An Roinn Airgeadais
Department of Finance

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Contents

Introduction **3**

Corporation Tax Trends **5**

COVID-19's Effect on Net Corporation Tax Receipts 7
Concentration of Corporation Tax Receipts 9

Implementation of EU Anti-Tax Avoidance Directives **12**

Anti-Hybrid and Anti-Reverse Hybrid Rules 12
Interest Limitation Rule 13

Update on the Implementation of other CT Roadmap Commitments **16**

Update on Apple State Aid Case **20**

Supporting Investment & Activity in Ireland **21**

Tax Credit for Digital Gaming Sector 21
Accelerated Capital Allowance scheme for Energy Efficient Equipment 24
Accelerated Capital Allowance scheme for Gas Vehicles and Refuelling Equipment 25
S486C – Relief from tax for certain start-up companies 26

Tax Appeals Commission **31**

Tiered System of Appeal Commissioners 31
Case Stated Procedure 32
Dismissal of an appeal – failure to comply with direction 34

Introduction

1. Ireland's corporation tax (CT) regime is a core part of our economic policy mix and is a long-standing anchor of our policy to attract substantive foreign direct investment (FDI). The 12.5% rate, which applies to a broad base, is internationally competitive and is notable for its long term stability. Certainty, transparency and a commitment to open engagement with stakeholders are cornerstones of the CT regime.

2. The establishment of the OECD Base Erosion and Profit Shifting (BEPS) project in 2013, resulting in the publication of the BEPS reports in October 2015, marked a fundamental shift in the international tax landscape for the taxation of multi-national enterprises. The BEPS reports commenced an ongoing, intensive period of legislative change across EU and OECD countries, as existing legislation is updated and new rules are introduced to implement the agreed new standards.

3. Ireland has been to the forefront in implementing the BEPS recommendations. In line with the plan set out in the 2018 Corporation Tax Roadmap[1], Ireland has taken significant concrete actions to ensure our CT code is in line with agreed international standards. Recent measures include the introduction of new ATAD-compliant Controlled Foreign Company rules, exit tax and anti-hybrid rules; updating and expanding Ireland's transfer pricing rules; and implementing the 6th Directive on Administrative Co-operation.

4. Ireland has also been, and will continue to be, pro-active in taking steps at domestic level to ensure that our CT regime remains competitive and continues to contribute to employment and economic growth, while also meeting the newly-agreed international tax standards.

5. The international tax environment remains in flux. There have been significant further developments since the publication of the BEPS reports in 2015, most notably the agreement of comprehensive US tax reform at the end of 2017 and an intensified debate on the taxation impacts of digitalisation at EU and OECD level.

6. The primary forum for this ongoing work is the OECD Inclusive Framework on BEPS. This group published the *"Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy"* in 2019. This work plan provides a mandate to the various OECD technical working groups to work on the technical detail of finding a sustainable globally agreed solution to addressing the tax challenges of digitalisation. This work is discussed in further detail in the *International & EU Developments* TSG Paper.

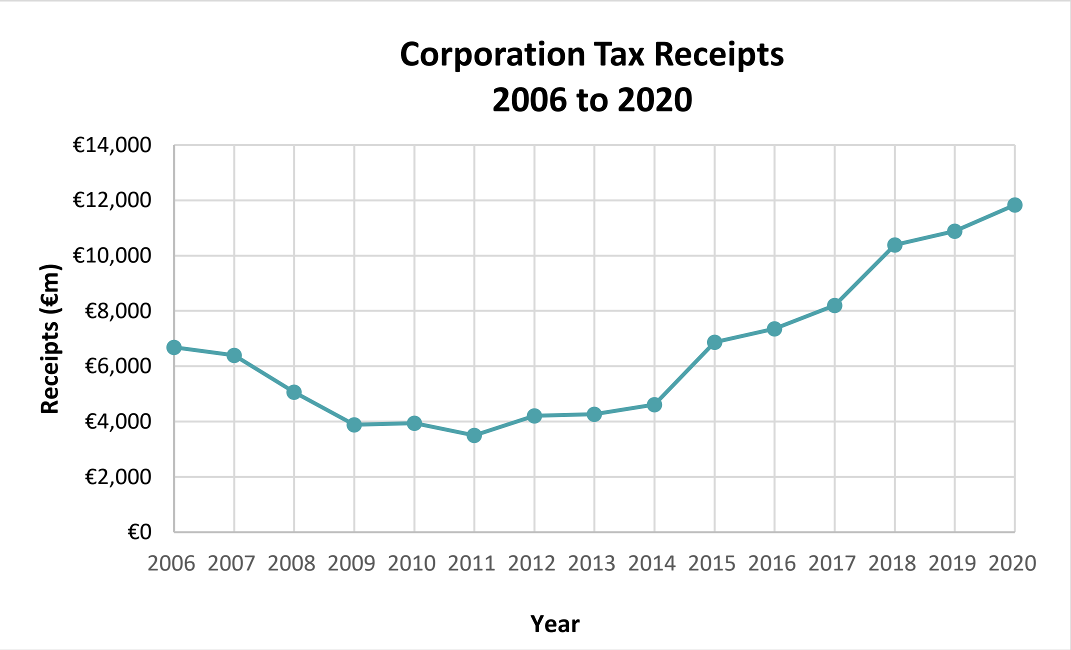
[1] https://assets.gov.ie/4158/101218132506-74b4db520e844588b3d116067cec9784.pdf

7. Against this background of ongoing international change, it is important to support an environment of certainty for substantive business investment and job creation in Ireland. In 2020, businesses faced unprecedented challenges as a result of the COVID-19 pandemic and related public health measures, while also having to prepare for the end of the Brexit transition period on the 31st of December 2020. Ireland's long-standing commitment to sustaining an attractive, stable and transparent CT regime provides certainty to businesses and allows us to compete legitimately to attract genuine substantive investment in the State.

8. This TSG paper therefore contains:
   - An overview of trends in CT receipts;
   - An update on the commitments to action on CT reform, as set out in the CT Roadmap published in September 2018 and the Roadmap Update published in January 2021;
   - Review of progress to date and next steps in the transposition of the Anti-Tax Avoidance Directives (ATAD);
   - An update on developments in the Apple State aid case; and
   - Consideration of a number of domestic reforms aimed at supporting business activities in Ireland.

Corporation Tax Trends

9. As with most other tax-heads, net CT receipts fell significantly during the global financial crisis. They subsequently recovered from 2012 and experienced a level shift in 2015, when net CT receipts of €6.87 billion represented an increase of €2.26 billion, or 49%, on 2014 net CT receipts. This was also the first time post-recession that net CT receipts exceeded the previous annual peak of €6.7 billion, recorded in 2006, as shown by the chart and table below.



2020	2019	2018	2017	2016
€11,833m	€10,887m	€10,387m	€8,201m	€7,352m
2015	**2014**	**2013**	**2012**	**2011**
€6,873m	€4,617m	€4,270m	€4,215m	€3,500m
2010	**2009**	**2008**	**2007**	**2006#**
€3,944m	€3,889m	€5,071m	€6,393m	€6,685m

Pre-recession peak (by value)
Sources: Revenue Commissioners (2006-2020 actual receipts).

10. Net CT receipts in 2020 were €11.83 billion (€11.96 billion before €121 million was allocated to fund payments for the COVID Restrictions Support Scheme ("CRSS")), an additional yield of €0.9 billion (8.7%) in comparison to 2019 (€10.9 billion). CT was the third largest tax-head, accounting for 20.7% (2019: 18.4%) of total net tax receipts[2] of €57.2 billion (2019: €59.3 billion). This represented the ninth consecutive year of annual growth from the low point of €3.5 billion in 2011 (the pre-recession peak was in 2006, when net CT receipts amounted to €6.7 billion).

11. Revenue analysis shows that increases in net CT receipts over the period 2015 to 2019 were attributable to a variety of reasons, including improved trading conditions, the exhaustion of historical losses from the recession and positive currency fluctuations. The increases were broad based – tax receipts from smaller companies increased more quickly in 2017 and 2019 than those from large companies. There were also increases in the numbers of companies (of all sizes) paying tax and across most economic sectors. After the onset of the Covid-19 pandemic, CT receipts for 2020 were initially projected to fall slightly from 2019 to €10.2 billion (as per the *April 2020 Stability Programme Update*), so the final outturn represents an over-performance against projections of circa €1.6 billion or 16.2%. As explained in more detail in the next section, most of the increase is attributable to the higher receipts from the Information & Communication sector as well as the resilience of other sectors, including the Manufacturing sector.

Profitability

12. In April 2021, the Revenue Commissioners published "*Corporation Tax 2020 Payments and 2019 Returns*"[3], the latest in a series of annual CT data publications. Revenue's analysis of 2019 tax returns shows that most sectors maintained their profitability from 2018 to 2019. In total, companies reported trading profits taxable at 12.5% of over €195.3 billion in 2019, an increase of €12.6 billion or 6.9% on the prior year (2018: €182.7 billion).

Losses

13. Revenue states that over 54,400 companies recorded current year losses in 2019 which totalled €9.3 billion. This represented a decrease of 3.7% on the 2018 number of loss-making companies (56,300), and a significant decrease (of €1 billion or 9.3%) in the value of losses incurred as compared to 2018 (€10.3 billion), reflecting the enhanced profitability enjoyed by companies in a buoyant economy which was at or near the peak of the business cycle. Approximately 25,000 companies offset losses totalling €11.9 billion against profits taxable in 2019 at a cost to the Exchequer of €1.5 billion (2018: c.25,400 companies used losses totalling €13 billion at a cost of €1.7 billion).

[2] December 2020 Fiscal Monitor Incorporating the Exchequer Statement
[3] https://www.revenue.ie/en/corporate/documents/research/ct-analysis-2021.pdf

Company Employments, Earnings & Related Taxes

14. Revenue also reports that there were c.2.4 million employments in 2019 (2018: c.2.3 million), c.1 million (2018: c.870,000) of which were recorded in multinational companies (MNCs). The combined Income Tax, USC and PRSI payments of all company employees amounted to approximately €21.5 billion, of which €13.4 billion (63%) related to employees of MNCs (2018: c.€20 billion and €11.5 billion (57%) respectively).

15. As in previous years, average earnings (and consequently average tax payments) were highest among employees of foreign-owned MNCs, which had c.767,000 employments. Of these, c.439,000 (57%) were in the Manufacturing, Administrative & Support, Information & Communication and Financial Services sectors, regarded as traditional export-oriented FDI sectors. The remaining c.328,000 (43%) employments, including c.161,000 in Wholesale & Retail Trade, are in foreign-owned MNCs operating in Ireland with a greater focus on the domestic market.

16. The 2019 returns also show that foreign-owned MNCs accounted for 82% of the total CT liability and 49% of employment taxes, while employing around 32% of company employees. The equivalent figures for 2018 were 77%, 44% and 27%[4].

COVID-19's Effect on Net Corporation Tax Receipts

17. Revenue's "*Corporation Tax – 2020 Payments and 2019 Returns*" report shows that COVID-19 had an unprecedented impact on the Irish economy. While the full effect of the pandemic on net CT liabilities will not be known until all 2020 and 2021 tax returns are fully filed (in late 2021 and 2022 respectively) and analysed (in mid to late 2022 and 2023 respectively), CT payments in 2020 provide an early indication of expected trends.

18. 2020 net CT receipts of €11.8 billion consist of preliminary tax (PT) payments for 2020 (€10.3 billion) and balances due for earlier years (€1.5 billion). As 2020 PT accounts for 87% of net CT receipts in 2020, the changes in 2020 net CT receipts are therefore indicative of the effects of COVID-19 on the CT base. In addition, the number of companies paying net CT fell from 59,970 in 2019 to 56,067 in 2020. Revenue states that this decrease of 6.5% is likely attributable to the effects of the COVID-19 pandemic.

19. Large corporates accounted for €10.3 billion (2019: €8.7 billion) or 87% (2019: 80%) of net CT receipts in 2020, an increase of €1.6 billion or 18%. By contrast, SME corporates paid €1.5 billion (2019: €2.1 billion) or 13% (2019: 20%) of net CT receipts in 2020, a

[4] https://www.revenue.ie/en/corporate/documents/research/ct-analysis-2021.pdf and https://www.revenue.ie/en/corporate/documents/research/ct-analysis-2020.pdf

decrease of €0.6 billion or 29%. This illustrates the negative impacts on the pandemic on small and domestic companies. It is therefore unsurprising that Revenue reports that most of the companies using COVID support schemes (COVID Restrictions Support Scheme, Temporary Wage Subsidy Scheme, Employment Wage Subsidy Scheme, Debt Warehousing and Acceleration of CT loss relief) are SMEs.

20. Early Exchequer projections assumed a decline in corporate profitability in response to the COVID-19 crisis; however, 2020 net CT receipts of €11.8 billion were actually €0.9 billion or 8.7% higher than 2019 (€10.9 billion). It is clear from the below sectoral analysis that most of the increase is attributable to higher receipts from the Information & Communication sector, supported by the resilience of other sectors including the Manufacturing sector. This is consistent with the ESRI's observation that major variations in output by sector during the lockdown period are not unexpected, because some sectors continued to function as per public health advice while others were restricted in their operations.

Sector	2020		2019		Variance	
	€m	%	€m	%	€m	%
Manufacturing	2,891	24%	2,917	27%	-26	-1%
Information and communication	2,883	24%	1,120	10%	1,763	157%
Financial and insurance activities	2,155	18%	2,478	23%	-323	-13%
Wholesale and retail trade	1,788	15%	1,861	17%	-73	-4%
Administrative and support services	1,152	10%	1,167	11%	-15	-1%
Construction	297	3%	336	3%	-39	-12%
Professional, scientific and technical activitie	288	2%	357	3%	-69	-19%
Real estate activities	112	1%	151	1%	-39	-26%
Other sectors	92	1%	77	1%	15	19%
Mining, quarrying and utilities	80	1%	100	1%	-20	-20%
Agriculture, forestry and fishing	62	1%	46	0%	16	35%
Accommodation and food services	44	0%	118	1%	-74	-63%
Transportation and storage	-9	0%	160	1%	-169	-106%
	11,833	**100%**	**10,887**	**100%**	**946**	**9%**

21. The ESRI also noted that Manufacturing accounts for approximately 40% of Irish output in 2020, one of the main reasons that the pandemic affected the Irish economy to a lesser extent than other EU countries. The ESRI reports that this sector, as an export sector, has performed relatively strongly during the public health crisis, registering an increase of 20% in output between 2019 and 2020. The resilience of Ireland's exports to the COVID-19-specific economic shock is a strength during the pandemic, with many of the largest pharmaceutical firms located here producing products that are central to the international response to COVID-19.

22. The ESRI attributed much of the strong economic performance in 2020 to exports of computer services and medicinal and pharmaceutical products, which are areas of a real sectoral specialisation advantage for Ireland. These sectors are dominated by MNCs, with the result that small and medium enterprises (SMEs) have been more significantly affected by the pandemic than MNCs.

Concentration of Corporation Tax Receipts

23. The Department of Finance carried out a comprehensive economic impact assessment of Ireland's CT policy in 2014[5]. This identified that Ireland collects a similar share of CT as a percentage of GDP to the EU average. Also, a distinctive feature of the Irish economy is the high share of economic activity accounted for by FDI.

24. CT receipts in Ireland are concentrated, with a high proportion of receipts coming from the multinational sector. Revenue's "*Corporation Tax – 2020 Payments and 2019 Returns*" report shows that foreign owned MNCs accounted for 82% of net CT receipts in 2020, up from 77% in 2019. While there are variations from year to year, this level of concentration has been relatively stable over recent years at circa 77% of net CT receipts. However, it increased during the pandemic, for reasons discussed previously. In addition, net CT receipts from Irish owned MNCs represented 7% of net CT receipts in 2020 (unchanged from 2019). Therefore, in total, the multinational sector accounted for 89% of net CT receipts in 2020 (and 84% in 2019).

25. The ten largest CT payers in 2020 accounted for €6.0 billion or 51% of net CT receipts in 2020, equivalent to approximately 10%[6] of all tax receipts in 2020. This proportion has also increased significantly during the pandemic over recent trends – over the period 2015 to 2019, the top ten CT payers accounted for between 37% and 45% of net CT receipts (with the 2018 proportion of 45% reflecting certain one-off factors that, when excluded, give a concentration of 43%).

26. It is important to note that there is a year-on-year churn of the companies who encompass the ten largest CT payers. Furthermore, prior to the pandemic there had been increases in the numbers of companies (of all sizes) paying tax and across most economic sectors, and growth in receipts from SME companies often outpaced that of large companies. While the pandemic has caused a reversal of this trend in 2020, it must also be acknowledged that the sustained CT and income tax receipts from the foreign-owned MNC

[5] http://www.budget.gov.ie/Budgets/2015/Documents/EIA_Summary_Conclusions.pdf.

[6] Calculated as follows: €5,983 million paid by the ten largest CT payers (per Revenue data[3]) divided by total net tax receipts of €57,165 million as recorded in the "End-2020 Exchequer Returns" (https://www.gov.ie/en/publication/a40dc-end-2020-exchequer-returns-presentation/).

sector have contributed significantly to the Government's ability to support the worst-affected domestic sectors through the course of the pandemic.

27. As a country that has been consistently successful in attracting leading MNCs to locate here, and given Ireland's level of integration with the global economy, it is not surprising that our CT base has become concentrated. The Statistical and Social Inquiry Society of Ireland (SSISI) recently published "*A Review of 15 Years of Corporation Tax Returns 2004 to 2018*"[7], which included comparison of Ireland to other countries for which data are available and noted that *"the phenomenon of a highly skewed CT liability distribution is common. Singapore, the UK, and Australia emerge as similar to Ireland in their degree of CT concentration, while the US is more concentrated again. In many respects this is not surprising, given global developments in rising corporate market power and monopoly rents (IMF, 2019), lower capital costs for multinationals (Erel et al, 2020) and growing productivity dispersions between 'the best and the rest' (OECD, 2015)".*

Concentration by financial year	US		UK		Singapore		Australia		Finland		Austria	
	% of CT Payers	Share of CT liabilities	% of CT Payers	Share of CT liabilities	% of CT Payers	Share of CT liabilities	% of CT Payers	Share of CT liabilities	% of CT Payers	Share of CT liabilities	% of CT Payers	Share of CT liabilities
2008-09	0.8%	96%	0.7%	69%	4.0%	80%	1.1%	78%			1.0%	62%
2009-10	0.7%	96%	0.6%	67%	3.6%	79%	1.2%	75%			0.9%	58%
2010-11	0.8%	96%	0.7%	69%	3.5%	79%	1.2%	78%			0.9%	65%
2011-12	0.8%	96%	0.6%	67%	3.6%	82%	1.3%	76%			1.0%	60%
2012-13	0.9%	97%	0.6%	63%	3.6%	82%	1.4%	76%			1.0%	63%
2013-14	1.0%	97%	0.6%	58%	3.3%	83%	1.3%	76%			1.0%	61%
2014-15			0.6%	57%	3.4%	83%	1.3%	75%	3.0%	53%	1.0%	64%
2015-16			0.5%	54%	3.1%	83%	1.4%	73%	3.1%	55%	1.1%	65%
2016-17			0.5%	58%	3.1%	83%	1.4%	76%	3.2%	49%		
2017-18			0.6%	61%	2.9%	84%	1.4%	76%	3.2%	54%		

28. The concentration of CT receipts from a limited number of sectors and companies results in potential volatility in receipts, a fact that has been widely recognised by commentators including the Irish Fiscal Advisory Council. While the increase in CT receipts has been welcome, we are not complacent to the risks associated with the concentration of CT receipts and will continue to monitor the situation closely.

29. Actions have been taken in recent years to mitigate the risk of over-reliance on potentially cyclical or over-concentrated CT receipts. A range of base broadening measures were introduced over the last decade and the "Rainy Day Fund" was established and funded. While CT receipts were maintained and in fact over-performed against expectation in 2020, these recent measures helped to fund the emergency support and stimulus measures introduced by the Government to support businesses facing the challenges arising from the COVID-19 pandemic.

[7] http://www.ssisi.ie/SSISI174-Lawlor-et-al-Fifteen-years-of-corporate-tax-revenues-revised.pdf

30. Notwithstanding the current strength in CT receipts, the risk of future volatility remains. The second round of the OECD BEPS process could pose a risk to CT revenues in small open economies such as Ireland. Specifically, the allocation of CT receipts based on the location of a company's sales or users would benefit larger markets that are net-importers. Small, export-intensive economies such as Ireland would lose a portion of their tax base as a larger proportion of profits would be allocated to larger countries.

31. Ultimately, any impact on the Irish Exchequer and on inward investment will depend on the detail of whatever is actually agreed globally. However, the Department's working estimate, based on ongoing work being carried out by the Revenue Commissioners, is that the overall risk from BEPS-related changes could be in the range of €0.8 billion to €2 billion annually. These significant potential costs notwithstanding, Ireland recognises that change is necessary to ensure that we have an international tax framework that fits the modern world. The certainty and stability provided by a globally agreed sustainable solution would help encourage trade and economic growth to the benefit of all.

Implementation of EU Anti-Tax Avoidance Directives

32. Following the publication in October 2015 of the OECD BEPS Package to tackle base erosion and profit shifting by multinational corporations, the Anti-Tax Avoidance Directives (ATADs) were agreed at EU level in 2016 and 2017 to ensure co-ordinated implementation across EU Member States of anti-avoidance measures arising from, and related to, the BEPS discussions.

33. ATAD contains five separate anti-avoidance measures and work on three of these measures is now complete – new Controlled Foreign Company (CFC) rules and a revised Exit Tax were introduced in Finance Bill 2018, while the first and most substantial part of the anti-hybrid rules were introduced in Finance Bill 2019. Ireland's existing General Anti-Abuse Rule (GAAR) already meets the required ATAD standard.

34. Work is continuing on the two remaining measures, anti-reverse-hybrid rules and an interest limitation rule.

Anti-Hybrid and Anti-Reverse Hybrid Rules

35. Anti-hybrid rules are intended to counteract tax mismatches where the same expenditure item is deductible in more than one jurisdiction, or where expenditure is deductible but the corresponding income is not fully taxable. The first and most substantial part of anti-hybrid rules was transposed on schedule in Finance Bill 2019, taking effect from 1 January 2020.

36. Finance Bill 2021 will legislate for the remaining element, anti-reverse-hybrid rules, with the new rules to take effect from 1 January 2022. A reverse hybrid mismatch arises where an entity, referred to as a reverse hybrid entity, is treated as tax transparent in the territory in which it is established but is treated as a separate taxable person by some, or all, of its investors and as a consequence some, or all, of its income goes untaxed.

37. In broad terms ATAD provides that, where one or more associated non-resident investors, holding in aggregate 50% or more of the hybrid entity, are resident in a jurisdiction that regards that entity as a taxable person and a reverse hybrid mismatch arises, then the hybrid entity shall be regarded as a resident of the Member State in which it is established and taxed on its income to the extent that the income is not otherwise taxed under the laws of the Member State or any other territory.

38. ATAD stipulates that the reverse hybrid mismatch provisions do not apply to a “collective investment vehicle” (CIV). For these purposes, a CIV is defined as an investment fund or vehicle that is subject to investor-protection regulation in the country in which it is established, is widely held, and holds a diversified portfolio of securities.

39. There are a number of complexities to be resolved in the transposition of this measure. Some of the necessary terms do not have existing definitions in Irish law or EU Directives and therefore require detailed consideration during the legislative process. Furthermore, application of the reverse-hybrid rule, when triggered, will require the imposition of a tax charge on an entity which, by definition, was not previously seen as a taxable entity in Irish law.

40. A process of stakeholder consultation on these provisions was conducted over the course of summer 2021 and a Feedback Statement was published for consideration in July 2021. A number of stakeholder meetings have been held with industry representatives on the proposed approach to be taken in the implementation of these rules, to ensure that it is operable in practice and will be fully understood by taxpayers when it comes into effect next year.

Interest Limitation Rule

41. Following from the recommended approach outlined in the OECD BEPS Action 4 2015 Final Report , ATAD requires Member States to implement a ratio-based interest limitation rule (ILR), designed to limit base erosion through the use of interest expenses to create excessive interest deductions. The ATAD ILR is a fixed ratio rule that seeks to link a taxpayer’s allowable net interest deductions (i.e. deductible interest expenses in excess of taxable interest income) directly to its level of taxable earnings, by limiting the maximum net deduction to 30% of taxable earnings before tax and before deductions for net interest expense, depreciation and amortisation (EBITDA).

42. The general implementation date for the ATAD interest limitation rule was 1 January 2019, but a derogation is provided in Article 11 of ATAD, such that Member States having national targeted rules for preventing BEPS risks which are equally effective to the ATAD ILR may defer implementation until 1 January 2024 (or until the end of the first fiscal year following agreement on a minimum standard for OECD BEPS Action 4, if sooner).

43. Ireland’s existing targeted interest limitation rules are different in structure to the ATAD ILR. They are purpose-based tests designed to limit qualifying borrowings, supplemented by extensive anti-avoidance provisions relating to connected party transactions. In addition, our transfer pricing legislation ensures that tax relief is only available for an arm’s

length amount of interest. The “arm’s length principle” is an internationally agreed standard that requires related party transactions to be priced as if they were carried out by unrelated parties dealing at arm’s length. Furthermore, while the ATAD ILR permits the deferral of excessive interest charges, so that amounts disallowed in one year may qualify as a deduction in a later year, our existing interest rules permanently disallow non-qualifying interest. Finally, our long-standing general anti-avoidance rule ensures that Revenue is empowered to counteract tax avoidance in Ireland that is not caught by a specific anti-avoidance provision.

44. Therefore, it is the opinion of the Department of Finance, supported by case study data, that Ireland’s existing interest rules are at least equally effective at preventing interest-related BEPS risks to the ATAD ILR. However the European Commission assessed applications for derogation using a ratio-based approach. As the Irish targeted national rules are structurally different to the ATAD ILR, the data collected for the purposes of administering and enforcing our domestic regime does not provide the data points necessary to demonstrate a hypothetical EBITDA outcome. As a result, the European Commission commenced infringement proceedings in 2019, issuing a reasoned opinion in November 2019. This is one of 10 ongoing infringement proceedings that the European Commission commenced against various Member States relating to different aspects of ATAD transposition.

45. While we remain of the view that the extended deadline of 1 January 2024 should apply, work has commenced to bring forward the transposition process. In the interim, Ireland’s existing targeted anti-avoidance rules in relation to interest deductibility remain fully in place. It is also intended that the underlying rules will be largely retained, with the ATAD ILR being introduced in Finance Bill 2021 as an additional measure designed to work with the continuing protections afforded by existing domestic legislation. This is necessary because Ireland’s existing comprehensive rules evolved over time to combat abusive practices and provide strong protection to the Exchequer, whereas the ATAD ILR is a generic, fixed ratio-based limit on current year interest deductibility without general or targeted anti-avoidance rules. Over time, further work will be required to fully integrate the two systems, to remove redundancies and simplify administration for both taxpayers and Revenue authorities.

46. Introduction of the ATAD ILR will be complex. While other ATAD measures enacted to date, such as the CFC and anti-hybrid measures, were targeted at specific BEPS strategies, the ATAD ILR is not targeted at specific types of “bad” borrowings; rather, it imposes an overall limit on all interest deductions, for whatever purpose. It is therefore of relevance to all taxpayers with borrowings, i.e. the vast majority of businesses.

47. Engagement with businesses and advisors during the drafting process is therefore of particular importance to avoid undue complexity and unintended consequences with this measure. The key challenge when integrating the new ATAD ILR will be to deliver a system which is understandable and easy for both business and Revenue to administer, while also retaining the necessary protections for the tax base.

48. Due to the complexity of the ATAD ILR and its interaction with domestic legislation, an iterative approach is being taken to developing ILR legislation. In November 2018, the Department held a public consultation on implementation of the ATAD Anti-Hybrid rules and ILR. This was followed by Feedback Statements in December 2020 and July 2021. The December 2020 Feedback Statement focused on the operation of the ILR on a single company basis. The July 2021 Feedback Statement responded to the observations of stakeholders and brought forward proposed draft legislative approaches to the ILR provision as a whole, including all the group elements and exclusion options. Responses to the July 2021 Feedback Statement are currently being reviewed in detail.

Update on the Implementation of other CT Roadmap Commitments

49. The publication of Ireland's Corporation Tax Roadmap[8] in September 2018 represented a significant milestone in Ireland's implementation of international tax reform. The Roadmap took stock of the significant developments and reforms that had occurred to that date and laid out a further 11 commitments to future action to be taken to implement agreed international tax reforms. It also reflected on the recommendations set out in the Review of the Irish Corporation Tax Code carried out by Seamus Coffey.

50. Subsequent to the publication of the Roadmap, discussions intensified at the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) and at the EU on agreeing further reforms to the international tax framework. The European Commission also published a package in July 2020 which encompassed an Action Plan for Fair and Simple Taxation Supporting the Recovery strategy, a proposal to amend the Directive on Administrative Cooperation, and a Communication on Tax Good Governance in the EU and beyond.

51. It was therefore considered timely in January this year to publish an Update to the Roadmap[9], to take stock of progress in achieving the commitments. Eight of the 11 original Roadmap commitments had been met, with the remaining three expected for completion in 2021.

52. The Update also set out a pathway for further actions to be taken in the period ahead, confirming five existing commitments to further action and seven additional commitments to action, consideration or consultation, as follows:

	Existing Commitments to Further Action
1	**Introduce ATAD-compliant interest limitation rules** The publication of an initial Feedback Statement in December 2020 will be followed by an iterative consultation and feedback process in early 2021, with transposition in Finance Bill 2021. **Update: On track for introduction in Finance Bill 2021**
2	**Legislate for reverse hybrids aspect of ATAD anti-hybrid rules**

[8] https://www.gov.ie/en/publication/b1fbf8-irelands-corporation-tax-roadmap/
[9] https://www.gov.ie/en/publication/678e5-irelands-corporation-tax-roadmap-january-2021-update/

	Publication of a Consultation Paper in Q1 2021 followed by a Feedback Statement by mid-2021, with legislation to be introduced in Finance Bill 2021 to be effective from January 2022. **Update: On track for introduction in Finance Bill 2021**
3	**Consultation on possibility of moving to a territorial regime** A consultation on this issue will be launched in 2021. Any subsequent policy actions will take account of the outcome of the ongoing international discussions on international tax matters. **Update: Consultation to commence in Q4 2021, contingent on greater clarity from OECD process in the interim**
4	**Progress the International Mutual Assistance Bill** Bill to be published in the coming weeks, and to begin progression through the Oireachtas early 2021. **Update: to be published in Q3 2021**
5	**Apply defensive measures in CFC regime to countries on EU Member States' list of non-cooperative jurisdictions** Finance Act 2020 provides that Ireland's CFC rules apply more stringently to companies with subsidiaries operating in jurisdictions that remain on the EU list. **Update: Came into effect from 1 January 2021**
	Further Commitments to Action, Consideration and Consultation
6	**Consider additional defensive measures re countries on EU list of non-cooperative jurisdictions** In 2021 consideration will be given to introducing additional restrictive measures, if required, including denial of tax deductions or imposition of withholding taxes where material payments are made from Ireland to listed jurisdictions. **Update: Public consultation to commence Q3 2021 (see below)**
7	**Consider actions that may be needed in respect of outbound payments** In 2021, commence a consideration of broader issues related to outbound payments from Ireland and our wider withholding tax regime. **Update: Public consultation to commence Q3 2021 (see below)**
8	**Adopt the Authorised OECD Approach for transfer pricing of branches** Extend transfer pricing rules to the taxation of branches in Ireland in line with the Authorised OECD Approach. Work will commence in early 2021 on this policy and it is intended to bring forward the necessary legislation in Finance Bill 2021. **Update: On track for introduction in Finance Bill 2021**

9	**Continue to meet international best practices on exchange of information and support efforts to enhance information exchange** Ireland is, and will continue to be, at the forefront of developing and implementing the latest standards for exchange of information among tax authorities. **Update: DAC7 agreed and on track for introduction in Finance Bill 2021**
10	**Proactively respond to the outcomes of international reform efforts** As the future direction of the global tax framework becomes clearer, the Department will continue to take a proactive, consultative approach in ensuring Ireland's corporation tax system is well-placed for the changing environment. **Update: Public consultation on OECD proposals launched in July 2021**
11	**Publish a tax treaty policy statement taking account of International developments** New tax treaty policy statement having particular regard to treaty policy for developing countries. **Update: Public consultation held and responses published. Development of new treaty policy statement underway and expected to be published Q1 2022.**
12	**Continued engagement in international fora and develop a new framework for domestic stakeholder engagement** New domestic stakeholder engagement process to be established in 2021. **Update: Work commenced on the design of a domestic stakeholder engagement framework in early 2021 but was deferred in view of the high volume of subject-specific consultation ongoing in 2021. It is now planned for introduction in early 2022.**

Action 6 – Additional Defensive Measures, EU List

53. In October 2019, Finance Ministers at ECOFIN agreed a soft law commitment to introduce national legislative defensive measures against listed jurisdictions. A toolbox of four distinct measures was agreed, from which Member States would adopt one through national domestic legislation. These measures are: the non-deductibility of costs; withholding tax measures; enhancing controlled foreign company (CFC) rules; and the limitation of participation exemptions on distributions of profit.

54. Of the four options detailed, Ireland's worldwide tax system already provides the protection that would be offered by the limitation of a participation exemption. Action 5 (above) resulted in the introduction of new criteria to Ireland's Controlled Foreign Company (CFC) rules in Finance Act 2020, to provide that the rules apply more stringently in respect of

subsidiaries operating in jurisdictions on the EU Member States' list of non-cooperative jurisdictions.

55. Consideration is being given to introducing additional defensive measures, including denial of tax deductions or the imposition of withholding taxes where material payments are made from Ireland to listed jurisdictions. A public consultation will be launched in the coming months to gather the views of stakeholders on these options.

Action 7 – Outbound Payments

56. Consideration is being given to actions that may be needed in respect of outbound payments from Ireland. A public consultation will be launched in the coming months to gather the views of stakeholders on the introduction of legislation applying to outbound payments to prevent double non-taxation. Measures under consideration include the non-deductibility of outbound payments, or the imposition of withholding taxes on outbound payments, where they could avail of double non-taxation.

57. It is anticipated that these measures would apply to outbound payments (dividends, interest and royalties) to all no-tax and zero-tax jurisdictions. It is further anticipated that any such measures would be introduced in Finance Act 2023, to apply from 1 January 2024.

Update on Apple State Aid Case

58. In July 2020 the General Court of the European Union (GCEU) issued its judgement in the appeal of the European Commission's 2016 Decision which alleged that Ireland granted illegal State aid to two Apple companies operating in Ireland through branches – Apple Sales International (ASI) and Apple Operations Europe (AOE).

59. The GCEU annulled the Commission's State aid Decision, finding in favour of Ireland and Apple. The Court rejected all three lines of reasoning put forward by the Commission:
    - The General Court annulled the Commission's primary line of reasoning, which claimed that the profits derived from the Apple IP licences should have been allocated to ASI and AOE's Irish branches and taxed in Ireland.
    - The General Court annulled the subsidiary line of reasoning which alleged that, even if the Commission were to accept that Apple IP licences should not have been allocated to ASI and AOE's Irish branches, the profit allocation methods endorsed by the opinions led to a result departing from a market-based outcome.
    - The General Court annulled the alternative line of reasoning whereby the Commission claimed that the tax opinions were the result of discretion exercised by Revenue.

60. The Commission appealed the GCEU judgement to the Court of Justice of the European Union (CJEU) on the 25th September 2020. An appeal to the CJEU must be an appeal on a point, or points, of law. The party appealing may challenge the GCEU's interpretation of the State aid rules and the application of them to the case, but not the facts of the case. The Commission stated that it *"respectfully considers that […] the General Court has made a number of errors of law"* and noted that the GCEU judgement raises important legal issues that are *"of relevance to the Commission in its application of State aid rules to tax planning cases".* Ireland has responded to the Commission appeal as have Apple.

61. A hearing date has yet to be set by the CJEU and the timing of any such hearing is entirely at the discretion of the Court.

62. The State recovered the alleged State aid from Apple of circa €14.3 billion (which is the principal and relevant EU interest), with the final payment made in early September 2018. The alleged State aid has been placed into an Escrow Fund with the proceeds to be released only when there has been a final determination in the European Courts over the validity of the Commission's Decision.

63. In the event that the GCEU judgement is upheld by the CJEU, the monies currently held in the Escrow Fund will be transferred to Apple and the Escrow Fund dissolved.

Supporting Investment & Activity in Ireland

64. In addition to the work ongoing to meet our international commitments for CT reform, the annual process of tax reviews and consideration of domestic measures is also taking place. Four such issues are set out in further detail below:
    - The new tax credit for the digital gaming sector;
    - The Accelerated Capital Allowance (ACA) scheme for Energy Efficient Equipment;
    - The ACA scheme for gas vehicles and refuelling equipment; and
    - The Section 486C relief for certain start-up companies.

Tax Credit for Digital Gaming Sector

65. As announced by Minister Donohoe during his Budget 2021 speech, Department officials have been developing a tax credit for the digital gaming sector in advance of Finance Bill 2021. Digital gaming is a sector that has seen exponential global growth in the past decade. However employment in the sector in Ireland has not matched this global trend and has decreased in the last ten years. In terms of the introduction of a tax credit for digital games, there are potential synergies to exploit with our established film and animation sectors, to support quality employment in creative and digital arts in Ireland.

66. Department officials have engaged with stakeholders, including both public bodies and private sector stakeholders, to inform the development of the tax credit. This engagement has provided officials with an understanding of how the sector operates and informed the development of the credit. Research was also conducted in relation to the operation of similar tax credits in the United Kingdom, France and Canada.

67. As the digital gaming tax credit by its nature is for the benefit of a particular sector, European Commission approval will be required to implement it. The State aid notification process and the legal basis underpinning the notification serves to inform some of the parameters within which the incentive can be designed. The relief will be notified as a cultural relief, therefore a cultural certification process will form part of the credit. This cultural certification process will be administered by the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, similar to the operation of Section 481 of the Taxes Consolidation Act 1997 (the Film Tax Credit).

68. The relief will be provided in the form of a refundable corporation tax credit, therefore it is intended that the target beneficiaries of the relief will be digital game development companies. The credit will not be available to individuals, sole traders or partnerships. A definition of a digital game development company will be developed as part of the

legislative drafting process, however, in general it is expected that such companies would be responsible for the design, production and testing of a digital game. It is intended that the credit will be available in respect of qualifying expenditure incurred in the aforementioned processes, and this concept will be expanded upon in legislation.

Reflections for Discussion by TSG

69. There are a number of potential key components of the credit under consideration which members may wish to reflect on for the purposes of discussion.

Minimum Expenditure

70. Officials are considering recommending a minimum spend requirement in order to avail of the credit. The purpose would be to ensure the credit meets the defined objective of supporting increased employment or growth in the industry. However, in defining a minimum spend, it is also important to ensure that small indigenous games development companies are not excluded, as one of the primary intended benefits of the credit would be to allow such developers to scale up and grow.

71. In terms of an international comparison: there is a required minimum development cost in order to qualify under the French credit which is set at €100,000; the UK's Video Games Tax Relief (VGTR) does not have a minimum spend requirement. With regard to Ireland's Film tax credit, there is a minimum production spend of €250,000 and a minimum eligible expenditure spend of €125,000.

Cap on Eligible Expenditure

72. Department officials are also considering the inclusion of a cap on the maximum value of eligible expenditure in respect of which the credit which could be claimed. A cap on claims would provide an element of control over the cost of the credit from an Exchequer perspective.

73. If a cap on the value of claims were to be included, consideration would be required as to how the cap would apply. Officials are giving consideration to two ways in which a cap could be set:
    a) on a per project basis, or
    b) on a per company per annum basis.

74. By way of comparison: section 481 Film Relief applies a cap of €70 million on a per project basis; the UK's VGTR does not have a cap in place; and the French games tax credit applies a cap on the value of credit that can be claimed of €6 million per year for a period of three years (equating to an eligible expenditure cap of €20 million).

Claims Process

75. Department officials are also giving consideration to the process under which relief can be claimed. Officials are giving consideration as to recommending whether claimants would claim :
    a) annually for expenditure incurred in a given year, or
    b) upon completion of a project.

76. In both the UK and in France, the credit can be claimed on an annual basis as the company develops the game. The expenses that give rise to the tax credit are claimed for the year in which they were incurred. This has been described by stakeholders as a key feature of video game tax credits internationally, as it reflects the commercial needs of smaller games development companies which would benefit from the cash flow of an annual claiming process.

77. Alternatively, the tax credit for digital gaming could operate via a claim submitted upon completion of the game. This method would be the simplest to operate from an administrative perspective and would be the most risk averse option from an exchequer perspective, as a claimant company would not benefit from the credit prior to the completion of a project.

Content Supported

78. During the development process, consideration is being given to potential restrictions on the type of content which will be supported through the tax credit. As outlined above, the credit will be notified to the European Commission as a cultural relief. Therefore qualifying games will be required to include an element of European or Irish culture.

79. There are provisions within the UK VGTR legislation and the French tax credit which impose additional restrictions on certain types of content. In the UK, the VGTR expressly excludes anything produced for advertising or promotional purposes and anything produced for the purposes of gambling within the meaning of the UK Gambling Act 2005. In France, there is a provision that excludes projects that contain pornographic or excessively violent content from accessing the tax credit.

Accelerated Capital Allowance scheme for Energy Efficient Equipment

80. Finance Act 2008 introduced the Accelerated Capital Allowance (ACA) scheme for Energy Efficient Equipment (EEE). The scheme provides a tax incentive for companies and sole-traders who invest in highly EEE. The ACA scheme allows taxpayers to deduct the full cost of expenditure on eligible equipment from taxable profits in the year of purchase. This differs to the standard treatment of capital allowances which are claimed at a rate of 12.5% annually over eight years.

81. The ACA scheme for EEE was reviewed in 2020 in accordance with guidelines for best practice for the evaluation of tax expenditures. This review established that the policy objective of the scheme remains valid and provided evidence of increased uptake of the relief, particularly among micro and small businesses in recent years. Finance Act 2020 extended the end date of the scheme from 31 December 2020 to 31 December 2023.

82. The review also identified that there is difficulty in assessing the energy savings resulting from the scheme as itemised details of each individual energy efficient product and the energy savings associated with that product are not required to claim ACA. This limits the contribution of the scheme to the achievement of energy efficiency targets as the Energy Efficiency Directive requires that energy savings claimed must be validated.

83. Validating the energy savings associated with the ACA scheme represents a significant administrative challenge. An ACA claim may include many low value products such as LED lamps for example, or a single high-value product such as one wind turbine. The administrative burden of accurately keeping track of the energy savings associated with many low-value products is significantly greater than that in respect of a single, high-value product. If a breakdown of each individual energy efficient product which forms the ACA claim and the energy savings associated with each of those products were to be required to claim ACA, it is expected that this could negatively impact the uptake of the relief, particularly for small and micro businesses.

84. The confidentiality of taxpayer information must also be considered, as Revenue cannot share taxpayer information with third parties (such as government departments or agencies) unless permitted by legislation. Furthermore, the responsibility and capability to audit declarations in respect of energy efficiency is also a factor in considering how such claims might be recorded.

Reflections for Discussion by TSG

85. Members of the Tax Strategy Group are invited to give their views on potential amendments to the scheme, or potential new approaches to supporting investment in energy efficient equipment, which would allow for better verification of energy savings resulting from the scheme, while also balancing the confidentiality of taxpayer information and the administrative burden for both claimants and Revenue / SEAI.

Accelerated Capital Allowance scheme for Gas Vehicles and Refuelling Equipment

86. Finance Act 2018 introduced the Accelerated Capital Allowances (ACA) scheme for capital expenditure incurred on certain types of gas propelled vehicles and refuelling equipment. The scheme allows taxpayers to deduct the full cost of expenditure on eligible equipment from taxable profits in the year of purchase, as opposed to the standard treatment for capital allowances which are claimed at a rate of 12.5% annually over eight years.

87. The purpose of the scheme is to contribute to the transition towards a low carbon economy. The scheme seeks to accelerate the de-carbonisation of the transport sector and support the transition from fossil fuels, particularly in the heavy-duty land transport sector. It is primarily valued as a stepping-stone to the use and production of renewable biogas for transport. Biogas is a renewable energy source that is largely CO2 neutral.

88. Tackling climate change is a critical objective, both internationally and domestically. At an international level, the European Green Deal aims to make the EU's economy sustainable and reach carbon neutrality by 2050. Ireland is committed to reducing our greenhouse gas emissions and tackling the climate crisis. The Climate Action Plan 2019 outlines 183 actions across all sectors, including transport. Ireland is required to deliver a 20% reduction (relative to 2005 levels) in greenhouse gas emissions in the non-Emissions Trading Scheme (ETS) by 2020 and a 30% reduction by 2030. The Programme for Government also commits Ireland to 7% average annual emissions reductions to 2030.

89. As the relief was introduced via Finance Act 2018, with effect from January 2019, information regarding the number of claims and the cost of the scheme is not yet available. However consideration of the scheme is required this year as it has a sunset clause of 31 December 2021. Department of Finance officials are therefore considering the potential extension of the scheme and other amendments which may improve the scheme.

90. The backdrop of increasingly ambitious carbon reduction targets and wider Government policy of reducing reliance on fossil fuels suggests that the policy rationale of the scheme remain valid.

91. In terms of improvements to the scheme, the Department of Transport has proposed that consideration be given to amending the scheme to include hydrogen-powered vehicles and refuelling equipment. The inclusion of hydrogen is proposed as a measure to accelerate the transition to sustainable technologies. Additional benefits include the acceleration of local renewable energy and fuel production, increased national fuel security through the diversification of fuel technologies and the avoidance of future technological lock-in concerning transport technologies.

Reflections for Discussion by TSG

92. Tax Strategy Group members are invited to give their views on both the potential extension of the scheme and the potential inclusion of hydrogen powered vehicles and refuelling equipment.

S486C – Relief from tax for certain start-up companies

93. The 3 year start up relief for certain companies is a key support for new small businesses. The relief was introduced in 2008 to provide support to new business ventures in their critical early years of trading, thereby supporting the creation of additional employment and economic activity in the State. A further objective of the relief is to support the survival of new start-up companies, thus leading to a broadening of the CT base. The relief is granted by reducing the CT payable on the profits of the new trade and gains on the disposal of any assets used for the purposes of the new trade.

94. The relief has been extended on a number of occasions since introduction and currently has a sunset clause of end-2021. A review of the relief is therefore being undertaken in 2021, and will include consideration of the significant changes to the business environment since the previous review of the relief in 2018, with Brexit and the Covid-19 pandemic presenting significant challenges to new businesses seeking to establish and grow.

95. According to Revenue data, prior to the pandemic the growth of small and medium enterprises was outpacing that of large companies. However, the Covid-19 pandemic has impacted SMEs significantly, leading to the concentration of CT receipts from larger companies becoming more prominent.

Main features of the relief

As a CT relief, it applies to incorporated businesses only i.e. not to sole traders or partnerships
The initial exemption period is three years from the date of commencement of the new trade.
Exemption is granted in respect of the profits of a new trade and chargeable gains on the disposal of any assets used for the purposes of a trade.
The amount of CT relief available is linked to the amount of Employers' PRSI paid by a company in an accounting period, subject to a maximum of €5,000 per employee (equating to an annual salary of over €49,000) and an overall annual limit of €40,000.
Subject to sufficient Employers' PRSI contributions, full relief applies where the total CT liability does not exceed €40,000 in any of the years of the three year period.
The exemption is granted by reducing the CT relating to the trade and chargeable gains of the company.
Marginal relief is available for companies with a tax liability between €40,000 and €60,000, to ensure new start-up companies with a liability of just over €40,000 do not lose the full value of the relief. Marginal relief operates by allowing relief on a tapering basis so that the closer the company comes to the outer €60,000 limit the less relief it will get.
A carry-forward provision is available for any unused relief arising in the first three years of trading, which can be used in subsequent years.

Continuing Relevance of Relief

96. CSO data illustrates the challenges faced by new businesses in surviving into the long term. For example, the data show that there were 13,824 new enterprises established in 2013. Of these, 11,708 enterprises (84.7%) survived one year in business; 10,938 (79.1%) survived two years in business; 10,141 (73.3%) survived three years in business; 9,756 (70.6%) survived four years in business and 9,305 (67.3%) survived at least five years in business.

97. This broadly compares to the figures in the 2018 review, which noted that of the enterprises established in 2011, 66.5% survived at least five years in business. In contrast, the 2015 review noted that, of the enterprises established in 2007, only 48.4% survived their fifth year of business. The latest data show that a positive trend in the likelihood of new start-ups surviving their early years of trading continues into 2018. While direct causality has not been established, it is reasonable to assume that the 3 year start up

relief may have been a factor in the improved survival rates of qualifying businesses since its introduction in 2009.

Cost and Uptake

98. In terms of the revenue forgone, the estimated tax cost for each year from 2013 to 2019 (the most recent year for which data are available) is as follows:

Tax Year	Estimated Tax Cost €m	Average Claim €	Number of Claimants
2013	4.9	4,682	1,038
2014	4.7	4,774	977
2015	4.8	5,121	936
2016	5.7	5,386	1,051
2017	5.8	5,415	1,071
2018	6.0	5,124	1,171
2019*	6.2	5,188	1,195

**provisional*

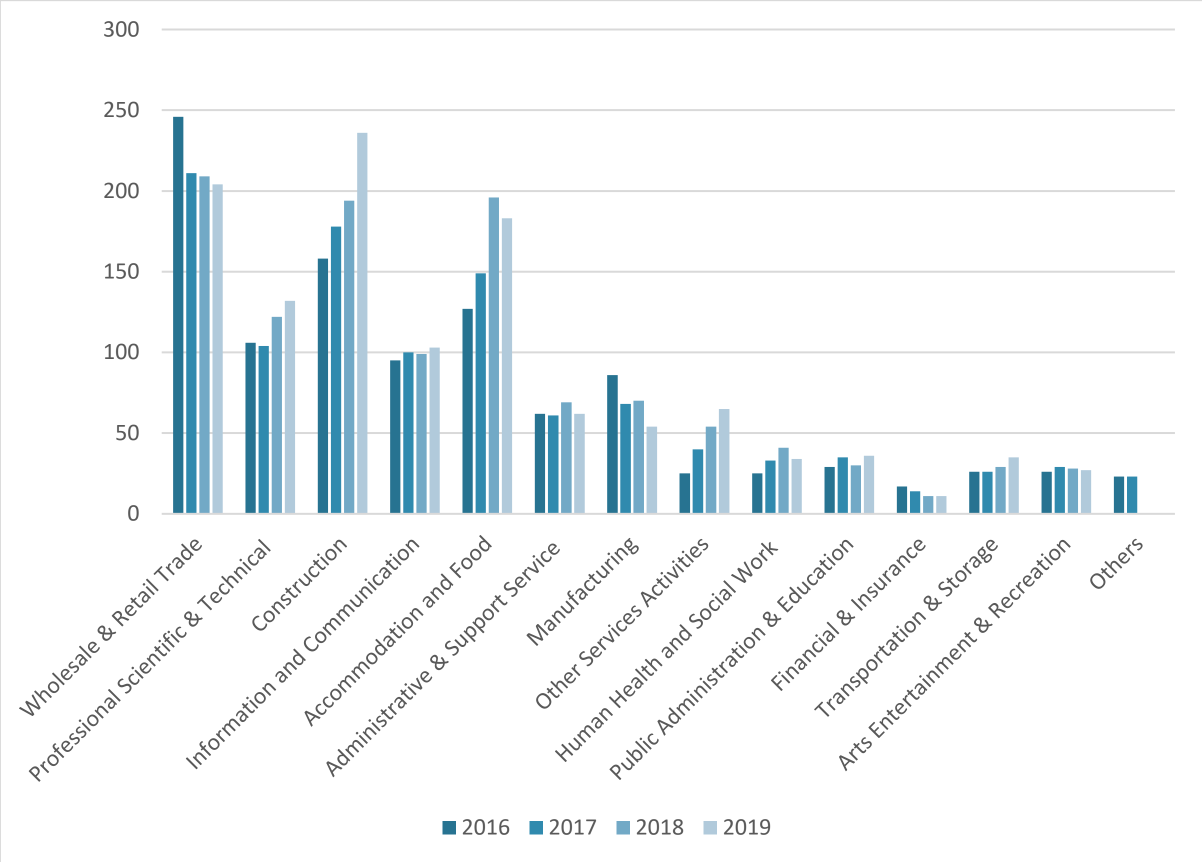
Levels of employment in companies availing of the relief

Tax Year	Number of Companies	Number of Employees	Tax Cost €m	Average number of employees per company	Average cost per employee
2013	1,038	11,750	4.9	11.3	€417
2014	977	12,735	4.7	13.0	€369
2015	936	12,948	4.8	13.8	€371
2016	1,051	15,597	5.7	14.8	€365
2017	1,071	15,830	5.8	14.8	€366
2018	1,171	18,225	6.0	15.6	€329
2019*	1,195	N/A	6.2	N/A	N/A

**provisional*

99. In 2013, the tax credit supported 1,038 companies that between them employed 11,750 employees. In the years that followed, there was a dip in the number of claimant companies but the estimated number of employees in claimant companies increased steadily. From 2016 onwards, both the number of claimants and associated number of employees have grown. 2018 marks the highest number of claimant companies benefitting from the relief since 2012, with 1,195 companies employing 18,225 people claiming relief worth €6 million. No employee numbers are available for 2019 at the time of writing.

Sectoral breakdown by number of claimant companies[10]



100. In 2016, the largest concentration of companies availing of section 486C relief were in the *Wholesale & Retail Trade* (246), *Construction* (158) and *Accommodation & Food* (127) sectors respectively. The sectoral breakdown shows that these sectors remained prevalent in 2019, however *Construction* (236) has overtaken *Wholesale & Retail Trade* (204) as the sector with the greatest amount of claimant companies. 2018 data show that claimants in the top three sectors (*Wholesale & Retail Trade, Construction,* and *Accommodation & Food*) between them accounted for 48% of employees who work in claimant companies.

[10] Source: Revenue Commissioners. 2019 data is provisional. “Others” includes companies in the Utilities, Agriculture and Real Estate sectors. As very few companies in these sectors availed of the relief in 2018/2019, no data can be provided to protect taxpayer confidentiality.

Impact of Covid-19 and Brexit

101. The latest available data on section 486C relief show that, as was the case in 2018, the relief continues to support employment and businesses in a cost-efficient manner. However it is necessary to consider whether changes to the relief may be required in view of the impact of both Covid-19 and Brexit on small and start-up companies.

102. Data in this paper illustrate that SME companies in particular have seen reduced profitability in 2020 and it may be expected that this will continue for some into 2021. The sectoral breakdown of claimants of the start-up relief show that a large proportion of claimants have traditionally come from sectors particularly affected by public health restrictions, including the wholesale and retail trade, construction, and accommodation and food.

103. Reduced profits, or indeed losses incurred, during the start-up period will have a negative impact on the support provided by the relief in the early start-up phase, albeit that the relief includes a provision allowing for carry-forward of the relief where it cannot be fully utilised in the first three years.

104. It is also possible that the pandemic will impact on the quantum of relief available, as a result of the link to Employer's PRSI. Companies in sectors affected by public-health related closures are more likely to have reduced employment numbers, and / or to have availed of COVID support schemes for employment such as the Temporary Wage Subsidy Scheme and the Employment Wage Subsidy Scheme, which reduced the Employer PRSI payable. For example, under the TWSS the rate of Employer PRSI was reduced from 8.8% or 11.05% to 0% on the amount of the TWSS payment and 0.5% of any additional top-up payment, within certain limits.

105. It is likely therefore that small businesses affected by the pandemic would have reduced Employer PRSI costs in 2020 and 2021, resulting in a lower value of start-up relief based on the current calculation methodology.

Reflections for Discussion by TSG

106. Tax Strategy Group members are invited to give their views on the further extension of the relief, and any potential adaptations to the relief in light of the issues noted above, having regard to the relief's key objective of supporting the creation and maintenance of jobs.

Tax Appeals Commission

107. An efficient and effective tax appeals process is an essential element to any functioning tax system. Efficient and fair administration of the tax system, both by Revenue authorities and by appeals bodies, are key factors in supporting businesses and ensuring broad-based compliance with tax legislation.

108. The Tax Appeals Commission (TAC) was established in March 2016, replacing the former Office of the Appeal Commissioners. The objectives for the establishment of the new structure included increased transparency and certainty for taxpayers and ensuring that the appeals system could be seen as fully independent from Revenue. The main function of the Appeal Commissioners is to make determinations on matters that are in dispute between taxpayers and Revenue.

109. The Finance (Tax Appeals and Prospectus Regulation) Act 2019, enacted in December 2019, provided for the establishment of the role of Chairperson of the TAC. Following the completion of a recruitment process by the Public Appointments Service, Ms. Marie-Claire Maney was appointed as the first Chairperson of the TAC on 1 July 2020.

110. The TAC has transitioned from an office of two Commissioners and four staff in 2016, to six Commissioners and 27 staff as at August 2021. Significant progress has been made on implementing the recommendations of the O'Donoghue report on the workload and operations of the TAC, which aim to enable the TAC to address a significant backlog of appeal cases and provide an effective and efficient appeals process into the future.

Tiered System of Appeal Commissioners

111. It has become clear since the establishment of the TAC that there is a wide range in both the complexity and quantum of matters appealed to the TAC, from disputes of vehicle valuations for VRT purposes to complex corporation tax assessments of hundreds of millions of euro. It was therefore proposed that, in line with other comparable bodies, the TAC should have a tiered system of Appeal Commissioners to reflect the actuality of the case load it receives, and to provide a more efficient and cost-effective appeals service for taxpayers.

112. The Ministers for Finance and Public Expenditure and Reform have approved the introduction of a new four-tiered structure of Appeal Commissioners, expanding on the existing system of Appeal Commissioners and Temporary Appeal Commissioners which has been in place to date. A recruitment process aiming to identify and appoint four new 'Tier 3' Appeal Commissioners is now under way.

Finance Bill 2021

113. In addition to implementing the recommendations of the O'Donoghue report, the Department also reviews tax appeals legislation on an ongoing basis to ensure that it is functioning as intended. The following two issues have been identified for consideration in the context of Finance Bill 2021:
    A. Changes to the case stated procedure
    B. Dismissal of an appeal – failure to comply with direction

Case Stated Procedure

114. Where a party to an appeal is dissatisfied with a determination made by the Appeal Commissioner they may appeal the determination to the High Court on a point of law. In order to do this the party must make an application to the Appeal Commissioner to require them to state and sign a case (a "case stated") for the opinion of the High Court.

115. The process can be summarised as follows:
    - The applicant party must submit their application to the Appeal Commissioner within 21 days after the issue of the determination, stating in what respect the determination is alleged to be erroneous on a point of law. The applicant party must also notify the other party to the appeal when making the application.
    - The Appeal Commissioner must issue the signed case stated within 3 months of the date of the application.
    - Prior to issuing the signed case stated, the Appeal Commissioner must prepare and issue to both parties a draft of the case stated, allowing 21 days for them to submit their representations.

116. Since 2018 the TAC has received 84* applications for cases stated, broken down as follows:

Year	CS Applications	Withdrawn/ Refused	Not Lodged with HC	Lodged with HC
2018	11	1	2	8
2019	49	4	8	37
2020	24	6	6	12
Total	84*	11	16	57

*At the time of writing there were an additional 5 case stated applications in 2020 which have not yet been completed and are therefore not included in these figures.

117. Based on the above statistics, 32% of applications for case stated to the TAC never progress to the High Court, despite the considerable amount of time spent by the Tax Appeals Commission in processing them.

118. Furthermore, the process as outlined above has proven to be cumbersome and time consuming and places a significant administrative burden on the Appeal Commissioner to prepare and sign the case stated, a task which cannot be delegated to other staff within the TAC.

119. Many requests for a case stated require further clarification on some element of the application. In circumstances where the parties cannot agree on the contents of the case stated, often a considerable amount of correspondence is required and sometimes it is necessary to convene a case management conference in order to reach agreement.

Time Limits

120. The legislation stipulates that the signed case stated must be issued within 3 months of the date of the application. This 3 month timeframe has proven to be a challenging deadline to meet, particularly in circumstances where there is disagreement between the parties in respect of the contents of the case stated. It is important in the most contentious cases to ascertain as much information from the parties before drafting the case stated to prevent judicial reviews and other disputes concerning the final case stated. However when time is given for the parties to set out their objections and clarifications, and to respond to those received, much of the 3-month time limit is exhausted.

121. The TAC have therefore proposed that the time limit be amended, to assist in the preparation and management of the case stated workload. Specifically, it has been proposed that the draft case stated (rather than the signed case stated) would be issued 3 months after the original application. The parties would then be given 21 further days to make representations; after this time, the Appeal Commissioner would have a further 21 days to complete and sign the case stated.

Point of Law

122. Amendments were made to the governing legislation in the Finance (Tax Appeals and Prospectus Regulation) Act 2019 with a view to clarifying that, where a party requests that the TAC prepare a case stated, the party must state clearly in what respect the original determination is erroneous in a point of law.

123. However, notwithstanding these amendments, the TAC have advised that that issue continues to arise, therefore it has been proposed to introduce a further amendment to specifically provide a power to the Appeal Commissioner to refuse an application where

the applicant party has not stated clearly in what respect the determination is erroneous on a point of law.

Pre-Establishment Requests

124. On establishment, the TAC inherited a tranche of outstanding case stated applications from the former Office of the Appeal Commissioners. Under the previous system there was no time limit for the signed case stated to issue. While the TAC has made great inroads in dealing with these legacy cases stated, there are a number which it has not been able to progress due to the lack of engagement from the parties involved. Currently there is no legislative provision to address this issue, therefore the TAC have proposed the introduction of a power to close these requests for a case stated, where the TAC has made repeated attempts to progress the matter but there has been no engagement from the applicant party.

Reflections for Discussion by TSG

125. The views of the TSG are invited on the following potential changes to the case stated procedure:
    a) An increase in the time limits for issuing the draft case stated. The draft case stated (rather than the signed case stated) would be issued 3 months after the original application. The parties would then be given 21 further days to make representations; after this time, the Appeal Commissioner would have a further 21 days to complete and sign the case stated.
    b) Provide that the Appeal Commissioner have an express power to refuse an application where the applicant party has not stated clearly in what respect the determination is erroneous on a point of law.
    c) Provide for the dismissal of pre-establishment requests for case stated, in circumstances where there is no engagement from the applicant party and the TAC is unable to progress matters.

Dismissal of an appeal – failure to comply with direction

126. Finance Act 2020 provided additional powers to the Appeal Commissioners to dismiss an appeal when either party to the appeal fails to comply with a direction given to them under section 949Q(1), TCA 1997 – requesting a Statement of Case and section 949S(1) TCA 1997 – requesting an Outline of Arguments.

127. Representations have been made to the Department to suggest that this provision could be considered to be one-sided, on the basis that dismissing an appeal is to the benefit of Revenue (as the taxpayer's appeal against a tax assessment is being dismissed).

128. It must however be acknowledged however that the taxpayer appellant is acting on his/her own behalf, whereas the Revenue caseworker is engaged with the appeal as representative of the Revenue Commissioners and ultimately on behalf of the Exchequer.

129. As such, it may be appropriate to address any failure of compliance with a direction of the TAC by the respondent to the appeal by establishing a clear escalation procedure to address any individual failure to comply, and / or to provide for publication of data in respect of any such instances in the TAC annual report.

Reflections for Discussion by TSG

The views of the TSG are invited on potential approaches to ensuring there is no perception of bias against the taxpayer in the provisions for non-compliance with directions of the TAC, having regard to the respective nature of the parties.

An Roinn Airgeadais
Department of Finance

Tithe an Rialtas. Sráid Mhuirfean Uacht,
Baile Átha Cliath 2, D02 R583, Éire
Government Buildings, Upper Merrion Street,
Dublin 2, D02 R583, Ireland

T:+353 1 676 7571
@IRLDeptFinance
www.gov.ie/finance