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OF IRELAND

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A submission from the Law Society of Ireland for Budget 2026 focussed on enhancing Ireland's tax code

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The Law Society of Ireland represents more than 12,000 solicitors and is the voice of the profession on law and justice. We work to shape a fair and just legal system that serves the needs of all. We deliver world-class solicitor training and legal education. Through effective regulation, we ensure the highest professional standards - protecting the public interest and sustaining trust in the profession. We provide extensive services that support solicitors in all areas of practice. Our work enables solicitors to deliver trusted legal services for communities across Ireland.

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INTRODUCTION

The Law Society has drafted this technical submission on taxation as an accompanying document to our main Pre-Budget Submission for 2026. The insights and recommendations contained in this submission should assist the Government in pursuing reforms to Ireland's taxation regime in both Budget 2026 and beyond.

The Law Society possesses a unique and crucial insight into Ireland's taxation regime. Many law firms and solicitors advise clients on their Irish tax obligations and, in doing so, gain extensive insight into the operation of the tax system across all tax heads. We have a dedicated Taxation Committee composed of expert members who provide guidance to the wider profession and key stakeholders on various matters related to tax law.

Through this experience, we have identified key areas where the Irish tax system does not function as effectively as it should, or where it can be improved. These shortcomings can contribute to a perception of unfairness within the system and adversely impact on Ireland's economy.

A fair tax system builds public trust, which, in turn, plays a crucial role in encouraging voluntary tax compliance. Clarity in Ireland's tax regime provides certainty to individuals and businesses.

Accordingly, we firmly believe that the recommendations outlined in this technical submission are vital to safeguarding Ireland's economic stability and prosperity in both the short and long term, particularly amid ongoing geopolitical and resulting economic uncertainty.

(1) Rebalancing taxpayer rights and Revenue powers with respect to time limits for assessments

The Government should:

- Maintain the standard period to make enquiries and raise assessments at 4 years from the end of the accounting period in which a return was filed.
- Extend this period in the following cases:
  - **Fraud by taxpayer:** extension to **20 years**
  - **Neglect by taxpayer:** extension to **10 years**
  - **Where no return is filed:** extension to **10 years** from when the return was due
  - **GAAR:** extension to **10 years**
- Revise the exclusions to four year rule introduced in 2012, in particular subsections 959AC(2)(b) and (c) of the TCA.
- Introduce a right for the taxpayer entitling them to request a closure notice in the case of protracted enquiries (as in the UK).

(2) The Participation Exemption for Irish resident companies

The Government should:

- Entirely remove the geographical limitations for participating exemptions;
- Align the scope of the exemption with the Case III charging section; and
- Replace the blunt and overbroad provisions that are currently in force with a targeted anti-avoidance provision.

(3) The tax treatment of the provision of food and drink to employees and directors

The Government should amend sections 118 and 112B of the Taxes Consolidation Act 1997 to provide clarity on the tax treatment of the provision of food and drink to employees and directors.

1. Rebalancing taxpayer rights and Revenue powers with respect to time limits for assessments

Introduction

There is a general rule under section 959AA of the Taxes Consolidation Act (the TCA) that precludes Revenue from raising an assessment more than four years after the end of the year that a tax return was filed by the taxpayer. However, that general rule is subject to a number of exclusions, which have been increased and expanded incrementally over time.

In one recent High Court case, Revenue successfully argued that they were entitled to issue an assessment outside the four-year time limit in a case that did not involve fraud or neglect on the part of the taxpayer and that an inadvertent inaccuracy in the return was sufficient to disapply the time limit *(Revenue Commissioners v Tobin* [2024] IEHC 196). The case related to a version of the four-year time limit that has since been replaced with a version that is subject to even more exclusions.

The approach of Revenue and the decision of the High Court raise serious concerns about the effectiveness of safeguards for taxpayers in this area. **It appears from the decision that the exclusions have entirely overridden the general rule.**

The absence of a statutory time limit that taxpayers can rely on with any degree of certainty is problematic from a policy perspective. It also leaves the Irish rules out-of-step with the approaches taken by many other jurisdictions.

There is also an imbalance in terms of the reciprocal rights and time limits that apply to taxpayers' rights to reclaim overpaid tax.

Notwithstanding the above, we recognise the need for Revenue to have relevant powers to collect appropriate taxes. **We therefore suggest the following provisions are included in Finance Act 2025 to strike a fair balance between Revenue powers and the right of taxpayers to certainty in their affairs:**

- Standard period to make enquiries and raise assessments remains at 4 years from the end of the accounting period in which a return was filed.
- This period is extended in the following cases:
  - Fraud by taxpayer: extension to 20 years
  - Neglect by taxpayer: extension to 10 years
  - Where no return is filed: extension to 10 years from when the return was due
  - General Anti-avoidance Rule (GAAR): extension to 10 years
- Revision of exclusions to four-year rule introduced in 2012, in particular subsections 959AC(2)(b) and (c).
- Right for taxpayer to request a closure notice in the case of protracted enquiries (as in the UK).

Introduction

In the Law Society's Pre-Budget Submission in 2024, we recommended that a review should be carried out regarding the imbalance between Revenue powers and taxpayers' rights/protections. This remains our strong recommendation. However, the issue of time limits which was highlighted in that submission requires more immediate attention and we have suggested here the changes that we propose in Finance Bill 2025.

A tax regime which offers certainty and predictability is key to taxpayers' rights and to Ireland's reputation as an investment location. This is an aim pursued by the OECD Forum on Tax Administration[1] which describes tax certainty as "a fundamental goal that ensures stability and predictability in the global tax landscape".

While the OECD expresses this aim at an international level, the same reasoning applies in a domestic context and highlights the need for clear domestic legislation. Time limits, which promote certainty, are a key protection for taxpayers and an important counter-balance in the tax system.

It is unsatisfactory that there are currently no time limits on Revenue's powers to investigate or raise assessments where the four-year limitation does not apply. Furthermore, the four-year limitation has been nullified by case law to a degree which is harmful to tax certainty in Ireland.

Recent caselaw, particularly the judgment of Mulcahy J in the High Court in *Revenue Commissioners v Tobin*[2], has diluted the distinction between "full and true" disclosure of all material facts – which is the basis of the 4-year limitation period – and "fraud or neglect", which has no limitation period. Mulcahy J interpreted "full and true" disclosure as meaning "accurate and correct" disclosure of all material facts, without the taxpayer allowed any level of subjectivity in determining accuracy. This has the effect of imposing a very high bar on taxpayers' obligations to file tax returns as accuracy – objectively determined – is necessary to trigger the 4-year limitation period.

Furthermore, the judgment of Barr J in *McNamara v Revenue Commissioners*[3] indicates that a taxpayer remains responsible for "full and true" disclosure of all material facts even where a tax advisor is involved in the submission of the return.

The result of this caselaw is that a taxpayer can never be confident of having met the standard of "full and true" disclosure of all material facts since there may be, objectively, a lack of accuracy in the disclosure. This was recognised as being a possibly unintended consequence of the legislation by Mulcahy J in *Revenue Commissioners v Tobin* but, as a matter of statutory interpretation, this recognition did not displace his interpretation of the "full and true" standard of disclosure as meaning "accurate and correct".

The Law Society recommends that the four-year time limit be reinforced to clarify that the operation of a four-year limitation period can be displaced only in circumstances of fraud or neglect. In circumstances of fraud or neglect, the Law Society recommends the introduction of an appropriate fixed limitation period for enquiries and assessments.

1. Available at: https://www.oecd.org/en/topics/tax-certainty-and-policy-implementation.html
2. [2024] IEHC 196.
3. [2021] IEHC 485.

The current law

In general, Irish tax rules provide that once four years have passed after the end of the year that the tax return was filed by the taxpayer, Revenue is precluded from making enquiries or raising an assessment. However, this four-year rule is subject to broad exceptions which may render the rule inapplicable in many cases. Where the four-year rule is disapplied, there is no time limit i.e. an indefinite statute of limitations. This leaves the taxpayer without any certainty as to the period during which a tax return can be re-opened by Revenue.

The time limit rules were designed to provide Revenue a reasonable time to examine the return made by the taxpayer and to raise a different assessment if they considered that the taxpayer assessment was incorrect. The four-year time limit also was intended to give certainty to taxpayers on their tax treatment. Without the protection of a time limit, the taxpayer would have no way of knowing whether their self-assessment had been accepted by Revenue and could face a Revenue assessment ten, or twenty years later (with associated interest charge). A time limit also relieves taxpayers of the obligation to retain records indefinitely and reflects the fact that the longer after an event a question is raised, the more burdensome it is for the taxpayer to find the answer, or evidence to be produced. As such, the four-year rule strikes an important balance between certainty and safeguards for taxpayers and upholding the integrity of the tax system by affording Revenue sufficient time to tackle non-compliance robustly.

Raising an assessment

The general rule (section 959AA of the TCA) precludes Revenue from raising an assessment four years after the end of the year that the tax return was filed by the taxpayer, provided the taxpayer has made a full and true disclosure of all material facts necessary for making an assessment. That general rule is subject to a number of exclusions, for example, if Revenue has reasonable grounds for believing that the taxpayer has been fraudulent or negligent in completing the tax return, the time limit does not apply, and Revenue can issue an assessment at any time (section 959AD of the TCA). The time limit is similarly disapplied in cases where the taxpayer has entered into a tax avoidance transaction (section 811C(6) of the TCA).

The time limit can also be disapplied in cases where the taxpayer fails to deliver a return (section 959AC(2)(a) of the TCA); or in cases where a Revenue officer is not satisfied with the sufficiency of the return (section959AC(2)(b)). This latter exclusion is extremely broad in its potential application and leaves no room for the taxpayer to object when a Revenue officer is simply dissatisfied with a return.

Revenue enquiries

Section 959Z provides a general right for a Revenue officer to make enquiries. Subject to certain exceptions (as outlined above for the making of assessments), this right carries a four-year time limit linked to the chargeable period in which the return is delivered.

The difficulties

The exclusions to the time limits on Revenue enquiries and assessments have been extended on a piecemeal basis and have not been assessed as a whole against the four-year time limit and its purpose. The disjointed approach has resulted in a suite of exclusions that appear to defeat the fundamental rule. Many of the exclusions lack focus and as such grant wide powers to Revenue officers to disapply the four-year rule. The effectiveness of the four-year rule therefore depends substantially on benign operation of those powers by individual Revenue officers.

The recent High Court decisions in the cases of *The Revenue Commissioners v Tobin* and *O'Sullivan v The Revenue Commissioners*[4] have raised significant concerns among members.

It has become apparent that Revenue is very willing to issue assessments to taxpayers outside the four-year time limit. In *Tobin*, Revenue successfully argued that they were entitled to issue an assessment outside the four-year time limit in a case that did not involve fraud or negligence on the part of the taxpayer and that an inaccuracy in the return was sufficient to disapply the time limit. The approach of Revenue and the decision of the High Court raise serious concerns about the effectiveness of safeguards for taxpayers in this area. Perhaps more concerning is that the decision related to a previous version of the rules that was subject to fewer exceptions than the current version. The interpretation applied in *Tobin* combined with the additional exclusions that have since been added result in the exclusions entirely swamping the general rule.

The absence of a statutory time limit that taxpayers can rely on with any degree of certainty is problematic from a policy perspective and risks undermining the perceived fairness in the tax system. Taxpayers may face an assessment from Revenue many years after the relevant period with interest accumulating at a rate of 8% or 10% per annum. It also leaves the Irish rules out-of-step with the approaches taken by many other jurisdictions. The approach is unfair, overly blunt and inconsistent with other parts of the tax rules, notably the approach to penalties when tax is underpaid (which seek to distinguish between taxpayers that have tried but failed to comply and those that have not). It is also inconsistent with the general file retention rules which refer to a period of 6 years after the relevant transaction.

The time limits that apply to Revenue's ability to raise assessments for underpaid tax should also be compared to the provisions that apply to taxpayers' rights to reclaim overpaid tax. The taxpayer must make a claim for repayment of overpaid tax within four years of the end of the year to which the claim relates. Notably, this is one year less than the time limit that applies to Revenue's right to raise assessments on taxpayers (due to the earlier date from when the clock starts ticking for taxpayers).

The practical implications of the time limit rules include the following:

- **Lack of clarity and certainty**: for taxpayers and practitioners in the management of their affairs.
- **Difficulties in M&A transactions**: difficult for sellers to negotiate a "clean break" and while W&I insurance may be an option, it will generally only provide cover for 7 years post completion.
- **Defence:** difficulties in defending a tax position where documentation and relevant personnel may no longer be available.

1. [2024] IEHC 611

RECOMMENDATIONS FOR GOVERNMENT

The Government should:

- Maintain the standard period to make enquiries and raise assessments at 4 years from the end of the accounting period in which a return was filed.
- Extend this period in the following cases:
    - **Fraud by taxpayer:** extension to **20 years**
    - **Neglect by taxpayer:** extension to **10 years**
    - **Where no return is filed:** extension to **10 years** from when the return was due
    - **GAAR:** extension to **10 years**
- Revise the exclusion to the four-year rule introduced in 2012, in particular subsections 959AC(2)(b) and (c) of the TCA.
- Introduce a right for the taxpayer entitling them to request a closure notice in the case of protracted enquiries (as in the UK).

2. The Participation Exemption for Irish resident companies

Introduction

The Finance Act 2024 sought to simplify the taxation of distributions from non-Irish resident companies by applying an elective exemption system in place of a tax and credit system.

These are new provisions and reflect a welcome and fundamental change of policy (at least in Ireland). However, the final form of the legislation contains some provisions that operate to undermine the policy objective of exempting foreign distributions in a simple and clear manner. These provisions have no counterparts in other EU member states or large countries. We consider that, unfortunately, these over-engineered anti-avoidance provisions are mechanical (so apply where there is no avoidance) and exceed the areas of stated concern so have resulted in a system that is much less functional than comparable systems. Clients have commented that they would prefer to use non-Irish participation exemptions as they see no logical rationale to use the overly complex and somewhat illogical current Irish system.

We have set out below the changes that would, in our view, bring the Irish system into line with international norms while addressing legitimate concerns of Irish taxation policymakers.

In principle, distributions from non-Irish companies to Irish companies should not be taxed in Ireland. This is the logic applied in most EU Member States and major countries to justify their distribution participation exemptions. This is also the logic behind the Pillar Two distribution participation exemption which is far simpler and wider ranging than its Irish counterpart.

We suggest that broadly:

a) the geographical limitations should be done away with entirely;

b) the scope of the exemption should be aligned with the Case III charging section; and

c) a targeted anti-avoidance provision should replace the blunt and overbroad provisions that are currently in force.

The changes summarised above (and outlined in more detail below) are needed to achieve the policy objective of having a workable participation exemption more in line with international norms.

General Comments

The Finance Act 2024 sought to simplify the taxation of distributions from non-Irish resident companies by applying an elective exemption system in place of a tax and credit system. This was intended to change Ireland's outlier status among EU Member States and other major countries, almost all of which have a simple participation exemption for distributions. The Law Society welcomed this positive change.

These are new provisions and reflect a welcome and fundamental change of policy (at least in Ireland). However, the final form of the legislation contains some provisions that operate to undermine the policy objective of exempting foreign distributions in a simple and clear manner. These provisions have no counterparts in other EU member states or large countries. We consider that, unfortunately, these over-engineered anti-avoidance provisions are mechanical (so apply where there is no avoidance) and exceed the areas of stated concern so have resulted in a system that is much less functional than comparable systems. Clients have commented that they would prefer to use non-Irish participation exemptions as they see no logical rationale to use the overly complex and somewhat illogical Irish system.

We have set out below the changes that would, in our view, bring the Irish system into line with international norms while addressing legitimate concerns of Irish taxation policymakers.

It must be recalled that, from an economic perspective (as a capital importing country) and from a free movement of capital perspective, Ireland should not tax the movement of distributions through Ireland where the capital comes from outside Ireland and the ultimate recipients of the distributions are not Irish. In those cases, Ireland is simply being used as a capital aggregator for efficient onward capital deployment. Accordingly:

a) Non-Irish distributions received by an Irish resident company that is ultimately owned by Irish resident individuals will correctly be taxed when the profits are distributed to those Irish resident individuals.

b) Non-Irish distributions received by an Irish resident company that is not ultimately owned by Irish resident individuals should not be taxed in Ireland since the capital ultimately comes from outside Ireland and is invested outside Ireland (unless one of the many reallocation rules such as transfer pricing, CFC etc. applies, all of which operate independently of whether such profit is actually distributed or not to and from Ireland).

Thus, in principle, distributions from non-Irish companies to Irish companies should not be taxed in Ireland. This is the logic applied in most EU Member States and major countries to justify their distribution participation exemptions. This is also the logic behind the Pillar Two distribution participation exemption which is far simpler and wider ranging than its Irish counterpart.

The concern raised by Irish tax policymakers to justify much of the complex and "unique" rules in the Irish participation exemption is that Ireland will be used as a "route" for untaxed profits to be "funnelled" to offshore locations. If this is still a concern in the light of the Outbound Payments rules (which effectively impose dividend withholding tax on distributions to those countries), then a specific anti-avoidance provision could be used to address this. The current anti-avoidance regime is overbroad, unconnected with actual avoidance and undermines the correct policy objectives of a participation exemption.

Areas for change and rationale

(a) Geographic Scope

The restriction of the participation exemption to EU, EEA and double tax treaty jurisdictions is counterintuitive from a policy perspective due to the exclusion of several large trading jurisdictions. If capital is invested outside Ireland under a *bona fide* commercial arrangement, the return on that capital should not be subject to Irish corporate tax, regardless of whether it is taxable in the local jurisdiction. The justification for this is twofold:

As above, where the capital derives from an Irish resident individual, they will pay tax when it is distributed and, if it does not so derive, then merely passing through Ireland should not result in taxation (other than under CFC, transfer pricing rules etc.).

The tax usurps the sovereign taxing rights in the countries from which the capital originates and in which it is invested.

Accordingly, a well-structured participation exemption should not have any condition on residence of the paying jurisdiction or, at least, should have a residence qualifier that is as broad as possible (i.e. excluding only jurisdictions included on the EU list of non-cooperative tax jurisdictions). This is the approach in many EU Member States and large economies. At minimum, the participation exemption should be extended to all companies that are resident in jurisdictions that have implemented Pillar 2.

(b) Distribution from Profits/ Reserves Discrepancy

There is a disconnect between Case III (income) and the concept of distribution "out of [P&L] profit". The charge to tax under Case III is on income from foreign possessions (whether by way of distributions paid out of profits or not). The 'income' concept does not look through the paying company but at the shareholding only. As a result, the charging section and the exemption are fundamentally misaligned. All Case III income that is received from a "participation" should accordingly be exempt so that the charging and the exempting sections align structurally.

Although Irish limited companies are restricted as a company law matter to paying distributions out of "distributable reserves" (a subset of P&L profits in most cases but including the outcome of a capital reduction), that is not the case in other jurisdictions. In many cases, distributions can be made out of a multitude of reserves some of which fall and some of which do not fall within the definition of 'profits' in section 21B of the TCA; yet all can be income for Case III purposes.

The imposition of two separate sets of conditions (for distributions "out of P&L profits" and for those that are not) for applying an exemption from tax on distributions from exempt participation is an example of over-regulation where a targeted anti-avoidance measure would have been sufficient.

(c) Distribution from "Relevant Subsidiary"

The five-year waiting period in subsection (b) of the definition of 'relevant subsidiary' is excessive and should be eliminated as any avoidance is addressed by existing anti-avoidance and the new Outbound Payments rules. If there remains concern (and provided appropriate justification for that concern can be provided) a targeted anti-avoidance provision could be added to address the concern with untaxed profit being moved through Ireland.

Confirming that the condition in subsection (b) of the definition of 'relevant subsidiary' is satisfied requires a disproportionate level of diligence. For example, if the subsidiary that pays the distribution (ACo) acquired assets during the reference period from an unconnected third party, XCo, even if XCo was resident in a relevant territory, that would not allow the parent company to confirm that the assets have not been used in a business carried on by a company that was not resident in a relevant territory. If it cannot be removed, then it should be limited to cases of avoidance.

If an Irish company has a subsidiary in France which itself has a subsidiary in Germany and both subsidiaries merge giving rise to a merger reserve for the French subsidiary which is reflected on its balance sheet but not in its income statement/P&L, the merger reserve could reflect a number of items, including retained earnings. A distribution out of that reserve, would be treated as income for the Irish parent. However, as it was not paid by the surviving entity out of profits within the meaning of section 21B of the TCA, it would not be eligible for the participation exemption, so the trading test comes into play under Section 626B (so more complexity).

We understand Revenue take the view that in some cases shares could be considered business assets. It is unclear when this is the case so there is much uncertainty. So, for example, if a Cayman company sells shares (that are business assets) in a French company to an existing French subsidiary of an Irish Holding company, the exemption does not apply to distributions from the French subsidiary for 5 years. Since the distribution is "out of [P&L] profits", the alternative Section 626B exemption (Section 831B(5)(b)) is not available. All profits were taxed in France at all times. There is no logical basis for this and does not achieve the objective of preventing untaxed profits being routed through Ireland. It merely adds unnecessary complexity and compliance cost.

The requirement in subsection (a)(i) that the subsidiary be resident in a relevant territory on the date it makes the distribution and throughout the relevant period is interpreted by Revenue as a requirement that the jurisdiction the subsidiary is resident be a treaty partner jurisdiction (or an EU/EEA jurisdiction) throughout the relevant period. The language of the provision would appear to allow a different interpretation. If the interpretation adopted by Revenue reflects the policy intention, that approach seems to run counter to Ireland's tax treaty policy. There are a number of jurisdictions that Ireland is working hard to secure a double tax treaty with. It is hard to understand why the participation exemption would not be available in respect of distributions paid by Brazilian subsidiaries in the five years after Ireland signed a double tax treaty with Brazil (in the event such a possibility arose). It seems likely that the approach would give rise to EU law issues on the accession on new Member States. We strongly recommend that the approach is reconsidered to take account of the broader context.

Recommendations for Government

The participation exemption in its current form contains unnecessary and disproportionate anti-avoidance provisions that not only apply where there is no avoidance but mean that the system is counterintuitive and outside international norms for a participation exemption system. This is needed to achieve the policy objective of having a workable participation exemption in line with international norms.

THE GOVERNMENT SHOULD:

- Entirely remove the geographical limitations;
- Align the scope of the exemption with the Case III charging section; and
- Replace the blunt and overbroad provisions that are currently in force with a targeted anti-avoidance provision.

3. The tax treatment of the provision of food and drink to employees and directors

Introduction

The current tax treatment treatment of the provision of food and drink to employees and directors is not appropriate for modern working practices.

We propose that section 118 of the Taxes Consolidation Act 1997 (TCA) as amended (TCA) should be revised to clarify that expenses incurred in connection with the provision of food and drink to employees and directors in their role as such shall not be regarded as a taxable benefit for the purposes of section 118(1). In a modern working environment, where employers have different departments, groups and teams spread across multiple locations, it is generally not feasible or effective for events to be "available to all employees" of the business at the same time (as currently required in order for certain concessions to apply).

In a hybrid working environment it is often necessary to meet on an individual basis or in smaller groups in different locations. This is an important part of the fabric of the modern working environment where employees are routinely obliged to meet with managers and teams to discuss business matters and should not be viewed as a benefit.

We are of the view that the existing treatment should be clarified and legislated for. Clearly, some guardrails will be required in relation to such a measure (e.g. the expenses incurred should be reasonable).

In addition, the Law Society is of the view that section 112B TCA should be amended to provide that (for the avoidance of any doubt), the expenses incurred in or in connection with the provision of food and drink to employees and directors in a restaurant, bar or other hospitality setting shall not be regarded as a tangible benefit for the purposes of this section. This change is proposed in order to avoid burdensome (and is some cases entirely unworkable) reporting requirements.

Current Approach and Suggested Changes

The Law Society is concerned about the approach of Irish Revenue in relation to the tax treatment of the provision of food and drink to employees and directors.

There are two points in this regard, firstly a broader policy point (Section 118 TCA) and secondly a narrower issue (Section 112B TCA).

Section 118 TCA

Section 118 TCA, *Benefits in kind: general charging provision*, provides, in subsection 4, for an exemption for expenses incurred in connection with the provision of meals in any canteen in which meals are provided for the staff generally.

Revenue, in its published guidance on Food and entertainment makes it clear that the exemption in section 118 TCA does not include external third-party restaurants, cafés or similar establishments.

"You may provide free or subsidised meals in staff canteens for all employees. If this facility is made available to all employees, these meals are not a taxable benefit in kind (BIK). Meals must be provided in a staff canteen. This does not include external third-party restaurants, cafés or similar establishments."

Revenue, in the same published guidance, allows the following concessional treatment for *"Seasonal parties and other inclusive events"*:

"You may decide to provide seasonal parties, special occasion meals or other inclusive events such as sports days, for your employees. The cost of these events are not taxable BIKs, provided the expenses are reasonable and the events are available to all employees."

The Law Society is of the view that from a policy perspective, section 118 TCA should be amended to clarify that expenses incurred in connection with the provision of food and drink to employees and directors in their role as such shall not be regarded as a taxable benefit for the purposes of section 118(1).

Just to give two discrete examples:

- Firstly, in a modern working environment, where employers have different departments, groups, teams, and can be spread across multiple locations, it is generally not feasible or effective for events to be "available to all employees" of the business at the same time. Indeed, it is often more appropriate and effective for different departments, groups and teams to have inclusive events that are available to all employees in these sub-groups.
- Secondly, in a hybrid working environment and indeed in an environment where employees are working in different locations, it is often necessary to meet on an individual basis or smaller groups, and this is an important part of the fabric of the modern working environment. These are occasions when employees are obliged to meet with their manager, etc, to discuss business matters and should not in any way be viewed as a benefit. It would be useful to clarify this position.

In short, we are of the view that the existing concessional treatment in this regard should be clarified and legislated for.

We are of the view that there are good policy reasons from an Ireland, Inc. perspective as to why this should be the case and this would support the hospitality industry in Ireland. Clearly, there are guardrails that will be required in relation to such a measure, to include that the expenses incurred should be reasonable, and representatives of the Law Society would be happy to discuss our thoughts in this regard.

Finally, for the avoidance of doubt, the Law Society does not propose that the tax treatment of the provision of "meal vouchers" would change - we envisage that these would continue to be taxable as a benefit in kind.

Section 112B TCA

Section 112B TCA, *Granting of vouchers*, provides for what is commonly known as the "small benefit exemption". As regards "benefits" to which the section applies, benefit "means a tangible asset other than cash". Practitioners have long been of the view that the provision of food and drink to employees and directors in a hospitality setting should not be regarded as a "tangible asset" for the purposes of the section, and that there are various arguments to support this position. Therefore, section 112B TCA should not apply in this regard.

However, Revenue, in TDM 05-01-01e (in relation to the small benefit exemption) provide in example 7:

"for Christmas 2025, as a reward for their efforts, Joe and four colleagues are brought out for a celebratory meal by members of the senior management team. The cost per head for the meal including drinks is €150."

Revenue deem this to be a benefit for the purposes of the small benefit exemption. This position has material adverse consequences for employers and employees, and, indeed, for the attractiveness of Ireland business economy.

The Law Society is of the view that from a policy perspective, the Department of Finance should amend section 112B to provide that for the avoidance of any doubt, the expenses incurred in or in connection with the provision of food and drink to employees and directors in a restaurant, bar or other hospitality setting shall not be regarded as a tangible benefit for the purposes of section 112B TCA.

From an employer's perspective, if food and drink provided to employees in a hospitality setting is regarded as a "benefit" within the meaning of s112B TCA, then it needs to be reported under the enhanced reporting requirements ("ERR") "on or before" the "benefit" is provided to the employee. This reporting timeframe is virtually impossible for an employer to meet, particularly for events taking place after work hours. It would also mean that such a "benefit" would count towards an employee's five tax free annual benefits, so an employer would need to maintain a list of what employees attended such hospitality events each year. This is yet another imposition of compliance cost and complexity for employers, with unclear benefits.

THE GOVERNMENT SHOULD:

- Amend the Taxes Consolidation Act 1997sections 118 and 112B of the TCA to provide clarity on the tax treatment of the provision of food and drink to employees and directors.

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