Updated summary of Covid-19 tax measures and Irish Revenue guidance

In March 2020, in response to the impact caused by Covid-19, Irish Revenue introduced a range of concessions and supports in order to deal with the unprecedented situation facing taxpayers. This also included the publication of a number of welcome guidelines and confirmations in an attempt to mitigate any detrimental effects caused as a result of the pandemic. A number of these measures were subsequently expanded and augmented throughout the year.

Irish Revenue have recently advised that some of the concessionary measures introduced during the course of 2020 will be retained, whereas others will cease to apply with effect from 1 January 2021. However, Irish Revenue will continue to regularly review all Covid-19 related matters. Certain other supports are expected to be available until at least April 2021, but may be further extended in due course.

Set out below is a high-level overview of the relevant measures announced to date which continue to apply from 1 January 2021.

Tax highlights	
International and domestic corporates	**<u>Corporate tax residency status</u>** Irish Revenue have confirmed that presence by individuals in certain capacities (including as directors) either in or outside Ireland which is only due to Covid-19 restrictions will be disregarded for Irish corporate tax purposes. In these circumstances, the individual and company should maintain a record of the facts and circumstances of the bona fide presence in or outside Ireland (as the case may be). Please see our separate article in relation to corporate tax residency considerations relating to Covid-19 <u>here</u>. **<u>Corporation tax returns</u>** Irish Revenue have suspended the application of surcharges for the late filing of corporation tax returns (Form CT1) for accounting periods ending June 2019 onwards. Where a Form CT1 is filed late, such late filing is the result of Covid-19 circumstances and the filing is not deemed to be filed late in specific circumstances, certain tax reliefs available to the company will not be restricted. **<u>Close company surcharge</u>** A surcharge may arise in respect of income of close companies that is not distributed within 18 months from the end of the accounting period in which the income arose. Irish Revenue have confirmed that where a distribution is not made within the required timeframe in response to Covid-19 circumstances affecting the company, on application, Irish Revenue may extend the 18-month period for distributions by a further nine months. This reflects the fact that companies may need to retain cash in order to support their businesses. This concession applies for accounting periods ending from 30 September 2018 onwards. A contemporaneous record should be kept by the company of the circumstances in which the application to delay making a distribution was made.

Tax highlights	
Business support, debt management and general compliance	**<u>Covid Restrictions Support Scheme (CRSS)</u>** The CRSS was introduced to support businesses significantly affected by restrictions introduced to combat the Covid-19 pandemic. The scheme is expected to run until 31 March 2021. The key features of the CRSS are as follows: - The CRSS is available to companies, sole traders or self-employed individuals and partnerships operating a business which is carrying on a trade. The business must have tax clearance from Irish Revenue. - The business must have been required to prohibit or considerably restrict customers from accessing their business premises. Generally speaking, this means that Covid-19 restrictions at Level 3, 4 or 5 must apply, although certain businesses may be eligible for the support where lower restrictions are in operation. - In addition, VAT-exclusive turnover for the claim period must be no more than 25% of the average weekly turnover in 2019 (or average weekly turnover in 2020 in the case of new businesses) where the business has been required to temporarily shut it premises or operate at significantly reduced levels in order for the business to qualify for the CRSS. - Additional conditions to avail of the scheme include the requirement for the taxpayer to continue to submitting timely tax returns, comply with his/hers/its VAT obligations and have an intention to resume business once the relevant Covid-19 restrictions are lifted. - Relief under the CRSS operates as a cash payment (known as an '*advance credit for trading expenses'*) to the business equal to 10% of the average weekly turnover of the business' 2019 turnover up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000. - The scheme will operate for each week that the business is affected by the Covid-19 restrictions. Please see our separate article in relation to the CRSS <u>here</u>. **<u>Debt management</u>** While taxpayers have been advised by Irish Revenue to pay tax liabilities if at all possible, recognition has been given that tax payment difficulties are an inevitable impact of the Covid-19 pandemic. Warehousing of certain tax debts has been introduced for SMEs (for this purpose, an SME is a business with turnover of less than €3 million which is not dealt with by either by Irish Revenue's Large Corporates Division or Medium Enterprises Division). Businesses other than SMEs which are experiencing difficulties in paying their tax liabilities are advised to contact the Collect-General's office or, alternatively, engage directly with their branch contacts in Irish Revenue's Large Corporates Division or Medium Division. Businesses can make an online application to Irish Revenue for a phased payment arrangement (PPA), the duration of which will vary dependant on the taxpayer's own circumstances. **<u>Reduced interest rate</u>** Taxpayers who entered into PPAs with Irish Revenue before 31 October 2020 can continue to avail of a reduced rate (3% per annum) of interest from the date of that agreement. This represents a significant reduction from the standard rates of interest rates on late payment of taxes (8% and 10% per annum). **<u>Relevant contracts tax (RCT)</u>** The 2020 RCT bulk rate review which was due to take place in March last year was postponed. While it remains unclear if the 2021 review will proceed, subcontractors and their agents can carry out and self-manage RCT rate reviews through Irish Revenue's online portal, the Revenue Online Service (ROS).

<table>
<tr><th colspan="2">Tax highlights</th></tr>
<tr><td></td><td> <u>General compliance</u>
Irish Revenue have advised taxpayers to continue to submit relevant tax returns, notwithstanding any inability to discharge relevant tax liabilities. Where key personnel that compute tax returns are unavailable due to the virus, relevant returns should be submitted on a 'best estimate' basis. All debt enforcement activity continues to be suspended until further notice. </td></tr>
<tr><td>Cross-border workers</td><td> <u>Trans-border workers relief</u>
Where employees are required to work from home in Ireland due to Covid-19, such days spent working in Ireland will not prevent an individual from being entitled to claim trans-border workers relief. In order for this concessionary measure to apply, the employee must be required to work from home in Ireland due to Covid-19 and all other conditions for satisfying the relief must be met. </td></tr>
<tr><td>Employees</td><td> <u>Employment Wage Subsidy Scheme (EWSS)</u>
The EWSS is an economy-wide enterprise support which seeks to focus on business eligibility. Employers who are eligible and have registered for the EWSS will receive a flat-rate subsidy of between €203 and €350 per employee per week. The EWSS commenced on 1 September 2020, replacing the Temporary Wage Subsidy Scheme (TWSS) introduced in March 2020, and is expected to run until 31 March 2021. The key features of the EWSS are as follows: An employer must demonstrate that (i) its turnover or the level of customer orders has fallen by 30%, and (ii) Covid-19 is the cause of this disruption. From 1 January 2021, the period to be reviewed for the purposes of (i) is 1 January to 30 June 2021. The reduction in turnover or customer orders is shown compared to the same period in 2019 where the business operated for the whole of the comparable period in 2019.
In order to be eligible for the EWSS, an employer must also be entitled to a tax clearance certificate throughout the relevant period.
A review must be undertaken on the last day of every month to ensure that the employer continues to meet the eligible criteria.
Employees are eligible if they are in receipt of weekly gross pay of between €151.50 and €1,462. The subsidy payable is also based on each employee's weekly gross pay.
A reduced rate of employer PRSI of 0.5% is due on wages paid which are eligible for the subsidy payment.
The EWSS also applies to new hires as well as seasonal workers (which was not the case under the TWSS). Please see our separate article in relation to the EWSS <u>here</u>. <u>Covid-19 pandemic unemployment payment</u>
A payment of between €203 and €350 per week is available to employees and the self-employed who have become unemployed as a result of the Covid-19 pandemic. The amount of the payment is based on the individual's average weekly earnings. This payment is expected to be available until 31 March 2021. <u>e-Working provisions</u>
Employees required to work from home in line with Irish Government recommendations as a result of Covid-19 should be regarded as 'e-working' for Irish employment tax purposes in line with recent Irish Revenue guidance and, as such, can be paid a round sum payment of up to €3.20 per working day by their employer without deduction of income tax, USC or PRSI. This is aimed at compensating employees for additional home expenses. Where an employer does not contribute to home expenses, the employee retains the right to claim deductions equal to: (i) 10% of the cost of electricity and heat and (ii) for the duration of the Covid-19 pandemic, 30% of the cost of broadband, in both cases apportioned on the basis of the number of days worked from home over the year, as expenses incurred wholly, exclusively and necessarily in the course of their employment. </td></tr>
</table>

Tax highlights	
	Provision of equipment In addition, no benefit-in-kind (BIK) charge should be imposed where an employer provides an employee with certain office equipment such as computers, printers and office furniture to enable the employee to work from home. **Real-time foreign tax credit (FTC) for restricted stock unit (RSU) cases** The 31 March 2021 filling deadline for 2020 cases in respect of FTC for RSUs in real-time is extended to the standard income tax filing deadline for the 2020 tax year (ie 31 October 2021). **Employer-provided vehicles** For the duration of the Covid-19 period, where an employee is in possession of a work vehicle (such as a car or van) provided by his/her employer and the employer either takes back possession of the vehicle or prohibits the use of such vehicle, no BIK charge shall apply. Where the vehicle is retained by the employee in these circumstances, records should be maintained that the employer prohibited use and no such use has in fact occurred. Where reduced business mileage is undertaken during the period of the Covid-19 pandemic and personal use is limited, the amount of business mileage travelled in January 2020 may be used as a base month for the purposes of calculating the amount of BIK due. Where an employee continues to undertake business travel as usual, normal BIK rules will apply. Special rules apply in the case of company cars used by employees in the motor industry during the Covid-19 period. **Payment of taxi fares** Where an employer pays for a taxi to transport the employee to or from work due to health and safety concerns, a BIK charge will not apply for the duration of the Covid-19 period. **Employer-provided accommodation** Due to health and safety concerns arising as a result of Covid-19, Irish Revenue is prepared to accept that no BIK charge will arise where an employer provides temporary accommodation to an employee for private use in order to mitigate against the risk of transmission of Covid-19 (such as where the employee returns from an overseas trip and requires self-isolation). **Retraining costs as part of a redundancy package** Where an employer pays the cost of retraining an employee as part of a redundancy package, the cost of retaining up to a maximum of €5,000 may be exempt from income tax provided certain conditions are satisfied, including that such retraining is completed within six months of the termination of the employment. Previously, Irish Revenue announced that, as a result of Covid-19, they would be willing to extend this exemption once the retraining takes place within six months of the required course/training becoming available following the end of Covid-19. However, Irish Revenue have now advised that this measure will not be retained in respect of redundancies after 1 May 2021. Accordingly, with effect from 2 May 2021, the individual must complete retraining within the usual six-month timeframe in order to avail of this exemption. **Covid-19 testing and vaccinations** Irish Revenue have confirmed that no BIK charge will arise where an employer performs, or engages a party to perform, Covid-19 testing on its employees in the workplace. Also, no BIK charge will arise where the employer provides a Covid-19 test kit to an employee for self-administration. Irish Revenue have confirmed that they will not seek to impose a BIK charge regarding the flu vaccine due to the unprecedented circumstances arising from the pandemic. **Refund of healthcare insurance premiums** Irish Revenue have confirmed the appropriate tax treatment where a private healthcare provider issues a refund of premiums to an employer/employee due to Covid-19, including where employer-paid premiums are made to the employer or split between

Tax highlights	
	the employer and the employee. Where premiums were paid by the individual policyholder with no employer involvement, a refund of the premium made to the policyholder should not be subject to tax in Ireland.
Personal taxes	**<u>Residency provisions for individuals</u>** Irish Revenue have advised that, where a departure from Ireland is prevented due to Covid-19*, Irish Revenue will consider this to constitute a '*force majeure'* for the purpose of establishing an individual's tax residence position (please see further below in relation to when a departure will be treated as being prevented due to Covid-19 for this purpose). In these circumstances, the individual in question should not be regarded as being present in Ireland for Irish tax residence purposes for the day after the intended day of departure. The length of time that may be disregarded is limited depending on whether the individual was present in Ireland on or prior to 23 March 2020, or travelled to Ireland between 24 March and 5 May 2020. **Irish Revenue will consider that an individual has had his/her departure from Ireland prevented due to Covid-19 only in specific circumstances, including where the individual or a family member or partner with whom they are travelling has Covid-19, the individual has received medical advice not to travel, or an employer requests that the individual does not travel.* **<u>Reduced interest rate</u>** Taxpayers who failed to meet their 2019 preliminary tax obligations but entered into an arrangement with Irish Revenue no later than 10 December 2020 can continue to avail of the reduced rate of interest in respect of their 2019 income tax liabilities. **<u>Childcare services relief</u>** An income tax exemption is available to individuals who provide childminding services in their own homes. The relief is subject to the satisfaction of a number of criteria, including that the service is provided in the individual's home. Irish Revenue have confirmed that an individual who minded children in the children's own home (as opposed to the individual's home) in accordance with Health Service Executive practice may still qualify for the relief if they continue to mind the children in their own home on public health grounds while the pandemic persists. **<u>Business relief from capital acquisitions tax</u>** Business relief allows a reduction of 90% in the taxable value of certain business assets that comprise a business for the purposes of calculating gift and inheritance tax. In order to avoid a clawback of the relief, a gifted or inherited business must continue to trade for a period of six years after the valuation date for the gift or inheritance. Irish Revenue have confirmed that where, because of Covid-19 restrictions, a business ceases to trade temporarily during this six-year period, the relief will not be withdrawn.
Promoting liquidity	**<u>Interim refunds of Professional Services Withholding Tax (PSWT)</u>** In order to accelerate interim refunds of PSWT during the Covid-19 pandemic, Irish Revenue will continue to accept refund claims where legible copies of the appropriate documents (Forms F45 and F50) are submitted to them. Where a service provider cannot be issued with an appropriate document solely due to Covid-19, Irish Revenue have advised that a written statement issued by the accountable person containing specified information will be acceptable.
Miscellaneous	**<u>Temporary VAT measures</u>** Until 30 April 2021, the supply of personal protection and specified medical equipment for use in the treatment of patients with Covid-19 to the HSE, hospitals and other health care settings (such as nursing homes, care homes and GP practices) is subject to the zero rate of Irish VAT. This treatment may be extended where the European Commission adopts a decision to extend the period of application of the relief granted by Commission Decision (EU) 2020/491 to a date later than 30 April 2021. Irish Revenue have also clarified the appropriate VAT treatment regarding the supply of emergency accommodation, including the application of the Capital Goods Scheme to same.

Tax highlights	
	Where a business donates certain goods without charge to the HSE, hospitals, nursing homes and other healthcare facilities for use in the delivery of Covid-19 related healthcare services to their patients, Irish Revenue will consider these to be self-supplies liable to the temporary zero VAT rate. Favourable VAT rules may also apply where a business donates food products and non-alcoholic drinks without charge to charities and healthcare providers involved in the response to the Covid-19 pandemic for distribution to vulnerable groups or for consumption by frontline staff. This concessionary treatment will apply until 30 April 2021, subject to review. **Relief from import duties and VAT for goods imported to combat Covid-19** Temporary relief in respect of customs duties and VAT arising on the importation of goods to combat the effects of Covid-19 was introduced by the European Commission in April 2020 and extended in October 2021. At present, the relief will apply uninterrupted until 30 April 2021. **Alcohol products tax** A relief from alcohol products tax will continue to apply to alcohol used in the production of medicinal products such as hand sanitisers. Producers must apply to Irish Revenue to be authorised to receive alcohol for this purpose. **Critical pharmaceutical products and medicines** Such products and medicines will be given '*green routing'* status (ie no examination of the goods or documentation supporting the declaration required) for customs purposes. **Form HPL1 form processing arrangements** A HPL1 form which declares that an applicant has not claimed income tax relief in respect of interest paid on monies borrowed to purchase or build a dwelling no longer needs to be signed and stamped by Irish Revenue. This applies for applicants who require a completed form for social housing assistance or the Rebuilding Ireland Home Loan.

Certain concessionary measures introduced in March/April 2020 in response to the ongoing COVID-19 crisis were not extended beyond 31 December 2020. These are explained at a high level in the table below. If any of the below concessions have been relied on in adopting a particular tax position, it is recommended that such position is reviewed as a matter of priority, as unintended tax consequences could follow.

	Concessionary treatment	**Requirement(s) from 1 January 2021**
Special Assignee Relief Programme ("SARP")	The 90-day employer filing obligation of a Form SARP 1A, which is a requirement for an employee to be eligible to benefit from SARP relief, was extended for a further 60 days.	All Form SARP 1As must be filed within the 90-day timeframe in the usual manner.
PAYE dispensation applications	Irish Revenue did not strictly enforce the 30-day notification requirement for PAYE dispensations applicable to short-term business travellers from countries with which Ireland has a double taxation treaty who are going to spend in excess of 60 workdays in Ireland in a tax year.	The normal 30-day notification timeframe must now be adhered to, although exceptional cases may be notified to Irish Revenue.
Foreign employments – Operation of Irish payroll taxes	Irish Revenue did not seek to enforce Irish payroll obligations for foreign employers where an employee was working abroad for a foreign entity prior to COVID-19 but relocated temporarily to Ireland during the COVID-19 period and performed the	Employers are required to operate Irish payroll taxes on such employments in the usual manner, subject to the standard exemptions.

	Concessionary treatment	Requirement(s) from 1 January 2021
	duties for his/her foreign employer while in the State.	
Multi-state workers	Foreign employer could operate Irish payroll on the basis of a non-resident employee's established work pattern pre COVID-19 where: - a non-resident employee carried out duties of the foreign employment partially in Ireland and partially in the foreign jurisdiction; - the foreign employer had applied payroll taxes in Ireland and the foreign jurisdiction based on the established work pattern prior to COVID-19; - the employee could not return to the foreign jurisdiction as a result of the travel restrictions introduced as a result of COVID-19; and - the employee continued to carry out their employment duties in Ireland.	Employers are required to operate Irish payroll taxes on such employments in the usual manner, subject to the standard exemptions.
PAYE exclusion order – Irish contract of employment	Employees working abroad for a foreign employer under an Irish contract of employment where a PAYE exclusion order was in place did not have their position adversely impacted where the employee worked more than 30 days in Ireland due to COVID-19.	Employers are required to operate Irish payroll taxes on such employments in the usual manner, subject to the standard exemptions.
Holiday/flight cancellations and costs of assisting employees returning to the State	To the extent that an employee was integral to the business and was required to return to deal with issues related to the COVID-19 crisis by his/her employer, no BIK arose if the costs incurred were reasonable and the employee was not otherwise compensated. This could have been extended to include costs related to family members who were on holiday or due to go on holidays with the relevant employee.	The provisions relating to costs of non-business travel will apply in the usual manner.
Scholarship exemption	If an individual was unable to travel to the State and obtain a Personal Public Service (PPS) number to begin their scholarship and, as a result, would not have qualified for the exemption from income tax, Irish Revenue was prepared to disregard such presence outside Ireland provided certain conditions were satisfied.	This measure will not apply for 2021, and any entitlement to the relief will be based on the relevant conditions as set out under Irish tax law.
Share scheme filing obligations	The filing deadline for 2019 share scheme returns was extended from 31 March 2020 to 30 June 2020.	The submission deadline for 2020 share scheme returns is 31 March 2021. No extension to this deadline has been notified by Irish Revenue to date.

If you wish to discuss the implications of any of the above on you or your business, then please contact a member of our Tax Team below.

Alan Connell, Managing Partner and Head of Tax - AlanConnell@eversheds-sutherland.ie

Tim Kiely, Partner – Tax and Commercial – TimKiely@eversheds-sutherland.ie

Melissa Daly, Senior Associate – Tax and Commercial – MelissaDaly@eversheds-sutherland.ie

Robert Dever, Senior Associate – Tax and Commercial -RobertDever@eversheds-sutherland.ie

Niall Pilkington, Solicitor – Tax and Commercial – NiallPilkington@eversheds-sutherland.ie

Aoife Noone, Solicitor – Tax and Commercial – AoifeNoone@eversheds-sutherland.ie