CORPORATION TAX

Tax Strategy Group – TSG 17/01

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Introduction

1. Companies resident in the State and non-resident companies which carry on a trade in the State through a branch or agency are liable to corporation tax. A company which is resident in Ireland for tax purposes is subject to corporation tax on its worldwide profits with a credit given for foreign tax paid. The rates of corporation tax are:
    - 12.5% – applicable to trading profits calculated under Schedule D, Case I and Case II;
    - 25% – applicable to profits from certain land dealings, mineral and petroleum activities and non-trading income such as investment income or rental income; and
    - 33% – applicable to companies' chargeable gains.

    An effective 6.25% rate may be applied to profits arising to certain intellectual property assets which qualify for the recently introduced Knowledge Development Box ('KDB').

2. Ireland's corporation tax regime is a core part of our economic policy mix and is a long-standing anchor of our offering on foreign direct investment ('FDI'). Our 12.5% rate, which applies to a broad base, is internationally competitive and is iconic from a policy point of view.

3. October 2015 saw a shift in the international tax landscape with the publication of the OECD Base Erosion and Profit Shifting project (BEPS) reports. The BEPS project gives countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. Ireland has been at the forefront in implementing the BEPS recommendations on country-by-country reporting as well as introducing the first OECD-compliant patent box, the KDB. Ireland has also been to the fore in progressing this work at EU level through the Anti-Tax Avoidance Directive and the Directives on Administrative Cooperation, and at OECD level through the Multilateral Instrument.

5. It is important that these initiatives support an environment of certainty for substantive business investment in Ireland. Research by the Economic and Social Research Institute points out that a competitive corporate tax rate is a significant factor in attracting FDI to Ireland especially from countries outside the EU. This research concludes that in addition to maintaining a competitive corporate tax rate, Ireland's attractiveness to FDI would benefit from policies aimed at maintaining cost competitiveness and enabling further Research and Development ('R&D') investment. Therefore, in the face of an ever evolving international tax landscape and recognising the importance of certainty, it is imperative that Ireland maintains its commitment to sustaining an attractive, stable corporate tax regime. This will allow us to compete legitimately and to continue to promote genuine substantive investment.

Recent Domestic Developments

Budget/Finance Bill Changes

Section 110 Companies

6. Section 22 of the Finance Act 2016 (an amendment of section 110 Taxes Consolidation Act 1997 ('TCA 1997')) was introduced to address concerns about the use of the section 110 regime by non-resident investors for the distressed debt that they had purchased from financial institutions.

7. Section 110 TCA 1997 was enacted to create a tax neutral regime for securitisation and structured finance purposes. However, during 2016, issues arose in relation to the use of the regime by international investors to reduce their Irish tax liabilities. The section 110 TCA 1997 regime primarily cannot be used to hold real assets and can only be used to hold qualifying assets (as defined) such as financial assets / debt.

8. In response to concerns that section 110 TCA 1997 was being used to erode the State's taxing rights on Irish property, Finance Act 2016 restricted the use of the section 110 regime to remove the ability of section 110 companies to use what are known as profit participating notes to extract Irish property or distressed debt profits out of the company in a way that ensured little or no Irish tax liability arises.

9. The amendment was designed in a targeted manner to ensure that certain persons who are already subject to Irish corporation tax can continue to avail of the existing regime. Bona-fide securitisation transactions including defined collateral loan obligation transactions, defined commercial, or residential, mortgaged back securities and defined loan origination businesses were also excluded from the amendment. This will ensure the appropriate use of the regime for the wider securitisation industry.

Property Related Funds

10. Finance Act 2016 also provided for the introduction of a tax regime for Irish Real Estate Funds ('IREFs'). The section was introduced to address the use of certain collective investment vehicles to invest in Irish property by non-resident investors. The IREF regime provides for taxation of investment undertakings, where 25% of the value of that undertaking is made up of Irish real estate assets.

11. The key features of the regime are:

- IREFs are investment undertakings (excluding UCITS) where 25% of the value of that undertaking is made up of Irish real estate assets. Where the main purpose of the fund is to invest in Irish property, this will also fall into the regime regardless of the amount of property held.
- Any rental income or development profits earned by the IREF will be included in the calculation of the IREF's profits.
- Capital gains will also be included in the calculation of profits unless the asset is held for five years or more. The five year time period was provided for to encourage longer-term investment in the market. Where the asset is held for five years or more but the investor has the ability to control or influence the selection of property in the fund, they will not qualify for the capital gains tax exemption.
- Where an IREF makes an actual distribution or on the redemption of units in the IREF, non-resident investors will be subject to a withholding tax of 20%.
- In line with provisions in the wider tax code, exemptions have been included where the payments/redemptions are made to a pension fund, another investment undertaking, life assurance fund and their EU equivalents. Charities, credit unions and the NTMA are also exempt.
- The new regime applies to accounting periods beginning on or after 01 January 2017.

12. Central Bank statistics for the first quarter of 2017, seen in Table 1 below, demonstrate that growth in the level of Irish real estate being held by Irish funds has slowed considerably. Nevertheless, it is still very early to draw definitive conclusions regarding the impact of changes in the Finance Act at this stage. The Department of Finance (‘the Department’) and Revenue will continue to monitor these trends.

Table 1 – Value of Irish Real Estate held by Irish Funds

	Value of Irish Real Estate Assets Held by Irish Funds	Quarterly Increase	Quarter-on-Quarter % increase
31/03/2014	€2,352m	n/a	n/a
30/06/2014	€2,931m	€579m	25%
30/09/2014	€4,051m	€1,120m	38%
31/12/2014	€4,846m	€795m	20%
31/03/2015	€5,683m	€837m	17%
30/06/2015	€6,818m	€1,135m	20%
30/09/2015	€7,660m	€842m	12%
31/12/2015	€8,480m	€820m	11%
31/03/2016	€9,248m	€768m	9%
30/06/2016	€10,530m	€1,282m	14%
30/09/2016	€11,851m	€1,322m	13%
31/12/2016	€13,294m	€1,442m	12%
31/03/2017	€13,693m	€399m	3%

Source: Central Bank of Ireland

Ireland’s Innovation Regime

13. Our corporation tax regime has always been at the forefront in relation to its innovation offering. Recognising that investment in knowledge based assets has become a significant driver of economic growth in OECD member countries, our regime includes a best in class Research and Development (R&D) tax credit and the KDB.

14. While the R&D tax credit and the KDB are aimed at supporting innovation, they are targeted at different stages of a company’s business model:

    - the R&D tax credit is intended to support firms at the time they are undertaking the actual R&D and reduces the net costs they have incurred as a result of undertaking this activity;
    - the KDB is aimed at the future income that is generated from the results of the R&D activity (namely the assets that are developed by the R&D).

R&D Tax Credit

15. The R&D tax credit was introduced in Finance Act 2004. Although there have been a number of significant changes to the regime over the past 12 years (primarily the introduction of repayable element in Finance Act (No. 2) 2008 and the removal of the base year in Finance Act 2014), the credit remains fundamentally the same. The central purpose of the R&D Tax Credit is to encourage companies to undertake high-value add R&D activity in Ireland, thereby supporting jobs and investment here. The principal benefit of the R&D Tax Credit is that it provides a tax credit at a 25%, entailing that for every €4 spent on qualifying R&D, a tax credit of €1 will be provided to the company. In 2015, a total of 1,534 companies availed of the tax credit and the total exchequer cost was €708 million.

Table 2 – R&D Tax Credit 2008 – 2015

	Cost	Number of Claims	Repayable Element	Total Corporation Tax	Repayable Element as a % of Cost	R&D Credit as a % of Corporation Tax Receipts
2008	€146m	582	n/a	€5,066m	n/a	3%
2009	€216m	900	€33m	€3,900m	15%	6%
2010	€224m	1,172	€65m	€3,924m	29%	6%
2011	€261m	1,409	€106m	€3,520m	41%	7%
2012	€282m	1,543	€136m	€4,216m	48%	7%
2013	€421m	1,576	€236m	€4,270m	56%	10%
2014	€553m	1,570	€326m	€4,614m	59%	12%
2015	€708m	1,534	€359m	€6,872m	51%	10%

Source: Revenue Commissioners

16. The 2013 Review of Ireland's R&D Tax Credit [1] concluded that the R&D Tax Credit plays an important role in encouraging firms to invest in R&D, and thus contributes to national and international policy goals; and that the Irish R&D Tax Credit is among the best in class internationally.

17. Along with Budget 2017, in October 2016, the Department published an Economic Evaluation of the R&D Tax Credit.[2] This is in line with the Department's intention to have a regular cycle of evaluation for large tax expenditures.[3] The 2016 evaluation found that 60% of the R&D undertaken by companies is due to the credit. This is considered to be a reasonable level of additionality and holds up well on a

[1] http://budget.gov.ie/Budgets/2014/Documents/Review%20of%20R&D%20Tax%20Credit%202013_web.pdf

[2] http://budget.gov.ie/Budgets/2017/Documents/Tax_Expenditures_Report%202016_final.pdf

[3] In line with Guidelines for Tax Expenditure Evaluation published by the Department in 2014, there is a commitment to regular evaluations of tax expenditures. For expenditures with a cost of greater than €50m, evaluations are to occur every three years under the guidelines. This ensures the continued relevance of tax expenditures with regards to achieving a policy objective. These evaluations can also asses the value for money of a given tax expenditure scheme.

comparative basis. Furthermore, the evaluation found that R&D expenditure among Irish firms has increased considerably since 2007.

18. The report also found that while average R&D expenditure increased for young firms between 2007 and 2014, older firms (16+ years) are responsible for the vast majority of growth in R&D expenditure over that period. Older firms are also responsible for the additional R&D performed that is specifically due to the tax credit. Due to the nature of the credit which is based on actual R&D carried out, it is not unexpected that more mature companies are carrying out more of the R&D growth that was evidenced. Additionally young firms may not operate on the same economies of scale, or may not be able to attract skilled workers to the same extent, and may have greater infrastructural concerns. Where non-financial barriers exist for young firms in performing R&D, it is unsurprising if a tax incentive is of limited use.

19. The repayable element of the credit, introduced in 2009, was a significant change which allowed firms to request a refund if their R&D claim was greater than their tax liability. The introduction of the repayable element of the R&D Tax Credit coincided with a substantial increase in the number of firms availing of the tax credit between 2008 and 2009. The evaluation found that the introduction of the repayable element of the tax credit has been more beneficial to older firms than younger firms. Nonetheless, new claimants now tend to be younger and smaller than prior to 2009 and significantly, the vast majority of new claims are by Irish firms, increasing from 84% in 2007 to 97% of new claims in 2014. However it does appear that the pool of firms who could potentially claim the tax credit has been largely exhausted, with 85% of claims in 2014 being made by firms which have previously availed of the credit (with the vast majority having claimed in 2013 as well).

20. Table 2 shows that in 2015 the repayable credit share of the 2015 cost was 51% (compared to 59% of the cost in 2014). Also, the cost of the R&D credit for 2015 as percentage of CT receipts is 12% compared to 10% in 2014. This demonstrates that the cost is rising at a commensurate level with the increase in receipts. However, it is important to recognise that while this is a generous tax credit, it is one of the few corporation tax credits that we have in Ireland, when compared with other jurisdictions. In this respect, we are mindful of the need to maintain a competitive corporation tax offering and the Department of Finance will continue to monitor changes made in competitor jurisdictions.

Knowledge Development Box

21. Finance Act 2015 introduced a patent-box, to be known as the Knowledge Development Box or KDB, for the first time to the Irish corporation tax regime. The KDB was introduced to enhance the competitiveness of the Irish offering for intangible assets and ensure Ireland becomes the location of choice for investment in IP.

22. Following the rules agreed by the OECD (which are known as the '*modified nexus'*), the KDB itself is designed in such a way that the 6.25% rate should only apply to profits that are the result of substantive R&D carried out in Ireland. The actual amount of profits that can avail of the relief will be determined by the proportion that the Irish company's R&D costs bear to the total R&D costs incurred to develop the qualifying assets. In essence, this means that if a company performs 50% of the R&D that developed an asset in Ireland, then 50% of the income arising to that asset will qualify for the 6.25% rate.

23. It is likely that, because of the operation of the formula set out by the '*modified nexus*', in the early years the KDB will be of most benefit to single companies who carry out their R&D activities solely in Ireland (or EU/EEA via a branch). From a domestic perspective, it is expected that the KDB will therefore support small innovative Irish businesses – including those who are seeking to expand their operations.

24. The OECD rules also allow the KDB to be made available for smaller companies (those with annual income from intellectual property that is less than €7.5million and annual global turnover of €50 million) in respect of assets that are patentable, but not yet patented. However, certain changes to IP legislation were required before we could introduce this aspect of the KDB. These changes have now been made by the Minister for Jobs, Enterprise and Innovation under the KDB (Certificate of Inventions) Act 2017, which became law on 19 May 2017.

25. From an FDI perspective, the KDB could encourage multi-national corporations to put additional substance in Ireland in order to be able to access the 6.25% rate. This could attract operations that have a high positive impact on the Irish economy.

26. The KDB is available to companies from 01 January 2016, therefore calculating an Exchequer cost for 2016 relies on the final Corporation Tax returns for 2016. The majority of these will be filed in September 2017. Consequently, the data for 2016 is not yet available.

Other features of the Irish Corporate Tax regime

Capital Allowances for Intangible Assets

27. The provision of capital allowances for intangible assets is provided for under Section 291A of the TCA 1997. Capital allowances are a well-established tax treatment for traditional physical assets, such as plant and machinery, recognising that on-going investment in these assets is a regular part of the business cycle and is necessary to generate profits. The global economy is evolving and business assets resulting from investment in 'knowledge based capital', such as intellectual property or 'IP', are becoming a significant driver of economic growth in OECD economies. Therefore, it is rational that capital allowances are available for investment in intangible assets such as patents, designs, brands, copyright, or other forms of IP. Ireland follows the international norm in this regard, with similar provisions available in the UK and USA.

28. At present, there is a general move towards the co-location of intangible assets and substantive activity in response to international tax initiatives like the OECD BEPS project. This could encourage companies to co-locate their IP and their substantive activities in Ireland. This could further embed existing substantive operations here and encourage further investment into Ireland.

Table 3 – Capital Allowances for Intangible Assets

	2014	2015	Variance	Variance %
Capital Allowances for Intangible Assets	€2,652m	€28,872m	€26,220m	989%

Source: Revenue Commissioners

29. Relief in the form of capital allowances under section 291A TCA 1997 is given for capital expenditure incurred by companies on the provision of specified intangible assets for the purposes of an Irish trade. Companies can avail of these capital allowances either by fixed write-down period of 15 years or the expenditure can be written off as the value of the intellectual property depreciates in line with accounting standards. Not to recognise the cost of the capital investment would result in an untrue exaggeration of the business's Irish profits.

31. Where it is not possible to utilise all the capital allowances available for an accounting period, the excess allowances may be carried forward and added to any allowances which are available for offset against trading income of the relevant trade for the next succeeding accounting period. Excess allowances may be carried forward to each succeeding accounting period until the allowances have been used up. The same rules apply in relation to the carry forward of any excess interest (in respect of borrowings used to fund expenditure on intangible assets).

32. Capital allowances for IP are ring-fenced for use only in respect of trading income which is generated by the acquired intangible assets. This ensures that the relief will only apply to income from managing, developing and exploiting the IP – i.e. income that would not arise if the investment did not occur.

33. In the case of a disposal of a specified intangible asset within the meaning of section 291A, a balancing charge will not arise if the event occurs more than five years after the beginning of the accounting period of the company in which the asset was first provided for the trade. The underlying intention of the claw-back period is to ensure that intangible assets remain in use in a business located in Ireland and are not relocated in a short period of time. If the capital allowances have been claimed for an intangible asset which is then disposed of or transferred less than five years after the beginning of the accounting period in which the asset was first provided for the trade, the relief given under section 291A TCA 1997 may be clawed back.

34. Table 3 shows that the claims for capital allowances for intangible assets have increased from €2.7 billion in 2014 to €28.9 billion in 2015. It is our understanding that this increase relates to the onshoring of IP. Given the 2015 GDP revision, some of which related to the onshoring of IP, it was not unexpected to see a significant increase in capital allowances relating to IP.

Loss Relief

35. The availability of relief for losses incurred in a business is a well-established feature of corporation tax regimes. It recognises the fact that a business cycle runs over several years, and that it would be unbalanced to tax profits in one year and not allow losses in another. Losses incurred in a trade are a fact of business life, and the provision of relief for such losses is a standard feature of our tax code and that of all other countries in the OECD. It would be difficult to justify taxing business profits without taking due account of business losses.

36. Under existing loss relief provisions in the Taxes Acts, any unrelieved trading losses of a company for an accounting period may be carried forward for offset against trading income of the same trade in future accounting periods. While trading losses carried forward may only be offset against future trading income of the same trade and not against any other profits, there is no time limit on the carry forward of such losses and any unused trading losses may be carried forward indefinitely until they are fully offset or the trade ceases.

37. According to data provided by the Revenue Commissioners, the value of trading losses carried forward fell by 3% in 2015.

Table 4 – Trading Losses by Sector

Sector	2014	2015	Variance	Variance %
Financial and Insurance Activities	€129,021m	€119,885m	-€9,136m	-7.1%
Administrative and Support Services Activities	€29,587m	€36,173m	€6,586m	22.3%
Information and Communication	€10,200m	€10,137m	-€63m	-0.6%
Construction	€10,828m	€8,881m	-€1,947m	-18.0%
Manufacturing	€9,254m	€8,266m	-€988m	-10.7%
Transportation and Storage	€8,040m	€7,917m	-€123m	-1.5%
Wholesale and Retail Trade, Repair of Vehicles	€7,597m	€7,124m	-€473m	-6.2%
All Other Sectors	€10,926m	€10,592m	-€334m	-3.1%
Total	**€215,453m**	**€208,975m**	**-€6,478m**	**-3.0%**

Source: Revenue Commissioners

38. While the Financial and Insurance activities sector has consistently had the highest losses of any sector in recent times, there has been a reduction in both overall losses in this sector and the share of losses concentrated in this sector. The value of losses carried forward by the financial and insurance activities sector into accounting periods ending in 2015 also €9 billion (-7%). While the losses in this sector are still substantial, this highlights that corporate taxes losses are being significantly utilised in this sector.

39. It is important to note that around €40 billion of losses brought forward (from the €209 billion for 2015) are claims by companies that are in liquidation or are otherwise unlikely to be in a position to ever use these losses. The bulk of such losses are recorded by companies in the financial sector.

40. Large decreases of €1.9 billion (-18 %) and €988 million (-11 %) are also seen in the construction and the manufacturing sectors respectively. The only substantial increase in trading losses carried forward is in the administrative & support service activities sector at €6.6 billion (+22 %). It is our understanding that this relates to the carry forward of capital allowances by the aviation leasing sector.

Tax Trends

41. The yield from corporation tax over the last five years has been rising steadily, see Table 5 below, with the yield for 2016 of €7,315m accounting for 15% of the overall tax yield.

Table 5 – Corporation Tax receipts 2012 to 2017

Receipts	2012	2013	2014	2015	2016	2017*
Corporation Tax	€4,216m	€4,270m	€4,614m	€6,872m	€7,315m	€7,715m

*Estimated Budget 2017 forecast

Source: Revenue Commissioners

42. Corporation tax receipts in 2015 were €6.87 billion. This represented an increase of €2.26 billion or 49% on the 2014 receipts. The performance in 2016 built on 2015. Receipts of €7.35 billion represented a year on year increase of €480 million or 7%. These confirmed that 2015 was not a one-off phenomenon.

43. In April 2017, the Revenue Commissioners published 'An Analysis of 2015 Corporation Tax Returns and 2016 Payments'[4], following on from the publication of a similar report in 2016 analysing the 2015 Corporation Tax payments. The analysis demonstrated that the largest contributing factor to the 2015 increase is a €46 billion increase in trading profits. Improved trading conditions and increases of productive capital stock have led to a higher level of profits beings taxes and thus a higher tax yield.

44. Other factors behind the increases included:

- Losses – over 7,900 companies carried forward losses in 2014 but not into 2015. This resulted in nearly €200 million in increased receipts.
- Gains – the value of gains on disposal of capital assets made by 170 companies is 57% higher than 2014 resulting in an increase of €110 million.
- New companies – €470 million in payments was received from roughly 16,000 companies that did not pay corporation tax in 2014.

[4] http://www.revenue.ie/en/corporate/documents/research/corporation-tax-returns-2016.pdf

45. As evidenced in Table 6 over €2 billion of the increase in corporation tax receipts in 2015 related to five key sectors: Manufacturing (€673 million), Wholesale/Retail (€284 million), Information and Communication (€452 million), Financial and Insurance (€554 million) and Professional, Scientific and Technical Activities (€108 million). In overall terms, this was to be expected because it reflects the structure of our economy in general and of the multi-national corporations in particular.

Table 6 – Trading Profits and Corporation Tax Paid by Sector 2014 and 2015

Sector	Profits 2014	Profits 2015	Variance	Var %	Tax 2014	Tax 2015	Variance	Var %
Manufacturing	€26,307m	€55,208m	€28,901m	110%	€1,149m	€1,821m	€672m	58%
Financial and Insurance Activities	€23,051m	€26,257m	€3,206m	14%	€1,041m	€1,594m	€553m	53%
Information and Communication	€16,650m	€18,448m	€1,798m	11%	€909m	€1,361m	€452m	50%
Wholesale and Retail Trade, Repair of Vehicles	€10,357m	€16,584m	€6,227m	60%	€850m	€1,134m	€284m	33%
Administrative and Support Services Activities	€9,073m	€12,984m	€3,911m	43%	€86m	€124m	€38m	44%
Professional, Scientific and Technical Activities	€2,526m	€4,120m	€1,594m	63%	€126m	€234m	€108m	86%
Transportation and Storage	€2,478m	€2,714m	€236m	10%	€88m	€172m	€84m	95%
Mining and Quarrying, Utilities	€1,727m	€1,657m	-€70m	-4%	€32m	€14m	-€18m	-56%
Construction	€1,043m	€1,253m	€210m	20%	€95m	€110m	€15m	16%
Other Activities and Sectors	€803m	€940m	€137m	17%	€103m	€117m	€14m	14%
Accommodation and Food Service Activities	€556m	€761m	€205m	37%	€42m	€55m	€13m	31%
Real Estate Activities	€405m	€393m	-€12m	-3%	€65m	€89m	€24m	37%
Agriculture, Forestry and Fishing	€345m	€369m	€24m	7%	€27m	€41m	€14m	52%
Public Admin and Defence	€53m	€32m	-€21m	-40%	€4m	€7m	€3m	75%
Total	**€95,374m**	**€141,720m**	**€46,346m**	**49%**	**€4,617m**	**€6,873m**	**€2,256m**	**49%**

Source: Revenue Commissioners

Table 7 – Corporation Tax Paid by Sector 2015 and 2016*

Sector	2015	2016	Variance	Variance %
Manufacturing	€1,821m	€1,876m	€55m	3%
Financial and Insurance Activities	€1,594m	€2,058m	€464m	29%
Information and Communication	€1,361m	€1,229m	-€132m	-10%
Wholesale and Retail Trade, Repair of Vehicles	€1,134m	€993m	-€141m	-12%
Administrative and Support Services Activities	€124m	€177m	€53m	43%
Professional, Scientific and Technical Activities	€234m	€323m	€89m	38%
Transportation and Storage	€172m	€244m	€72m	42%
Mining and Quarrying, Utilities	€14m	€41m	€27m	193%
Construction	€110m	€153m	€43m	39%
Other Activities and Sectors	€117m	€42m	-€75m	-64%
Accommodation and Food Service Activities	€55m	€84m	€29m	53%
Real Estate Activities	€89m	€90m	€1m	1%
Agriculture, Forestry and Fishing	€41m	€39m	-€2m	-5%
Public Administration and Defence	€7m	€4m	-€3m	-43%
Total	**€6,873m**	**€7,353m**	**€480m**	**7%**

*Sectoral trading figures for 2016 will not be available until Corporation Tax Returns are filed later this year.

Source: Revenue Commissioners

Reports/Reviews

46. In September 2016, the Government made a number of decisions relating to corporation tax including, commissioning a review of Ireland's corporation tax code by an independent expert, convening a multi-stakeholder event (which took place earlier this year) and appealing the Commission's State Aid ruling regarding Apple. In his Budget 2017 speech, Minister Noonan announced that Seamus Coffey had been appointed to carry out the review.

47. A previous review of corporation tax policy was carried out in 2014. Since that time there have been a number of developments in the international tax environment, in particular the OECD's initiative to combat BEPS and legislative proposals on tax from the European Union. Given these changes it was considered timely to carry out this review.

48. The terms of reference of the review address the following matters:

    - Further implementing Ireland's commitments under BEPS to tackle harmful tax competition and aggressive tax planning;
    - Ensuring that the corporation tax code does not provide preferential treatment to any taxpayer;
    - Achieving the highest international standards in tax transparency;
    - Delivering tax certainty for business and maintaining the competitiveness of our corporation tax offering;
    - Maintaining the 12.5% rate of corporation tax; and,
    - The role and sustainability of the corporation tax receipts.

49. The independent expert is to present his recommendations to the Minister for Finance and Public and Expenditure and Reform by the end of Q2 2017.

Recent International Developments

50. The last few years have seen significant developments globally on international corporate tax reform. Ireland has been an active participant in, and supporter of, this work through various international fora.

51. The OECD BEPS reports marked a key milestone in this progress. The BEPS reports were published in October 2015 and made a series of recommendations for international tax changes to combat aggressive tax planning. The actions which Ireland has taken, and continues to take, on foot of these reports are discussed below.

BEPS Multilateral Instrument

52. On 07 June 2016, the Minister for Finance signed the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS' on Ireland's behalf. This convention, which is commonly referred to as the 'BEPS Multilateral Instrument' was signed by 66 other countries, with more expected to sign in the coming months.

53. The Multilateral Instrument provides a mechanism for countries to transpose a range of BEPS recommendations into their existing bilateral tax treaties. Some recommendations are considered to be "minimum standards" which countries have committed to, while others are recommended best practices that countries can choose to adopt.

54. Ireland has 72 tax treaties in effect and the multilateral convention will enable Ireland to update the majority of these treaties to ensure they are BEPS complaint without the need for separate bilateral negotiations.

55. Full details of Ireland's proposed approach have been published on the Department of Finance website.

56. The Multilateral Instrument must be ratified by Ireland before it come into force. The approach Ireland propose to take to the various options in the Multilateral Instrument will become binding on Ireland on foot of the ratification of the Multilateral Instrument in Irish law. Ireland's tax treaties will be amended where both Ireland and the relevant treaty partner have fully ratified the convention in their domestic law.

57. It is intended that the first steps to ratify the Instrument would be taken as soon as possible with a view to completing the ratification process during 2018.

EU Anti-Tax Avoidance Directives

58. EU Member States have agreed a number of Directives that commit each country to implementing the OECD BEPS recommendations and some additional anti-avoidance measures. These Directives, the first and second Anti-Tax Avoidance Directives and the Directives on Administrative Cooperation, will now be implemented by Member States over the coming years.

59. In line with the position set out in the Programme for a Partnership Government, Ireland's approach to negotiating these Directive was to engage constructively with the proposals while critically analysing elements that may not have been in Ireland's long term interests. The compromises achieved are ambitious in combatting aggressive tax planning while respecting Member States sovereignty on tax rates.

60. The first of the measures agreed will need to be implemented in domestic law by 01 January 2019 with some measures having later implementation dates. The Department and the Revenue Commissioners are actively reviewing our domestic law to determine what action is needed to ensure that we fully implement the Directive in line with the agreed timelines.

Table 9 – OECD BEPS recommendations

Action	Aim of Action	Action Taken by Ireland
1	Address the tax challenges of the Digital economy	No options were recommended by the report which instead found that the digital economy cannot be separated from the overall economy. Ireland is actively engaged in work at the OECD Task Force on the Digital Economy which seeks to build on the original report.
2	Neutralise the effects of hybrid mismatch arrangements	Ireland has committed in the Anti-Tax-Avoidance Directive to introducing anti-hybrid rules in domestic law. These rules will be introduced by 1 January 2020.
3	Strengthen Controlled Foreign Corporation (CFC) rules	Ireland has committed in the Anti-Tax-Avoidance Directive to introducing Controlled Foreign Company rules in domestic law. These rules will be introduced by 1 January 2019.
4	Limit base erosion via interest deductions and other financial payments	While we believe our current rules relating to interest expenses are equally effective to the rules agreed in the Anti-Tax-Avoidance Directive, Ireland have committed to introducing the rules in the Directive by 1 January 2024.
5	Counter harmful tax practices more effectively, taking into account transparency and substance	Ireland meets the standard set in BEPS Action 5 on tax transparency and exchange of information. The Knowledge Development Box is fully in line with the Modified Nexus Approach agreed in BEPS Action 5. This has been confirmed by the OECD Forum on Harmful Tax Practices and the EU Code of Conduct on Business Taxation Group.
6	Prevent treaty abuse	Ireland has agreed to introduce a Principal Purposes Test, and other measures, into our tax treaties through the Multilateral Instrument (discussed above).
7	Prevent the artificial avoidance of Permanent Establishment (PE) status	Ireland has agreed to introduce new rules on Permanent Establishment into our tax treaties through the Multilateral Instrument.

8 to 10	Assure that transfer pricing outcomes are in line with value creation	The terms of reference of the Coffey Review include consideration what changes are needed to ensure that Ireland's transfer pricing rules meet the standards set in the OECD transfer pricing guidelines.
11	Establish methodologies to collect and analyse data on BEPS and the actions to address it	Data analysis – no specific recommendations included in this action. Ireland is actively engaged in the follow up work in this area at the OECD.
12	Require taxpayers to disclose their aggressive tax planning arrangements	Ireland has longstanding mandatory disclosure rules already in our legislation. The European Commission have published a proposal in June for common EU wide rules. Ireland supports such rules to the extent they are consistent with the BEPS Action 12 recommendations.
13	Country by Country Reporting	Finance Act 2015 introduced Country by Country Reporting in Irish law. The first reports will be filed with Revenue by the end of 2017, and exchanged with other countries in 2018.
14	Make dispute resolution mechanisms more effective	Ireland has agreed to introduce new rules on dispute resolution into our tax treaties through the Multilateral Instrument. This includes a commitment to mandatory binding arbitration of disputes. EU Member States have also agreed the Tax Disputes Resolution Mechanism Directive which will extend the availability of arbitration to a much wider range of tax disputes. The Directive will be implemented in Irish law by July 2019
15	Develop a multilateral instrument	Ireland has signed the Multilateral Instrument and will soon begin the process of ratifying the Instrument into Irish law.

Common Consolidated Corporate Tax Base - C(C)CTB

61. The European Commission re-launched its proposal on a Common Consolidated Corporate Tax Base sometime on 25 October 2016.

62. The proposal takes a twostep approach – first Member States will seek to agree a common tax base (a CCTB) and only if agreement can be reached on this, will discussions begin on agreeing the Consolidation of that tax base. The Commission's proposal is that the CCCTB would be mandatory for large companies with group turnover of more than €750 million. It would also be open to smaller companies to opt in to the CCTB and calculate their profits using the CCTB rules rather than the Member States domestic tax rules.

63. A common corporate tax base (CCTB) would consist of agreed rules for how a company calculates its taxable profits in each Member State. The Member State would then apply its own tax rate to those profits. The CCTB is by necessity a very complex proposal. Each Member State currently applies different rules in terms of what income is taxable, what deductions are allowed, what credits are given etc.

64. The discussions between Member States to date have focussed entirely on three "novel" aspects of the CCTB proposal that were not included in the 2011 Commission proposal. Member States have yet to reach any consensus on these, or any other, aspects of the proposal.

65. The Department and the Revenue Commissioners are carrying out an analysis of the CCTB to identify the extent to which it would change the existing Irish tax base. Our initial view is that the CCTB would narrow our tax base, and therefore result in less corporate tax revenue being paid in Ireland.

66. The third "C" in the proposal, Consolidation, relates to how profits are attributed to each country in the EU. A CCTB would give countries common rules for how to calculate profits but it would not impact on where the profits, and therefore taxing rights, are attributed. Currently, Member States use transfer pricing rules to determine how profits are attributable to each country. Transfer pricing looks at where the real value adding activities happen and attributes a proportionate share of the profits to those activities.

67. Consolidation would replace the transfer pricing approach with a formula for dividing profits among Member States. This formula would be based on where sales happen, where staff are located and where a company's assets are. Each corporate group's total EU taxable profits would be added together and divided among countries under

this formula. Each country would then tax the profits attributed to it at its own corporate tax rate. Consolidation would not impact a country's tax rate but would have a significant impact on how much tax would be paid in each Member State.

68. Under a consolidation regime, companies would file a single tax return for all their activities in the EU through one tax authority, rather than having to file a tax return in every country where they have a taxable presence.

69. In line with the commitment in the Programme for Government, Ireland is engaging constructively with this proposed reform while critically analysing the proposals and considering whether it is in Ireland's long term interests. Unanimity will be required before any proposal on CCTB or CCCTB is adopted.

Common EU list of non-cooperative tax jurisdictions

70. At EU level, work is ongoing to agree a common list of non-cooperative tax jurisdictions. EU Ministers have committed to agreeing the first version of this list by the end of 2017.

71. Member States have agreed the criteria to be used in assessing the tax regimes of third countries. These criteria focus on compliance with international standards on tax transparency and harmful tax practices and on a country's commitment to the OECD BEPS process. An additional criterion also requires that countries with a zero, or almost zero, tax rate should be subject to further scrutiny.

72. Work continues on the reviewing of third country regimes, and it is expected that the EU Code of Conduct Group will make a recommendation to Ministers by the end of the year.

73. Discussions are also underway in the Code of Conduct Group as to what 'defensive measures' Member States may apply against countries that are included on the list.

Transfer Pricing

74. Transfer pricing refers to the practice by which MNEs set intra-group pricing arrangements between associated business entities. The transfer pricing policies of MNEs have recently attracted a high level of international attention, due in part to the rapid rise of multinational trade, the opening of several developing economies and the increased impact of transfer pricing on corporate taxation.

75. The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Guidelines') are the internationally recognised standard for the application of transfer pricing. In general, Irish rules require that the principles in the OECD Guidelines, and specifically the version of the OECD Guidelines in place at 22 July 2010, must be followed when analysing whether a transaction between associated persons has been entered into at arm's length.

76. The output from the OECD BEPS work on Actions 8, 9 and 10 sets out revisions to the OECD Guidelines. In 2016, the OECD Council approved revised OECD Guidelines which incorporate the revisions from the BEPS work.

US Tax Developments

77. Tax reform remains high on the political agenda in the United States of America. This is potentially important for Ireland as the Irish economy and exchequer benefit significantly from investment by US multi-national corporations. US companies account for a high percentage of the annual corporation tax revenue collected in Ireland. US companies also make large payments of value added tax, excise duty and income tax – the latter is due to the large number of people directly employed in Ireland by US companies and indicates the substantial nature of US investment in this country.

78. The Trump Administration has outlined its key priorities for corporate tax reform. These priorities are:

    - A reduction in the US corporate tax rate to 15% from 35%
    - A one-off 'repatriation tax' on existing overseas profits of US multinationals. The proposed rate for this one-off tax was not announced.
    - A move from a worldwide tax system which taxes US companies on their global activities to a territorial system which would only tax US companies on their activities that take place in the US.
    - Eliminate tax breaks for 'special interests'. No details have been given for what tax breaks the administration has in mind to eliminate.

    The measures announced also include changes in how domestic US businesses and individuals are taxed. Of particular significance was the fact that President Trump did not endorse the Border Adjustment Tax proposal which was put forward by House Republicans. The Border Adjustment Tax would represent more radical reform by moving away from the OECD consensus that tax should be paid where value is added towards a system that requires tax to be paid where sales are made.

79. At this stage, we have yet to see the substantive detail of the measures proposed by the Trump Administration. Agreement between the House of Representatives, the U.S. Senate and President Trump will be needed before any changes can be introduced. It also remains to be seen whether any reduction in the US corporate tax rate would be permanent or temporary in nature.

80. At this stage, sufficient details have not been published to enable a comprehensive analysis of the potential impact of US tax reform proposals as a whole. The Department, and the Irish Embassy in the US, are closely tracking the debate in the US and we continue to engage with business and others to fully understand the potential impacts of any US reform. Consideration is being given as to how best to analyse the impact of any US tax reform proposals once the details of proposed changes become available.

81. If the changes proposed by the Trump Administration were enacted, it would be expected that there would be a change in the relative competitive position of the US in attracting future investment. However, Ireland will remain a highly competitive location to invest in and do business from. US business will also still want to locate substantial operations within the European Union to benefit from access to the EU Single Market

Brexit and UK Tax Developments

82. The UK has become increasingly competitive on corporate tax in recent years. This has included the lowering of its corporate tax rate which will be 17% by 2020. Brexit does not alter the UK's ability to amend its corporation tax rate further.

83. Depending on the terms of exit, the UK may or may not remain subject to State Aid rules (likely to be linked to whether they maintain access to the Single Market). Being outside of State Aid rules would increase the UK's flexibility to introduce targeted tax incentives. However, the UK are committed to the OECD BEPS process and are also members of the OECD's Forum on Harmful Tax Practices which prevents members from engaging in harmful tax competition. The UK remains committed to OECD tax reform and this will not be impacted by Brexit.

84. We are mindful that Brexit could potentially have an impact on a number of sectors of the economy, and any general negative economic impact is likely to see a reduction in corporation tax collected.

85. The confidence and supply agreement reached between the UK Conservative Party and Democratic Unionist Party expressly mentions the ongoing discussion towards devolving corporation tax powers to the Northern Irish Executive. The agreement notes that options in this regard will be developed for Autumn Budget 2017.

Gender and Equality Implications

86. There are no specific gender or equality implications with regard to these tax issues.

The Tax Strategy Group may wish to consider these issues.