and only handles VAT filing for a taxable person established in another Member State) from being held jointly and severally liable for VAT, especially when tax authorities cannot determine the representative's involvement, knowledge or good faith regarding the taxable person's activities. Article 205 allows Member States to make persons other than the main VAT debtor jointly and severally liable for VAT but does not specify who or in what situations this can apply. Member States are provided with discretion regarding how Article 205 applies, but in exercising that discretion EU principles must be respected – in particular, the principles of proportionality and legal certainty.

With reference to the principle of proportionality, the court indicated that

the measures undertaken by the Member State must not go beyond what is necessary to protect the public exchequer. In this regard strict, unconditional joint and several liability, where a tax representative is liable for the payment of VAT regardless of involvement, knowledge or good faith, would be disproportionate. Therefore, it would be excessive to hold a tax representative liable for VAT shortfalls caused by a taxable person if the tax representative had no influence on or knowledge of the acts. However, the tax representative is also required to take reasonable steps to avoid involvement in tax evasion, so that if a tax representative acts in good faith, exercises due diligence and is not involved in fraud, these factors must be considered before imposing a VAT liability.

The court therefore held that Article 205, read in conjunction with the principle of proportionality, precludes holding a tax representative jointly and severally liable for VAT if neither the tax administration nor the courts can assess the representative's involvement, knowledge or good faith regarding the taxable person's economic activities.

The third question posed was whether the use of a particular VAT identification number – specifically, whether the transaction was carried out under the VAT number allocated by the Member State where the taxable person is established or by the Member State where the VAT is due – is decisive in determining the liability of a tax representative under Articles 204 and 205 of the VAT Directive. The court highlighted the purpose and use of VAT numbers (i.e. allow the proper functioning of the VAT system, facilitate tax inspections and determine the place of final consumption) but indicated that the use of one VAT identification number over another does not affect the influence or awareness of the tax representative regarding the taxable person's actions.

The liability of a tax representative under Articles 204 and 205 is not determined by which VAT number is used in the transaction but by the substantive conditions set out in

those articles of the VAT Directive (such as the appointment as the person liable for VAT or the existence of joint and several liability). The court held that whether the transaction in respect of which VAT is due was carried out under the individual VAT identification number allocated to the taxable person by the Member State in which he or she is established or under that allocated by the Member State in which the VAT is due cannot be decisive for the answers to the first and second questions.

The fourth and final question referred was whether Article 205, interpreted in conjunction with Article 204(1), allows a person to be both the person liable for payment of VAT and jointly and severally liable for the VAT payment. The court outlined the purpose of each Article in that Article 204(1) allows a tax representative to be appointed as the person liable for payment of VAT, making them directly responsible for the VAT debt, and Article 205 provides for joint and several liability, but only for persons other than the main person who would be liable for VAT. It noted that

the Directive does not specify who may be made jointly and severally liable but it clearly separates the person liable for VAT from the person who may be made jointly and severally liable, and therefore they must be different individuals or entities. A tax representative who is already appointed as the person liable for VAT under Article 204 cannot also be made jointly and severally liable for the same VAT debt under Article 205.

In answer to the fourth question, the court held that Article 205 of the VAT Directive, read in the light of Article 204(1), must be interpreted as meaning that a person appointed as the person liable for payment of the VAT under that Article 204 cannot also be jointly and severally liable under Article 205.

This case highlights the importance of understanding the capacity in which a person acts on behalf of another person, how that relationship is documented and in what circumstances joint and several liability can be imposed.

04

Exemptions – Services for the Management of Credit and Credit Guarantees: Judgment of the General Court

The General Court delivered its judgment on 17 June 2026 in **Veronsaajien oikeudenvalvontayksikkö v A Oy** T-184/25, where it was required to provide an interpretation of Article 135(1)(b) to (d) of the VAT Directive. The proceedings arose because of a request for a tax ruling by A Oy on the VAT treatment of credit sold to a third company and services for the management of credit and the management of credit guarantees relating to the credit sold.

Article 135(1) provides exemption from VAT in respect of certain financial transactions, namely: (b) the granting and the negotiation of credit and the management of credit by the person granting it; (c) the negotiation of or

any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit and (d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection.

In this case A is the main establishment of Bank X and the representative of the VAT group in Finland of Group Y. Group Y primarily sells financial and insurance services that are exempt from VAT. B is a wholly owned subsidiary of A, but they do not form part of the same VAT group. A sells a large proportion of its property loans to B at market price, usually as

soon as the loans are granted. All rights and obligations of the loans are transferred to B without borrower involvement. Notwithstanding the transfer by A, A continues to manage the loans and all related customer interactions. Management of the loans includes customer service, monitoring, calculating rates and interest, amending loans and debt collection. The scope of management services provided by A to B is the same as if A had retained the loans. B is financed mainly through covered bonds and loans/guarantees from A. A handles bond issuance tasks and also provides these services to B for consideration. The management services are invoiced monthly by A to B based on the actual costs plus a profit margin.

A sought a tax ruling on the VAT treatment of the loan sales and the provision of the management services. The Finnish tax authority determined that the loan sales are VAT-exempt financial services, that debt collection is subject to VAT and that the management of credit/guarantees is VAT-exempt as management by the lender. A challenged the ruling to the Finnish Supreme Administrative Court regarding the VAT exemption of the management services.

The first question posed by the referring court was whether the VAT exemption for the management of credit under Article 135(1)(b) of the VAT Directive applies when the original lender (A) sells loans to another company (B) but continues to manage those loans for B for consideration.

In assessing the scope of Article 135(1)(b) the court noted that different-language versions of Article 135(1)(b) are ambiguous about whether the exemption applies only to the original lender or also to subsequent holders of the credit. It reiterated the point that VAT exemptions must be interpreted strictly but not so strictly as to undermine their purpose. It also considered the context and purpose of the exemption and indicated that the exemption for management

of credit is linked to the original credit relationship that exists between the lender and the borrower, rather than being linked to the services provided after the credit is transferred to a third party. In this case once the loan is sold by A, as lender, the management services are provided to the transferee (B), not the borrower, and therefore they fall outside the intended scope of the exemption.

The court also made reference to the objectives of the exemption, namely, to avoid difficulties in determining the taxable amount and to prevent increased costs for consumers. But these issues are not present when management services are separately invoiced between taxable persons, as the VAT on the services is not directly borne by the borrowers, and any indirect effect depends on market factors. Finally, the court considered the principle of fiscal neutrality, which requires that similar services be treated in the same way for VAT purposes, irrespective of whether the supplier of the management services is the original lender or a third party. If a third party's management services are liable to VAT, then those of the original lender after transfer should also be subject to VAT.

The court held that the answer to the first question is that:



“Article 135(1)(b) of the VAT Directive must be interpreted as meaning that the exemption which it provides for the management of credit does not apply to the services for the management of credit provided by the person who granted that credit, subsequently transferred that credit and continues to manage that credit for consideration for the transferee.”

The second question referred was whether the VAT exemption under Article 135(1)(c) of the VAT Directive, which covers dealings in credit guarantees or other security for money, applies to management services provided by the

original lender (A) when those services relate to loans used as guarantees for bonds issued by another financial institution after the loans have been transferred.

In assessing the scope of Article 135(1)(c) the court clarified that Article 135(1)(c) provides exemption for transactions involving the negotiation of or dealings in credit guarantees or other security for money, and the management of credit guarantees by the person granting the credit. The management services provided by A to B after the transfer of the loans are not dealings in credit guarantees or other security for money. Instead, they comprise the management of credit, rather than the management of credit guarantees. The court emphasised that management of credit is specifically addressed in Article 135(1)(b), and applying Article 135(1)(c) to such services would undermine the intended limitation of the exemption in Article 135(1)(b). It noted that allowing management of credit to be exempt under Article 135(1)(c) would render the restriction in Article 135(1)(b) meaningless, as it would allow the exemption to apply more broadly than intended.

The court therefore held that the answer to the second question is that:

“Article 135(1)(c) of the VAT Directive must be interpreted as meaning that the exemption which it provides for any dealings in credit guarantees or any other security for money does not apply to the services for the management of credit provided by the person who granted that credit and relating to the credit used as a guarantee for a bond issued by another financial institution, to which that credit was transferred.”

The third question referred was whether the VAT exemption for transactions concerning debts under Article 135(1)(d) of the VAT Directive applies to management services provided by the original lender (A) for

loans that have been transferred to another company (B).

The court assessed the scope of Article 135(1)(d) and clarified that the exemption under this provision covers financial transactions involving payment instruments, such as deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but specifically excludes debt collection. The court noted that for a transaction to qualify for this exemption, the transaction must involve the actual or potential transfer of ownership of funds or fulfil the essential functions of such a transfer. In this regard it stated that the management services provided by A to B do not involve the transfer of ownership of funds or fulfil the essential functions of such a transfer. The management services are administrative services related to managing credit, not transactions concerning debts as defined by the VAT Directive. Similarly to above, the court indicated that interpreting Article 135(1)(d) to cover management of credit would undermine the specific limitation in Article 135(1)(b), which restricts the VAT exemption for management of credit to the original lender–borrower relationship. Therefore, the court held that:

“Article 135(1)(d) of the VAT Directive must be interpreted as meaning that the exemption which it provides for transactions concerning debts does not apply to the services for the management of credit provided by the person who granted that credit and relating to the credit transferred to another financial institution.”

This judgment, which applies a strict interpretation of the exemptions at issue, is relevant for the financial services sector – particularly, for institutions involved in loan origination, securitisation and the outsourcing of loan management functions. There may be an impact on the cost structure of outsourcing arrangements where there is a requirement to charge VAT on servicing fees.

04

VAT Refund Orders/Security Requirement: TAC Determinations

Determination date	TAC reference	VAT provisions at issue	Matter at issue	TAC findings
07 April 2026	63TACD2026	Value-Added Tax (Refund of Tax) (Touring Coaches) Order 2012 (SI 266 of 2012)	Refusal to allow a reclaim of VAT in respect of the purchase of a new coach in accordance with SI 266 of 2012 on the basis that it was not demonstrated that the vehicle was used for the carriage for reward of tourists by road under contracts for group transport	The appellant is not a “qualifying person” for the purposes of SI 266 of 2012, and the respondent was correct to refuse the VAT reclaim
14 April 2026	67TACD2026	Sections 2, 4(1), 5, 6, 86 and 103(1) of the VAT Consolidation Act 2010; VAT (Refund of Tax) (Flat-rate Farmers) Order 2012 (SI 201 of 2012)	Refusal to repay to the appellant (flat-rate farmer) VAT incurred on acquisition and installation of a six-unit cluster flushing system, a variable-speed milk pump and a single-cell heat recovery unit	There was no evidence that the items purchased and installed involved any construction, extension, alteration or reconstruction carried out on the dairy building. Alteration work carried out was to the milking machine, not to the dairy building.
24 April 2026	69TACD2026	Sections 2, 4(1), 5, 6, 86 and 103(1) of the VAT Consolidation Act 2010; VAT (Refund of Tax) (Flat-rate Farmers) Order 2012 (SI 201 of 2012)	Refusal to repay VAT incurred in the acquisition and installation of a 16-unit automatic cluster flushing system	The installation of the cluster flushing system did not involve the construction, reconstruction or extension of the farm building in which it was housed. Nor did its installation involve the “alteration” of the dairy building. Although there was

Determination date	TAC reference	VAT provisions at issue	Matter at issue	TAC findings
				a small hole drilled in the internal wall dividing the milking parlour and the dairy room, so as to allow the connection of the water reservoir and the mains water supply, this work did not alter the state of the dairy building.
14 May 2026	75TACD2026	Sections 2, 4(1), 5, 6, 86 and 103(1) of the VAT Consolidation Act 2010; VAT (Refund of Tax) (Flat-rate Farmers) Order 2012 (SI 201 of 2012)	Refusal to repay VAT incurred in the acquisition and installation of a Prinzen PR70C egg packer and Ergo egg stacker	There was no evidence given of any construction, reconstruction or alteration work carried out to hen shed during the installation of the egg packing and stacking machine. Any construction work carried out was the construction of the egg packing and stacking machine itself and not related to the farm building (hen shed).
27 May 2026	78TACD2026	Section 109 of the VAT Consolidation Act 2010	Decision of the respondent to require the appellant company to provide a security bond	Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner was satisfied that the respondent's decision of 16 April 2025, requiring the appellant to provide security in the amount of €34,289, was reasonable and stands

VAT News

Ireland

Revenue eBrief No. 088/26: “VAT and Customs Treatment of the Movement of Second Hand Motor Vehicles from Great Britain and Northern Ireland”

A new Tax and Duty Manual has been created to provide guidance on the VAT and Customs treatment of second-hand or used motor vehicles moving into the State that follow these routes (Great Britain and Northern Ireland). The guidance is directed at both the motor trade and private purchasers.

Revenue eBrief No. 093/26: “VAT Treatment of Debt Factoring and Invoice Discounting”

The VAT Tax and Duty Manual “VAT Treatment of Debt Factoring and Invoice Discounting” has been updated (amendments to paragraph 5 and Appendix 1) to reflect the CJEU judgment in case of *Kosmiro* C-232/24 (where the court held that the factoring commission and the arrangement fees charged by a provider of factoring services in the context of trade factoring or invoice factoring constitute consideration for a single and indivisible service of debt collection and are subject to VAT). The updated manual has effect from the date of publication (20 May 2026).

EU

VAT in the Digital Age (ViDA) implementation

The European Commission has published its work programme for 2026, which can be found on the website ec.europa.eu. The table included in the programme outlines the main activities that are tentatively planned under the current Multiannual Financial Framework in 2026 (and early 2027) for the implementation of ViDA. It updates and complements the ViDA Implementation Strategy published on 24 September 2025.

The ECOFIN report on tax issues, which was approved by the Council (Economic and

Financial Affairs), was published on 12 June 2026. The key VAT topics discussed during the Cyprus Presidency included:

- Access to VAT data for the EPPO and OLAF:
 - A proposal was advanced to amend Regulation 904/2010, enabling the European Public Prosecutor’s Office (EPPO) and the European Anti-Fraud Office (OLAF) to access VAT information at the EU level.
 - The aim is to strengthen cooperation and combat VAT fraud by providing a legal basis for information exchange.
 - Safeguards were added in line with data protection recommendations, and the Council reached a general approach on the draft regulation in May 2026.
- Abolition of the €150 threshold and customs warehouses:
 - The Commission discussed removing the customs exemption for goods valued up to €150, aligning VAT and customs rules for e-commerce.
 - The proposal would also affect the VAT Import One-Stop Shop (IOSS), expanding its scope to higher-value goods.
 - Concerns were raised about increased fraud risks and the robustness of the IOSS after abolishing the threshold. Further work is needed to reach agreement.
- VAT reverse-charge mechanism:
 - The reverse-charge mechanism and quick reaction mechanism for VAT, which help to combat fraud, are set to expire at the end of 2026.
 - The Commission announced plans to propose an extension of these mechanisms after summer 2026.
- Tax-related simplification and decluttering:
 - The Council continued efforts to simplify and declutter tax rules (direct and indirect), aiming to reduce administrative

burdens and eliminate outdated or overlapping tax rules.

- A legislative proposal for an omnibus on taxation simplification is expected in 2026, with a target for agreement by late 2027.

These discussions reflect ongoing efforts to modernise VAT rules, enhance fraud prevention and streamline administrative processes within the EU.

The “Final Report on the Financial Sector” was published in June 2026. The overall conclusion set out in the Executive Summary document states:



“The study concludes that the original technical rationale for the VAT exemption no longer remains fully valid. In combination with divergent national sectoral taxes, the current tax framework causes distortions, complexity, legal uncertainty and fragmentation. These problems are becoming more serious as the sector digitalises and value chains become more specialised.

While taxation is not the only or main barrier to integration, the current framework is not aligned with broader EU policy priorities such as the Savings and Investment Union Strategy, which aims to facilitate cross-border financial services and capital allocation. Incremental reforms could improve the framework by ameliorating legal certainty and reducing to some extent hidden VAT. The most effective way to address the root causes would be a more fundamental reform of the VAT exemption and its interaction with sectoral taxes.

The study therefore concludes that such a reform would be, in several forms, practically feasible, while recognising that any final decision will depend on political choices about the trade-off and relative priorities. This is because the impacts of the policy considerations assessed differ substantially in terms of the level of simplicity and tax neutrality achieved, fiscal burdens on the financial sector, business customers and households, and wider impacts on the economy.”



Legal Monitor

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Selected Acts Signed into Law from 1 May to 31 July 2026

No. 22 of 2026: National Treasury Management Agency (Miscellaneous Provisions) Act 2026

The Act provides for the dissolution of the National Asset Management Agency, the transfer of its assets, rights, liabilities, obligations, causes of action and entitlements to the National Treasury Management Agency (NTMA), and the transfer to the NTMA of certain assets, rights, liabilities, obligations and entitlements of the Irish Bank Resolution Corporation Limited. For those purposes, the Act provides for the repeal of the National Asset Management Agency Act 2009 and amendments to the Irish Bank Resolution Corporation Act 2013 and the National Treasury Management Agency (Amendment) Act 2014.

No. 24 of 2026: Finance Act 2026

This Act amends the Finance Acts 1999 and 2010 to provide temporary fuel supports. The Diesel Rebate Scheme maximum repayment for qualifying road transport operators is increased from €75 to €120 per 1,000 litres for auto-diesel purchased between 1 January and 30 June 2026. The Act also confirms reductions in the mineral oil tax rates for certain fuels from 25 March 2026 and further reductions from 15 April 2026. Carbon tax increases that were due to take effect on 1 May 2026 are deferred to 14 October 2026. The scheduled increases through to 2030 are otherwise unaffected.

Selected Bills Initiated from 1 May to 31 July 2026

No Bills of note were initiated in this period.

Selected Statutory Instruments from 1 May to 31 July 2026

SI 198 of 2026: Local Property Tax (Local Adjustment Factor) Regulations 2026

These Regulations provide the requirements for local authorities that may wish to vary their local property tax rates for a specified period, in accordance with s20 of the Finance (Local Property Tax) Act 2012 (as amended), including the factors that they must consider and the type of public consultation that they should undertake as part of the process. These Regulations revoke and replace the Local Property Tax (Local Adjustment Factor) Regulations 2022 (SI 358 of 2022).

SI 305 of 2026: Finance Act 2025 (Section 62(1)) (Commencement) Order 2026

This Order states that s62(1) of the Finance Act 2025 shall come into operation on 1 December 2026 insofar as it relates to subsections (1) and (2) of s78 of the Finance Act 2002. Section 62(1) of the Finance Act 2025 substitutes a new s78 in the Finance Act 2002. Subsections (1) and (2) of the substituted s78 create offences for bookmakers' employees or agents who knowingly make false entries or substitute false records relating to bets, or who are otherwise knowingly involved in fraudulently evading betting duty.

SI 306 of 2026: Finance Act 2025 (Section 57(1)) (Commencement) Order 2026

This Order states that s57(1) of the Finance Act 2025 shall come into operation on 1 July 2026. That sub-section amends the interpretation provision in s64 of the Finance Act 2002 to update the definitions of “licensed bookmaker” and “remote betting intermediary” to reflect the new licensing regime introduced by the Gambling Regulation Act 2024 and inserts a new definition of “Act of 2024”, meaning that Act.

SI 318 of 2026: Stamp Duty (Designation of Exchanges and Markets) Regulations 2026

These Regulations came into operation on 8 July 2026. They designate the following as “markets” for the purposes of s75 of the Stamp Duties Consolidation Act 1999: OneChronos Markets NL B.V., OneChronos Markets UK

Limited, TP ICAP MTF Limited and TP ICAP (Europe) S.A. As a result, transfers of securities to an intermediary on those markets can now qualify for the s75 stamp duty exemption, provided that the other requirements of the provision are satisfied.

SI 324 of 2026: Finance Act 2025 (Section 45) (Commencement) Order 2026

This Order states that s45 of the Finance Act 2025 shall come into operation on 10 July 2026. That section amends s481 of the Taxes Consolidation Act 1997 to introduce an enhanced 40% film corporation tax credit for “visual effects projects” (in place of the standard 32% rate on the first €10m of qualifying visual effects expenditure), with a new certification and regulation-making framework for the Minister to assess and approve visual effects work.



Tax Appeals Commission Determinations

Catherine Dunne
Barrister-at-Law

Published from 1 May to 31 July 2026

Income Tax

[47TACD2026](#)

Appeal regarding the refusal of an earned income tax credit for the years 2016–2020 because the claim was made outside the statutory four-year period

ss472AB and 865 TCA 1997

Case stated requested: Unknown

[48TACD2026](#)

Appeal regarding refusal of repayment of income tax for 2019 and 2020 arising from errors in the appellant's capital allowance calculations, on the basis that the repayment claims were made outside the statutory four-year period

s865 TCA 1997

Case stated requested: Unknown

[49TACD2026](#)

Appeal regarding whether a transfer of assets by a company to its members gave rise to a distribution taxable as income, including whether share rights constituted separate assets and whether new consideration had been provided by the appellant. This appeal was nominated as a lead appeal in a group of similar appeals regarding the treatment of share rights and liability to income tax rather than CGT.

ss20, 130, 135, 544 and 551 TCA 1997

Case stated requested: Unknown

[51TACD2026](#)

Appeal regarding the imposition of chargeable excess tax on the total pension benefit amount of an occupational pension scheme exceeding the appellant's available standard fund threshold.

ss787O, 787P, 787Q, 787R and 787S and Schedule 23B TCA 1997

Case stated requested: Unknown

[54TACD2026](#)

Appeal regarding the refusal of a repayment of €3,286.21 of income tax overpaid for 2020 because the claim was submitted outside the statutory four-year repayment period

s865 TCA 1997

Case stated requested: Unknown

[56TACD2026](#)

Appeal regarding the income tax treatment of distributions received in 2017 and 2019 from a non-Irish investment fund, including whether the appellant held a material interest in an offshore fund and the distributions constituted offshore income gains

ss743, 744 and 745 and Schedule 20 TCA 1997

Case stated requested: Unknown

[58TACD2026](#)

Appeal regarding tax treatment of maintenance payments made for the benefit of the appellant's children and the availability of relief under s1025 TCA 1997

s1025 TCA 1997

Case stated requested: Unknown

59TACD2026

Appeal regarding refusal of a 2019 income tax repayment arising from the Home Renovation Incentive because the claim was made outside the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

61TACD2026

Appeal regarding refusal of tax relief for nursing-home fees paid for the appellant's mother in 2020 because the repayment claim was made outside the four-year statutory limitation period

s865 TCA 1997

Case stated requested: Unknown

62TACD2026

Appeal regarding denial of credits for income tax and USC deducted from salary payments to a proprietary director where the employing company failed to remit the corresponding payroll taxes

s997A TCA 1997

Case stated requested: Unknown

71TACD2026

Appeal regarding the extent of credits for income tax and USC deducted from salary payments to a proprietary director where the company had outstanding PREM liabilities

s997A TCA 1997

Case stated requested: Unknown

72TACD2026

Appeal regarding withdrawal of maintenance tax credits for mortgage payments made towards the former family home pursuant to a court order and the availability of relief under s1025 TCA 1997

s1025 TCA 1997; s1026 TCA 1997

Case stated requested: Unknown

81TACD2026

Appeal regarding taxation of payments received through a Community Employment Scheme, including their liability to income tax and PRSI and exemption from USC under s531AM TCA 1997

s193 TCA 1997; s531AM TCA 1997

Case stated requested: Unknown

84TACD2026

Appeal regarding tax treatment of Carer's Benefit and Carer's Allowance for 2024 and 2025 and whether those payments were exempt from income tax under s126 TCA 1997

s12 TCA 1997; s112 TCA 1997 and s126 TCA 1997

Case stated requested: Unknown

VAT**63TACD2026**

Appeal regarding entitlement to a VAT refund on a bus and whether the vehicle was used for the carriage for reward of tourists under contracts for group transport

Value-Added Tax (Refund of Tax) (Touring Coaches) Order 2012 (SI 266 of 2012)

Case stated requested: Unknown

67TACD2026

Appeal regarding a flat-rate farmer's entitlement to VAT refunds on a six-unit cluster flushing system, a variable-speed milk pump and a heat recovery unit and whether the expenditure related to the "construction, extension, alteration or reconstruction" of a farm building or structure under the 2012 Refund Order

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

Case stated requested: Unknown

69TACD2026

Appeal regarding entitlement of flat-rate farmer to VAT refund on a 16-unit automatic cluster flushing system and whether its acquisition constituted qualifying outlay on a farm building or structure under the 2012 Refund Order

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

Case stated requested: Unknown

75TACD2026

Appeal regarding a flat-rate farmer's entitlement to a VAT refund on an egg-packing and stacking machine and whether its installation constituted qualifying outlay on the "construction, extension, alteration or reconstruction" of a farm building or structure under the 2012 Refund Order

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

Case stated requested: Unknown

78TACD2026

Appeal regarding Revenue's requirement that a company provide a €34,289 security bond for future VAT liabilities pursuant to s109 VATCA 2010

s109 VATCA 2010

Case stated requested: Unknown

VRT**79TACD2026**

Appeal regarding the calculation of VRT on an imported motorhome – in particular, the calculation of its open-market selling price used to determine the VRT liability

s133 Finance Act 1992 (as amended)

Case stated requested: Unknown

Stamp Duty**66TACD206**

Appeal regarding refusal of a claim under the residential development stamp duty refund scheme where construction commenced outside the statutory period following acquisition of the land

s83D SDCA 1999

Case stated requested: Unknown

68TACD206

Appeal regarding refusal of a claim under the residential development stamp duty refund scheme because construction did not commence within the 30 month statutory time limit

s83D SDCA 1999

Case stated requested: Unknown

PAYE**43TACD2026**

Appeal regarding withdrawal of tax credits claimed in relation to maintenance -payments for the years 2021-2024 where the maintenance payments ordered by the District Court were made to the appellant's former cohabitant for the benefit of their child

ss1031P and 1031Q TCA 1997; ss172 and 175 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Case stated requested: Unknown

53TACD2026

Appeal against a 2022 PAYE Statement of Liability arising principally from the taxation of One-Parent Family Payment received by the appellant, resulting in an income tax underpayment

ss19 and 112 TCA 1997

Case stated requested: Unknown

PAYE & PREM

60TACD2026

Appeal regarding refusal to repay overpaid employer PAYE/PRSI arising from amended 2019 and 2020 payroll returns filed outside the four-year repayment period

s865 TCA 1997

Case stated requested: Unknown

64TACD2026

Appeal regarding repayment of tax arising from pension overpayments for 2018–2020 where the repayment claims were made outside the statutory four-year time limit

s865 TCA 1997

Case stated requested: Unknown

CGT

44TACD2026

Appeal against an amended CGT assessment of €1.77m arising from the disposal of shares inherited in a private company, concerning the market value/base cost of the shares on the date of inheritance and the availability of capital losses claimed against the gain

ss31, 547 and 548 TCA 1997

Case stated requested: Unknown

55TACD2026

Appeal regarding refusal of a €12,516 CGT repayment arising from an error in converting the acquisition cost of a property into euro as the repayment claim was made outside the statutory four-year period

s865 TCA 1997

Case stated requested: Unknown

Corporation Tax

50TACD2026

Appeal regarding refusal of repayment of the excess R&D tax credit arising in 2021 where

the R&D credit itself had been claimed within time but the separate claim for payment of the excess credit was not made within the applicable 12-month period

s766 TCA 1997

Case stated requested: Unknown

Help to Buy

57TACD2026

Appeal regarding refusal of Help to Buy relief because the approved valuation of a self-build property (€510,000) exceeded the €500,000 statutory ceiling

s477C TCA 1997

Case stated requested: Unknown

70TACD2026

Appeal regarding a 40% clawback of Help to Buy relief after the appellant ceased occupying the qualifying property within the five-year clawback period owing to employment circumstances

s477C TCA 1997

Case stated requested: Unknown

73TACD2026

Appeal regarding refusal of Help to Buy relief where the approved valuation at the time the qualifying loan was entered into exceeded €500,000, notwithstanding a subsequently amended lower valuation

s477C TCA 1997

Case stated requested: Unknown

74TACD2026

Appeal regarding a 100% clawback of Help to Buy relief on a self-build property in Northern Ireland because the construction was not subject to Irish VAT and the property therefore did not constitute a “qualifying residence”

s477C TCA 1997

Case stated requested: Unknown

76TACD2026

Appeal regarding a clawback of Help to Buy relief where the appellant had previously purchased a residential property in the United Kingdom and therefore did not satisfy the statutory “first-time purchaser” requirement

s477C TCA 1997

Case stated requested: Unknown

RCT**65TACD2026**

Appeal regarding application of the 20% rather than the 0% RCT deduction rate and whether the appellant satisfied the statutory compliance requirements for the 0% rate

s530G TCA 1997

Case stated requested: Unknown

Customs & Excise**45TACD2026**

Appeal concerning the customs tariff classification of an aromatised wine-based alcoholic product, specifically whether it fell within CN Heading 2205 or CN Heading 2208

Council Regulation (EEC) No. 2658/87; Regulation (EU) No. 251/2014; Regulation (EU) 2019/787; ss73 and 74 Finance Act 2003; SI 379 of 2004; Combined Nomenclature Headings 2205 and 2208; Commission Implementing Regulation (EU) 2018/1602

Case stated requested: Unknown

80TACD2026

Appeal regarding a €93,020.62 customs debt arising from the importation of 71 vehicles from Great Britain under claims for preferential origin, including whether the appellant was liable as importer or merely acted as a customs representative under the Union Customs Code

Union Customs Code Regulation (EU) No. 952/2013

Case stated requested: Unknown

Artists' Exemption**52TACD2026**

Appeal regarding entitlement to the artists' exemption for artwork/illustrations and whether the work constituted a qualifying “painting or other like picture” that was original and creative and had cultural or artistic merit, rather than being primarily decorative

s195 TCA 1997

Case stated requested: Unknown

77TACD2026

Appeal regarding entitlement to the artists' exemption in respect of a jointly created picture book and six visual artworks, including whether the works satisfied the original, creative and cultural or artistic merit requirements

s195 TCA 1997

Case stated requested: Unknown

83TACD2026

Appeal regarding entitlement to the artists' exemption for newly written scholarly and literary introductions/prefaces to previously published books and whether the works were “original and creative”

s195 TCA 1997

Case stated requested: Unknown

Employment Wage Subsidy Scheme**82TACD2026**

Appeal against EWSS assessments of approximately €8.87m concerning whether the appellant satisfied the 30% turnover-reduction test and whether parts of its retail operation constituted separate business divisions for the purposes of s28B of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (EMPI Act 2020)

s28B EMPI Act 2020

Case stated requested: Unknown

LPT

[46TACD2026](#)

Appeal regarding entitlement to the LPT exemption for a residential property occupied

by a severely incapacitated person where the property had not been acquired or constructed because of its suitability for that person and the cost of adaptation did not exceed the required 25% threshold

ss10B and 41B Finance (Local Property Tax) Act 2012

Case stated requested: Unknown



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The Rights and Obligations of Cohabitants on Death Under the 2010 Act



Introduction

For practitioners advising on estate and succession planning, the traditional starting point has long been a single threshold question: is the client married? The answer has often shaped the direction of the practitioner's advice, including the extent of any inheritance tax exposure. Yet to approach estate planning today through that binary lens – married or not married – is to risk providing incomplete advice.

This article examines the cohabiting relationship as a distinct and increasingly

significant category of personal union in Ireland in the twenty-first century, one that demands careful attention in succession planning. It sits alongside, but remains separate from, the married relationship with which practitioners are more familiar.

The article considers the statutory framework under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the "2010 Act"), in force for fifteen years, and the developing body of case law that has shaped its application. The article examines the capital acquisitions tax (CAT) consequences that flow

from the different routes by which a cohabitant may inherit and the practical steps that a practitioner can take to structure a client's affairs in a manner that reflects their wishes. Where necessary, it also addresses how to guard against, or manage, the risk of litigation being brought against the estate after the client's death.

The Inheritance Rights of Surviving Cohabiting Partners

Although Ireland has progressed in recent years in the recognition of different types of unions between two people, unfortunately the law still recognises marriage as being the only union where there is an automatic entitlement to a share of the other person's assets on their death. The result of this is sometimes baffling – situations can arise where a married couple who have long separated are entitled to a large share of each other's estates but their cohabiting partner of many years has no entitlement whatsoever.

Part 15 of the 2010 Act sought to recognise the rights of these non-marital relationships and give people in cohabiting relationships some rights upon the death of their partner. However, it was ultimately decided that no automatic entitlement would arise, and a cohabiting partner must make a court application to assert their rights.

The legal position is very different for married couples compared with cohabiting couples when it comes to probate and succession rights. If a couple are married and one of them dies intestate (without a will), the entire estate passes to the spouse, if the deceased has no children. If the deceased has children, two-thirds of the estate will pass to the spouse and the remaining one-third will pass to the deceased's children in equal shares.

If the couple are married and one of them dies testate (with a will), the spouse will receive their benefit under the will or, alternatively, can elect to take their "legal right share". If the deceased has no children, this will be one-half

of the estate. If the deceased has children, this will be one-third of the estate. Although the word "claim" is used, a claim before the courts is not required, and the spouse in this scenario can simply request their legal right share from the legal personal representative, in lieu of anything that they are due to receive under the terms of the will.

In contrast, a person in a cohabiting relationship has no entitlement whatsoever to any share of their deceased partner's estate. If a person dies intestate, their partner will inherit nothing from their estate. If they die testate, they are entitled to receive any benefit left to them under the will, but if it is something of significance, a significant tax liability will likely arise given that they fall within category C for CAT purposes, meaning that 33% of anything received over €20,000 is due to Revenue, for deaths occurring since 2 October 2024.

Since the commencement of the 2010 Act, in certain circumstances a cohabitant can bring a claim against their deceased partner's estate where either they are due to inherit nothing from their estate or they are unhappy with the provision made for them in their late partner's will.

The Relevant Sections of the 2010 Act

Section 172: the definition of "cohabitant" and "qualified cohabitant"

The 2010 Act limits the right of a surviving cohabitant to bring a claim to persons who come within the definition of a "qualified cohabitant". Section 172 first defines a "cohabitant" as follows:

- One of two adults, whether of the same or opposite sex, who live together.
- The couple are living in a committed and intimate relationship.
- The relationship need not be a sexual relationship anymore.
- The couple are not married to or in a civil partnership with each other.

- They are not related such that they would be prohibited from marrying each other.
- The relationship is one where the court has considered the following circumstances and deems the couple to be cohabitants:
 - the duration of the relationship,
 - the basis on which the couple live together,
 - the degree of financial dependence, financial arrangements or agreements between them in respect of their finances,
 - whether there are any dependent children,
 - whether one adult cares for and supports any children of the other adult and
 - the degree to which they present themselves as a couple.

Section 172 then defines a “qualified cohabitant” as being a person in a cohabiting relationship where the couple are:

- living together for at least two years if they have dependent children together;
- living together for at least five years if they have no dependent children together; and
- not married to anyone else during the relationship, unless living apart from their ex-spouse for at least four of the past five years when the co-habiting relationship ended¹.

Section 194: The right of a qualified cohabitant to bring a claim against their partner’s estate

Section 194 provides that a surviving “qualified cohabitant” can bring court proceedings seeking provision, or greater provision, from the estate of their deceased partner.

Sub-section 194(1) provides that the claim must be brought within six months of the grant of representation issuing. This is a strict time limit, and proceedings will be statute barred if not brought within that period.

Sub-section 194(3) provides that the court may make provision for the claimant if satisfied that proper provision was not made during the lifetime of the deceased and that this was not because of any conduct on the part of the applicant that would be unjust to disregard.

Sub-section 194(4) provides that the court shall have regard to circumstances of each case, including:

- any orders for provision made under the 2010 Act in favour of applicant while the deceased was alive;
- any gift in the deceased’s will in favour of the applicant;
- the interests of the beneficiaries of the estate;
- the factors set out in s173(3)² of the 2010 Act, as follows:
 - the financial circumstances, needs and obligations of each cohabitant at the date of the application and into the future;
 - the rights and entitlements of any spouse or former spouse;
 - the rights and entitlements of any civil partner or former civil partner;
 - the rights and entitlements of any dependent child or any child of a previous relationship of either cohabitant;
 - the duration of the relationship, the basis on which they entered the relationship and the degree of commitment to each other;
 - the contributions of each cohabitant to the welfare of each other, in the past and intended for the future (this includes contributions made by each of them to income, earning capacity, property or financial resources of the other person);
 - any contributions made by either person in looking after the home;

¹ Where the relationship concerned ended before 1 December 2019, this being the date of commencement of section 4(2) of the Family Law Act, 2019.

² Section 173(3) relates to applications for redress by a financially dependent cohabitant where the relationship ends and both parties are still alive, but the 2010 Act provides that the same principles apply where there is an application for provision from the estate of a deceased cohabitant under s194 of the 2010 Act.

- the effect on the earning capacity of each cohabitant of the responsibilities assumed during the period of cohabitation and the degree to which future earning capacity is impaired by having forgone the opportunity to earn by looking after the home;
- any physical or mental disability of the qualified cohabitant; and
- the conduct of either party, if it would be unjust for the court to disregard.

The scope of bringing a claim is more limited where the relationship ended before the date of death. Section 194(2) provides that the claimant can bring the claim where the relationship ended two years or more before the date of death only where either (a) they were already in receipt of periodical payments from the deceased or (b) proceedings or court order(s) were pending in respect of such payments under the 2010 Act (and the application in respect of those proceedings or court order(s) was made by the claimant within 2 years of the relationship ending).

Sub-section (5) further provides that the court shall not make an order for provision where the relationship ended before the date of death where:

- the court is not satisfied that the applicant is financially dependent on the deceased or
- the applicant has married or entered into a civil partnership

Bringing a Claim Under s194

The key aspects of s194 have already been examined in terms of the requirements a “qualified cohabitant” must meet to bring such a claim. There are other matters practitioners should be aware of when advising clients in relation to s194 proceedings.

Who is to be notified and/or heard

The Act provides that the applicant must notify the legal personal representative of the estate.

It is vital that this is done as soon as possible. If the personal representative is not notified, they can proceed to distribute the assets in the estate and will not be held liable.

The Act also provides that the court must have regard to any representations made by the personal representative and any spouse or civil partner of the deceased.

Where the deceased has died testate, it is often the case that they have appointed their cohabiting partner as their executor. In such cases, where the cohabiting partner seeks to bring s194 proceedings, they are required to renounce their executorship. A clear conflict of interest arises – the applicant cannot defend the proceedings in their capacity as legal personal representative while also being the plaintiff in the proceedings. If there is another executor, or executors, they can obviously act, but if there is not, the issue of who will act as legal personal representative is determined by the order of priority set out in the Rules of the Superior Courts.³

How the court makes provision

It is important to consider how, and from where, the court will make provision for the applicant if they are successful. The provision is made from the net estate, i.e. after the payment of all debts, liabilities and testamentary expenses.

It is important to note that any order made under s194 will not affect the legal right share of a spouse. Where a person has a spouse who is claiming their legal right share, that must be deducted from the net estate before any payment can be made in respect of an s194 order.

Sub-section 194(7) provides that the total value of any award cannot exceed what the applicant would be entitled to if they were the spouse of the deceased. For example, if the deceased died testate and with children, the applicant’s claim will be limited to one third (i.e. legal right share entitlement) of the net estate.

³ See Order 79, Rule 5(6), Rules of the Superior Courts.

Proceedings in camera and costs

Section 194 proceedings shall be heard in camera, meaning that only the parties (i.e. the personal representative on behalf of the estate and the applicant) and the legal teams can be present in court. Other parties may give evidence, but they are only permitted in the court room for the duration of that evidence and cannot remain for the entire case.⁴

The costs of the proceedings will be at the discretion of the judge hearing the case (s200 of the 2010 Act), but generally a successful applicant will be awarded their costs from the estate. The costs are discharged before any distribution, including any award in favour of the applicant.

Jurisdiction

The Circuit Court has concurrent jurisdiction with the High Court to hear cases brought under s194. The usual rules apply such that the Circuit Court has jurisdiction to deal with claims where the market value of any real estate in the estate is less than €3m and has unlimited jurisdiction regarding the monetary value of personal property.

If the proceedings are brought in the Circuit Court, they should be brought in the circuit where one of the parties ordinarily resides or works (or resided or worked before their death).

Where the relationship ended before the date of death, the applicant must satisfy the court that both cohabitants were ordinarily resident in the State for one year before the relationship ended and:

- both cohabitants were ordinarily resident in the State for one year before the date of death of the deceased;
- on the death of the deceased, the applicant was in receipt of periodical payments from the deceased as set out in the 2010 Act, whether by court order or agreement; and

- within two years of the relationship's ending, the applicant had made an application for provision (as between separated cohabitants) under the 2010 Act that was either pending or awaiting court orders at the date of death.

The Factors Considered by the Court in s194 Claims

As already outlined, the court will first determine whether the person is a “qualified cohabitant” within the meaning of the 2010 Act, and if they are, the court will then consider whether provision, or further provision, should be made for the applicant having regard to the factors set out in s194(3) and (4), as mentioned above.

Although the criteria are set out in detail in the legislation, the case law provides practitioners with guidance on how the court considers whether the criteria have been met. Despite concerns that Part 15 of the 2010 Act would result in a huge number of claims coming before the courts, there are in fact very few reported cases since the legislation commenced. The case law largely deals with the issue of whether the applicant is a “cohabitant” or “qualified cohabitant” within the meaning of s172 and provides useful insight into the application of the legislation.

Section 172: A non-exhaustive list

In the case of *D.C. v D.R.* [2015] IEHC 309 the court helpfully confirmed that the factors set out in s172 (to determine whether the applicant is a “cohabitant”) are a non-exhaustive list and the court is entitled to consider other factors in deciding this issue.

A committed and intimate relationship

The issue of how to determine whether a couple are in a “committed and intimate relationship” has been considered in the case law,⁵ and the following issues are taken into account when deciding whether this requirement is met:

⁴ As confirmed by the court in the case of *D v B* [2021] IEHC 407.
⁵ *D.C. v D.R.* [2015] IEHC 309; *G.R. v Regan* [2020] IEHC 89.

- whether a reasonable person who knows them would consider them to be in a committed and intimate relationship;
- whether one party has given up work to care for the other;
- the involvement in funeral arrangements can demonstrate a degree of commitment;
- the relationship must have been sexually intimate at one point; and
- certain acts or habits can demonstrate intimacy – e.g. in the case of *D.C. v D.R.* the applicant was in her late sixties and the fact that the deceased helped her to dress demonstrated intimacy, as it was not a task that would typically be carried out by a friend.

The duration of cohabitation

The period of living together before the commencement of the 2010 Act can be taken into account in determining whether the applicant meets the duration requirement as set out in s172.⁶ However, the couple must have lived together for a period of time after the 2010 Act was commenced on 1 January 2011; otherwise, the Act does not apply, as the legislation cannot be applied retrospectively.

Living together

The case law⁷ helpfully demonstrates that the concept of cohabitation is flexible, must be considered on a case-by-case basis and will depend on the couple's own living arrangements. The court has held that there is a distinction between living together under one roof every day of the week and the legal concept of living together, and that only the latter must be established to satisfy the requirements in s172.

It is not necessary for the couple to have physically lived together at all times during the relevant period, and there may be genuine,

external reasons for not doing so, e.g. working arrangements or ill health.

The following guiding principles can be taken from the case law:

- The couple do not need to have physically cohabited at all times during the relevant period.
- Living apart for work or other reasons may not disrupt the concept of cohabiting.
- If they live apart for a period, it must not be due to a breakdown of the relationship.
- Other factors can demonstrate that the couple meet the requirement, such as:
 - the degree to which they shared activities;
 - the degree to which they shared meals – especially morning and evening meals;
 - the division of household chores; and
 - the fact that they shared holidays together.

The degree of financial dependence/ proper provision

The applicant need not demonstrate that they were financially dependent on the deceased, and a degree of “financial interdependence” can suffice.⁸ It is entirely possible for the couple's finances to have been separate, as long as some level of financial dependence, or interdependence, can be shown. Examples of this include shared personal and social spending habits or a contribution by both parties to the household upkeep and maintenance.

In determining whether proper provision has been made, the post-death situation must be considered, not just the fact that provision was made for the applicant during the deceased's lifetime. In the recent case of *C.D. v E.F.* the court held that the notion that generosity by the deceased during their lifetime would obviate the need for provision after death would “entirely defeat the purpose” of the legislation.

6 C.D. v B.B. [2021] IEHC 684.

7 D.C. v D.R. [2015] IEHC 309; M.W. v D.C. [2017] IECA 255; G.R. v Regan [2020] IEHC 89; and X.Y. v Z.W. [2019] IEHC 257.

8 D.C. v D.R. [2015] IEHC 309; G.R. v Regan [2020] IEHC 89; C.D. v E.F. [2025] IEHC 737.

Presenting as a couple

This factor must be considered in the context of social norms and the specific couple. The court will consider matters that may have had a bearing on how the couple choose to present themselves to the outside world, such as the age of the couple, the family dynamics and the social attitude towards the couple. In the case of *D.C. v D.R.* family members did not approve of the couple's relationship, which caused the couple to remain private about their relationship. The court took this into account and was satisfied that the applicant met the "cohabitant" requirement.

CAT Considerations

One of the frequent queries that arise in relation to the inheritance by cohabitants from their partner's estate is the application of capital acquisitions tax. As already stated, unmarried couples fall within category C, and accordingly CAT is payable at 33% on any inheritance received over €20,000 for deaths occurring since 2 October 2024.

This is in contrast to a cohabitant who brings s194 proceedings and obtains a court order for provision from their late partner's estate. Section 88A of the Capital Acquisitions Tax Consolidation Act 2003, as inserted by the Finance (No. 3) Act 2011, provides:

“ *“Notwithstanding any other provision of this Act, a gift or inheritance taken by virtue or in consequence of an order made under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 by a qualified cohabitant, within the meaning of that Act, is exempt from tax and is not taken into account in computing tax.”*

The section provides that a court order is required for a cohabitant to avail of the tax exemption, meaning that a cohabitant who has been left a large portion of their estate in their partner's will is at a disadvantage from a CAT perspective. Clients should be made aware of this fact when taking advice on estate and succession planning.

Cohabitants' Agreements

Section 202 of the 2010 Act provides that cohabitants can enter into a cohabitants' agreement regarding financial matters during the relationship or when it ends, whether through death or otherwise. A cohabitants' agreement is valid only if:

- the cohabitants have each received independent legal advice beforehand, or have received legal advice together and have waived in writing their right to independent legal advice;
- the agreement is in writing and is signed by both cohabitants; and
- it complies with general contract law.

Crucially, s202(3) provides that the agreement can include a clause whereby each party waives their right to bring s194 proceedings. However, a court can vary or set aside the agreement in "exceptional circumstances", where its enforceability would cause a "serious injustice" to arise.

Preventing a Claim Being Brought Under s194

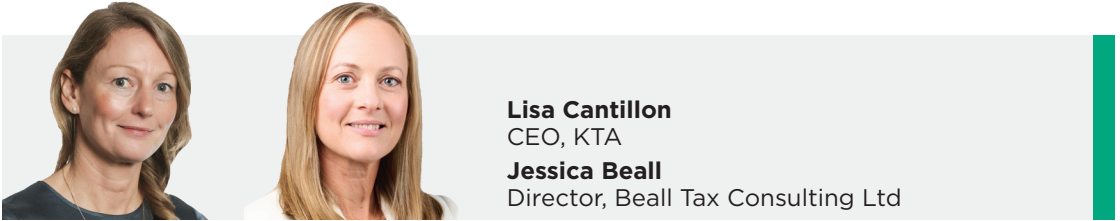
The main objective when advising clients in estate planning matters is to ensure that their wishes are met and are structured in a tax-efficient and legally sound manner. It is equally important to consider the risk of litigation being brought against their estate that could have the effect of significantly altering their intentions and may cause great expense to their estate.

The following steps can be taken to try to prevent s194 proceedings from being brought and to assist in the defence of a claim if one cannot be avoided:

- Determine whether your client has a partner who is a "qualified cohabitant".
- If they do, take instructions on their financial and personal arrangements, any provision that has previously been made for their partner, and their partner's own financial situation.

- Determine whether your client also has a spouse/civil partner, whether provision has been made for them during their lifetime and whether their succession rights have been extinguished by divorce or otherwise.
- Determine whether their partner is already married and, if so, whether they are legally separated or divorced or would be prohibited from bringing s194 proceedings.
- Advise the client regarding the succession rights of their spouse (if any) and the potential rights of their cohabiting partner under s194.
- Advise clients that if their partner brings s194 proceedings, they will not be able to act as executor, and to consider an alternative or additional executor(s).
- Take instructions on what provision your client wishes to make for their partner. Advise them on whether their partner would be entitled to seek additional provision from their estate, having regard to s194(7), and whether there is merit in leaving their partner the equivalent of what a spouse would be entitled to prevent s194 proceedings.
- If the intended provision means that an s194 claim is possible, advise them to consider entering into a cohabitation agreement with their partner and apprise them of the benefits of doing so.

Finally, it is important to advise your client to share the information that they have provided with the intended personal representative(s) of their estate or a trusted family member. Any s194 proceedings will be brought after the client has passed away, meaning that they will not be able to advise the intended personal representatives of matters at that stage or give evidence at the hearing if an action is brought.



CAT Implications of US-*Situs* Assets and Exposure to US Estate Tax



Introduction

It is increasingly common for individuals who are Irish tax resident and Irish domiciled to hold US-*situs* assets, whether through direct shareholdings in US listed companies, US-domiciled exchange traded funds (ETFs), or interests in US entities such as limited liability companies (LLCs). Although the US tax exposure for US citizens is generally well understood, a less recognised issue arises where Irish residents who are not US citizens hold US assets. In such cases US estate tax or

US gift tax can arise, often at relatively modest asset values and without any corresponding Irish tax charge.

This can give rise to:

- significant unanticipated tax liabilities,
- mismatches between Irish and US tax outcomes and
- limited availability of relief in certain scenarios.

- This article examines: the application of US federal estate tax and US gift tax to Irish-resident individuals who are not US citizens,
- the charge to capital acquisitions tax (CAT) for Irish-resident, Irish-domiciled individuals,
- spousal transfers and the misalignment between the Irish and US tax treatment,
- the interaction between CAT and US estate and gift tax (which are referred to collectively as “US transfer tax” in the article),
- the relevance of the agreement between Ireland and the United States with respect to taxes on the estates of deceased persons (the Ireland-US estate tax treaty) and
- key planning considerations arising from the interaction of the two regimes.
- Patrick and Aoife have two adult children, who are resident in Ireland.
- Patrick has worked in the US and Ireland for the same multinational.
- Patrick participates in the incentive stock plan of his employer, which is a US-incorporated company, and has a total of USD1.2m in shares.
- Patrick also has exposure to US equities through an Irish pension and separate investment wrapper.
- Patrick and Aoife hold a joint brokerage account that includes US securities valued at USD60,000. The account was funded primarily from Patrick’s employment earnings.

US Estate and Gift Tax Exposure for Irish Residents

US estate and gift tax issues can arise for Irish residents in circumstances that may appear routine from an Irish tax or investment perspective. An individual may hold shares in US-incorporated companies, participate in an employee share plan connected with a US parent company, or have exposure to US markets through a pension, fund, investment wrapper (i.e. legal structure that sits around the investments) or brokerage account. Those facts may be enough to require a separate U.S. transfer tax review, particularly where US-*situs* assets are held directly or where the legal nature of the holding is unclear.

Typical example

Consider the following example, which is used throughout this article to demonstrate the application of the basic rules:

- Patrick is Irish resident and Irish domiciled. He is neither a US citizen nor domiciled in the United States for US estate and gift tax purposes.
- Patrick is married to Aoife, who is also Irish resident and Irish domiciled and not a US citizen.

Patrick’s facts are illustrative, but they reflect a wider issue: many Irish residents now have some form of direct or indirect exposure to US markets, whether through an incentive stock plan, direct investment in US equities, or US securities held through a self-directed Irish pension, fund or diversified investment portfolio. We will consider some of these common cases throughout this article.

Charge to CAT for Irish-Resident and Irish-Domiciled Individuals

CAT arises on:

- gifts taken during a person’s lifetime and
- inheritances taken on a death.

The charge is imposed on the beneficiary, rather than the estate (as is the case in the US), and applies at the current prevailing rate of 33%. This difference can give rise to administrative and funding challenges across the two jurisdictions.

The scope of CAT depends on the residence and domicile position of both the disponent and the beneficiary. CAT applies to worldwide assets in the following circumstances where:

- the disponent is resident or ordinarily resident in Ireland, or

- the beneficiary is resident or ordinarily resident in Ireland.

CAT also applies where the property is situated in Ireland regardless of the residence or ordinary status of the disponer or beneficiary.

Accordingly, an inheritance of US-*situs* assets may still fall within the Irish CAT net where either the beneficiary or the disponer is Irish resident or ordinarily resident. In other words, Irish CAT has worldwide application for so long as there is an Irish connection (donor or heir) – unless a specific exception applies. Therefore, in the above example, Patrick's worldwide assets, to include the US assets, are within the Irish CAT charge.

The five-year rule for non-Irish-domiciled individuals

This article focuses on Irish-resident, Irish-domiciled individuals and does not consider the position of non-Irish-domiciled beneficiaries. However, it should be noted that an individual who is not Irish domiciled is treated as non-resident for CAT until they have been Irish tax resident for five consecutive years up to the year of the gift/inheritance. During this period non-Irish-*situs* assets taken as a gift or inheritance by or from such an individual can fall outside CAT if both parties (disponer and beneficiary) are outside the charge to CAT based on either residence or the five-year rule. Once the five-year period is exceeded and the person remains resident in Ireland, worldwide assets will be within the scope of CAT.

US Transfer Tax Status: Citizenship, Domicile and Situs

The preceding section outlines the CAT scope for Irish-resident, Irish-domiciled individuals, which is mostly straightforward, apart from any treaty relief or exemption, dealt with at the end of this article. However, it is necessary to consider the US transfer tax implications where US assets are held by Irish individuals. The starting point in any US transfer tax review is to look at the individual's citizenship and domicile status under the US estate tax rules. US estate

and gift tax apply differently depending on whether the person is a US citizen, US domiciliary or neither. Once that status is established, we look to whether the relevant asset is treated as situated in the United States for US estate or gift tax purposes. The review therefore has two stages: first, identify the person's US transfer tax status; second, classify the asset by *situs*.

An individual who is neither a US citizen nor domiciled in the United States is referred to in this article as a non-resident non-citizen (NRNC).

From a US perspective it is important not to confuse US transfer tax domicile with US income tax residence. The income tax rules look to concepts such as green-card status and substantial presence, but the estate and gift tax rules ask a different question: where is the individual's fixed and permanent home? For US transfer tax purposes a person is generally treated as domiciled where they live with no definite present intention of leaving. That requires both being physically present in a place and intending to remain there indefinitely. Living in the United States is, on its own, not enough if the person does not intend to make it their permanent home. Equally, an intention to live there is not enough without actual presence, which can sometimes be the case for green-card holders.

This is ultimately a facts-and-intentions test. A common example is an Irish individual who moves to the United States for work, remains there for a number of years and eventually obtains a green card. The green card is relevant because it gives the individual the legal right to live and work in the United States permanently, even though the card itself must be renewed periodically. It may therefore point towards US domicile, particularly while it is held. However, it is not conclusive.

The position can become more complicated where Patrick (in our example) later returns to Ireland while retaining green-card status or applying for a re-entry permit. From an Irish

perspective it may be tempting to assume that Patrick remains Irish domiciled because Ireland is his domicile of origin. That may be correct for Irish domestic law purposes, but it does not answer the US transfer tax question. The United States applies its own domicile test, focused on physical presence and an intention to remain indefinitely. In the right circumstances Patrick could therefore be treated as Irish domiciled under Irish law while simultaneously being treated as US domiciled for US estate and gift tax purposes.

This distinction is important because the Ireland-US estate tax treaty does not contain a general domicile tie-breaker rule. Instead, treaty relief often depends on the application of *situs* rules and credit provisions, and certain assets may be treated as situated in the state of domicile for treaty purposes. Accordingly, the concepts of domicile and asset *situs* are fundamental to the operation of the Ireland-US estate tax treaty. This importance is reflected in the language in the treaty, which refers to the domicile of the individual concerned when determining the allocation of taxing rights and the availability of relief:



“For the purposes of the present Convention, the question whether a decedent was domiciled in any part of the territory of one of the Contracting Parties at the time of his death shall be determined in accordance with the law in force in that territory.”

The ultimate outcome will depend on the facts and circumstances of each case to determine the allocation of taxing rights. However, the treaty may not apply if both territories are claiming domicile.

Basic Scope of US Estate and Gift Tax for NRNCs

Once Patrick is identified as an NRNC, the next question is how far the US estate and gift tax rules reach. Unlike US citizens and US domiciliaries, who are generally subject to US estate and gift tax on worldwide assets, an NRNC is generally taxed only by reference to US-*situs* property. Even then, the estate tax and gift tax rules do not apply in exactly the same way. The table below summarises the basic distinction.

Table 1: Basic scope of US gift tax and estate tax and Irish CAT for an NRNC.

US gift tax	US estate tax	Irish CAT
Generally, within scope: - US real estate, - tangible personal property situated in the US and - cash, where treated as US-<i>situs</i> property	Generally, within scope: - US-<i>situs</i> tangible and intangible property, - US real estate, - stock of US-incorporated companies, - debt obligations of a US person and - cash accounts with a US brokerage	Worldwide assets
Key exception: gifts of intangible property, including stock, are generally outside the US gift tax rules	Key exceptions: US bank accounts and debt obligations may be outside scope where statutory exceptions apply	6.0x – 7.0x
Separate regime: Certain gifts or bequests received by US persons from covered expatriates may be subject to separate US tax rules and should be analysed separately.		

The practical effect of that distinction can be seen most clearly when considering Patrick's US employer shares. If Patrick still owns the US shares at death, they are US-*situs* property and may fall within the US estate tax net. If, instead, he makes a completed lifetime gift of those shares, the gift is outside the scope of US gift tax because stock is intangible property and gifts of intangible property by an NRNC are excluded from the US gift tax base.

The mismatch between gift and estate tax can be a useful planning point, but it should not be viewed in isolation. From an Irish perspective a lifetime transfer, excluding spousal transfers, may trigger CAT for the recipient and, depending on the facts, capital gains tax (CGT) for the donor. CGT and CAT may be chargeable on the same asset and on the same event. When this occurs it may be possible to claim a credit for CGT paid by the donor against the CAT liability.

The point may therefore be most relevant in spousal planning where there is a US tax implication on death or in cases where the wider Irish tax and succession consequences have been examined.

This strategy depends on the transfer being genuinely complete. If Patrick retains meaningful rights, benefits or control over the shares (such as in a trust arrangement), they may still need to be considered for US estate tax purposes at death.

Applying the Situs Rules: What Does the Donor Actually Own?

The next step is to identify the legal structure or classification of the asset that Patrick directly owns. US market exposure, by itself, does not answer the estate tax question. The answer depends on the legal structure of the asset he owns at death and whether that asset is treated as US-*situs* property under US domestic law, taking into account the Ireland-US estate tax treaty, where relevant. The treaty also uses *situs*-based rules, so the focus remains on identifying the asset and then applying the relevant *situs* rule as prescribed by the treaty.

The clearest case is direct ownership of stock in a US-incorporated company. If Patrick owns USD1.2m of shares in his employer's incentive stock scheme (i.e. a US-incorporated company) at death, that USD1.2m will be US-*situs* property. By contrast, the fact that a share is traded on a US exchange does not, by itself, answer the *situs* question. *Situs* is based on where the company is incorporated. CRH plc shares provide a useful example. In 2023 its shares began trading on the New York Stock Exchange, but CRH plc remains an Irish-incorporated company. The move to a US listing does not in itself make ordinary shares in CRH plc US-*situs* property. *Situs* is linked to the country where the company is incorporated.

The analysis becomes more nuanced where Patrick does not hold US securities directly but instead has exposure to the US markets through a fund, pension, investment wrapper or other pooled arrangement. For an NRNC such as Patrick, the key question is what asset he legally and beneficially owns at death. If he owns shares or units in a non-US fund or similar foreign wrapper (e.g. Irish ETFs, UCITS, ICAV or unit trusts), that foreign interest is generally structured as a separate body corporate, incorporated outside the US. The investment would therefore be foreign *situs*. You do not look through to the underlying investments.

The position is different where the arrangement is merely custodial, nominee or administrative in nature. If Patrick remains the beneficial owner of the underlying US securities, the platform or account wrapper will not usually change the *situs* analysis. The underlying US shares remain US-*situs*.

The same distinction is important for pensions, investment bonds and pooled arrangements. The documentation should be reviewed to determine whether Patrick owns a separate foreign contractual, corporate or trust interest, or whether he retains a proprietary interest in the underlying US securities. The answer is therefore structural rather than categorical: US exposure inside a pension or wrapper does not automatically create US-*situs* property,

but neither does the presence of a wrapper automatically remove the issue.

NRNC Exemptions, Credits and Marital Relief

Once it is clear that there are US-*situs* assets within an estate, we then consider whether any reliefs are available. For an NRNC estate, the answer is limited.

There is no large exemption equivalent for NRNCs similar to the relief available to US

citizens and US domiciliaries (i.e. USD15m, effective for 2026). Instead, the NRNC rules provide a limited estate tax credit (USD13,000), which shelters approximately USD60,000 of US-*situs* assets from US estate tax. The relief is applied as a credit and not a deduction from the taxable estate value. Therefore, the estate tax liability must be calculated first on the full market value of US-*situs* assets, and then the USD13,000 credit is applied against that tax.

Further reliefs are summarised below.

Table 2: NRNC exemptions, credits and marital relief.

US estate and gift tax			Irish CAT and CGT
Relief	Basic rule	Application to Patrick and Aoife: US position	Application to Patrick and Aoife: Irish position
Annual gift exclusion	USD19,000 per beneficiary	Relevant for lifetime gifts	Gifts between spouses are fully exempt from CAT
Annual exclusion for gifts to a non-US-citizen spouse	USD194,000 (effective for 2026)	If Patrick transfers U.S. situs assets to Aoife during life, this rule may be relevant	Gifts between spouses are fully exempt from CAT and CGT
Gift tax unified credit	None, A non-U.S. citizen who is not U.S.-domiciled generally does not have a lifetime unified credit available to offset U.S. gift tax on taxable gifts exceeding the applicable annual exclusion.	Potentially relevant for gifts otherwise within the US gift tax base, such as certain transfers of US- <i>situs</i> tangible property or cash treated as US- <i>situs</i> property, where the value exceeds the applicable annual exclusion	Gifts between spouses are fully exempt from CAT and CGT
Estate tax unified credit	USD13,000 credit, equivalent to approximately USD60,000 of US- <i>situs</i> assets	Patrick's US employer stock and other U.S.- <i>situs</i> assets included in his share portfolio exceed the USD 60,000 amount effectively sheltered by the 13,000 credit	Inheritances between spouses are fully exempt from CAT
Unlimited marital deduction	Only available for gifts or bequests to a US-citizen spouse	Aoife is not a US citizen, so an outright transfer to her does not automatically eliminate US estate tax/gift tax	Inheritances/gifts between spouses are fully exempt from CAT

Spousal Transfers and the Non-US-Citizen Spouse

A defining difference in this area is the misalignment between the two regimes:

- under Irish law, transfers between spouses are fully exempt from CAT, but
- under US law, no equivalent exemption exists unless the spouse is a US citizen.

This results in a position where:

- US estate or gift tax arises on a transfer to a spouse,
- no Irish CAT arises and
- no credit relief is available.

Accordingly, this creates an absolute tax cost, which cannot be mitigated through Irish tax provisions.

With the basic relief framework in mind, Patrick asks whether leaving his US shares to Aoife would remove the US estate tax issue. This is a natural question for an Irish-resident couple, because the Irish spousal exemption applies, as mentioned above, regardless of the surviving spouse's citizenship. The US rule is different. The US unlimited marital deduction is available for transfers to a US citizen spouse, but not generally for an outright transfer to a spouse who is not a US citizen. In this context, an "outright" transfer means that the assets pass directly to the surviving spouse rather than through a qualifying structure, such as a qualified domestic trust (QDOT).

For example, if Patrick dies owning shares in a US-incorporated company and leaves them outright to Aoife, the transfer does not qualify for the US unlimited marital deduction because Aoife is not a US citizen. In some cases a QDOT may offer a way to defer, rather than eliminate, the US estate tax that would otherwise arise. It is possible for a QDOT to be established and funded after death if the statutory requirements and filing deadlines are met. However, a QDOT brings its own compliance and administration

obligations, as well as costs, so it is usually considered only where the expected US estate tax exposure is large enough to justify that additional complexity, and often in very limited circumstances.

There is, equally, no unlimited marital deduction available for lifetime gifts to a non-US citizen spouse. Instead, a special annual exclusion applies for gifts where the recipient has an immediate and unrestricted right to use, enjoy, or benefit from the property. In 2026 that exclusion is USD194,000. In Patrick's case, however, the relevant asset is stock in a US-incorporated company. Because stock is intangible property, a completed lifetime gift of those shares to Aoife is generally outside the US gift tax base.

Joint Ownership and the Consideration-Furnished Rule

Patrick and Aoife hold a joint brokerage account, which raises a separate issue. Even if an account is held in both spouses' names, the US estate tax rules do not assume that each spouse owned one-half. Where property is held jointly with a right of survivorship, there is a presumption that the full value of the jointly held property is included in the estate of the first joint owner to die, unless the surviving joint owner can show that they furnished consideration for part of the property. This is known as the consideration-furnished rule.

In Patrick and Aoife's case, if the joint brokerage account holds US securities and was funded primarily by Patrick, the US estate tax analysis may extend beyond a simple assumption that only 50% of the account is relevant. The critical question is the extent to which Aoife can establish that she contributed her own funds toward the acquisition of the securities or other assets in the account. If she cannot substantiate her contribution, the amount included in Patrick's gross estate is more likely the full value of the account.

In applying the consideration-furnished rule, the focus is generally on the source of the

funds used to acquire or fund the account, including each spouse's earnings or other separate contributions, and whether those amounts can be substantiated. Amounts previously received by Aoife from Patrick for less than full and adequate consideration (i.e. a gift) do not count as Aoife's own contribution for this purpose. For that reason, tracing the funding history of the account can be important. This is often discovered only after the death of the first spouse, where historical records are near impossible to reconstruct. If Patrick funded the account, contemporaneous evidence of funding, beneficial ownership and any intended gift to Aoife should be retained, as this evidence may be needed to establish the portion of the jointly held property that is properly included in Patrick's US gross estate at death. Without that evidence, the estate may face a more difficult US position at death.

From an Irish CAT perspective, the Irish tax analysis differs fundamentally from the US estate tax regime. US estate tax is imposed by reference to the deceased's ownership of US-*situs* assets at the date of death. Irish CAT, however, is primarily a tax on the beneficiary and focuses on the value of the benefit received. The CAT position will depend on a number of factors, including the relationship between the disponent and beneficiary, the availability of exemptions and reliefs, the relevant CAT threshold, and the residence, ordinary residence and domicile status of the parties, as explained above.

Accordingly, the Irish analysis will focus on the position of Aoife and the children as beneficiaries. Key considerations include the availability of the spousal exemption, the Group A threshold for children, currently standing at €400,000, and whether credit relief may be available for any US estate tax paid on assets that are also subject to Irish CAT.

From an Irish CAT perspective, the funding and ownership structure of the assets are not relevant. However, from an Irish CGT perspective, it is important to note that, on death, assets (or a share of assets) inherited by a surviving spouse are rebased to market value at the date of death, resulting in a step-up in base cost for future CGT purposes.

Bringing the Analysis Together: Patrick's US Estate Tax Exposure

If we bring the analysis back to Patrick, assume that the earlier asset review has narrowed the US estate tax issue. The joint brokerage account no longer holds US shares, and the pension and investment wrapper have been reviewed and are not treated as look-through holdings of US-*situs* assets. On that basis, the only asset remaining within Patrick's US estate is his USD1.2m portfolio of directly held shares as a consequence of his participation in his employer incentive stock scheme.

Table 3: Simplified US estate tax calculation.

Step	Formula/point	Amount
US-situs taxable estate	Directly held US-incorporated shares included in Patrick's US estate	USD1,200,000
Tentative US estate tax	Tax calculated on USD1.2m using the US estate tax rate schedule	USD425,800
Less NRNC estate tax credit	Estate tax unified credit available to an NRNC estate	(USD13,000)
US estate tax liability	USD425,800–USD13,000; no treaty relief or further credit assumed	USD412,800

The simplified US estate tax calculation would therefore proceed as follows. (Note that the calculation does not take account of administration expense deductions. For a non-US-domiciled decedent those deductions are generally allowed only on a pro-rated basis, based on the ratio of US-*situs* assets to the worldwide estate.)

On these simplified facts Patrick's US estate tax liability would therefore be USD412,800, if it is assumed that no treaty relief or other credit applies.

From an Irish perspective, the above cost is an absolute cost if Patrick's entire estate is left to Aoife, as there is no US spousal exemption in the same manner as there is under Irish rules. Therefore, where a spouse inherits the US assets, there will be a tax leakage, given that no Irish tax will apply. Accordingly, the above cost of USD412,800 is an absolute cost if Patrick's estate is left to Aoife.

Although it may not be suitable in all cases, passing US assets directly to children (i.e. not passing them directly to a surviving spouse, such as Aoife) can be more efficient. Where both US estate tax and CAT arise on the same asset, a credit may be available for US estate tax paid against CAT under the treaty. Passing US assets directly to the children can therefore improve the overall tax position by avoiding a second exposure to US estate tax that could otherwise arise if the assets first passed to the surviving spouse and subsequently formed part of that spouse's estate. As the assets pass directly to the children, they do not become part of the surviving spouse's estate, thereby reducing the risk of double taxation. Patrick's will would need to be updated to reflect this position.

Ireland-US Estate Tax Treaty

The treaty covers US estate tax and Irish CAT on inheritances; however, it does not cover gifts. The concepts of domicile and the *situs* of assets are central to the operation of the treaty. Within the treaty there is an exemption method

of relief from double taxation and also a credit method of relief.

The steps that should be taken in applying the treaty are:

- Determine the deceased's domicile in accordance with the laws of both Ireland and the US. If the deceased is a US citizen, then it is not necessary to determine the domicile under US law.
- Determine the *situs* of assets in accordance with Article III(2).
- Check whether the exempting provisions of Article IV(2) apply as outlined below. The exemption may not apply if both territories are claiming domicile.
- If an exemption is not available, then ascertain the level of credit available under the credit relieving provisions of Article V (if any).

A credit may be available against the Irish CAT for US estate tax paid, but there is a valuable exemption under the treaty that brings certain US inheritances outside of the Irish CAT net. This is dealt with under Article IV(2) of the treaty, as follows:

- “(2) Where tax is imposed by one Contracting Party on the death of a person who at the time of his death was not domiciled in any part of the territory of that Contracting Party but was domiciled in some part of the territory of the other Contracting Party, no account shall be taken in determining the amount or rate of such tax of property situated outside the former territory: provided that this paragraph shall not apply as respects tax imposed –
- (a) In the United States in the case of a United States citizen dying domiciled in any part of Ireland; or
 - (b) In Ireland in the case of property passing under a disposition governed by the law of Ireland.”

In general, for the exemption to apply, the two main provisions are that the asset must be dealt with in a US will and that the individual who passed away was domiciled in the US.

If we return to Patrick from our example, assume that he has an uncle Bill who is a US citizen and has an estate of USD10m, which Patrick may ultimately inherit. If Bill remains US domiciled at his death and all of his assets are non-Irish assets and pass under a US will, the treaty exemption will apply to Patrick on receipt of the inheritance.

Importantly, the treaty analysis does not focus exclusively on the underlying asset. The applicable outcome may vary depending on the disposition governing the transfer and the domicile of the deceased at the time of death. Accordingly, a detailed review of the treaty provisions is essential in determining the relief available. Depending on the circumstances, this may result in an exemption, a tax credit or, in some cases, no treaty relief at all.

Immediate Compliance Action Points for Inheritances

US filing threshold and deadline: Form 706-NA

Once a US-*situs* asset has been identified, the US compliance timetable should be considered at an early stage. For a decedent who was neither US resident nor a US citizen, Form 706-NA is required if the value of the decedent's US-situated assets at death exceeds USD60,000. As Irish residents commonly hold US shares (Meta/Tesla/Apple etc.) or US ETFs or have US interests in foreign structures such as LLCs, this is an important factor.

Where an individual is not a US citizen the US estate tax will apply where the value of US assets is greater than USD60,000. There are graduated rates of tax up to a maximum of 40%. For example, an Irish-resident/non-US-citizen spouse inheriting a USD500,000 US share portfolio faces US estate tax because the noncitizen estate tax unified credit/exemption is USD60,000, leading to an estimated tax cost of approximately USD140,000.

Due date and extensions:

- The Form 706-NA is due nine months after the date of death.
- A six-month extension of time to file is available by submitting Form 4768 on time, but that extension does not automatically extend the time to pay any US estate tax due.
- A separate extension of time to pay may be requested, although interest will continue to accrue on unpaid tax during any extended payment period.

US filing and payment

Executors should address the US filing position early, not only to quantify any estate tax liability but also to understand how the tax will be funded. This can be a practical issue where the executors are outside the United States and the US portfolio is the main liquid asset.

Payment can also be awkward. A bank draft may be the simplest method, where it is available, but many Irish banks no longer issue drafts in USD. In this case a wire transfer is the only alternative, although this requires the estate to obtain an Internal Revenue Service (IRS) tax identification number, often referred to as an IRSN, before payment can be made. The IRSN is generally assigned after the IRS processes the initial extension request, and in practice the process of obtaining the IRSN can take six to nine months or more.

Irish filing requirements

The CAT filing obligation and payment date are determined by reference to the valuation date. The Irish CAT filing deadline will generally fall after the US deadline. Where the valuation date falls between 1 January and 31 August, the CAT return and any CAT liability must generally be filed and paid by 31 October of the same year. Where the valuation date falls between 1 September and 31 December, the filing and payment deadline is 31 October of the following year.

The differing compliance deadlines under the Irish and US regimes can give rise to practical challenges in cross-border estates. Irish CAT

reporting is linked to the valuation date and the relevant CAT pay and file deadline, whereas US estate tax compliance is generally driven by the date of death. As a result, taxpayers may find themselves dealing with tax assessments, valuations and relief claims in two jurisdictions on different timelines, potentially delaying the final quantification of overall tax liabilities and the availability of double taxation relief.

Liquidity and transfer certificates

A further practical issue is liquidity. The estate may need to sell part of the US portfolio to fund the estate tax, but the broker or transfer agent may be unwilling to release, sell or transfer the US assets until the IRS estate tax process has been dealt with. In practice this often means waiting for the IRS to issue a transfer certificate confirming that the US estate tax position has been addressed. This can leave the estate in a difficult position: the assets needed to fund the tax may be the same assets that cannot easily be accessed until the IRS process has advanced.

Processing times for the transfer certificate are far from predictable. The certificate will generally be issued only once the IRS is satisfied that the estate tax liability has been fully discharged or otherwise provided for and its review has been completed. In practice, executors of Irish estates with US assets should therefore be prepared for a potentially lengthy period, often 18 to 24 months or more, before the US assets can be dealt with freely.

Closing letters and overall timing

Executors may also wish to request an estate tax closing letter from the IRS, which is, broadly, confirmation of the IRS estate tax account

status after processing of the return. In practice, it serves as formal evidence that the IRS has accepted the estate tax return as filed. It is not the same as the transfer certificate and does not serve the same asset-release function. The request for a closing letter is generally made no earlier than nine months after the filing of Form 706-NA, and further processing time should be expected.

Conclusion

US estate and gift tax exposure for Irish residents is often a classification exercise. The key questions are whether the individual is an NRNC, what asset is legally and beneficially owned, and whether that asset is *US-situs* for US transfer tax purposes.

Patrick's example illustrates why the analysis should be completed before a taxable event occurs. Direct holdings in US-incorporated shares can create a material US estate tax liability, while indirect holdings, joint accounts, trusts and spousal transfers require separate review. Irish tax consequences and any available relief for double taxation should also be considered before relying on any US advice.

Finally, from an Irish perspective, although worldwide assets are generally within the scope of CAT, consideration should be given to the potential application of the treaty where *US-situs* assets are involved. In certain circumstances *US-situs* assets may be excluded from the Irish CAT charge where the deceased was domiciled in a US state and the assets form part of a US estate. However, the availability of this relief is highly fact specific and requires careful analysis of both the treaty provisions and the deceased's domicile position.



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Flaherty v Revenue Commissioners: When Is a Contract “Conditional”?



Introduction

The Supreme Court’s decision in *Flaherty v Revenue Commissioners* [2026] IESC 4 represents a significant judicial consideration of the meaning of a “conditional contract” for the purposes of s542(1)(b) of the Taxes Consolidation Act 1997 (TCA 1997). The underlying dispute related to a capital gains tax (CGT) assessment raised by Revenue (“the assessment”) and the availability of revised entrepreneur relief on the disposal of a fishing vessel and its associated fishing rights, which was appealed by the taxpayer to the Tax Appeals Commission (TAC) and thereafter to the High Court and the Court of Appeal, ultimately coming before the Supreme Court.

The broader significance of the decision lies in the Supreme Court’s detailed analysis

of when a contract will be regarded as “conditional”, such that the date of disposal will be the date on which the relevant condition is satisfied rather than the date of the contract. Before the Supreme Court’s decision, judicial pronouncements on s542(1)(b) TCA 1997 were limited, as can be seen from the judgments of the Court of Appeal and High Court in this case, which mainly referenced contract case law and precedents from other jurisdictions in understanding what constitutes a conditional contract.

Contracts containing conditions and completion requirements, including regulatory approvals and third-party consents, often arise in practice, but there was limited guidance on which of those matters would engage

s542(1)(b) TCA 1997. This case provides welcome clarification regarding the distinction between a genuinely conditional contract and a contract that contains mutual obligations, procedural requirements or events within the control of third parties.

This article reviews the background of this case and its progression from the TAC to the Supreme Court and examines the Supreme Court's analysis of conditional contracts and the implications of the new guidelines set down by the Supreme Court for considering what will render a contract conditional in the context of s542(1)(b) TCA 1997.

Legislative Background

Section 542 TCA 1997 determines the time at which a disposal and acquisition occur for CGT purposes. Sub-section 542(1)(a) establishes the general rule that the relevant date of disposal is the date that a contract is made rather than the later date on which the asset passes to the purchaser:

“Where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made **shall be the time at which the contract is made** (and not, if different, the time at which the asset is conveyed or transferred) [emphasis added]”.

The general rule in sub-section (1)(a) is subject to the exception contained in sub-section (1)(b) (and sub-section (2), which is not relevant to this case), which alters the time of disposal where the relevant contract is conditional:

“Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made **shall be the time at which the condition is satisfied** [emphasis added]”.

When a disposal is deemed to occur for CGT purposes may be significant for a taxpayer for a number of reasons, the most obvious

implication being that the disposal date will determine when the taxpayer must pay any CGT arising on the disposal and report details of the disposal to Revenue in a tax return. The date of disposal was relevant in this case as the question of whether the disposal took place when the contract was made (under s542(1)(a) TCA 1997) or on the satisfaction of a condition if the contract was conditional (under s542(1)(b) TCA 1997) would determine whether revised entrepreneur relief under s597AA TCA 1997 was available on the disposal.

Revised entrepreneur relief was introduced by Finance Act 2015, and applies to disposals of chargeable business assets on or after 1 January 2016 and, subject to meeting the qualifying conditions, allowed a taxpayer to pay CGT at a reduced rate of 20% on the first €1m of chargeable gains arising (Finance Act 2016 subsequently reduced the 20% rate to 10% for disposals of chargeable business assets on or after 1 January 2017).

Facts of the Case

The case centred on a Memorandum of Agreement executed on 21 October 2015 (“the memorandum”) between Mr Flaherty (“the appellant”) and Antarctic Polyvalent Fishing Company Limited (“the purchaser”) for the sale of the fishing vessel *Glór na dTonn* (“the vessel”), its equipment, spare parts and associated fishing capacity (its “capacity”).

The memorandum

The memorandum was relatively short and provided that a deposit of €500,000 was payable by the appellant on signing of the memorandum, with the balance of the consideration of €4.5m being payable “in exchange for the completion documentation” listed in the second schedule of the memorandum.

The second schedule of the memorandum set out the completion documents that had to be received by the purchaser's solicitor before completion of the sale of the vessel could take place:



- “1. Up to date Transcript of the Register
2. Certificate of Registry
3. Bill of Sale
4. Discharged Marine Mortgage
5. Up to date copies of Vendor’s Licences from MSO
6. Explanation of all acts appearing on Searches against the Vendor and against the Vessel
7. All other documents in the Vendor’s Control and possession relating to the Vessel
8. Satisfactory Survey
9. Confirmation of Fishing Entitlements.”

Arguments by the appellant

There are detailed rules governing the obtaining and use of “fishing entitlements” in Ireland. For the purchaser to utilise the vessel and its capacity for its intended purpose of commercial sea fishing, it would have to comply with an extensive regulatory framework (described below). Although the memorandum did not contain any provision expressly stating that the sale of the vessel was “subject to” the grant of any necessary regulatory approvals, the appellant’s position was that several provisions of the memorandum, when understood in the context of the regulatory framework governing sea-fishing vessels, had the effect of rendering the memorandum conditional within the meaning of s542(1)(b) TCA 1997.

The first conditional provision of the memorandum identified by the appellant was clause 1.1, which provided:



“Subject to the provisions of this agreement, the Vendor agrees to sell and the Purchaser agrees to purchase the Vessel and Capacity, together with all of the equipment thereon as viewed and agreed by the Parties hereto including all spare parts in the ownership of Vendor and with all Plans and Certificates relating to the Vessel in the Vendor’s possession or under its control, at the date of delivery of the Vessel [emphasis added].”

The appellant’s position was that the repeated references in the memorandum to the sale of both the vessel and its capacity were significant, in that the memorandum was for the sale of the vessel and capacity together as a package and the relevant capacity could not simply be transferred by contract between the parties. Rather, the regulatory authorities had to permit the capacity to be assigned to the purchaser through the statutory licensing regime and administrative processes.

The second key provision identified by the appellant was clause 2.3. This provided that the purchase monies would be held pending receipt by the purchaser of a validly executed bill of sale transferring ownership of the vessel and a “capacity assignment”, together with various associated documentation (“the bill of sale”).

The appellant contended that this clause demonstrated that the parties themselves recognised that something more than an ordinary transfer of title was required before the sale could be fully implemented. The purchaser was not merely acquiring a vessel; rather, it was acquiring a vessel together with the ability to operate commercially as a fishing vessel.

Particular emphasis was placed by the appellant on the final item of the second schedule, “Confirmation of Fishing Entitlements”, which he argued was, in practical terms, a reference to the various regulatory permissions required for the vessel to operate commercially. Because such matters depended on decisions of third parties, the appellant argued that the sale could not become fully effective until those matters had been resolved. Therefore the memorandum contemplated the sale occurring only after the purchaser’s solicitor had received the completion documentation listed in the second schedule. In the appellant’s submission, these provisions demonstrated that completion of the transaction was contingent on successful completion of the regulatory process.

The regulatory framework

To understand the appellant’s position that the memorandum was a conditional

contract for CGT purposes, it is necessary to understand the regulatory framework governing Irish sea-fishing vessels. At EU level, Member States are subject to fleet capacity limits measured by reference to gross tonnage and engine power. Under Articles 22 and 23 of Regulation (EU) 1380/2013, new capacity cannot simply enter a national fishing fleet without a corresponding withdrawal of existing capacity. The objective is to maintain overall limits on fishing capacity and thereby assist in the management of fish stocks.

The practical consequence is that capacity acquires significant commercial value. Capacity can be bought and sold and forms an important part of the value of many fishing vessels, as without capacity, a sea-fishing vessel cannot be used for its intended purpose. As Murray J observed (paragraph 9 of the Supreme Court judgment):

“capacity...is a privately held and traded asset, and the maintenance of capacity is relevant to the licensing and registration of Irish sea fishing boats due to the requirements of EU law”.

At a high level, the regulatory and administrative process for the sale and acquisition of a sea-fishing vessel and capacity works as follows:

- A sea-fishing vessel requires a sea-fishing boat licence; in Ireland such licences are granted by the Registrar General of Fishing Boats under the Fisheries (Amendment) Act 2003. Once ownership of a vessel changes, the existing licence ceases to have effect and must be surrendered. A new application must then be made by or on behalf of the new owner.
- Every Irish sea-fishing vessel must be entered on the Register of Fishing Boats. An application for registration must be made by a vessel's owner. Registration depends on the licensing requirements being satisfied.
- Certain ships over a certain weight (such as the vessel in this case) must be transferred by way of a bill of sale.

Crucially, both registration and licensing require the purchaser already to be the owner of the vessel. As Murray J repeatedly emphasised, ownership had to pass before the purchaser could obtain either registration or a fishing licence.

Completion

After the signing of the memorandum the purchaser made an initial payment of €65,000 to the appellant on 17 December 2015. The bill of sale for the sale of the vessel was signed by the appellant on 21 December 2015, and the appellant transferred the vessel to the purchaser on the same date. On 22 December 2015 the purchaser applied to the Register of Shipping, Port of Galway, to be registered as the owner of the vessel. The application included the bill of sale and a declaration of ownership signed by a director of the purchaser.

On 11 January 2016 the purchaser was notified that it had been granted a “non-operative” licence in respect of the vessel and a certificate of registration in respect of the vessel issued to the purchaser. The purchaser paid the outstanding consideration to the appellant of €4,930,000 on 19 January 2016 and €5,000 on 10 February 2016.

Revenue review

Revenue initiated an aspect query against the appellant in 2017. As part of its review Revenue requested further information regarding the basis for the appellant's revised entrepreneur relief claim in his 2016 CGT computation and supporting documents regarding the date of sale of the vessel and its capacity.

After review of the memorandum and associated documents Revenue informed the appellant that in its view the memorandum was not a conditional contract within the meaning of s542(1)(b) TCA 1997, therefore the disposal of the vessel and its capacity occurred in 2015 for CGT purposes, and the appellant was not entitled to claim revised entrepreneur relief on the disposal given that the relief was operative only from the beginning of 2016.

In response the appellant advised Revenue that the memorandum was a conditional contract on the basis that the sale of the vessel and its capacity was subject to a number of conditions. As set out above, the process for the purchaser obtaining the relevant fishing rights that were being acquired under the memorandum was subject to review and approval by third parties and would require the purchaser to be registered as the new owner of the vessel. The appellant’s position, therefore, was that the disposal took place in January 2016, when the purchaser was registered as the vessel’s owner.

After further correspondence between Revenue and the appellant, Revenue issued a notice of assessment to CGT to the appellant on 27 April 2018 for the sum of €130,000, representing the underpayment of CGT arising from the appellant’s claiming revised entrepreneur relief on the disposal. The appellant appeal this notice of assessment to the TAC.

The TAC Decision

The appellant’s principal argument before the TAC was that the memorandum was conditional upon:

- completion of the bill of sale,
- transfer of the sea-fishing licence and
- registration of the vessel in the purchaser’s name.

The appellant further argued that these matters could be frustrated by various third parties and therefore constituted conditions whose fulfilment was required before a disposal could occur, and this meant that the memorandum equated to a conditional contract.

If the TAC did not consider that the language included in the memorandum clearly provided that the sale of the vessel and its capacity were conditional on satisfying the above conditions, the appellant asked the TAC to imply such a term into the memorandum to reflect the clear intentions of the parties under the business efficacy doctrine.

On that basis the appellant’s case was that the disposal of the vessel and its capacity occurred in January 2016 pursuant to s542(1)(b) TCA 1997 and therefore revised entrepreneur relief was available to be claimed by the appellant against any capital gain arising on the disposal.

The Commissioner rejected the appellant’s arguments and concluded that the contract contained neither express nor implied conditions for the purposes of s542(1)(b). The references in the memorandum to documentation and completion requirements were viewed as procedural rather than conditional. Particular emphasis was placed on the absence of express language in the memorandum, which did not say that the sale of the vessel and its capacity was “subject to” any contingent conditions or provisions of the documentation listed in schedule 2 of the memorandum.

The Commissioner did not consider it necessary to examine in detail whether the doctrine of frustration could apply if performance of the memorandum became impossible if the necessary third-party actions required to facilitate the transfer of the capacity to the purchaser were not completed. The Commissioner also rejected the appellant’s contention that any conditions should be implied into the contract under the business efficacy doctrine. In the Commissioner’s view the only practical effect of implying the proposed term would be to reduce the appellant’s CGT liability, which did not justify implication of a contractual term. Although these arguments are not the focus of this article, it should be noted that they were subsequently raised and expanded upon by the appellant at each subsequent appeal and were dismissed by each court in turn.

Accordingly, the TAC upheld the assessment in determining that the memorandum was not a conditional contract, that disposal of the vessel and its capacity occurred on 21 October 2015, when the memorandum was signed, and therefore that revised

entrepreneur relief could not be claimed by the appellant on the disposal.

The High Court Decision

The High Court upheld the TAC determination, Nolan J agreeing that the memorandum contained no express wording making the sale of the vessel and its capacity conditional on obtaining regulatory approvals or documentation.

The High Court distinguished between a contract being conditional and a contract requiring certain acts to be performed before completion. The memorandum provided that completion documentation would be exchanged for payment of the consideration, but it did not state that the contract itself was conditional on obtaining that documentation.

Nolan J regarded the requirements in the memorandum as procedural rather than conditional. If the required documentation were never obtained, there would simply be no completed disposal. However, that possibility did not transform the memorandum into a conditional contract.

The High Court therefore rejected the appellant's appeal and upheld the assessment.

The Court of Appeal Decision

The Court of Appeal delivered a lengthy and detailed judgment through Whelan J, which undertook an extensive review of contract law principles and terminology, including the potential distinctions between:

- promissory contracts – where the parties simply agree to perform certain obligations, which may be required to be carried out before a sale under the contract can be completed;
- contingent contracts subject to conditions precedent – where no legally binding contract between the parties comes into existence until an essential condition has been satisfied; and
- contingent contracts subject to conditions subsequent – where there is a legally binding contract between the parties, but their obligations to complete the contract are subject to the fulfilment of a condition, and if this does not occur the contract may be terminated.

A key feature of the Court of Appeal's analysis was its conclusion that s542(1)(b) TCA 1997 is concerned only with certain forms of contingent conditions precedent. According to the Court of Appeal, the relevant factor in determining whether a contract was conditional was whether the purported condition prevented the coming into existence of any contract between the parties.

The Court of Appeal concluded that the appellant and the purchaser intended to enter into an immediately binding agreement on 21 October 2015. The regulatory steps that followed were simply aspects of implementing the transaction within an established regulatory framework. They did not prevent a binding contractual relationship from arising.

The Court of Appeal attached particular significance to the fact that after the signing of the memorandum the appellant would not have been free to sell the vessel to somebody else. That fact was inconsistent with the proposition that no binding sale agreement existed until January 2016. The appeal was therefore dismissed.

The Supreme Court's Analysis

The Supreme Court, in granting leave to hear this matter on appeal from the Court of Appeal, considered that the construction of s542(1) TCA 1997 was a matter of general public importance. The Supreme Court approached its analysis by focusing on the purpose of s542. Murray J emphasised that the provision creates a deemed date of disposal for CGT purposes. The legislation does not determine when a disposal actually occurs as a matter of law; rather, it designates the date that will be treated as the disposal date for CGT purposes, and if a sale does not complete for whatever

reason, then there will simply be no disposal for CGT purposes.

The Supreme Court observed that s542(1)(a) establishes the general rule that disposals under contracts are deemed to occur when the contract is made, s542(1)(b) is therefore an exception and must be interpreted in that context, and the exception cannot be interpreted so broadly that it swallows the general rule. An interpretation of s542(1)(b) under which every contract containing obligations or contingencies became a conditional contract would effectively deprive s542(1)(a) of any practical operation.

Contract law terminology

In analysing the relevant case law on conditions in contracts, the Supreme Court recognised that the legal terminology surrounding contractual conditions is notoriously imprecise. Murray J observed that concepts such as contingent contracts, conditions precedent, conditions subsequent and promissory conditions are often used inconsistently in legal authorities, with there being six potentially different meanings of the term “condition” in a contract law context.

The Supreme Court therefore observed:

“While the cases and terminology considered by the Court of Appeal are helpful in illuminating the various situations that fall to be addressed by contractual conditions, there is no reason to believe that the Oireachtas had any one of these terms in mind when enacting the section – although clearly the situation it did have in mind is likely (at least in part) to be captured by one of these terms.”

The Supreme Court ultimately determined that in understanding conditionality for CGT purposes the question is not whether a particular contractual provision may be categorised as a condition precedent or condition subsequent in some abstract contractual sense. Rather, the question is

whether the contract is “conditional” in the manner contemplated by s542(1)(b) TCA 1997.

What s542(1)(b) TCA 1997 does not cover

The Supreme Court identified two categories of contracts that fall outside the contemplation of s542(1)(b).

Ordinary mutual promises

The Supreme Court was clear that a contract does not become conditional merely because one party’s obligation depends on the other’s performance. Most contracts operate in precisely that way. A purchaser may be obliged to pay only when the vendor transfers the asset. Equally, a vendor may be obliged to transfer only upon payment. These are ordinary contractual promises and are not conditions for the purposes of s542(1)(b).

Where no contract yet exists

The second excluded category consists of arrangements where no contract exists unless and until a specified event occurs. The Supreme Court disagreed with parts of the Court of Appeal’s analysis and held that s542(1)(b) assumes the existence of a contract, given that it represents an exception to the general rules in s542(1)(a), as explained by Murray J:

“Section 542(1)(a) is concerned, and concerned only, with a situation in which an asset is disposed of ‘under a contract’. Section 542(1)(b) TCA is concerned with that same situation (‘[w]here **the** contract ...’). The structure of the section suggests that ‘the contract’ is the same contract as referred to in s. 542(1)(a) TCA ‘under’ which the asset is disposed [of or] acquired, and the language used puts beyond doubt that the provision assumes that there is a contract providing for an obligation, but that that obligation is itself conditional [emphasis in original].”

Accordingly, arrangements that are “subject to contract” or otherwise incapable of creating contractual obligations until a future event occurs fall outside s542(1)(b). In such situations

there is simply no contract at all until the relevant event occurs. Once a contract is eventually formed, s542(1)(a) will operate in the ordinary way.

When is a contract conditional?

The key outcome of the Supreme Court's decision is the four-part test formulated at paragraph 54 of Murray J's judgment, which outlines the circumstances in which a contract will be conditional for the purposes of s542(1)(b) TCA 1997:

"The provision operates where, and only where, there is:

- (a) a legally enforceable contract between A and B;*
- (b) 'under' which it might be said that A has agreed to dispose of, and B to acquire, an asset the disposition of which is subject to Capital Gains Tax;*
- (c) where the obligation of A to dispose of, and that of B to acquire that asset is conditional upon an event; and,*
- (d) where no contractual obligation to dispose of, and no obligation to acquire, that asset comes into being unless and until that event occurs. This is to be distinguished from the situation in which there is a contractual obligation to dispose of or acquire the asset irrespective of whether the 'event' occurs, but where the non-occurrence of the event may operate generally, or after the effluxion of a period of time, to extinguish that obligation, or to allow one or other parties to treat itself as discharged from any obligation of performance."*

The above test cuts through the extensive analysis carried out by the Court of Appeal on the labelling of contractual terms and clarifies that the conditionality of relevance to s542(1)(b) is whether the obligations of a purchaser to acquire, and a vendor to sell, a chargeable asset are contingent on

the happening of some event specified in the contract.

The Supreme Court Decision

Murray J's judgment provided a number of useful observations on some of the practical indicators relevant to determining whether s542(1)(b) TCA 1997 applies and why the appellant's case could not succeed.

Drafting

The appellant failed to satisfy the Supreme Court that the language contained in the memorandum supported his case that the sale of the vessel and its capacity was conditional on the purchaser obtaining the various regulatory approvals required to use the vessel for its intended sea-fishing purpose. The appellant effectively asked the court to treat the words "confirmation of fishing entitlements" in schedule 2 of the memorandum as shorthand for the complex collection of registration, licensing and associated third-party approvals without producing evidence demonstrating that this was their accepted meaning within the industry.

Murray J observed:

““The Agreement did not refer to the grant of a sea-fishing licence, the registration of the vessel in the name of the purchaser, or the registration of specified tonnage and engine capacity...it is very difficult to see how the Commissioner or a court could superimpose this on the written agreement without at least some evidence of context that would permit the conclusion that as a matter of trade practice, this was what the term meant and would have been objectively understood to mean by those conversant with the industry.”

The Supreme Court emphasised that parties who genuinely intend a disposal obligation to arise only upon satisfaction of a specified event could be expected to expressly reflect that in the transaction documents. Although express

wording is not an absolute requirement (e.g. if there was clear practice in a particular market or industry), its absence is likely to be highly influential.

This observation aligns with the Supreme Court’s later comments regarding third-party consents that where parties truly intend there to be no obligation to dispose of or acquire an asset until specified consents are obtained, one would ordinarily expect that intention to be clearly reflected in the contractual documentation.

Operation of the regulatory framework

The appellant’s case also placed substantial weight upon portraying capacity as a right that could only be extinguished and recreated through administrative decision-making.

The documentary evidence before the TAC suggested that the capacity was simply assigned. Most notably, the 7 January 2016 communication from the licensing authority stated: “capacity has been assigned to Antarctic Polyvalent Fishing Co Ltd as per capacity assignment note”.

The Supreme Court considered that the documentary record did not support the characterisation of the regulatory process advanced by the appellant. Murray J noted that if the appellant wished to contend that the entire transaction depended upon uncertain regulatory decisions of a kind sufficient to prevent contractual obligations arising in the first place, it was incumbent on him to produce evidence supporting that contention.

Regulatory context

The appellant had argued that the licensing and registration requirements to be completed by the purchaser were preconditions to a binding obligation to transfer the vessel and its capacity.

The Supreme Court found that, in practice, the legislative framework required the reverse sequence, with the regulatory regime requiring ownership of the vessel to transfer before the

purchaser could apply to become the vessel’s registered owner and obtain a sea-fishing license.

The purchaser could not obtain a fishing licence unless it already owned the vessel, and similarly, registration could be obtained only by the owner, leading Murray J to conclude that

“The only way the sea-fishing boat licence and, thereafter, registration of the vessel could be obtained by the purchaser was if he first became owner of the vessel. On its face, this was not consistent with there being no contractual obligation to dispose of the vessel unless and until *inter alia* that licence and registration was obtained.”

The statutory background was a relevant contextual factor in interpreting what had been agreed by the appellant and the purchaser in the memorandum.

Third-party consents

The Supreme Court rejected any broad proposition that a contract becomes conditional simply because any third-party consent or action is required to effect the sale.

The appellant’s case was that where the occurrence of an event depends on a third party outside the control of the contracting parties, the contract must necessarily be conditional. Murray J expressly rejected that proposition:

“It is not true to say...that (as the appellant contended) where the parties make provision for an event over which neither has control, the contract is for that reason alone conditional.”

Furthermore, Murray J explained that the facts and circumstances must be examined to determine whether the third-party action required is sufficient to render the obligations of the parties conditional on its happening:

“For example, if the consent of a third party was *pro forma* and/or there were

limited circumstances in which that consent could be lawfully withheld, the case for the condition precluding the creation of obligation to sell is considerably weaker.”

Although dependence on an event within the control of a third-party action may be relevant in determining whether a contract is conditional, parties remain free to enter into binding contractual obligations even though performance assumes that a third party will act in a particular manner.

Conclusion

The Supreme Court’s decision in *Flaherty v Revenue Commissioners* provides significant clarification on the circumstances in which s542(1)(b) TCA 1997 will be engaged and the meaning of a conditional contract for CGT purposes. While affirming the decisions reached by the TAC, the High Court and the Court of Appeal, the Supreme Court moved away from reliance on traditional contract law labels and terminology and instead focused on the statutory purpose of s542(1) and the

interaction between the general rule under sub-section 1(a) and the exception that it contains under sub-section 1(b) in determining when a disposal occurs.

The Supreme Court has now set out the specific circumstances that will render a contract conditional as situations where:

- a legally enforceable contract exists;
- under which there is an agreement for the disposal and acquisition of a chargeable asset;
- the obligation of the seller to dispose of and the purchaser to acquire the chargeable asset is conditional upon an event; and
- no contractual obligation to dispose of and no obligation to acquire the chargeable asset comes into being until that event occurs.

This test formulated by the Supreme Court, along with emphasis it placed on the requirement for express drafting in contracts to reflect the intentions of the parties, goes some way in clarifying when contracts will be conditional for CGT purposes.

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Clearing the Succession Hurdle: Using Growth Shares to Pass Value to the Next Generation



Introduction

The succession of family businesses and wealth remains one of the most complex challenges in Irish tax planning for individuals and their families. Aside from the various tax technicalities, one of the main hurdles to clear is ensuring the continued future success of a business while maintaining family harmony. Succession planning is often viewed as an event, but in practice it is a process – careful consideration is required to preserve a family's wealth as it moves through the generations.

For many founders who have built impressive businesses, sometimes over decades, the regret is not that they structured their succession without sufficient thought – it is that they did not structure it early enough. As the Chinese proverb reminds us, “the best time to plant a tree was 20 years ago; the second-best time is now”. The use of growth shares can embody this wisdom: they allow value to pass to the next generation, but only if the structure is planted early enough to take root.

When we look at shareholdings in a family enterprise, traditional equity transfers can present gift/inheritance tax exposure, particularly for a rapidly expanding enterprise where significant growth in share value is anticipated between now and a future succession event. For children of business owners who are themselves actively involved in the family business, this can serve as a disincentive from driving growth – their additional efforts can ultimately contribute to an elevated tax liability on a future succession event due to increased share value.

Growth shares offer a sophisticated mechanism to allow the next generation to participate in the value of the business and to be recognised for the contribution they make to driving its growth.

This article examines the tax-efficient structuring of growth shares in a succession-planning context under Irish tax law, considers non-tax factors involved when implementing growth shares, outlines the valuation methods and discounts for growth shares for tax purposes, and explores the availability of reliefs.

Overview of Growth Shares

Growth shares have typically been associated with management incentive plans whereby employees are rewarded with a share in a company to which future value accrues. Those shares would have “hope” value, and the difference between the value placed on the shares and what the employee pays for them is considered to be a benefit-in-kind (BIK) and liable to income tax in accordance with s112 TCA 1997. In effect, the employee is taxable on the prospective value of the share, which is calculated by reference to the likelihood of the share value increasing over time. Often the shares may be awarded in exchange for no consideration, and in such cases BIK is paid on the full value attributed to them. Usually, a fresh issue of new shares occurs, which should not give rise to any stamp duty.

By contrast, in a family situation a gift of shares between family members should be

considered a capital transaction to which capital acquisitions tax (CAT) and capital gains tax (CGT) may apply. In addition, a transfer of shares, unlike a fresh issue of shares, should give rise to stamp duty.

Therefore, the context in which the shares are acquired or transferred has a significant bearing on the appropriate tax treatment. Factors to consider include the following (however, the list is not exhaustive):

- Are the family members also employees of the business?
- Where any family members in receipt of growth shares are employees of the business, are any other family members who are not employees also in receipt of growth shares?
- Are any employees who are non-family members in receipt of growth shares?
- Will all future growth of the business be attributed to the growth shares (more likely in the case of a family member) or merely serve to give the recipient a percentage of the overall future value of the business (more likely in the case of an employee)?
- Does the fact pattern reflect the founder's wider succession plan? The growth shares in the business may be transferred to family members involved in the business while separate provisions are made for the founder's remaining children.

As an example, where two children of the founder have received growth shares and one child is employed in the business and the other is not, it could be argued the benefit should be treated as a gift on the basis that the children have received the growth shares in their capacity as children rather than as employees – especially where growth shares have not been provided to any other non-family member employee.

Therefore, the fact pattern and overall substance of arrangements should be carefully considered to establish whether the transfer of shares represents a reward for employment or a gift between family members.

Operation of Growth Shares

If we consider an example of a founder who owns and runs a business with two of his or her children, the share classes may be restructured to result in two separate classes of shares. One share class is capped in value (e.g. the ordinary shares) – typically, at current market value – with any future value of the company in excess of current market value allocated to the other share class, typically known as “growth shares”, and the current market value becoming the “hurdle rate”. These growth shares can be gifted by the founder to his or her children.

Historically, for CAT purposes, given that the ordinary shares in the above scenario encompass all of the current market value of the company, the view was taken that the gift of growth shares at the date of allotment had little to no value. This was on the basis that it was the value of the shares at the date of the gift that was relevant. For example, if the company was liquidated immediately, the holder of the growth shares would not be entitled to any value, as all of the value would be paid out to the holder of the ordinary shares.

Thus, the concept of capping shares and having separate shares to which future value may arise was predicated on the future value accruing to the holder of these shares. As the value accrues to the growth share in the future, after the acquisition of the shares, the acquisition itself could not be a gift, as the accrual or increase in value occurs after the recipient had acquired the shares.

In effect, the tax treatment is very much determined by commercial reality, as the recipient acquires the shares at little to no value and then benefits from the future performance of the business, which, if it performs well, substantiates a value being attributed to those shares in the future.

Revenue removed any ambiguity in that context when it updated Chapter 13 of its Share Schemes manual in July 2021 insofar as it related to employee shares. The updated

manual provides that the shares be valued based on relevant accounting standards. From an accounting perspective the shares are, in effect, an option on the future value of a company, and consequently option pricing models such as Black-Scholes were used to determine the value of growth shares.

However, this commentary was included in the Revenue manual only insofar as it relates to employee shares. In recent years it has been considered more prudent to adopt a similar quantitative basis for growth shares gifted to family members, and as a result some value is accorded to them based on future potential of the business.

Optimal Use of Growth Shares

Commercial projections

As described above, growth shares are optimally deployed in private companies where the business model is predicated on significant future value creation, typically those with projected compound annual growth rates or clear strategic expansion trajectories. The mechanism is particularly well suited to businesses where future value is anticipated to be materially distinct from current value – such as technology firms scaling to new markets, professional-services practices expanding geographically and manufacturing businesses entering higher-margin product lines. The hurdle mechanism inherent in growth shares allows the founder or existing shareholders to ring-fence current value while incentivising their successors to drive incremental growth. Conversely, growth shares are entirely inappropriate for businesses in structural decline, where the hurdle is unlikely to be exceeded, or for companies with imminent exits (less than two years), where the administrative burden of valuation and documentation can outweigh the incentive benefit.

Business value

Determining the source from which the business derives its value is key to

understanding whether the use of growth shares is appropriate for the business. The distinction between expanding and depreciating asset bases is critical to growth share suitability. In expanding-trade scenarios where the business derives value from growing revenues, improving margins or expanding customer bases, growth shares can create tax efficiency and incentive alignment.

In contrast, a company where value is derived from a depreciating asset such as its premises or plant/machinery may render growth shares economically worthless, as the hurdle is either unlikely to be exceeded or likely to be exceeded by an amount on which minimal tax savings can be realised.

Protecting family harmony

Beyond tax efficiency, growth shares serve a critical non-tax function in family business succession by enabling meritocratic value distribution while preserving founder control. In multi-generational transitions the share rights attaching to the growth shares may be structured to allow the founder to retain voting control and security of current value while allocating growth participation to their successors. Growth shares can be used to address a fundamental tension in family succession: the desire to reward active family members (who drive growth) differently from passive investors or non-participating family members. The founder can make provision for the child or children involved in the business through growth shares, whereas they may wish to provide for non-participating children through alternative means outside of their business assets.

Availability of Tax Relief on the Restructure of Existing Shares

Capital gains tax

Where an existing class of share is restructured to create growth shares that are gifted to the next generation, the disponent, in the

absence of relief, should be liable to CGT at a rate of 33% on any difference between the value of the growth shares and the original price paid (likely to be the nominal subscription price).

Retirement relief

Conditions

An individual who has obtained the age of 55 years or older may qualify for retirement relief if they dispose of their business assets to:

- a third party in accordance with s598 TCA 1997 and/or
- a child in accordance with s599 TCA 1997,

where various conditions have been satisfied (as outlined in a previous article by Alan Heuston and Ian Hanrahan, “Application of Entrepreneur Relief & Retirement Relief on Share Disposals”, in *Irish Tax Review*, Issue 2 of 2024) with regard to:

- the founder’s period of ownership of the company,
- whether the company should be regarded as a “family company” based on the percentage of voting rights exercisable by the individual and/or their family, and
- whether the founder has satisfied the working-time requirement.

In addition to the conditions mentioned above, the relief applies to “qualifying assets”, which include chargeable business assets. Therefore, where a disposal of shares in a business takes place, the value of both chargeable business assets and other chargeable assets must be assessed for two reasons:

- to compare the relevant relief threshold against the portion of proceeds attributable to the chargeable business assets and
- to apply the relief to the portion of any gain arising attributable to the chargeable business assets.

Structuring of disposal

The way in which the disposal of shares in a family company is structured should not, in itself, prohibit a claim by the disponer for retirement relief; however, it may be a factor in determining the applicable threshold for a relief claim.

Disposals to any person (individual or company) who does not fall within the definition of child under s599(1) should be regarded as a disposal to a third party for the purposes of retirement relief. Therefore, *prima facie*, the disposal of shares to a company controlled by a child should be considered a disposal to a third party and the lower of threshold of €500,000/€750,000 should apply, depending on the founder's age at the time of disposal.

However, readers should be aware of the exception to the aggregation rules in TCA 1997. While s599(5) sets out that disposals to third parties and children should not be aggregated together, s599(7) contains rules designed to ensure that the thresholds for retirement relief on disposals to children (i.e. €10m up until the age of 69 and €3m where the individual is 70 or older) cannot be extended by claiming relief under the retirement provisions that apply to purchasers who are not qualifying family members.

The exception in s599(7) requires that consideration on a disposal of shares in a family company by an individual to a child in circumstances where the €3m lifetime limit on relief for disposals in the period 1 January 2014 to 31 December 2024 and/or the €3m/€10m lifetime limit on relief for disposals on or after 1 January 2025 applies is to be aggregated with a disposal of shares by the individual to a company controlled by that same child. This arises for the purpose of calculating the relevant threshold limits for relief under s598, i.e. the €500,000 threshold for disposals on or before 31 December 2024 and the €500,000/€750,000 threshold for disposals on or after 1 January 2025.

Where the disponer gifts shares to a personal holding company (PHC) controlled by their child, with no separate gift directly to the child, the above aggregation rule should not come into play.

However, s598(1) includes a provision with regard to the definition of "chargeable business asset" for purposes of retirement relief – that the transfer of shares to another company (e.g. a child's PHC) where the individual remains connected to the first-mentioned company after the disposal is excluded from the relief. The founder typically retains a separate class or classes of shares in their company after the gift of growth shares to their successor(s) and in such a case would be regarded as remaining connected with the company and not being in a position to claim retirement relief where the gift is to another company, under clause (III) of the definition of "chargeable business asset" in s598 (1)(a) TCA 1997. However, it is important to note that the legislation contains a "bona fide" test whereby the transfer of shares as mentioned above should be treated as the transfer of "chargeable business assets" where it would be reasonable to consider that a disposal of such assets is made for bona fide commercial reasons and does not form part of any tax-avoidance arrangement or scheme under s598(1)(f) TCA 1997.

Even in cases where the disponer does not remain connected to the company, they would have to meet a significantly lower threshold of €500,000/€750,000, compared to the threshold for disposals directly to their child, in order to avail of the relief.

Retirement relief under s599 also includes clawback provision whereby the relief is withdrawn on a future disposal by the beneficiary within a period of six years. The beneficiary would be required to pay CGT on the original disposal by the disponer (i.e. the parent/founder), in addition to the CGT on their own subsequent disposal.

Finally, the legislation provides that relief will be available only where the disposal is made for genuine commercial reasons and its sole or main purpose is not the avoidance of tax.

Example 1

Consider the case of Michael O'Connor, aged 62, who has owned and actively managed O'Connor Manufacturing Ltd, a family company, since subscribing for shares at nominal value in 1995. Michael satisfies all of the conditions for retirement relief: he is over 55 years old, he has owned the company for a substantial period, the company qualifies as a family company, and he has satisfied the working-time requirement. In June 2025 Michael disposes of growth shares valued at €1.8m directly to his daughter, Sarah. The base cost of these shares is €1, resulting in a chargeable gain of €1,799,999.

As the disposal is made to a child on or after 1 January 2025, Michael qualifies for retirement relief under s599 TCA 1997 with an applicable threshold of €10m (since he has not yet attained age 70). The market value of the qualifying assets of €1.8m falls within this threshold and is therefore relieved from CGT, resulting in no CGT liability for Michael.

In March 2026 Michael considers gifting 25% of the ordinary shareholding in the business, valued at €500,000, to a company controlled by Sarah. Due to the aggregation provisions with regard to calculating the €750,000 threshold on disposals to third parties, retirement relief should not be available on the gift to Sarah's company (i.e. the €750,000 threshold is deemed to have been utilised after the €1.8m gift of growth shares).

Even where Michael had not already made the gift of €1.8m directly to Sarah, and the gift of ordinary shares of €500,000 would be below the threshold, retirement relief would not be available on the gift of ordinary shares as Michael would still retain 75% of the ordinary shares and therefore be connected with the business, subject to the "bona fide" test under s598(1)(f) TCA 1997, mentioned above.

Entrepreneur relief

Under s597AA TCA 1997, revised entrepreneur relief provides a CGT rate of 10% for gains on the disposal of chargeable business assets. There are a number of conditions, including that the taxpayer must have been a director or an employee of the qualifying company, where they spent no less than 50% of their working time in the service of the company in a managerial or technical capacity.

There is a lifetime limit of €1m on gains arising between 1 January 2016 and 31 December 2025. For gains arising on or after 1 January 2026, the lifetime limit increases to €1.5m. You must add together all prior gains on qualifying disposals to check if you have reached your lifetime limit. Only gains on disposals made on or after 1 January 2016 count towards the limit. Any gain above the relevant lifetime limit is taxed at the 33% CGT rate.

Example 2

If we take the same background facts as in Example 1 above, where Michael satisfies the conditions for entrepreneur relief and the €500,000 gift does not qualify for retirement relief, the reduced 10% rate of CGT should apply. Therefore, if we ignore potential marginal relief for the purposes of this example, Michael would be liable to pay CGT of €49,998 (€500,000 less nominal base cost of €25 = €499,975, chargeable gain at 10% CGT). Sarah should be able to claim a credit of €49,998 for the CGT paid by Michael against any CAT liability for her.

Interaction of reliefs

Although retirement relief and entrepreneur relief have mandatory application, the interaction between them is not set out in tax legislation. Where both reliefs apply to a transaction, the €1.5m lifetime threshold is deemed to be utilised to the extent that any capital gain is relieved by way of retirement relief.

It should be noted that where entrepreneur relief applies to a disposal of shares in a

company, the 10% rate applies to the full gain arising (subject to the lifetime limit), even if the company owns investment assets, provided it is a company whose business consists wholly or mainly of carrying on a qualifying business or it is the holding company of a qualifying group. As mentioned above, full retirement relief does not apply to a disposal of shares in a company that owns non-chargeable assets, e.g. investment assets.

Example 3

If we continue Example 2 above and disregard the retirement relief provisions in relation to aggregation and remaining connected with the business after the disposal and therefore assume that retirement relief had been applicable to the gift of ordinary shares valued at €500,000, there would be no issue with this disposal, as a full exemption from CGT would be available by way of retirement relief. However, for future disposals Michael will be regarded as having utilised €499,975 of lifetime threshold for the purposes for entrepreneur relief, being the portion of the relieved chargeable gain.

Capital Acquisitions Tax

On the gift of growth shares, the value of the shares should be liable to CAT at a rate of 33% to the extent that consideration has not been exchanged for the benefit, unless the conditions of business relief are satisfied

Business relief

Business relief is granted on the transfer of “relevant business property”, including a business, a share in a business, or the shares or securities of a company carrying on a business, where the conditions are satisfied. One of the conditions attaching to shares in a company relates to the level of the shareholding held by the beneficiary following the transfer.

In the case of shares gifted by a founder to their child, the conditions in s27 and s93(1)(c) of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) should be satisfied,

whereby the shareholdings of the children and their relatives (including the founder themselves) when taken together constitute control of the company. It is worth noting that in the event that any shares are gifted by the founder to a child's company, the reference to “relatives” includes a company controlled by the donee (i.e. any of the children) in accordance with s27(3) CATCA 2003.

Where the relief applies, it operates to reduce the taxable value of the business property on which CAT is calculated by 90%.

Shares in a family business can qualify where the value of those shares is attributable, directly or indirectly, to businesses that wholly or mainly consist of activities other than dealing in currencies, securities, stocks or shares, land or buildings, or making or holding investments (“excluded businesses”).

Even where the shares are regarded as “relevant business property”, Irish tax legislation excludes certain assets from being eligible for business relief. Therefore, with regard to a shareholding in a company, it is necessary to “look through” the shares to the underlying assets to ensure that each asset has been used for business purposes for a minimum period before the gift (i.e. five years). The value of the shares attributable to any asset not so used (known as an “excepted asset”) will not be eligible for business relief, and the value of the shares attributable to the “excepted assets” is excluded from the relief.

The relief in respect of “relevant business property” can be fully or partially withdrawn in certain circumstances. For gifts and inheritances taken after 1 January 2026, Revenue will withdraw the relief where:

- the business ceases to trade within six years of the valuation date of the gift or inheritance otherwise than because of bankruptcy or winding-up on the grounds of insolvency;
- the relevant business property is disposed of, in whole or in part, within six years of the

valuation date of the gift or inheritance (this includes where the disposal was owing to compulsory acquisition) if the full proceeds from the disposal are not used to acquire replacement relevant business property within one year of the disposal; or

- the relevant business property comprises development land and the disposal is within ten years of the valuation date of the gift or inheritance.

Where the relief is clawed back, the beneficiary would need to settle any additional CAT due.

CGT/CAT offset

A further element of relief is available where both CGT and CAT arise on the same event or gift. In such a case, where CGT is payable, the CGT paid may be credited against any CAT arising for the beneficiary.

The sole requirement is that the beneficiary retain the property or subject matter of the gift for a period of two years. Any disposal of the property within two years of the date of the gift should result in a clawback of the CGT credit given against the CAT, in accordance with s104 CATCA 2003.

Updates in Finance Act 2025

In the context of “excepted assets”, an issue may arise in respect of the excess cash held through the shares. Whereas shares held in a business may be eligible for business relief, the relief may not apply to the entire value of the shares, as the value of the shares attributable to any “excepted assets” cannot avail of the relief, i.e. an amount of cash held through the shares where it is not used for business purposes or is surplus to working capital requirements.

What constitutes excess cash can be subjective and was considered in Tax Appeals Commission (TAC) determinations 132TACD2021 and 85TACD2023, where it was determined that excess cash qualified for business asset relief as the assets were used “wholly or mainly for the purposes of the business”.

Finance Act 2025 amended the meaning of “excepted assets” for the purposes of claiming business relief. Section 100(2) CATCA 2003, as amended by Finance Act 2025, provides that where assets that are gifted/inherited are “required” at the date of the gift or inheritance to be used for a specific purpose of the business within six years, the assets should not be regarded as “excepted assets”. In other words, for excess cash, for example, to qualify for business relief, it must be used for business purposes within the six-year clawback period. Previously, excess cash qualified for relief where it could be determined it would be used “wholly or mainly for the purposes of the business” without the stipulation of a particular timeframe.

Therefore, careful consideration should be given to how companies can evidence and document the business requirement of “excepted assets” such as surplus cash, both at the time of initial transfer and throughout the six-year period until at such time the “excepted asset” is put to its intended business use.

Divergence in Valuation Principles for CGT and CAT Purposes

Shares are valued at “market value” for CGT purposes, which means the price that those shares may reasonably be expected to fetch on a sale in the open market. Market value is also the applicable value for stamp duty purposes.

However, Irish tax legislation sets out special rules for the valuation for CAT purposes of shares held in private companies where that person's shares, taken together with those of their relatives, would constitute a controlling interest in accordance with s27 CATCA 2003.

In such a case the shares are valued on a majority basis irrespective of the size of the shareholding that any one individual may hold or may receive on a gift or inheritance. Therefore, after the gift of growth shares, the value of the shares of the founder and their successor(s) is their value as part of the controlling holding, which should be more

valuable than the value attributable to the shares in isolation, in accordance with s27 CATCA 2003.

In comparison, in determining market value for CGT purposes, a discount is generally applied to holdings of a minority interest (<50%) because it is not worth its proportionate share of the company's value, given that the minority owner lacks the voting and other powers to control the company's actions. Revenue also outlines its approach to discounts for majority shareholdings in paragraph 21.13 of its "Valuation of Unquoted Shares" CAT manual.

The starting point for each tax can be different – this is relevant when it comes to assessing the relative application of the reliefs, as any relief available will be assessed relative to the value placed on the shares for the particular tax to which the relief applies.

This means that the divergence in valuations can give rise to inherent mismatches as follows:

- The recipient of a gift claiming the CGT/CAT offset where the two taxes are applicable to different valuations of the same chargeable asset for CAT and CGT. This may prevent the recipient from optimising the benefit of the offset.
- Applying the appropriate level of discount on the disposal of a majority shareholding to multiple individuals who will each hold a minority stake after the transfer. The question arises as to whether the disponent is regarded as having made a single disposal of a majority shareholding or multiple separate disposals of minority shareholdings – and whether the parent is entitled to apply a minority discount. In a case before the TAC that dealt with a similar fact pattern (198TACD2024), the Commissioner found in favour of the taxpayer and concluded that it is the market value of the shares transferred in each disposal that must be considered. However, careful consideration should be given to the structuring of the disposal and

how the disposals are documented from a legal perspective to support the position.

- The recipient of shares may be subject to CAT on the undiscounted market value of the shares (excluding the minority discount per s27 CAT 2003) while having to regard the discounted value as their base cost for CGT purposes. Based on the TAC determination in 12TACD2017, the market value rules in s548 TCA 1997 apply separately in respect of disposals and acquisitions, which is borne out by the fact that s547(1) refers to acquisitions whereas s547(4) refers to disposals. Therefore, there is nothing to prevent the market value on disposal being different from the market value on acquisition for CGT purposes.

Alteration of Share Rights

Where the process of designating growth shares involves an alteration of the share rights attaching to those shares, the treatment of both distributions and value shifting should be considered under s130 and s543 TCA 1997 to the extent that consideration has not been exchanged for the benefit. For example, if a parent wholly owns a company and newly created shares are issued at nominal value to one of their children, where the share rights are subsequently altered, a portion of the value of the parent's shares may be regarded as passing to the child's newly created shares, thereby prima facie falling within the value-shifting provisions under s543.

As readers will be aware, the parent in the immediately above example will be regarded as having made a disposal to their child where the value-shifting provisions apply, and the CGT/CAT analysis from the previous section will be applicable.

However, the application of s543 has been the subject of recent consideration by Allen J in the High Court in *Raymond Hughes v The Revenue Commissioners* [2019] IEHC 807. The underlying facts involved a scheme ultimately to liberate €2m from a company within a

corporate structure and put the money in the hands of the shareholders – the appellant and his wife – by altering the rights attaching to their shareholding.

It was found that the rights attached to the shares were valuable rights that were divisible from the shares to which they were attached and were assets. It was also decided that the extinguishment of a right and the creation of a new right could be a mechanism to effect a transfer. Therefore it was held that distribution treatment should apply (without further consideration of the value-shifting provisions), as for such treatment to apply does not require the shareholders to receive the asset in their capacity as such but simply requires that the recipient of the assets is identified.

The decision highlights the importance of considering the application of the broadly defined distribution provisions in circumstances where s543 applies. In the context of whether both s130 and s543 should be assessed with a view to determining the most applicable treatment, the judge decided that it would not be necessary to explore whether any other provisions would be applicable. In addition, the judge found that where a transaction attracts income tax treatment, it will not also be chargeable to CGT under s544(7) and s551(2).

Issue of New Growth Shares

Readers should be aware of the potential tax implications in cases where, instead of restructuring existing shares as outlined in the previous section, a new class of “growth” share is created and issued to recipients – the tax treatment will depend on whether the subscription price of the shares is paid at the date of issue.

Subscription price is paid

For newly issued shares, a valuation is performed based on the share rights attaching to the shares, as well as other variables to reflect their associated “hope” value. Where

the recipient pays an amount representing the market value of the shares at the date of issue, there should be no tax implications on receipt of the growth shares.

Subscription price is not paid (or is partially paid)

After the issuance of new shares, where the recipient pays consideration (if at all) representing an amount less than the market value of the shares at the date of issue, a charge to tax arises in respect of the underpayment’s being regarded as a taxable benefit. Therefore, income tax (for an employee, for example) or CAT (for a family member, for example) may arise, depending on the capacity in which the beneficiary receives the shares, as discussed above.

For clarity, where the growth shares reach their future expected value after the achievement of a particular target, for example, no charge to tax arises, regardless of the value originally paid (if any) at date of issue.

Conclusion

The succession of family businesses can be inherently complex. Growth shares, when properly structured and carefully documented, represent far more than a technical tax-planning device – they embody a fundamental principle of succession planning, allowing the founder to plant a tree that will bear fruit for generations to come by incentivising the next generation to build on the foundation laid by their predecessors without being burdened by the tax consequences of doing so.

The term “hurdle” operates on two distinct levels in the context of growth shares: the hurdle rate on the growth shares themselves must be breached for the family to realise tax efficiencies, and this reflects the wider succession hurdles faced by a founder, such as maintaining family harmony.

By separating current value from future growth, growth shares allow founders to pass wealth to their successors while maintaining control.

The key takeaways are:

- The fact pattern and overall substance of arrangements should be carefully considered to establish whether the transfer of shares represents a reward for employment or a gift between family members.
- Revenue guidance has clarified the approach to valuing growth shares – in a move away from the qualitative valuation basis, the shares should be valued based on relevant accounting standards. This means applying valuation methodologies appropriate to the particular business and fact pattern of the company as determined by a valuation expert.
- Growth shares are optimally deployed in private companies where significant value creation is projected and their implementation aligns with maintaining family harmony.
- Retirement relief should be applicable to a disposal of growth shares – however, readers should be aware of the exception to the aggregation rules designed to ensure that the thresholds for retirement relief on disposals to children cannot be extended by claiming relief under the retirement provisions that apply to purchasers who are not qualifying family members.
- Entrepreneur relief should be applicable to a disposal of growth shares – however, readers should be aware of its interaction with retirement relief.
- Business relief should be applicable to an acquisition of growth shares – however, it is necessary to “look through” the shares to the underlying assets to ensure that each asset has been used for business purposes for the minimum period (i.e. five years for a gift). For excess cash to qualify for relief, it must be used for business purposes within the six-year clawback period.
- There can be a divergence in valuations for CAT and CGT purposes, primarily owing to the minority-discount anti-avoidance legislation for CAT purposes. This can create mismatches with regard to the CAT/CGT offset and the future CGT base cost for the recipient.



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VAT Grouping Reforms: Navigating the New Territorial Landscape



Introduction

“Not all those who wander are lost.” –
J.R.R. Tolkien, *The Fellowship of the Ring*

The recently announced changes to the territorial scope of VAT groups in Ireland have altered the map that taxpayers and advisers have relied on for many years. Like explorers entering unfamiliar territory, businesses with multi-country establishments must now reassess longstanding assumptions about

where the boundaries of a VAT group begin and end. As with any new landscape, the changes present both hazards and opportunities; the challenge is in understanding where they lie and plotting a safe path through.

In this article we outline what is changing, present the legislative and case law backdrop, set out some practical examples of the impact of the changes and provide an outline for what to do next. With the transitional period

for certain VAT groups in Ireland due to expire at the end of 2026, groups impacted by the changes should prepare their map and begin to set out on the journey.

What Is Changing

On 19 November 2025 Revenue issued guidance (eBrief No. 216/25) reflecting a significant update to its interpretation of the territorial scope of Irish VAT groups. The change came into immediate effect for VAT groups formed on or after 19 November 2025. For VAT groups in place before that date, a transitional period up to 31 December 2026 applies, with the new interpretation applying to such groups from 1 January 2027 onwards.

The change, in short, is that an Irish VAT group is interpreted as including only the Irish establishment of members of the group, with any foreign establishments of VAT group members no longer being part of the Irish VAT group. As a result, any supplies between the Irish VAT group and foreign establishments of the VAT group's members are no longer disregarded for Irish VAT purposes. Furthermore, where an entity having an establishment in a VAT group in another EU Member State also has an Irish establishment (whether in an Irish VAT group or not), supplies between that other establishment and the Irish establishment are also no longer disregarded in Ireland under the new interpretation.

This change could therefore have a significant financial and operational impact for groups with supplies between establishments of the same entity (e.g. head office to branch, branch to head office, or branch to branch) where that entity is a member of a VAT group in Ireland or in another EU Member State. This is particularly pertinent for businesses with no or partial VAT recovery on costs (e.g. financial services and insurance institutions), as VAT charges on those intra-entity supplies will likely result in additional VAT costs. There may, however, also be some additional VAT recovery entitlement

where taxable supplies are made by the Irish establishment to its foreign establishments.

Coincidentally, shortly after Revenue announced its change of interpretation regarding the territorial scope of VAT grouping in Ireland, HMRC announced a change to its interpretation of UK VAT groups. As the UK is no longer bound by the jurisprudence of the Court of Justice of the European Union (CJEU), HMRC has taken the opposite view to that now applied in Ireland and most of the EU. A UK VAT group is now deemed to include any overseas establishments of UK VAT group members, regardless of how the VAT group rules are applied in the overseas jurisdiction. This emphasises the importance of considering the overall position with potentially different approaches across jurisdictions.

Context and Legal Backdrop

The legislative basis for VAT grouping in the EU is Article 11 of EU VAT Directive 2006/112 ("the Directive"), which states that:



"After consulting the advisory committee on value added tax (hereafter, the 'VAT Committee'), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision."

Most EU Member States (including Ireland, and the UK before it exited the EU single market and customs union at the end of 2020) have adopted this provision and introduced VAT grouping into their domestic legislation (although the practical impact of VAT groups can vary between Member States). The relevant

domestic provision in Ireland is s15 of the Value-Added Tax Consolidation Act 2010.

For the purposes of this analysis, two aspects of Article 11 of the Directive are particularly important. The first is that members of the VAT group become a “single taxable person”. Therefore, the entities within the VAT group essentially lose their individual character for VAT purposes, such that transactions between those members are disregarded for VAT purposes. This is subject to local exceptions (e.g. supplies of immovable goods within an Irish VAT group are not disregarded).

The second relevant part of Article 11 is the reference to “any persons established in the territory of that Member State”, which speaks to the territorial scope of VAT groups. The exact meaning of this phrase has been subject to debate for some time, with different approaches being adopted historically by different EU Member States. On the one hand, “established in the territory of that Member State” could be interpreted as meaning that, although each member of the VAT group must be established in the Member State of VAT grouping, once that test is met, the entire legal entity (including its foreign establishments, if any) joins the VAT group. This is often referred to as the “whole-entity” approach to VAT grouping. However, an alternative interpretation is that Article 11 limits the territorial scope of the VAT group to only the local establishment of the entity in that Member State, with any establishments of the entity outside of the Member State of the VAT group being excluded from its scope. This is referred to as the “establishment-only” approach to VAT grouping.

Case Law Developments

The question of whether “whole-entity” or “establishment-only” is the correct interpretation became the subject of case law before the CJEU, which ultimately favoured the “establishment-only” approach. This was considered first in the case of *Skandia America*

Corporation C-7/13 (“*Skandia*”) in 2014 and later in the case of *Danske Bank* C-812/19 in 2020. Both cases were referrals from Sweden. Although the judgments in the two cases arguably still left some room for interpretation, they both applied an “establishment-only” approach in deciding the questions referred to the CJEU.

Before discussing these two judgments in further detail, it is also important first to reference the *FCE Bank* C-210/04 judgment, which pre-dated both. The CJEU held in that case that a branch that is not legally separate from its head office is, in the normal course, not a distinct taxable person for VAT purposes. Consequently, services supplied between the head office and the branch (or vice versa) are not supplies for VAT purposes. The *FCE Bank* decision continues to apply where neither establishment is in a VAT group. However, it did not consider the potential impact of VAT grouping, and therefore further case law was required to analyse this topic.

Skandia was the first such case to come before the CJEU. In that case a US-based corporation had a Swedish branch, which was a member of a VAT group in Sweden. Sweden adopted an establishment-only approach to VAT grouping. The CJEU held that the services supplied from the US head office to the Swedish branch (although they were within the same legal entity and would ordinarily be disregarded under the *FCE Bank* principle) could no longer be disregarded because the Swedish branch was part of the Swedish VAT group. Effectively, the inclusion of the Swedish branch in the Swedish VAT group severed the link between the US head office and the Swedish branch for VAT purposes, resulting in VAT applying to supplies for consideration from the US head office to the Swedish branch.

The *Danske Bank* judgment in 2020 took this principle a step further. In that case a Danish bank had a branch in Sweden. The Danish head office was a member of a VAT group in

Denmark, but the Swedish branch was not in a Swedish VAT group. The question was whether the VAT group in Denmark impacted the VAT treatment in Sweden of services received by the Swedish branch. The CJEU held that the VAT group in the Denmark (which did not include the Swedish branch) also had the effect of breaking the link for VAT purposes between the Danish head office and the Swedish branch. The judgment therefore took the establishment-only interpretation a step further by requiring consideration of whether a VAT group exists in both the EU Member State of supply and the EU Member State of receipt of the services.

The *Skandia* and *Danske Bank* judgments brought more sharply into focus certain differences in interpretation of VAT grouping between EU Member States. Those countries that had already adopted an establishment-only approach to VAT grouping, reinforced by the CJEU judgments, continued in that vein. Several countries, including Ireland, that had adopted a whole-entity approach did not immediately make changes but kept the matter under review. Meanwhile, after the *Skandia* decision in 2015, the UK (then an EU Member State) adopted a hybrid approach, whereby it took account of the interpretation of the other EU Member State when considering the UK VAT treatment of supplies between a UK establishment in a VAT group and an establishment in another EU Member State.

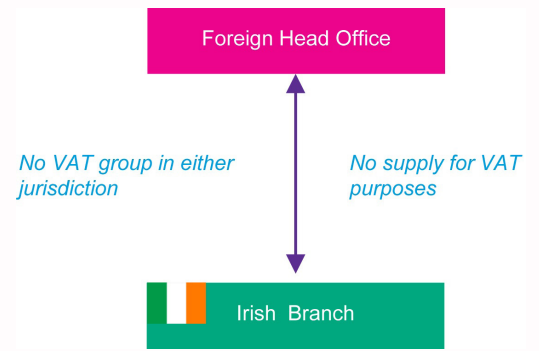
The approach applied across jurisdictions has continued to evolve over time. For example, the Netherlands began adopting the establishment-only approach with effect from 1 January 2024. The Irish change referenced above follows this trend and brings Ireland’s interpretation of the territorial scope of VAT groups in line with most of its EU peers. Conversely, the UK – no longer an EU Member State – has reverted to a whole-entity approach to its VAT grouping rules from November 2025 (ending the hybrid approach

that it had adopted since 2015). However, the UK continues to apply anti-avoidance rules (s43(2A) of the Value Added Tax Act 1994) to certain bought-in charges from a foreign head office or branch in a UK VAT group that are then passed on to other VAT members, which need to be carefully considered.

Practical Examples

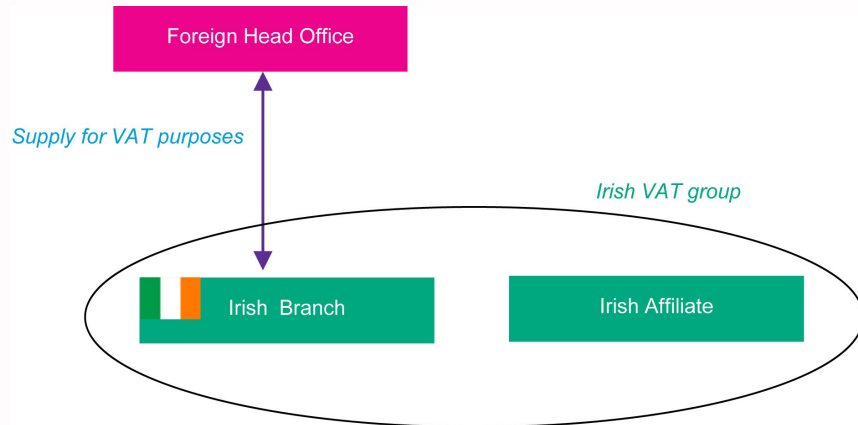
We set out below a number of practical examples to illustrate the principles outlined above. We then consider the steps that organisations should take in implementing (or, in the case of transitional VAT groups, preparing for the implementation of) these changes.

Example 1: Head office to branch with no Irish or other EU Member State VAT group



In this scenario the principle established in *FCE Bank* continues to apply: a charge from a foreign head office to its Irish branch (or vice versa) where neither is a member of a VAT group continues to be disregarded for Irish VAT purposes. Therefore, it may be preferable in some cases to exclude or remove an establishment from a VAT group to help avoid the impact of VAT on cross-border intra-entity charges. However, the quid pro quo of being outside a VAT group is that charges between local entities/establishments in the same jurisdiction would ordinarily be subject to VAT in the absence of a VAT group (unless VAT exempt in nature), so a cost-benefit assessment is required.

Example 2: Irish branch is a member of an Irish VAT group

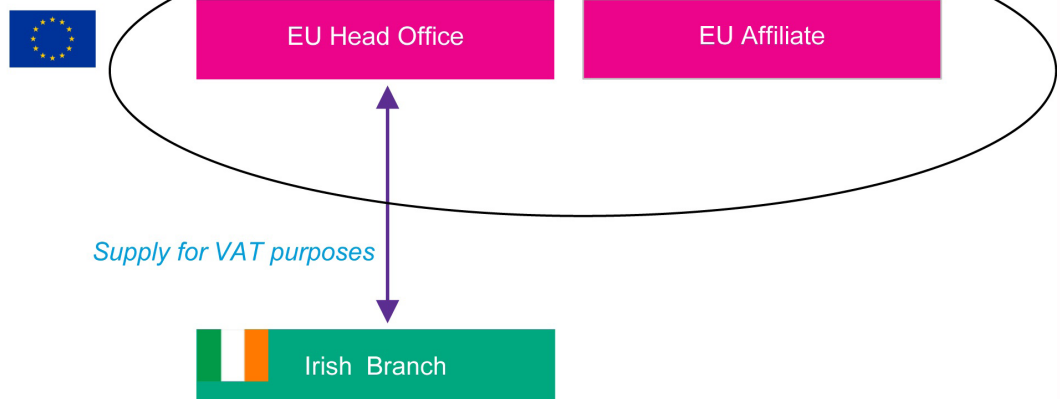


Historically, the charges to and by the Irish branch and its foreign head office were disregarded for VAT purposes irrespective of the Irish VAT group. However, after the change of interpretation (and, in the case of VAT groups in effect before 19 November 2026, after the end of the transitional period), only the Irish branch is considered to be a member of the Irish VAT group. Accordingly, supplies between the foreign head office and its Irish branch will no longer be disregarded for Irish VAT

purposes in this scenario. To the extent that these charges are in consideration for taxable (and not exempt) supplies of services, Irish VAT would arise on a reverse-charge basis for the Irish VAT group on receipt of the services from the foreign head office. Similarly, supplies by the Irish branch to the foreign head office would typically have a place of supply outside of Ireland but may contribute to VAT recovery for the Irish branch where those supplies are taxable in nature.

Example 3: Foreign head office is a member of a VAT group in another EU Member State

VAT group in other EU Member State



The change of interpretation in Ireland will also impact scenarios where an entity that is a member of a VAT group in another EU Member State also has an Irish establishment (regardless of whether the Irish establishment is in an Irish VAT group or not). This follows the principles established in the *Danske Bank* judgment.

As above, the Irish branch may have to self-account for Irish VAT on supplies received from the EU head office in this scenario and may be considered to make supplies to the EU head office, which would be taken into account in its VAT recovery position.

Example 4: Irish and UK VAT group interaction

The change in interpretation of VAT grouping in both Ireland and the UK requires detailed consideration on a case-by-case basis.

Where neither the Irish nor the UK establishment of the same entity are in a VAT group in either jurisdiction, there should be no supply for VAT purposes between those establishments under the *FCE Bank* principle.

Where an entity with an establishment in an Irish VAT group also has a UK establishment, any supplies between the Irish and UK establishments should no longer be disregarded from an Irish VAT perspective. However, the UK establishment could still potentially disregard these supplies, given the different interpretation in the UK. Where the UK establishment is also a member of a UK VAT group, this requires consideration of the UK anti-avoidance rules, which could, nonetheless, deem there to be a supply in the UK, depending on the nature of the services.

As will be seen from the above, the interaction of the VAT grouping rules between Ireland and the UK is complex and should be carefully considered, particularly where there are supplies in both directions.

Navigating the Changes

All businesses that have both Irish and foreign establishments of the same legal entity should consider the extent to which they are impacted

by these changes. They should ensure they are clear on where establishments exist and whether each establishment is a member of a VAT group. They should then identify and map out the transaction flows between those establishments.

Where such transactions are identified, the VAT treatment of the transactions should be considered. Although the default position is that any supply for consideration will be a taxable supply, there may be grounds for VAT-exempt or “outside the scope of VAT” treatments in certain circumstances (however note that the conditions for VAT exemption are interpreted strictly).

Where taxable supplies are identified, systems and procedural updates may be required to address these and to ensure that VAT is appropriately captured. This is particularly relevant to businesses with no or partial VAT recovery (as any VAT arising will likely trigger a net VAT payable amount to Revenue), but businesses with full VAT recovery should, nonetheless, ensure that their systems are capable of capturing the appropriate VAT payable and deductible entries in their VAT returns.

Taxable supplies made by the Irish establishment to a foreign establishment may also give an entitlement to VAT recovery on related costs in Ireland. This may be factored into the Irish establishment’s partial VAT exemption methodology, taking account of the general principles that any such methodology must correctly reflect how costs are consumed and have due regard to the range of the entities’ activities.

Where intra-EU taxable supplies take place between establishments, they will also typically be subject to normal VAT invoicing and VIES reporting requirements. VAT invoices (with appropriate VAT identification numbers and reverse-charge wording) should be issued for cross-border supplies and VIES reporting should be completed. Although not an immediate change, the impact of the VAT

in the Digital Age (ViDA) changes due to come into effect across the EU in July 2030 should also be considered. These changes will require electronic invoices to be issued within a short timeframe (typically, ten days) for cross-border intra-EU supplies and continuous digital transaction-level reporting (typically, five days later), which will replace periodic VIES reporting.

Conclusion

The new VAT group rules create a complex landscape where friends or foes can lurk around the bend. However, as Tolkien observed: “not all those who wander are lost”. Those who take the time now to understand the new framework, chart the risks and identify the opportunities should find themselves well placed as the terrain changes in the coming months.

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Too Close for Comfort: Practical Close Company Considerations



Introduction

Close companies represent a significant proportion of the Irish corporation tax landscape, requiring careful attention to compliance obligations and strategic tax planning. Revenue's report "Corporation Tax – 2025 Payments and 2024 Returns" indicated that 148,784 close company corporation tax returns were filed in respect of accounting periods ending in 2024. Of this number, 7,090 companies returned the close company surcharge as part of their Form CT1 filing, yielding approximately €58m.

The close company provisions contain several specific anti-avoidance provisions designed to prevent participators from extracting funds from a close company in a way that avoids or reduces potential tax liabilities. This article examines the key considerations for tax practitioners advising close companies, with particular focus on the surcharge mechanism; the importance of timely elections; and an overview of commonly impacted transactions, including loans to participators, the treatment of benefits paid on behalf of a participator or an associate, and interest payments to directors and directors' associates.

It should be noted that the close company surcharge provisions extend to close companies that fall within the definition of service companies. The definition of service companies and the operation of the professional service company surcharge are outside the scope of this article; however, practitioners should be aware of the various professions that are regarded as falling within the scope of the surcharge. Revenue's Tax and Duty Manual, Part 13-02-06, provides details on these professions and the operation of the surcharge.

What Is a Close Company?

Definition and statutory framework

A close company is defined in s430 TCA 1997 as a company that is resident in the State where, at any time during the accounting period, the company is under the control of five or fewer participators, or would be so under the control of any number of participators if those participators were connected persons.

The definition extends to companies where the company is under the control of participators who are directors, regardless of the number of such participators. This means that a company that is controlled by its directors, even if there are more than five directors, should be classified as a close company.

Key definitions

Participators are defined broadly in s433(1) TCA 1997 and include:

- any persons holding present or future rights to share capital or voting rights in the company,
- any loan creditor of the company,
- any persons holding rights to share in any distribution by the company and
- any persons who are entitled to secure that the income or assets of the company will be applied directly or indirectly for their benefit.

Associate is defined in s433(3) TCA 1997 in relation to a participator as:

- the person's relatives,
- the person's partners (in the case of a partnership),
- the trustee of a settlement in which the participator, or any relative of the participator, was a settlor, or
- a person interested in a trust or estate holding shares in the company, where the participator also has an interest.

Control is defined in s432(2) TCA 1997 as the ability to control or to acquire control, either directly or indirectly, of the company's affairs. In this regard a person is regarded as having control of a company if the person has or is entitled to acquire:

- the majority of the share capital, issued share capital or voting power,
- such part of the issued share capital as would entitle the person on a total distribution of income to more than 50% of such distribution or
- such rights as would entitle the person on a winding-up or otherwise to more than 50% of the distributable assets.

For the purposes of determining whether a person has control, it is necessary to attribute the rights and powers of that person's associates to that person.

A company is "associated" with another company, in accordance with s432(1) TCA 1997, at a particular time if, at that time or any time within one year previously, one of the two companies has control of the other company, or both companies are under the control of the same person or persons.

Practical implications

The definition of a close company is broad and captures most small and medium-sized Irish companies. Even companies with a significant number of shareholders may be classified as close companies if those shareholders are connected persons. For example, a family-

owned company with ten shareholders who are all family members would be a close company.

The practical implication is that most Irish companies will be subject to the close company provisions unless they are widely held by unconnected persons. This makes understanding the close company rules essential for tax practitioners.

Separately, if a company has identified any associated companies in accordance with the definitions above, it is required to disclose details of such associated companies as part of its Form CT1.

The Surcharge Mechanism: Calculation and Considerations

Overview

The primary mechanism for taxing close companies is the surcharge on undistributed estate and investment income, as set out in s440 TCA 1997. The surcharge is designed to encourage the distribution of investment income to shareholders, which would otherwise be allowed to accumulate in a close company, thereby bringing the income into the hands of individual shareholders, where it can be taxed at their marginal rate of tax.

The surcharge is calculated as 20% of the company's undistributed after-tax estate and investment income for the accounting period. This surcharge is in addition to the corporation tax rate of 25% that would ordinarily apply to such income (other than franked investment income). As a deduction is allowed for any tax paid on such income, the effective rate on such estate and investment income is typically 40%.

Practical points in calculating the surcharge

The following practical points should be considered when calculating the close company surcharge:

- Franked investment income should form part of a company's estate and investment income for the purposes of the calculation; however, subject to the making of a joint

election, as outlined in further detail below, franked investment income may be disregarded for the purposes of the close company surcharge calculation.

- In calculating the close company surcharge, investment income does not include distributions received by that company from a non-resident company that, if a gain arose on the disposal of shares in that non-resident company at the time the dividend or distribution is made, would not have been a chargeable gain by virtue of the provisions of s626B TCA 1997.
- Where a company is a trading company, the distributable estate and investment income for the purposes of the surcharge should be reduced by 7.5%.
- In the event that the company incurs a trading loss in the accounting period in question, the amount of income as calculated in accordance with s434(4) TCA 1997 should be reduced by any Case I/II loss incurred. No relief is available in respect of trading losses carried forward or carried back. Furthermore, if a company incurs expenses of management, such expenses are deductible for the purposes of calculating estate and investment income.
- For the purposes of calculating the excess of distributable estate and investment income on which the close company surcharge of 20% is applied, consideration should be given to any restriction imposed by law as regards the making of distributions in accordance with s434(7) TCA 1997: for example, if the company does not have sufficient distributable reserves to make a distribution as permitted by company law.
- If the excess of distributable estate and investment income is less than €2,000, no surcharge should arise. Where the accounting period is of less than 12 months, the €2,000 limit should be reduced accordingly. Similarly, if the company has associated companies, the €2,000 must be divided by the number of associated companies, including the company itself.

- The close company surcharge can be avoided if the company were to make a sufficient distribution to its shareholders within 18 months of the end of the accounting period in which the estate and investment income giving rise to the surcharge arose.

It should be noted that in the case of a corporate shareholder that is regarded as a close company in its own right, such a distribution will subsequently be liable to the close company surcharge provisions in the recipient company unless that company were to make a sufficient distribution in its own right within 18 months of the end of the accounting period in which the distribution from the subsidiary company was received.

The Joint Election Under s434 TCA 1997: Critical Timing and Precedent Overview

Sub-section 434(3A) TCA 1997 provides a mechanism for close companies to elect for a distribution paid by one close company to another close company to be disregarded for the purposes of the close company surcharge calculation. In this regard, from the perspective of the paying company, such a dividend shall not be taken into account for the purposes of calculating the distributions made by that company in assessing the amount of any surcharge payable. Similarly, in the case of the recipient company, such a distribution will not be taken into account for the purposes of calculating franked investment income when determining whether a close company surcharge arises.

Procedural requirements

The joint election must be made in writing on the Form CT1 of both the paying company and the recipient company – specifically, at Panel 13.1 of the 2025 Form CT1. In addition to ensuring that both companies include the election on their Form CT1, it is vitally important that the election is made in a timely manner, as set out in the TCA 1997. What constitutes a valid election under the provisions of s434(3A)

TCA 1997 has come before the Tax Appeals Commission (TAC) on two occasions to date.

Determination 129TACD2020 concerned a dividend of €665,000 paid by a company to its parent. Neither the paying company nor the recipient company made an election pursuant to the provisions of s434(3A) TCA 1997. On foot of a Revenue audit, the appellant had sought that Revenue allow an amendment to the relevant returns to reflect the joint election, but this request was denied. Ultimately, the TAC found that the appellant has not succeeded in proving that the corporation tax assessment was incorrect.

More recently, determination 149TACD2024 involved a situation where the appellant had filed its corporation tax returns, which included a joint election under s434(3A) TCA 1997, late. Revenue subsequently raised assessments to the close company surcharge, on the basis that an election under s434(3A) TCA 1997 can be made only in a corporation tax return that has been filed on time. The TAC found in favour of Revenue, noting that s434(3A)(c) TCA 1997 requires that an election be included on returns made under Chapter 3 of Part 41A TCA 1997, which mandates timely filing. We understand that this determination was appealed to the High Court, but it has yet to come before the courts.

Practical considerations

The joint election is an effective mechanism that allows one close company to pay a distribution to another close company with the dividend being disregarded for the purposes of the close company calculation in both the paying and the recipient company. It should be borne in mind that the effect of such an election is that any distribution made by the paying company cannot be taken into account for the purposes of reducing any close company surcharge that may be payable by that entity. As a result, the paying company's exposure to the close company surcharge will not be relieved by a distribution on which a joint election under s434(3A) TCA 1997 has been made.

Finally, tax practitioners should be aware of the importance of making a timely election under the provisions of s434(3A) TCA 1997 – particularly, as we approach the 23 September filing deadline for companies with an accounting period ending 31 December 2025 and in light of the cases that have come before the TAC to date.

Commonly Impacted Close Company Transactions

There are several transactions that are specifically impacted by the close company provisions, some of which are outlined below.

Loans to participators

Loans to participators are a common feature of close company structures, particularly where the company wishes to extract value for shareholders without making a formal distribution. However, loans to participators are subject to specific tax treatment under TCA 1997 owing to the application of the close company provisions.

Tax treatment

Under s438 TCA 1997 there is a requirement for a close company to impose a charge to income tax at the standard rate (currently, 20%) on the grossed-up equivalent of a loan or advance made by a close company to a participator or an associate of the participator. It should be noted that the provisions do not apply in instances where a company makes a loan or advances any money in the ordinary course of a business carried on by it that includes the lending of money.

Where a company is required to operate income tax at the standard rate in accordance with the above provisions, such tax should be paid to Revenue as part of the company's Form CT1 for the period in question. For example, if the company makes a loan to a participator in the amount of €400,000 during 2025 that remains outstanding at 31 December 2025, ordinarily the company would be required to remit income tax to Revenue of €100,000 as part of its 2025 Form CT1, being 20% of the re-grossed loan ((€400,000/80%) @ 20%).

Sub-section 438(3) TCA 1997 outlines that the above provisions will not apply to a loan made to a director or an employee of the close company, or of an associated close company, provided that:

- the loan taken together with any other loans made by the company or its associated companies to the borrower or to the spouse or civil partner of the borrower does not exceed €19,050;
- the borrower works full-time for the company or its associated companies; and
- the borrower does not have a material interest in the company or any of its associated companies.

The most common form of a loan typically seen is an overdrawn director's current account. It should be noted that it is a requirement for a company to disclose details of all current and loan accounts with a director or participator as part of its Form CT1.

When the loan is subsequently repaid by the director or participator, the company may seek a refund of the income tax previously paid over to Revenue. Please note that such refunds may be made at any time within four years from the end of the year of assessment in which the loan or advance is repaid to the company.

We are aware that Revenue will, concessionally, for the purposes of satisfying a company's preliminary tax obligations, not require the company to take into account the income tax to be operated on the grossed-up loan provided that the loan or advance has been repaid by the due date for filing of the company's corporation tax return. It should be noted that Revenue's Tax and Duty Manual, Part 13-02-04, specifically states:



“Revenue considers that the practice set out in this statement should be relied upon only to the extent that the loan arrangements concerned are undertaken in good faith and for purposes other than tax avoidance.

The practice will not apply in the case of ‘bed and breakfast’ type of arrangements where a new loan or advance is taken out on, or shortly after, repayment of an existing loan or advance. In such cases, Revenue will insist that the section 438 provisions will apply for preliminary tax purposes.

However, in circumstances where it is the practice of a director to operate a current account with the company and this account is cleared annually from the director’s own resources (e.g., the director’s remuneration), such an arrangement will not be regarded as a ‘bed and breakfast’ type arrangement.”

Should the company release or write off whole or part of the loan that was previously assessed to tax, the borrower is regarded as having received at that time income equal to the grossed-up amount released or written off.

Albeit that they are outside the scope of this article, and notwithstanding the Revenue concession outlined above in respect of loans and/or advances that have been repaid before the corporation tax filing deadline, tax practitioners should be aware of the PAYE implications in respect of benefit-in-kind (BIK) arising on preferential loans, as set out under s122 TCA 1997, which should, nevertheless, arise for the period the loan is outstanding. Furthermore, although not specifically related to tax, consideration should also be given to the company law considerations regarding making loans to directors and the restrictions that can apply.

Practical considerations

Below are some practical tips in relation to loans made to participators and completion of the Form CT1:

- Even in instances where the company is availing of Revenue’s concession in relation to a loan or an advance repaid to the company before the filing deadline, the company should, nevertheless, disclose details of the loans to directors and participators as part of the Form CT1.
- It is advisable for practitioners to take the opportunity to identify any overdrawn current and loan accounts before the corporation tax filing deadline to ensure that there is sufficient time to discuss with the client and assess whether there are any methods to repay the outstanding loans and/or advances to avail of the concession referenced above.
- Where a company is required to withhold income tax at the standard rate and remit to Revenue as part of the Form CT1, it is advisable to track such payments to Revenue, and subsequent repayments of the loan, to ensure that a claim for repayment of the income tax remitted to Revenue is made within the statutory timeframes.

Benefits paid to participators and potential distribution treatment

The close company provisions – specifically, s436 TCA 1997 – extend to cover situations where certain benefits are incurred by a close company on behalf of a participator that are not within the scope of BIK legislation. Where such benefits fall within the scope of s436 TCA 1997, they will be regarded as a distribution.

Tax treatment of benefits

Where a close company incurs expenses in, or in connection with, the provision of certain benefits to a participator, such amounts should be treated as a distribution to the participator equal to the amount of the expense incurred by the company less any amounts made good by the participator. For the purposes of these provisions, the definition of participator extends to cover an associate of a participator.

The benefits that are covered by these provisions include:

- living or other accommodation,
- entertainment,
- domestic or other services and
- any other benefits or facilities of whatever nature.

Where such benefits are regarded as a distribution, no tax deduction should be available in respect of them. In this regard, a DWT exposure arises for the company and an obligation to file a DWT return with Revenue in advance of the appropriate deadline. Similarly, as a distribution, they should be disclosed appropriately on the company's Form CT1.

Interest paid to directors and directors' associates

In addition to extending the meaning of a "distribution" to incorporate certain benefits paid on behalf of participators, the close company provisions via s437 TCA 1997 extend the definition of a "distribution" to cover excessive interest paid by close companies to directors and their associates. In essence, the provisions are aimed at counteracting attempts to withdraw profits from a close company disguised as an interest expense. Accordingly, this section provides that any excessive interest paid to directors and their associates shall be treated as a distribution, and therefore no corporation tax deduction shall be available for the excess amount.

Tax treatment

For the purposes of s437 TCA 1997, the definition of interest includes any consideration paid or given for the use of money advanced or credit given. This section will apply where certain interest is paid by a close company to a person, or an associate of that person, who is a director of the close company or of a company that controls or is controlled by the close company. Similarly, the director must hold a material interest in the close company, or if the close company is controlled by another company, in that other company.

Where the amount of interest paid to such a director, as outlined above, is in excess of the limit as determined by s437 TCA 1997, the excess amount will be treated as a distribution for corporation tax purposes. The limit is calculated in accordance with s437(6) TCA 1997 and shall be equal to 13% per annum of the lesser of:

- the total of the loans, advances and credits for the accounting period on which interest was paid, within the provisions of this section; and
- the nominal amount of the issued share capital plus any share premium account, with both amounts taken at the beginning of the accounting period.

It should be noted that this is an overall limit. If there are two or more recipients of interest payments, the overall limit should be apportioned based on the amounts of interest to be paid to each recipient.

In the event that any such excess interest is to be treated as a distribution, no tax deduction should be available in respect of such amounts.

Ordinarily, where a company makes payment of interest to an individual, such a company should be required to withhold income tax at the standard rate and pay such amounts to Revenue as part of its Form CT1. However, where excess interest is treated as a distribution, the company should instead operate dividend withholding tax (DWT) in respect of the interest payment and remit the DWT withheld to Revenue within the relevant timelines, i.e. by the 14th of the month following the month in which the interest payment is made. This is provided that the recipient does not satisfy the conditions to avail of one of the DWT exemptions available.

Example

Mr and Mrs A own 100% of the ordinary shares of Orange Limited. Both individuals are also directors of Orange Limited. Orange Limited is a trading company and is in receipt of rental income arising from an investment property on its balance sheet. For the year ended 31 December 2025 the financial performance of the business is as follows:

- Case I profits of €100,000.
- Case V profits of €50,000.
- Case III income of €200,000 in respect of a dividend received from a 100% subsidiary company tax resident in France (Pear Limited).

- At 31 December 2025 there was an overdrawn director's current account (Mr A) in the amount of €80,000. There was no opening balance at 1 January 2025. Mr A subsequently repaid €50,000 to Orange Limited on 1 December 2026, and the balance was repaid to Orange Limited on 1 February 2027.

In the above example, the following considerations should be borne in mind in the context of completing the 2025 Form CT1 and calculating the associated liabilities and the preliminary tax for future periods.

Orange Limited is a close company for Irish corporation tax purposes as it is under the control of five or fewer participators and/or any number of directors. It will be required to disclose details of beneficial ownership (Panel 1.11 of the 2025 Form CT1).

A potential close company surcharge applies in respect of the estate and investment income arising during the period ended 31 December 2025, as follows:

	€
Case III foreign income (Note 1)	Nil
Case V profits	50,000
Gross estate and investment income	50,000
Deduction for corporation tax of 25%	(12,500)
	37,500
Trading deduction of 7.5%	(2,812)
Distributable estate and investment income	34,688
Close company surcharge at 20% (Note 2)	6,938

Note 1: On the basis that Orange Limited would qualify for relief under s626B TCA 1997 on a disposal of shares in Pear Limited, any distributions received from Pear Limited should be excluded from the definition of investment income for the purposes of calculating the close company surcharge.

Note 2: The close company surcharge of €6,938 calculated in respect of estate and investment income arising during the year ended 31 December 2025 is ordinarily payable as part of the 2026 Form CT1. The close company surcharge may, however, be avoided if Orange Limited were to make a distribution in the amount of €34,688 to Mr and Mrs A within 18 months of the end of the accounting period in which the surcharge arose, i.e. on or before 30 June 2027.

Details of Mr A's overdrawn directors current account should be disclosed on the corporation tax return (Panels 1.25-1.40 of the 2025 Form CT1). Similarly, as Orange Limited is a close company, it is necessary to consider the loan-to-participator provisions in respect of same. In this regard Orange Limited is required to calculate income tax on the re-grossed loan and remit this to Revenue as part of filing its 2025 Form CT1. In the example, this would amount to €20,000. This amount should be reflected in Panel 14.1 of the 2025 Form CT1.

It is noted that Mr A has repaid the amount outstanding in two instalments: (1) €50,000 on 1 December 2026 and (2) €30,000 on 1 February 2027. As the overdrawn director's account was not repaid before the filing deadline relating to the 2025 Form CT1 – i.e.

on or before 23 September 2026 – Orange Limited cannot avail of the Revenue concession provided for regarding preliminary tax in respect of the year ended 31 December 2026, which is due for payment on or before 23 November 2026.

Orange Limited can seek a refund of the income tax paid to Revenue as part of its 2026 and 2027 Form CT1 based on the amounts paid above, i.e. €12,500 and €7,500, respectively. Details of any repayment of directors' current and/or loan account should be disclosed at Panel 1.24 of the Form CT1. It should be noted that a refund of the income tax previously paid to Revenue will not be automatically processed as part of filing of the Form CT1 for the period in which it was repaid. It is worthwhile in this regard to notify Revenue via MyEnquiries of the repayment of the loan and request a refund of the income tax previously paid. Where the loan is repaid in tranches, it is advisable to maintain a schedule, as part of the underlying computation and/or tax software, of the amount originally paid to Revenue, the amounts subsequently repaid and details of the requests for repayment of the income tax, given that a refund claim must be made within four years of

the end of the year of assessment in which the loan or advance is repaid to the company.

Finally, and notwithstanding the fact that the loan or advance was repaid to Revenue by 1 February 2027, tax practitioners should be aware of any BIK and associated PAYE implications of a preferential loan in the period from the date the monies were advanced to the date they were repaid.

Conclusion

Close companies represent a significant proportion of the Irish corporate tax filing base, given that most small and medium companies would be under the control of five or fewer shareholders and/or any number of directors. Where such companies are in receipt of estate and investment income, the application of the close company surcharge will need to be considered. Aside from any immediate close company surcharge that may arise, the close company provisions extend to several common transactions involving directors and/or participators, as well as corresponding disclosures on the Form CT1, that will need consideration before the September 2026 corporation tax filing deadline.



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Protecting a Deal: W&I and Tax Insurance in Irish M&A Transactions



Introduction

The use of insurance products to manage risk in mergers and acquisitions (M&A) has grown significantly over the past decade, and for good reason. The insurance premium is “peace of mind” money for many.

Warranty and indemnity (W&I) insurance has almost become standard for mid-to-large Irish transactions, while tax insurance – which is more bespoke – is gaining traction as buyers and sellers seek to ring-fence identified tax risks. In this article I provide a short guide

to both products: how they work in the Irish market, when they are used and what they cost.

W&I Insurance

What is it?

W&I insurance is a policy that provides cover for financial loss arising from a breach of the warranties (and, in some policies, the tax deed) given by a seller in a sale and purchase agreement (SPA). It transfers the risk from the seller to a third-party insurer. There are two principal structures, outlined below.

1. *Buy-side policies*

The buyer takes out the policy and claims directly against the insurer in the event of a warranty breach. This is the more straightforward and common structure in the current market. The buyer has recourse to an insurer, guaranteed to have the money to pay out if necessary. It is particularly attractive where the seller is a private equity house looking for a clean exit or where the proceeds are distributed to numerous selling shareholders.

2. *Sell-side policies*

This is taken out by the seller, which claims under its own policy to fund its liability to the buyer under the SPA. These are seen more in auction processes or distressed situations.

In an M&A context, the allocation of the premium between the buyer and the seller is a commercial negotiation. Where insurance is being used to cover a seller-side exposure – effectively, replacing a specific indemnity that the seller might otherwise be asked to give – it is common for the seller to bear the cost of the premium. Where the buyer is the primary beneficiary, costs are more frequently split or borne by the buyer.

How does W&I insurance work in practice?

W&I insurance sits alongside the SPA. With a sell-side policy, the buyer may pursue the seller under the warranties or indemnities as normal while, behind-the-scenes, the seller seeks reimbursement from the insurer for any required payments to the buyer. With a buy-side policy, the insurer steps into the shoes of the seller to cover losses that the buyer would otherwise recover from the seller under the SPA's contractual remedies. Buy-side policies are the predominant structure in the current Irish market, and the subject of this article. The key mechanics are as follows.

Broker engagement

Specialist insurance brokers with expertise in transactional risk products are the first port of call for someone who wants W&I

insurance cover. The broker represents the party seeking cover and acts in their interests as an intermediary between that party and the insurance companies. The broker assesses the transaction and available documentation – typically, an information memorandum or similar description of the target and an auction draft SPA (a form of draft SPA prepared by the seller's lawyers which is circulated to all prospective bidders on the same terms) – and advises on its insurability and the optimal insurance structure.

Submission and underwriting

The broker prepares a submission for the insurance companies. The insurers review the submission and may discuss with local advisers before providing headline terms, known as non-binding indications (NBIs).

The underwriting process

The insurer, together with its counsel, will conduct a detailed underwriting review of the transaction, including the SPA, the disclosure letter, and the due diligence reports prepared by the buyer's advisers (legal, financial, tax and any specialist reports). The insurer does not carry out its own due diligence on the target business. Rather, it assesses the quality of the buyer's due diligence process. Comprehensive, evidence-backed due diligence processes lead to broader, more favourable policies.

Known risks

W&I insurance covers unknown risks only, e.g. matters that were not disclosed against, or identified by, the buyer during the due diligence process. It generally does not cover matters that the buyer knows about at the time of signing (so-called known risks). If the known risk is tax related, tax insurance could come into play – as discussed later in the article.

The retention

Some W&I policies carry a retention (or excess), which represents the initial layer of loss that the buyer must bear before the insurer responds. In the current market, retentions on buy-side policies have reduced significantly. It is not

unusual for retentions to be as low as nil or “tipping to nil” on well-run processes. Where the SPA preserves the seller’s liability up to the amount of the retention, the buyer can pursue the seller for that initial layer while looking to the insurer to cover any loss above it.

Policy limits and duration

Policy limits are typically set by reference to the enterprise value (EV) of the transaction (i.e. the total consideration payable for the shares adjusted for net debt and working capital) – commonly, between 10% and 30% of EV for general warranties and up to 100% of EV for fundamental warranties (e.g. title and capacity). The policy period will usually be longer than the SPA’s warranty periods: typically, 36 months for general warranties and up to 7 to 10 years for tax and fundamental warranties.

Exclusions

Standard exclusions include forward-looking warranties, adjustments to purchase price mechanisms (such as locked-box or completion-accounts disputes), pension underfunding, environmental contamination, transfer pricing risks and secondary tax liabilities (VAT group or Irish group payment arrangements). Specific tax matters and other known issues identified during due diligence will also normally be excluded.

Why use W&I insurance?

W&I insurance can benefit both buyers and sellers by transferring a significant part of the post-completion warranty risk from the parties to an insurer. In practice it can reduce a key area of SPA negotiation, help bridge differences in risk appetite, and support a cleaner and more competitive deal process.

It can also deliver a “day 1” return on investment by converting a relatively modest premium into immediate deal value through the elimination of escrows and related “opportunity cost of capital”. This is one of the reasons why financial sponsors (e.g. private equity funds, venture capital funds and other institutional investors that acquire businesses as part of

an investment strategy) are such dedicated customers of W&I insurance.

For sellers, W&I insurance can:

- enable a clean exit and allow for immediate cash extraction,
- remove the need for escrows, holdbacks and other security,
- improve value certainty,
- support competitive auctions with a clear risk allocation and
- preserve relationships where sellers or management remain involved after the sale.

For buyers, W&I insurance can:

- provide recourse against a creditworthy insurer rather than the seller,
- help buyers submit a more attractive bid,
- extend protection beyond the SPA warranty periods,
- reduce SPA negotiation around warranties and
- protect relationships with continuing-management sellers.

The Irish market

W&I insurance is increasingly used in transactions involving buyers, sellers and/or targets in Ireland, especially where there is financial sponsor involvement in the deal. Insurance premiums are calculated by reference to the limit of liability purchased, which is based on a percentage of the EV (typically, 10%–30% but up to 100% of EV in smaller deals). The insurance premium typically costs 0.7%–1.2% of the limit (excluding some other costs, such as underwriting fees and taxes).

Tax Insurance

What is it?

Whereas W&I insurance addresses unknown breaches of warranties, tax insurance is designed to cover a specific, identified tax risk – a known issue or uncertainty that

arises as a result of the transaction; that has been identified during due diligence; or that otherwise exists in a business's tax history. It is not a substitute for W&I insurance but a complementary product used to ring-fence a discrete exposure.

Tax insurance provides cover for the financial consequences of a tax authority successfully challenging the tax position in question. This typically includes the additional tax liability itself, interest on unpaid tax, and penalties. Legal and other professional costs of defending the position are often covered as well.

The size of risks that can be covered range from approximately €1m up to €1bn. Risks at the larger end of the scale require a large number of insurers to build a "tower" to cover the full limit.

When is tax insurance used?

Tax insurance can be used in many different scenarios, both within and outside M&A transactions.

In M&A transactions

There are a number of points during the deal life cycle where tax insurance can be relevant. Sellers may wish to prepare a group before sale (sometimes several years in advance) or buy a policy to cover an issue that they know will cause buyers to offer a reduced price.

Due diligence often identifies a specific tax issue in the target company – for example, uncertainty about tax reliefs claimed in a historical restructuring, withholding tax uncertainties, a business asset relief claim on a prior share sale, an employment tax characterisation or a stamp duty treatment – that the parties may not be able to resolve through negotiation of the SPA alone. The seller may be unwilling to give a specific indemnity for the full value of the potential exposure, and the buyer may be unwilling to accept the risk unprotected.

Tax insurance bridges this gap: the insurer assumes the risk, and the deal can proceed without a price chip.

Outside of M&A

Businesses, funds and individuals also use tax insurance to manage ongoing tax risk – for example, to:

- create certainty around a significant tax filing position,
- protect against the potential financial consequences of a tax authority challenge to a reorganisation that has already taken place or
- provide comfort to lenders or investors who require assurance regarding identified potential tax exposures on a business's balance sheet.

Specific Irish issues

In the Irish market, tax insurance has been used in connection with a range of matters, including:

- the question of whether shares are "land-rich" for the purposes of s980 of the Taxes Consolidation Act 1997 (TCA 1997),
- the availability of the participation exemption (s626B TCA 1997) and holding-company structuring reliefs (s586 TCA 1997),
- the availability of stamp duty reliefs such as reconstruction relief (s80 of the Stamp Duties Consolidation Act 1999 (SDCA 1999)) or the applicability of certain anti-avoidance provisions (such as s31C and s31E SDCA 1999),
- the treatment of certain employment-related share scheme arrangements,
- R&D tax credit claims at scale,
- the principal-purpose test and limitation-on-benefits analysis under double taxation treaties and
- the historical stamp duty or VAT treatment of property transactions.

Kerry Westwell, Head of Tax Insurance (excluding US & Canada) at Ryan Transactional Risk, says:



"Tax insurance is a really flexible product that can be used to assist with an efficient

deal process and to avoid price chips or even prevent deals falling over. We have underwritten a significant number of risks in Ireland but feel that there is so much more scope for the product to be used and for the market to grow.”¹

How does tax insurance work?

Identify and scope the risk

The first step is to identify the risk, as this will feed into the definition of the “insured tax event” for the policy document. This requires:

- a clear articulation of the relevant tax position or transaction,
- the legal and factual basis on which the position was taken or is proposed to be taken,
- the quantum of the exposure (including potential interest and penalties) and
- the basis on which a tax authority might challenge the position.

To be insurable, the tax treatment for which insurance is sought must be defensible on a principled technical basis. Where a tax adviser cannot reach at least a “more likely than not” level of comfort in respect of that tax treatment, insurance will typically not be available.

A written advice note from the tax adviser will need to be shared, on a non-reliance basis, with the broker and insurer in order to seek NBIs. The insurance company considering underwriting the risk will generally seek its own advice from a tax professional to determine whether the taxpayer’s position is defensible and how likely it is that it would need to be defended.

Broker engagement

Specialist tax insurance brokers will review the tax advice prepared by the tax adviser.

They will advise on insurability and insurance structure and suggest any additional analysis or advice likely to increase the prospect of obtaining cover.

Clodagh Rochford, Head of M&A and Transaction Solutions Ireland at Aon, says:



“In Ireland, where tax authority rulings and opinions are less common than in some other jurisdictions, tax insurance is becoming the go-to solution for dealing with tax uncertainty. Because it covers the potential tax, interest, penalties, defence costs, and gross-up, it offers full financial protection against the downside risk of the tax authorities disagreeing with the tax treatment. That ‘sleep-easy’ protection is the reason clients are increasingly opting for tax insurance here.”²

Submission and underwriting

The broker prepares a submission for the insurance companies that includes a description of the transaction or issue at hand and a summary of the key tax issues and the relevant legal analysis (generally prepared by advisers to the prospective insured taxpayer). They will typically share the written tax advice and, if available, relevant transaction documents and any correspondence with the tax authority to date.

The tax underwriting market is very sophisticated, and most tax underwriters are tax specialists. Underwriters review the submission, discuss it with their local adviser and probe the tax analysis to ensure that they understand it fully. They are essentially assessing the strength of the tax position and the likelihood of successful challenge by the tax authorities. There is little appetite to insure aggressive tax structures or anything that does not have a robust technical and legal foundation.

¹ Quote provided by Kerry Westwell, Head of Tax Insurance (excluding US & Canada), Ryan Transactional Risk, 8 July 2026.

² Quote provided by Clodagh Rochford, Head of M&A and Transaction Solutions Ireland at Aon, 14 July 2026.

Underwriters will then send the terms and pricing for covering the risk (NBIs) to the broker. This is generally a fairly quick process that takes a few days.

Once an insurer has been selected, underwriting can begin. An underwriting fee is charged, facts and circumstances presented in the submission are checked, and the policy is negotiated. This can take anywhere from two weeks to several months, depending on complexity and deal pressures.

Claims

A claim notification will typically arise where the tax authorities raise an enquiry or assessment in respect of the tax position covered by the policy. The insured taxpayer notifies their broker and insurance company promptly.

The broker works with the taxpayer to liaise between the taxpayer and the insurer in the management of the dispute. The insurance company will typically not become involved in the management of the dispute but will, under the terms of the policy, typically have a right to consent to or reject certain proposed actions. If the position is ultimately upheld (i.e. the tax authority's challenge succeeds), the insurance company pays out under the policy.

What does tax insurance cost?

Tax insurance premiums are a one-off payment and are a percentage of the insured limit (i.e. the total cover sought). Currently, premiums for tax insurance in Ireland generally fall in the range of 1.2%–6% of the insured limit, although

the precise figure will depend on a range of factors, including:

- the complexity and novelty of the tax issue,
- the quality and strength of the supporting analysis,
- whether the tax issue has already been the subject of tax authority scrutiny,
- whether there is a valuation or subjective element to the risk,
- the jurisdictions involved,
- the quantum of exposure,
- the length of the policy period,
- the track record of the insured's advisers with the underwriting market and
- competitive tension among underwriters.

In addition to the premium, the insured taxpayer will incur insurer underwriting costs and insurance premium taxes (currently 3% of the premium being the Government Levy and 1% of the premium being in respect of the Insurance Compensation Fund Levy).

Conclusion

W&I insurance and tax insurance are extremely useful in M&A. Tax insurance is also useful for freeing up cash where business-as-usual tax risks are identified. For Irish practitioners it is becoming increasingly important to be familiar with both products and to be able to identify when to suggest that they might be considered. They can unlock value for both buyers and sellers, facilitate cleaner and faster deal execution, and provide a degree of certainty that contractual warranties and escrow arrangements cannot deliver.



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Finance Act 2025 and the Irish Housing Market: Tax Measures to Stimulate Residential Supply



Introduction

The Irish housing market continues to face significant structural challenges arising from a persistent imbalance between housing supply and demand. Demographic growth, inward investment and employment expansion have supported strong demand for residential accommodation, but the delivery of new housing stock has frequently been constrained by the economics of development, rising construction costs, infrastructure deficits and planning delays. Against this background Finance Act 2025 introduced a series of targeted tax measures, many of which take

effect during 2026, with the stated objective of improving development viability, encouraging residential construction and facilitating the better use of existing property assets.

What distinguishes this package from previous interventions is that it seeks to address housing supply through multiple channels simultaneously. Rather than relying solely on demand-side supports, the legislation attempts to reduce development costs, improve post-tax investment returns, incentivise urban regeneration, encourage the conversion of under-utilised buildings,

and discourage the retention of undeveloped land and vacant property. Taken together, these measures represent one of the most comprehensive tax responses to the housing crisis in recent years.

The effectiveness of these measures will ultimately depend on whether they are sufficient to transform marginal projects from being economically unviable to commercially deliverable. Although tax incentives can play an important role in influencing behaviour, they cannot operate in isolation from broader issues such as planning timelines, infrastructure funding, labour shortages and construction inflation. Nevertheless, Finance Act 2025 provides a useful opportunity to consider the extent to which the tax system can contribute to increasing housing supply.

VAT Reduction on Apartment Sales: A Direct Intervention in Development Economics

Perhaps the most significant measure from a residential development perspective is the reduction in the VAT rate applicable to certain apartment sales from 13.5% to 9%, effective from 8 October 2025 and scheduled to remain in place until 31 December 2030.

For many years developers, lenders and industry participants have argued that apartment developments have become increasingly difficult to deliver because the costs associated with construction frequently exceed the market value of the completed units. This has been particularly evident in Dublin and other urban centres, where apartment construction costs have risen substantially owing to labour constraints, inflation in building materials, enhanced fire-safety requirements and sustainability obligations.

Key features of the relief

Finance Act 2025 s70 represents a deliberate departure from the traditional residential VAT framework by creating a bespoke “housing as part of a social policy” category within Schedule 3 of the Value-Added Tax

Consolidation Act 2010 (VATCA 2010). The relief was announced on 7 October 2025 and its scope was expanded with effect from 26 November 2025.

For supplies from 26 November 2025 –

- The relief reduces VAT from 13.5% to 9% for qualifying apartment sales (including qualifying site sales) and associated development services until 31 December 2030, with the express policy objective of improving apartment viability and increasing residential supply.
- The measure is notable not only because of the reduced rate but also because it extends beyond the sale of completed apartments to encompass the sale of qualifying sites under paragraph 9B(2) of Schedule 3 and qualifying development services under paragraph 9B(3), thereby reducing VAT leakage throughout the delivery chain of apartment developments

The reduction in the VAT rate seeks to address the viability gap directly. By lowering the indirect tax burden associated with apartment sales, the measure increases the potential net proceeds available to developers. In practical terms the reduction improves project margins without requiring a corresponding increase in sale prices and may therefore assist projects that were previously deemed uneconomic.

The importance of the measure extends beyond the immediate VAT saving. Development finance providers typically examine project viability at the outset of a scheme. Small changes in projected profitability can have a disproportionate impact on funding decisions and therefore on whether projects ultimately proceed. Consequently, even modest improvements in after-tax economics may have a significant influence on housing delivery.

A new s46(1)(cac) VATCA 2010 provides that during the period from 26 November 2025 to 31 December 2030 VAT shall apply at 9% to goods of a kind specified in paragraph 9B(2)

of Schedule 3 and services of a kind specified in paragraph 9B(3) of Schedule 3.

An apartment block means a multi-storey building comprising, or to comprise, not less than three apartments with grouped or common access. Paragraph 9B(2) applies to the supply of immovable goods, as part of a social policy, which are or, when completed, will be one or more apartments in an apartment block used or to be used for residential purposes; or an apartment block used or to be used for residential purposes (excluding non-residential elements).

Paragraph 9B(3) extends the relief to services consisting of the development, until completed, of relevant apartment property described in paragraph 9B(2). This is significant because the reduced rate is not confined to the sale of completed or partially completed apartments (including qualifying sites) but can also apply to qualifying construction services connected with apartment development.

Finance Act 2025 also amended s477C of the Taxes Consolidation Act 1997 (TCA 1997) (Help to Buy scheme). Section 5 of Finance Act 2025 amended the definition of “qualifying residence” so that it references both s46(1)(c) and s46(1)(cac) VATCA 2010. This amendment ensures that apartments benefiting from the new 9% VAT regime remain capable of qualifying for under the Help to Buy scheme.

However, important questions remain regarding the extent to which the VAT reduction alone will be sufficient to unlock supply. Although the saving improves project economics, it does not remove many of the structural issues that continue to affect apartment development. Accordingly, the VAT measure is best viewed as one component of a broader package rather than a complete solution in itself.

Enhanced Corporation Tax Deduction for Apartment Construction

Complementing the VAT reduction is the introduction of an enhanced corporation

tax deduction for qualifying apartment construction expenditure. Under the new regime, qualifying costs may attract an enhanced deduction equal to 25% of the qualifying costs or, if lower, €50,000 per apartment unit. The relief applies to new-build developments and conversion projects comprising ten or more apartments.

Key features of the relief

Section 81E TCA 1997, inserted by s42 of Finance Act 2025, provides for:

- an enhanced tax deduction equal to 25% of qualifying construction expenditure;
- eligibility for developments comprising 10 or more apartments;
- application to:
 - new apartment developments and
 - apartment conversion projects; and
- a cap on the “enhanced” tax deduction of €50,000 per apartment unit.

Revenue’s Tax and Duty Manual Part 04-06-27 (January 2026) provides further guidance.

The significance of this measure lies in its focus on project profitability rather than simply reducing transaction costs. Corporation tax deductions directly affect the taxation of profits arising from development activity and therefore improve expected after-tax returns to investors and developers.

Historically, the Irish tax system has generally allowed deductions only for expenditure actually incurred. Enhanced reliefs therefore represent a departure from ordinary tax principles and are usually introduced only where the legislature wishes to encourage specific forms of economic activity. This relief clearly reflects a policy decision that apartment construction warrants targeted intervention because of the supply difficulties currently facing the sector.

From a policy perspective, the relief seeks to narrow the viability gap that has emerged in urban apartment developments. The measure is particularly relevant for institutional developers and investors whose decisions are driven by expected returns on capital. If successfully implemented, the relief should improve the competitiveness of apartment projects when compared with alternative investment opportunities.

It is also notable that the relief extends to conversion projects. This reflects an increasing recognition that housing supply can be improved not only through new construction but also by repurposing existing buildings. Urban regeneration objectives are therefore supported alongside broader housing delivery goals.

Cost Rental Housing and the Corporation Tax Exemption

Another significant development is the introduction of a corporation tax exemption for rental income arising from homes designated under the Cost Rental Scheme. The exemption applies to properties formally designated by the Minister for Housing, Local Government and Heritage on or after 8 October 2025.

Key features of the relief

The relief is a corporation tax exemption rather than a deduction or credit.

- It applies to rental income derived from qualifying cost rental properties.
- The property must be formally designated as a cost rental dwelling by the Minister for Housing, Local Government and Heritage on or after 8 October 2025.
- The measure came into operation on 1 January 2026.

Cost rental housing has increasingly emerged as an important component of Irish housing policy. The model seeks to provide rental accommodation at rates below prevailing

market rents while maintaining financial sustainability through long-term institutional investment and public sector support.

One of the challenges historically associated with cost rental developments has been ensuring that the financial returns available are sufficient to attract long-term investment capital. By providing an exemption from corporation tax on qualifying rental income, the legislation seeks to improve the overall return profile of cost rental projects.

The exemption may prove particularly attractive for pension funds, regulated investment vehicles, State-supported housing bodies and other institutional investors whose investment horizons extend over many decades. By reducing the tax leakage that would otherwise arise on rental profits, the measure enables a greater proportion of income to be reinvested in housing provision.

The broader significance of the exemption lies in its recognition that the housing crisis cannot be solved exclusively through owner-occupier delivery or traditional private rental development. Cost rental accommodation is increasingly viewed as a distinct and permanent segment of the housing market, bridging the gap between social housing and market-rent accommodation.

Residential Development Stamp Duty Refund Scheme

Finance Act 2025 also extended and enhanced the Residential Development Stamp Duty Refund Scheme. Importantly, the changes improve the position of large-scale and phased residential developments.

Key features of the relief

Section 83D of the Stamp Duties Consolidation Act 1999 provides for this refund scheme.

- When residential dwelling units are built on land, the builder may qualify for a refund of 11/15ths of the stamp duty paid on the acquisition of the land reducing the effective

rate of stamp duty paid from 7.5% to 2%. The dwelling units can be single or multi-unit dwellings.

- Finance Act 2025 extended the deadline by which construction operations must commence to 31 December 2030.
- It also extended the 30-month time limit for acquisition to commencement and commencement to completion to 36 months for large-scale residential developments.
- For multi-phase residential developments a full refund can now be claimed at the commencement of the first phase, improving cash-flow for developers.

Stamp duty represents a significant upfront cost for developers acquiring development land. Although the Residential Development Stamp Duty Refund Scheme has been in place since 2017, practical concerns frequently arose regarding timing and cash-flow. Development projects often require substantial capital expenditure at the earliest stages, and the retention of stamp duty pending future completion milestones can adversely affect funding requirements.

The revised approach seeks to address these concerns by accelerating access to relief. This should improve liquidity and reduce financing pressures for large-scale residential developments.

From a broader policy perspective, the enhancement reflects a growing recognition that cash-flow constraints can materially affect the timing and pace of housing delivery. Although tax reliefs traditionally focus on reducing overall tax costs, the timing of relief can be equally important in determining whether a development proceeds.

Expansion of the Living City Initiative

The Finance Act 2025 also extends and broadens the Living City Initiative, which seeks to encourage the rehabilitation and productive use of under-utilised buildings in

designated urban areas. The legislation extends the initiative until 31 December 2030, expands qualifying residential properties to include buildings constructed before 1975, increases relief limits from €200,000 to €300,000, and enlarges the geographic scope of the scheme to include Athlone, Drogheda, Dundalk, Letterkenny and Sligo.

Key features of the relief

The legislative basis for the Living City Initiative expansion is contained in s30 of Finance Act 2025, which amends s372AAA-372AAD of TCA 1997 and inserts s372AAE TCA 1997. The amendments substantially broaden the relief and reposition it as a more meaningful regeneration measure for housing and town-centre renewal.

- Perhaps the most important change is the amendment to the definition of “relevant house” in s372AAA(1) TCA 1997. The Finance Act replaces “1915” with “1975”, meaning that buildings constructed before 1975 may now qualify for the residential reliefs.
- For qualifying commercial properties and qualifying rented residential properties, the capital allowances write-off period for expenditure incurred on or after 1 January 2026 is reduced from 7 years (i.e. 15% per annum in years 1 to 6 and 10% in year 7) to 2 years (i.e. 50% in years 1 and 2).
- The revised treatment therefore represents a substantial acceleration of relief and is intended to improve the economics of urban refurbishment projects.
- The legislation also modifies the tax life of those properties from 7 years to 10 years for expenditure incurred after 1 January 2026. Where a balancing event occurs before the end of the tax life, a balancing allowance or balancing charge may arise.
- The availability of capital allowances has been extended to expenditure on the conversion/refurbishment of certain commercial units into residential units that are subsequently let on bona fide commercial terms. This is referred to as

“living over the shop relief” in Revenue’s Tax and Duty Manual Part 10-13-01b. It applies to expenditure incurred from 1 January 2026. The write-off period is 2 years (i.e. 50% in years 1 and 2) and the tax life is 10 years.

- The Finance Act introduces references to Commission Regulation (EU) 2023/2831 concerning *de minimis* aid. The amended provisions recognise a new permissible ceiling of €300,000 of *de minimis* aid over a three-year period. Relief claims must be considered together with other *de minimis* aid received by the undertaking.

The relaxation of the historical-building requirement may prove particularly significant. Previous restrictions limited the regime’s practical effectiveness because many potentially suitable buildings did not meet the pre-1915 requirement. By extending eligibility to buildings constructed before 1975, the legislation captures a substantially larger stock of urban property.

The measure reflects an increasing policy focus on urban regeneration and sustainable development. Rather than concentrating solely on greenfield construction, the State is seeking to encourage the reactivation of vacant and under-utilised buildings in existing urban environments.

This approach offers several advantages. Existing infrastructure can often be utilised more efficiently; urban centres can benefit from increased residential occupation; and environmental impacts associated with new development may be reduced. The expansion of the scheme therefore aligns housing policy with wider sustainability objectives.

Residential Zoned Land Tax Measures

Section 103 of Finance Act 2025 amended the residential zoned land tax (RZLT) regime in Part 22A TCA 1997. The 2026 changes are primarily focused on greater flexibility, enhanced deferral mechanisms and improved

alignment with the planning system, rather than changing the underlying tax rate.

Key features of the regime

Amongst other things, s103 expands the circumstances under which landowners can seek relief where submissions are made to local authorities regarding zoning changes.

- Section 653IA TCA 1997, as amended by Finance Act 2025, provides that where a qualifying submission requesting a change of zoning is made, RZLT shall not be charged and levied in respect of the relevant site on 1 February 2026.
- Certain amendments align the RZLT legislation with the new Planning and Development Act 2024, and as the author understands, goes towards ensuring that sites actively progressing through planning processes are not inadvertently exposed to immediate RZLT liabilities.
- Section 653AF TCA 1997, as amended, provides that RZLT arising between the granting of planning permission and the determination of a relevant appeal or petition shall not become due and payable.
- Under various provisions, the key changes include recognition of new categories of deferred tax, alignment of tax payment obligations with statutory return dates, extension of existing deferral mechanisms and improved treatment of sites progressing through development stages.
- Section 653AG TCA 1997, as amended, requires an owner of relevant sites to make a declaration to Revenue within prescribed periods where non-residential development commences on the site and maintain supporting records demonstrating compliance.

Taxes are intended to influence behaviour as well as simply raise revenue. The underlying objective is to encourage the activation of development land and discourage the retention of vacant or under-utilised property assets. In policy terms these measures operate as a counterbalance to the various tax

incentives discussed above. Whereas reliefs seek to encourage development, charges on inactive assets seek to discourage delay and inactivity.

Rent Tax Credit

The Finance Act 2025 provided for the extension of the credit in its current form for a further three years to 31 December 2028, at a maximum value of €1,000 for a single individual and €2,000 for a jointly assessed couple.

Conclusion

The Finance Act 2025 housing package undoubtedly represents one of the most

ambitious uses of the tax system to support residential development in recent years. The combined effect of VAT reductions, enhanced corporation tax deductions, corporation tax exemptions, stamp duty reforms and regeneration incentives should improve the economics of a wide range of housing projects.

However, the extent to which these tax measures translate into additional housing supply remains uncertain. The principal obstacles to development are often not purely fiscal. Planning delays, judicial review processes, infrastructure capacity constraints, labour shortages and development finance considerations continue to affect the delivery of new homes throughout the State.



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Tax Litigation: Is It Time to Consider Mediation?



Introduction

This article discusses how mediation or other forms of alternative dispute resolution could be effective in tax litigation. A number of recent developments have brought this issue to the fore, the Revised General Scheme of Finance (Tax Appeals and Fiscal Responsibility) Bill 2024 and the proposals in respect of public hearings before an Appeal Commissioner in the Tax Appeals Commission (TAC) being most relevant to tax practitioners. There have also been a number of recent advancements in the High Court with respect to mediation, and this article examines how those advancements may align with the impact of the proposed changes in the Revised General Scheme of Finance (Tax Appeals and Fiscal Responsibility)

Bill 2024, particularly on the issue of tax appeal hearings in public or private and on resulting determinations issued by an Appeal Commissioner.

The Revised General Scheme of Finance (Tax Appeals and Fiscal Responsibility) Bill 2024

The Bill was drafted in early 2024, but the Government was dissolved in November 2024, before pre-legislative scrutiny of the Bill could take place. In September 2025 the new Government approved a Revised General Scheme of the Bill, which was published on 13 November 2025 and referred to the Joint Committee on Finance, Public Expenditure,

Public Service Reform and Digitalisation (“the Joint Committee”). For ease of reference, therefore, I will refer to the Bill as the Revised General Scheme of Finance (Tax Appeals and Fiscal Responsibility) Bill 2024 (“the 2024 Bill”).

Head 5 of the 2024 Bill proposes various amendments to the Taxes Consolidation Act 1997 (TCA 1997). Subhead 2 proposes:

“an amendment of section 949Y of the Taxes Consolidation Act 1997 (Public hearings) to make clear that the Appeal Commissioners have discretion to decide whether it is necessary to allow for a hearing to be held ‘in camera’”.

In respect of publication of determinations, subhead 5 proposes:

“an amendment to section 949AO(4) of the Taxes Consolidation Act 1997 (Publication of determinations) to ensure redaction of determinations occurs only where the Appeal Commissioners are of the view that there are special and limited circumstances justifying such redaction”.

The explanatory note to the 2024 Bill outlines that these proposals were precipitated by the Supreme Court judgment in *Zalewski v Adjudication Officer and the Workplace Relations Commission, Ireland, and the Attorney General* [2022] 1 IR 421, where the majority held that the exercise of powers by Adjudication Officers pursuant to the Workplace Relations Act 2015 (as amended) (“the WRC Act”) was the administration of justice within the meaning of Article 37 of the Constitution. Separately, the Court held that because Adjudication Officers carried out the administration of justice all hearings before such officers are required to be held in public, in accordance with Article 34 of the Constitution, and therefore the provision of the WRC Act requiring all hearings “to be held otherwise than in public” was inconsistent with the Constitution. The explanatory note to the 2024 Bill further outlines that it is the

Department of Finance’s view that the hearing and determination of appeals before the TAC constitutes the administration of justice for the purposes of Article 34 of the Constitution, and therefore appeal hearings must be, by default, in public. The explanatory note states that:

“while there may be cause for hearings to be held ‘in camera’, per request of the parties to an appeal, in line with *Zalewski* it is appropriate that Appeal Commissioners have discretion to direct that an appeal should be heard ‘in camera’ on the request by a party or parties to an appeal, **or** to direct that an appeal should be heard in public where they believe it is in the interests of justice to do so [emphasis in original].”

On this basis, the Department of Finance is of the view that to comply with *Zalewski* an Appeal Commissioner should have discretion to direct that an appeal should be heard in camera on the request by a party or parties to an appeal or to direct that an appeal should be heard in public where they believe that it is in the interests of justice to do so.

As it currently stands, the default position in respect of hearings before an Appeal Commissioner is that hearings of tax appeals shall be held in public (s949Y(1) TCA 1997). Sub-section 949Y(2) TCA 1997 provides that an Appeal Commissioner may give a direction that a hearing, or part of a hearing, is to be held in camera if they consider that giving such a direction is necessary with reference to five specific criteria, namely, in the interests of public order or national security, to avoid harm to the public interest, to maintain confidentiality of sensitive information, to protect an individual’s right to respect of his or her private and family life or in the interests of justice. An appellant taxpayer can, under s949Y(3) TCA 1997, apply to have the hearing heard in private or elect to do so on the statement of case. Where either option is requested, the Appeal Commissioner **shall** hear the appeal in private; the section is mandatory in nature.

The effect of the proposed amendment by the 2024 Bill to s949Y TCA 1997 on public hearings before the TAC is that although the default position for a hearing in public remains, the appellant taxpayer will no longer have the entitlement to have the appeal heard in private. Rather, the Appeal Commissioner will retain discretion regarding whether the appeal should be heard in private. The 2024 Bill does not specify what criteria or grounds can be considered by an Appeal Commissioner in exercising their discretion to have an appeal heard in camera, but it is anticipated that those grounds would be in line with the current s949Y(2) TCA 1997.

Subhead 5 and the proposed amendment to s949AO TCA 1997 will, in turn, allow for the redaction of determinations of an Appeal Commissioner in special and limited circumstances only, as opposed to the current position, where determinations are redacted of information identifying an appellant taxpayer.

Submissions were made to the Joint Committee by a number of parties, including the Irish Tax Institute,¹ Chartered Accountants Ireland,² the Law Society of Ireland³ and the Council of the Bar of Ireland.⁴ All of these bodies are consistent in the submission that the *Zalewski* judgment does not mandate the changes to appeal hearings proposed by the 2024 Bill. Appellants before the TAC have, by virtue of s949Y TCA 1997, the option of a hearing in public (albeit that most taxpayers elect for a private hearing), as opposed to the appellant in *Zalewski*, who, under the WRC Act, had no such option. All advocate for the maintenance of the status quo: that the default position remain that hearings are to be held in public but that the taxpayer has an entitlement to elect to have an appeal heard in private.

Examples of the impact of the proposed changes are highlighted in these submissions,

with emphasis on taxpayer confidentiality, the loss of the right to privacy with public hearings and the fact that the proposed changes would act as a deterrent to legitimate challenges by taxpayers, who will forgo appeals or concede disputes to avoid public identification.

The Joint Committee has, as of May 2026, issued its report on Pre-Legislative Scrutiny of the Revised General Scheme of the Finance (Tax Appeals and Fiscal Responsibility) Bill. As part of its Primary Recommendations on tax appeal hearings in private or public, the Joint Committee provided at Recommendation 1:



“The Committee strongly recommends that the Minister for Finance make no change to the existing provisions in respect of public or private TAC hearings.”

As part of its Ancillary Recommendations, if Recommendation 1 is rejected, at Recommendation 5 it states:



“In the instance of a rejection of Recommendation 1, the Committee recommends introducing an alternative dispute resolution process which precedes recourse to the TAC and can take place in private.”

In coming to this conclusion, the Joint Committee references (at page 18) a point raised by the Irish Tax Institute in its submission that, compared with the systems in other common law jurisdictions, the proposed system clearly lacks any alternative or preliminary dispute resolution process, which normally precedes public hearings (as in the UK and the US).⁵

The current position, therefore, is that the Joint Committee recommends no changes to the existing provisions of s949Y TCA 1997 concerning public and private hearings. If,

¹ Written submissions dated 12 December 2025 and 9 March 2026 and oral submissions before the Joint Committee.

² Written submissions dated 12 December 2025.

³ Written submissions dated 13 December 2025.

⁴ Written submissions dated 12 December 2025 and oral submissions before the Joint Committee.

⁵ Written submissions by Matheson LLP, Deloitte Ireland LLP and the Law Society of Ireland also make reference to alternative dispute resolution and/or mediation.

however, that recommendation is rejected, the Joint Committee (as part of its ancillary recommendations) recommends recourse to a confidential alternative dispute resolution system that precedes recourse to the TAC.

What Is Alternative Dispute Resolution?

Alternative dispute resolution (ADR) is a broad concept incorporating processes such as arbitration, adjudication, conciliation and mediation and is intended to be an alternative to litigation, depending on the type of dispute involved. Mediation as a form of ADR is the focus of this article as possibly the most widely used form of ADR.

As far back as 2010 the Law Reform Commission in its report “Alternative Dispute Resolution: Mediation and Conciliation” (LRC 98-2010) analysed the pros and cons of ADR with references to various types of disputes that tend to result in litigation. The Law Reform Commission made recommendations in respect of the use of ADR, many of which were implemented by the Mediation Act 2017. As part of its analysis the Law Reform Commission observed (paragraphs 1.10 to 1.14), *inter alia*, that although not all types of cases are suitable for resolution by way of ADR, those that are should be encouraged and facilitated to do so. The Commission states the following at paragraph 1.14:

“The Commission’s clear view is that not all cases are suitable for resolution by ADR, just as the court based adversarial process is not suitable for all cases. The decision to use ADR should be made on the basis of a range of factors including how best to serve the specific interests of the parties and how best to ensure that justice is accessible, efficient, and effective for the parties involved.”⁶

Mediation is defined by s2(1) of the Mediation Act 2017 (“the Mediation Act”)

as a “confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute”. The Mediation Act provides a statutory framework to promote and facilitate the settlement of disputes by way of alternative to litigation. Before the issuing of civil proceedings (as defined by the Mediation Act) a solicitor is required to advise a client to consider mediation, explain the process and provide a statutory declaration that the client has been so advised. The Mediation Act empowers a court to invite parties to engage in mediation at any stage during the proceedings and can adjourn proceedings to facilitate the process. Unreasonable failure to comply with these requirements can result in costs consequences for the relevant party.

The scope of the Mediation Act is set out at s3, and rather than prescribe what is included, it specifies what the Mediation Act shall not apply to. Section 3(1)(c) excludes appeals determined by an Appeal Commissioner before the TAC and a subsequent case stated of such a determination to the High Court. Section 3 provides:

“3(1) This Act shall not apply to:...

- (c) a matter that may be determined by –*
 - (i) an Appeal Commissioner appointed under section 8 of the Finance (Tax Appeals) Act 2015,*
 - (ii) the High Court under section 949AR of the Taxes Consolidation Act 1997, or*
 - (iii) a property arbitrator appointed under section 2 of the Property Values (Arbitrations and Appeals) Act 1960 in relation to a decision of the Revenue Commissioners as to the market value of any real property”.*

Further exclusions are set out at ss3(1)(d), (e) and (f):

6 Also referred to by Kennedy J in *Byrne v Arnold* [2024] IEHC 308.

- “(d) an application under section 901, 902A, 907, 907A, 908, 908B or 1077B of the Taxes Consolidation Act 1997;*
- (e) proceedings under –*
- (i) sections 960I, 960M, 960N, 1061, 1062 or 1077D of the Taxes Consolidation Act 1997,*
 - (ii) section 20 of the Customs Act 2015, or*
 - (iii) section 127 of the Finance Act 2001;*
- (f) proceedings in the High Court by way of judicial review or of seeking leave to apply for judicial review”.*

There are logical reasons for these exclusions: for example, where a statutory function is reserved to the court, as in s1077B TCA 1997. An application pursuant to s1077B relates to a determination that a taxpayer is liable to penalties on foot of a Notice of Opinion issued by a Revenue Officer. In the absence of agreement by the taxpayer to the Notice of Opinion, s1077B empowers the court alone to make a determination regarding whether the taxpayer is liable to penalties. This is an obvious example of a matter that is not suitable for the ADR process as identified by the Law Reform Commission.

The more significant exclusion from a tax practitioner’s point of view is an appeal before the TAC and/or a case stated to the High Court. One of the purposes of the Mediation Act is to allow the court to intervene and invite the parties to mediation where appropriate. Part 40A TCA 1997 provides for a statutory process for appeals to an Appeal Commissioner primarily in respect of assessments to tax, which involves an entirely different regime from that of issuing proceedings before the courts and therefore is not governed by the Mediation Act. The exclusion of tax appeals from the Mediation Act is therefore likely because tax appeals are grounded in a statutory process wherein the Appeal Commissioner has a specific jurisdiction, as opposed to the process

of a court, which is governed by the Mediation Act.

The fact that tax cases are not within the scope of the Mediation Act does not mean that they are not, as a general principle, suitable for mediation or that mediation cannot be considered. The State Litigation Principles were introduced by the Office of the Attorney General on 21 June 2023, and although they do not, and are not intended to, have legal effect, they seek to serve as guidelines to assist the State in the conduct of litigation. Although the State Litigation Principles expressly refer to litigation conducted through the Office of the Attorney General and the Chief State Solicitor (as opposed to the Revenue Solicitors Office), it is interesting to note the Attorney General’s reference to mediation both with reference to the Mediation Act and otherwise. At paragraph 1 it states:



“the State will endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings, in line with the provisions of Section 14(1) of the Mediation Act, 2017 **and in other cases, by participating in alternative dispute resolution processes where appropriate** [emphasis added]”.

This arguably shows that the Office of the Attorney General and the Chief State Solicitor’s Office can consider mediation in matters not governed by the Mediation Act if the parties agree and if appropriate. More recently, High Court Practice Direction 137 (Planning and Environment Court List) commenced on 13 April 2026. Some of the litigation concerning planning and development to which this Practice Direction is directed is conducted by way of judicial review. Judicial review proceedings are specifically excluded from the Mediation Act (s3(f)); however, paragraph 5(k) of this Practice Direction encourages parties to “demonstrate reasonable willingness to explore ADR options if appropriate and/or to explore proposals from other parties or the Court as

to how areas of dispute might be reduced or narrowed”. A court in these instances is not bound by the Mediation Act, but this paragraph acknowledges the option of ADR regardless, and where appropriate the court may facilitate mediation.

In the United Kingdom HMRC provides specific alternative dispute resolution guidance,⁷ which makes provision for the engagement in an ADR process, which can be used before or after HMRC has issued a decision that can be appealed against or at any stage during an enquiry. The guidance is comprehensive and covers a range of scenarios. It acknowledges the voluntary nature of mediation and that not all tax cases are suitable for ADR; in fact, it specifically excludes certain types. It also provides that those looking to engage in mediation can either use the HMRC mediator or, where the parties agree and pay the costs, engage an external mediator.

The Recent High Court Developments

There has been considerable judicial approval of mediation and the Mediation Act over recent years, with instances too numerous to list here. There have also been specific directions on the use of mediation. Of particular note are:

- High Court Practice Direction 141, relating to “the Mediation Act 2017 and other Statutory Provisions relating to Mediation and Alternative Dispute Resolution” (HC141), which commenced on 3 June 2026;
- the High Court judgment in *J Burke & Associates Ltd v O’Connell* [2026] IEHC 314 (“the *Burke* judgment”), delivered on 20 May 2026, which analyses the concept of court-ordered mandatory mediation; and
- High Court Practice Direction “Clinical Negligence Actions – Applications for Trial Dates” (HC131), commenced on 28 April 2024.

Practice Direction HC141

HC141 seeks to strengthen compliance with the Mediation Act and remind parties of the consequences of failing to comply with its requirements and the consequences of unreasonably refusing to engage in mediation. It emphasises that compliance with s14 of the Mediation Act is mandatory and that non-compliance may have adverse consequences, including delay and cost implications to be borne by the defaulting party. Although HC141 confirms the express obligations on a plaintiff/applicant solicitor, paragraph 15 also emphasises that a defendant/respondent has professional and ethical obligations to act in their client’s best interests and advise them of the options available to resolve a dispute so that the client can make an informed decision on how best to proceed. The role of the court is addressed in paragraphs 16 and 17 of HC141. Section 16 of the Mediation Act allows a court, on the application of the parties or of its own motion, to invite the parties to mediate. Where such invitation is accepted, the proceedings are adjourned to facilitate the mediation. Subsection 6(2) of the Mediation Act confirms that participation in mediation is at all times voluntary; however, s21 provides that where there is an unreasonable failure by a party to attend mediation (following an invitation by the court under s16) the court can, where it considers it just having regard to s169(1)(g) of the Legal Services Regulation Act 2015, have regard to that refusal in awarding costs. HC141 therefore emphasises the need to engage meaningfully in considering mediation to resolve a dispute subject to the Mediation Act or potentially face cost consequences where consent is unreasonably withheld.

The *Burke* judgment: delivered on 20 May 2026

The judgment is lengthy, and a full analysis is beyond the scope of this article. Of relevance, however, is that Twomey J reflected on whether the court has a general power to direct mediation even if the parties (or one

⁷ HMRC, Alternative Dispute Resolution Guidance (ADRG01000–ADRG03300).

of them) do not agree or whether the court can only invite the parties to mediate. As part of his deliberations Twomey J considered the position in the courts of England and Wales on mediation, which was radically altered by the judgments in *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 416 and *DKH Retail Limited & Ors v City Football Group Limited* [2024] EWHC 3231(Ch). The combined effect of these two cases is that a court in England and Wales, in controlling its own process, has the jurisdiction to compel parties to litigation to mediate. Although no such rules compelling parties to mediate exist in this jurisdiction (s6(2) of the Mediation Act confirms that the process is voluntary, which is, in turn, confirmed by HC141), Twomey J concluded, *inter alia*, that the High Court in this jurisdiction has an inherent jurisdiction to direct parties to engage in mediation. The effect of the *Burke* judgment, however, remains to be seen.

Practice Direction HC131

HC131 relates specifically to clinical negligence cases. It makes provision for mediation at a later stage in the proceedings and is additional to the Mediation Act's requirement to advise the client before issuing proceedings. It provides guidance on the criteria required before applying for a hearing date for trial and requires a fully pleaded case (such that all issues are identified and documents exchanged via discovery), together with the exchange of a schedule of witnesses and all expert reports. A further condition for applying for a date for hearing is that the applicant must provide an undertaking to offer mediation to the opposing party within three weeks following the date on which the trial date is fixed and to engage in such mediation within six weeks of the offer of mediation being accepted. The parties are required to engage constructively in this process, although HC131 acknowledges that the mediation requirement will not apply to an applicant who has satisfied the court that mediation will not assist the parties in achieving settlement. Similar to HC141, failure to reasonably engage with the process can result in cost consequences.

What Issues Do These Developments Raise for Tax Litigation?

Although ostensibly it could be argued that these developments have no relevance to practitioners advising clients on tax appeals in light of the current statutory regime, I would argue that they show an increasing move towards resolving civil litigation matters by way of mediation that is being formalised by way of legislation, practice directions and judgments of the courts. An obvious question to readers in respect of HC131 and HC141 is "what do these practice directions have to do with tax?". The answer is "more than one might think". The recommendation of the Joint Committee in respect of an ADR process acknowledges the potential loss of the confidential process within the TAC. Although the recommendation relates to an ADR process "which precedes recourse to the TAC", there is nothing to say that once an appeal has been filed with the TAC a mediation process could not be engaged in after filing. HC131 is an example of how this may be achieved as its logic aligns quite well with a tax appeal and the statutory provisions relating to pre-hearing proceedings, in particular ss949Q, 949R and 949S TCA 1997, which make provision for the submission and exchange of a statement of case followed by an outline of arguments.

Although there is no definition of what might constitute a "public hearing" in the 2024 Bill, it may be the case that unless and until a tax appeal is listed for hearing, the name of the taxpayer will not be public. The aim of the statement of case is to set out the parameters of the appeal with reference to the relevant legislation, the relevant facts, the relevant case law etc. The outline of arguments is a more fulsome document where the issues in the appeal are elaborated on, the law is analysed, and appropriate reference is made to the relevant evidence and expert reports. As practitioners are aware, once an outline of arguments is filed in a tax appeal, a hearing date is set. A tax appeal brought to this stage should be ready for hearing and, in a scenario where the parties

are facing a public hearing are, in my view, primed for mediation. As in civil litigation, the parties may not fully understand the factual position of each other until this point in the proceedings, and mediation may well result in a better understanding of the facts, leading to an agreed resolution. Similar to a clinical negligence case that is ready for hearing (where, no doubt, confidentiality of all parties is an issue), with a tax appeal after the outline-of-arguments stage a mediation could be proposed and conducted on a confidential basis, potentially resulting in a binding solution for the parties without recourse to a public hearing. Even if a tax case were not fully resolved by mediation, in complex litigation it is always open to the parties to agree certain aspects of the case or to narrow the issues. A mediation can interrogate the issues, leaving the unresolved issues to be determined before the Appeal Commissioners.

In terms of costs, although both parties bear their own in a tax appeal, there are obvious benefits to resolving an appeal that is set to run for multiple days before it commences for both the appellant and Revenue. A case stated to the High Court, however, would be subject to ss168 and 169 of the Legal Services Regulation Act 2015, whereby costs are generally awarded to the successful party; this further strengthens the benefit of mediation as both parties remain on risk.

An interesting situation may arise should ss949Y and 949AO TCA 1997 be amended in accordance with the 2024 Bill. Civil proceedings subject to the Mediation Act and HC141 can avail of the statutory scheme and the obligations imposed on parties to encourage disputes to be resolved via confidential and binding mediation. Tax appeals, which historically provided confidentiality to taxpayers, are specifically excluded and therefore cannot. This, potentially, makes tax appeals an outlier in the sphere of civil litigation vis-à-vis the obligations and the benefits of the Mediation Act and the potential to interrogate and resolve a dispute in a confidential manner. Tax appeals frequently engage issues of statutory interpretation, analysis of case law,

complex facts and expert evidence and bear a striking similarity to civil and commercial litigation. Every other “civil proceeding” as defined by the Mediation Act has a statutory pathway to engage in a confidential process to resolve the dispute, whereas tax appeals (and subsequent cases stated) will not, nor does the 2024 Bill propose any. Viewed through the prism of all of the changes encouraging parties to resolve litigation through a confidential and binding ADR process cited above, the proposals in the 2024 Bill, absent any protections in respect of taxpayer confidentiality, are a backward move.

Even if Recommendation 5 of the Joint Committee in respect of an ADR process before appeal is acceded to, this in itself is arguably not enough. As can be seen from HC141 and HC131, the facilitation of mediation is required throughout the litigation process, and as is evident from the clinical negligence scheme, an appropriate time to facilitate mediation is later in the litigation, once all of the issues and the scope of the evidence have been identified. Moreover, although a pre-appeal mediation process may be appropriate in some instances, the likelihood of parties being fully ready to address resolving a tax dispute generally arises only after the outline-of-arguments stage, when all issues are identified.

Conclusion

It remains to be seen whether the proposals in the 2024 Bill in relation to public or private hearings will be adopted or the recommendations of the Joint Committee are accepted. The use of mediation in litigation is increasing to the extent that it is no longer considered an alternative to litigation; it forms part of the process, and unreasonable refusal to engage has consequences. The Law Reform Commission observed that there are matters that will not be suitable for mediation, and there is no doubt that certain tax cases fall into this category. That said, regardless of whether the proposals in the 2024 Bill are adopted, a question remains: can, or should, tax litigation remain outside the scope of mediation in the face of its advancement?

News & Moves

PwC Ireland is Delighted to Announce the Admission of Two New Tax Partners

Together, PwC's new Partners will unlock new sources of growth, build trust in a changing world and shape the next era of progress.

Melissa Fenlon

Melissa Fenlon becomes a Tax Partner in the firm's Domestic and International Outbound practice, with responsibility for tax services in the South-East region, including PwC's offices in Wexford, Kilkenny and Waterford. With over 16 years experience, Melissa advises indigenous Irish businesses and multinationals on a wide range of tax matters. She specialises in supporting private businesses on strategic transactions, including sales and acquisitions, as well as estate and succession planning, group restructuring and rationalisation, and Revenue audit engagements. Melissa is a Fellow of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).



Kevin Galligan

Kevin Galligan becomes a Tax Partner in the firm's Foreign Direct Investment practice. Kevin brings over 12 years' experience advising multinational companies on the design and implementation of international and domestic tax structures. Kevin has extensive experience across Intellectual Property, international expansion, financing and treasury matters. Specifically, Kevin advises clients on international structuring, business model transformation and mergers and acquisitions with a particular focus on companies operating in the Technology, Media, and Telecommunications (TMT) sector. Kevin also has significant international tax experience, having spent two years on secondment with PwC San Francisco. He is a Fellow of Chartered Accountants Ireland and a Chartered Tax Adviser (CTA).



EY Strengthens Partnership Across Island of Ireland with 12 New Equity Partners Including Two New Tax Partners

EY Ireland is delighted to announce 12 new Equity Partners, including two new Tax Partners, bringing the total number of Equity Partners in EY across the island of Ireland to 157.

Ciarán Conroy has been admitted as a Partner in Tax. He specialises in aviation finance and structured finance, advising aircraft leasing groups and banks on the establishment and structuring of aircraft leasing platforms in Ireland. He has supported a number of leading aircraft lessors on the acquisition and divestment of significant aircraft portfolios. He has also led multiple big ticket tax engagements across the broader Financial Services sector, including diligence and post-transaction structuring. Ciarán is a Chartered Tax Adviser (CTA).



Shannon Cunningham has been admitted as a Partner in Tax. Based in Northern Ireland, she has over 13 years' experience advising clients on tax structuring, reorganisations, transaction tax matters and international tax matters. A Chartered Accountant and Chartered Tax Adviser (CTA), she works with private equity and private and public companies across the UK market.



New Senior Appointments Signal Growth in Tax and Financial Services at Mason Hayes & Curran

Mason Hayes & Curran has announced new senior appointments across its tax and financial services teams. Finn Kelly joins as Partner and Susan Lynch is promoted to Of Counsel in the firm's tax practice.

New tax partner **Finn Kelly**, Chartered Tax Adviser (CTA) will advise clients on all aspects of Irish tax, with a primary focus on the financial services sector. He specialises in advising asset managers, investment funds, financial institutions and aircraft leasing companies on the tax aspects of their business operations in Ireland. This includes establishing and operating Irish investment platforms and the tax treatment of financing transactions.

Susan Lynch, Chartered Tax Adviser (CTA) has been promoted to Of Counsel in the firm's Tax team, bringing more than 30 years' experience across Big 4 tax advisory and an in-house role giving her a unique perspective on diverse client requirements. Susan works with Irish and international businesses on a wide range of tax issues, from complex cross-border tax structuring to employee share incentive schemes. She also helps clients with tax risk management and disputes involving tax authorities.



L-R: Finn Kelly, Niamh Caffrey (Co-Head of Tax), Kevin Mangan (Co-Head of Tax), and Susan Lynch.

Matheson Announces New Managing Partner

Matheson LLP is pleased to announce that the partners have elected **Shane Hogan**, partner and Head of Tax, as Managing Partner. Shane succeeds Darren Maher, who resigns after 23 years with the firm.

Shane Hogan joined Matheson as a trainee solicitor in 2000 and heads up the largest tax practice in the Irish legal market. Representing international businesses and financial institutions operating in and from Ireland, he is internationally-recognised as a leading tax practitioner advising on the most complex tax mandates in the Irish market. Shane is a Chartered Tax Adviser (CTA).



The best conversations are over coffee.

So let's have one.
It's on us.

Get in touch



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