The CPD Fest 2020

Tax Compliance Round-Up

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Tax Compliance Round-Up

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Topics to be covered:

- Corporation Tax Compliance & Reliefs
- Covid-19 Corporation Tax loss relief
- Payroll Compliance
- Vat
- Pre-year end company review
- Revenue intervention update

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Corporation Tax

Company residence:

- Incorporated in Ireland – tax resident in Ireland
- Any companies incorporated in Ireland will be resident (apart from DTA tie-breaker situations)
- Resident in Ireland – worldwide income
- New companies – from 1 January 2015
- Existing companies – from 1 January 2021
- Existing companies – pre-existing rules until 31/12/2020
- Non-resident – Irish generated income only

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Pay & File

- Preliminary tax for 'small companies'
- Small company – total prior period corporation tax is <€200,000

Example of 31/12/20 year end:

- 1st payment due 23/11/20 – pay either 90% of current year or 100% of prior year
- Balance due when file return – latest 23/09/21
- Adjust €200,000 for non-12-month periods

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Pay & File

- Prior period tax in excess of €200,000
- Preliminary tax for 'large companies'

Example of 31/12/20 year end:

- 1st payment due 23/06/20 – pay either 45% of current year or 50% of prior year
- 2nd payment due 23/11/20 – to bring 1st & 2nd payment to 90% of current liability
- Balancing 10% due when file return – latest 23/09/21

Pay & File

- Can pay top-up for chargeable gains in last month of accounting period
- Pay additional preliminary Corporation Tax (CT) on gain within 31 days of period-end
- Preliminary tax must include income tax withheld during period under s239 TCA 1997 e.g.
  - Interest/charges/non-resident landlords
  - Health insurance TRS
  - Directors' loan (close companies)
- Underpayments of preliminary tax – interest may be chargeable at 0.0219% daily (8% p.a.)
- Charged on difference between tax paid and shortfall, between payment of preliminary and final e.g. 23/11/2020 and 23/09/2021 for 31/12/2020 year-end
- Gains on development land are not included in preliminary corporation tax
  - Gains 01/01 – 30/11 – due by 15/12 – 100%
  - Gains 01/12 – 31/12 – due by 31/01 – 100%

Corporation Tax

- Review of tax adjustments for corporation tax
- Depreciation – claim wear and tear
- Entertainment – specifically disallowed
- Interest & fines – clamping etc.
- Patent royalties – no accruals allowed
- Pension – no accruals allowed
- Special pension contributions – allowed to match normal contributions max 5 years
- Interest on investing – qualifying conditions – allowed against all income in year
- Ensure correct book-keeping coding system

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Corporation Tax

Leases – 3 types for tax purposes

- Finance – disallow interest and depreciation and allow payments against tax
- Finance – buyout – credit note treated as income and invoice capitalised for wear & tear (w&t)
- Operating – no tax changes needed*
- Hire Purchase* – disallow depreciation and claim w&t

*For accounting periods beginning on or after 01/01/19 most leases are now capitalised under IFRS standards (but not FRS 102)

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Corporation Tax

Passenger motor vehicles

- Claims linked to CO_2 emissions category
- Allowances for leasing/purchases to 31 December 2020:
  - A,B,C – claim based on €24,000
  - D,E – 50% of lower of €24,000 or original market price when first manufactured
  - F,G – nil allowances
- Leasing – restrict payments in formula
- Wear & tear – restrict amount claimable
- New regime for leasing/purchases from 1 January 2021:
  - A,B – claim based on €24,000
  - C – 50% of lower of €24,000 or original market price when first manufactured
  - D,E,F,G – nil allowances

Corporation Tax

- Donations – CHY number and above €250
- Keyman insurance – allowed on ordinary, non-proprietary employees for loss of profit
- Provisions – allowed if meet FRS 102/IFRS guidelines – committed liability at year-end
- Bad debts – provisions allowed if comply with accounting standards
- Qualifying long-term unemployed – payment under JobsPlus scheme are exempt from tax
- Medical insurance – deduct TRS from CT and pay with tax at year end (as income tax). Max €200 per adult and €100 per child

Research & Development Tax Credits

- Relief – 25%* of current spend
- Credit is refundable – may take 3 years

- *see later slide for 30% small & micro company scheme

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Research & Development Tax Credits

- Order of set-off relief – for a 2020 claim:

  a) Set against current years corporation tax (2020)
  b) Set against prior years corporation tax (2019) – will ensure refund of any tax paid for the year
  c) Refund of 33% of any remaining credits – only after file 2020 return – 23 September 2021 at the latest
  d) Set against corporation tax of 2021 (subject to own claim)
  e) Refund of half of any remaining credits – only after file 2021 return – 23 September 2022 at the latest
  f) Set against next years corporation tax – 2022 liability
  g) Remainder refunded when file 2022 return – 23 September 2023 at the latest

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Research & Development Tax Credits

- Maximum refund allowable for each year of expenditure for claims C - G (previous slide) is the greater of:

  1. Total corporation tax for the ten periods prior to B. claim – 2009-2018 for 2020 expenditure year, or;
  2. Total payroll taxes for the expenditure year and prior year

- Expenditure must be incurred in the State or an EEA country where it does not qualify for relief in that country
- Must carry on a trade and keep detailed expenditure records
- Expenditure must be to "achieve scientific or technological advancements" or "solutions to technological uncertainties"

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Research & Development Tax Credits

- Software and IT inventions should qualify
- Engineering advancements
- New products not previously on the market
- Not necessarily "men in white coats" expenditure
- Should have full claim backup on file
- Can outsource 15% or €100k to university and still claim
- Can outsource 15% or €100K to others and still claim (must inform subcontractor on or before payment date)
- Pre-trading expenditure also qualifies
- Grants are deducted prior to calculating claim

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Research & Development Tax Credits

- Separate relief for R&D buildings
- Available if building used for R&D for 35% of time over 4 years – credit based on usage
- Building must be used for 10 years or relief must be repaid
- Same A – G claim for buildings as for expenditure
- Revenue can consult external experts to verify claim
- If this would compromise company secrets – Revenue will verify themselves

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Research & Development Tax Credits

- Must lodge claims within one year of tax period
- Would generally lodge with the corporation tax return
- Revenue frequently check claims – may disallow and refunds sought (plus interest and penalties)
- Most recent Revenue guidelines – more restrictive on overheads and non-specific R&D costs
- Review Revenue tax manual (most recent version issued in July 2020), in particular –
  - a) Section 3 - Types of research applicable
  - b) Section 8 - Records to be kept
  - c) Appendix 1 & 2 - Categories of activity that do and do not qualify
  - d) Revenue suggested "pro-forma claim layout"

Preparing a claim:

1. Review operations and confirm engaged in R&D
2. Document processes – where is value added and how
3. Quantify direct costs – materials, salaries etc.
4. Apportion overheads – turnover/floor space etc.
5. Check claim does not exceed maximum limits
6. Include claim in corporation tax return and note prior and future years offset and refund claims from that years expenditure

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Research & Development Tax Credits

- Small and Micro company Scheme (subject to commencement order)
- R&D credit increased to 30%
- Limit on refundable credit increased to payroll liability x 2
- Pre-trading e.g. involved in R&D and not yet making sales
- Can offset credit against payroll taxes (excluding PRSI) and VAT

Micro Company:
- Less than 50 employees and
- Turnover of €10m or less or
- Balance Sheet total of €10m or less

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Employment Termination

- Statutory redundancy – tax-free to employee
- Tax allowable in company
- *Ex-gratia* payments – certain tax-free elements
- Maximum allowable – €200,000 (lifetime limit)

  Basic €10,160 plus €765 p.a. for every full year of service

  Two methods to increase:

  1. Extra €10,000 if no previous termination payments received in prior 10 years, less pension tax-free lump sum
  2. SCSB – for high earning long-service individuals
     - Average annual salary for 36 months prior to termination
     - Can include bonuses etc. in average
     - Average x number of complete years / 15 - Less tax-free pension lump sum
     - Can waive right to pension lump sum if required

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Company Liquidation

- Cessation of trade – liquidation
- Pay redundancy – tax allowable
- *Ex-gratia* termination payments – not allowable
- Balance of company funds after costs – CGT for shareholders
- Company must have genuine reason to cease trading – retirement, loss of contracts etc.

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Exiting from company

Exit strategy from company

Tax considerations

- Review company pension plan funding
- Retirement lump sum
- Sale of business and availability of
  - Retirement relief
  - Entrepreneur relief
- Transfer to children/family
  - CGT and CAT reliefs
  - Share buybacks
- Revenue anti-avoidance
  - Section 135 TCA 1997 anti-avoidance rules that impact share sales in certain cases where external borrowings not used – issues re: use of company cash to buy-out exiting shareholders

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Start-Up Relief

Tax free for company's first three years trading - Conditions to qualify for relief:

1) Company incorporated only since 14/10/08
2) Commenced to trade between 01/01/09 – 31/12/21
3) Qualifying trades only – not professional trade, a previous trade or an existing trade
4) If total tax is less than €40,000, trade will be exempt
5) Cannot transfer trades in groups
6) Exemption is linked to employer PRSI – €5,000 per employee, maximum of €40,000. Applies to all companies
7) Cannot incorporate new branches as companies

- Marginal relief available for total tax between €40,000 and €60,000
- Employer PRSI not set against first 3 years CT can be carried forward against future CT
- Note – income tax exemption for sole traders ceased as at 31/12/2018

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Close Companies

- Controlled by 5 or less participators or by any number of directors
- Control is >50% of ordinary share capital (OSC) or of all shares
- Virtually all Irish companies
- Benefits for shareholders – employees/directors – BIK
- Benefits – all others – distributions
- Interest on loans to companies – not common
- Loans from companies – common
- Regross loan at 80%
- Pay tax at year end – 20%
- Director/employee – BIK – 13.50% (4% for home loans and mortgages)

- Loan repaid – tax office repay 20%
- Company law rules – max = 10% of net assets as laid before last AGM
- Companies Act 2014 – Summary Approval Procedure – loans >10%

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Close Companies

- Loan forgiven – company write-off loan and no refund from tax office – not tax deductible
- Individual – includes loan in tax return less credit for tax paid by company
- Other distributions (close and non-close)
- Any share dealings that result in no effective change in shareholding – distributions
- Transfer at undervalue – CGT on company and shareholder, distribution and CAT
- Close company surcharge
- Additional tax on after tax profit of close companies
- To narrow CT and IT gap
- To avoid surcharge – pay dividend = IT

- Passive income = 20% surcharge
- 50% of professional income at 15%
- 18 months after year-end to pay dividend
- Dividends are not tax-deductible

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Professional Services Withholding Tax

- Deducted by Government bodies/agencies
- 20% on net professional services
- Credit against final taxation
- Can seek interim refunds
- Proposal to move to ePSWT system

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Dividend Withholding Tax

- Deducted by dividend paying companies – paid to tax office monthly
- Standard rate of tax – 25% (20% to 31/12/19)
- Exemptions available – companies, charities, pension funds, EU residents
- Companies must receive appropriate exemption forms – otherwise deduct tax
- Proposed real time system from 1/1/21 deferred until further notice

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Relevant Contract Tax

- Building/forestry and meat processing
- Principal using a subcontractor
- Tax on subcontractors at 0%, 20% or 35%
- Withholding tax only – not final tax
- VAT – reverse charge applies
- Subcontractor or employee – follow code of practice to assist with decision making
- Ensure receive valid invoice – no VAT – regrossed and paid by principal
- eRCT system only – no paper filings
- Operated via Revenue On-line Services (ROS)
- Details of contracts given to Revenue
- Subcontractor provides invoice

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Relevant Contract Tax

- Principal informs Revenue of payment due
- Revenue issue deduction authorisation
- Penalties for not seeking authorisation prior to paying – 35%, 20%, 10% and 3% of the payment!
  - Revenue will push for these penalties
- Rate of tax – 0%, 20%, 35%
- 0% – tax compliant now and in previous 3 years, includes proprietary directors
- 20% – comply substantially with tax law
- 35% – all other cases
- Copy of deduction authorisation to subcontractor with cheque
- Pay RCT – Revenue know amount due – check amounts and submit return
- Pay after due date – statutory interest will be charged
- No refunds to subcontractor until tax return lodged and agreed

Covid-19 Tax Measures

Corporation Tax Interim Loss:

- Normal loss relief sees trade loss in later year carried back against prior year trade
- However – need to file the CT1 return of the later year in order to claim the loss against the prior year
- Covid-19 loss measure:
- If company expects a loss due to Covid-19 and its accounting period includes any part of March 2020 to December 2020
- - it can estimate its loss for this period (e.g. management accounts and forecast)
- - set 50% of this estimate against the previous year as an interim claim
- - when return is eventually filed, final claim is submitted and relief finalised
- ***Example:*** year end 31 December 2019 has been lodged and paid
- - 31 December 2020 expected to be a loss of €300,000
- - Company can re-open 2019 return and claim €150,000 (under s.396D) and obtain €18,750 refund or if not paid, cancellation of this liability
- Similar relief for **sole traders** with 50% limit replace by maximum claim of €25,000

Covid-19 Tax Measures

PAYE:

- Current scheme in place - EWSS
- Requires keeping tax clearance up to date
- Ongoing month end review of qualifying criteria (Jul-Dec 2020 sales at 70% of Jul-Dec 2019)
- Revenue undertaking TWSS reconciliation campaign to identify under/overpayments eg flat €410 during transitional TWSS v actual subsidy due (this can be warehoused)
- Revenue undertaking compliance campaign on TWSS
- Have also committed to EWSS compliance campaign
- Employee taxes due during TWSS to be recouped – mainly commencing in January 2022

Tax Debt Warehousing:

- Qualifying debt: VAT from January and PAYE from February 2020 to re-opening plus following vat period
- Example: Business re-opened in May 2020, add July/Aug vat period = Jan – Aug can be warehoused
- Use Government Road Map for Re-Opening for date of end of warehousing plus next vat period
- Can also include Level 5 debt if business had to close put following vat period
- One year interest free and PPA commences thereafter at 3% for agreed period
- Can also include TWSS Reconciliation amount due

PAYE – Direct Payroll Reporting

- On or before an employee is paid or provided with a benefit – must send notification to Revenue of payment date, amount, tax deductible
- Download “Revenue Payroll Notification” (RPN) for each employee
  - contains details relating to calculation of taxes
  - you must request an RPN from Revenue each time you make a payment to an employee
  - the RPN is unique to the payment and employment
- Revenue issue a statement on the 5th of the month showing the payroll reporting information submitted to Revenue for the previous month
- If the entries on the statement are incorrect an employer has to correct before the 14th
- Payment due on the 23rd
- Emergency basis should only apply under Real Time Reporting (RTR) where the employee has no PPSN – where PPSN supplied RPN request automatically registers that employment on ROS
- Obligation to register as an employer with Revenue
- Revenue will maintain register of employers
- Employer must keep register of employees

PAYE – Direct Payroll Reporting

- If an employer experiences a systems failure and they are unable to validate payroll with Revenue, they can pay employees:
  - If legally obliged to
  - Must use most recent RPN or emergency tax (if no PPSN or new to Ireland)
  - Revenue may seek evidence of systems failure
- Ensure all employees on system have PPS numbers
- Revenue obtain details of Department of Employment Affairs and Social Protection (DEASP) payments directly and update RPNs automatically (SW payments continue to be taxable on an earnings basis)
- Keep BIK under review – Revenue recommend quarterly review*
- Review expenses schemes – kept up-to-date, no round sum payments
- *Covid-19: Revenue offered deferral of BIK during TWSS – but try to review before 31 December 2020

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Payroll Taxes

- PRSI – ensure correct classes
- A – employee under 66
- J – employee 66 and over or low earner
- M – pensioner
- S – self-employed - 50% shareholder
- A or S – may need to review for up to 50%
- For employed contributors: 4% PRSI on unearned income if over €5,000 pa – must lodge Form 11 Chargeable person return
- Earn non-PAYE income – <€4,999 – Form 12 and no PRSI
- Earn €5,000 – Form 11 – full PRSI 4%

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Payroll Taxes

- BIK – employer responsible and will be liable for any liabilities not deducted from employees
- Liable to all payroll taxes – PAYE, PRSI and USC
- BIK on passenger motor vehicles – based on original market value

Business travel lower limit Kilometres	Business travel upper limit Kilometres	Percentage of original market value
0	24,000	30%
24,000	32,000	24%
32,000	40,000	18%
40,000	48,000	12%
48,000	-	6%

- In all cases BIK based on original market value of car (even if purchased second-hand)
- BIK exemption for electric vehicles provided by employee, €50k limit from 09/10/18
- New CO_2 system from 01/01/23: rates ranging from 9% to 37.50%

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Payroll Taxes

BIK – alternative is civil service rates

- Paid to employees for using their own motor vehicle
- 4 bands of tax free mileage payments – can pay this or lower
- Latest rates came in on 1 April 2017
- Also can pay subsistence rates for working out of the office during day and/or overnight, tax free
- Latest rate came in on 1 July 2019
- Specific Dublin only rate from 1 April 2017
- Need to keep log for claims
- Note – must be >8km from office for subsistence claims

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Payroll Taxes

BIK – vans – 5% (8% from 1/1/23) or exempt if meet conditions:

- Van is necessary to perform work
- Must keep at private house when not in use
- Private use of van is prohibited
- Employee spend 80% of time away from work premises
- Definition of van per Revenue:
  - Designed to carry goods only
  - Roofed area behind drivers seat
  - No side windows/seating in roofed area
- BIK exemption for electric vans provided by employer (€50k limit from 09/10/18)

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Payroll Taxes

- BIK – Preferential loans:
  - For home mortgages and loans – 4%
  - All other loans 13.5%
- Employer contributions to pension schemes:
  - Not treated as a taxable BIK and tax allowable for employer
  - Very high limits for employer contributions
  - E.g. employer can pay €12,000 pa if employee earns €25,000 pa

Health Insurance:

- Employee taxed on gross premium (including TRS)
- Employee can claim tax credit on gross cost of insurance (max €200 per adult/€100 per child)
- Frequently not operated correctly
- Ensure linked to payment of TRS in CT return

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Payroll Taxes

- BIK – exemptions – travel pass/bike scheme:
  - Must be used to get to work and any other use is incidental
  - Maximum cost for bike is €1,250 (€1,500 for e-bikes) every four years
- BIK exemption for items/home costs paid for by employer where private use is incidental, e.g. internet, laptops, mobile phones, etc.
- Items such as payments of home and telephone account will be split *pro rata* between personal and business based on usage
- BIK on professional subs – Revenue manual 05-02-18 updated in January 2020
- Exam fees also allowable if directly relevant to work
- BIK – Others – valuation based on higher of cost incurred by employer or value to employee in monetary terms
- BIK exemption – Annual €500 voucher (taxable if paid in cash or convertible into cash)
- *Covid-19: No BIK on home office equipment and employer can pay €3.20 per day to cover home office overheads eg utilities etc or employee can submit end of year tax claim based on % of actual overheads incurred (Revenue guidance – will accept 10% of utilities and 30% of broadband)

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Payroll Taxes

- Proprietary Directors – > 15% of OSC
- Treated as self-employed – Form 11 annually
- Directors – subject to surcharge if return late
- Surcharge is before PAYE – expensive!
- Include IT/CGT due and preliminary tax (if other income)
- Option of pension top-ups before file return, i.e. can make payment on or before 10th December 2020 to set against 2019 income tax

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Recap of Unapproved Share Options

- No tax on grant of options (unless capable of being exercised more than 7 years after granting)
- Exercise of options – tax at marginal rate due (via form RTSO1) within 30 days on difference between price paid for share and current market value
- Must complete Form 11 in year of exercise
- Capital gains due when sold on uplift from market value at date of exercise (base cost is original price paid and amount liable to income tax at exercise)
- Revenue currently conducting a review in this area

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Key Employment Engagement Programme (KEEP)

- Designed to allow the tax efficient grant and exercising of share options to key employees
- No income tax on grant or on initial exercise
- Capital gains tax deferred until shares sold
- Tax saving – 52% v 33%
- Employee will have cash to pay CGT
- Applies to unquoted companies only
- Scheme commenced from 01/01/18
- Applies to shares granted between 01/01/18 – 31/12/23

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KEEP – Qualifying Company (for issue of options)

- Unquoted SME company (can be quoted on ESM or similar exchange in EEA or DTA country)
- Carrying on a qualifying trade (as defined)
- Incorporated in Ireland or EEA and resident in Ireland or resident in EEA with trade in Ireland
- Company must remain an SME between date of grant and exercise of all options
  - <250 employees, €50m t/o and €43m b/s
- Annual reporting of granting and issuing of shares
- Market value of total unexercised options cannot exceed €3m at date of granting the options
- Qualifying trade:
  - Trading on a commercial basis
- Excluded trading activities:
  - financial trades, professional trades (defined and includes medical, accountancy, tax, legal, architectural)
  - construction and property related

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KEEP

- Qualifying employee (for issue of options):
  - Director or employee must work either at least 20 hours per week or 75% of their work time
  - Cannot own >15% of company (with connected persons)
  - Must hold option for minimum of 1 year and maximum of 10 years
  - Total market value of shares under option cannot exceed – €100,000 in any year, €300,000 in all years and 100% of emoluments of year of grant (per employee)
  - When exercise options – must pay at least market value at date of grant
  - Employment must be capable of lasting 12 months or more
  - Ordinary fully paid up shares only
  - Section allows for takeover of company by purchaser to qualify
  - Options can only be granted for bona fide reasons – to recruit or retain employees and not for the main purpose of avoiding tax

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VAT

- VAT – collection tax only
- Low registration thresholds – €37.5K & €75K
- VAT rates – exempt, 0%, 9%, 13.5%, & 23%
- Exempt – banking, insurance etc.
- 0% – basic foodstuffs, children's clothing
- 13.5%* – hotels and accommodation
- 13.5% – construction, power
- 9% – newspapers including electronic
- 23% – all other services**
- * 9% between 1/11/20 – 31/12/21
- **21% between 1/9/20 – 28/2/21
- List of over 4,000 services/products and appropriate rates on www.revenue.ie

- Liability based on place of supply and customer registration status:
  - Ireland – Ireland – VAT is charged – B2B and B2C
  - Ireland – EU – B2B – quote EU VAT number on invoice and charge 0% VAT
  - Ireland – EU – B2C – charge Irish VAT (**)
  - EU – Ireland – B2B – provide Irish VAT number – charged 0% VAT and self-account on own VAT return
  - ** Subject to changes from 1/7/21 (see next slide)

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VAT

- EU – Ireland – B2C – will be charged other country VAT rate**
- EU – Ireland – B2C – non-taxable entities (e.g. banks) must register in Ireland for VAT if EU acquisitions exceed €41,000 (will then self-account for vat in Ireland)
- Non-EU – Ireland – VAT on importation
- Ireland – non EU – no VAT chargeable
- ** **New Vat e-Commerce Package (from 1/7/21, deferred from 1/1/21)**
- - Removal of distance selling threshold and replacement with new scheme
- - Applies if cross-border sales are more than €10,000 per annum
- - Use of OSS (One Stop Shop) for B2C - to charge vat at EU rates and allocate through one vat return (e.g. Irish company makes a return via ROS OSS and vat is allocated to each state
- - Removal of vat exemption for importation of goods worth less than €22
- - Vat on Imports into EU of €150 or less can be paid via IOSS (Import One Stop Shop)

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VAT

- VAT charged on consideration receivable
- No charge on statutory fees etc. e.g. stamp duty – as these are held as agent only
- Vat due on travel expenses etc – as this is "consideration"
- Accounting for VAT – two choices:
  1. Invoice basis – pay VAT when charge
  2. Cash basis – pay VAT when get paid – for turnover of less than €2,000,000

- 2/3rds rule for charging VAT – arises during mixture of services and goods
- Need to ensure correct to charge all at 13.5%

VAT

- Composite supplies – principal supply – all goods at one rate
- Multiple supplies – charge different goods at appropriate rate
- 56B authorisation – ensure correct & in date documentation is on file to 0% charge (old 13B)
- Invoicing regulations – issue and receive correct invoices – could affect VAT inputs
- Return of Trading Details – Revenue demand any o/s returns prior to issuing refunds. Not filing can cause issues with tax clearance.
- VAT on property
  - Revised rules since 01/07/08
  - Complex – always seek advice

VAT

Restriction of input credits:

- Revenue concerned with claiming of input credits and no expense actually incurred
- Purchase not paid after 6 months:
  - Input credit to be clawed back in VAT3 form
  - Input allowed if invoice paid later
- Need to watch book-keeping records

Revenue compliance programme:

- RTD's being actively requested
- No tax refunds if last RTD not filed
- Should be filed on an ongoing basis
- VAT 3 returns – more emphasis on E & ES boxes
- Ensure correct coding in bookkeeping system
- Common issue – all zero rates coded to 0% code
  - Can be zero codes for exempt, 0% Ireland, 0% EU, 0% non-EU, eRCT – all these are different e.g. for RTD and VAT3 regrossing
- Campaign re eRCT and reverse charges

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VAT

Brexit Implications:

- Current Revenue campaign of contacting businesses to enquire as to Brexit "readiness"
- appointment of customs agent to deal with UK trade
- software capability re forms required for UK import/export
- are transport providers ready for new requirements
- No VAT changes in dealing with Northern Ireland - current system remains in place

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Pre-Year End Items and Corporation Tax Returns

- Company with 31 December 2020 year end:
- Ensure all loss relief claims made for 31/12/2018 –
  1. Trading losses – s396A and s396B TCA 1997
  2. Trade charges – s243A and s243B TCA 1997
  3. Irish rental losses – s399 & s308(4) TCA 1997
- Company has two years from loss period to make claim – can wait to review the following year first

Example:

- A company has excess industrial building allowances s308(4) TCA 1997 – it may be more efficient to carry forward against future rental income (tax at 25%) rather than set against current year's Case I trade income (tax at 12.5%)
- Due to two-year rule the claim can be held off to allow reviewing of the following years results

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Pre-Year End Items and Corporation Tax Returns

- R&D claims – to 31/12/2019 – 12 months to lodge claim – via CT1 normally for year of expenditure
  - May need to resubmit previously filed CT1
  - Should have report/schedules prepared to support claim - in case of Revenue enquiry
  - Will then include in current year CT1 the portion of credits and refunds for claim – e.g. 31/12/2020 CT1 will include R&D offset and 50% refund of remainder
- Employee/Directors pension schemes
  - Allowable on a paid basis only – ensure cheques are written before year end – accruals must be added back
  - Ordinary contributions – usually by monthly direct debit
  - Special contributions – lump sum top-ups for schemes
  - Special is allowable to extent of ordinary contributions
  - Therefore can double contribution prior to year end

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Pre-Year End Items and Corporation Tax Returns

- Treatment of charges is similar to pensions
  - Trade charges – e.g. for patent royalties
  - Ensure paid before year end – or will be added back
  - Non-trade charges – e.g. interest on intercompany loans
  - Allowable against all current year income and gains
  - Any unutilised cannot be carried forward or back – any relief potentially due will be lost
- Review of potential provisions/accruals:
  - Ensure compliance with accounting standards – should then be tax allowable – s76A TCA 1997
  - Tax allowance for provisions – financial commitment at the year end – e.g. contract signed
  - Provision will be allowable provided it is not in contradiction with tax law – for example treatment of finance leases for accounting and tax purposes

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Pre-Year End Items and Corporation Tax Returns

- Directors loan accounts at year end:
  - Company has until it files its CT1 return for year end to declare Directors fees and pay PAYE due
  - Fees will be CT allowable – assuming wholly and exclusively for trade
  - Use net pay to clear loan accounts
- Directors' Fees at year-end:
  - Directors' fees voted and paid within 6 months of year end – process in current payroll, accrue fee in accounts and include in Directors Form 11 for same year. E.g. December 2020 year-end – vote by June 2021. Process in payroll when paid and include in 2020 accounts and directors tax return
  - Fees will be CT allowable – assuming wholly and exclusively for trade
  - Directors' fees voted or paid 6 months after year-end – revise payroll in accounts year, accrue fee in accounts and include in Directors Form 11 for same year. E.g. December 2020 year end – vote in August 2021. Process in 2020 payroll and include in 2020 accounts and directors tax return.
  - Fees will be CT allowable – assuming wholly and exclusively for trade

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Pre-Year End Items and Corporation Tax Returns

- Timing of capital asset purchases:
  - Assets bought pre year-end and put into use before year-end
  - Full years w&t claim available in year of purchase
- Close company surcharge
  - Prior year surcharge will become payable with current year tax
  - Example – year end 31/12/2019 – surcharge due with CT for year end 31/12/2020
  - Company has until 30/06/2021 to declare and pay dividends to reduce surcharge – will be before file CT1*
  - *Revenue current offering surcharge deferral of 9 months – need to apply for this
  - Dividends will be Schedule F for individuals

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Pre-Year End Items and Corporation Tax Returns

- Close company surcharge cont'd
  - Dividends will be FII for companies – exempt from CT
  - However, will be liable to surcharge if close company
  - Group companies – can elect to treat dividend as non-allowable against surcharge for paying company and non-surchargeable for recipient company
  - This will be efficient in cases where subsidiary has trading income only and parent only receives dividends from subsidiary (close companies only)
  - Review retained reserves – replace in computation if lower
- Discover error in previous years returns
  - Can use self-correction mechanism – deadlines:
    - One year after return due date – e.g. 31/12/2019 – file 23/09/2020 – have until 23/09/2021
  - Inform Revenue and resubmit – will owe additional tax and interest but no penalty
  - If outside time frame – can use unprompted disclosure mechanism – will be charged penalty

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Revenue Audit Update

- Latest code update – July 2020
- 3,029 Audit Interventions in 2019 – €222m collected
- Average yield – approx. €73k (up from €54k in 2018 and €40k in 2017)
- Aspect queries – approx. 6k less carried out but yield up €10m
- PAYE checks – approx. 11k less carried out but yield up €2.3m
- Random audits – only 150 in 2019, down on 1,300 commenced in 2018
- Random audits – only 2 cases had a yield – totalling €472
- Covid-19 has significantly reduced 2020 audit activity – currently all audits are desk based rather than on-site activity

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Revenue Audit Update

- 2019 - focus on Revenue Realignment Project
- - shifting of cases from geographic to sectoral
- - MED division for those below LCD – 9 sectors and "entry" is based on turnover, no. of employees, director salary etc
- - below MED are the business and personal divisions for SME
- Revenue spent 2019 building up profiles of various sectors
- Early 2020 had seen an increase in compliance activity
- Covid-19 has significantly reduced activity – currently all interventions and audits are desk based rather than on-site activity

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Revenue Audit Update

Recent activities :

- Building sector activity remains very high
- Site visits – subcontractor v employee classification (also an issue for all industries)
- Also high % of reviews in retail/wholesale, rental and food outlets
- Reviewing credit card payment reports for undeclared income
- LPT declarations v Rental income returns
- Customs audits – comparison of SAD documentation with sales and purchases invoices
- Improvements to "good citizen" reporting capability
- - total reports in 2019 were over 6,000 – mainly online via Revenue website
- Ongoing campaign on employees not reporting share option gains
- Use of 46G (increased compliance activity expected in this area)
- Targeting of on-line platforms e.g. Airbnb – lodgement of Form 8-2 confirmed by Airbnb – income of more than €3,810 pa

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Revenue Audit Update

Recent activities :

- PAYE compliance visits post PAYE modernisation had been deferred
- Revenue have gathered information on P-Mod issues for certain employers including:
- RPNs not being used as provided by Revenue
- non-operation of emergency tax – 40% and 8%
- noting of errors in computation of USC and PRSI
- Current TWSS compliance campaign – for all employers who availed of scheme:
- Revenue have sought limited information to date e.g. assurance on 25% turnover reduction, copy TWSS payslips etc
- TWSS letter also "comments" on other issues e.g. returns not filed, P-Mod breaches etc
- Further action expected on these when initial responses are reviewed

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Revenue Audit Update

Recent activities :

- TWSS reconciliation programme:
- - data was due by 31/10/2020
- - Revenue will be contacting employers in scheme who did not provide data
- EWSS:
- - compliance campaign expected when scheme closes
- - focus on qualifying criteria – monthly review of eligibility should be undertaken up to 31/01/2021 to ensure employer can provide backup for future Revenue review
- Employees:
- - 2020 TWSS/PUP liabilities
- - Revenue to provide preliminary calculate in January 2021
- - ability to defer repayment to 2022 for 4 years (or more!)
- - chargeable persons (eg landlords)/proprietary directors – will need to contact Revenue if require deferral

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Revenue Audit

Common Revenue Audit issues:

- Supressed sales/unrecorded sales
- Non-genuine expenditure/receipts not on file
- BIK – especially motor vehicles
- Travel – mileage claims and logs
- Operation of PAYE – subcontractors, correct credits etc.
- Cash business – check that purchases and margins = sales
- Imports – customs records compared to VAT returns. Consider Brexit from 1/1/21
- Directors returns and assets/income from company linking
- eCG50 application from solicitor – aspect query – source of funds, VAT on property etc.
- Close company surcharge – Revenue won recent case at TAC re accountancy services – further reviews expected

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Revenue Audit

- Information from DEASP
- Information from Residential Tenancies Board (RTB)
- 3rd party data sets – Dun & Bradstreet, Experian
- Facebook – signs of expensive holidays, lifestyles, trading
- Online sales – DoneDeal, car buyers etc.
- Revenue also act on 3rd party information – employees/public etc.
- Late filing can also result in interventions
- International tax authorities – FATCA, DAC, CRS etc.
- Form 8-2 = received €3,810 of a 3rd persons income

Revenue Audit – Default Categories

Careless behaviour:

- "failure to take reasonable care" – but not intending to default on tax obligations
- not taking tax advice when required
- estimation of items in accounts
- not quantifying disallowed costs in accounts
- inappropriate internal controls
- lapses in record-keeping
- isolated errors (as distinct from frequent)
- careless behaviour WITH significant consequences – when tax underpaid exceeds 15% of correct tax
- careless behaviour WITHOUT significant consequences – when tax underpaid does not exceed 15% of correct tax
- 15% test applies to each tax type and period

Deliberate behaviour:

- intention to default as distinct from error
- failure to keep proper books and records
- repeated omissions from records/returns or omission of a large transaction (e.g. capital sale)
- serious failure to operate fiduciary taxes – e.g. large scale cash in hand to "employees"
- concealment of bank account, assets

Penalty chart in pack

Revenue Audit – Contents of a Qualifying Prompted Disclosure

- Set out issue involved (in writing)
  - background to company/taxpayer
  - reason tax due was not paid
  - highlight previous compliance record
  - note how issue will not re-occur
- Decide on category of default – as this impacts on periods and heads involved
- Consider earlier periods and other tax heads (if not deliberate default) – may require an unprompted qualifying disclosure for others
- Compute tax liability due

- Compute interest due
  - fiduciary taxes – 0.0274% daily (10% per annum)
  - direct taxes – 0.0219% daily (8% per annum)
- Suggest (but not required) penalty category
- Note how total liability will be paid and if require instalment arrangement – period required
- Note if require tax clearance
- Made in writing and signed (by taxpayer)

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Revenue Audit – Pre-audit Review

- VAT – walk through system – inputs and outputs
- VAT – correct charge out rate applying
- PAYE – subcontractors (all industries)
- PAYE – travel claims
- RCT – operation of eRCT and penalties for non-compliance
- CT/IT – BIK, drawings v lifestyle
- CT/IT – close company – loans etc., family employees

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Revenue Audit

Claim for innocent error – "once-off"

- Category below careless behaviour
- Based on previous compliance history, infrequent error, materiality in context of overall tax liability
- No penalty
- Interest applies
- Be reasonable in claiming this – genuine cases – if client has issues over various years/tax heads – will not apply

Claim for technical adjustments:

- Action taken on information available – advice taken
- Issue over interpretation of law
- Use in "grey" areas such as reclassification of subcontractors to employees
- No penalty
- Interest applies

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TAX COMPLIANCE ROUND-UP

PAUL MURPHY
MARTIN J. KELLY & COMPANY

CONTENTS

1. CORPORATION TAX (CT) RETURNS AND COMPLIANCE

All new companies incorporating in the State must inform Revenue within 30 days of incorporation, usually via ROS. This registration gives details to Revenue of the companies CRO Number, its trading year end and its trading activities.

If the information is not provided Revenue can issue Form 11F CRO and the non-completion of this form can ultimately see Revenue writing to the CRO seeking to have the company struck off the Register of Companies.

If the company is deemed tax-resident in Ireland through either being incorporated here or managed and controlled here it is taxed on all its worldwide income in Ireland. Otherwise it is taxed on its Irish generated income only.

Companies that are incorporated in Ireland are automatically deemed to be tax-resident in Ireland (subject to the tie-breaker clause in a Double Tax Agreement). Companies incorporated before 1 January 2015 can use the pre-existing rules until 31 December 2020. This allows companies who are incorporated in Ireland and are controlled by EU/DTA owners and have a trade in Ireland or are connected to a company with a trade in Ireland to potentially be not deemed Irish tax resident.

The registration application will also detail the directors of the company including their PPS numbers and its main shareholders.

1.1 Summary of Rates:

Trading Income	12.5%	
Investment Income	25%	
Rental Income	25%	
Irish Dividends	exempt	
EU/DTA Country Dividends	25%	(12.5% if 75% of the profits are from trading or if the shareholding is 5% or less if income is not treated as trading income in the recipient company)
Capital Gains	33%	(gain is adjusted and taxed under CT at 12.5%)

1.2 Returns:

The company's tax return Form CT1 is due to be lodged 8 months and 23 days after its year end. Companies can have a maximum of 12 months in an accounting period for tax purposes and therefore a company with an accounting period of, for example, 15 months must prepare two tax returns, one for the twelve-month period and one for the remainder, in this case being three months.

It should be noted that these dates are earlier than most companies ARD dates for CRO filing purposes.

Included in the return is all income tax collected during the year by the company, for example tax withheld from patent royalty payments, non-resident landlords, etc.

If the return is filed late the following surcharges apply:
- Filed less than two months late – 5% additional tax due (subject to maximum of €12,695)
- Filed more than two months late – 10% additional tax due (subject to maximum of €63,485)

The surcharge includes any income tax due.

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1.3 Preliminary Tax:

For companies which are not "small companies" (see below) the following are the preliminary tax payment rules:

- Initial Instalment – this payment is due on the 23rd day of the sixth month of the accounting period. The payment due is the lower of 50% of the previous periods corporation tax liability or 45% of the current years liability.

- Final instalment – this payment is due on the 23rd day of the eleventh month of the accounting period. It must be equal to 90% of the current periods corporation tax liability including the tax due on any chargeable gains made between the initial instalment date and the final instalment due date less the initial instalment paid.

The company must file its corporation tax return and pay the remaining 10% of the tax due by the 23rd of the ninth month after the period end.

These requirements can give rise to considerable difficulties as the company is required to either base the initial instalment on an accounting period that has over six months left to run or on the prior years' tax which may not yet be fully calculated, as that year's return would not be due for a further three months.

If a company does not make sufficient Preliminary Tax payments, Revenue can levy interest on the underpayment. Naturally this can cause a great deal of concern for large companies, especially those that may have high trade revenues in the last month of sale, for example a retail shop with a year end of December would have high Christmas turnover.

The only provision in the legislation to allow for a top-up of an underpayment is if the company has a capital gain in the last month of trading which may not have been factored into their preliminary payments. In this situation, a company can pay the tax on the gain within 31 days of their year-end, thereby ensuring that the three payments equal 90% of its total liability.

The company would then pay the final tax when it files the return, being no later than 8 months and 23 days after its year end.

Example:
A Limited's accounting year end is 31 December. Its corporation tax liability for the year ended 31 December 2019 was €500,000. In June 2020, it is estimated that its corporation tax for the year ended 31 December 2020 will be €750,000. It makes two chargeable gains in the subsequent months giving rise to tax liabilities of €50,000 on a July 2020 gain and €80,000 on a December 2020 gain.

Therefore, its total estimated tax liability for the year ended 31 December 2020 is €880.000.

A Limited's pay and file requirements are as follows

23.06.20 €750,000 x 45% or €500,000 x 50%	=	*€250,000*
23.11.20 (€750,000 + €50,000) x 90% - €250,000	=	*€470,000*
31.01.21 (€750,000 + €50,000 + €80,000) x 90% - €250,000 - €470,000	=	*€72,000*

At this stage A Limited has now paid 90% (€792,000) of its overall liability

23.09.21 Lodge CT1 corporation tax return and pay €880,000 x 10% = €88,000

At this stage A Limited has now paid its total corporation tax liability of €880,000 in four instalments.

The only exception to these Corporation Tax returns and payments dates is that of development land. Development land is not taxed under Corporation Tax Rates and therefore comes under the normal Capital Gains Tax payment deadlines.

Any gains on the sale of lands in the period 1 January to 30 November should be paid in full by 15 December and any gains in the month of December should be paid in full by 31 January of the following year. The detail of the gain however will be included in the Corporation Tax return for the year in which the gain arises.

Care should be taken however, to ensure that the tax is paid on time to avoid interest charges. For example, a small company with a 30 June 2020 year-end will normally calculate its Preliminary Corporation Tax payment for 23 May 2020 perhaps in early May 2020. This company may have sold development land in September 2019 and was therefore obliged to pay its full tax on 15 December 2019 notwithstanding that the return is not due to be lodged until 2020. There is a possibility that the company would miss its capital gains tax payment deadline if the company does not inform its advisers of the sale of land.

Small Companies
There is provision in the legislation to allow small companies, (these are companies whose corporation tax liability in the previous period did not exceed €200,000) to pay 100% of the previous year's liability if they wish, rather than an estimate of 90% of the current year's liability. They also do not need to make the initial instalment payment.

1.4 Non-Allowable Expenses Against Corporation Tax:
This part covers the main accounting and taxation addbacks and adjustments which normally arise in computing Case I/Case II taxable income.

Depreciation
Depreciation is a notional write-off against profits for accounting purposes of the cost of the capital asset over its useful economic life and must be added back. Provided the asset qualifies under allowable plant and machinery the company can claim wear and tear.

Over the length of the life of the asset the company will effectively add back the same amount that it allows under wear and tear even if the appropriate depreciation and wear and tear rates differ.

When a fixed asset is sold through the books of a sole trader, profit or loss would normally be the difference between consideration received and book value at the time of sale. A loss on the disposal of fixed assets should be added back as it is a notional loss. Similarly profit on disposal of fixed assets should be deducted.

A balancing charge/allowance would then be calculated as normal. The company may also be able to avail of capital allowances replacement relief by setting a balancing charge against the cost of any new asset purchased, therefore claiming a lower annual wear and tear.

There is also no balancing charge if they sell the proceeds of the asset for lower than €2,000. Any balancing allowance arising from a sale below €2,000 is allowable.
The situation should also be reviewed from a Capital Gains Tax point of view.

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Entertainment
Entertaining of clients and suppliers is not allowable and any costs or expenses charged to the profit and loss account are added back.

The cost of staff functions etc., are allowable provided no clients or suppliers attend. In cases where there is a mixture of clients/suppliers and staff the full cost is disallowed.

Interest / Fines
Any type of fines or interest surcharges are not allowable and must be added back. For example, parking fines, interest on late payments of taxes and CRO late filing charges.

Patent Royalties and Pensions
Patent Royalties are specifically allowed as a charge and therefore the amount in the Profit & Loss Account must be added back and the charge actually paid in the year will be allowed as a deduction against trade income. Therefore, any amount accrued for charges due but not yet paid will not be allowed until they are actually paid. These types of charges are called relevant trade charges.

Similarly, pensions are only allowable when they are paid, therefore any accruals at the end of the year must be added back. In the case of special contributions these are allowable on a matching basis with ordinary contributions.

For example, a company makes annual ordinary contributions of €50,000 and in one year makes a special contribution of €150,000. It would be obliged to add back €100,000 (being the excess of the special over the ordinary contribution). It can deduct the €100,000 over the following two years.

Leases
A finance lease will have been capitalised in the balance sheet; however, the taxation treatment ignores this capitalisation. As normal the depreciation is added back together with the write-off of the finance interest.

The entire capital repayments to the finance company (net of VAT if applicable) are allowed.

Operating leases are usually written off to the Profit & Loss account as they arise, therefore no tax adjustment is required.

Assets acquired under a hire purchase agreement are also capitalised in the balance sheet. Due to the legal nature of hire purchase agreements, these assets qualify for capital allowances.

Motor Leasing Expenses and Capital Allowance Restrictions
In general, there are restrictions on the amount of tax allowances that can be claimed on the lease/purchase of motor vehicles. Historically, cars allowances were limited to a cost of €24,000, this amount was known as the specified amount.

In recent years significant changes have been made to the operation of the leasing expenses and capital allowances regime for passenger motor vehicles. In support of the green economy the leasing restriction formula takes into account the carbon dioxide emissions of the vehicle. The specified amount to be included in the formula is from one of the following categories:

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Leasing expenses – contracts entered into up to 31 December 2020

Categories A, B, C – up to 155 g/km – specified amount is €24,000 regardless of the cost of the vehicle.

Categories D, E – between 156 - 190 g/km – specified amount is lower of 50% of €24,000 or cost of the vehicle, when first manufactured.

Categories F, G – above 190 g/km – specified amount is nil.

For capital allowances, the specified amount is the amount upon which capital allowances can be claimed. Any future balancing allowances will be adjusted accordingly.

For leasing expenses, the formula to quantify the disallowed costs is as follows:

$$\textit{Leasing Charges for Car} \quad X \quad \frac{\textit{Cost of Car – specified amount}}{\textit{Cost of Car}}$$

Leasing expenses – contracts entered into on or after 1 January 2021

For leasing contracts entered into on or after 1 January 2021 the categories noted above are being amended as follows –

Pre-1 January 2021	**From 1 January 2021**
Category A & B	No change – fixed €24,000 specified amount
Category C	Relief that applies for categories D & E to 31 December 2020
Category D & E	No relief
Category F & G	No change – no relief

The restrictions do not apply to short-term hire vehicles, e.g. taxis.

Donations

Donations made to approved charities and other bodies are allowable provided the donation is €250 or more.

If the donation is to a non-approved body or a charity which does not have a CHY number, the donation is non-allowable and must be added back.

Political donations are not tax allowable.

Keyman Insurance

Revenue will allow Keyman Insurance policy payments (insurance covering death/illness of an employee who is central to the management and control of the business) provided the following conditions are met:

(a) Relationship is that of employee/employer.

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(b) The employee does not have a proprietary interest in the business (for companies this would mean not owning more than 15% of the ordinary share capital).
(c) Insurance covers loss of profit etc., rather than loss of goodwill.

Any claim received from the policy is fully taxable. It follows therefore that if the policy is not allowable any claim received will be exempt from tax.

Provisions

In general provisions that are allowable under FRS 102/IFRS accounting standards will be tax allowable. The main requirement is that the provision arises from a quantifiable future liability of the company.

For example, if the company signs a contract before the year-end to have a roof repaired in the new year, the provision would be allowable. If they had not signed a contract but still intended to have the roof repaired the provision would not be allowable as there was no binding commitment.

IFRS 9 requires companies to review for potential bad debts using an "expected credit loss" model. Revenue recognise (in TDM 04-05-06) that this may contain an element of general and specific provisions as the standard generally gives rise to a provision earlier than the older "incurred credit loss" model. In recognition of this, specific provisions are allowable if they are impairment losses calculated in accordance with generally accepted accounting practice (GAAP), such as IFRS 9.

Relief for employing the long-term unemployed

This scheme gives employers taking on new employees' tax-free grants of between €7,500 and €10,000 over two years for taking on individuals who had been unemployed for more than 12 months and more than 24 months respectively.

Medical insurance premiums paid on behalf of employees

It is common practice for Irish companies to pay their employees' medical insurance premiums for VHI/Laya etc. on their behalf as a taxable BIK.

The payment made by the employer on behalf of the employee is net of the TRS relief and as a company cannot qualify for TRS as it is not an individual the following applies:

- the company pays the net amount of the medical insurance premiums to the relevant medical insurance provider,
- it is obliged to pay the 20% credit to Revenue along with its annual corporation tax liability,
    - it is entitled to an allowable deduction for the gross amount of the medical insurance premiums, not the net amount.

<u>*Example:*</u>

A Ltd has two employees who are members of a medical insurance scheme with the VHI. A Ltd pays

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the premium on their behalf directly to the VHI. The gross cost of the scheme per employee is €1,000.

Annual premium	*€1,000*
TRS x 20%	*(€200)*
Net cost	*€800 X 2 = €1,600*

The company issues a cheque for €1,600 to the VHI and obtains relief of €1,600 in its accounts against its tax liability.

When the company is filing its annual CT1 form it completes the box entitled "Clawback of Employer's Tax Relief at Source" by entering the TRS figure of €200 X 2 = €400. It then claims the €400 as a deduction.

The net effect of this is that the company has paid €2,000 for its employee's medical insurance (€1,600 to the VHI and €400 to the Collector General) and obtained relief against its Case I income of €2,000 (€1,600 as a general deduction in the profit and loss account and €400 as a specific tax adjustment).

The employees will be liable to income tax on the BIK of €1,000 each through their payroll under current BIK regulations and they will each receive a credit for the €200 tax already paid to the Revenue by the company.

The maximum gross cost to qualify for TRS is €1,000 per adult policy and €500 per child policy.

1.5 Research and Development

Tax credits are available for research and development expenditure under s766 (expenses) and s766A TCA 1997 (buildings). This tax relief was introduced to incentivise large multinationals, such as drug and information technology companies etc., to locate an R&D unit here. The credit is increased by Finance Act 2019 to 30% for micro or small companies for expenses (but not buildings). These are companies that employ less than 50 employees and their annual turnover or balance sheet total is not greater than €10 million. However, it should be noted that this measure is subject to a ministerial commencement order.

The scheme operates as follows:

1. The relief is calculated by allowing a tax credit of 25% of the qualifying incremental expenditure against the corporation tax liability of the company. Qualifying incremental expenditure incurred in 2020 of €100,000 would give a corporation tax credit of €25,000, which can be set directly against the corporation tax liability. The relief is in addition to the normal deduction for expenditure incurred against taxable income.

The credit operates as follows:

A. The credit is firstly set against the current period's corporation tax liability.

B. Any excess is then set back against the tax liability of the prior period (of corresponding length).

C. Any remaining excess is then carried forward. One-third of the carry forward will be refunded after the due date of the filing of the corporation tax return for the period in which the R&D claim arose.

D. Any remaining excess is then set against the corporation tax liability of the next accounting period after the R&D claim, subject to allowing the subsequent R&D claim for that period to take priority.

E. Any remaining excess is then halved. The first half is refunded after the due date of the filing of the corporation tax return immediately after the filing of the corporation tax return that gave rise to the original claim. For example, if a company made a claim in the year to 31 December 2020, the 50% in question would be refunded after the filing of the 31 December 2021 return, on 23 September 2022.

F. The remaining 50% is then set against the next period's corporation tax liability. Any final remaining excess is refunded after the filing of the second corporation tax return after the corporation tax return that gave rise to the original R&D credit. In E. above this would be the return for the period ended 31 December 2022. The credit would be refunded after the return was filed on 21 September 2023.

There is a limit on refunds payable under claims from C. to F. above. The maximum credit which may be refunded is the greater of:

I. The total corporation tax paid in all accounting periods for the ten years prior to the period in which relief is claimed under B. above or

II. The total PAYE/PRSI liability of the company in the period in which the R&D expenditure is incurred and the prior period. For the purpose of the 30% credit, it is twice this amount, again this new measure is subject to a ministerial commencement order.

PAYE/PRSI includes income tax, employee and employer PRSI and the universal social charge.

Expenditure incurred prior to 1 January 2009 was allowed at 20% against the company's corporation tax for that year and any unused amounts was then carried forward to a future year until fully utilised. There was no provision for expenditure incurred prior to 1 January 2009 to be refunded or carried back to a prior period.

2. Qualifying expenditure is defined as expenditure incurred in a country of the European Economic Area (EEA) in the relevant year. The expenditure must qualify for relief in the State and, in the case of an Irish resident company, must not qualify for tax relief outside the State. Therefore, an Irish resident company which has a research branch based in the UK would not qualify for relief if the branch expenditure would qualify for the equivalent UK R&D relief.

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3. The company claiming the relief must carry on a trade in the State, engage in R&D activities in the period and keep a record of all expenditure incurred.

4. The expenditure must be incurred in the areas of science and technology and involve research and developmental activities. It must seek to achieve scientific or technological advancement or solutions to scientific or technological uncertainties. This includes areas such as engineering, computer programming, testing etc. Expenditure on R&D buildings is excluded, as it has its own separate relief noted below.

5. The company is entitled to claim credit for any R&D undertaken by a university (in the EEA) on its behalf to the greater of 15%[1] (previously 5%) of the total R&D spend or €100,000.

6. The company is entitled to claim relief for any R&D undertaken by an unconnected third party provided the third party does not claim R&D credit relief and the sum paid to the third parties does not exceed the greater of 15% of the expenditure or €100,000. Per the Revenue guidance notes, this measure is in addition to the provision in respect of R&D work carried out by universities. The company must inform the subcontractor that it is making the claim on or before the date the subcontractor is paid.

7. Relief can be claimed for expenditure incurred prior to the commencement of the company to trade .For micro or small companies the legislation allows for the increased credit of 30% in the periods before they commence to trade to be set against its corporation tax liability in the first instance, with any excess being available to offset against VAT and payroll taxes (excluding PRSI). This provision is subject to a ministerial commencement order. Note that the pre-trading R&D tax credit is not a repayable credit.

8. Relief is not available for any expenditure covered by grants.

9. S766A TCA 1997 grants relief for expenditure incurred on an R&D building. To qualify, the company must be entitled to claim industrial buildings capital allowances on the building. The cost of the site is excluded, as is any expenditure covered by grants. The relief will be clawed back if the building is sold or ceases to be used within 10 years.

The qualifying conditions for expenditure incurred are as follows:

A. To be a qualifying building it must be used at least 35% of the time as an R&D building over a 4-year period (from the time it is first brought into use after being built or refurbished).

B. The credit will be 25% of the relevant expenditure. Relevant expenditure is based on the percentage of time it is used as an R&D building, which must be at least 35%. For example, a building which costs €1,000,000 and is used for 40% of the time over the four-year period would have an R&D credit as follows: €1,000,000 x 40% x 25% = €100,000

C. If the building ceases to be used within 10 years of the commencement of the 4-year period noted in A, the relief is clawed back.

[1] Effective from periods commencing on or after the passing of Finance Act 2019 i.e. 22 December 2019

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D. Similar claims to those noted under R&D revenue expenditure in s766 TCA 1997 are available under s766A TCA 1997 and the refunds are also subject to the same limits.

10. In situations where relief will be claimed on plant and machinery, the assets must be used "wholly and exclusively" for R&D. For practical reasons, this is not normally the case as the machinery is usually put to commercial use after the R&D process has finished. It is now open to the company's Inspector of Taxes to determine (presumably after representations from the company) the "just and reasonable" portion of plant and machinery to be allowed in the R&D claim.

    "Just and reasonable" is not defined in the legislation.

11. There is also a provision to allow the revision of the R&D claim if the plant and machinery usage differs from that forecasted originally.

12. A further provision allows Revenue to consult external experts to assist in their determinations as to whether the R&D claim meets the legislative requirements. The company must be notified of the identity of the expert and of the information to be given to the expert.

    If the company can prove that the disclosure of such information to the expert would be detrimental to its business, then Revenue will not engage the expert. It is then up to Revenue to decide on the claim internally.

13. The claim for the R&D expenditure must be made within 12 months of the end of the accounting period in which the expenditure was incurred. Ideally it would be made with the corporation tax return of the period.

14. Expenditure on a specified intangible asset within the meaning of s291A TCA 97 (intellectual property) will not qualify as research and development expenditure.

15. There are also provisions which allow a company transfer some of its R&D credits tax free to certain qualifying employees. The employee cannot have been or become a director or a shareholder with a material interest (more than 5% of the ordinary share capital) in the company and must spend at least 50% of their time on R&D activities in the year of the claim. The employee's effective tax rate for the year must not be less than 23%, however any unclaimed relief can be carried forward. The relief is against income tax and does not cover PRSI or USC. Note pre-trading R&D credit cannot be surrendered to a key employee.

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Example:

Patrick Limited incurs R&D expenditure of €650,000 in 2019, €1,000,000 in 2020, and €1,100,000 in 2021. It is not a small or micro company. Its corporation tax liabilities are as follows:

2018	*€50,000*
2019	*€60,000*
2020	*€262,500*
2021	*€80,000*
2022	*€60,000*
2023	*€100,000*
2024	*€110,000*

Patrick Limited's final corporation tax liability or refund for these years after claiming relief for R&D expenditure incurred in 2019, 2020 and 2021 would be as follows:

Note - Letters in bold indicate order of set-off

Tax Year	***Tax Liability €***	***R&D Credit Offset €***	***R&D Year***
2018	*50,000*	***(b)*** *(50,000)*	*2019*
2019	*60,000*	***(a)*** *(60,000)*	*2019*
2020	*262,500*	***(d)*** *(250,000)*	*2020*
		(e) *(12,500)*	*2019*
2021	*80,000*	***(g)*** *(80,000)*	*2021*
2021	*60,000*	***(j)*** *(60,000)*	*2021*

Tax Year	***Tax Liability***	***R&D Credit Offset***	***R&D Year***
	€	**€**	
2023	*100,000*	***(l)*** *(35,325)*	*2021*
2024	*110,000*		
		R&D Credit Refund	
2020		***(c)*** *(17,325)*	*2019*
2021		***(f)*** *(11,338)*	*2019*
2022		***(h)*** *(11,337)*	*2019*
2022		***(i)*** *(43,725)*	*2021*
2023		***(k)*** *(14,388)*	*2021*

Workings:

R&D Claims & Usage

Tax Year	***2019***	***2020***	***2021***
	€	*€*	*€*
R&D Claim	*650,000*	*1,000,000*	*1,100,000*
Credit x 25%	*162,500*	*250,000*	*275,000*
Offset 2019 CT liability	***(a)*** *(60,000)*		
Offset 2018 CT liability	***(b)*** *(50,000)*		
Offset 2020 CT liability	***(e)*** *(12,500)*	***(d)*** *(250,000)*	

2021 Offset			***(g)*** *(80,000)*
2022 Offset			***(j)*** *(60,000)*
2023 Offset			***(l)*** *(35,325)* *(see note 4)*
Credit Refund	***(c)*** *(17,325)* *from 21/9/20* *(see note 1)*	*Nil all relieved against* *2019 liability*	
	(f) *(11,388)* *from 21/9/21* *(see note 2)*		
	(h) *(11,337)* *from 21/9/22* *(see note 2)*		***(i)*** *(64,350)* *from 21/9/22* *(see note 3)*
			(k) *(35,325)* *from 21/9/23* *(see note 4)*

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Notes:

1. *€162,500 – €50,000 – €60,000 x 33%*

   [(Credit – 2018 offset – 2019 offset) x 33%] i.e. €17,325

2. *€162,500 – €50,000 – €60,000 – €17,325 – €12,500 x 50%*

   [(Credit – 2018 offset – 2019 offset – 2020 refund – 2020 offset) x 50%]

3. *€275,000 – €80,000 x 33%*

   [(Credit – 2021 offset) x 33%)] i.e. €64,350

4. *€275,000 – €80,000 – €64,350 – €60,000 x 50%*

   [(Credit – 2021 offset – 2022 refund – 2022 offset) x 50%]

Practical application for claiming relief:

1. The company reviews its operations to ensure that it qualifies as a research and development company.

2. Its research and development procedures and processes are documented including how it engages in R&D activities. For example, a flow chart of the process from start to finish would show where the R&D activity is included in developing the product for sale.

3. The direct qualifying costs are listed and calculated. This would include materials purchased, direct R&D staff, etc.

4. Overheads are analysed, and a portion included in the overall claim on a just and reasonable basis - for example based on turnover.

5. Grants received for R&D costs are deducted from the claim.

6. The total claim is checked to ensure that it is not in excess of the statutory amounts noted above.

7. The claim should be included on the CT1 return for the year of claim, this is within the 1-year time limit.

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Example:

A company incurred qualifying R&D expenditure in 2020 of €500,000 on an R&D building. The qualifying usage over the next four years is 60%. The relief will be €500,000 x 60% x 25% = €75,000 directly against the corporation tax liability. There is no base cost/year when dealing with R&D buildings.

1.6 Company Liquidation/Employment Terminations

If a company is coming to the end of its natural life and has built up cash reserves a member's voluntary liquidation can be efficient. Where the company owner has taken the decision to cease trading, he could pay himself and his fellow directors and employees' termination payments. The current tax-free limit for termination payments is €10,160 and €765 for every completed year of service, subject to the lifetime limit discussed below. These amounts can also be increased by the greater of the following two options:

(a) An extra €10,000 if no previous claim has been made in the previous 10 years. Any company pension tax free lump sum received, or receivable (discounted to the current net present value) must be deducted from the extra payment. If the pension lump sum is less than €10,000 the remaining balance can be added to the termination payment, or

(b) The Standard Capital Superannuation Benefit (SCSB). For high earning directors/employees with long-term service this can lead to a very valuable tax-free termination lump sum. The formula is calculated as follows:

$$\frac{(A \times B)}{15} - C$$

A = The average for 12 months of the emoluments of the employment for the last 36 months of service, to date of termination.

B = Number of complete years of service

C = Any tax-free lump received or receivable (discounted to the current net present value) from the company's approved pension scheme

Revenue approval is no longer required for the extra €10,000 noted in (a) above but employers should ensure that they retain relevant documentation from the employee in support of the claim.

The maximum amount payable tax-free is €200,000 (lifetime limit). Similarly, the employer should retain supporting documentation to demonstrate that employees have not exceeded this threshold.

A corporation tax deduction (12.5%) will not be available for termination payments to the directors/employees as the trade will have ceased and the payments will be deemed to be not in the nature of trade. However, the directors should not pay income tax at 40% plus other levies on the termination payments (provided they have not exceeded their €200,000 lifetime limit).

These amounts are in addition to any payment from the director's/employee's pension fund by means of a lump sum, subject to the €200,000 (lifetime tax-free lump sum limit) and €500,000 (25% of €2 million standard fund threshold).

The company is then liquidated and all debts due are paid. Any remaining cash can be paid by means of a capital distribution under a winding up, under ordinary capital gains tax rules. Therefore, the directors/shareholders should be liable to tax at 33% capital gains tax rates on distributions received (or perhaps lower if retirement/entrepreneur relief (can be claimed due to trade asset sales) or if losses forward are available)

Care should be taken to ensure that companies are not formed, large profits made and then liquidated on a routine basis. Revenue expect that liquidations are done for genuine commercial reasons only, such as the retirement of directors or the natural winding up of the company after a long period of trading.

1.7 Exemption for Start Up Companies

In an attempt to encourage economic activity relief is provided from certain taxes for new start-up companies. Ireland has always had a very high proportion of small businesses.

The intention of the relief is straight forward. If the corporation tax of the company in any one year is equal to or lower than €40,000 and the trade is a qualifying trade, the company is exempt from corporation tax in that year. The complications begin when the company has other income or more than one trade etc.

The legislation is contained in s486C TCA 97 and operates as follows:

1. The company must be incorporated within the EEA and can only have been in existence from 14 October 2008.
2. The trade can only have commenced on or after 1 January 2009 and before 31 December 2021, any relief will apply for the three years from the date of commencement.
3. The relief is available for income of a qualifying trade and gains on the sale of trade assets from that qualifying trade. A qualifying trade is a trade which is NOT one of the following:
   - A. A trade that was carried on previously by another person (rules out sole traders incorporating their trade into a limited company).
   - B. An existing trade (rules out forming a new company and acquiring a new trade).
   - C. An excepted trade - mineral extraction/petroleum companies
   - D. A trade which would come within the s441 TCA 97 close company surcharge, a service company.
4. The company's total Corporation Tax for the period must be equal to or lower than €40,000. Total Corporation Tax is defined as all corporation tax that is chargeable for the period but excluding income tax. Therefore, it would include corporation tax on passive income and the close company surcharge but exclude income tax withheld, for example from a patent royalty.

   The relief is linked to employers PRSI paid in the period. The total tax relief is the lower of €40,000 or the employers PRSI paid by the company for all employees, subject to a maximum PRSI payment of €5,000 per employee. Any employers PRSI not matched by corporation tax savings can be carried forward to future corporation tax liabilities of the same trade.

5. If the company transfers part of its qualifying trade to another connected company the relief will be unavailable to both companies. This is anti-avoidance legislation to prevent companies sharing income to avail of the €40,000 limit in group situations, where there has not been a genuine company incorporation to commence a new trade.

   If a new company is formed to carry on a trade which an associated company also carries on, the new company will not qualify for relief if the associated company could have carried on the trade. This is aimed at preventing companies increasing their operations by starting new companies rather than operating through a branch structure. It will mainly affect retail chains which carry on similar trades in multiple sites. For example, if a chain of coffee shops decides to open a new shop and incorporates a company to operate the trade, the new company will not qualify as the original company could have carried on the trade.

6. To quantify the relief available the company must calculate its Relevant Corporation Tax. Relevant Corporation Tax is Total Corporation Tax as calculated above less the following:

   A. Tax on income at the 25% corporation tax rate

   B. Close company surcharges

   C. Tax on chargeable gains

7. The legislation requires that amounts which can be set against total profits (income and chargeable gains), typically expenses of management and non-relevant trading charges, must be set against income in priority to chargeable gains. Whilst this would be the most common approach in an ordinary situation, the taxpayer does have the option of offsetting against a chargeable asset in priority to income, however this option is now not available if a claim is being made under this section of the legislation.

8. The Relevant Corporation Tax is then applied to the qualifying trade income over total income (defined as total income excluding income charged at the 25% corporation tax rate, essentially trade income). This will then give the amount to be deducted from the corporation tax charge.

9. The relief for the disposal of qualifying trade assets (assets used directly in the operation of the qualifying trade, including goodwill) is operated in the same method as Relevant Corporation Tax at 8 above. The corporation tax on chargeable gains is applied to net gains (profits less losses) on qualifying assets over net gains on all chargeable assets. This amount is then deducted from the corporation tax payable.

Marginal Relief

As noted above the full exemption from corporation tax on the qualifying trade is only available if the Total Corporation Tax is equal to, or lower than €40,000.
Marginal relief is available if the Total Corporation Tax is between €40,000 and €60,000.

The corporation tax chargeable is reduced by an amount calculated by the following formula:

$$3 \times (T-M) \times (A+B)/T$$

The letters signify the following amounts:
T = Total Corporation Tax (as above)
M = €40,000

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A = Corporation Tax on the Qualifying Trade (as above)
B = Corporation Tax on the disposal of Qualifying Assets of the Qualifying Trade (as above)

<u>Example:</u>

New Co Ltd commenced trading on 1st January 2020. Mr. A incorporated his architectural practice which had been trading for many years and opened a new café. The company's total employer PRSI charge for the year was €15,000 for all employees.

Calculation of Corporation Tax Liability:

	€
Case I – Café	*50,000*
Trade Charges	*(5,000)*
Case II – Architect	*40,000*
Case V – Rent	*10,000*
Income:	*95,000*
Chargeable gain on shares	*15,000*
Non-Trade Charges	*(7,000)*
Profits	*103,000*
Case I: 50,000 – 5,000 × 12.5%	*5,625*
Case II: 40,000 × 12.5%	*5,000*
Gain 15,000 × 12.5%	*1,875*
Passive 10,000 – 7,000 × 25%	*750*
Income tax on patent 5,000 × 20%	*1,000*
Tax Payable	*14,250*
Relief (Note 1)	*(5,625)*
Relief (Note 2)	*(0)*
	8,625

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Calculation of Relief:

Total Corporation Tax = €14,250 – €1,000 = €13,250. As total corporation tax is less than €40,000, relief is available.

Relevant Corporation Tax = €13,250 – €750 – (€15,000 × 12.5%) = €10,625, (this is €85,000 of net trading income × 12.5%).

Note 1

Relevant Corporation Tax $€10{,}625 \times \frac{50{,}000 - 5{,}000}{50{,}000 + 40{,}000 - 5{,}000} = 5{,}625$

Note 2

€15,000 x 12.5% = €1,875

As the employers PRSI are greater than €5,625 this relief is allowable in full.

Example:

New Co Ltd commences trading on the 1 January 2020. Its total corporation tax liability for the year ended 31 December 2020 is €53,000. The charge can be analysed as follows:

Tax on qualifying trade	*€25,000*
Tax on rental income	*€20,000*
Tax on qualifying assets sales	*€8,000*

As the total corporation tax is in excess of €40,000 it cannot claim the full exemption. However, as the total corporation tax is lower than €60,000 marginal relief applies as follows:

3 × (€53,000 – €40,000) × (€25,000 + €8,000)/ €53,000 = €24,283.
This amount is deducted from the total tax payable of €53,000 leaving a net liability of €28,717.

If the employers PRSI was lower than €24,283, this lower figure would be used instead and deducted from the €53,000.

1.8 Knowledge Development Box

Finance Act 2015 saw the introduction of the Knowledge Development Box (KDB) which is linked to both the R&D tax credit and Intellectual Property Relief (IP).

While the R&D tax credit and the relief for IP are two separate reliefs, they are linked for the purposes of the KDB and a claim under the scheme.

Ireland was the first country to introduce a KDB which is in full compliance with the OECD's modified nexus approach. This essentially means linking the relief to IP and R&D. The aim of the relief is to effectively tax qualifying income at a rate of 6.25%. It achieves this by deducting 50% of the qualifying income from taxable profits, therefore effectively halving the 12.50% rate.

In order to qualify for relief under the KDB the company must earn income from its IP assets, such as through their exploitation or management/licensing. In order to have income from IP assets it must incur qualifying expenditure on their development.

In essence therefore, a company will incur qualifying expenditure (which in the legislation is identical to the definition of qualifying expenditure for R&D purposes) in creating an IP asset from which it will then earn qualifying income upon which it will then claim KDB relief.

In ascertaining the portion of IP income that qualifies for the relief the legislation provides for the formula as shown below:

$$\frac{QE + UE}{OE} \times QA$$

QE (Qualifying Expenditure) is the qualifying R&D expenditure that leads to the creation/improvement etc. of the IP asset. The legislation excludes outsourcing to related parties, for example outsourcing to a group company would not be within the definition.

UE (Uplift Expenditure) allows the QE to be increased by a lower of 30% of the QE or the amounts paid to group companies (excluded in QE) and the cost of actually purchasing IP assets.

OE (Overall Expenditure) is the overall expenditure on the qualifying assets and will include acquisition costs, qualifying expenditure and non-qualifying outsourcing expenditure.

QA is the income stream from IP assets less any normal costs incurred in earning this income on a just and reasonable basis.

As can be seen from the above the formula seeks to restrict purchases costs of IP (as they already qualify for relief separately under IP legislation) and group outsourcing – this will make it more beneficial to Irish companies who do the majority of the development work in house rather than multinationals who would outsource elements to group companies.

The above formula will need to be used for every separate IP asset; however, grouping is allowed in certain situations, known as “family assets”. The legislation also contains provision for transitional measures in relation to assets and certain costs incurred prior to 1 January 2016, interaction with the R&D refundable credits, the effect of a claim which gives rise to a loss and certain relieving measures for SME’s.

Claims must be made within 24 months of the period-end and is to run from accounting periods beginning on or after 1 January 2016 and ending before 1 January 2021.

1.9 CLOSE COMPANIES

A close company is an Irish resident company which is controlled by five or fewer participators and their associates or by any number of directors.

The basic definition of a participator is a shareholder and any person with options on purchasing shares anytime in the future. Associates are business partners and relatives including direct lineal descendants and ascendants, i.e. by excluding family members such as nephews, nieces and uncles.

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Given the wide definition of a participator and his/her associates, a company which has five families of which each husband and wife and their five children own shares, i.e. seven members of each family, would be a close company as five or fewer participators and their associates control the company. Each husband together with his children and wife's shareholdings would be one participator and related associates and therefore despite the fact that there would be 35 people involved (five families with seven members) the company would be deemed to be close.

Given this wide-ranging definition it is quite understandable that the vast majority of trading companies in Ireland are close companies. Once the five participators and their associates control more than half of the company under any of the following four separate tests, the company is deemed to be close:

(a) Voting share capital of the company.
(b) Total share capital of the company (including ordinary, non-voting and preferential shares).
(c) The income of the company on the full distribution.
(d) The assets of the company on a full winding-up.

Once it has been established that a company is close any transactions between directors /shareholders and associates with the company should be carefully reviewed. The following is a discussion of the main points regarding transactions in close companies.

1.9.1 Benefits to Participators and Associates:

If a shareholder receives a benefit from the company such as payment of a holiday or discharge of a liability this is deemed to be a distribution /dividend from the company upon which it must deduct dividend withholding tax, see Section 1.10.2. The withholding tax is then paid to the Revenue. The shareholder must then pay back the DWT to the company. If the DWT is not repaid the company must regross the net benefit to include the DWT.

For example, if a holiday to a shareholder costs €1,000 this would give rise to DWT of €250 (at 25%). The shareholder should pay this €250 back to the company as the total cost to the company should only be €1,000 and not €1,250.

If the shareholder does not repay the DWT the company must regross the benefit to include the DWT. Therefore, the cost of the holiday would be €1,000 / 75% = €1,333. The DWT at 25% would then be €333.

The net expense will not be allowable in the company's tax computation and will be added back. The shareholder will suffer tax under Schedule F as a dividend on the gross amount (€1,000 or €1,333 in the example above) with an attaching dividend withholding tax credit.

The one exception to this rule is that if the shareholder is a director/employee of the company the expense will be treated as an emolument in the books of the company and the director/employee will suffer BIK at source through payroll. This will be tax deductible for the company.

1.9.2 Interest paid to Directors & their Associates:

If a director who is able to control more than 5% of the ordinary share capital of the company provides a loan to that company, there are restrictions on the amount of interest the company may pay to the director.

The maximum amount payable which will be allowable for corporation tax purposes is the lower of 13% of all restricted loans or the nominal amount of the issued share capital and share premium account at the start of the accounting period.

Any interest paid in excess of this amount will be disallowed, added back in the Corporation Tax computation and treated as a distribution. The Director would be charged to Schedule F in his own income tax computation on the distribution. The allowable portion of the interest is charged to the Director as Schedule D Case IV and the company can claim a qualifying interest reduction. However, the company should, as the interest is an annual payment, deduct tax at 20% on any interest payment to the director.

This loan is very rare in practice as most directors will only lend to a company which is undergoing financial difficulty in order to encourage a resumption in trading and therefore would not seek an interest charge.

1.9.3 Loans to Participators:
If a company makes a loan to a participator this loan is treated by the Inspector of Taxes as being paid net and must be regrossed at the standard rate of tax. The tax on the regrossing of the loan is then payable with the company's corporation tax at the end of each year.

The company will then have two assets on its balance sheet, one being a loan to a director and the other being tax paid on behalf of the loan. If the loan is repaid the tax office will, on the making of a claim by the company, repay the tax originally withheld.

If the participator is an employee/director of the company, he will also be liable to BIK at 13.5% (reduced rate of 4% for mortgages) on the loan.

If a loan is subsequently forgiven by the company the write-off to their Profit & Loss Account will not be an allowable deduction and they will also lose the withholding tax paid to Revenue originally.

The participator is then taxed on the gross loan under Schedule D Case IV in the year of forgiveness with a credit for the tax paid by the company to the tax office when the loan was first regrossed.

At a time of granting the loan the company should ensure that the loan given to the Director does not exceed 10% of the net assets as defined under Company Law or ensure that the appropriate Summary Approvals Procedure (SAP) is filed with the Companies Office (CRO).

1.9.4 Other Distributions:
Other transactions which are not strictly limited to close companies are to be found under s130 TCA 1997. This section deals with transactions between companies and shareholders where there is no change in the shareholding after the transaction.

Examples include:
(1) Bonus issue of shares followed by a repayment of share capital.
(2) A repayment of share capital followed by a bonus issue of shares.
(3) Transfer of assets by a company to its shareholders where the benefit received by the shareholder exceeds the value of any new consideration given by him.
(4) Any amount received for the redemption of bonus shares which are issued in respect of existing shares in the company other than for new consideration.

None of the above qualify for Capital Gains Tax treatment and instead would be treated as distribution/dividends paid by the company.

Number (3) above would also have capital gains tax implications. On the transfer of the asset the company would be liable to capital gains tax on the market value of the asset and not the amount received from the shareholder. Also, the base cost of all the shareholders original investments in the company at the time of the transfer is reduced pro-rata by the difference between the consideration paid and the market value when they eventually sell their shares.

Example:

Mr A purchased shares in A Ltd in April 2004 for €125,000. Mr A is the only shareholder. In July 2020 the company transferred a property it had purchased in June 2005 for €75,000 to Mr. A for €100,000. The property was valued at €150,000 in July 2020.

Mr. A sold his shares in A Ltd for €175,000 in November 2020. Mr. A repaid the initial DWT on the deemed distribution arising on the transfer of the asset at undervalue.

Compute the taxation implications of the above transactions.

1. *A Ltd is treated as disposing of the property to Mr. A at market value*

	€
Sales proceeds	*150,000*
Cost	*(75,000)*
Capital Gain	*75,000*

Regross: €75,000 x 33%/12.50% = €198,000 x 12.50% = €24,750

2. *Mr. A is treated as receiving a distribution of €50,000 (€150,000 - €100,000) as he repaid the initial DWT. A Ltd must withhold Dividend Withholding Tax as follows:*

€50,000 x 25% = €12,500.

Mr. A is taxed under Schedule F as follows:	€
Schedule F	*50,000*
Income Tax x 40% (ignoring PRSI and USC)	*20,000*
DWT	*(12,500)*
Taxation liability	*7,500*

3. *Mr. A's base cost is reduced by the undervalue when disposing of the shares:*

	€	€
Sales proceeds		*175,000*
Cost	*125,000*	
S589 TCA 1997 undervalue	*(50,000)*	*75,000*
Gain		*100,000*

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CGT @ 33%	*33,000*

The transfer at undervalue effectively cost Mr. A an additional €20,000 in income tax (ignoring PRSI and USC) and €16,500 in CGT (i.e. the reduction in base cost of €50,000 x 33%) – a total of €36,500 in taxes. It also resulted in a corporation tax liability for the company of €24,750 as a result of the chargeable gain arising on the transfer of the property to Mr. A.

There may also be gift tax consequences.

1.9.5 Close Companies Surcharges:
One of the main disadvantages of close companies' status is that in addition to its normal Corporation Tax, surcharges apply to certain undistributed income.

Surcharge on Undistributed Passive Income
Companies which have income under Case III, IV & V, known as passive income, are surcharged an additional 20% Corporation Tax on any of this after-tax income that they do not distribute by way of dividend to their shareholders.

The surcharge is calculated by the following steps as laid down by legislation.

(1) Add together Case I, III, IV & V.
Deduct current losses
Deduct relevant trade charges

(2) Multiply the answer from (1) by Passive Income over Total Income
Add franked investment income
Deduct non-relevant trade charges

(3) From (2) deduct Corporation Tax
Deduct 7.5% trading discount

(4) From (3) deduct distributions paid during the year and 18 months after the end of the year. The company can also include the deemed distributions such as benefits to shareholders, interest on loans to companies and share transactions which are deemed to be distributions. The net figure is then surcharged at 20%.

There is no surcharge if the figure at (3) is less than €2,000.

If the company's accumulated reserves at the end of the accounting period are lower than the figure at (3) then that lower figure is surcharged instead.

<u>*Example:*</u>
B Ltd has the following results for the accounting period ended 31 December 2020:

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	€
Chargeable gain	*5,000*
Trading income (non-professional)	*32,000*
Rental income	*6,000*
Bank interest (Gross)	*8,000*
FII (Gross)	*2,000*

B Ltd paid charges of €3,000 in respect of its trading activities and claimed €4,000 of trading loss relief for a loss which arose in the year ended 31.12.19.

Assume that in the year, B Ltd incurred expenses on behalf of a participator of €400, the participator repaid the DWT.

In addition, the final dividend for the year was declared and paid on 1 February 2021 of €2,000.

1. *Calculate the 'income' of the company*

		€
Schedule D	*Case I*	*32,000*
	Case III	*8,000*
	Case V	*6,000*
		46,000
Less: Relevant trading charges		*(3,000)*
		43,000

2. *Calculate the Estate and Investment Income*

First calculation:

(i)	*F11 – see note 1*	*2,000*
(i)	$43{,}000 \times \frac{14{,}000}{46{,}000}$	*13,087*
		15,087

Second calculation:

(i)	*Non-relevant trading charges*	*Nil*
(ii)	*Management expenses*	*Nil*
	Estate and Investment income	*15,087*

3. *Distributable Estate and Investment Income*

	€
Estate and Investment Income	*15,087*
Less: Corporation Tax (13,087 x 25%)	*(3,272)*
	11,815
Less: Trading Discount @ 7.5%	*(886)*

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		10,929

4. Surchargeable Amount

		€
Distributable Estate and Investment Income		*10,929*
Less: Distributions for the period		
Expenses of participator	*400*	
Final dividend declared and paid	*2,000*	*(2,400)*
		8,529
Surcharge @ 20%		*1,706*

This surcharge is treated as part of the corporation tax liability for the accounts year-ended 31.12.21 (as the company has 18 months to declare and pay dividends, it has until the following year to actually pay the surcharge) and is payable if no further distributions are made by the company before 30.06.22.

Note 1 – The participation exemption scheme was introduced in Ireland a number of years ago to encourage the location in Ireland of multinational holding companies. If an Irish located company disposes of its shareholding in a qualifying company any capital gain is ignored. Following on from this the receipt of a dividend from a foreign qualifying company is ignored in calculating the surcharge. In relation to an Irish dividend the companies paying and receiving the dividend can jointly elect to have it ignored for surcharge purposes. This will ensure that the receiving company will not be surcharged on the dividend. However, the paying company will not receive a deduction for the dividend paid against its own surcharge liability.

Surcharge on Service Companies

In additional to the surcharge on undistributed passive income, service companies are surcharged on 50% of their undistributed professional income at 15%.

A service company is defined as a company which is close and whose business consists of the carrying on of a profession or the provision of professional services. The term service company applies only where the principal part of the company's income as chargeable under Case II is derived from a profession or the provision of professional services.

There is no exhaustive list of what is and is not a professional service but over the years case law has decided that most corporate professional companies in which the employees/members are governed by a professional body would be service companies. Revenue's Tax and Duty Manual Part 13-02-06 incorporates Tax Briefing 48 (published in June 2002) which listed the main categories which Revenue were of the opinion were professional services. .

The surcharge is calculated as follows:

(1) Case II Trade Income less relevant Trade Charges and after deducting standard rate Corporation Tax (12.5%).

(2) 50% of Step (1).

(3) Add to Step (2) above the answer from Step (1) to (3) of the passive income surcharge.

(4) From (3) all distributions for the accounting period and dividends declared and paid during the accounting period or within 18 months of the end of the accounting period to give the total surchargeable amount.

(5) Deduct distributions made from the total of the passive income surcharge, as noted at (3) above.

(6) Surcharge the resulting figure in (5) by 20%. This will give the surcharge on passive income.

(7) Taking the figure at (4) deduct from it the figure at (5) above and multiply by 15% and add step (6). This will give the total service company surcharge.

To avoid both surcharges noted above the company has 18 months to distribute dividends to reduce the surchargeable figure. Due to this time delay the tax payable on the surcharge is not due until the following years Corporation Tax. For example, a surcharge on results for the year ended December 2019 is not due until the tax for 2020 is payable. Therefore, the first element of the 2019 surcharge will not be paid until the Preliminary Tax for 2020 is paid on 23 June 2020.

Example:

B Ltd (a service company) has the following results for the accounting period ended 31 December 2020:

	€
Chargeable gain	*5,000*
Trading income (professional)	*32,000*
Rental income	*6,000*
Bank interest (Gross)	*8,000*
FII (Gross)	*2,000*

B Ltd paid charges of €3,000 in respect of its trading activities and claimed €4,000 of trading loss relief for a loss which arose in the accounting period ended 31.12.19. The company made distributions of €2,400 in the year ended 31 December 2020.

The distributable trading income of the company is calculated as follows:

		€
1.	*Case II*	*32,000*
	Less relevant trade charges	*(3,000)*
		29,000
	CT @ 12.5%	*(3,625)*
	Distributable Trading Income	*25,375*

2. *Calculate half of the distributable trading income, i.e. €25,375 divided by 2 = €12,687.*

3. *Add to amount at point 2 the distributable investment and estate income (net of trading discounts).*

Distributable Estate and Investment Income:

		€
Schedule D	*Case I*	*32,000*
	Case III	*8,000*
	Case V	*6,000*

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	46,000
Less: Relevant trading charges	*(3,000)*
	43,000
43,000 x 14,000 / 46,000	*13,087*
Franked Investment Income)	*2,000*
Estate and Investment Income	*15,087*
Less: Corporation Tax (13,087 x 25%)	*(3,272)*
	11,815
Less: Trading Discount @ 7.5%	*(886)*
	10,929
Distributable estate and investment income	*10,929*
Half of distributable trading income	*12,687*
Total	*23,616*
4. Less distributions made	*(2,400)*
Total surchargeable amount	*21,216*

5. Excess of distributable estate and investment income over distributions made

	€
Distributable estate and investment income	*10,929*
Less: Distributions made	*(2,400)*
	8,529
6. Surcharge at 20% on €8,529 =	*1,706*

7. Surcharge at 15%

Total surchargeable amount	*21,216*
Less: Excess levied at 20%	*(8,529)*
Total	*12,687*

Surcharge at 15% = 1,903

Therefore, the total surcharge assessed on the company is €1,706 + €1,903 = €3,609.

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This surcharge is payable with the corporation tax liability for the year ended 31 December 2021.

1.10 WITHHOLDING TAXES

1.10.1 Professional Services Withholding Tax (PSWT):

Professional Services Withholding Tax (PSWT) is a withholding tax operated by all government departments, local authorities, etc., on professional services provided to them. The tax is deducted at the standard rate, currently 20% (on the charge before VAT), on services such as veterinary, medicinal, accounting and engineering, etc.

It is not deducted on any goods or non-professional services.

The person suffering the PSWT will receive a net cheque and an F45.

F45s are generally used to pay an individual's income tax or a company's corporation tax at the end of the accounting period in which the tax was deducted.

Revenue will allow interim refunds to be made during an accounting year and will deduct any outstanding taxes such as VAT and PAYE. The Inspector of Taxes will also deduct from the refund a balance equal to the previous year's income tax or corporation tax and refund the excess. This ensures that the company/individual will always have a credit of taxes already paid on their current year's tax account equal to the previous year's liability.

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PSWT Interim Refunds (Temporary Covid-19 Measure – Transcribed from the Revenue Website)

To accelerate interim refunds of Professional Services Withholding Tax (PSWT) during the Covid-19 pandemic, Revenue will accept refund claims via MyEnquiries where legible copies of the original F45 and F50 documents are attached.

To ensure quicker refunds, the attached copies of the F45 and F50 documents must be tagged correctly for MyEnquiries:

- Enquiry relates to '**Professional Services Withholding Tax**'
- More specifically '**PSWT Interim refund CT**'
- More specifically '**PSWT Interim refund IT**'

All original F45 forms should be retained. A refund may be withdrawn from a taxpayer who fails to supply the original F45 documents if requested to do so by Revenue.

Where the relevant F45 form cannot be issued to the specified person due solely to the current Covid-19 circumstances then, for the purposes of attachment to a MyEnquiries refund claim, a written statement issued by the accountable person to the specified person setting out the following information will be accepted in place of an F45 form:

- the name and address of the accountable person
- the Tax Reference Number of the accountable person
- the name and address of the specified person
- the Tax Reference Number of the specified person
- the amount of the relevant payment
- the amount of the tax deducted from the relevant payment
  and
- the date on which the payment is made.

1.10.2 Dividend Withholding Tax (DWT):

Dividend Withholding Tax (DWT) is a tax operated by companies declaring dividends. They are obliged, when issuing a dividend, to review their shareholding listing and to charge or exempt, as is applicable, shareholders with withholding tax at the standard rate of tax, currently 25% (20% to 31 December 2020).

The basic premise of the legislation is that every shareholder must suffer DWT at 25% on their dividend unless they have forwarded to the company a qualifying certificate which enables them to receive the dividend free of withholding tax.

The most common Irish shareholder, the individual, is not entitled to receive dividends DWT free. He is instead charged to Schedule F on the gross dividend and receives a credit for the DWT deducted at source. This credit is shown on his dividend counterfoil.

The following is a list of the main individuals/companies who are entitled to receive dividends gross, together with the exemption certificate required:

(1) Companies receiving dividends from their subsidiaries, no certification required.

(2) A company resident in the State – this would be classified as franked investment income. The company must have forwarded the relevant taxation form to the dividend paying company.

(3) Pension schemes/charities/SSIA funds etc all receive dividends DWT free, again provided they have completed the relevant taxation form.

(4) Individuals resident in an EU or tax treaty country can receive dividends DWT free, provided they have forwarded to the company a certificate from their own Inspector of Taxes certifying that they are resident in that country.

(5) Companies resident in an EU or tax treaty country. These companies should file the relevant form with the paying company to receive the dividend DWT free.

(6) Non-resident companies quoted and regularly traded on a stock exchange of another EU member state or double tax treaty country. These companies should file the relevant form with the paying company to receive the dividend DWT free.

It is in the best interest of the company paying the dividend to ensure that it has the correct exemption forms on file prior to paying gross dividends. Any DWT deducted at source is due to be paid to the Tax Office on the 14th day of the following month.

A proposal to introduce a real-time DWT withholding tax system from 1 January 2021 has been deferred and the current 25% rate will remain in place until further notification.

1.10.3 Relevant Contracts Tax (RCT):

Relevant Contracts Tax (RCT) is a tax operated mainly by the building industry. It is deducted by principal contractors, individuals/companies engaged in the construction, forestry or meat processing industries that have a contract with a third party to provide any of those services and who themselves engage a subcontractor to assist in the carrying out of that relevant contract.

For example, a builder who has a contract with a homeowner to construct an extension and who engages subcontractors to lay the blocks is deemed to be a principal contractor and is obliged to operate RCT on payments to that subcontractor.

Tax is charged on the entire consideration at rates of 0%, 20% or 35%. The subcontractor is given a payment for the remaining net amount together with a Deduction Authorisation Certificate for the tax withheld. An individual can use this authorisation to pay their own taxes such as PAYE/CT/IT/VAT and any excess will be refunded by Revenue once the tax return for the period covered by the deduction has been filed and fully paid.

In relation to VAT, a reverse charge VAT mechanism for the supply of services between a principal and a subcontractor applies, in the construction sector only. Under this rule the subcontractor does not charge VAT on their services. Instead the principal self-accounts for the VAT and obtains a simultaneous recovery, assuming there is 100% VAT recovery. This system is similar to the reverse charge rules that apply to EU transactions between registered traders and customers.

One of the main concerns of a Revenue audit in this area is to ensure that subcontractors are actually genuine subcontractors and should not have been, instead, redefined as PAYE employees. There are numerous examples in the building trade of subcontractors having only one client and issuing weekly invoices, sometimes for the exact same amount. Revenue will investigate these persons to determine if they are carrying on duties more akin to that of an employee and may seek to recover PAYE and Employers and Employees PRSI from the principal contractor. If Revenue are satisfied that there is a genuine contract in place it will then seek to ensure that RCT is operated correctly.

The system operates online as follows:

- When a principal enters into a contract with a subcontractor, the principal will provide details of the contract to Revenue via ROS.
- In order to make a payment to a subcontractor, the subcontractor must provide an invoice to the principal who, when it comes to paying the invoice then electronically forwards the details to Revenue.
- Revenue then issue a deduction authorisation setting out the RCT rate to apply – either 0%, 20% or 35%.
- 0% applies to subcontractors whose tax affairs are currently in order and were complaint for the last three years. As well as the company's tax history, proprietary directors/employees (15% share capital owners) income tax history will also be reviewed.
- 20% applies to those who met the 0% conditions but who have only complied "substantially" with their tax obligations for the past three years.
- 35% applies in all other cases.
- The principal gives a copy of the authorisation to the subcontractor along with the appropriate payment.
- At the end of each RCT period the principal must pay the tax due to Revenue (who will already know how much is due). It can also be amended at this stage.
- The subcontractor must keep records of all payments made to him and keep all deduction authorisation given to him by principals.
- In general, no refunds will be given for RCT to subcontractors until after the tax return for the period has been filed. Revenue know from the system how much tax has been deducted from each subcontractor.
- Surcharge penalties for not operating the eRCT system correctly are imposed and depend on the compliance level and authorisation rate of the subcontractor and are 35%, 20%, 10% and 3%. These % amounts are based on the payments and not the actual tax liability and must be self-assessed.

Assistance for the Building Industry – Home Renovation Incentive:
This is a relief for homeowners who renovate their houses, by granting a tax credit of 13.50% of the amount spent on qualifying works, such as extensions, plumbing etc.

The credit is available for expenditure of between €5,000 and €30,000 before VAT and means that essentially the homeowner can recover the VAT that the contractor will charge them. Spends over €30,000 are permitted but the relief only applies to the first €30,000.

The homeowner must be in compliance with the local property tax and the contractor must also be tax compliant.

The credit is granted over two years beginning the year after the costs are incurred. The scheme ran from 25 October 2013 to 31 December 2018 with taxpayers receiving the final credits in 2020.

The scheme also applies to landlords.

1.11 OTHER MATTERS AND RECENT DEVELOPMENTS

1.11.1 Intellectual Property:

Under the general provisions relating to intellectual property, companies can claim capital allowances for "specified intangible assets" that are used in their trade. These include costs incurred on intangible assets such as patents, registered designs, trademarks and names, brand names, domain names, copyrights, know-how and licences etc. and any goodwill related to these assets.

To be an intangible asset it must come within the definition under GAAP. Under IAS 38 an intangible asset is defined as “an identifiable non-monetary based asset without physical substance”. This would generally be an asset that has been created or purchased by the company and from which an income stream is derived. The allowance is then set against this income and is not allowable against any other income of the company.

For assets purchased on or after 11 October 2017 only 80% of the relevant trade income may be sheltered by such a claim. Any amount not utilised can be carried forward to a future claim.

This entails tracking the income from each asset and ensuring that either all the income can be sheltered if the asset was acquired before 11 October 2017 and only 80% if acquired thereafter.

1.11.2 Interest as a Charge:

Where interest is incurred by a company on funds borrowed to acquire shares in or loan money to certain other companies it may be allowed as a charge against company profits, subject to meeting certain conditions, the main ones of which as listed below:

1. The investing company must hold more than 5% of the ordinary share capital in the other company at the time the interest is paid
2. The two companies must have at least one common director from the date of purchase of the shares to the date of the payment of the interest
3. The company whose shares are being acquired must exist wholly and mainly for the purpose of carrying on a trade or whose income consists wholly or mainly of rental income or whose business consists wholly or mainly of the holding of stocks, shares or securities of such a trading or rental company and the funds from the share subscription must be used in full by the company issuing the shares for business purposes.

The relief is also available when borrowings are used to acquire shares in an intermediate holding company. This would be the case where a holding company owns shares in another holding company which in turn owns shares in a trading company. It should be noted that this relief does not extend to intermediate holding companies of rental companies. The relief for intermediate holding companies of trading companies applies to loans drawn down on or after 19 October 2017.

The lending of funds to qualifying companies is also allowed in certain situations.

The legislation contains numerous anti-avoidance clauses and care should be taken in each case to ensure that the relief is available.

1.11.3 Capital allowances – energy efficient equipment:

In order to encourage energy-efficient equipment, 100% capital allowances are available to companies who incur expenditure on ‘green’ capital items. The energy efficient scheme runs to 31 December 2020. The scheme was historically only available to companies but from 1 January 2017 it was extended to sole traders and partnerships. The SEAI website contains the complete list of qualifying expenditure.

1.11.4 Adoption of a new accounting standard:

S76A TCA97 provides for the following when preparing financial standards in line with generally accepted accounting practice:

(A) - Subsection (2) - Transition from FRS (the old standard to 31 December 2014) to FRS 102/IFRS
(B) - Subsection (3) - Change of an Accounting Policy
(C) - Subsection (4) - Adoption of a new Accounting Standard
(D) - Subsection (5) - Correction of Errors

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The legislation provides for the taxation issues which arise on the move from accounting standards. The original intention was to deal with the issue surrounding the transfer from FRS101 and FRS102 to IFRS from 1 January 2015, but it will also allow for the expected future changes to the current standards as they adopt to future accounting requirements.

The legislation deals with the transitional measures to be adopted during the move and acts to ensure that no income or expense falls out of the tax net during the changeover periods.

If the change in accounts results in items other than financial instruments falling out of the taxable accounts (either income or expenditure), then the tax adjustment is spread equally over the following five years.

There are two items which need to be dealt with for taxation purposes:

(a) – Deductible amount:
This is an expense which would ordinarily have been allowed against taxable income but because of the amendment has not been included. It also includes any income which has been taxed twice, once under the original Financial Statements and once under the revised Financial Statements,

(b) – Taxable amount:
This is a receipt which would ordinarily have been taxed as taxable income but because of the amendment has not been included. Any expenditure which has been deducted twice, once under the original Financial Statements and once under the revised Financial Statements is a taxable amount.

The amount by which the taxable amount exceeds the deductible amount (or vice versa) is spread equally over the following 5 years.

In addition to a change in the accounting standard, the legislation also provides for two other possibilities -

1. Following a change in an accounting policy, any amount that is adjusted against prior year reserves will be deductible or taxable in the current year
2. Following the correction of an error it is necessary to amend the year in which the error occurred by re-opening the corporation tax return and amending the relevant entries.

1.11.5 Covid-19 – Specific Corporation Tax Measures:
At the time of writing a summary of the main measures introduced by legislation or Revenue practice to assist companies during the pandemic are as follows -

1. A company making losses in an accounting period which falls or partially falls between March 2020 and December 2020 can set 50% of the losses back against the prior period in order to obtain a refund of corporation tax paid in that prior period. While legislation already contains a facility to set a loss in one year back against a prior year, this new facility allows a company to estimate a current year loss and to set 50% of it back against the prior year. For example, a company with a 31 December 2020 year end can estimate the expected losses and set 50% of them back to the year ended 31 December 2019 in order to seek a refund of the corporation tax paid.
2. The late filing of a corporation tax return will currently not give rise to a late filing surcharge or a restriction of ordinary loss claims.
3. A company can apply to Revenue to seek a 9-month extension to the payment of a dividend to avoid the imposition of the close company surcharge.
4. A research and development credit refund claim are not payable by Revenue to the claimant company under existing legislation until the due date of the filing of the corporation tax return, i.e. the 23rd of the ninth month after the year end. It is now current Revenue practice to issue the refund as soon as possible.

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2. EMPLOYMENT TAXES, PRSI, AND USC UPDATES, PERSONAL TAX MATTERS

For most businesses, the cost of wages and salaries would be one of their highest if not the highest overhead. VAT and PAYE are two of the greatest earners for Revenue on revenue audits as these are the areas that the greatest mistakes are made, and one simple error extrapolated over a number of years can lead to a large underpayment of tax with subsequent additional interest, penalties and fines. In the vast majority of businesses, it is often bookkeepers/payroll operators with no taxation training who are in charge of the operation and collection of these taxes.

2.1 Pay As You Earn (PAYE):

From 1 January 2019 the PAYE system operates with the mandatory online reporting via ROS of all payrolls to Revenue in advance of payment to the employee. On this basis Revenue have constant up to date information on each employee's earnings from all employments. As a result of the switch to an online system, previous forms such as P35s, P45s, P60s etc are no longer in operation.

The typical payroll process under the online system is as follows (assuming that the payroll is being processed through a payroll software system linked to ROS):

1. The payroll software system downloads a Revenue Payroll Notification (RPN) for every employee before each payroll is run. The RPN provides details of tax credits and cut-off points allocated to the employer.
2. An RPN will be available for all employees except for those with no PPSN or who have yet to register for PAYE. Until then emergency tax is operated. Employees register for PAYE using the online Jobs and Pensions service.
3. The payroll is then processed and will then provide the gross pay, payment date and taxes deducted to Revenue. Revenue acknowledge this information with a matching statement.
4. The payroll system also informs Revenue of any leavers.
5. After each month Revenue provide a statement of the total payroll tax due for the month. If no amendments are required, the statement becomes the monthly return.
6. If any corrections are required, they must be made and submitted to Revenue who will then provide a revised statement.
7. Payments are due on the 23rd of the following month.

Revenue advise that BIK should be reviewed on a quarterly basis to ensure that the correct amounts are being captured by payroll.

Other points to note –
All employees (with the exception of proprietary directors) are taxed on a payment received basis. Proprietary directors are on the earnings basis.

In the event that there is a failure to operate the PAYE system by an employer on an employee or has disguised the payment, regrossing of the net payment will apply.

Emergency tax operates as follows:

- Where the employee does not provide a PPS number – income tax at 40% plus USC at 8% is applied on all gross pay
- Where the PPSN is known but there is no RPN available, for the first 4 weeks the standard single person rate band is used (with no tax credits) with the excess being taxed at 40%. After 4 weeks 40% income tax will apply to the total payment. USC at 8% will apply to all income for each week.

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2.2 PRSI:

A PRSI class must be allocated to each employee on your payroll. The main classes are as follows:

Class A –	the majority of employees will be allocated this class. It is for non-controlling employees and is charged at 4%. Employers PRSI is charged in addition to the employees cost at either 8.8% or 11.05% of salary, depending on the level of earnings.
Class J –	allocated to employees earning less than €38 per week or to employees aged 66 or over. There is no charge for the employee with an employer's charge of 0.50%.
Class M –	allocated to individuals on a pension payroll. No PRSI charged.
Class S –	allocated to controlling directors of companies, charged at 4% on all earnings.
Class K -	Employed contributors who have unearned income (rental or bank interest etc) in excess of €5,000 pay PRSI at 4%. As with all PRSI classes, it does not apply to individuals aged 66 or over. Class K provides no welfare benefits.

2.3 Universal Social Charge (USC):

The USC is charged on all gross income without any deductions for pension deductions.

Income from the Department of Social Welfare including unemployment benefit, old age contributory pension, etc, is exempt from the charge. An individual whose gross annual income is below €13,000 is also exempt.

The charging bands are as follows:

Income	**USC**
€0 – €12,012	0.5%
€12,013 - €20,484	2.0%
€20,484 - €70,044	4.5%
€70,044 onwards	8%

Individuals in receipt of a "full" medical card are charged at a maximum of 2% where annual income is less than €60,000.[2]

From an administrative point of view the charge is collected mainly in two ways:

1. *Self Employed:*
   Levied on annual tax returns and included in preliminary payments. Income from self-employment in excess of €100,000 is taxed at 11%.
2. *Employees:*
   The charge operates similar to PAYE and is deducted as a payroll tax. USC cut-off points are included in RPNS.

2.4 Benefit-in-Kind:

BIK is the responsibility of employers to deduct at source and the employer should constantly review their benefits file to ensure that all benefits provided on behalf of employees are being dealt with correctly.

The main benefits which would apply are as follows:

[2] This relief for individuals under the age of 70 with a full medical card and annual income of less that €60,000 is due to expire on 31 December 2020.

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Provision of Motor Vehicles [3]

A passenger motor vehicle provided by the company to the employee is deemed to be an annual benefit and is charged at 30% of the open market value of the car when it was first manufactured.

Therefore, an employee may receive from the employer a second-hand car but will be charged to BIK on its original market value (OMV) as a new car. The % charge can be reduced by the employee engaging in high business mileage.

The rates of charge are as follows:

Business travel lower limit	**Business travel upper limit**	**Percentage of original market value**
Kilometres	**Kilometres**	
24,000	32,000	24%
32,000	40,000	18%
40,000	48,000	12%
48,000	-	6%

There is no BIK on electric vehicles (including vans) provided by employers, where the vehicle was first made available after 9 October 2018 subject to a cap of €50,000. Where the OMV exceeds this cap, the excess is subject to BIK in the normal manner. For 2019 and 2020, there is no BIK charge on vehicles first provided from 10 October 2017 to 9 October 2018. This is irrespective of the cost of the vehicle. These exemptions are due to cease on 31 December 2022.

Employees may provide their own cars for work purposes and receive tax free mileage allowances from a company using civil service subsistence rates in respect of qualifying journeys.

To use the civil service mileage rates the employee must keep a detailed mileage log showing where they travelled to and from together with the reason for that travel, the date they travelled, and the mileage incurred. A similar log is required if an employee is in receipt of a motor vehicle BIK. An employee is not entitled to claim an allowance for travel from their own personal residence to their place of work.

[3] Finance Act 2019 provides for amendments to the BIK charge for cars and vans from 1 January 2023. The new system will base the BIK charge on both mileage and the Co2 category of the car with % charges ranging from 9% to 37.50%.

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Rates per Mile Effective from 1 April 2017

Official Motor Travel in a calendar year	Engine Capacity up to 1200cc	Engine Capacity 1201cc to 1500cc	Engine Capacity 1501cc and over
0 – 1,500 km	37.95 cent	39.86 cent	44.79 cent
1,501 – 5,500 km	70.00 cent	73.21 cent	83.53 cent
5,501 – 25,000 km	27.55 cent	29.03 cent	32.21 cent
25,001 km and over	21.36 cent	22.23 cent	25.85 cent

An employee can also claim subsistence rates if they are outside the office (more than 8km away) for more than 5 hours. The rates for foreign travel are available from the Department of Finance, who update the various rates annually.

Domestic Subsistence Rates from 1 July 2019

	Overnight Rates			Day Rates	
Class of Allowance	**Normal Rate – payable up to 14 nights**	**Reduced Rate – payable for each of next 14 nights**	**Detention Rate – payable for each of next 28 nights**	**10 hours or more**	**5 hours but less than 10 hours**
	€	**€**	**€**	**€**	**€**
	147	132.30	73.50	36.97	15.41

A separate scheme for accommodation in Dublin allows a vouched cost of up to €147 plus an allowance for meals of €36.97.

It should be noted that only employees with a permanent office available are entitled to claim mileage and subsistence rates. Sole traders and partners are not entitled to claim these allowances as they are available to employees and directors only.

For building operatives who would generally have no permanent office available to them they can, if they meet the conditions, avail of country money. Tax free country money payments are available for example where the employee is based 20 miles from the GPO and moves from site to site during his normal working week.

***Company Vans*[4]**
There is also provision for BIK on company vans at 5% of OMV. Due to the significant difference in the rates of charge between cars and vans, the company should ensure that they have correctly categorised the vehicle. A van is defined as:
- A vehicle designed solely for the transport of goods/product, etc.
- Has a roofed area to the rear of the driver's seat
- Has no side windows or seating in that roofed area

There is no charge to BIK on the private use of the van if the following conditions are met:
- The van is necessary for the employee to perform their duties
- The van must be kept at the employee's house when not in use (for security or operational reasons)
- The employee spends at least 80% of their time away from the office/factory

[4] Finance Act 2019 provides for an increase in the 5% charge to 8% from 1 January 2023.

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Private use of the van is prohibited by the employer

<u>Temporary Covid-19 Measures (text is reproduced from the Revenue website)</u>

Use of company cars by employees in the motor industry

Special rules for determining the cash equivalent of the car apply in the case of the calculation of the benefit in kind charge on use of company cars by employees in the motor industry. If the employee uses one car for a period of one month or greater, these special rules are not available.

During the COVID-19 crisis, employees working in the motor industry:

- who have availed of the special cash equivalents for calculating benefit in kind on company cars from January 2020
  and
- who, due to current restrictions, are unable to change their vehicle within the required timeframe

may continue to utilise the cash equivalents for employees in the motor industry.

show that the employer has prohibited its use and no such use has occurred, for example communication from employer, photographic evidence of odometer etc.

(c) Employer Allows Private Use

Where an employee has a car provided by his or her employer and

- the circumstances in the previous example don't apply
- limited or reduced business mileage (if any) is undertaken during the period of the COVID-19 crisis
- **and**
- personal use is limited

the amount of business mileage travelled in January 2020 may be used as a base month for the purposes of calculating the amount of BIK due. Thus, the percentage applied in the calculation of the cash equivalent, which is based on annualised business mileage, may have regard to the actual business mileage for January 2020, for the period of the COVID-19 restrictions. Appropriate records should be kept, for example business mileage travelled in January, amount of private use, photographic evidence of odometer etc.

Employee Continues Working

Where an employee continues to undertake business travel as usual in an employer-provided vehicle, the usual BIK rules will apply. Further information on the taxation of employer-provided vehicles is available in the Tax and Duty Manual Part 05-04-02, Benefit-in-Kind, Private use of Employer-Provided Vehicles.

PRSA Payments

Employers are obliged to provide their employees with access to a PRSA scheme. Employees can contribute personally to a PRSA scheme or have the contributions stopped at source through payroll and paid over to the pension company by the employer on their behalf.

An employer is not obliged to provide contributions to the fund. Any contributions made by the employer to a PRSA are tax allowable similar to deductions made by the employer to a company occupational pension scheme once it has been Revenue approved.

Employees should note that any employer contribution to their PRSA scheme is treated as a BIK. It is not taxed at source through payroll like other BIK items but should be included on the employees' personal tax return. The employee can also claim a reduction against his taxable income for the pension paid by the employer and so therefore his should be left in a tax neutral position. If the contribution results in him exceeding his annual contribution allowance it can be carried forward for relief in a later year.

Health Insurance
Another common scheme is contributions for employees to health insurance schemes such as VHI etc. These contributions to health schemes are treated as a benefit for the employee on which they must pay BIK.

Health insurance is paid by the employer net of tax at source and therefore the employer generally pays 80% of the entire subscription. From an employer point of view, he must regross the net subscription and pay the additional 20% tax with the annual tax return. He is entitled to a reduction from his taxable profit for the 20% withholding tax.

The employer should then operate BIK on the gross payment through the employees' payroll. The employee can claim the gross payment as a standard tax credit and have his RPN increased accordingly.
The maximum TRS claim per adult is €200 and €100 per child.

<u>Refund of healthcare insurance premiums</u>

Arising from Covid-19, some healthcare insurance providers are issuing refunds of premiums paid during the pandemic. The Revenue have issued guidance on the treatment of such refunds from an employer and employee perspective:

"Tax relief at source (TRS) is ignored for the purposes of the below, the usual procedures apply with regard to an employee claiming such relief and employers accounting for the value of the TRS amount to Revenue.

Scenario 1: Employer paid premiums – refunds made to the employer

Where the employer receives a refund of the healthcare insurance premium the following shall apply:

- the amount subject to BIK is reduced to reflect the new gross value of the insurance policy
- the employer is entitled to a Schedule D Case I/II deduction in line with the reduced policy amount.

Scenario 2: Employer paid premiums – refund split between the employer and the employee

Where the refund of the healthcare insurance premium is split between the employer and the employee the following shall apply:

- the amount subject to BIK is reduced to reflect the new gross value of the insurance policy (i.e. taking into account the refunds to both the employer and employee) and any refund made to the employee is subject to BIK
- the employer is entitled to a Schedule D Case I/II deduction to reflect the reduced policy amount (i.e. taking into account the refunds to both the employer and employee).

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Scenario 3: Payment of premium by an individual policy holder (no employer involvement)
Where the refund of the healthcare insurance premium is made to an individual policy holder the refund is not subject to tax."[5]

Preferential Loans
A loan given to the employee by the employer is subject to BIK at the following rates:

Loans used for private residences	4.00%
All other loans	13.50%

The employee is liable to the above rates less any interest charge actually levied by the employer.

Travel Pass/Bicycle Scheme
If an employer provides an employee with a travel pass to enable the employee travel to work, no BIK is levied.

If the employer does not wish the bear the cost of the pass the employee can suffer a "salary sacrifice" and have the cost of the pass deducted from their payroll, before any taxes are deducted. However, the employer must actually purchase the pass and deduct it from the employee's payroll.

There is also an exemption from BIK for the provision of bicycles to an employee or the employee can accept a "salary sacrifice" on the purchase if the employer does not provide one. The maximum expenditure is €1,000 every five years. There are specific criteria for employees to comply with in order for the provision of a bicycle to be an exempt BIK/"salary sacrifice".

Professional Subscriptions
Over the years the guidance on whether professional subscriptions qualify as an expense of an employment under S114 TCA 1997 has been updated. Revenue's current position is set out in Tax and Duty Manual Part 05-02-18, The original eBrief (eBrief 19/11) and latest Revenue guidance confirms that in order to be entitled to claim an expense under s114 TCA 1997, the professional subscription must be "wholly, exclusively and necessarily" incurred for the purpose of carrying on an individual's duties of employment. The circumstances for which a deduction can be claimed can be broken into the following areas:

a) Where there is a statutory requirement for membership of a professional body or to hold a practising certificate, and
b) Where statutory provisions restrict the ability of an individual to fulfil the duties of an office or employment
c) Where annual professional membership fees are commercially necessary
d) Indispensable condition of the tenure of employment

Two subscriptions

The guidance states that in general for an employee, only one membership can be provided tax-free where multiple memberships enable the employee to carry out similar or the same duties of employment.

[5] Content is reproduced from the Revenue website

Where annual professional membership fees are commercially necessary

Revenue in its guidance state that they are prepared to accept in certain circumstances that the requirements of s114 TCA 1997 are meet where an employee failing to hold a professional membership or practising certificate prevents an employer from carrying on its trade. The guidance provides some examples of when this might occur:

- If the employer’s indemnity insurance policy would be invalidated if employees failed to hold a professional membership or practicing certificate.
- If potential customers would be prevented from entering into business contracts as a professional membership or practicing certificate was not held.

Indispensable condition of the tenure of employment

Revenue also accepted that a deduction was available in respect of the annual membership fee paid by an employer under s114 TCA 1997 in certain circumstances where there was no statutory or practising requirement for annual membership of a professional body, association, society, council, etc. where all of the following conditions were satisfied;

- The duties of the employee and the duties of the employment required the exercise or practice of the occupation or profession in respect of which the annual membership fee refers,
- The employee exercises or practices the occupation or profession in respect of which the annual membership fee refers, and
- Membership of the professional body was an indispensable condition of the tenure of employment.

Guidance is also provided on indicators for when a membership or certificate is required to be held as part of the tenure of an individual’s employment. The guidance states that more than one indicator should be met in order to qualify under s114 TCA 1997:

- If there is a requirement to hold such a membership in the employment contract
- If all staff in the same role are required to hold a membership or certificate
- If the individual would be dismissed or transferred if they did not:
  - Acquire such membership or certificate,
  - Hold such membership or certificate, or
  - Maintain their membership or certificate

Other BIK items

Other common BIK issues centre around home telephone, gym subscriptions, etc. and these are all covered in detail in the Revenue BIK guide. Unless there is a specific rule governing the benefit, such as motor cars etc, the general rule is that the BIK charge is based on the higher of the value to the employee of the benefit received or the cost to the employer.

One common device which can be utilised by all employers when rewarding staff is that they can currently make an annual once-off BIK free gift to staff of €500. This is normally done by means of retail vouchers. It cannot be paid in cash otherwise it would be taxed through payroll as gross pay.

<u>Temporary Covid-19 Measures (text is reproduced from the Revenue website)</u>

Accommodation

Where accommodation is made available by an employer to an employee for his or her private use a benefit-in-kind charge generally arises. Due to health and safety concerns arising from COVID-19, an employee may be provided with temporary accommodation by his or her employer to mitigate against potential transmission risks. Revenue are prepared to accept that no charge to benefit-in-kind will arise during the period of the COVID-19 crisis on employer-provided temporary accommodation in the following circumstances:

- the accommodation made available to an employee by his or her employer is temporary in nature and the reason is to mitigate against the risk of transmission. For example, where an employee returns from an overseas trip and requires self-isolation, or where there is a concern of transmission to other frontline staff members/workers residing in the same household.

Covid-19 Testing

Due to health and safety concerns arising from COVID-19, an employer may perform COVID-19 testing on an employee at the workplace, or may engage a third party to do such testing on behalf of the employer. In such circumstances, no benefit-in-kind charge will arise. In addition, where an employer provides a COVID-19 test kit to an employee for self-administration, no benefit-in-kind charge will arise.

Tax treatment of reimbursements by an employer to an employee regarding holiday/flight cancellations or in relation to costs of assisting employees returning to the State

Provided the employee is integral to the business and was required to return to deal with issues related to the COVID-19 crisis by his or her employer, the costs incurred are reasonable and the employee is not otherwise compensated (i.e. via an insurance policy or direct claim to the service provider), a BIK will not arise. This may include costs related to family members who were on holiday or due to go on holidays with the employee.

Employer provided equipment

A BIK will not arise where employers provide equipment such as laptops, printers, scanners and office furniture in order for employees to set up a working space in their homes.

Payment of taxi fares

Where an employer pays for a taxi to transport an employee to or from work due to health and safety concerns, BIK will not apply for the duration of the COVID-19 period only.

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Temporary Covid-19 Measures (text is reproduced from the Revenue website)

Small benefits exemption

Where an employer wishes to recognise efforts of frontline or other key staff working during the COVID-19 crisis, either by accelerating part of a reward (voucher) usually paid later in the year, or making an additional voucher award, the requirement that only one voucher issues (as per s112B(1)(d)) is concessionally waived for the 2020 tax year, where the additional award is related to an employee's exceptional efforts during the COVID-19 crisis.

This concession only applies to employees who continue to work during the restricted period. All other conditions of the section must be met, for example the maximum (cumulative) value may still not exceed €500 but, as stated above, the requirement to only issue one voucher will be waived. Appropriate documentation must be retained by an employer where this concession is availed of.

2.5 Directors Tax:

Proprietary directors, those owning more than 15% of the ordinary share capital of a company, are treated as chargeable individuals even though all their income may be covered by PAYE in their company. This means that they must complete annual Form 11 self-employed income tax returns. They are also not entitled to the PAYE credit but are entitled to claim the Earned Income credit.

Under income tax pay and file rules, each year's return is due to be lodged on or before 31 October of the year following the tax year in question. The balance of any tax owing should also be paid with the filing of the return together with preliminary tax for the current year. Also, due to be lodged is a capital gains tax return for the year notwithstanding that all the tax should have been paid in the previous two preliminary payments, being the previous 15 December and 31 January of the same year, the return is being filed.

In summary therefore, individuals will have just lodged their 2019 tax return and paid the balance of that year's income tax together with preliminary tax for 2020 on or before 31 October 2020. If applicable they will also have lodged their capital gains tax return for 2019. Preliminary capital gains tax for the period 1 January 2020 to 30 November 2020 is due on 15 December 2020. The Capital Gains Tax return for the year is usually submitted on the Form 11 with the individual's personal tax return. In recognition of the impact of Covid-19, ROS filers who pay and file their returns online can avail of a further four week extension (10 December 2020) to file their income tax returns.

If a return is filed late a surcharge applies. Returns filed less than 2 months late will suffer a surcharge of 5% on the total tax liability before deduction of Preliminary Tax. A proprietary director whose return is late will suffer a surcharge, but no allowance will be given for PAYE paid. This could lead to a large surcharge on high earning directors. They will also suffer a surcharge if they are not in compliance with the Local Property Taxes legislation.

If the return is more than two months late the surcharge is 10% of total liability.

The maximum surcharge is €12,695 for returns delivered within two months of the filing date and €63,485 for returns delivered thereafter.

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A typical filing on or before 31 October 2020 (or by ROS on or before 10 December 2020) for an individual would be as follows:

(1) Income tax return for the tax year 2019
(2) Payment of balance of 2019 income tax
(3) Payment of preliminary income tax for 2020
(4) Capital gains tax return for the tax year 2019

One of the main options available to individuals to reduce their tax before filing the return is to make a pension payment. Individuals filing income tax returns can make contributions up to the following percentages on their net relevant earnings:

Age	**Percentage of net relevant earnings**
To age 29	15
30 but less than 40 years	20
40 but less than 50 years	25
50 but less than 55 years	30
55 but less than 60 years	35
60 years or over	40

The contribution cap for individuals are earnings of €115,000. If a director makes a pension contribution outside of salary, they can submit an income tax claim after the tax year has finished.

The making of these post year pension contributions is available to all individuals and not just company directors.

The individual has up to the date of filing his return the opportunity of making a pension contribution. This is one of the few reliefs which allow a current year payment to affect a prior year tax. Any pension contributions paid in excess of the above limits can carry forward to be utilised in a later year.

When the individual retires, they are then in a position to receive one quarter of the gross fund tax free and will usually transfer the balance to an ARF (Approved Retirement Fund) for draw down under PAYE as and when they require.

The gross pension fund is subject to a maximum limit of €2,000,000. Any individual retiring will suffer tax on any figure in excess of this amount and the tax will be levied on the pension fund. Higher limits can apply to funds set-up before the changes of recent years.

The maximum tax-free lump sum an individual can receive in their lifetime is €200,000. Any amount above this to €500,000 is taxed at 20% and the balance at 40%.

2.6 KEEP (Key Employee Engagement Programme) Scheme:

The KEEP scheme was setup to provide for relief for the granting and exercising of share options in the SME sector. It applies to options granted on or after 1 January 2018 but before 1 January 2024.

The relief works by removing the liability to income tax on the exercise of share options, which currently exists for employees of quoted companies. Instead a tax liability only arises, to capital gains, when the shares are sold.

Main conditions of the scheme:

1. The employer grants share options on ordinary shares to an employee at their current market value. The options must be exercised from one year of grant and within 10 years.
2. The company must be incorporated in the EEA or have a trade in the state and be a micro, small or medium company.
3. The total market value of issued but unexercised share options cannot exceed €3,000,000.
4. The company must conduct a qualifying trade, which is any trade not on the excluded list. Excluded trades include those in construction, financial activities and professional services such as medical, architectural, accounting/taxation and legal.
5. Options can be granted in holding companies who themselves do not trade and are not controlled directly or indirectly by another company. The holding company's business must consist wholly or mainly of the holding of shares in qualifying or relevant subsidiaries (and no other companies) and it must own more than 50% of each of these companies.[6]
6. The employee must work at least 20 hours per week or not less than 75% of their work time and the employment must be capable of lasting at least 12 months from the date of granting the first option and cannot control more than 15% of the ordinary share capital of the company (along with any connected persons).[7]
7. An employee cannot be granted share options valued at more than €100,000 in any one year, €300,000 in total years or more than 100% of annual salary.

The main premise of the scheme is that an employee will exercise the option between 1 and 10 years of grant and pay the market value at grant. No income tax charge arises no matter what the variance between market value at grant and issue. When the employee sells the shares capital gains tax will arise on any uplift between sale proceeds and the price paid when exercised.

3 VALUE ADDED TAX COMPLIANCE (VAT)

VAT is a consumption tax for which businesses are legally obliged to register for if they are aware that in a particular year, they will breach the turnover registration thresholds. These thresholds are as follows:

(1) Provision of services – €37,500
(2) Sale of goods – €75,000

It is generally accepted that businesses should register for VAT to ensure that they do not end up having an un-claimable VAT charge. Due to the fact that the registration thresholds are so low there are very few small businesses which can avail of the non-registration option.

As VAT is a consumption tax it is not designed to be a charge on registered businesses but to be a charge to the eventual consumer of the goods/service.

[6] This provision was altered by Finance Act 2019, this provision is subject to a ministerial commencement order
[7] This provision was altered by Finance Act 2019, this provision is subject to a ministerial commencement order

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Certain businesses however are not entitled to register for VAT as the services they provide are exempt, such as banking, financial services, private educational establishments, crèches, etc. These businesses do not charge VAT but must however pay VAT on any goods/services that they themselves consume.

The registration form for registering for VAT is Form TR2, usually completed online.

3.1 VAT Rates:

Exempt Rate

This concerns exempted activities such as the companies noted above which are not entitled to register for VAT. Any of the providers of these services will not charge VAT nor can they recover VAT they are charged. Examples are insurance and banking activities.

Zero Rate

This covers goods and services chargeable at 0%. It covers items such as basic foodstuffs for human consumption, vegetables and meats, oral medicine, printed books, children's clothing/shoes and other basic necessities. It should be borne in mind for example that a vegetable shop which charges VAT at 0% is entitled to register for VAT and recover credits which they themselves have been charged on services/goods that they have purchased. In a situation like this the vegetable shop will generally always be in a VAT refund situation.

Reduced Rates

This covers goods and services chargeable at the reduced rates, currently 13.5% and 9%.
The 13.5% rate covers items such as the provision of power and heat, food in restaurants, hotel accommodation, general repair services on immovable goods such as property. The 9% rate applies to printed newspapers and periodicals, certain electronic publications and sporting facilities.

Goods & services not covered by the exempt, 0% or 13.5%/9% rates

If an item is not included in any of the above lists it is then automatically charged at the standard rate of 23%. As part of the Government's Covid-19 July Stimulus package the standard rate is reduced to 21% from 1 September 2020 to 28 February 2021. Where a doubt arises as to the correct VAT rate, the Revenue website has approximately 4,000 individual items covering virtually every type of transaction in the State.

3.2 Place of Supply of Goods and Services:

The general rule is that VAT is charged at the rate applying in the country where the goods depart from:

- Sales of goods in Ireland – vendor charges appropriate VAT rate
- Sales of goods from EU country to Ireland – vendor quotes Irish customers VAT number on their invoice and charges 0% VAT. Irish customer self-accounts for VAT in own return – adds deemed Irish VAT to sales and purchases. The transaction is an intra-community transaction. If the customer does not have full VAT recovery, for example a bank, they will add the VAT to sales but not to the purchases and therefore will suffer a VAT charge.
- Sales of goods from non-EU country to Ireland – no VAT charged by foreign supplier. Irish customs charge VAT at entry which can be reclaimed by Irish customer.
- Sales of goods from Ireland to EU – Irish company quotes customers' VAT number and charges no VAT. If the customer does not have a VAT number Irish VAT is charged.
- Sales of goods from Ireland to non-EU country – as VAT is an EU tax only, no VAT is charged.
- Supply of services in Ireland – service provider charges appropriate VAT rate
- Supply of services within
- the EU to registered customers – customers VAT number quoted on invoice and customers self-accounts for VAT

- Supply of services within the EU to non-registered customers – service provider charges VAT at their local country rate (see 3.12 for changes from 1 July 2021)
- Supply of services outside the EU – service provider charges no VAT
- Supply of telecommunications or electronic services to EU consumers – from 1/1/15 – where customer is established. Supplier can either register for VAT in each EU country or apply for MOSS (Revenue portal for allocating VAT among different EU countries) (see 3.12 for changes from 1 July 2021)

3.3 Amount Liable to VAT:

VAT is chargeable on the total consideration receivable by the supplier. This would therefore include additional costs such as delivery charges, mileage charges etc.

Costs charged by the supplier of the service which will not be retained are not liable, for example a solicitor charging for work on a house purchase will charge VAT on his services and related costs but not on the stamp duty he is collecting on behalf of Revenue.

3.4 Accounting for VAT:

The traditional method of paying VAT to Revenue is to compute VAT on all sales raised in the two-month VAT period less VAT on all allowable purchase invoices and pay the difference to Revenue.

If total annual sales are below €2,000,000 or 90% of all sales are to the public, the trader can apply for the cash receipts basis. Under this methodology VAT on sales is only due when the actual receipt has been received. VAT on purchases are claimable as normal.

3.5 Two-Thirds Rule (2/3rds):

This rule is used when there is a single consideration paid for both a service and a supply of goods, for example a tradesman making repairs to a property which also includes the supply of some goods.

Where the VAT exclusive cost to the supplier of the goods for the contract is less than 2/3rds of the contract price, the rate of VAT chargeable to the entire supply is that chargeable on the supply of the service, in an ordinary repair contract this would be 13.5% of the entire consideration.

When the reverse applies VAT is chargeable on the entire contract at the rate applying to the goods, which would normally be 23% or 21% from 1 September 2020 to 28 February 2021.

3.6 Composite Supplies and Multiple Supplies (Package/Cocktail Rule):

This procedure is concerned with two separate types of supplies, one is composite, and the other is multiple.

In the case of a composite supply this covers situations where there is a principal element to the supply, to which all other components are unsuitable for separate sale. In this situation VAT would be charged on the main product, known as the composite product and the other ancillary products would be charged at the rate of main product. For example, a mobile phone (23% or 21% from 1 September 2020 to 28 February 2021) and instruction booklet (0%) would be charged at 23% or 21% from 1 September 2020 to 28 February 2021 in total.

Multiples supplies cover a situation where two types of products are being sold together but could be sold separately. In this section, the consideration would be apportioned between the various supplies involved and supply would be taxed at the appropriate VAT rate. For example, a cheese (0%) and wine (23% or 21% from 1 September 2020 to 28 February 2021) hamper.

3.7 Passenger Motor Vehicles:
Under normal circumstances there is no VAT recovery on the purchase or hire of a passenger motor vehicle. However, if the category of vehicle is A, B or C 20% of the VAT charged can be recovered, provided the vehicle is used at least 60% of the time for business purposes. From 1 January 2021, recovery will only be available for category A or B vehicles.

3.8 VAT 56 Procedures (known as 13A – old VAT Act reference):
Traders who can prove to Revenue that 75% of their supplies of goods are to other EU states or to non-EU countries can seek to become a 13A holder (now contained in s56 of the VATCA 2010). This status means that their own local goods and services suppliers will always charge them the 0% VAT rate.

This mechanism is to assist with these companies' cash flow. As most of their sales have no VAT they would constantly be in a VAT repayment situation and would have to wait a number of months before receiving their refund.

When a company is granted the authorisation, they give the authorisation number to all their suppliers who then quote the number on all subsequent invoices. If the supplier does not quote the number or charges no VAT when the authorisation has expired, the invoice charge is deemed to be VAT inclusive and the supplier must pay VAT to Revenue.

3.9 Invoicing Regulations:
All traders supplying goods and services to other traders must supply a valid VAT invoice.

This invoice must show the traders name, address, VAT number, date of supply, invoice number, description of goods/services provided, charge before and after VAT and the VAT charged at each appropriate rate.

A business customer not in receipt of a valid invoice will be denied a VAT input credit claim.

3.10 VAT on Property (Post 1 July 2008):
VAT on property is one of the most complex areas of taxation and expert advice from an experienced VAT practitioner should always be sought. To err in a situation regarding VAT on property could result in an extremely large irrecoverable VAT charge being applied to the transaction.

Whilst it is beyond the scope of this document to discuss the legislation in detail a brief summary is as follows:

Exempt Properties
The following supplies of properties are not subject to VAT:
(a) Undeveloped property.
(b) Property which has not been developed in the previous 5 years and this is the first supply in 5 years.
(c) Property which has been let for an aggregate of more than 24 months since the last development, previous supply was taxable between taxable unconnected persons.
(d) Property which has only seen minor developments in the past 5 years, this would encompass non-material alterations and have cost less than 25% of the sales value.

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(e) Property which has been developed in the previous 5 years and occupied by an unconnected person for an aggregate of 24 months provided the previous supply was taxable and there has only been minor development since.

Anti-avoidance measures have been enacted to ensure no loss of VAT to Revenue in non-commercial situations

Even if the disposal is exempt the sale can be treated as taxable if both parties elect in writing, in this situation the VAT is paid by the purchaser on the reverse charge basis.

For residential property, the first disposal will always be taxable, even if the developer lets the property prior to its disposal. This will result in a partial loss of input credits under the Capital Goods Scheme (see below).

Lettings (Post 1 July 2008)

Under the legislation all lettings are exempt from VAT. In order for a landlord to preserve his VAT input recovery he has the option to charge VAT on his rent, at 23% or 21% from 1 September 2020 to 28 February 2021. This option is not available for residential property or where the landlord and tenant are connected (unless the tenant has 90% VAT input recovery).

Rent is chargeable until the landlord ceases to charge or breaches one of the conditions noted above – property converts to residential or tenant becomes connected (subject to the VAT recovery rules). In this situation, the landlord will suffer a VAT credit clawback under the Capital Goods Scheme (see below).

Capital Goods Scheme

The legislation seeks to adjust the allowable VAT input credit on the original purchase / development of the property over its VAT life based on its usage.

The scheme applies to all taxable persons who acquire or develop a property.
There are various life spans of the building for the purpose of the adjustment depending on whether the property was newly developed, refurbished or subject to lettings. The maximum life span is currently proposed as being 20 years. It is of vital importance to calculate the correct life span as this will guide the VAT recovery/clawback over the building's life.

The usage of the building is calculated in the initial interval period (first twelve months) and this will decide the actual VAT input credit to be claimed. This may result in an adjustment to the VAT first claimed when the property was first purchased/developed. This amount will then be the benchmark for the overall usage test to decide on the eventual input credit at the end of the property's life
Whenever a property changes from taxable to non-taxable or vice versa a usage comparison must be carried out, which may result in a higher or lower VAT input claim. The legislation provides specific rules for calculating the VAT input credit claim.

If the change in usage is more than 50% a separate formula must be used. This element will apply for situations such as changes in the nature of the trade carried on in the premises.

As noted under the lettings section above the landlord has the option of taxing exempt lettings. If the option is cancelled the landlord's original VAT credit claim is clawed back subject to an adjustment for the number of years during which VAT was actually charged.

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The legislation contains formulae for calculating the amount of VAT recovery for vendors who are disposing of properties and charging VAT who may not have had full VAT recovery and for vendors disposing of exempt properties who originally claimed VAT input credits.

There are also provisions for VAT clawbacks from tenants who develop property during their own lease tenure (subject to certain exceptions) and anti-avoidance measures concerning connected persons.

It is highly recommended to engage the services of a VAT professional when carrying out transactions in property.

3.11 Anti-avoidance:

1. If after 6 months a purchase which has given rise to a VAT input claim remains unpaid and Revenue have not given permission to retain the credit, it must be repaid in the subsequent VAT return. If the expenditure is subsequently paid for, the previously denied credit can be re-claimed.
2. Under current invoicing regulations, suppliers are only obliged to issue VAT receipts to VAT registered traders. Revenue have powers to request records showing the full details of all sales in a two-month period within 7 days of requesting same. This is with a view to combating evasion of tax by VAT registered traders who are not declaring all their activities.
3. Joint and several liability applies in relation to VAT where the VAT due is not paid by the first accountable person and the second accountable person, the supplier or purchaser, knows or ought to have known that a VAT fraud may be taking place.

3.12 EU VAT Developments

On 11 December 2018, the Commission proposed a number of changes to the current VAT system, including 4 measures that are effective from 1 January 2019[8]:

- An annual threshold of €10,000 (subject to certain conditions) on the intra-EU telecommunications, broadcasting and electronically (TBE) supplied services. Where this threshold is not breached, they remain subject to VAT in the member state where the supplier is located.
- Only one piece of evidence to identify the member state of the customer is required subject to a supply threshold of €100,000. (subject to certain conditions)
- A supplier using MOSS will only have to respect the invoicing rules of the member state in which they are established.
- The Moss non-union scheme is available for a business which is not established in the EU but is required to register for VAT.

In addition, there were a number of "Quick Fixes" introduced from 1 January 2020:[9]:

- Introduction of uniform "call-off stock" simplification rules across the EU
- Implementation of uniform rules for the VAT treatment of chain reactions to establish who the intra-Community supply should be attributed to
- Introduction of mandatory VAT registration number requirements to support the zero rating of intra-Community supplies of goods between business customers

[8] Readers are referred to Greg Lockhart of Matheson's 2019 Annual Conference paper which is available on TaxFind for further information.
[9] Readers are referred to Deirdre Hogan and James Fox of EY's article in issue 4 of *The Irish Tax Review* 2019 - "VAT "Quick Fixes", A short-term solution of a longer-term problem?"

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- Introduction of mandatory evidence requirements for the zero rating of intra-Community supplies of goods.

EU VAT e-commerce package commencing on 1 July 2021 for B2C (deferred from 1 January 2021 due to Covid-19 pandemic):

The main implications of this new package are as follows –

- The EU VAT distance selling thresholds are being abolished and companies with annual cross-border sales of goods of more than €10,000 will join a new scheme
- VAT on cross border sales of goods will now be accounted for through the OSS (One Stop Shop). In Ireland a company dealing across the EU will declare the VAT charged at the various EU rates to its cross-border customers and make the return via the Irish Revenue's OSS where the VAT will be allocated to each country
- VAT will become due on all imports into the EU, with the abolishment of the current €22 exemption threshold for low value items. There will also be a facility for importations into the EU not exceeding €150 which can be reported on a IOSS (Import One Stop Shop)
- The MOSS portal is being extended to all services where the supplier will owe VAT on a B2C service but is not established in that EU state

4. PRE-YEAR END TAX CONSIDERATIONS/COMPLIANCE REVIEW:

Prior to the next accounting period end a company may wish to give consideration to the some of the following:

a. Losses must be claimed within two years of their being incurred. Therefore, a company with a 31 December 2020 year end must ensure that all losses for the year 2018 are claimed by its current year end date. It may have held of making the claims originally in order to review subsequent years results. Consideration should also be given to interim loss claims for the year 2020 as noted in 1.11.5.
b. R&D must be claimed within 12 months of the expenditure being incurred. Therefore, a company must ensure that its expenditure to 31 December 2019 is claimed before 31 December 2020.
c. To obtain relief for charges and pension contributions they must actually be paid in the year. Any amounts accrued in the accounts will be added back and not allowed until they are actually paid. Therefore, to obtain reliefs these costs should be paid before the year end.
d. Interest on intercompany loans generally cannot be carried forward or back and therefore is lost if not utilised in the period. The company should ensure that it generates sufficient income in the period the interest in incurred to ensure that it can obtain full relief.
e. To obtain relief for accruals and provisions the company should ensure that they are in compliance with IFRS/FRS 102 accounting standards. For example, provisions for repairs should be committed to a signed contract/agreement to carry out the work.
f. All directors loan accounts in close companies should be reviewed regularly throughout the year (and at year end) to ensure that any relevant transactions are captured from a payroll perspective and to review for compliance with the 10% net assets company law requirements.
g. Directors fees approved and paid within 6 months of the year are accrued into the year-end accounts, included in the annual tax return of the director which falls within the company's year-end but is processed in the payroll in the month that it is declared. If the fee is approved and/or paid more than 6 months after the company year end, it is accrued in the accounts, included in the annual tax return of the director which falls within the company's year-end but is processed in the month of the company's year-end, by revising the previously filed payroll submission.
h. The timing of asset purchases should be reviewed. If the company bring forward their capital expenditure for the new year to just before the current year end a full year's wear and tear will be allowed, thereby shortening the assets capital allowances life span for claiming relief.

i. For close companies, the surcharges are payable with the following years corporation tax. The company may wish to review its results to decide whether it is efficient to pay a dividend to reduce its exposure to the surcharge. This may depend on the tax status of the shareholders during the proposed year of paying the dividends. See 1.11.5 for a possible extension to the payment date for dividends due to be paid in 2020.
j. The company has 1 year to declare and pay the tax and interest on any errors it discovers in its return under the self-correction mechanism. Penalties will be charged after this period.
k. If the company is in receipt of residential rents it should ensure that it is in compliance with the RTB regulations, to obtain the interest relief on qualifying loans and has filed and paid its LPT return, to avoid the imposition of a late filing surcharge when it files it CT1.

5. <u>REVENUE AUDITS</u>

The most recent update of the Revenue Audit Code of Practice was in July 2020.

Code of Practice for Revenue Auditors

The code sets out tax geared penalties expressed as a % of the extra tax due. It also sets out tables of penalties and the types of co-operation that would mitigate them.

A summary of the table is as follows:

Category of Tax Default	**Tax Geared Penalty**	**Net penalty after mitigation where there is:**		
	No co-operation	**Co-operation only**	**Co-operation and a Prompted Qualifying Disclosure**	**Co-operation and an Unprompted Qualifying Disclosure**
Deliberate Behaviour	100%	75%	50%	10%
Careless Behaviour with Significant Consequences	40%	30%	20%	5%
Careless Behaviour without Significant Consequences	20%	15%	10%	3%

The three categories of tax default are described as follows:

(i) Deliberate Behaviour

This is where the taxpayer intended to wilfully misrepresent the facts or had no regard for the fact that his actions might lead to serious omissions in his returns. Examples given in the guide include repeated omissions of transactions from the books and records, providing false documents or claiming tax refunds that the taxpayer is not entitled to. The tax geared penalty in these situations is 100%. Therefore, the tax not originally paid is due along with a penalty of the tax plus interest.

(ii) Careless Behaviour with Significant Consequences

This is indicated by lack of concern about figures contained in tax returns (but not deliberate omissions which are covered by deliberate behaviour). The main point here is that there is no intent to conceal items. Examples given in the guide include estimating items in the accounts (when actual figures should be available) and not taking tax advice on complex matters. The guide states that if the extra tax payable

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exceeds 15% of the total tax due under each tax head it is usually an indicator of careless behaviour with significant consequences, rather than careless behaviour without significant consequences. The penalty for careless behaviour with significant consequences is 40% of the unpaid tax.

(iii) Careless Behaviour without Significant Consequences

This heading concerns whether the taxpayer has shown reasonable care in computing the tax liability. The inspector will look at the internal controls of the company/ frequency of errors etc. to see whether a penalty should apply. Underpayments which exceed 15% of the tax liability for that heading would indicate careless behaviour with significant consequences and not careless behaviour without significant consequences. If the Inspector deems the penalty to be for careless behaviour without significant consequences the charge is 20% of the tax.

Adjustments which give rise to no penalty

Not all underpaid tax will give arise to a penalty and the guide sets out these areas:

1. A once-off uncharacteristic error by a previously compliant taxpayer. Statutory interest will arise.
2. Technical adjustment - treatment of a transaction for tax purposes which the Inspector does not agree with, but which nevertheless has been arrived at by the taxpayer after taking due care. The Inspector will take into account the complexity of the legislation, available guidance etc. Statutory interest will arise.
3. While not strictly arising from an audit a taxpayer is allowed to self-correct a return if errors are noticed. The taxpayer must notify the Revenue in writing, submit details of the mistake and pay the additional tax along with interest. The self-correction must take place within 12 months of the original filing date, or in the case of PAYE and VAT, must be corrected before that year's corporation tax return is filed. If the error is found by an Inspector during a subsequent audit no penalty will be imposed. For VAT errors of less than €6,000 no interest is charged, and Revenue need not be informed, the liability is added to the next return.

Mitigation of Penalties

There are three levels by which penalties can be mitigated:

1. Co-operation only – during the audit

To receive the penalty mitigation for co-operation the taxpayer must provide all books, records, linking documents etc. to the Inspector during the audit. He must respond promptly to all requests made and pay any additional liability as soon as it is quantified. The guides states that failing to disclose all information or delays in disclosing information will not be regarded as co-operation. Depending on the category of tax default the net penalty can be reduced to either 75%, 30% or 15% (as per the tax default table).

2. Co-operation and a Prompted Qualifying Disclosure – before commencement of the audit

When a notification for Revenue Audit is received by the taxpayer the option is available to make a "prompted qualifying disclosure". Within 14 days of receiving the audit notification the taxpayer must inform the Inspector that he intends to make a disclosure. He then has 60 days from the date of his notice to the Inspector to calculate the additional tax due together with statutory interest and the mitigated penalty (depending on the category of tax default).

Along with the payment he must make a statement that his disclosure includes all additional liabilities to tax covered by the audit tax head and period.

However, all undisclosed liabilities relating to deliberate behaviour must be disclosed whether covered by the audit notification or not, this relates to all tax heads and periods. This statement can have serious implications if the Inspector decides that it is incomplete and legal advice should be sought before any disclosure is made. Provided the disclosure is complete the Inspector will, in most circumstances not seek to initiate a prosecution nor will he seek to have the name of the taxpayer published under S1086 TCA 1997.

All prompted disclosures will be examined by the Inspector. As per the above Table, depending on the category of tax default the tax penalty can be mitigated to 50%, 20% or 10% of the underpaid tax.

All disclosures must be in writing and signed.

3. Co-operation and an Unprompted Qualifying Disclosure – before notification of an audit
This covers the area where the taxpayer himself decides to inform the Inspector of previous underpayments of tax. The same reliefs from prosecution and publication and conditions (apart from there being no 60-day time frame – as there is no audit notification) apply to unprompted disclosure as they do to prompted disclosure. The Inspector will only select a number of disclosures (unlike prompted – when they are all investigated). Depending on the category of tax default the level of penalty mitigation is 10%, 5% or 3%. It should be noted that the sectoral review letters noted above are not audit notifications and therefore the taxpayer can still available of this category in making his submission.

All disclosures must be in writing and signed

Prosecution Cases
The following are some of the offences which are likely to be prosecuted by the Revenue should any of them arise in a particular audit:

- Use of forged or falsified documents
- Systematic scheme to evade tax
- False claims for repayment
- Failure (as distinct from minor delays) in remitting fiduciary taxes
- Deliberate and serious omissions from tax returns
- Use of offshore bank accounts to evade tax
- Aiding and abetting the commission of a tax offence

If any of these tax offences are present when a forthcoming audit is being discussed by the company and its advisers, the adviser should put in place the following procedures:

1. Advise the individual that in their opinion, there exists a situation that could lead Revenue to initiate prosecution proceedings.
2. Request the company to seek legal advice and in particular the advice of a criminal lawyer with expertise in the preparation and defence of criminal cases.
3. If the company refuses to appoint a legal adviser, the adviser should resign, as to continue to act and advise the individual in an area, not of their expertise, could have material consequences for them.
4. Where legal advice is taken, the adviser can prepare relevant documentation for the legal expert for both the forthcoming audit and possible prosecution case.

The question of whether Revenue will initiate a prosecution will depend on a number of criteria, the chief of which being the strength of evidence available and the cost benefit analysis of undertaking the case (based on possible tax, interest and penalties recoverable, the ability to pay and the complexity and duration of the case). These factors should <u>not</u> be used though by the adviser in deciding to bring a case to a criminal lawyer.

The benefits which will accrue to the individual in making a qualifying disclosure are as follows:

1. No publication of the case will be made under S1086 TCA 1997. (This Section gives the Revenue Commissioners power to publish names of tax defaulters who have paid in excess of €35,000 (€33,000 for taxes to 31/12/2016) in underpaid tax, interest and penalties – usually in Iris Oifigúil every 3 months. Publication will not take place if the penalty imposed is not more than 15% of the underpaid tax).
2. Revenue, as is normal practice, will not seek a prosecution.
3. Revenue will note the amount unpaid in the publication but will only include amounts arising from non-qualifying disclosures or in cases were no disclosure was provided.

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