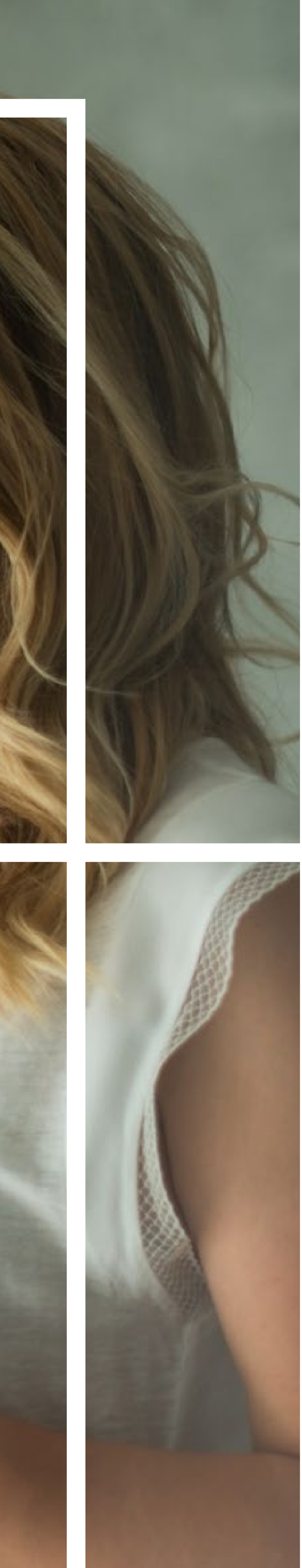
Championing Irish Entrepreneurs in Budget 2020

Pre-budget submission

pwc



Contents

1 Executive summary

Whilst the Irish tax system has been very successful in supporting the overall economy through the encouragement of Foreign Direct Investment, there are a number of areas where we feel the Irish tax code could be improved to better support Irish owned businesses.

With the challenges and uncertainty of Brexit looming over many Irish businesses and in a continually evolving international tax environment, it is important to Ireland's future that there is a vibrant and growing "home grown" Irish business environment. We believe that home grown Irish business could contribute much more. We are suggesting some amendments to our tax system to encourage this.

Through our consultations with members of the DCU National Centre for Family Business and the Family Business Network, we have identified a number of straightforward and inexpensive changes to the Irish tax system that would support Irish entrepreneurs in creating jobs, retaining key talent, raising investment and planning for important intergenerational issues such as succession.

We also recommend certain changes to the current tax appeals system to provide greater certainty for taxpayers and a lower cost environment in which to address smaller tax claims and appeals.

2 Successful succession and ownership transition

Amend the legislative anomaly which currently has a disproportionately negative impact on the value which can qualify for Retirement Relief on the transfer of shares.

Remove the arbitrary €3 million cap on value which can qualify for Retirement Relief on the transfer of shares for those aged 66 years of age and older.

Increase the threshold for capital gains which can qualify for the reduced 10% rate of CGT under Entrepreneur Relief.

Introduce a 'future use' test to ensure that any business assets (including cash) which are considered essential for the future success of the business are not excluded from Business Relief.

Similar to the equivalent UK relief, consider removing the 90% cap to provide full relief from CAT under Business Relief.

The owners of any family business continuously monitor the ownership and financing structures to maintain the success of the business. This becomes a particularly important exercise when it is time for the current owners to step back and retire from the business as there will often be a brand or heritage associated with the family which must be protected going forward.

One of the biggest drawbacks to a successful succession and ownership transition is the associated tax cost. Current tax policy encourages the transfer of family businesses to the next generation at an early stage by minimising tax costs through the use of specific reliefs such as Retirement Relief for Capital Gains Tax ("CGT") purposes and Business Relief for Capital Acquisitions Tax ("CAT") purposes. However, there are limitations and anomalies associated with these reliefs, which may lead to higher than expected tax costs. This could potentially put the business at risk in some cases and, at the very least, can also discourage in many cases business owners from making lifetime transfers.

Retirement Relief

Retirement Relief from CGT is designed to allow the transfer of family businesses to the next generation free from CGT. For unincorporated businesses, this is a straightforward process as the business assets can simply pass tax free, although investment assets may be subject to CGT if a gain arises on the transfer. However, where the business is being operated through a company, any investment assets (even those investments standing at a loss) can disproportionately impact the percentage share value that can qualify for Retirement Relief, which may discourage a business owner from making a lifetime transfer to the next generation.

The problem arises because of an anomaly within the legislation that calculates the value of shares in a family company that are considered 'qualifying assets' for the purposes of the relief (and which does not take into account key assets such as trading stock). This anomaly could be fixed by simply excluding investment assets from the relief similar to the process for establishing the value of shares that qualify as 'relevant business property' under Business Relief. This amendment would ensure that Retirement Relief operates as intended for shares in a family company and also that it is consistent with Business Relief.

For example, an unincorporated business worth €5 million could be passed on to the next generation with no CGT. In this instance, (i) the Current Assets are not subject to CGT, (ii) the Investment Assets are standing at a loss and therefore no CGT, and (iii) the Fixed Assets benefit from Retirement Relief in full.

	€'000
Fixed Assets	600
Current Assets	4,000
Investment Assets (cost €600k)	400
	5,000

However, if that business was being carried on as an incorporated company, €2 million of the value of the business would not benefit from Retirement Relief (even though the value of the Investment Assets is only €400,000) with a **potential tax cost of €660,000 (€2 million x 33% CGT).**

The reason for this is that Retirement Relief is limited to the proportion that the value of the chargeable business assets (€600,000 being Fixed Assets) bears to the value of all the chargeable assets (€1 million being Fixed Assets and Investment Assets). Therefore, 40% (€2 million) of the value of the shares does not benefit from Retirement Relief.

If the value of the Investments Assets was simply deducted in arriving at the value of the shares that can benefit from retirement relief, then €4.6 million of the value of the shares could benefit from Retirement Relief. This is still not on par with the relief for the unincorporated business but it would minimise the disproportionate impact of the current rules and would be consistent with the treatment of investments for Business Relief from CAT.

Alternatively, the proportion of share value that qualifies for the relief could be based on the proportion that the investment asset bears to all the company's business assets (i.e. not just the chargeable business assets but other business assets such as debtors, trading stock etc.).

The cap of €3 million

Furthermore, to encourage early transfers, a cap of €3 million was placed on the value of business assets which can benefit from Retirement Relief where the owner is 66 years of age or older. Our view is that this cap is arbitrary in nature and takes no account of the experience and suitability of the next generation in taking over the business.

Often it is not clear who the ultimate successor(s) will be by the time a parent turns 66 and this is undoubtedly a factor in pushing business owners towards prematurely transferring the business to the next generation simply for fear of losing out on some tax relief. This can result in poor decision making and cause long term damage to the viability of the business and we would suggest that the cap of €3 million is removed.

Entrepreneur Relief

In the UK, relief from CGT (Taper Relief) on disposal of business assets was available in the form of reduced CGT rates. Taper Relief was subsequently replaced with a form of Entrepreneur Relief ("ER") that is similar to the relief applying in Ireland. ER in Ireland essentially applies a 10% rate of CGT on the first €1 million of chargeable gains arising on disposal of chargeable business assets.

ER has little direct impact on the transfer of family businesses to the next generation primarily because of the interaction with Retirement Relief, which, when it applies in full, essentially eliminates any CGT for the business owner that is making the transfer. However, where Retirement Relief is not available in full, ER can minimise the tax cost of ownership transfers.

ER was initially introduced with a promise that it would be revisited with a view to increasing the threshold of €1 million of gains to which the reduced CGT rate applies. That has not yet happened and therefore it can be a factor in delaying decisions about whether to transfer ownership of the business.

Our view is that the threshold should be increased in accordance with the commitment given when ER was first introduced. ER in the UK applies a 10% rate of CGT on the first £10 million of chargeable gains. For many family businesses, an increase in the threshold above the current €1 million limit would mean that, even if Retirement Relief was not available in full, the effective rate of tax would be such that it would not be a deterrent to the ownership transfer.

Business Relief

Business Relief from CAT is similarly designed to minimise the tax cost arising from the transfer of the business (but in this case it is for the recipient). However there are aspects of this relief which can negatively impact on succession plans.

Percentage limitations

Even when Business Relief operates in full, it still only provides relief of 90% of the value of the assets. Depending on the value of the family business there may still be a significant CAT liability for the recipient on the remaining taxable value. That liability may have to be funded out of the resources of the business itself, that can place an unnecessary burden on the business.

In the UK, if a qualifying business forms part of a person's estate for Inheritance Tax ("IHT") purposes, the relief will cover 100% of the value of the business.

There is no UK equivalent of Irish Gift Tax and therefore, for lifetime transfers, there may be no IHT issue at all. Instead, if a person makes a gift to someone and the person making the gift survives for 7 years, IHT will not apply. If the person making the gift passes away within the 7 year period some IHT may be imposed, but, subject to some additional conditions, 100% business relief should still be available to protect against the IHT.

On that basis, we recommend that the Business Relief limit is increased to 100%. Alternatively, a mechanism to allow the company to pay all or part of the CAT arising on a gift / inheritance could be introduced (at present, funds extracted to pay a CAT liability or to pay any debt taken out to fund a CAT liability are subject to PAYE in full).

Cash reserves

Where a business has been operating successfully for a number of years, it is not unusual for a cash pool to have been built up in the company. Current tax policy is to regard any of the cash that is not immediately required for the purpose of the business as being an 'excepted asset' for Business Relief purposes and therefore excluded from the relief. This can have the impact of severely restricting the amount of Business Relief available on the transfer and gives rise to significant CAT liabilities which must be funded from after tax income. In a worst case scenario, where the cash has grown substantially, Revenue can even take the view that the business is not a qualifying business for Business Relief purposes.

Our view is that this approach is not always appropriate as it is simply based on a snapshot of a company's assets at a moment in time and takes no account of the circumstances in which the cash has arisen nor the purpose for which the cash is intended.

Where the cash has been earmarked for pre-existing contractual or planned expenditure, it should not be regarded as an 'excepted asset' for Business Relief purposes. For example, where funds have been set aside to fund a business expansion or a trade or business asset acquisition, relief should be available.

It is important to note that surplus cash is also regarded as an 'excepted asset' for IHT purposes in the UK. However, the equivalent UK legislation contains a specific provision that assets (including cash) that are required for the future needs of the business concerned should not be regarded as an 'excepted Asset'. The absence of such a provision in Irish tax legislation often results in an anomaly which unfairly restricts the amount of Business Relief available on the transfer of a family business. On that basis we recommend that an equivalent 'future use test' is introduced to address the issue and provide a clear legislative basis for allowing cash reserves which are required for future business commitments to be regarded as relevant business property.

3 Sale and other exit scenarios

Introduce a ‘bona fide’ test to recently introduced anti-avoidance legislation under Finance Act 2017 allowing the ability to carve out genuine commercial transactions, meaning that existing and well established paths to structuring business ownership transitions no longer impose income tax over CGT on a sale by business owners.

There are of course a whole host of external factors which could potentially play a key role in the decision making process for selling or exiting a business. However, we find that family business owners will often prefer to manage this process by way of a sale to the next generation or the existing management team. This will allow the current owners to enjoy the fruits of their labour by planning a future with a sensible retirement fund. It also has the effect of instilling a true sense of value of the business amongst the next generation with fair purchase price (and the management team if they are involved in the ownership transition process).

Financing

As with many transactions, it is important to source an appropriate form of finance to fund the acquisition of a business. Whilst there are a few options available in a buyout situation, including venture capital and private equity, the most suitable form of financing will likely come as bank debt as it allows the family and the management team to maintain full control of the business on the basis the bank will not seek to acquire an equity stake.

However, the commercial reality is that a bank will only provide the requisite debt financing to the extent that there is sufficient collateral put in place to protect their position. This will inevitably involve the use of retained earnings from within the business, particularly in a business which has been operating successfully for a number of years and has built up a cash pool.

A standard buyout structure typically involves the future owners incorporating a new company which will be used to acquire the shares of the existing business. This new company will also be used as the financing vehicle and therefore will draw down bank debt to fund the acquisition of the shares. That bank debt will then be repaid using the retained earnings of the newly acquired business as distributed up from the trading entities.

Finance Act 2017 introduced an anti-avoidance measure to prevent undistributed profits of a company from being extracted in the form of capital, and therefore subject to CGT (rather than income tax), by way of an ‘arrangement’ involving companies which are ‘close’ for tax purposes.

The problem with this new addition is that, unlike other anti-avoidance legislation, it does not contain a 'bona fide' test and therefore it prevents the ability to carve out genuine commercial transactions. In short, this now means that a well established path to structuring a business ownership transition, such as the one described above, is no longer a viable option from a tax perspective as it imposes an income tax charge on the business owners that are selling rather than CGT (meaning that the usual reliefs such as ER and Retirement Relief would no longer apply).

In percentage terms, this means that income tax rates of up to 55% apply to sales proceeds as opposed to 10% or 33% for capital gains. This differential in tax rates is discouraging family business owners in transferring the business to the next generation, and instead, may push them to consider other exit strategies not involving the family.

It is not uncommon for anti-avoidance legislation to include an exception clause for 'bona fide' commercial transactions. In fact, a 'bona fide' test is included in similar anti-avoidance sections in the legislation also designed to counter capital to income schemes. We therefore recommend that a 'bona fide' test is inserted to the anti-avoidance legislation brought in under Finance Act 2017 to ensure that commercial transactions such as the ownership transition structure described above can be implemented without imposing an income tax charge. Whilst we recognise that there is an element of subjectivity to a 'bona fide' test, it would allow family business owners to document their motives and rationale for a transaction which can then be produced and defended in the event of a future challenge from Revenue.

4 Job creation and retaining key talent

Introduce further guidance and “safe harbour” rules on tax valuations to provide clarity for employers with respect to the valuation of shares within the tax efficient KEEP share option plan. Where value parameters are breached, this should only partially reduce the tax efficiency of a KEEP option as opposed to disqualifying it fully.

Update the legislation to ensure participants of a KEEP share option plan can achieve a CGT outcome on the more common exit routes, being share purchases funded internally by the business.

Provide more clarity and flexibility for KEEP to be implemented in companies with more complicated group structures. For example, it should be possible to implement KEEP in those groups with multiple subsidiaries, employees working for more than one group company and those with less than a 100% interest in its subsidiary.

Given employers are becoming more accepting of flexible working arrangements, KEEP should be extended to part time employees.

Consider alternative methods to incentivising and retaining key management and employees such as the Employee Ownership Trust which has proved extremely popular in the UK.

Key Employee Engagement Programme

It is often appropriate to offer equity in a business to key management and employees. This can be a powerful tool in retaining key talent and aligning the interests of key employees with that of the business (e.g. in supporting growth strategies, expansion abroad etc).

There are many studies which show that companies with employee share ownership plans tend to have a stronger long term focus and enjoy improved performance. This can lead to the creation of more rewarding roles and jobs within the business and therefore the retention of key talent within a company. For many Irish Small and Medium Enterprises ("SMEs"), it is vitally important that they are able to offer equity as part of their package for key employees as it allows them to compete with the large multinational organisations who commonly use equity to attract and retain key staff.

The introduction of the Key Employee Engagement Programme ("KEEP") in Finance Act 2017 was a very welcome alternative to management and employee incentivisation for SMEs.

KEEP is a tax efficient share option plan which should provide participating individuals with a CGT outcome on a subsequent exit event or disposal of shares (with no additional taxes payable for either the company or the individual participant at grant or exercise). The sentiment of KEEP is in line with the equivalent and hugely successful Enterprise Management Incentive ("EMI") scheme in the UK.

However, for a variety of reasons, KEEP is not enjoying the same success in Ireland and, to date, only 38 employees have been granted KEEP options.

There are a number of aspects of the KEEP scheme which are responsible for the current low level of take up.

Income tax treatment on sale

The main advantage of the KEEP scheme is in offering CGT treatment to participants on exit. However, in reality, often the only available purchaser for shares in a privately owned company is the company itself. Under current Revenue practice, income tax rather than CGT applies to such scenarios. This contradictory position removes the benefit of the KEEP scheme for many privately owned companies and their employees.

We would recommend that the KEEP legislation is updated to provide for CGT treatment in such circumstances.

Practicalities around the valuation of shares

One of the conditions for options to be KEEP qualifying is that the exercise price must be set at a level which is no less than the market value of the shares under option at the point of grant. However, there is no facility or guidance to allow employers value the shares prior to awarding the options. This is of particular importance to companies which are experiencing high growth.

We therefore recommend Revenue introduces guidance or "safe harbour" rules on tax valuations with respect to employee share awards so as to provide employers with clarity in this regard, particularly to aid in the decision making process on whether KEEP is suitable for their company.

Shares are issued at undervalue to participants

Linked to the above, if options are issued to participants with an undervalued grant price, then these share options will not qualify for KEEP and will instead become 'unapproved' or non-tax advantaged options. In this case, an income tax charge may in certain circumstances be triggered for the employee through PAYE on grant with a further income tax charge arising on exercise.

A simple solution to this problem would be to allow a scheme to remain qualifying if options are granted at undervalue but to impose an income tax charge on sale on the difference between the market value of the shares at the date of grant and the exercise price set at the date of grant.

Limits on the amount of options which can be granted to a participant

Finance Act 2018 introduced some welcome changes such as increasing the value limit for KEEP options in issue from €250,000 to €300,000 and also increasing the value restriction on individual participants from 50% of their emoluments to 100%.

However, Finance Act 2018 also changed the issue period limit from 3 years to a 'lifetime limit'. There is no clarity around the 'lifetime limit' and whether this applies per individual or per employment, and if the former, how can this be tracked by employers. We recommend that Revenue releases some guidance on the point.

Holding company definition

The KEEP legislation was drafted only with the most simple of group structures in mind. Therefore there is a lack of clarity for more complicated groups, being groups with multiple subsidiaries, where employees work for more than one company within the group and where the holding company has an interest of less than 100% in the subsidiary. We therefore recommend that more clarity and flexibility is provided to cater for a variety of holding company structures, which should result in an increased take up by employers.

Full time employee

The KEEP scheme is currently only available to individuals who are considered to be full time employees throughout the relevant period, however, as employers are becoming more and more accepting of flexible working arrangements, we recommend that the legislation is extended to include part time employees.

The main focus for KEEP needs to be on keeping it as simple as possible so that it can be implemented in a very cost efficient manner for the SMEs. As mentioned above, the EMI scheme in the UK has been extremely successful since its introduction in 2000 and this gives the UK a competitive edge in this area in the absence of a similarly user-friendly and fit-for-purpose scheme in Ireland.

Employee Ownership Trusts

There is much evidence to support the advantages of employee share ownership which include employee loyalty, improved long term performance and creating a community of employee owners. On that basis, we believe that consideration should be given to looking at tax efficient ways in which businesses can be moved into employee ownership as an alternative solution for current owners (where a transfer to the next generation, an MBO or a third party sale may not be feasible).

The Employee Ownership Trust ("EOT") was introduced in the UK in Finance Act 2014 with the aim of promoting employee ownership as a business model in the UK. The EOT is an extension of a traditional Employee Benefit Trust, however, it has specific features and associated tax advantages. Assuming the EOT holds a controlling stake in its company and is for the benefit all employees on an equal basis (which are two key qualifying conditions), then the main tax exemptions are:

- A complete CGT exemption on gains made by individual shareholders when a controlling interest in a company (or parent company of a trading group) is sold to an EOT.
- An income tax exemption of £3,600 per individual per tax year on certain bonuses issued to all employees (National Insurance Contributions would still apply).

The CGT relief makes the EOT a particularly attractive route for business owners looking to sell their company. The alternative solution would be the sale of shares through conventional means which, as discussed previously, in the UK could result in a 10% CGT rate on the first £10 million of gains and 20% thereafter.

The income tax relief provides a substantial benefit for all employees as it not only provides an additional source of remuneration in addition to wages or salaries, but it also helps create a culture of ownership and collective responsibility for the company's performance.

This relief has proved hugely popular in the UK with around 250 companies availing of the relief so far with 61% of these companies generating sales turnover of between £1 million and £10 million.

Employee ownership is not a new concept and is not a UK-specific idea. In the US, Employee Share Ownership Plans, or ESOPs, are a significant part of the ownership landscape and in Spain, the Mondragon co-operative network operates some of the country's most successful and innovative companies.

From our preliminary discussions, we believe that a similar relief in Ireland would be welcomed by the private business community and in particular we believe that the EOTs may be relevant for businesses in rural Ireland where they are the cornerstone of their economies and communities. Offering a way to move business ownership in a phased way to a new ownership structure could help stabilise and strengthen the business for the future and help maintain employment.

5 Funding and investing in Irish business

Update EII legislation such that a Personal Holding Company does not disqualify potential investors from the relief.

Increase the limits available for relief under EII such that it can compete with the UK equivalent (EIS).

Revenue should reconsider their approach that ‘Put and call options’ can no longer be used to facilitate investor exits from EII companies.

Allow for CGT treatment on share buybacks and other internally funded buyouts.

Rectify the technical anomaly with SCI to allow parents obtain relief when investing in companies controlled by their children.

Implement an awareness campaign to highlight the tax benefits of SURE for aspiring entrepreneurs looking to finance their start-up companies.

Employment and Investment Incentive

Indecon International Economic Consultants released a report in September 2018 outlining a number of recommendations for the Employment and Investment Incentive (“EII”) and Start-Up Relief for Entrepreneurs (“SURE”) schemes (“the Indecon Evaluation”). A summary of these reliefs is set out in the Appendix to this booklet.

Finance Act 2018 introduced a number of these recommendations, one of which was the new Start-up Capital Incentive (“SCI”) relief. The purpose of SCI is to allow family members make qualifying investments into businesses in certain circumstances, which was a welcome addition given both family and friends are key sources of starter finance for companies during their infancy.

Another welcome change was the shift to a ‘self-certification’ process whereby a ‘Statement of Qualification’ from the investee company is now sufficient to support the amount on which tax relief may be claimed, under either EII, SURE or SCI. Our experience to date is that these changes have been positive and have reduced the backlog of approvals that had built up under the previous system.

Whilst the above changes were all well received, our view is that further changes should be introduced to encourage take up of these reliefs and also to maintain competitiveness with respect to the UK equivalents.

Further enhancements

Indecon Evaluation

We recommend that the following changes, which are broadly consistent with the findings of the Indecon Evaluation, are implemented.

- Relief at the marginal rate of tax, being 40%, should be granted in the year of investment, rather than the current system which is phased over a four year period.
- The annual investment limit of €150,000 should be increased to more attractive levels such that it is comparable with the UK equivalents.
- Investors should be allowed to claim CGT loss relief if the investment fails.

UK approach

It is important to note that the UK schemes (EIS and SEIS) are currently in many respects more attractive than the Irish equivalents and the expectation is that the UK will enhance these schemes post-Brexit. For example, EIS in the UK currently provides the individuals with relief on up to £1 million per annum as compared to €150,000 per annum in Ireland. Taking on board more of the recommendations in the Indecon Evaluation becomes even more compelling against that backdrop.

Personal holding companies

The EII legislation requires that the investee company cannot be under the control of another company, or control other companies (albeit this latter condition is relaxed in certain circumstances). However, many founders of EII companies wish to hold their investment through a personal holding company (“PHC”) for commercial reasons and are currently restricted from doing so under these rules. Our view is that there should be no difference if a founder holds their shares in the EII company either directly or indirectly through their PHC. We therefore recommend that this direct ownership requirement is reviewed.

Investor exit

Share buybacks

Share buybacks and other internally funded buyouts would generally be subject to income tax rather than CGT. Our view is that this ignores the commercial reality of many early stage businesses and therefore, the share purchase rules in these instances should be relaxed to achieve a CGT outcome on exits, particularly in the case when the investor (apart from his / her shareholding) is totally unconnected with the company and its founding / controlling shareholders.

Put and call option agreements

There are several designated EII investment funds in the market and their mandate is to invest in a wide spread of companies. It has been normal practice to date that 'put and call option' agreements were used to facilitate an exit for the EII investor after the minimum 4 year investment term had expired.

The legislation is clear that 'put and call option' agreements can be used to facilitate liquidity events provided the exit price is determined by the prevailing market value for the shares at that point in time. However, the most recent guidelines released by Revenue are now taking a more restrictive view on the use of options. This is likely to cause concern for 2018 designated EII funds that are looking to invest money over the course of 2019, and therefore, our view is that this change of approach by Revenue should be reconsidered.

Start-up Capital Incentive

A significant component of Finance Act 2018 was aimed at EII, SURE and SCI measures and therefore it is not surprising that some technical anomalies have been identified since its introduction.

The most significant technical anomaly relates to SCI, the net result of which means that a parent might not be able to make a qualifying investment into a company that his / her child controls. Given the basic premise of SCI, we do not believe that this was intended, and therefore, we recommend that this is amended accordingly.

Start-Up Relief for Entrepreneurs

The SURE incentive broadly benefits founders in circumstances where they leave PAYE employment to set up their own company. It provides them with tax relief for the amount invested in new shares against income earned in the year of the investment or any of the previous 6 years.

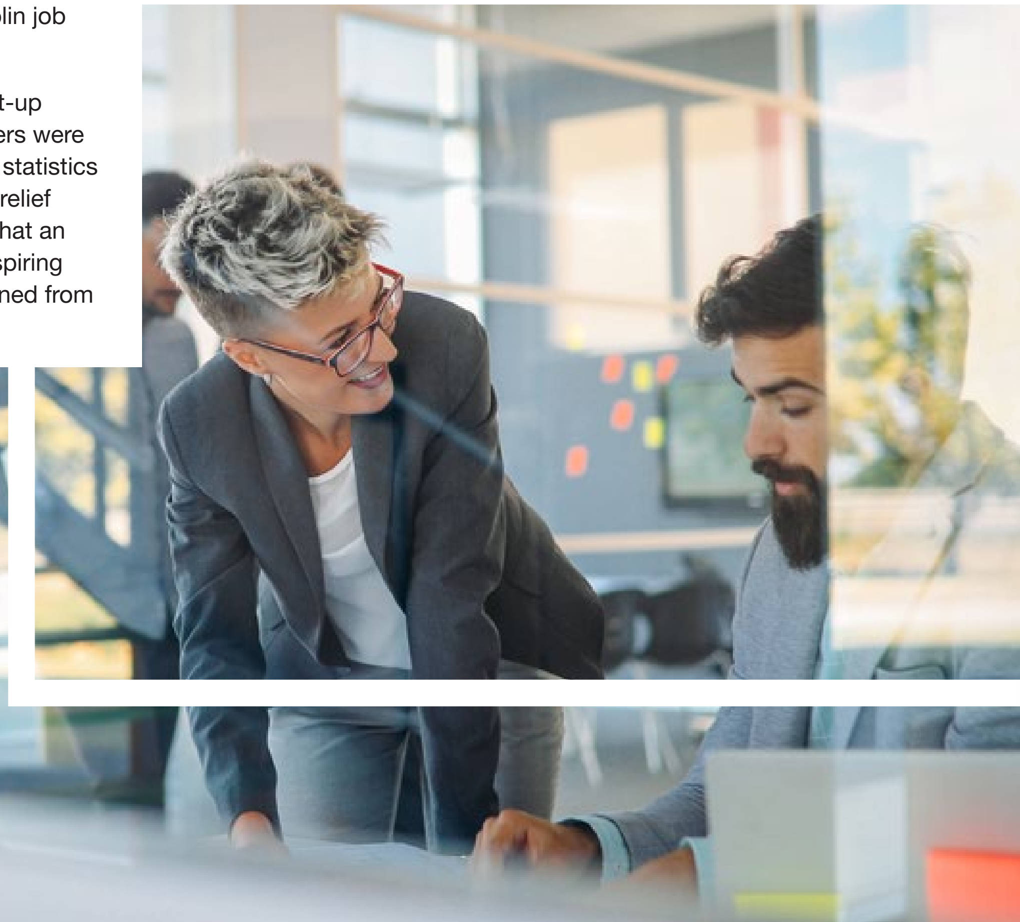
In the past, people often used redundancy payments to set up their new businesses. However, in the current “high cost” environment, individuals on good salary packages are considering moving home to the regions from our cities to set up new businesses. This is particularly prevalent in the technology and software engineering sectors which dominate the Dublin job markets.

Our experience from working with many start-up and scale-up companies is that many founders were unaware of the existence of SURE. Revenue statistics prove this by showing that only €6 million of relief was claimed in 2016. Therefore, our view is that an awareness campaign is required to inform aspiring entrepreneurs of the benefits that can be gained from SURE.

Employed vs Self Employed

In contrast with the above tax reliefs which encourage job creation and investments in corporates, the personal tax code currently imposes a 3% levy on incomes over €100,000 on self employed individuals as compared to their PAYE counterparts. It is hard to see any justification for this levy on a class of taxpayers who create employment and invest in our economy.

We therefore recommend that the 3% levy be abolished with immediate effect.



6 The Irish tax appeals system and business certainty

Introduce a ‘Small Claims’ division for tax appeals.

Reduce the current annualised interest rates of 10% to be more in line with market rates as set by the central banks.

Similar to the UK, introduce a Certificate of Tax Deposit scheme allowing taxpayers to pay the contested amount of tax upfront, which can be repaid by Revenue with interest if the taxpayer’s appeal is successful.

Introduce a ‘Tax Ombudsman’ or ‘Tax Advocate’ for aggrieved taxpayers to complain to if they feel unfairly treated by Revenue.

There is of course a strong need to enforce the Irish self assessment regime to ensure high levels of compliance from all taxpayers. However, it is also important that this regime is fair, equitable and works in tandem with an efficient appeals process to create certainty for taxpayers in any situation where they believe their tax assessment is not reflective of the actual facts and circumstances.

Currently, the process for aggrieved taxpayers is to submit their notice outlining their grounds for appeal to the Tax Appeals Commission (“TAC”). The TAC is an independent statutory body whose main task is to oversee appeals against the assessments and decisions of Revenue.

The independent function of the TAC is of course valued however, as highlighted in the TAC review released in August 2018, it has limited resources to deal with the volume of the appeals being received which is creating a backlog within the system and large delays.

This backlog, coupled with the fact that high rates of interest are charged in the appeals process (as compared to the UK), is creating an uncertain environment for the taxpayer. Often taxpayers are reluctant to submit an appeal for fear that they could have to pay disproportionately large interest costs should their appeal prove unsuccessful. The large delays in bringing and hearing appeals is further exacerbating this issue.

Furthermore, the high legal costs associated with an appeal (which are still payable even if a taxpayer wins an appeal) act as a deterrent to taxpayers bringing an appeal for smaller cases.

On that basis, we recommend that the below ‘quick fixes’ are introduced.

- Interest should not apply to appeals cases where it is clear that they are being subjected to a delay in the system.
- Similar to the UK, a Certificate of Tax Deposit scheme should be provided to the taxpayer. This allows the taxpayer to pay the contested amount of tax upfront to Revenue, but seek a return along with a market rate of interest if the TAC rules in favour of the taxpayer.
- The rate of interest should be reduced as it is currently too high equating to an annualised rate of up to 10%. In contrast, the UK currently imposes an annual interest rate of 3.25%.

Small Claims division

Looking further ahead, it is expected that Ireland's economy and population will continue to grow over the coming years. On that basis, the TAC will inevitably receive more and more appeals from taxpayers. As a result, our view is that there should be sufficient investment today in order to ensure that the appeals system is fit for purpose in the medium to long term.

We recommend that a 'Small Claims' division is created which specifically focuses on minor appeals, typically contested by individuals and family businesses. This should have the effect of increasing the efficiency of dealing with claims, particularly as the new division gains more experience in dealing with the more routine appeals. This is also consistent with how the law courts currently operate with the appropriate court for a particular case being determined by the size of the underlying claim.

Tax ombudsman

Separately, there are currently insufficient independent outlets for a taxpayer to complain if they feel unfairly treated by Revenue. Similar to the UK and US, our view is that there should be a 'Tax Ombudsman' or 'Tax Advocate' to protect taxpayers in this situation. Whilst we recognise that there would be a limited number of cases where the taxpayer may feel the need to utilise this service, we believe it is an important step to reinforce the perception of fairness amongst taxpayers.

Appendix 1

Employment and Investment Incentive (EII)	
Relief Rate (max)	30% in Year 1; 10% after 4 years.
Eligibility Test	Spend a minimum of 30% of the amount raised on a qualifying purpose.
Company Limit	€5 million p.a. subject to €15m lifetime cap
Investor Limit	€150,000 p.a.
Qualifying companies	Micro, Small and Medium sized enterprises and not carrying on excluded trades
Approval process	Self-certify
Minimum holding period	4 years
Capital Gains	Normal rules but losses are restricted
End date	31 December 2021

Start-up Relief for Entreprenuers (SURE)	
Relief Rate (max)	40%/41% (depending on year of claim).
Investor Profile	Broadly an individual who never owned a company before and who is moving out of an employment (PAYE) environment to set up a new company.
Investor Limit	Maximum €100,000 p.a. (can opt to claim tax relief over the previous 6 years).
Qualifying companies	Micro, Small and Medium sized enterprises and not carrying on excluded trades
Approval process	Self-certify
Minimum holding period	4 years
Capital Gains	Normal rules but losses are restricted
End date	31 December 2021

Start-up Capital Incentive (SCI)	
Relief Rate (max)	30% in Year 1; 10% after 4 years.
Eligibility Test	Spend a minimum of 30% of the amount raised on a qualifying purpose.
Company Limit	€500,000
Investor Limit	€150,000 p.a.
Qualifying companies	Must be a micro enterprise and not carrying on excluded trades
Approval process	Self-certify
Minimum holding period	4 years
Capital Gains	Normal rules but losses are restricted
End date	31 December 2021

Key contacts

This report has been informed and guided by views, perceptions and opinions of the members within the DCU National Centre for Family Business and the Family Business Network. PwC would like to thank all those who contributed to the research.

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