An Roinn Airgeadais
Department of Finance

Corporation Tax

Tax Strategy Group – 22/03

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Introduction

1. Ireland's corporation tax (CT) regime is a core element of our economic policy mix and is a longstanding anchor of our offering to attract 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 corporate tax regime.

2. The original OECD Base Erosion and Profit Shifting (BEPS) project resulted in the agreement and publication of the BEPS Reports in October 2015, marking a fundamental shift in the international tax landscape as regards the taxation of multinational companies (MNCs). The BEPS reports commenced an intensive period of legislative change across EU and OECD countries, with the overall aims of addressing tax avoidance and ensuring that profits are taxed where economic activities generating those profits are performed and where value is created.

3. Ireland has been to the forefront in implementing the BEPS recommendations into domestic law. In line with the plan set out in the Corporation Tax Roadmap (2018 and 2021 Update), Ireland has followed through on its commitments and taken significant, concrete actions to ensure our CT code is in line with agreed international standards. The most recent legislative measures include the introduction of an interest limitation rule and the reverse hybrid element of anti-hybrid rules in Finance Act 2021. With these two measures, Ireland has now completed the transposition of the Anti-Tax Avoidance Directives.

4. The pace of international tax reform has remained intense over the past 12 months. In October 2021, Ireland, along with over 130 other countries in the OECD/G20 Inclusive Framework on BEPS, signed up to the two-pillar solution to address the tax challenges arising from digitalisation and globalisation. Pillar One of the agreement involves the reallocation of certain profits from MNCs to market jurisdictions (i.e. where sales arise), whereas Pillar Two provides for a global minimum effective tax rate of 15% for large multi-national enterprises.

5. Ireland has committed to the two-pillar solution and has engaged intensively at both OECD and EU level to follow through on this commitment. At the OECD, the primary forum for the ongoing work is the Inclusive Framework. Through its 'Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy' (2019), this group has provided a mandate to various OECD technical working groups to progress the technical detail of the two pillars. Ireland is fully engaged in these groups and this work is discussed in further detail in the International Developments section of this paper.

6. Work on Pillar Two is currently the most advanced. In December 2021 the OECD Inclusive Framework produced Model Rules providing a legislative template for the GloBE rules, followed by publication of an accompanying Commentary in March 2022. Immediately following publication of the Model Rules, the European Commission published a proposed EU Minimum Tax Directive, to provide for the co-ordinated introduction of the Pillar Two rules by EU Member States. It is expected that the Directive will be agreed soon, and work is ongoing to prepare for transposition into Irish law before the end of 2023.

7. Ireland will continue to be pro-active at both international and domestic levels 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. Our objective is to provide an attractive, stable and transparent CT regime, to provide certainty to businesses here and to allow us to continue to attract genuine substantive investment into the State.

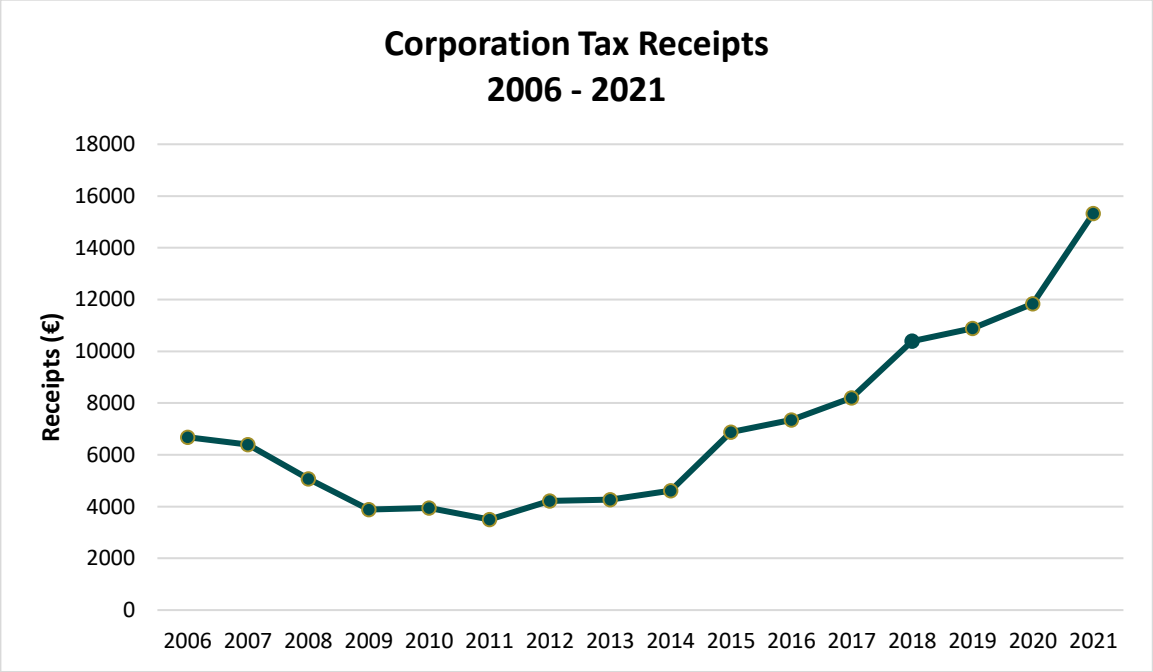
8. As part of this agenda, and in accordance with the Department's Tax Expenditure Guidelines, three business tax credits are under review in 2022: The Research & Development tax credit, the Knowledge Development Box, and the Film tax credit. This paper contains interim progress updates on each of the three reviews.

9. This TSG paper contains:
   - An overview of trends in CT receipts;
   - An update on developments in the Apple State aid case;
   - An update on the commitments to action on CT reform, as set out in the Corporation Tax Roadmap published in September 2018 and the Roadmap Update published in January 2021;
   - Interim updates on 2022 business tax expenditure reviews;
   - Consideration of a number of domestic reforms aimed at supporting business activity and investment in Ireland, and
   - An update on international tax developments, with a focus on work on the two-pillar solution.

1. Corporation Tax Trends

10. 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.

11. The upward trend in CT receipts has continued in subsequent years, with further significant year-on-year rises in 2018 and 2021, as illustrated in the chart below.



2021	2020	2019	2018	2017
€15,323m	€11,833m	€10,887m	€10,387m	€8,201m
2016	**2015**	**2014**	**2013**	**2012**
€7,352m	€6,873m	€4,617m	€4,270m	€4,215m
2011	**2010**	**2009**	**2008**	**2007**
€3,500m	€3,944m	€3,889m	€5,071m	€6,393m

12. Net CT receipts in 2021 were €15.32 billion, an additional yield of €3.49 billion (29.5%) in comparison to 2020 (€11.83). CT was again the third largest tax head, representing 22.6% of net tax receipts in 2021 (20.7% in 2020). This represented the tenth consecutive year of annual growth from the low point of €3.5 billion in 2011.

13. 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.

Profitability 2020

14. Overall CT profitability held up quite strongly in 2020 despite the effects of the pandemic and related public health restrictions. Revenue's "*Corporation Tax 2021 Payments and 2020 Returns"* report, the latest in a series of annual CT data publications, shows that the net reported decrease in trading profits taxable at 12.5% from 2019 was c.€2.1 billion (c.1.06%), a fall from €195.3 billion to €193.2 billion.

15. When broken down to sectoral level, it can be seen that this overall stability in profits is the net outcome of very divergent performance in different sectors in 2020, as shown in Table 1 below. The "Accommodation & Food Services", "Financial & Insurance Activities" and "Manufacturing" sectors had the biggest reductions in profits (by percentage and/or value). By contrast other sectors, such as "Information Communication" and "Wholesale & Retail Trade", recorded significant profit increases. This divergence points to the uneven effect of the pandemic on business activity in 2020. It is also notable that the manufacturing sector appears to have recovered strongly in 2021.

Table 1: Company Trading Profits by Sector 2019 & 2020

Sector	Adjusted Profits €m		Growth	
	2019	2020	€m	%
Manufacturing	79,397.53	74,414.26	-4,983.27	-6.28%
Financial & Insurance Activities	25,808.85	20,827.47	-4,981.38	-19.30%
Administrative & Support Services	24,518.35	24,234.55	-283.80	-1.16%
Information Communication	26,771.13	33,038.10	6,266.98	23.41%
Wholesale & Retail Trade	20,146.64	22,173.99	2,027.35	10.06%
Professional, Scientific & Technical Activities	5,917.17	7,221.65	1,304.48	22.05%
Transportation & Storage	2,985.59	2,159.27	-826.32	-27.68%
Construction	2645.59	2,919.18	273.58	10.34%
Mining & Quarrying + Utilities	1,870.52	2,157.57	287.05	15.35%
Accommodation & Food Services	1,084.50	604.13	-480.37	-44.29%
Agriculture, Forestry & Fishing	679.17	813.32	134.14	19.75%
Human Health & Social Work Activities	1,896.05	1,405.59	-490.46	-25.87%
Real Estate Activities	505.82	327.78	-178.03	-35.20%
Other Sectors	1,055.32	915.34	-139.98	-13.26%
Total	**195,282**	**193,212**	**-2,070**	**-1.06%**

Source: Revenue Commissioners

Losses 2020

16. Over 58,300 companies recorded losses on their 2020 tax return, totalling €14.2 billion. This represented an increase of 7.2% on the 2019 number of loss-making companies (54,400), and an increase of €4.9 billion (52.6%) in the value of losses incurred as compared to 2019 (€9.3 billion). This significant increase is a reflection of the impact that the COVID-19 pandemic had on the Irish economy during 2020. Around 26,000 companies used losses in 2020 totalling €9.1 billion, at a cost to the Exchequer of €1.1 billion. This is a year-on-year increase in the number of companies using losses but a decrease in the value offset, indicating less profits available against which to offset losses. The comparable 2019 figures were c.25,000 companies using losses totalling €11.9 billion at a cost of €1.5 billion.

Company Employments, Earnings & Related Taxes 2020

17. Revenue reports that there were c.2.4 million employments in 2020 (2019: c.2.4 million). Approximately 1 million (2019: c.1 million) of these were recorded in multinational companies (MNCs). The combined Income Tax, USC and PRSI payments of all company employees amounted to approximately €21.4 billion, of which €14.3 billion (65.6%) related to employees of MNCs (2019: c.€21.5 billion and €13.4 billion (63%) respectively).

18. Average earnings (and consequently average tax payments) were highest among employments of foreign-owned MNCs, followed closely by average earnings in Irish-owned MNCs. Foreign-owned multinationals had 761,000 employments in 2020 on Revenue records. Revenue data show 433,000 (57%) of those employments were in the Manufacturing; Administrative & Support; Information & Communication; and Financial Services sectors, which would be regarded as the traditional export-focussed FDI sectors.

19. The 2020 returns also shows that foreign-owned MNCs accounted for 83% of the total CT liability and 53% of employment taxes, while employing around 32% of company employees. The equivalent figures for 2019 were 78%, 49% and 32%.

Indications of 2021 Profitability, based on Net CT Receipts

20. CT payments in 2021 (€15.3 billion) are made up of preliminary tax (PT) payments for 2021 (€13.6 billion) and balances due for earlier years (€1.7 billion). PT payments in 2021 are 32% higher than in 2020 (and 49% higher than 2019). This indicates that, for many companies, profitability increased significantly in 2021. Many companies were affected by the COVID-19 pandemic and the associated health restrictions in 2020. While restrictions continued in 2021, the profitability of companies began to improve and the recovery was strongest in 2021 among the smaller companies, which were often the worst impacted by COVID-19 in 2020.

21. While the proportion of overall CT receipts derived from SMEs fell in 2021 due to the predominance of MNCs, this masks the fact that the recovery by SMEs was stronger –

CT receipts from SMEs increased 60% year-on-year, compared to a 25% year-on-year increase from MNCs. This reflects the recovery SME corporates have made after being more significantly affected by the COVID-19 pandemic. Large companies accounted for €12.9 billion (2020: €10.3 billion) or 84% (2019: 87%) of net CT receipts in 2021, an increase of €2.6 billion (25%). SME corporates paid €2.4 billion (2020: €1.5 billion) or 16% (2020: 13%) of net CT receipts in 2021, an increase of €0.9 billion (60%).

22. 2021 net CT receipts of €15.3 billion were €3.5 billion (29%) higher than 2020 (€11.8 billion). It is clear from the below sectoral analysis that most of the increase is attributable to higher receipts from the Manufacturing sector, supported by the resilience of other sectors including the Information and Communication sector and the Wholesale and Retail Trade Sector.

Table 2: Net CT Receipts by Sector 2021

Sector	2021	+/- 2020
	€m	€m
Manufacturing	4,418*	+1,527
Information and Communication	3,262	+380
Financial and Insurance Activities	2,364	+209
Wholesale and retail trade	2,341	+552
Administrative and support services	1,285	+133
Professional, scientific & technical activities	656	+369
Construction	365	+68
Mining & quarrying + utilities	177	+98
Real estate activities	118	+6
Other Sectors	101	+10
Transportation & storage	90	+100
Agriculture, forestry & fishing	77	+15
Accommodation & food services	70	+26

Source: Revenue Commissioners.
*€2,891m chemical and pharma manufacture, €933m ICT manufacture, €594m other

23. The ESRI has attributed much of the strong economic performance in 2021 to exports of computer services and medicinal and pharmaceutical products, which are areas of real sectoral specialisation for Ireland.

Concentration of Corporation Tax Receipts

24. CT receipts in Ireland are concentrated, with a high proportion of receipts coming from the multinational sector. Revenue's "*Corporation Tax – 2021 Payments and 2020 Returns*" report shows that foreign owned MNCs accounted for 80% of net CT receipts in 2021, down from 82% in 2020. Net CT receipts from Irish owned MNC's represented 9% of net CT receipts in 2021 (up from 7% in 2020). Therefore, in total, the multinational sector accounted for 89% of net CT receipts in 2021 (unchanged from 2020).

25. The ten largest CT payers in 2021 accounted for €8.2 billion (53%) of net CT receipts in 2021. This proportion has increased significantly during the pandemic over recent trends – over the period 2013 to 2019, the top ten CT payers accounted for between 36% and 45% of net CT receipts.

26. While there is consistent concentration in receipts from the top ten CT payers each year, it is important to note that there is a year-on-year churn of the companies who encompass the ten largest CT payers, indicating a broader base than might first be assumed.

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

28. As this increased concentration is connected with the sectoral impacts of the pandemic and the particular sectoral specialisations in Ireland, it could be expected that the concentration should moderate in 2022 as public health restrictions are lifted. As noted above, CT payments data for 2021 provides early indications of a strong return to profitability in 2021 for SME businesses, in addition to growth for larger firms. The increased concentration is nonetheless a matter of concern in considering longer-term sustainability and will require ongoing careful monitoring.

2. Update on Apple State Aid Case

29. 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).

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

3. Corporation Tax Roadmap – Update

35. The Update to the Corporation Tax Roadmap, published in January 2021, contained a series of commitments to further action, consultation and consideration. There has been continuing progress on meeting these commitments since that time, 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:** legislation introduced in Finance Act 2021 ✓
2	**Legislate for reverse hybrids aspect of ATAD anti-hybrid rules** 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:** legislation introduced in Finance Act 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 held in early 2022, 15 responses received. Consideration of options ongoing – further details below. ✓
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:** The Mutual Assistance Bill has been delayed for a variety of reasons, including some complexity in the technical drafting of the Bill. Work in the Bill is well progressed and it is expected that the Bill will shortly be brought to Government for permission to publish. Following publication, the Bill will be considered by the Oireachtas. »
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:** legislation introduced in Finance Act 2020 ✓

	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**: consideration is ongoing, in conjunction with Action 7
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:** consultation held in December 2021, consideration ongoing
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:** legislation introduced in Finance Act 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 in 2021 and transposition commenced in Finance Act 2021 with the remainder to be transposed by 31 December 2022.
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:** consultation held in July 2021 on OECD international tax proposals, prior to Ireland signing up to the Two Pillar agreement in October 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:** consultation held in April 2021, treaty policy statement published in June 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:** deferred due to changed work practices over the course of the pandemic, but work has now commenced on developing a pilot engagement process.

4. Tax Expenditure Reviews 2022

Film Relief - Section 481

36. It is Government policy to support the arts sector and to support engagement in arts, culture and creativity by individuals and communities. The Audiovisual Action Plan[1] was launched in 2018 to set out the Government's high-level, strategic priorities over a ten year period to develop a vibrant media production and audiovisual sector. The core objective of this Audiovisual Action Plan is to provide the necessary environment for Ireland to become a global hub for the production of film, TV drama and animation.

37. In accordance with these policy objectives, the section 481 film tax credit acts as a stimulus to the creation of an indigenous film industry in the State, creating quality employment opportunities and supporting the expression of the Irish culture.

38. The Department of Finance are currently undertaking a Cost Benefit Analysis of Section 481 in advance of Budget 2023, in line with the Tax Expenditure Guidelines.

Description of the Scheme

39. Section 481 of the Taxes Consolidation Act (TCA) 1997 provides relief in the form of a corporation tax credit related to the cost of production of certain films. The credit is granted at a rate of 32% of the lowest of:
    a) eligible expenditure;
    b) 80% of the total cost of production of the film; or
    c) €70 million.

40. The minimum amount that must be spent on the production is €250,000 and the minimum eligible expenditure amount to qualify is €125,000.

41. The relief may be claimed against a producer company's corporation tax liabilities. If the relief due is greater than any tax due by a producer company in the accounting period immediately preceding the claim, the excess amount will be paid to the producer company by the Revenue Commissioners.

42. The relief applies to feature films, short films of feature quality, television dramas, animations and creative documentaries. In order for a production to qualify for the relief it must have been issued with a cultural certificate by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (Minister for Culture).

[1] 'Audiovisual Action Plan, Creative Ireland Programme Pillar 4', June 2018. https://www.creativeireland.gov.ie/app/uploads/2019/12/audiovisual-action-plan.pdf

43. The Minister for Culture, in considering whether to issue a certificate to the producer company in relation to a film, will examine the anticipated net contribution that the Section 481 Scheme and other State Aid Schemes will make to the project; and will consider whether the film will either or both:

    a) be of importance to the promotion, development and enhancement of the national culture including, where applicable, the Irish language (referred to as 'the Culture test'), and

    b) act as an effective stimulus to film making in the State through, among other things, the provisions of quality employment and training and skills development opportunities (referred to as 'the Industry development test').

Regional Film Development Uplift

44. Finance Act 2018 provided for the introduction of the regional film development uplift, an additional short-term uplift designed to support the development of new, local pools of talent in areas outside the current main production hubs, to encourage the geographic spread of the audio-visual sector.

45. The regional uplift is being phased out on a tiered basis. It was originally scheduled to be available over 4 years, with 5% available in years 1 and 2 (2019 and 2020), 3% available in year 3 (2021) and 2% available in year 4 (2022). However Finance Act 2020 extended the regional uplift to include one further year at 5% in 2021, tapering to 3% in 2022 and 2% in 2023.

46. This amendment was made in recognition of the detrimental impact Covid-19 restrictions had on the sector. The additional 5% year in effect replaces the incentive year lost as a result of the Covid-related public health measures.

47. In considering whether the regional film development uplift applies, the Minister for Culture shall have regard to the following factors:

    a) whether the production of the film is substantially undertaken in an assisted region;

    b) whether there is limited availability of individuals with suitable experience or training who habitually reside within a 45 kilometre radius of the place of production to provide services; and

    c) in respect of the areas of expertise where there is limited availability, the company provides training for individuals that habitually reside within that 45 kilometre radius.

48. The regions in respect of which the uplift is available are limited to areas sanctioned to receive regional aid as per the regional aid map for Ireland applicable from 1 July 2014 to 31 December 2020[2]. In accordance with the map, the regions unable to avail of the uplift are Dublin, Cork and the Mid-East generally, i.e. Kildare, Meath and Wicklow. (Exceptions in the mid-east which can receive regional aid assistance are Kells, Athy and Arklow.)

49. While a new regional aid map for Ireland has been approved by the European Commission for the period 01 January 2022 to 31 December 2027[3], the availability of the regional uplift will continue to be based upon the 2014 map until it has phased out in 2024.

2022 Review – Initial Findings

50. Section 481 claim data provided by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DTCAGSM) and the Revenue Commissioners is currently being analysed as part of the ongoing Cost Benefit Analysis of the scheme. Some initial analysis is presented below.

51. Figure 1 presents the cost of section 481 claims, assigning the amounts to the year in which the production was issued with either:
    - a Revenue certificate for productions up to March 2019 (through the old certification mechanism) or,
    - a cultural certificate by the Minister for Culture after March 2019 (after the amended certification process was commenced).

52. As the relief may be claimed in instalments based on budgeted expenditure, these figures may be subject to amendment when projects are complete and the actual credit amount is finalised.

53. The cost of the relief has increased significantly since 2015 when the credit was moved from an investor-based relief to a credit against the production company's corporation tax liability. Of note is the low figure in 2018 relative to other years. This is a result of the move to a self-assessment basis as part of Finance Act 2018. Many productions applied for a Revenue certificate in the latter stages of 2018 as part of the previous application process. Following the move to self-assessment these productions were instead certified by the Minister for Culture in 2019. Figure 1 assigns these claims to 2019, resulting in a lower figure for 2018. The project-based nature of the industry also causes annual fluctuations in claims and costs.

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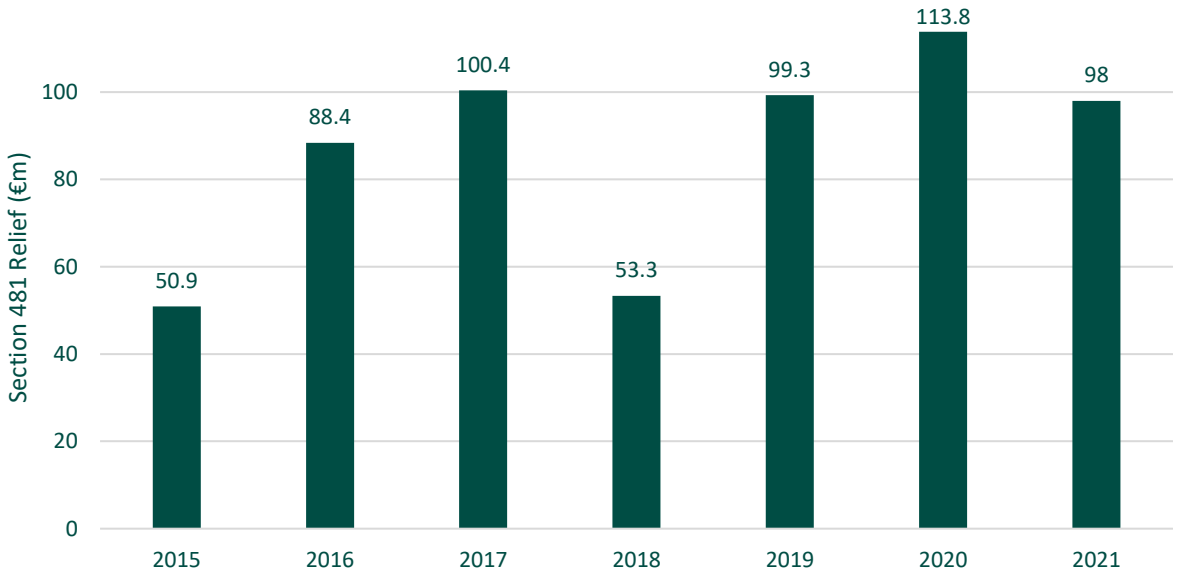
[2] State Aid SA.38509 (2014/N) – Ireland Regional Aid Map 2014-2020 https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38509

[3] State aid SA.101399 (2022/N) – Ireland Regional aid map for Ireland (1 Jan 2022 – 31 Dec 2027) https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_101399

Figure 1: Section 481 relief assigned by year of certification by Revenue / DTCAGSM, 2016 - 2021



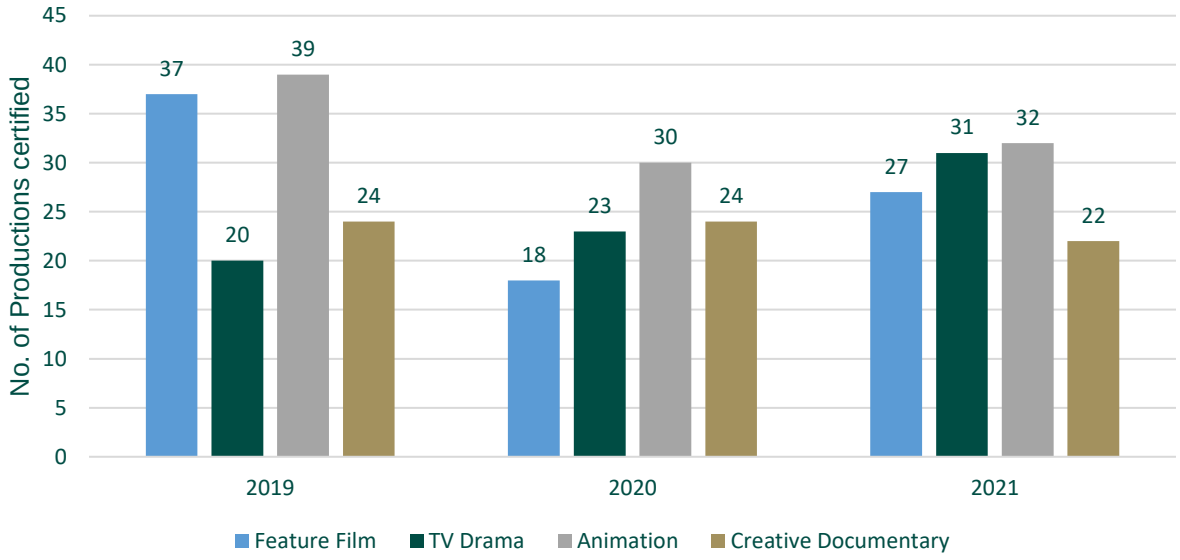
Source: Revenue Commissioners

54. The number of productions certified by the Minister for Culture in each production category in the years 2019, 2020 and 2021 is presented in Figure 2 below. Animation represents the largest proportion of productions certified in each year, maintaining a somewhat consistent share of total productions. Animation accounted for 33% productions certified in 2019, 32% in 2020 and 29% in 2021.

55. The number of feature films certified fell sharply from 37 in 2019 to 18 in 2020. This drop in productions is likely a result of the impact of the Covid-related public health measures implemented in 2020. Following the easing of public health measures in 2021, the number of feature films certified increased to 27. This trend is also evident when analysing the total number of productions certified, with 120 certifications issued in 2019. This decreased to 95 in 2020, before increasing to 112 in 2021, a figure comparable to the pre-pandemic levels of 2019.

56. The number of TV dramas certified has increased year on year, increasing from 20 in 2019, to 23 in 2020 and 31 in 2021. It should also be noted that a fifth category of production, short films, may also qualify for certification by the Minster for Culture. However no such productions were certified from 2019 – 2021.

Figure 2: Number of productions certificated by production category, 2019, 2020 and 2021



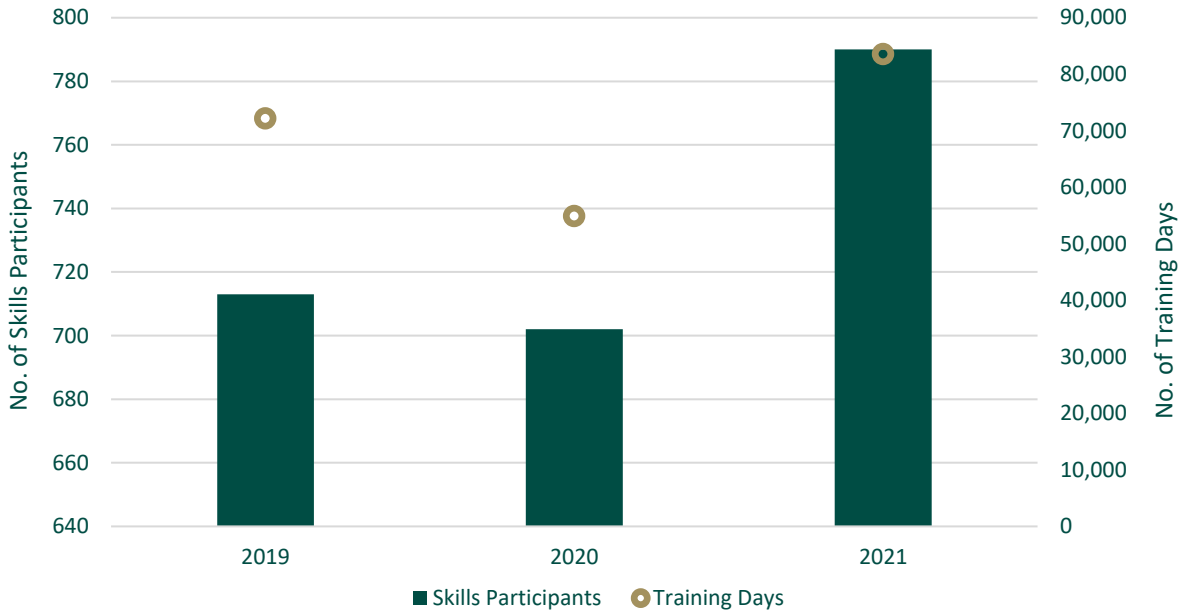
Source: Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

57. In considering whether to issue a certificate in relation to a production, the Minister for Culture will consider whether the production acts as an effective stimulus to film making in the State through, among other things, the provision of training and skills development opportunities. All applications must also include a Skills Development Plan outlining the number of skills development participants.

58. Figure 3 presents the numbers of skills development participants and training days provided by productions certified in 2019, 2020 and 2021. The impact of the Covid-19 pandemic is again evident in this graph with the number of skills development participants dropping from 713 in 2019 to 702 in 2020. Despite this drop in 2020 the average number of skills development participants actually increased in this period, from an average of 6 skills development participants per production in 2019 to approximately 7 in 2020. The number of skills development participants increased well beyond pre-pandemic levels in 2021 to 790, maintaining the 2020 average of 7 participants per production certified.

59. The number of days of training provided to skills development participants is also presented below, as drawn from Skills Development Plans. Approximately 72,204 training days were provided by productions certified in 2019, an average of 597 training days per production. Using the average of 6 skills development participants per production, this results in an average of 100 days training per participant in productions certified in 2019. The number of training days provided decreased to 54,891 in 2020, a reflection of the public health measures in place at the time. This results in an average of 578 training days per production, and an average of 83 days training per participant. The number of training days subsequently increased to 83,598 days training in 2021, an average of 746 training days per production and an average of 107 days training per participant.

Figure 3: Number of Skills Participants and Training Days provided, 2019, 2020 & 2021

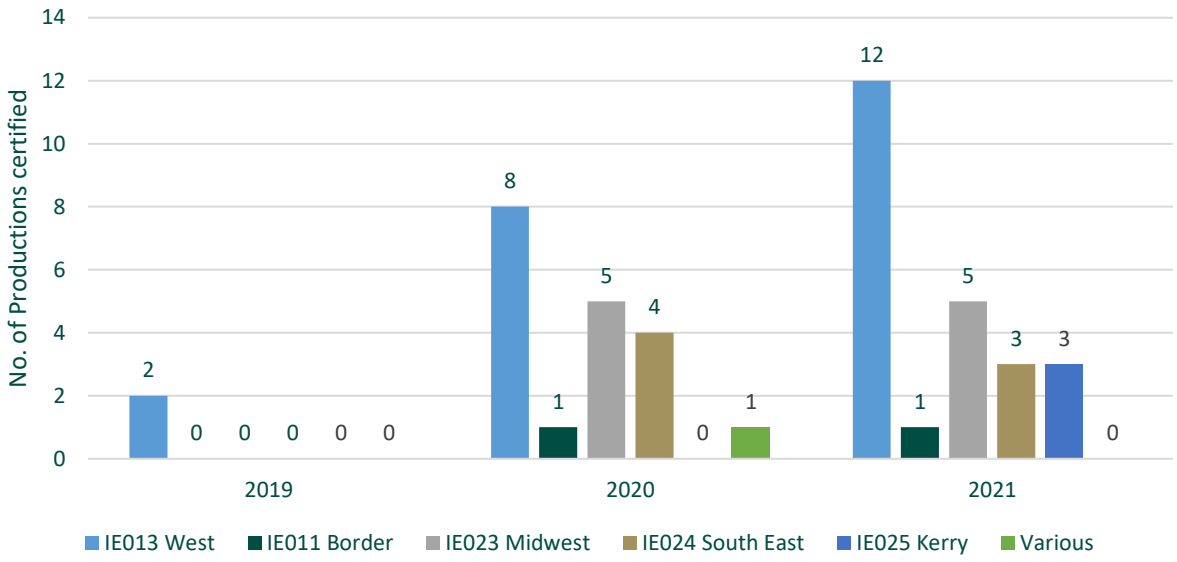


Source: Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

60. Figure 4 presents the number of productions which were certified by the Minister for Culture as eligible for the regional uplift in 2019, 2020 and 2021. The number of certifications for the regional uplift was very low in 2019. This was due to the fact that the regional uplift required European Commission State aid approval before it could be introduced. Following receipt of European Commission approval the Finance Act 2018 (Section 26) (Commencement) (No.2) Order 2019 commenced the regional uplift on the 17th July 2019. Therefore the regional uplift was available for less than half of 2019, impacting upon the number of claims for certification made in 2019.

61. The total number of productions which were certified as eligible for the regional uplift increased to 19 in 2020. There was also greater variety in the number of regions which were the basis of a regional uplift claim. However much of the 5% Regional Uplift incentive applicable in 2020 was not available to potential claimants as productions were halted following the onset of the Covid-19 pandemic. Therefore Finance Act 2020 provided for an additional 5% year in 2021. Following this amendment certifications for the regional uplift increased once more to 24 overall in 2021. The NUTS regions IE013 West and IE025 Kerry experienced increases in certifications, while IE011 Border and IE023 Midwest maintained the same level of certifications.

Figure 4: Number of certifications for the Regional Uplift by NUTS Region, 2019 to 2021



Source: Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

Reflections for TSG Discussion

62. Section 481 is currently scheduled to cease on 31 December 2024. Decisions as to the extension of time-limited credits are typically taken during the year in which the credit is set to cease. However officials are aware that audio-visual production companies usually plan their productions up to two-plus years in advance. Therefore the potential for an earlier decision on extension of the relief (in 2022 or 2023) may be considered to provide certainty to industry regarding its availability in future years.

Research and Development Tax Credit

63. The Research and Development (R&D) Tax Credit is an important feature of the Irish Corporation Tax (CT) system. The primary policy objective is to increase business R&D in Ireland, as R&D can contribute to higher innovation and productivity. More broadly, the tax credit forms part of Ireland's corporation tax offering aimed at attracting FDI and building an innovation-driven domestic enterprise sector. The credit enables Ireland to remain competitive in attracting quality employment and investment in R&D.

64. There have been a number of significant changes to the regime since its introduction, including:
    - the introduction of the 'repayable credit' in Finance (No. 2) Act 2008,
    - the introduction of the key employee relief in Finance Act 2012,
    - the removal of the base year in Finance Act 2014, and
    - the increase of the outsourcing limit to third level institutes of education from 5% to 15% in Finance Act 2019.

65. Finance Act 2019 also provided for a number of targeted supports for micro and small companies within the R&D tax credit. However, due to the targeted nature of the measures, they were introduced subject to a commencement order pending further engagement with officials in the European Commission in relation to State aid.

66. Following engagement with the Commission it was determined that it would be necessary to introduce some changes to the measures in order to secure State aid approval. However, as the measures are enhancements to the existing general R&D credit, this could present a significant administrative challenge to both taxpayers and Revenue if different criteria were to apply to two elements of a claim for the same R&D costs. Adding complexity and administrative burden would be counterproductive to the aim of assisting small and micro companies.

67. Furthermore, in the two years since Finance Act 2019, the immediate government priority has been to support businesses during the Covid-19 pandemic. This diverted resources to the development and roll-out of supports for businesses impacted by the various lockdowns. Revenue data show that the companies using the extensive Covid-19 supports over 2020, 2021 and into 2022 have been primarily SME companies. The supports were primarily aimed at delivering immediate cash supports to enable affected businesses to maintain a level of trade and retain their staff in employment.

68. As priorities return to normal following the successful vaccination campaign, officials are now examining options to progress R&D policy in order to deliver the best outcome for small innovative companies, including options for other methods of support taking into account the significant changes to the wider economy since the measure was first announced.

Features of the R&D Tax Credit

Rate

69. The R&D Tax Credit provides a 25% tax credit for all qualifying R&D expenditure.

70. The credit reduces the CT liability of the company for the accounting period in which the relevant R&D expenditure is incurred. Any excess credit can be carried back to the preceding accounting period. Following this, any remaining credit can be carried forward indefinitely for use against future CT liabilities, or can be claimed as a repayable credit.

Repayable Element

71. The repayable element of the R&D tax credit is available to companies which have already offset current and previous year CT claims and an excess amount still remains.

72. The company may apply for a refundable credit in three instalments, over 33 months. The first instalment to be paid will amount to 33% of the excess amount. The remaining balance of the excess amount will then be used to reduce the company's Corporation Tax liability of the next accounting period (if it has not otherwise been discharged) and then if any of the excess amount still remains, a second instalment amounting to 50% of that amount remaining will become payable not earlier than 12 months after the corporation tax pay and file date for the accounting period in which the R&D expenditure was incurred.

73. Any part of the excess amount still remaining will then be used to reduce the company's Corporation Tax liability of the following accounting period (if it has not otherwise been discharged), and if any part of the excess amount still remains, that amount will become payable not earlier than 24 months after the corporation tax pay and file date for the accounting period in which the R&D expenditure was incurred.

Limit on Amount of Payable Credits

74. The aggregate amount of payable credits in respect of R&D expenditure in an accounting period is subject to a limit that is the greater of:
    i. the aggregate amount of Corporation Tax paid by the company for the previous ten years, reduced by any amounts of Payable R&D Credit claimed,

    or

    ii. a measure of payroll liabilities (PAYE, USC and PRSI), generally equivalent to payroll liabilities for the claim period.

75. Part of the reason for the limits to the repayable element of the R&D credit is to protect the Exchequer by ensuring that tax relief is given to growing, profit-making companies and those with substantive employment in the State. Any changes to this element of the R&D credit will result in a cash-flow cost to the Exchequer and there may be an increased risk of an overall loss if businesses get the full amount of the credit in year one but subsequently the business fails, leaving an overall loss to the Exchequer.

76. Revenue data for 2020, set out in Table 3 below, show that 61% (402m) of the credit cost in that year was used as offsets against CT liabilities in the current accounting period while 18% (€256m) was comprised of payable credit, of which 18% (€116m) were first instalments, 12% (€77m) were second instalments and 10% (€63m) were third instalments.

Outsourcing limits

77. A company may claim a credit for certain sub-contracted qualifying R&D costs. Two separate limits apply, one for work sub-contracted to third level institutions and one for work sub-contracted to other un-connected persons.

78. In both categories the company is allowed to claim the R&D credit on qualifying expenditure of a value up to 15% of the eligible R&D expenditure incurred by the company itself or €100,000 (whichever is the greater amount), subject to certain conditions.

Key Employee Provision

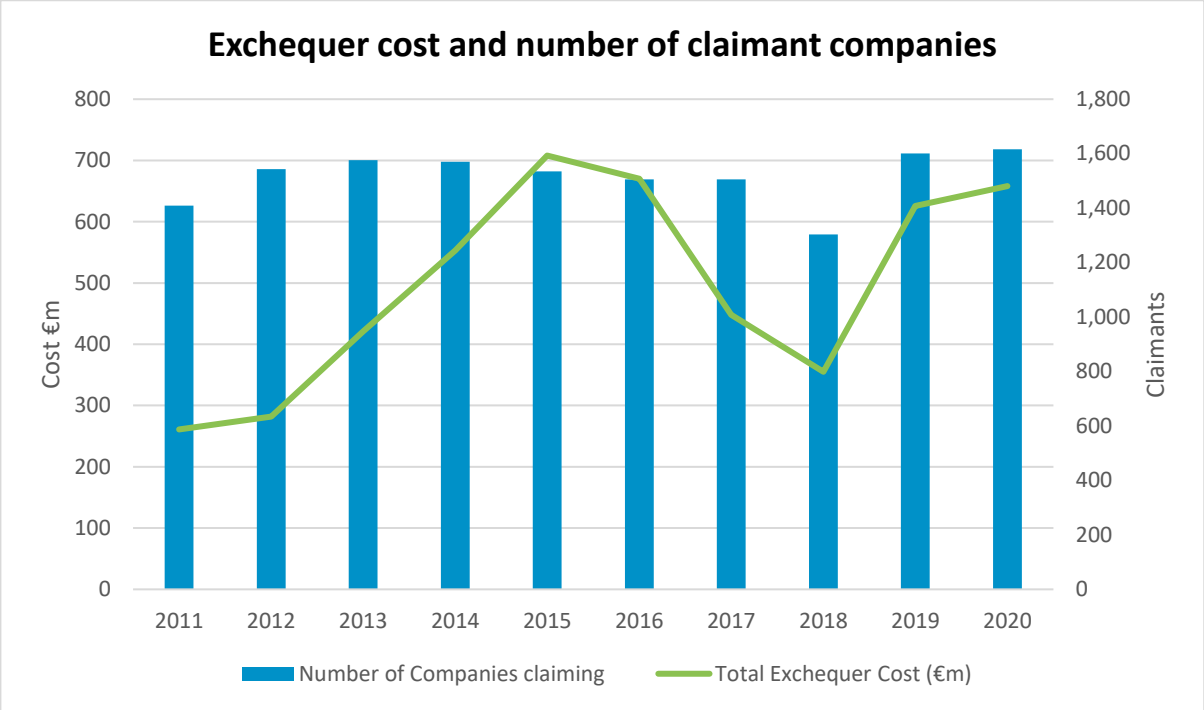
79. Companies in receipt of the R&D credit may also avail of a key employee provision. This allows for the transfer of the financial benefit of the R&D Tax Credit from a company to an individual employee. This key employee measure is designed to assist companies in the State to attract and retain employees with key skills in the field of R&D.

Cost

80. The cost of the R&D tax credit has risen since its introduction in 2004 and, due to the project-based nature of R&D activities, there can be year-on-year fluctuations in the overall cost of the credit. The cost of the relief peaked in 2015, at €708 million with 1,535 claims. The latest cost figures for the credit are from 2020, where the cost was €658 million with 1,616 claims. It is expected that the cost will increase again in future years.

81. The analysis below shows that the number of companies claiming the credit has been relatively consistent over the last 5 years, despite the greater fluctuation in overall cost.

Figure 5: Exchequer cost and number of claimant companies, R&D tax credit



Source: Revenue Commissioners

Table 3: Analysis of the cost of the R&D tax credit

Year	2015 €m	2016 €m	2017 €m	2018 €m	2019 €m	2020 €m
Used in the current accounting period	349	434	297	246	429	402
Carried back to the previous accounting period	<1	<1	<1	<1	<1	0.3
Converted into 1st repayable credit instalment	86	52	55	43	80	116
Converted into 2nd repayable credit instalment	145	85	50	37	69	77
Converted into 3rd repayable credit instalment	128	99	47	28	51	63
Total cost €m:	**708**	**671**	**448**	**355**	**629**	**658**

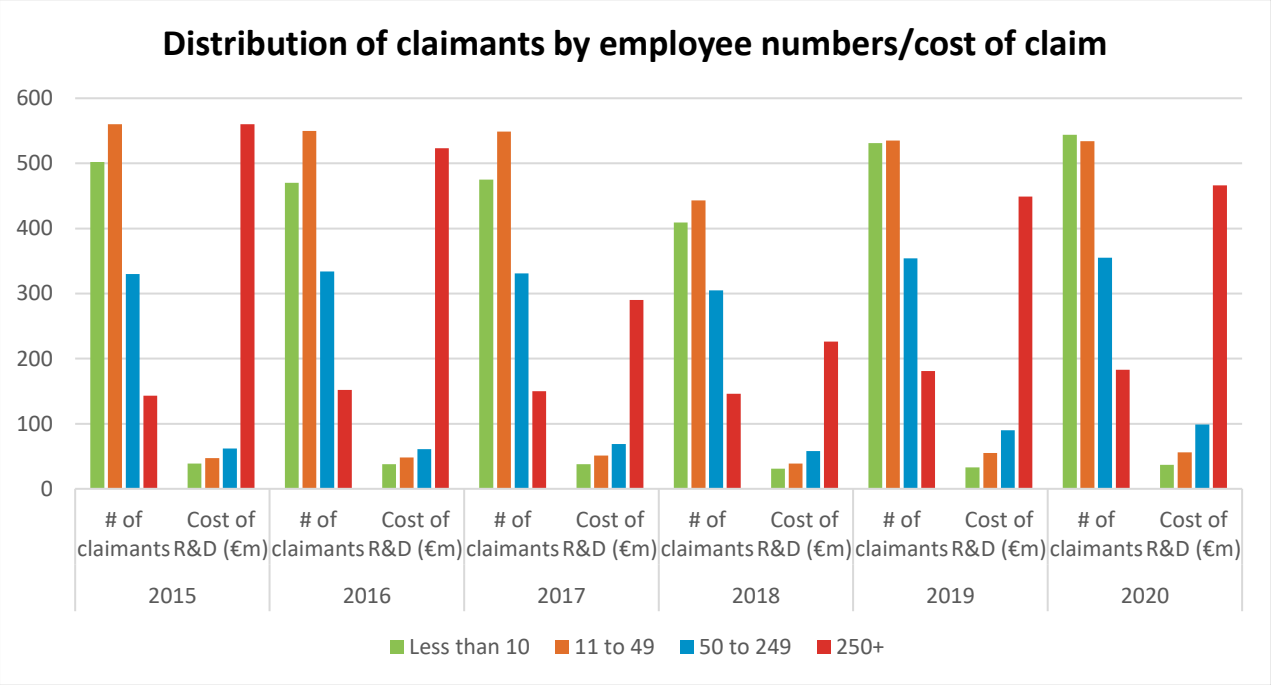
Source: Revenue Commissioners

82. The proportion of the credit claimed as repayable varies year-to-year – in 2015, the amount of repayable credit issued exceeded the amount of the credit used in the current accounting period. In 2016 to 2020, the repayable credit has been less than the amount of the credit used in the current accounting period. This may indicate that companies engaged in R&D activities had greater profits in later years to offset the credit against, rather than claiming a repayable credit. At present, figures for the amount of the credit being carried forward to future years are not being recorded.

Claimant Companies by Number of Employees

83. Figure 6 shows the distribution of claimant companies by size (based on number of employees) by reference to number of claims and value of R&D expenditure. It should be noted that this data is compiled based on registered employees within the claimant company only and does not factor in employees in associated group companies, where relevant. Unsurprisingly, larger companies (those with over 250 employees) spend more on R&D. There is consistently a large number of companies with 50 or fewer employees making R&D claims however, as noted above, this is subject to the caveat above in respect of group companies.

Figure 6: Distribution of number and cost of claims by reference to size of claimant firm based on number of employees



Source: Revenue Commissioners

Claimant Companies by Size

84. Revenue data does not separately identify R&D Credit claimants as being either SME or non-SME companies. However, the charts below compare the number of Revenue Large Cases Division (LCD) companies and non-LCD companies who have claimed the credit. While companies that are outside the remit of LCD are not necessarily SMEs, the majority would be, therefore this data provides a proxy to estimate claims by SME and non-SME companies.

85. R&D can be an expensive process, and it is not unexpected that larger companies investing in R&D make up a large proportion of the costs of the R&D credit. The majority of firms claiming the R&D tax credit are non-LCD companies (88% in 2020) (Figure 8), but the majority of the value claimed (73% in 2020) is by LCD companies (Figure 7).

Figure 7: Cost of R&D credit claimed by LCD and Non-LCD companies

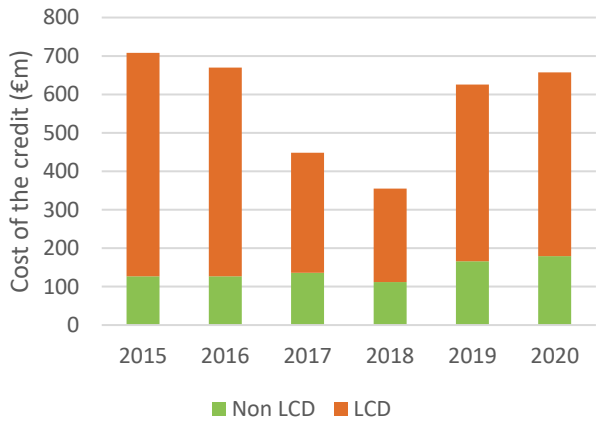
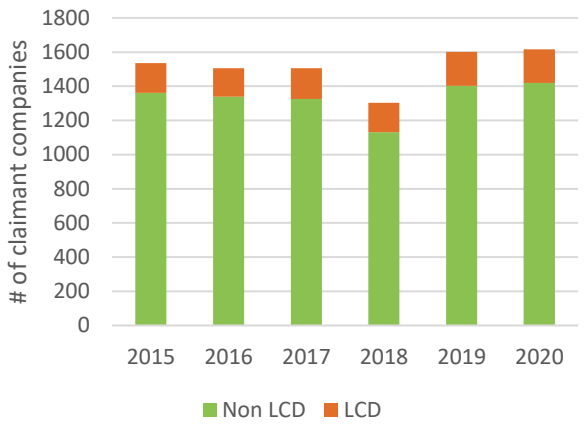


Figure 8: No. of Non LCD and LCD companies claiming the credit



Source: Revenue Commissioners

Review and Consultation

86. In line with the Department's Tax Expenditure Guidelines, large tax expenditures (costing more than €50 million per annum) are evaluated every three years to assess the continued relevancy, cost, impact and efficiency of the expenditure.

87. A consultation process was held on the R&D tax credit and the Knowledge Development Box earlier this year, closing on 30 May 2022. Twenty-one submissions were received from a range of respondents, including companies engaged in R&D activities, advisory firms, and Government Departments. The submissions are currently being evaluated. The responses to the publication will be published in future, alongside a more in-depth analysis of the feedback received, as part of the ongoing review of the credit.

International Tax Considerations - OECD BEPS Pillar Two and Related Changes

88. An element of the 2022 review of the R&D tax credit will be consideration of the potential impact of international tax changes on the current credit, and any changes which may be required in order to align the credit with new international norms.

89. Agreement was reached in October 2021 on the historic Two Pillar Solution addressing the tax challenges of the digitalised economy. Pillar Two of the agreement provides for a new global minimum effective rate of tax, and therefore consideration was required as to how tax credits, such as the R&D tax credit, would operate within such a system.

90. The signatory countries, including Ireland, recognise the valuable economic and societal role played by research and development activities, and the Model Rules therefore provide that "Qualified Refundable Credits" may be treated as income, rather than as reducing tax paid, thereby preserving the value of R&D tax credits in the context of the new minimum effective tax rate calculations.

91. To be considered ***qualified***, a credit must be paid as cash or available as cash equivalents, within 4 years from when the claimant satisfies the conditions for receiving the credit. The different Pillar Two treatment of *qualified* and *non-qualified* refundable tax credits is significant and can be summarised as follows:
    - If the R&D credit is a *qualified* refundable tax credit, it is treated as income (as if it were a taxable grant) and taxed under Pillar Two at the minimum rate (i.e. 15%). The company's full tax liability, including tax settled by offset of R&D credit, is recognised for calculation of the company's effective tax rate.
    - If the R&D credit is a *non-qualified* refundable tax credit, the amount of the credit is treated as reducing the corporation tax paid by the company. As the Irish headline CT rate is already below the Pillar Two minimum rate, this would result in an increase in the top-up tax required to be collected in order to meet the Pillar Two minimum effective tax rate, thereby wiping out the benefit of the credit.

92. OECD countries are working towards the introduction of the Pillar Two rules and introducing the new concepts into domestic legislation where relevant. In January 2022, the United States published new Foreign Tax Credit (FTC) Regulations, including new provisions in respect of "Refundable Credits", with similar considerations as to when a tax credit such as the R&D tax credit should be treated as income (equivalent to a grant) or as a reduction in tax paid.

93. The US FTC Regulations recognise a qualifying Refundable Credit as a means of paying a tax liability where the taxpayer has the option to receive in cash the full amount of the tax credit. Where this option is not available, the credit would be treated as reducing (rather than paying) the tax liability, and therefore would not qualify for US FTC purposes.

94. Officials are examining whether policy adjustments should be made to the R&D tax credit to adapt to these new standards, to ensure that it can continue to meet the policy objective of supporting substantive and innovative Research & Development activities in Ireland.

Reflections for TSG Discussion

95. TSG members are asked to consider what changes should be contemplated to ensure the R&D tax credit continues to meet its purpose of encouraging R&D in Ireland.

Knowledge Development Box

96. The Knowledge Development Box (KDB) is an OECD-compliant intellectual property (IP) regime, which provides for an effective 6.25% rate of corporation tax on income arising from qualifying assets such as computer programs and inventions protected by a qualifying patent.

97. Small and Medium Enterprises (SMEs) benefit from an expansion of the definition of qualifying assets to include inventions that are certified by the Controller of Patents, Designs and Trademarks as being novel, non-obvious and useful.

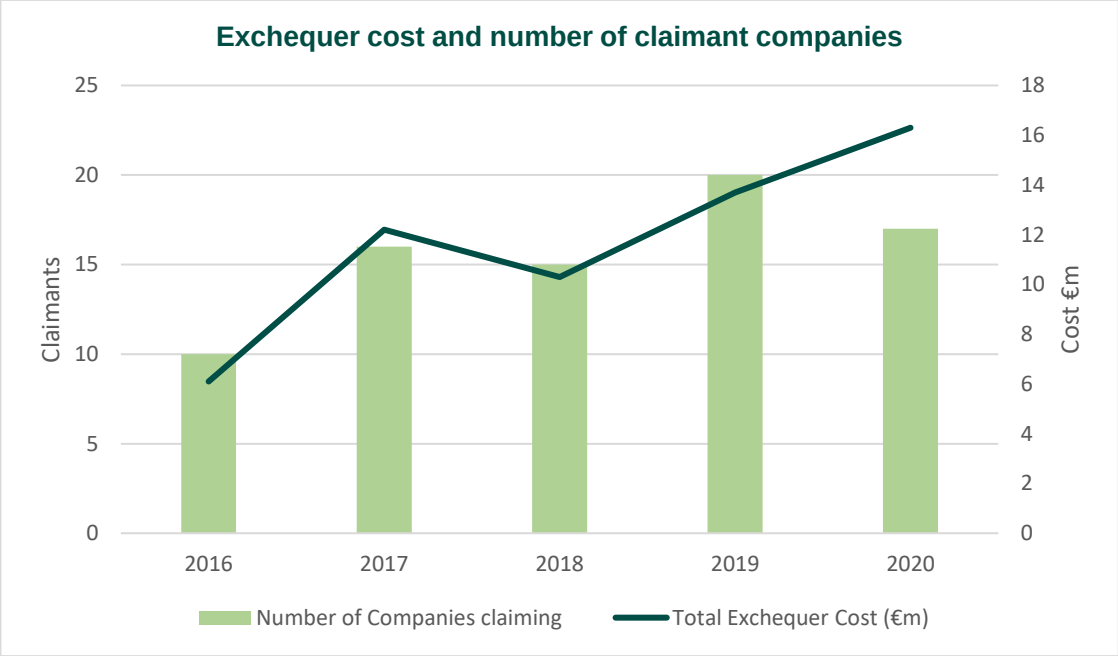
98. The objective of the KDB is to encourage companies to develop IP in Ireland and thereby engage in substantive operations that have a high 'value-add' for the Irish economy, both in the FDI and indigenous sectors. To qualify for the KDB, the qualifying assets must result from qualifying R&D activities carried out by the company in Ireland. This meets the OECD's "modified nexus standard", an approach which provides that a taxpayer may only benefit from an IP regime to the extent it can clearly show the incurred expenditure that resulted in the qualifying asset(s).

Statistics on the KDB

99. Uptake of the KDB has been low to date, as set out in the table below. In part this is due to the restrictive requirements of the relief, required in order to meet the modified nexus standard. However it is also in part due to the longer claim window for the KDB as compared to other tax expenditures. Companies electing to avail of the KDB must do so in their tax return for the accounting period in which the qualifying expenditure is incurred and must make the claim within 24 months from the end of that accounting period. Once a company elects to avail of the KDB, it is not possible to opt out at a later stage.

100. At the time of writing, five years of data is available in respect of KDB claims, as shown in Figure 9 overleaf. A claimant company has up to 24 months to make a claim for KDB relief. As such, more claims in respect of the year ended 31 December 2020 are likely to be made by December 2022.

Figure 9: Knowledge Development Box: annual cost and number of claimants



Source: Revenue Commissioners

Extension of the KDB in Finance Act 2020 and 2022 Review

101. The KDB was introduced with effect from 1 January 2016, with an original sunset clause of 31 December 2020, therefore consideration was given to undertaking a review in 2020.

102. However, due to the relatively low uptake and the longer claim window, limited data was available in 2020 for the purposes of a review. This meant that little in the way of economic analysis could be undertaken at that time. Due to the small number of claimants, for confidentiality reasons Revenue could provide only limited statistical information in respect of claims and claimants to that date.

103. Having regard to the data limitations, in addition to the challenges facing both businesses and government in 2020 as a result of the Covid-19 pandemic, a decision was taken to extend the KDB in Finance Act 2020 to a new sunset clause of 31 December 2022, with an ex-post expenditure review to take place at that time.

104. The KDB is therefore currently under review. This evaluation is taking place alongside the review of the research and development (R&D) tax credit and, as is the case with the R&D tax credit, it is timely that a review of the KDB is taking place this year in light of recent developments in the international tax sphere.

OECD Pillar Two, Including the Subject to Tax Rule (STTR)

105. The review of the KDB also requires consideration of elements of the OECD Pillar Two agreement, referenced above. In addition to the GloBE minimum tax rules, the Pillar Two agreement also includes a Subject to Tax Rule (STTR). The STTR is a treaty-based rule that will allow source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate of 9%.

106. Unlike the GloBE rules, the STTR is not confined only to groups with turnover in excess of €750 million.

107. The STTR will operate by restricting tax treaty benefits, and either party to a tax treaty may request that the STTR be applied bi-laterally. As the effective rate of KDB is 6.25%, the KDB has the potential to trigger such a request.

Stakeholder Feedback

108. A public consultation on the KDB and the R&D tax credit was launched this spring, closing to submissions on 30 May 2022. Twenty-one submissions were received to the consultation, with fifteen of those providing commentary on the KDB.

109. These submissions are being examined at present and data analysis is also ongoing. Preliminary review of the submissions indicates that stakeholders have mixed views about the merits and effectiveness of the KDB. Submissions highlight the administration burden involved in claiming the credit and the narrow scope of the regime (which is largely driven by the relief's adherence to the OECD modified nexus approach).

110. Smaller companies noted that navigating the patenting process is challenging and involves commitments of time and resources which reduce the net benefit of the KDB.

111. Larger companies/group structures noted that it can be difficult to determine exactly what income might qualify for the KDB, given R&D is often conducted by a number of different teams across the globe. Furthermore, the company holding the patent might not be the same company as the one where the initial R&D took place.

112. Generally, in terms of the low uptake of the relief to date, contributors noted that the KDB only becomes applicable later in the R&D cycle. Firms are beginning to plan R&D operations with the KDB in mind should the R&D yield a product that can be commercialised. It was highlighted that early-stage companies doing R&D should be made aware of the KDB now, so that they can prepare accordingly to avail of the patent box in due course.

113. Further analysis will take place on the submissions received ahead of Budget 2023.

Options for the KDB

114. For the purposes of discussion, three options are set out below in terms of the future and / or continued operation of the KDB, in the context of Pillar Two as well as its relevance as a tax expenditure more generally.
   A. Extend the KDB at the current effective 6.25% rate
   B. Extend the KDB but increase the effective tax rate to 9% or above
   C. Allow the KDB to cease

A: Extend the KDB at the current effective 6.25% rate

115. If the current effective rate remains at 6.25%, up to 33 countries may request that Ireland includes the STTR in their double taxation agreements. The inclusion of the STTR measure in a timely manner was part of the international agreement. While it may take some time to agree such a high volume of requests with other jurisdictions, it will be necessary to progress the inclusion of the STTR in the double taxation agreements as early as possible.

116. If a request is made and the STTR is subsequently included in a double taxation treaty, it will remain part of the treaty, even if a subsequent Finance Bill amends the rate of tax applicable to KDB to 9% or above.

117. Should the policy decision be taken to extend the KDB at the current effective rate of 6.25%, an Irish company would suffer a Withholding tax (WHT) of up to 2.75% (i.e. 9%-6.25%) on the gross amount of covered income payments received. Consideration would need to be given to whether such WHT may be creditable in Ireland, and the resultant cost to the Exchequer.

118. The policy objective of the KDB is to attract attracting and retaining activities of both indigenous companies and multinationals in the relevant business activities, being the development and exploitation of high value-add innovative activities in Ireland

119. It is worth considering that, where a KDB claimant is within the scope of the Pillar Two GloBE rules (i.e. the 15% minimum effective tax), claiming the KDB would decrease the taxpayer's effective tax rate and the benefit of the relief is therefore likely to be counteracted by an increase in the GloBE top-up tax.

120. In addition, as the STTR taxing right is on the gross amount of the payment received, a tax arising under the STTR could result in a higher tax burden than paying a top-up tax to achieve the 15% GloBE minimum effective rate (which is calculated on a measure of net income).

B. Extend the KDB but increase the effective tax rate to 9% or above

121. Another option available would be to increase the KDB tax rate to 9% or above in Finance Bill 2022. For example, other OECD countries such as France and Greece apply a 10% rate to similar reliefs.

122. As a result, there would be no requirement to include the STTR provision in the double taxation agreements with developing countries. This would eliminate the possibility of disagreements arising between Ireland and other jurisdictions in relation to the application of the STTR to the KDB.

123. If a policy decision is taken to increase the rate of tax on the KDB income to 10%, the value of the relief to a company (being the difference between the standard 12.5% trading rate of tax and the reduced effective KDB rate) would reduce from the current 6.25% to (for example) 3.5% (assuming a 9% rate) or 2.5% (assuming a 10% rate).

124. As noted above, where a KDB claimant is within the scope of the Pillar Two GloBE rules (i.e. the 15% minimum effective tax), they are unlikely to have a net benefit from the KDB after operation of the GloBE top-up taxes.

125. For smaller companies outside scope of the GloBE minimum tax rate, consideration would need to be given as to whether a reduced KDB incentive would be attractive. As part of the OECD modified nexus approach, a large administrative burden is placed on businesses to maintain records in order to claim the KDB. At a reduced incentive rate, some potential claimants may consider the administrative burden too onerous, thereby reducing the incentive effect.

C: Allow the KDB to cease

126. A third policy option is to cease the KDB relief, ahead of the introduction of the STTR. The sunset clause currently provides for the KDB to apply to accounting periods which commence on or after 1 January 2016 and before 1 January 2023. As a result, depending on the timing for introduction of the STTR and related administrative processes, this option may require some amendment to the current end date for the relief in Finance Act 2022.

127. Should the KDB cease in advance of the introduction of the STTR, it would eliminate the need to include the STTR provision in up to 33 double taxation agreements. This would also eliminate the possibility of disagreements arising between Ireland and other jurisdictions in relation to the application of the STTR to the KDB.

128. However, this would involve the removal of a relief which supports innovative companies, and consideration may need to be given to alternative means to provide similar supports.

Reflections for TSG discussion

129. Tax Strategy Group members are invited to give their views on the above considerations and the various proposals presented in respect of the KDB's future as a support for the development of indigenous IP in Ireland.

5. Supporting Investment & Activity in Ireland

Tax Credit for Digital Games – Section 481A

Description of the Scheme

130. Finance Act 2021 provided for the introduction of tax credit for the digital gaming sector. The relief applies to qualifying expenditure incurred on the design, production and testing of certain digital games. The credit will be an amount equal to 32% of the lowest of—
    - the eligible expenditure amount,
    - 80% of the total cost of development of the digital game, or
    - €25 million.

131. The minimum amount that must be spent on the production is €100,000.

132. If the relief due is greater than the corporation tax due by the game development company in respect of a qualifying period, the excess amount will be paid to the development company by the Revenue Commissioners.

133. 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.

134. The objective of the tax credit is to support the development of games with culturally relevant Irish and European content by reducing the costs associated with such projects, thereby increasing their commercial viability. A claim for the tax credit can only be made in respect of a digital game which has been issued with a cultural certificate from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

135. In order to receive such certification, this process requires a project to pass a culture test. The culture test will ensure that the relief is channelled to digital games which genuinely seek to promote Irish or European culture, in accordance with its stated objective.

Engagement with European Commission

136. As announced on Budget day last year, the introduction of this relief is subject to a commencement order as European Commission State aid approval is required to introduce the credit.

137. Department of Finance officials are currently engaged in the State aid notification process with the European Commission. As a result of this engagement it has been determined

that a number of minor technical amendments to the legislation will be required as part of Finance Bill 2022 to ensure the credit is compliant with State aid rules. These amendments are outlined at A and B below.

A. Amend the requirement to carry on business in Ireland through a branch or agency to apply only at the time of making a claim

138. Subsection (1)(a) of the definition of a digital games development company states that such a company is eligible if it is "resident in the State, or is resident in a European Economic Area (EEA) state other than the State and carries on business in the State through a branch or agency". The requirement to carry on business in the State through a branch or agency should be applicable only at the moment of payment of the aid, as required by paragraph 49 of the Cinema Communication.[4] The Cinema Communication sets out the application of State aid rules to film and other audiovisual works

139. The requirement to carry on business in the State through a branch or agency is contained in the definition of a digital games development company. This means that the legislation as currently drafted provides that the requirement also applies at the date of application for either an interim or final certificate, as digital games development companies (as defined) apply for those certificates.

140. In order to ensure compliance with paragraph 49 of the Cinema Communication, this requirement could be removed from the definition of a digital games development company. The requirement would be better placed in section 481A (13) which relates to the requirements that a digital games development company must satisfy at the time of making a claim.

B. Amend subsection 16(a) to refer to EEA States instead of Member States of the European Communities

141. Subsection 16(a) of section 481A TCA 1997 sets out that a company shall not be regarded as a digital game development company where the company enters into financial arrangements with a person resident, registered or operating in a territory other than a Member State of the European Communities or a country with which Ireland has a Double Taxation Agreement unless it can provide sufficient information and records to verify any expenditure incurred in such a country.

142. This subsection should refer to EEA States instead of Member States of the European Communities as provisions which apply to Member States should also apply to EEA States.

[4] The Communication from the Commission on State aid for films and other audio-visual works (2013/C 332/01) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013XC1115(01)&from=EN

Non-Euro Currency Transactions

143. Non-Euro currency transactions are typically treated as capital in nature for tax purposes. The general rule, set out in the Taxes Consolidation Act (TCA), 1997, is that any currency other than the currency of the State is an asset for Capital Gains Tax (CGT) purposes.[5] This means that the gains or losses in value of such currencies as compared with the value of the Euro will be subject to CGT treatment, including applicable rate of tax (currently 33%).

144. There are exceptions to this general rule, including section 79 TCA which was introduced in 1994 and sets out certain circumstances where the non-Euro currency movements are treated as trading in nature and therefore subject to the appropriate CT treatment, including the applicable rate (12.5% or 25%).

145. The general purpose of these exceptions is to match the tax treatment of the currency movement with the underlying business that gives rise to the currency movement itself. When the underlying business purpose is trading in nature, it may be considered appropriate that the tax treatment of the currency transaction to which it relates, should also be trading in nature.

146. Further legislative amendments could extend the scope of the exceptions. The views of the TSG are invited on two matters that are being considered in the context of the upcoming Finance Bill which could extend the trade treatment to currency movements relating to:
    - trade debtors (money owed to companies) in the same way that trade creditors are treated at present; and
    - non-Euro currency held in trading bank accounts in the same way that non-Euro cash is treated at present.

147. The purpose of such a change would be to provide consistency with the general purpose of the other exceptions and to recognise the continued importance of trading in non-Euro currencies for Irish firms, especially those carried out in UK Sterling and US Dollar. It could also keep the legislation in line with current industry practice and would not be expected to have an Exchequer impact.

[5] Section 532(b) TCA 1997

Consideration of a Territorial System of Taxation

148. The Corporate Tax Roadmap (2018) contained a commitment to consider the introduction of a territorial tax regime in Ireland. This commitment followed on from the 2017 'Review of Ireland's Corporate Tax Code' by Seamus Coffey (the Coffey Report) which recommended that such a change be considered.

149. Ireland's current worldwide regime for corporation tax reflects our stable, long-term commitment to a broad base and a relatively low rate. It considers all profits, both domestic and foreign source, of a resident entity to be within the scope of Irish tax. Typical of these systems, Ireland allows double tax relief (via the credit method) for companies in respect of foreign tax paid on foreign-source profits, and therefore an Irish tax charge generally only arises to the extent the Irish tax liability exceeds the foreign tax already paid on the same profits.

150. In view of Ireland's 12.5% trading tax rate and the pooling provisions allowed in calculating double tax relief on foreign income, in practice this means that incremental Irish tax on such foreign income rarely arises. However there is a significant administrative burden for businesses in complying with double tax relief provisions.

151. Furthermore the additional provisions introduced to domestic tax legislation in recent years, such as the ATAD-compliant Controlled Foreign Company (CFC) rules and anti-hybrid rules, reduce the role a worldwide tax system plays in protecting against BEPS (base erosion and profit shifting).

152. A fully territorial regime focuses on the taxation of income and gains earned in the territory and exempts foreign-source profits of resident entities. There are relatively few such regimes globally and such a system is not under consideration for introduction here. Instead, many jurisdictions, including most EU Member States and many OECD members, have introduced a limited territoriality into their corporate tax codes. This is often referred to as participation exemption and typically exempts dividends remitted from companies resident in another jurisdiction controlled (by reference to a holding requirement) by companies resident in the parent jurisdiction. It is often complemented by an exemption of foreign branch profits of the latter companies.

153. Considerations of a potential move to a territorial regime in Ireland are focussing on the options of a participation exemption and/or branch exemption; a move to a fully territorial exemption regime is not under consideration.

154. A public consultation was opened earlier this year, seeking stakeholder input on the desirability of, and potential challenges of, moving towards a territorial tax system. Fifteen submissions were received to the consultation, and are currently under consideration.

155. The introduction of the Pillar Two global minimum tax rate will also introduce additional anti-BEPS measures into the Irish and global tax architecture, and so it is intended that any move towards a territorial regime, if such a decision is taken, would progress in tandem with the introduction of the GloBE rules, currently planned for Finance Bill 2023.

156. The views of Tax Strategy Group members are invited on this issue.

Interest Limitation Rule: Process for Exemption by Minister

157. Finance Act 2021 introduced an Interest Limitation Rule (ILR), as required by the EU Anti-Tax Avoidance Directive (ATAD), which applies to accounting periods beginning on or after 1 January 2022. The ILR imposes a restriction on the interest deductibility of corporate entities within the charge to Irish corporation tax, up to a limit of 30% of a taxpayer's taxable earnings before interest, tax, depreciation, and amortisation ("EBITDA")

158. The ILR's purpose relates back to the original BEPS Action 4 Report (Limitation on Interest Deduction) which is to prevent interest deductions in large corporates being used to facilitate base erosion and profit shifting. In line with ATAD, a number of exemptions from the interest limitation have been provided for in the legislation. As Ireland has taken significant action in recent years to tackle the risk of (BEPS related) corporate tax avoidance, it is important that these exemptions be narrowly focused and granted only where necessary.

159. The legislation provides exemption for borrowing costs incurred in respect of 'qualifying long-term public infrastructure projects'. To be such, the project must be to provide, upgrade, operate or maintain a large-scale asset. A large-scale asset must have a minimum expected life span of 10 years and includes:
    a) certain energy, transport, environmental and health care infrastructure,
    b) electricity transmission lines,
    c) strategic gas infrastructure,
    d) railway works,
    e) road works,
    f) strategic housing developments,
    g) an asset constructed pursuant to a public private partnership arrangement,
    h) an installation generating energy from renewable sources, or
    i) an asset specified by the Minister for Finance in regulations.

160. To qualify for the long-term public infrastructure project exemption, the project must also meet the following conditions:
    - the project operator must be established and tax resident in an EU Member State,
    - the asset must be situated in an EU Member State, and
    - the income and deductible interest equivalent costs must arise in an EU Member State.

Procedure for Exemption by Minister

161. Under section 835AAA TCA 1997, an asset shall not be so specified by the Minister (i.e. specified under (i) of the list set out above to be a Long-Term Public Infrastructure Project) unless:
    a) specifying it would not give rise to a breach of EU State Aid rules,
    b) the purpose of the asset is to enhance the general public interest,
    c) it is in the public interest to so specify the asset, and
    d) the financing arrangements for the long-term infrastructure project to which the large scale asset relates present special features which justify such specification.

Reflections for TSG discussion

162. No regulation has yet been made by the Minister under section 835AAA TCA 1997. In line with the aim and practice of Irish tax legislation to treat all taxpayers equally, it is now proposed to put in place an objective and transparent administrative process in order to fairly evaluate applications for specification under section 835AAA.

163. It is recognised that the criteria against which an application must be judged are quite technical (i.e. to ensure no breach of State Aid rules and the public interest requirement). The evaluations here can be quite wide ranging and require a high level of expertise. For example, to judge whether State Aid rules were breached, an evaluator needs to have an in-depth knowledge of EU State Aid rules and practice, and have all relevant information on the applicant's position and the market(s) they operate in.

164. The views of Tax Strategy Group members are sought, to inform the development of this process.

6. International Developments

OECD/G20 inclusive Framework on BEPS

165. Ireland is a member of the OECD/G20 Inclusive Framework on BEPS (base erosion and profit shifting), which contains 141 countries and jurisdictions collaborating on the implementation of measures to tackle tax planning.

166. The initial BEPS package, agreed in October 2015, provides 15 Actions to tackle tax avoidance to tackle tax avoidance, improve the coherence of international tax rules, ensure a more transparent tax environment and address the tax challenges arising from the digitalisation of the economy.

167. The BEPS Actions have largely been implemented, with the exception of BEPS Action 1 Tax Challenges arising from Digitalisation. In order to deliver on BEPS Action 1 the OECD proposed the "Two-Pillar solution".

The Two-Pillar Solution

168. In 2019 the OECD released a policy note proposing a two pillar approach as foundation for a consensus-based solution to broader tax challenges. The following year, in 2020, the OECD's Inclusive Framework released Blueprint Reports on Pillar One and Two, and held a public consultation on the blueprints in early 2021.

169. On 1 July 2021, the OECD Inclusive Framework reached agreement, but not consensus, on the key aspects of the two-pillar solution to address tax challenges arising from digitalisation and globalisation.

170. At that time, Ireland re-iterated its support for the Pillar One proposals at the Inclusive Framework and broad support for the agreement on Pillar Two, but noting a reservation about the proposal for a global minimum effective tax rate of 'at least 15%'. As a result of this reservation, Ireland was not in a position to join the consensus, but continued to engage constructively in discussions. A public consultation was also launched in Ireland, to seek the views of stakeholders on the OECD proposals.

171. Following further negotiations, and amendment to a minimum tax rate of '15%', rather than 'at least 15%', the OECD/G20 Inclusive Framework on BEPS met again on 8 October 2021 and Ireland joined the agreement on the two-pillar solution to address tax challenges arising from the digitalisation of the economy.

172. The agreement provides for:
    - **Pillar One:** a reallocation of 25% of residual profits to the jurisdiction of the consumer. The scope is confined to multination groups with turnover in excess of €20 billion annually. Residual profit is profit greater than 10% of turnover.
    - **Pillar Two:** a minimum effective tax rate of 15% for in-scope businesses (MNCs over €750m revenue).

173. Ireland is one of 137 jurisdictions who have signed up to this political agreement at the OECD. It is expected that the Agreement will bring long-term stability and certainty to the international tax framework arising from discussions which have taken place.

174. The agreement will continue to allow our tax system to support innovation and growth with the 12.5% corporation tax retained for companies with a turnover below €750m annually, and the retention of the existing R&D tax credits.

Implementation of the Agreement

175. An intensive programme of meetings is ongoing at the OECD to ensure that the Agreement can be translated into rules which ultimately can become legislation. Officials of the Department of Finance and the Revenue Commissioners are endeavouring to shape the rules to ensure that they provide the necessary tax certainty, are administrable for business and tax administrations, and remain broadly faithful to the October Agreement.

Pillar One

176. Pillar One is comprised of Amount A, which will be delivered through a Multilateral Convention (MLC), and Amount B.
    - **Amount A** refers to the amount of profit for reallocation under Pillar One. It is agreed that 25% of the residual profit of a multinational enterprise will be allocated to, and taxed in, market jurisdictions. Residual profit is profit which exceeds 10% of total revenue.
    - **Amount B** will provide for a simplified and streamlined approach to the application of the arm's length principle to in-country baseline marketing and distribution activities. Amount B is intended to enhance tax certainty and reduce controversy between tax administrations and taxpayers.

177. As well as providing rules for Amount A and the elimination of double taxation, the MLC will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future.

178. Since the October Agreement, intensive technical work has been underway at the OECD on the Pillar One Model Rules.

Pillar One Amount A Building Blocks

179. On Pillar One, the OECD have divided the work into a variety of individual building blocks necessary for implementation. These elements will eventually combine to form the Pillar One Model Rules.

180. There are four stages to the process of agreeing model rules for each of the building blocks. Below is a summary of the progress made by each building block:

STAGE	BACKGROUND
Stage 1 - Discussion by the SGIF (Steering Group of the Inclusive Framework)	• Withholding Taxes
Stage 2 – Discussions in TFDE (Taskforce on the Digital Economy)	• Elimination of Double Taxation
	• Segmentation
	• Marketing & Distribution Profits Safe Harbour
	• Unilateral Measures
	• Administration
Stage 3 **Public Consultation**	As of early July, no building blocks have as yet gone out to public consultation
Stage 4 **Revising rules provisions based on public input**	• Main Scope Provisions
	• Nexus and Revenue Sourcing
	• Tax Base Determinations
	• Extractives Exclusion
	• Regulated Financial Services Exclusion
	• Tax Certainty Framework for Amount A
	• Tax Certainty for Issues Related to Amount A

181. These elements will eventually form the Pillar One Model Rules. These model rules will feed into a Multilateral Convention (MLC) which, along with its accompanying Explanatory Statement, will be used to implement the system for Amount A of Pillar One.

182. There have been initial meetings to discuss the MLC at the Taskforce on the Digital Economy (TFDE) earlier this year, and it is expected that substantive work on the Multilateral Convention will begin as the model rules get closer to completion.

183. Amount B, which will apply to the routine Baseline Marketing and Distribution activities, is less developed as yet, and work is ongoing on this part of Pillar One at the Steering Group of the Inclusive Framework. A proposal has been brought forward by the FTA MAP (Forum on Tax Administration – Mutual Agreement Procedure).

Pillar Two

184. Work on Pillar Two is more advanced. The OECD published Model Rules in December 2021 and published commentary to these rules in March 2022. The Model Rules and commentary provide an important framework to assist individual jurisdictions in implementing the GloBE rules (i.e. the Global Minimum Effective Tax), in a coordinated and consistent manner in accordance with the terms of the Agreement.

185. The primary rule is the **Income Inclusion Rule (IIR)**, under which the ultimate parent entity would review all its in-scope group entities on a jurisdiction-by-jurisdiction basis and apply an additional top-up tax where necessary to ensure the minimum effective rate is met in respect of each jurisdiction.

186. The secondary rule is the **Undertaxed Profits Rule (UTPR)**, planned to come into effect one year after the IIR. It is intended to act as a backstop, applying in cases where the full top-up tax due is not collected by parent entities through an IIR, and allows for residual top-up tax to be collected in the jurisdictions of other group entities regardless of whether they are parent entities.

187. Pillar Two also allows jurisdictions to elect to apply a **Qualified Domestic Minimum Top-Up Tax**, to provide for top-up tax arising to be collected domestically in respect of in-scope entities.

188. Technical work on Pillar Two at the OECD is now focused on developing the Implementation Framework. There are five areas of work under the Implementation Framework:
    - GloBE Implementation and Rule Order (including peer review processes for determining qualified status);
    - Administrative guidance (i.e. further guidance of an interpretative and administrative nature);
    - Information collection and exchange (including the GloBE Information Return);
    - Safe harbours and simplifications; and
    - Technical assistance (to implementing jurisdictions).

189. A focus group, of which Ireland is a member, has also been formed to develop the GloBE Information Return. The focus group contains a wide range of expertise from delegates of the OECD's Working Party 10 on the Exchange of Information, Working Party 11 on Aggressive Tax Planning, and the Forum on Tax Administration.

EU Implementation

190. In the EU, work on delivering Pillar Two into legislation through the Minimum Tax Directive is very advanced. In December 2022 the European Commission published a Proposal for a *COUNCIL DIRECTIVE on ensuring a global minimum level of taxation for multinational groups in the Union (EU Minimum Tax Directive).* The EU Minimum Tax Directive now provides for implementation by 31 December 2023, which is in line with the OECD agreement of 2023 implementation. This remains faithful to the original deadline, while recognising the complex work required of both tax administrations and businesses in order to introduce and operate these rules effectively.

191. Member States engaged in intensive discussions on the proposed Directive in Q1 of this year, and a revised text currently has broad support among most Member States. It is expected that the Directive will be unanimously agreed by Member States later this year.

Domestic Implementation

192. Work on transposition of the EU Directive, informed also by the GloBE Model Rules and Commentary, is under way. These are complex provisions and will require detailed consideration in order both to draft the new GloBE provisions and to integrate them with existing tax legislation. This process will be ongoing across the full 15 months available ahead of Finance Bill 2023.

193. A public consultation regarding the domestic implementation of Pillar Two was launched on 26 May 2022 and remains open for submissions until 22 July 2022. Officials will carefully consider the feedback received. Stakeholder views, as ever, will form a crucial part of the domestic implementation process.

Cost of Agreement

194. Ireland's corporate tax regime has been built on certainty and predictability. Ireland signed up to the OECD agreement in October 2021 in the knowledge that there would be a cost in terms of reduced tax revenues. However, this cost would have broader benefits in that implementation of the agreement is expected to bring much-needed stability to the international tax framework after the turbulence and uncertainty in recent years.

195. In addition, Ireland will continue to be able to offer a 12.5% rate to over 95% of Irish businesses who are out of scope of the agreement, i.e. businesses with global revenues less than €750m. The agreement also allows for our tax system to continue to support innovation and growth, including through our established R&D tax credit.

196. Businesses with a turnover in excess of the €750m annual threshold have been constructively engaged in the OECD process for a number of years and the consistent message has been that certainty and stability are vital requirements for investment decision-making.

197. The current estimate of the cost of joining this agreement is in the region of €2 billion annually, however it remains very difficult to accurately estimate the impact at this stage.

198. There are still many details to be worked out in these complex international agreements. There are sensitive issues for Ireland which are advancing but not yet finalised, including in respect of the method of reallocation of profits under Pillar One, as well as the impact of the detailed technical provisions under Pillar Two.

199. The outcome of these discussions, coupled with the future business decisions of multinationals, will have significant implications for our future corporation tax receipts, and the scale of the effect will only become fully known with time.

7. European Union Tax Developments

Overview

200. The International Taxation agenda has been heavily dominated by the ongoing work of the G20/OECD Inclusive Framework on BEPS, on the Two Pillar solution. However, there have also been important developments at an EU level on direct taxation policy.

201. Most notably, as set out above, in December 2021 the European Commission adopted a Directive to provide for the implementation of the Pillar Two rules collectively by EU Member States, while maintaining the integrity of the single market.

202. In addition, the European Commission previously outlined its intentions for Direct Taxation policy in two communications, the first on Tax Good Governance published in July 2020[6] and most recently in the Communication on Business Taxation for the 21st Century published in May 2021[7], which set out both short and longer terms measures with the aim of providing a fair and sustainable business environment, and EU tax system.

203. The Commission outlined its intention to table a number of legislative proposals, within the timeframe of the current Commission mandate (2021 to 2023). Specifically the Commission has identified the following:

- A legislative proposal setting out union rules to prevent the misuse of shell entities for tax purposes (Un-Shell) (published in December 2021),
- A legislative proposal creating a Debt Equity Bias Reduction Allowance (DEBRA) (published in May 2022), and
- A legislative proposal for BEFIT (Business in Europe: Framework for Income Taxation), moving towards a common tax rulebook and providing a mechanism for allocating taxing rights between Member States for fairer allocation of taxing rights between Member States (expected by 2023).

204. The above proposals represent the Commission's ideas and ambitions. Ultimately, any tax proposal requires unanimous approval by Council.

205. In addition to the above, there are other actions on the EU agenda relating to tax transparency and governance, including:

- Further legislative proposals to amend the Directive on Administrative Co-operation (DAC) to ensure that EU rules stay in line with the evolving economy and include other areas such as crypto-assets and e-money (expected by end 2022), and

[6] Draft Communication on Tax Good Governance (europa.eu)

[7] communication_on_business_taxation_for_the_21st_century.pdf (europa.eu)

- The bi-annual updates to the EU list of non-cooperative jurisdictions for tax purposes (expected October 2022).

Proposal to address misuse of Shell Companies

206. In December 2021, the European Commission published its proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes, known as the Un-Shell Directive.

207. The objective of the Directive is to tackle the misuse of shell companies for tax evasion and avoidance whilst allowing these types of business entities to be used for legitimate commercial reasons. In the circumstances of a company being deemed to be an abusive shell entity, the Member State shall apply denial of tax benefits and further introduce monitoring and tax transparency requirements on the entity.

208. Expert working parties to discuss the proposal commenced in March 2022 under the French Presidency of the European Council and will continue under the Czech Presidency in the second half of 2022. Ireland is engaging constructively on the topic.

DEBRA (Debt Equity Bias Reduction Allowance)

209. In May 2022, the European Commission published its proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes, known as the DEBRA Directive.

210. The Commission's stated objective for this proposal is to create a level playing field for debt and equity from a tax perspective, thereby removing taxation as a factor which can influence companies' funding decisions. The proposal would make new equity tax-deductible, as debt currently is. It would apply to all taxpayers that are subject to corporate tax in one or more Member States. The proposal also supports one of the aims of the Capital Markets Union Action Plan to reduce companies' reliance on debt financing.

211. The Commission’s proposal includes a proposed calculation on equity allowance based on the difference between net equity at the end of the current tax year and net equity at the end of the previous tax year, multiplied by a notional interest rate. In addition, the proposal introduces a further limitation to debt interest deduction to reduce the incentive to use debt and preserve the sustainability of Member States' public finances.

212. Expert working parties to discuss the proposal commenced in June 2022 under the French Presidency of the European Council and will continue under the Czech Presidency in the second half of 2022. Ireland will engage constructively in the Council negotiations of the proposal.

BEFIT (Business in Europe: Framework for Income Taxation)

213. The Communication on Business Taxation for the 21st century also indicated the intention by the European Commission to create a new framework for business taxation in the EU. The "Business in Europe: Framework for Income Taxation" (or BEFIT) aims to provide a single corporate tax rulebook for the EU, based on a formulary apportionment and a common tax base.

214. The BEFIT proposal will replace the existing proposal for a Common Consolidated Corporate Tax Base (CCCTB), which will be withdrawn by the European Commission.

215. To date the precise details of the BEFIT proposal are unknown, however, Ireland will maintain the principle that matters of direct taxation remain a Member State competence under the treaties, and tax harmonisation is contrary to that principle. Ireland will continue to engage actively on this issue.

DAC8 – Cryptocurrency

216. The EU tax reform agenda will continue with a proposal to amend the DAC (Directive on Administrative Co-operation) by extending the EU rules to keep pace with the technological developments and extend the scope of exchange of information to include areas such as crypto-assets and e-money. This proposal is expected in the second half of 2022 and will build on work that is currently ongoing at the OECD.

217. The European Commission held a public consultation from March 2021 to June 2021 and the responses to that public consultation are publicly available on the European Commission website.[8]

218. It is anticipated that the Commission legislative proposal will provide for the introduction of reporting obligations and the exchange of information that will enable tax administrations to obtain information necessary to ensure tax compliance in the area of crypto-assets and e-money. Ireland is helping to shape the reporting rules through the OECD working party discussions, which will assist in developing DAC8.

219. Ireland fully supports the exchange of information by tax authorities and looks forward to the launch of this proposal later in 2022. Ireland will actively participate in the Council negotiations to ensure that any Directive aligns with OCED work and interlinked regulatory requirements, such as the OECD's FATF (Financial Action Taskforce) and the EU's MiCA (Regulation on Markets in Crypto-assets). It will also be of significant

[8] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-&-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information/feedback_en?p_id=16161038

importance to Ireland that the Directive provides for reasonable timelines for Member State implementation and avoids excessive compliance burden on business.

Code of the Conduct Group

220. The EU Code of Conduct Group (business taxation) was established by Finance Ministers at ECOFIN in 1997 as a tool to identify and assess possible harmful or preferential tax measures in Member States. Under the Code, the EU Member States committed to roll back existing tax measures that constitute harmful tax competition and refrain from introducing any such measures in the future. Over the intervening period, the scope of the Code of Conduct Group has expanded to apply to third countries outside the EU. It is an important instrument of the EU to promote fair tax competition, both within the EU and beyond.

221. One of the group's main tasks is the preparation of the EU list of non-cooperative jurisdictions for tax purposes. The aim of the list is not to name and shame countries but to encourage positive change in their tax legislation and practices through co-operation.

222. Since 2020, the list has generally been updated twice a year. The next expected update of the list will be by Finance Ministers at the ECOFIN in October 2022.

223. A further reform of the Code of Conduct Mandate has been discussed in recent years. Ireland was supportive of the compromise proposal to revise the Mandate, which failed to reach agreement at ECOFIN in December 2021. It is anticipated that discussions will continue on the reform of the Code of Conduct Mandate, particularly in the context of the new rules brought about by the enactment of Pillar Two and the Minimum Tax Directive. Ireland will fully engage in those discussions.

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