Submission No. 1

Ibec submission to the Seanad Public Consultation Committee on Small and Medium Sized Business in Ireland

17 July 2018

By e-mail: seanadpublicconsult@oireachtas.ie

17 July 2018

Ref: Seanad Public Consultation on Small and Medium Sized Business in Ireland

I am pleased to communicate the views of Ibec and its members on the issues surrounding the growth of Small and Medium Sized Business (SMEs) in Ireland. Ibec represents the interests of Irish business including indigenous and multinational enterprises and SMEs, spanning all sectors of the Irish economy.

Ibec and its sector associations work with government and policy makers at a national and international level to shape business conditions and drive economic growth. A key part of this, which we have focused on in much of our work in recent years is reform of the environment to encourage small business and entrepreneurship. Although there have been some tax, regulatory and structural reforms aimed at small business and start-ups in recent years these have not gone far enough, in our view, to bridge the gap to having an indigenous sector on par with elsewhere in Europe.

Overview

Some notable successes aside, there is a strong argument that we have not done enough over the past 60 years to fulfil the promise of the First Programme for Economic Expansion to 'foster in every way' the development of Irish indigenous business. If we are to follow through on the economic promise of the last six decades, then it is evident we must go further than industrialisation by invitation and develop our indigenous enterprise base.

We have made some real progress in recent years. In order to survive the downturn firms have invested in new product, engaged in capital deepening and become leaner. The impact of this and better price competitiveness in the Irish economy can be seen in the fact that Irish exports over the eight years to 2017 were between five and six times more responsive to growth in global demand than they had been between 2001 and 2008. As a result, for the first time in 2015 agency figures showed Irish owned exporters accounting for a greater share of agency supported employment than foreign MNEs.

While Ireland does not produce enough start-ups, equally worryingly is not enough small companies make it big. Finance, access to export markets and the ease and cost of doing business all remain significant hurdles. We need a business environment that supports entrepreneurship and rewards innovation and risk taking. Enterprise policy must focus on helping companies scale up. An appropriate definition for a scale-up is as important for start-ups so that both groupings are given appropriate attention by policymakers.

We must go further, however. All available evidence shows that Irish indigenous firms are well below ‘best in class’ when it comes to management, innovation and exporting — three of the main drivers of business growth and productivity. Improving management practices, helping firms innovate or export earlier will increase the productivity and growth of Irish indigenous firms. We also have low start-up rates compared to the majority of our European neighbours – the second lowest in the EU15 and one-quarter that of the UK. We must do more to help people starting out on the journey of building a business.

To change this, we need to address what is within our control. Irish firms face a number of ongoing challenges to their growth. These include high legacy debts and costs, a small domestic market, a lack of diversified funding options, barriers to innovation and challenges accessing and competing for the right skills to help them grow. Below we set out some of the key policy levers which we believe can help Irish business to grow.

Business priorities to support SMEs

Recommendation 1: Improve investment supports for indigenous firms

Why?

Ireland’s broader investment tax environment for indigenous business is an outlier in its lack of attractiveness by international norms. We have the third highest capital gains tax rate in the OECD, a stamp duty regime on shares which is the highest in the world (twice that of the second highest) and an R&D tax credit which is far too complicated and onerous for smaller firms to engage with.

In addition, feedback from our members and users of the EIIS, the state premier investment incentive for indigenous business, has shown that changes to the EIIS to make it compliant with state aid rules has increased the complexity of the scheme to the extent that firms and users of the scheme are finding it very difficult to operate the scheme (resulting in incomplete applications). The drop-off in applications in Q1 of 2018 (down by 47% year-on-year) is a clear indicator of the material impact this is having on confidence in the scheme and consequently in investment in Irish business.

This perverse treatment of investment by indigenous business cannot be allowed to continue if we are serious about growing internationally competitive companies.

Government should:

- Send a signal of intent to serial entrepreneurs by radically improving the CGT entrepreneurs' relief by introducing a 12.5% rate with no lifetime cap on gains.
- Renew confidence in the EII scheme by improving processing times, matching the UK's €2 million annual limit on investment (currently €150,000 in Ireland) and ending the uncertainty caused by the current system of split relief (based on employment levels or R&D expenditure) with full relief given in the investment year.
- Reduce the level of stamp duty on equity to UK levels (0.5%) over a period of three years in order to increase liquidity, make raising capital easier for Irish firms and reduce the cost of raising capital significantly.
- SMEs may be over-reliant on bank funding - partly an institutional issue but exacerbated by national tax systems – demonstrated by it being easy to start a business in Ireland but difficult to scale one. Government must do more to promote alternative investment sources.
- Improve information flow on all funding sources (e.g. VC, grants, tax, banks, angel etc) allowing start-ups to pick suitable strategy best suited to their ambitions and management style. Schemes and portals may exist but they are not well branded, marketed and suffer from lack of awareness. Monitoring of draw-down of national or EU funds & schemes targeted at start-ups and SMEs should occur and corrective action taken if poor take-up is identified.

Recommendation 2: Protecting the indigenous sector from Brexit

Why?

In the context of Brexit, companies will need support to diversify, innovate and re-align their business models. The education system will need support to provide the capacity for up-skilling. Supporting our domestic industries will mitigate the worst impacts of Brexit domestically. While progress has been made on issues surrounding trade questions at the European level there is significant uncertainty surrounding the outcome. In this context, there must be a stronger delivery on Brexit preparation and mitigation domestically. Yes, there are still major uncertainties which make it difficult to plan ahead for Government but the time for preparation is now. Ibec members will be making key decisions in advance of March 2019 and the Government can play a greater role in supporting them.

This does not just extend to the agrifood-sector but also to the wider domestic economy with tourism, forestry, traditional manufacturing, retail and energy, transport, utilities and telecoms all impacted either directly through loss of trade or otherwise through disruption of their supply chain. It is worth remembering that the need for diversification not only applies to exporting companies but also to those importing. 36% of Irish consumer goods are imported from the UK along with 23% of material goods which go into the production of finished goods here. Increases in tariff or non-tariff barriers, regulatory divergence or transport delays will impose significant costs on all areas of the Irish economy past the initial export shock. Companies will clearly need to diversify not just their export markets but also their sourcing strategy in response to these issues.

Government should:

Outline a Brexit strategy on assistance for firms to prepare for Brexit, not just limited to exporting companies

Strand 1:	Strand 2:
Put in place a multi-annual framework for funding Brexit mitigation beginning in Budget 2019. The resources required will be in the region of 5% of the value of current annual indigenous export sales to the UK	Continue work to put in place a broader temporary state aid framework to help Governments provide short-term assistance to companies
Measures under strand 1	**Measures under strand 2**
Introduce direct supports for companies looking to re-tool and re-invest in plant and machinery to produce product lines for new markets. This should take the form of pre-approved accelerated capital allowance scheme for projects which are deemed necessary under a clear Brexit related contingency plan. Provision must be in line with those already available for energy efficient equipment, with allowances available to be claimed at an accelerated rate of 100% in year 1	Introduce an enterprise stabilisation fund with assistance from EU colleagues. This would enable short-term financing similar to the supports that were introduced in 2009 that helped firms through the financial crisis and an increase in 'de minimus' levels of state aid
Allow companies claim VAT as an input credit at the same time as declaring their liability in order to minimise Cashflow needs. This VAT deferral licence regime already exists in the Netherlands. A review of Section 56 of the VAT regime (particularly the rules on group registrations) could provide a better solution in the long run.	Work to improve the terms and conditions under the current Brexit Loan Scheme which has interest rates of 4% and loan terms of only 3 years maximum
Introduce additional marketing and innovation supports for companies looking to reformulate, re-package or innovate their product lines for new markets	Review double tax agreements with high growth developing countries with a view to reducing withholding tax (particularly on royalty/licensing fees) facing companies trading with those markets
Introduce trade support measures, including further export trade financing and export credit guarantees to support the continued development of international export markets. This must also include supply-chain supports to companies in the non-tradeable sector.	

Recommendation 3: Unlock SME Growth Potential Through Innovation

Why?

We must look at boosting Ireland's capacity for innovation and exploitation of spill-overs. SMEs may experience greater challenges than larger companies to dedicate and develop internal resources needed to engage successfully with universities and to capitalise on their research outputs. These enterprises will require additional state support to build the absorptive capacity and to participate in any research collaboration.

The OECD have highlighted that the productivity gap between indigenous SMEs and larger multinational organisation is widening. Too many SMEs miss opportunities to fully realise the potential of research activity in higher education institutions, and too few have the knowledge and skills to develop, value and exploit the situation

The R&D tax credit has been a successful model in encouraging Irish companies to invest in R&D and create value in the economy. In line with international research an Ibec study showed that for every €1 given in tax credit to participating firms they spend in the region of an additional €2.40 on R&D over and above what they would otherwise have spent. Studies in the UK suggest this additional spend could rise as far as €3.60 in the long-run and that it is higher for smaller firms.

Government should:

- Introduce a simplified pro-forma R&D tax credit scheme for SMEs which allows smaller firms to overcome funding constraints on their innovative activity. An Ibec survey in 2013 found that among SMEs in R&D intensive sectors 31% of the firms saw the administrative burden involved as being the number one reason they had for not claiming the R&D tax credit. The UKs Research and development tax relief for SMEs gives a good example of how to overcome this. It is an excellent example of simple language tax guidance for SMEs. The tax treatment is more generous (particularly if you have outsourced your R&D), but the key advantage for small operators is that you file the claim with your tax return and a short form outlining how you qualify – and that is it. There is no additional record keeping requirements and you receive 'advanced assurance' for the first three times you claim it. These two in particular help smaller firms deal with the uncertainty and the administrative burden.
- Ireland has the second lowest density of industrial robots in the EU15[1], despite them being strongly linked with increased productivity. In order to encourage investment in high-value manufacturing accelerated capital allowances for a number of areas of advanced manufacturing (including Computerised/computer aided machinery and robotic machines) should be introduced. France, for example, operated a similar scheme for robotics and 3-D printing (for SMEs) allowing for provision over a two-year basis.
- Introduce funding for a targeted, paid internship programme for PhD students, aimed at installing innovation expertise directly into the SME operation to identify new product and process development opportunities, highlighting development and commercial opportunities to increase innovation within the business. A critical feature of the programme will be that the internship provides supporting link to higher education consultancy services, business and legal schools, research programmes, spin-out companies and state-backed innovation supports.
- Building on the successful Trade Mission in Ireland and Meet the Buyer Events, provide seed funding to foster linkages between indigenous and multinational firms on projects of common interest and co-selling opportunities which have the potential to enhance the productivity and innovation potential of both firms. This should not be limited to firms in the exporting sectors.

Recommendation 4: Help SMEs attract management and skills

Small firms and particularly start-ups also face problems attracting the necessary human capital and skills they need to grow. This is a particular problem due to the fact that staff in start-up companies typically will have low incomes, relative to the market, as the business builds. Management and skills are key components business growth in any economy. Research has shown internationally that improved management skills can improve sales growth, market share growth and particularly higher productivity.

A 2010 study of Irish firms for the IMI by researchers from the London School of Economics had some disconcerting results in this context. They found that manufacturing firms in Ireland has poor management practices lagging considerably behind their counterparts in the US and UK. They also found that Ireland had a long tail of poorly performing firms which was not seen in other countries covered by some very high scoring multinationals. Irish domestic firms in general were 20% behind multinationals in terms of management practices. Among 10,000 firms in manufacturing and retail across 21 countries Irish domestic firms and particularly SMEs suffered the when it came to management practices. Irish indigenous firms were second bottom among developed countries, barring Portugal and Greece.

Government should:

- Match the Swedish enterprise management incentive scheme for smaller firms. The Swedish Government received European Commission clearance to abolish tax on stock options at companies that are younger than 10 years, have fewer than 50 employees, and revenue and a balance sheet of below €8 million.
- Remove, the limit on grants to any individual in any year to "50 per cent of the annual emoluments", increase the €3 mn cap on options in use under the KEEP scheme
- Ensure better guidance for firms on share buybacks or redemptions, the definition of holding companies and excluded activities (ie Fintech) under KEEP. Make sure the scheme aligns favourably with the UKs EMI scheme
- Pilot an online system to match up mentors and entrepreneurs across the country in order to allow businesses access specific skills with the right expertise and advice regardless of geographic location. This should complement existing mentor programmes operated by Enterprise Ireland, the local enterprise office network and accelerators.

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[1] http://bruegel.org/2017/12/the-growing-presence-of-robots-in-eu-industries/

Recommendation 5: 'Think small' first when it comes to regulation

Poorly designed policy, legislation and regulation add to the cost of doing business and are obstacles to growth and job creation. This is particularly an issue for SMEs, who in many cases are 'time poor'. Ireland requires a comprehensive approach involving government, the Oireachtas, regulators and stakeholders to effectively address the burden of regulations in Ireland, one that is fair and transparent.

Red-tape is not just an issue for SMEs, but the burden is often more acutely felt amongst smaller firms. This is due to resource constraints and the fact that much of the costs associated with compliance are fixed. Our regulatory system can be a labyrinth for SMEs. According to the National Competitiveness Council "there is a continuing and urgent need, therefore, to enhance the regulatory environment for SMEs, to enable them to trade successfully".[2]

Government should:

- Monitor stakeholder engagement, use of regulatory impact assessments and ex-post evaluations across the public policy system and publish statistics annually. These assessments should have a particular focus on SMEs.
- Ensure that any new employment regulations adopted are based on solid evidence and accompanied by both stakeholder consultation and regulatory impact assessments.
- Launch a red tape challenge regulatory reduction campaign and mandate government departments to undertake regulatory burden assessments on each business sector.
- Ensure the Legal Services Regulation Act is fully implemented and identify further mechanisms to reduce the legal costs on business, including identifying alternative dispute resolution measures and examining low cost appeals mechanisms other than the High Court for particular areas (e.g. public procurement).
- Develop a SME procurement statement informing companies of what they can expect when tendering for public contracts. Encourage more innovative products and solutions. Appoint a dedicated SME lead to each procurement category council and host category/sector specific meet-the-buyer events. All public bodies to have a "doing business with us" section on their websites.
- Local authorities should be given the powers to use the commercial rates system to direct investment in specific areas (e.g. start-ups) to assist entrepreneurship and to encourage productive investment and local authority premises should be examined for suitability to be used as much needed incubation space for start-ups.
- Start-ups and scale-ups should be a key pillar of the "think small first" approach and EU policies (e.g. single market, VAT reform etc) should support accordingly. Not all sectors are alike so some for some sectors priority issues may differ between them.
- Support policies fostering entrepreneurship amongst targeted societal groups: In terms of promoting entrepreneurship, dedicated actions may be required to encourage higher levels of entrepreneurship amongst specific demographics (e.g. women, seniors, migrants etc).

[2] National Competitiveness Council Bulletin 15-6 (October, 2015) p.2

Submission No. 2

Dr John Breslin
Director, TechInnovate/AgInnovate
National University of Ireland Galway

A brief introduction indicating any experience, expertise or background you may have in this area

Programme Director, TechInnovate, NUI Galway [2016 - Present]

- Having been selected for the competitive Entrepreneurship Development Program from MIT Sloan Executive Education in 2017, adopted the MIT Disciplined Entrepreneurship process for TechInnovate
- Received seed funding for nine 10-month, full-time, stipend-supported entrepreneurship fellowships where interdisciplinary teams from engineering, business and design backgrounds aligned unmet domain needs with a market opportunity through a technology innovation
- Received Springboard+ funding for 20 participants on the MSc in AgInnovation in 2018 and for 38 participants on the Postgraduate Diploma in TechInnovation in 2017
- Brought entrepreneurship skills to 30 PhDs during a one-week course in 2017
- Delivered intrapreneurship training to 30 industry professionals in 2017 and 2018
- Multiple workshops in Blackstone LaunchPad and the PorterShed in 2017 and 2018
- Also promotes Galway as a hub for tech/medtech startups/companies through the Galway Tech Map and the Galway Medtech Map, which have in turn attracted more companies to the region, available at https://github.com/techinnovate

Co-Founder and Director, Galway City Innovation District CLG (PorterShed) [2015 - Present]

- The first innovation hub in the not-for-profit Galway City Innovation District, the PorterShed, opened in April 2016
- Home to 34 resident companies, with 98 people employed, and 20-25 new hires
- Nine companies (18 people) have graduated so far from NDRC at PorterShed, the country's first regional accelerator, with eight more companies in the next cohort
- 12 PorterShed companies have raised over €7 million
- Average salary is €64,000, adding €10 million to the local economy annually
- Featured in Forbes in December 2015

Advisor to various emerging Irish tech companies (AYLIEN, Pocket Anatomy, BuilderEngine)

Director, WestBIC [2014 - Present]

- WestBIC provides advice and services for entrepreneurs planning or starting a new business in the West of Ireland

Co-Founder and Chairman, Startup Galway [2013 - Present]

- Not-for-profit initiative to develop a more entrepreneurial ecosystem in Galway
- Established with three local tech startup CEOs (Altocloud, OnePageCRM, Netfort)
- Community of over 900 people, with over 100 at each monthly tech meetup
- Brings together founders and budding entrepreneurs, students and researchers, government staff, MNC / SME employees, to learn from a successful tech leader

Co-Founder, Adverts Marketplace Ltd. [2006]

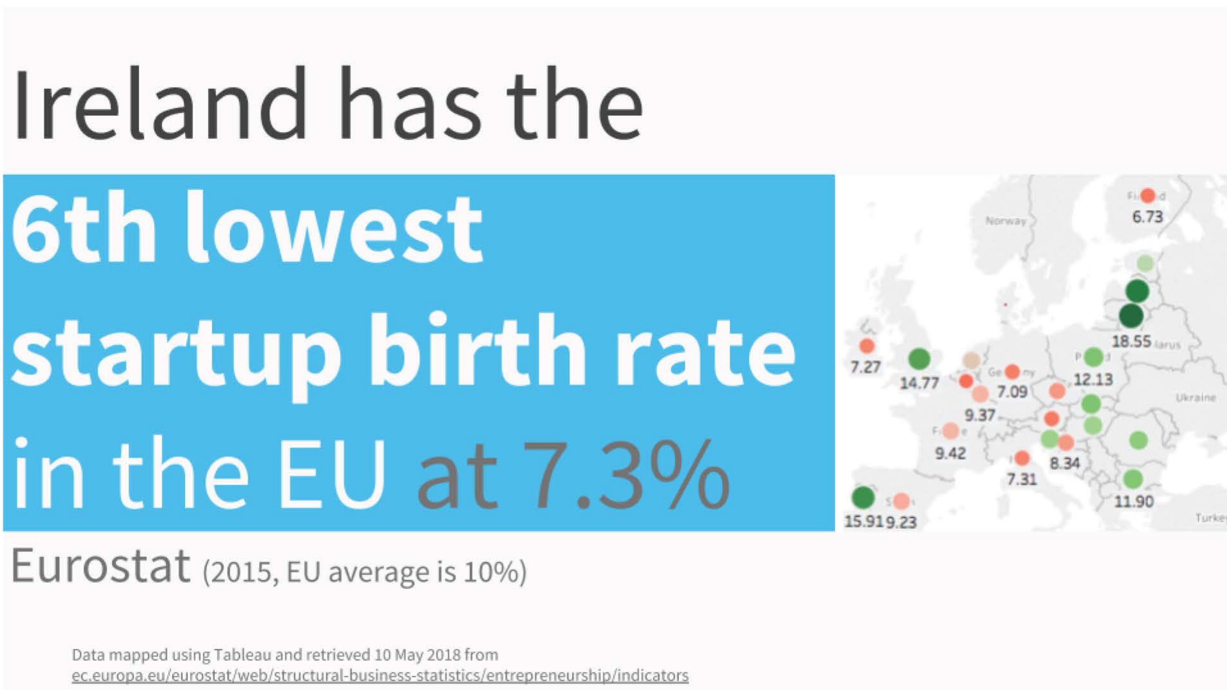
- adverts.ie is a popular online classified adverts service, and a spin-off from boards.ie
- Acquired in a joint venture by Distilled Media and Schibsted Media in 2015
- adverts.ie employed about 10 people in Dublin

Co-Founder, boards.ie Ltd. [2000]

- Ireland's largest forum community, 2.5 million visitors per month, employs 12 people

Factual information, observations or opinions that you believe will assist the Committee in drawing conclusions

More statistics available in my slides at http://bit.ly/sligomasterclass



techinnovate

Drop in the number of **enterprises** from 2008 to 2015 CSO

Northern & Western Region

7% ↓

Ireland

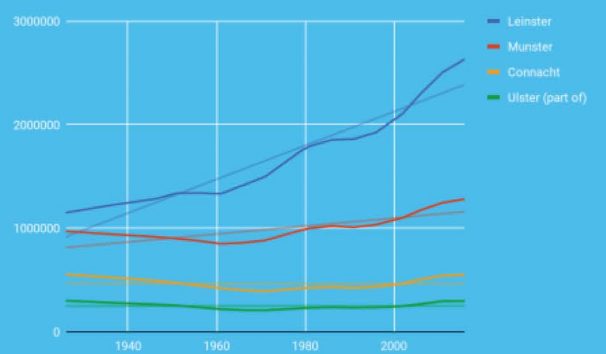
2% ↑

NUI Galway
OÉ Gaillimh

Data retrieved 10 May 2018 from
www.cso.ie/en/releasesandpublications/er/bd/businessdemography2015/

Populations of **Connacht** & **Ulster** are **lower than** they were in **1926** CSO

DL, MO, SO were the only counties to **drop in population** (2011 to 2016), and **Dublin** is **166% greater** than at **foundation of the State**



NUI Galway
OÉ Gaillimh

Data retrieved 10 May 2018 from www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=CD102&PLanguage=0 and www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=EP001&Planguage=0

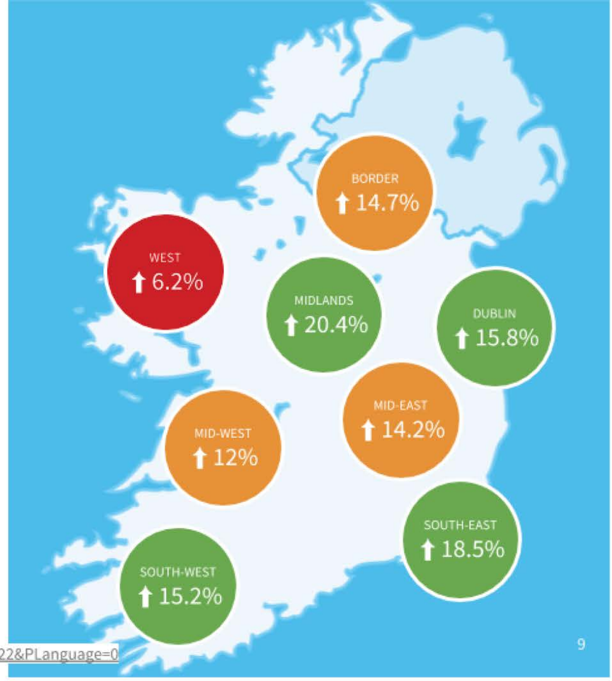
Lowest national jobs growth in the West

since the lowest point of the recession CSO (QNQ22: low point-2017Q2)

In the West, **employment** is only now at the **same level as in 2009** (>200k), growing at the slowest rate in the State (QNQ22; QLF15)

NUI Galway
OÉ Gaillimh

Thanks to @DanOBrien20 for the pointers, data retrieved 10 May 2018 from www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=QNQ22&PLanguage=0



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Patent filings from Irish organisations

WIPO

PCT = Patent Cooperation Treaty

PCT Applicant	2015	2016	2017
CONNAUGHT ELECTRONICS LIMITED (VALEO VISION SYSTEMS)	10	22	28
ACCENTURE GLOBAL SERVICES LIMITED	12	10	14
UNIVERSITY COLLEGE DUBLIN	11	7	11
FOTONATION LIMITED	1	10	10
PROTHENA BIOSCIENCES LIMITED	8	4	10
X-CELEPRINT LIMITED	4	4	10
JANSSEN R & D IRELAND	9	7	9
NURITAS LIMITED			9
DEPUY IRELAND UNLIMITED COMPANY			8

NUI Galway
OÉ Gaillimh

Data retrieved 23 May 2018 from World Intellectual Property Organization at www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=IE

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Public policy recommendations

- Develop an IDE (innovation driven enterprise)-focused approach that will strengthen the Irish business community in terms of job growth and prosperity:
    - Research-backed findings that startups are the drivers of regional job creation
- Foster an understanding of the differences between an SME and an IDE outlook:
    - SME = small-medium enterprise:
        - Local / regional market
        - “You and your family”
        - Straight-line growth in cash flow, then plateaus
    - IDE = innovation-driven enterprise:

        - Global market / supraregional market
        - Lots of shareholders
        - Significant initial burn rate, then exponential cash flow
- Support the development of entrepreneurship skills that focus on being an *innovation-driven entrepreneur*:
    - Processes like Disciplined Entrepreneurship provide a structured approach to becoming such an entrepreneur
    - There is an opportunity for increased numbers of startups and job creation if we can create more IDEs, and this requires fostering more innovation-driven entrepreneurship skills amongst our country's population
- Identify SMEs who could/should be IDEs and help them to further develop their skills:
    - This does not have to be a cold start approach, as you can upskill others
- Rebrand and link academic entrepreneurship education on a national scale
- As a country, increase our entrepreneurship capacity (ECap) and move up the European rankings for startup creation
- In parallel, encourage SMEs and future IDEs to increase their innovation capacity (ICap), in terms of human capital, funding, culture, etc., with more patents and IP:
    - See ECap/ICap measures from MIT in slides at http://bit.ly/sligomasterclass
- Get Ireland signed up to the MIT Regional Entrepreneurship Acceleration Programme
- Look at creating programmes similar to those that came from MIT REAP Scotland:
    - IRELAND CAN DO SCALE:
        - Intensive workshop for existing entrepreneurs seeking to scale an early stage business into a globally sustainable organisation
        - 50 places made available annually to SMEs with the potential to scale, having a minimum €500k turnover (and on track to reach a minimum €1M turnover), and with the ambition to grow the business by 20% year-on-year, over a three-year period
        - Develop IDE skills among Irish entrepreneurs by surrounding them with mentors, networking linkages, extensive educational opportunities
        - Leverage local universities, private industry, local government to work together to support entrepreneurship in a public-private partnership
        - By 2017, Scotland Can Do Scale had 210 participants who benefitted from the programme over the past 3 years, with 93% of participants very likely to recommend it, appreciating the opportunity to learn and reflect away from the workplace in a retreat setting
        - Evidence shows that companies go on to raise ambition, increase turnover and employ more people
    - IRISH EDGE:
        - Annual competition to identify and support Ireland's up-and-coming, innovative, high-growth potential entrepreneurial talent
        - A winning business can get up to €175k in funding
        - By 2016, Scottish Edge had 2,000 applicants and had awarded £7M to local entrepreneurs, supported 205 businesses, created 641 new jobs, generated £31.8M and spurred £28.36M in additional investment in startups

Submission No. 3

Public Consultation Committee – SME's

Organisation	Contact Details
Strategic Banking Corporation of Ireland (SBCI). **The SBCI is Ireland's National promotional institution.**	**(1) Nick Ashmore, CEO** **Ph: 01 2384162.** NAshmore@sbci.gov.ie **(2) John Madigan, Marketing and Research** **Ph: 01 2385087.** John.madigan@sbci.gov.ie

Key roles and Objectives

1. **Develop targeted lending and risk sharing measures to respond to the changing economic environment and to address both short-term and long-term market failures in the Irish market for the provision of credit to SMEs.**
2. **Continue to source European support and deliver this to SMEs in an efficient and effective manner as part of its overall programmes.**
3. **Continue to grow choice and competition for SMEs through the addition of new non-bank on-lenders.**

Strategy

The SBCI seeks to deliver on its mandate through three distinct lines of business, each of which provide measures to address existing or emerging market failures.

- **Provision of low cost liquidity to small businesses and farmers through non-bank on-lenders.**
- **Delivery of risk-sharing instruments into the Irish SME credit market to address access to finance issues for SMEs.**
- **Operator and manager of the Minister for Business Enterprise and Innovation's Credit Guarantee Scheme.**

Result and Success Measures used

Public Consultation Committee – SME's

1. Number of on-lender partners – currently 7 (3 bank, 4 non-bank).
2. Number of SMEs supported with either low-cost liquidity or a guarantee at December 2017 is 22,928.
3. Volume of funding allocated is €925m
4. Introduction of new risk-sharing schemes to the Irish market – 2.

Information correct as at 19th December 2017

Key Stakeholders	Outline of stakeholder engagement and relationship	Other comments

Public Consultation Committee – SME's

SMEs	**SBCI continuously engages with** • **Key industry bodies (IBEC, SFA, ISME).** • **Accountancy bodies.** • **SMEs** **Through a public awareness campaign consisting of advertising, Social media, attendance at SME events and selected event sponsorships.**	
Government Departments	**The SBCI's main stakeholder is the Department of Finance but it also works closely with the Departments of Business, Enterprise and Innovation (DBEI) and Department of Agriculture, Food and the Marine in the development of supports for Irish Businesses.**	**Examples include, Agriculture cashflow loan scheme in 2017 and the Brexit Working Capital loan scheme which will be launched in Q1 2018.**
European supports	**The SBCI has regular engagement with relevant European bodies, including EIB, EIF, EU Commission to ensure available EU supports are channelled to the Irish SME Market.**	**Examples of this include the EIF COSME and INNOVFIN agreements utilised to support the above schemes.**

Public Consultation Committee – SME's

Key challenges – please provide evidence based backup documentation	Proposed solution	Result matrix
Summary of Key Challenges facing Irish SMEs. While Irish SMEs face similar challenges to their European counterparts such as; 1. Access to Finance 2. Lack of collateral 3. Quality and timeliness of financial information. 4. Brexit impact, there are also some Irish specific challenges which include; 5. Many viable SMEs don't believe they will be successful if they apply for credit (discouraged borrowers) 6. Appetite to invest versus appetite to borrow 7. Cost of credit v European peer SMEs 8. Collateral requirement that includes the use of personal guarantees. 9. Contracting bank distribution channels, lack of access to relationship manager. 10. Loan application process perceived as opaque, difficult. SBCI uses the following information sources to support the above findings. Central Bank of Ireland Half yearly reports, https://www.centralbank.ie/docs/default-source/publications/sme-market-reports/sme-market-report-	The introduction of a suite of Risk Sharing schemes should help address these concerns. Eligibility for the schemes will be undertaken by the SBCI with the credit decision remaining with the finance provider. This will ease the application process for SMEs. The introduction of an SBCI guarantee will influence both the level of collateral required and the interest rate charged. The €300m Brexit loan scheme will allow impacted SMEs the funding to make the changes necessary to address the challenges of Brexit.	Success measures include, the number of schemes available in the market, the number of SMEs availing of the schemes, the volume of funding availed of during the life of the schemes the number of providers of SBCI schemes. The level of awareness of SBCI schemes across the SME market.

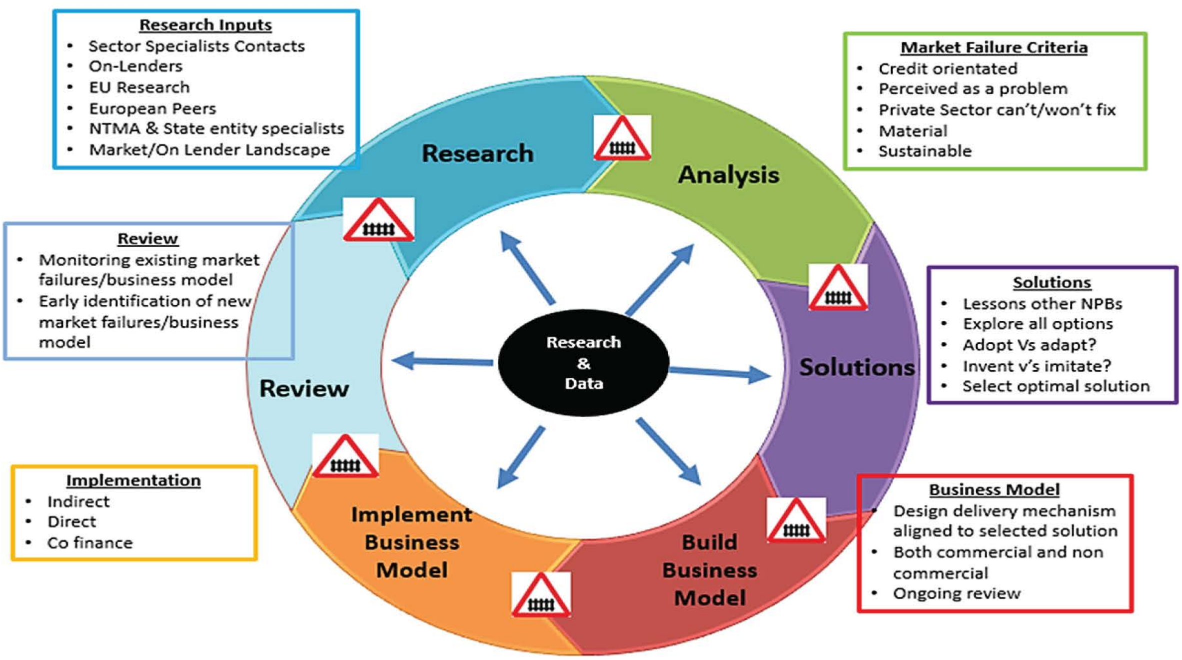
2017h2.pdf?sfvrsn=5 Department of Finance Credit demand survey, http://www.finance.gov.ie/updates/sme-credit-demand-survey/ These are supported by SBCI direct engagement with SMEs / Advisors at events across the country and ongoing engagement with relevant industry bodies.		

Public Consultation Committee – SME's

Please also provide an organizational chart and a flow chart outlining engagement process with customers/clients.

Also, please attach any other information you consider helpful to the deliberations of the committee in drafting a white paper on SME's in Ireland.

SBCI Market Failure Review Cycle



2017h2.pdf?sfvrsn=5 **Department of Finance Credit demand survey,** http://www.finance.gov.ie/updates/sme-credit-demand-survey/ **These are supported by SBCI direct engagement with SMEs / Advisors at events across the country and ongoing engagement with relevant industry bodies.**		

Submission No. 4

SEANAD PUBLIC CONSULTATION ON SMALL AND MEDIUM SIZED BUSINESSES IN IRELAND

A RESPONSE FROM THE UK ENTERPRISE RESEARCH CENTRE

Stephen Roper (Warwick) and Jane Bourke (UCC)
Stephen.roper@wbs.ac.uk
Jane.bourke@ucc.ie

Contact details: Enterprise Research Centre, Warwick Business School, University of Warwick, Coventry, CV4 7AL, UK. Tel: 04424-7652-2501/0447766992222

1. About the Enterprise Research Centre

The Enterprise Research Centre (ERC) was established in 2013 as a partnership between the UK government and the Economic and Social Research Council, the body which funds social science research in UK universities. The aim of ERC is to address gaps in the evidence base relating to small and medium enterprises and enable better evidence-based policy-making. ERC itself is a research partnership led by Warwick Business School, and Aston Business School, with contributions from University College Cork, Queens University Belfast and Leeds University Business School.

ERC is active in developing new primary research projects relevant to policy agendas in the UK, including the current Industrial Strategy. We also provide advisory and consultancy support for UK government departments in terms of their engagement with SMEs. For example, for the last two years we have been working closely with HMRC as they develop a strategy for engaging and supporting small business growth. Key themes in ERC research at the moment include productivity, innovation, technology diffusion within industries and along supply chains and organisational resilience. More information on ERC research and other activities can be found at www.enterpriseresearch.ac.uk.

Aside from its link to UCC, ERC staff are involved in other projects in Ireland in partnership with the University of Limerick on the evaluation of SFI impacts on Irish businesses.

2. Understanding Micro-business in Ireland

With support from the UK government ERC recently undertook a survey-based project focusing on the activities of micro-businesses with less than 10 employees in the UK, Ireland, and the US. We believe the results of this project may be of interest to the committee in developing proposals which can better support growth in Irish businesses over the next few years. In particular, the Micro-business Britain project provides new data on innovation, growth ambition, and digital diffusion for micro businesses, topics which are not covered by other data sources. Below, we outline some of the key results from the survey but would be delighted to provide more detail on any issues of interest to the committee as it's thinking develops.

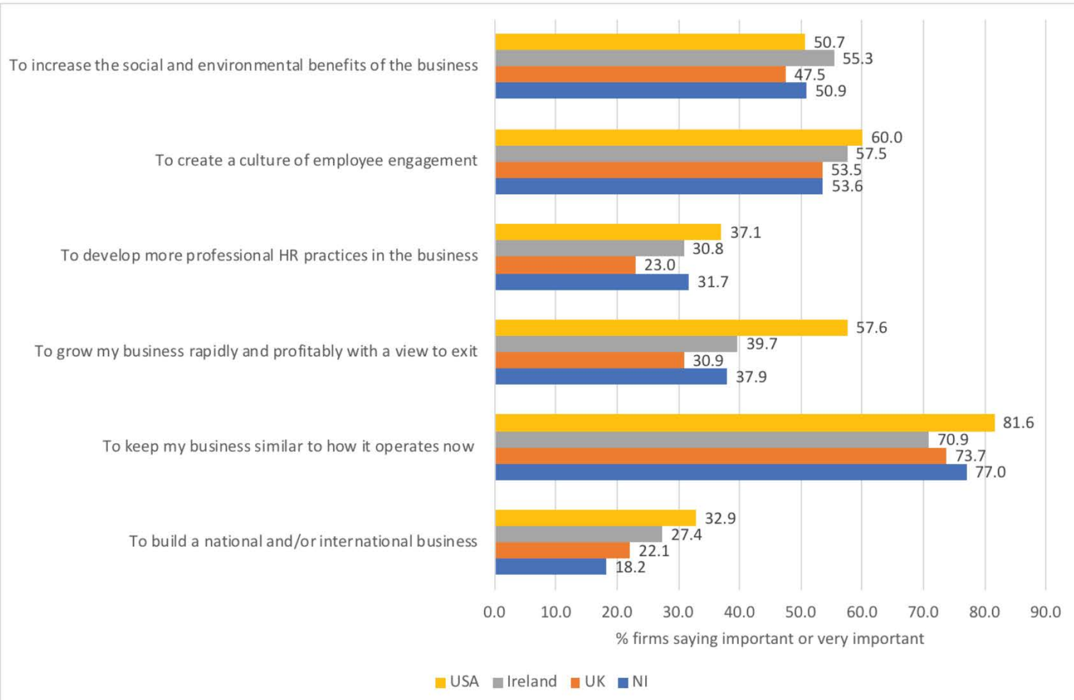
The survey data we discuss here was collected between January and March 2018 as part of a telephone survey. Data was collected from 6200 firms in the UK, 1500 in Ireland, and 2000 in the US. In the Figures we separately identify Northern Ireland when sample size was around 500 responses. In the analysis, responses are weighted to give representative results.

2.1 Growth ambition in micro-businesses

Previous research has linked owner-managers' growth ambitions to the subsequent growth and performance of the firm. In the Micro-business Britain Survey we use a new set of ambition questions which reflect individuals' aspirations for their own future and their aspirations for the future of their business.

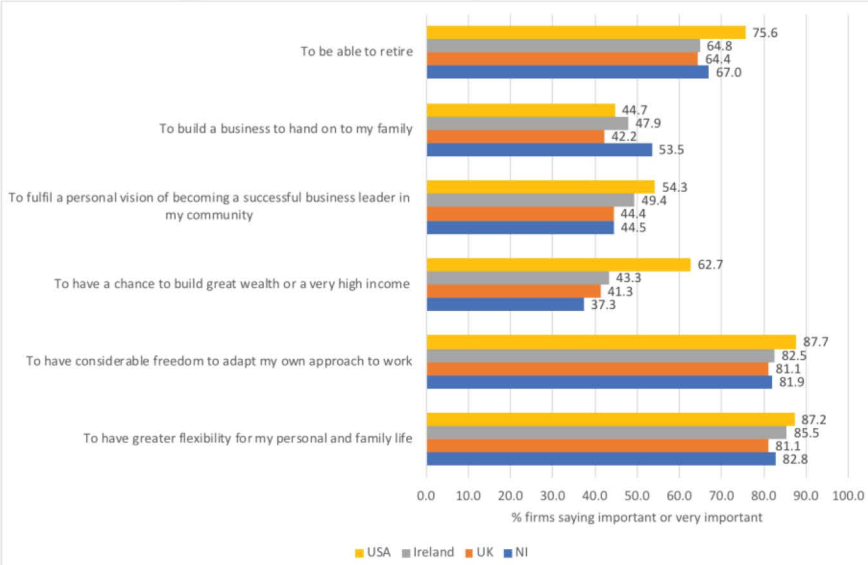
Looking first at respondents' aspirations for their micro-business we consider the proportion of respondents ranking each aspiration as 'important' or 'very important'. This suggests a sharp distinction between 71 per cent of Irish respondents' who aim to 'keep their business similar to how it operates now', and a more ambitious 27 per cent who aim to build a 'national or international business' (Figure 1).

Figure 1: Indicators of business ambition



Individuals' personal ambitions suggest a rather different set of priorities, with a marked emphasis on 'freedom' and 'flexibility' (Figure 2). This is consistent with much of the research literature on self-employment and entrepreneurship which stresses the financial as well as the non-financial benefits of being your own boss.

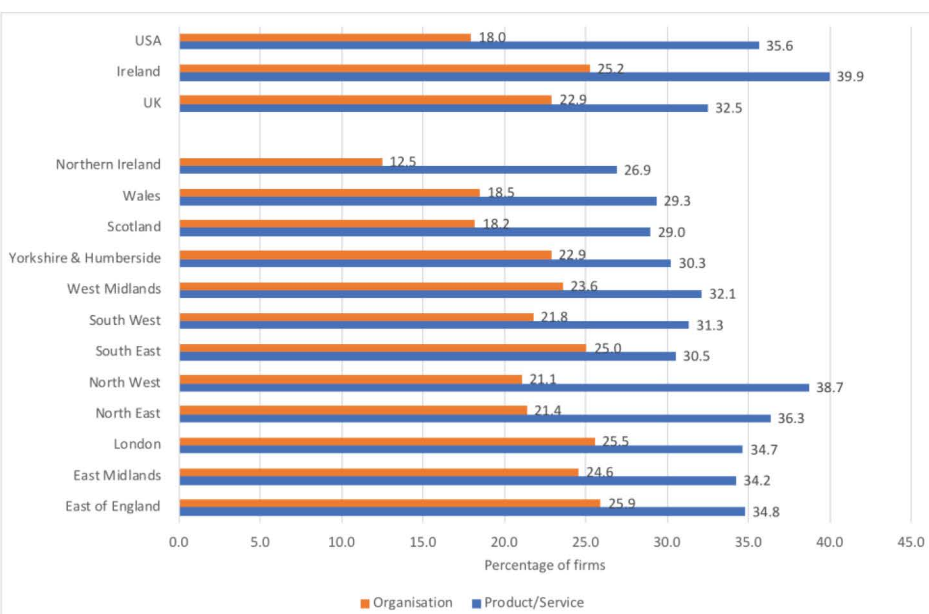
Figure 2: Indicators of personal ambition



2.2 Innovation and technology diffusion

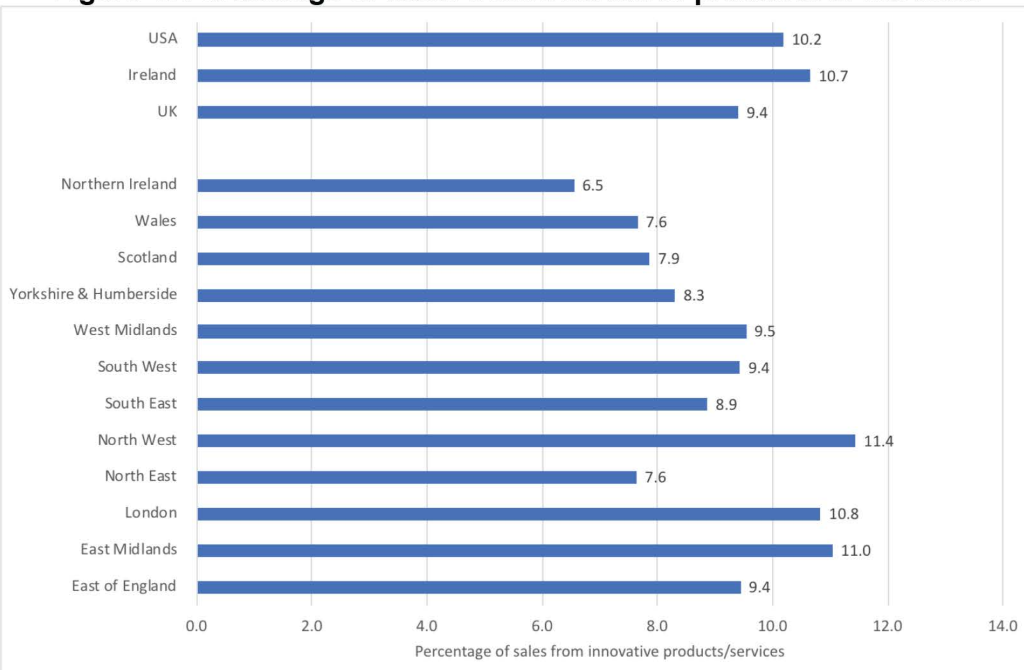
Turning to innovation we consider two indicators relating to whether micro-businesses introduced new or improved products or services over the three years prior to the survey or new business models or forms of organisation (Figure 3). On both metrics micro-businesses in Ireland are ahead of those in most UK regions and the USA.

Figure 3: Percentage of micro-businesses undertaking innovation



Another innovation indicator - the proportion of sales derived from innovative products or services - provides an indication of the extent to which firms are able to derive sales from their new products or services – a measure of innovation success. In the year prior to the survey Irish firms derived around 11 per cent of their sales from innovative products/services compared to 9 per cent for the UK as a whole and 10 per cent in the US.

Figure 4: Percentage of sales from innovative products or services



2.3 Digital Adoption

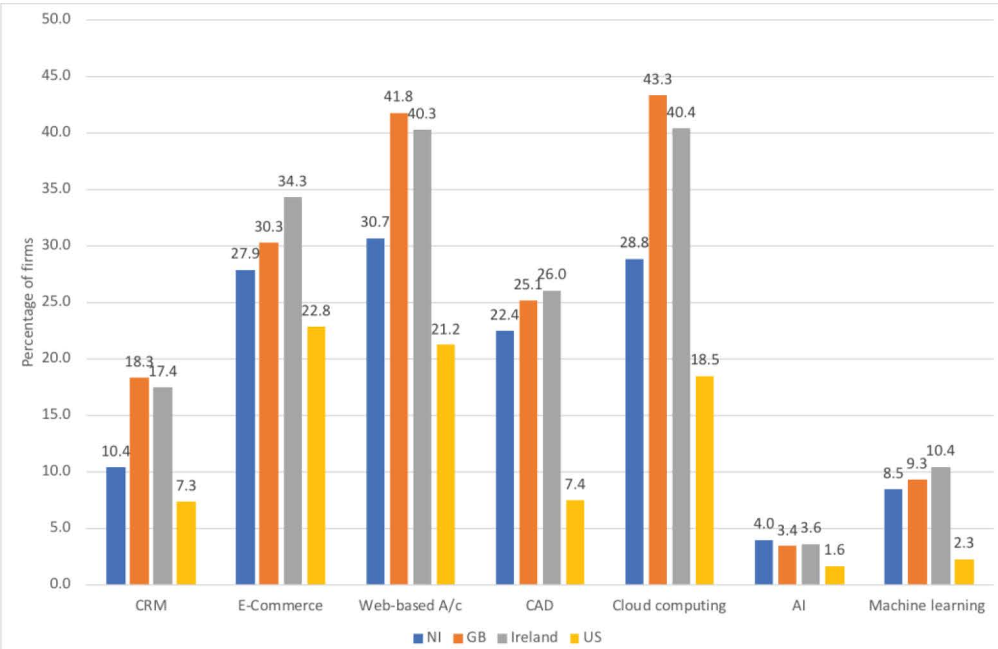
The adoption of information technology has been one of the key drivers of productivity across the advanced economies over the last three decades. The advent of Industry 4.0 presents businesses with new challenges relating to digitisation in both selling and operations. The Micro-business Britain survey provides the first robust benchmarks for digital adoption in firms with less than 10 employees.

The Micro-business Britain survey focuses on seven digital technologies which vary in their maturity. They are:

- **Customer relationship management (CRM) systems** use data analysis about customers' history to improve business relationships with customers, specifically focusing on customer retention.
- **E-commerce** involves selling goods and/or services through the company website.
- **Web-based accounting software** is an accounting information system which can be accessed with any device which is internet enabled.
- **Computer-aided design software** aids in the creation, modification, analysis, or optimization of a design.
- **Cloud computing** involves the practice of using a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server or a personal computer.
- **Artificial intelligence** is the simulation of human intelligence processes – learning, reasoning and self-correction - by machines, especially computer systems.
- **Machine learning technologies** use statistical techniques to give computers the ability to "learn" (i.e., progressively improve performance on a specific task) with data, without being explicitly programmed.

Figure 5 profiles the proportion of micro-businesses using each digital technology in Ireland and comparator areas. Generally, adoption rates in Ireland compare well with those in the UK and are markedly higher than those in the USA.

Figure 5: Digital adoption in micro-businesses



3. Final remarks

In the context of this consultation we do not feel it is appropriate to draw public policy recommendations for Ireland. We can however provide the committee with further information on policy frameworks, current academic thinking on small business policy and development, and potential data sources if that is useful.

The Micro-business Britain survey itself addresses a number of the specific issues identified by the committee and we would be happy to provide more detail on survey results if useful. This could include issues around access to finance (particularly early-stage equity), skills, exporting, and the comparative barriers to doing business in Ireland the US and the UK. Other research at ERC has recently looked both of the Danish Growth Fund and the UK Enterprise Finance Guarantee Scheme and again we would be happy to provide further input to the committee on either topic.

Submission No. 5

The Voice of
Small Business

Small Firms Association
84/86 Lower Baggot Street
Dublin 2, D02 H720

t: +353 1 605 1500
e: info@sfa.ie
w: sfa.ie

Small Firms Association

Submission on small and medium sized businesses in Ireland

Presented to:
Seanad Public Consultation Committee

August 2018

SFA Director: Sven Spollen-Behrens

@SFA_IRL

linkedin.com/company/small-firms-association

Introduction

The Small Firms Association (SFA) is the trusted partner of small businesses (less than 50 employees) in Ireland, with members in all sectors and parts of the country. Its mission is to deliver business-focused advice and insights to member companies, influence government policy to the benefit of small businesses and connect its members in a thriving community.

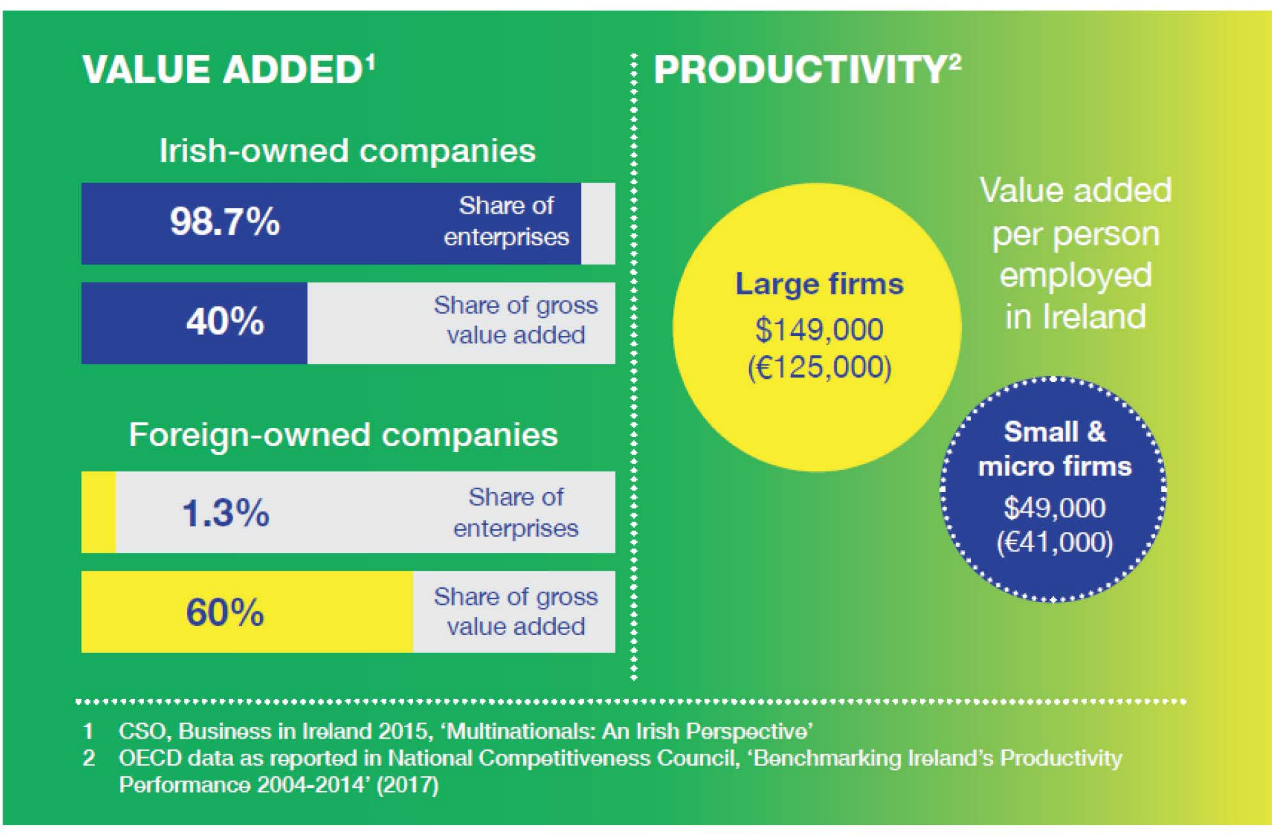
The SFA has a vision of Ireland as the most vibrant small business community in the world – supporting entrepreneurship, valuing small business and rewarding risk takers. The SFA makes this submission to the Seanad Public Consultation Committee based on our knowledge and experience of the small business community, which comprises over 246,000 businesses, employing half of the private sector workforce, some 720,000 people.

A Small Business Strategy: The next leap forward for the Irish economy

Ireland 2018

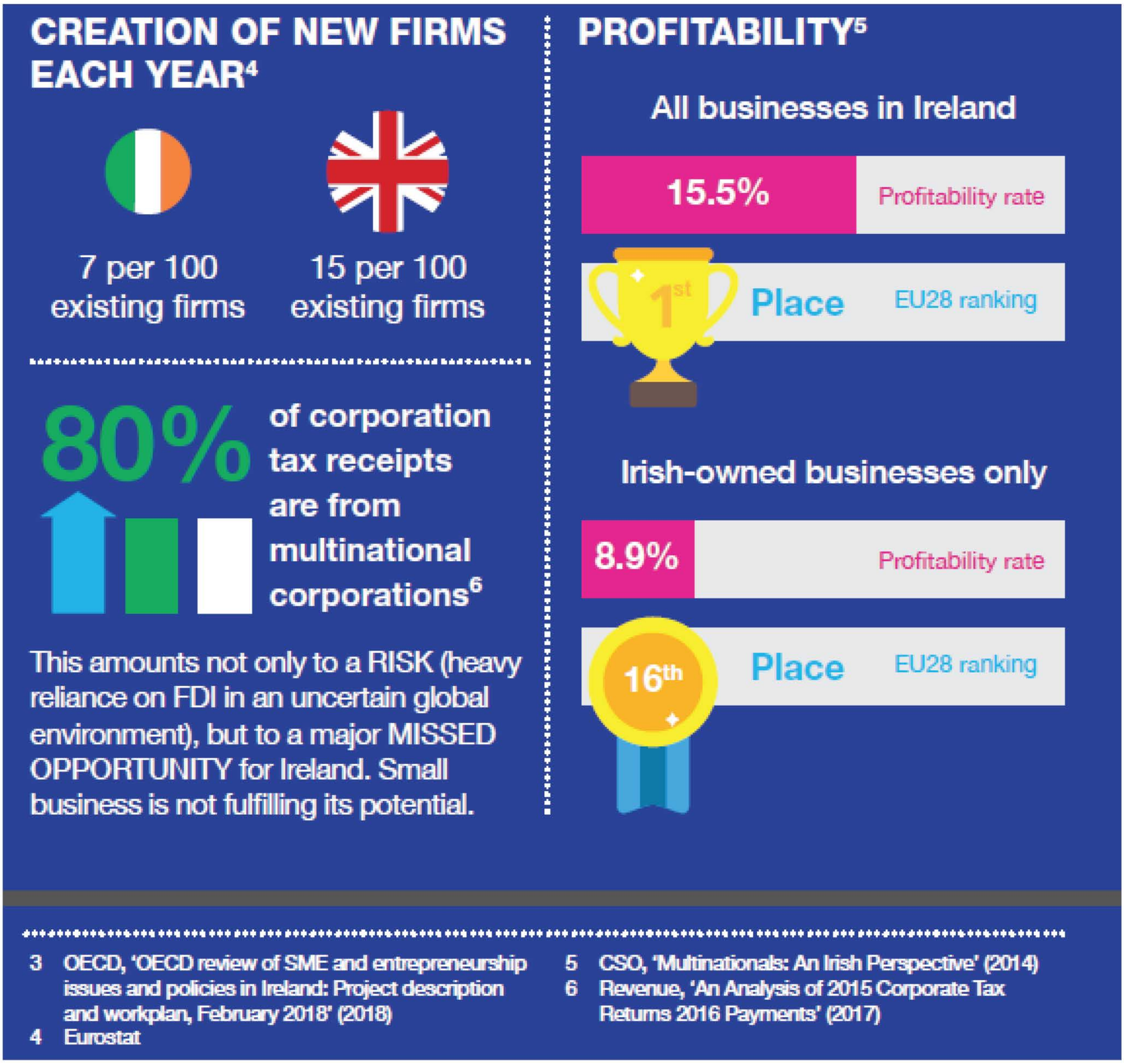
The Irish economy is performing strongly, with growth of 7.8% in 2017 and unemployment now approaching 5%. As a whole, Ireland is moving past 'the recovery' and into a new growth phase.

Look closer, however, and it is clear that the story of the Irish economy is based largely on the phenomenal success of the foreign direct investment (FDI) sector.



In contrast, it is clear that the small business sector is not performing at its optimal level in many areas including the rate of start-ups, scaling, survival, productivity and exporting.

In the words of the OECD: *"...challenges remain with regard to Ireland's domestic SME sector, which is still lagging behind and displaying much lower levels of competitiveness, productivity and R&D spending than large multinationals".*[3]



This amounts not only to a **RISK** (heavy reliance on FDI in an uncertain global environment), but to a major **MISSED OPPORTUNITY** for Ireland. Small business is not fulfilling its potential.

<u>Small business potential:</u>
The scale and breath of the small business sector (companies with less than 50 employees) in Ireland is enormous. Its role in job creation, in particular regional job creation, cannot be underestimated.

SMALL BUSINESS IN IRELAND[7]

With this volume of enterprises, even modest improvements in the small business environment could have a significant multiplier effect. This could have huge implications for employment, economic growth, Exchequer tax take and especially for regional development and the vibrancy of local communities.

A leap forward in the small business environment is estimated to create 23,000 (26%) additional jobs by 2021[8]:

Current growth trajectory – 87,750 | Potential – 110,750

<u>A Small Business Strategy: Why? And why now?</u>

Changing government policy step-by-step has got the small business sector to where it is today. There are many State supports for small firms but, from an owner-manager's perspective, the environment is fragmented, confusing and inconsistent.

There are many individual success stories but also many tales of business failure. The potential of the sector has not been realised.

That is why the focus should now be on creating a leap forward for small businesses. Multinational firms in Ireland are thriving. This means that:

a) policy-makers can turn their focus to small businesses without jeopardising the FDI sector
b) lessons from the FDI success story can be applied to small business sector

The Small Firms Association (SFA) is calling for Government to shift its attention to the 98% of enterprises that are small firms, present in every city, town and village in the country.

Businesses know that strategies matter. The SFA is calling for a national Small Business Strategy just as ambitious as the strategic focus on FDI from the 1950s to the present day.

LESSONS FROM IRELAND'S FDI STRATEGY

In Ireland, we know exactly what it takes to create real, transformational change, as we have successfully built a world-class environment for multinational companies.

SUCCESS OF IRELAND'S FDI STRATEGY:

#1 in the world for inward investment by quality and value

#1 in the world for investment incentives

304,376 people employed by FDI companies, 22.2% of total employment[9]

- 10/10 top pharma companies[10]
- 16/20 top global software companies
- 13/15 top medtech companies
- 20/25 top financial services companies

9 CSO, Business in Ireland 2015, 'Multinationals: An Irish Perspective'
10 www.idaireland.com/invest-in-ireland

<u>Designing a Small Business Strategy for Ireland</u>

We need a Small Business Strategy to ensure that all parts of the State system get behind Ireland's indigenous businesses to unlock its untapped potential.

Above all, we need a clear statement from government that it will support home grown enterprises and stand behind those who take the risk to start their own business.

Eight key considerations:

1. The Small Business Strategy should be a common vision with whole-of-government buy-in
2. Public awareness and acceptance important
3. Strategy should support all small business – there is no 'right' sector to be in
4. Strategy should provide coherence – all policies and schemes aligned, no mismatches between rhetoric and practice
5. Business-friendly approach to be instilled in public officials across the apparatus of the state
6. Strands: tax, cost of doing business, regulatory burden, accessibility and suitability of business supports, enhancing spillovers from multinationals to indigenous firms
7. New approach to communicating with small businesses

8. All other decisions affecting small business should be informed by the strategy

Specific public policy recommendations

Two of the areas where reform would be needed most urgently under a future national Small Business Strategy are tax and the cost of doing business.

Main tax recommendations:

- Reduce the headline rate of capital gains tax (CGT) to 20% for all
- Increase the lifetime limit for CGT Entrepreneur Relief to €15 million
- Increase the Earned Income Tax Credit to €1650 to equal the PAYE tax credit
- Improve access to R&D Tax Credit for small firms through pre-approval, simplified administration and a centre of excellence in Revenue
- Increase EIIS relief to €500,000/annum with all relief claimed in year 1 at 40%
- Create a new talent regime for small businesses so that they can attract talented and skilled employees from outside Ireland (similar to SARP)

Main cost of doing business recommendations:

- Examine cost monitoring already in place through the CSO, the National Competitiveness Council and other bodies, and make changes if needed in order to ensure that policy makers have access to robust data on business costs
- Design a method for relevant departments to respond to the findings of the monitoring in a structured way and take action to curb costs
- Introduce an SME Test for proposed legislation to assess its impact on small businesses
- Specific costs of concern to small firms:
    1. Labour costs: employer PRSI, National Minimum Wage, cost of compliance with employment law/social welfare
    2. Insurance costs
    3. Local Authority rates and charges
    4. Others: commercial rents, energy costs, cost of finance

Conclusion

The Small Firms Association works with small businesses every day on a wide range of issues. It is challenging to outline all of the relevant issues and recommendations in this short submission, and the SFA would welcome the opportunity for additional engagement in a meeting with the committee.

For further information, please contact Sven Spollen-Behrens, SFA Director, on 01-6051602 / 087-1609403 or e-mail sven@sfa.ie. More information about the SFA is available at www.sfa.ie or on Twitter @SFA_Irl.

Fáilte Ireland Submission to the Seanad Public Consultation Committee

Submission No. 6

Organisation	Contact Details
Fáilte Ireland **88-89 Amiens Street** **Dublin 2** **01-8847862**	**Paul Keeley** **Commercial Director** **Paul.keeley@failteireland.ie**

1. Introduction

Failte Ireland is focused on supporting enterprises through up-skilling and capability building at the level of the firm. The Tourism Industry is made up of close to 15,000 businesses most of which are SME's and are small family run operations.

Our Enterprise & Hospitality Division deliver a suite of supports building Tourism SME's Performance Capability in general and specifically within core disciplines such as International Sales, Service Excellence; Revenue and Cost Management, Enhancing Digital Presence, Increasing Engagement via Improved Channel Management and Marketing Skills and addressing enterprise activity where appropriate through lens of Brexit trading environment. Failte Ireland regularly engages with our SME's through Research and the Tourism Barometer, which delivers a real time health check on what are the areas of most concern to them.

It is our intention in this submission to provide information concerning the key challenges that tourism SME's face, to enable the Committee meet its objectives in a number of the areas that it has identified.

2. Recruitment of suitably qualified staff

As the economy nears full employment, one of the key challenges for Tourism SME's is the recruitment of suitably qualified staff. As the sector continues to grow year on year, supply of labour talent is outstripping demand, which will compromise growth and ultimately affect the visitor experience. The supply gap for chefs and cooks is particularly acute.

Recruitment website irishjobs.ie highlighted the fact that hotel and catering jobs dominate job vacancies, representing 27% of all vacancies in the three months to June 30th.

Source: Irish Independent 25th July 2018.

The Expert Group on Future skills Needs noted that addressing projected skills demand is likely to necessitate a combination of approaches, including:

- Provision of additional education and training output, including flexible CPD offerings, and the entry of new skilled staff;
- Re-training of unemployed former Hospitality sector workers;
- Reducing 'under-employment' among part-time workers who wish to increase their hours of work;
- Increasing staff retention and reducing the high extent of exit from certain occupations;
- Increasing the attractiveness of employment opportunities and take-up of vacant positions; and,
- Continuing inward migration of skilled labour.

Source: Assessment of Future Skills Requirements in the Hospitality Sector in Ireland, 2015-2020. November 2015

3. Ongoing training/skills development challenges

Against the backdrop of a profile of the majority of Irish Tourism Businesses being composed of very small businesses – typically less than five employees, it is common that significant challenges exist in the whole area of business capability and preparedness for international sales.

The need for upskilling and on-going training is crucial, yet constraints on budget capacity, & time and resources both impact hugely on accessing supports.
Given the fact that many tourism operations are effectively 'one-person shows', restricts the accessibility to attend training as cover for business as usual is often absent. Thus, flexibility in the approach adopted especially concerning the mode of delivery is essential.

Scheduling training supports during off-peak periods, short half-day events to limit the time away from the coalface etc. Offering a blended approach combining face-to-face along with e-learning methodologies, and as/if required backed up with tailored coaching or mentoring supports are made available to provide specific solutions.

Examples of targeted supports include: Accredited Service Excellence (available both as a face-to-face workshop, and via an online module); Grow Digital, which combines a workshop element linked to an independent review of the businesses own website and a follow-up telephone consultation to address issues identified in the review. Creating Your Saleable Experience, combining a group workshop with 1-2-1 coaching.

Another innovative approach involves clustering a number of small tourism businesses within a given area. This allows both for a cost effective delivery to the assembled group, and fosters networking amongst the tourism operators to develop better understanding of the common objectives and acts as an enabler for enhanced collaboration.

Community Engagement Events illustrate this approach, which can also entail a series of 1-2-1 mentoring clinics alongside the main group dynamic, which is based upon a common theme reflecting the regional team's objective/message.

As individual tourism SME's would typically not be of the required scale for overseas buyers to feature, grouping saleable experiences in a given area is an approach found to be effective. Fáilte Ireland acting as the catalyst to prepare these operations for international sales and introducing them to the routes to market. Taking the essence of their USP's, marshalling their offering into a saleable experience that is ready for market, and enhancing their knowledge and skills in the areas of contracting, pricing and selling to overseas buyers. Our pre-meitheal incubation programme illustrates this approach.

4. Cost of doing business

To have a competitive industry, Tourism SME's need input costs that are competitive and do not place them at a disadvantage with our competitors. Ultimately, these costs feed in to what the tourist has to pay so they must be constantly monitored with great vigilance.

Fáilte Ireland has analysed the cost inputs in Ireland across all industry sectors. While in general Ireland's input costs enable us to be cost competitive, there are two key areas of potential concern;

a. High cost of credit for SMEs (4th highest in EU*)– Without access to competitively priced credit, Irish SMEs will find it more expensive to support expansionary activities and/or manage short-term liquidity issues.

b. High inflation rates in business insurance (5.1% vs EU average of 2.1%*)– The rapid rise in insurance premiums is ratcheting up the overall operating costs of doing business and is undermining overall competitiveness.

**Sources: Costs of Doing Business in Ireland 2017 – National Competitiveness Council, International Construction Market Survey 2017 – Turner & Townsend*

One in five (20%) restaurants report increased profitability to date this year, but a much higher proportion (43%) are down. It seems that the sector is under pressure from rising operating costs (beside fuel and energy) – stated by 56% of restaurants.

Source: Fáilte Ireland Tourism Barometer April 2018

5. Poor integration and communication perceptions of State Agencies

There is potentially a need for a stand-alone platform for SME's that delivers clear content and data that makes sense to them and is focused on their needs. Maybe an initiative that gives stand out to SME's on each of the main agencies and sectors Agriculture, Tourism, Food, Dept of Marine, BIM, etc. across their own websites. There is a strong requirement for SME's to have a one-stop shop, a road map in terms of those small businesses accessing the various training and up skilling programmes and relevant information across the numbers of state agencies. Access to the right supports and the right information that can assist and support an SME to grow their business or to operate in a more efficient and profitable way.

In assisting the Department of Transport Tourism and Sport's commitment to support measures across Government that reduce or streamline administrative processes associated with regulatory compliance, Fáilte Ireland is working with the Department of Business, Enterprise and Innovation to centralise all online registrations on to licensing.ie.

6. *Conclusion*

As noted above, one of the current key challenges for Tourism SME's is the recruitment of suitably qualified staff, which will compromise growth in the sector and affect the visitor experience. In addition, the high cost of credit for SMEs and high inflation rates in business insurance feed into what the tourist has to pay and ultimately affects our value for money rating.

I would like to thank the Commission for the opportunity to make this submission as tourism SME's are a key foundation block for the long-term success of the sector and the estimated 235,000 jobs that it supports.

Submission No. 7

nursinghomesireland

SUBMISSION TO SEANAD PUBLIC CONSULTATION COMMITTEE

SMALL & MEDIUM SIZED BUSINESS IN IRELAND

AUGUST 2018

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Contact details

Nursing Homes Ireland,
2051 Castle Drive,
Citywest,
Dublin 24
D24 K299

Relevant contact: Tadhg Daly, Chief Executive

Contact: 01 4699800 / ea@nhi.ie

Private & Voluntary Nursing Home Care

Nursing Homes Ireland (NHI) is the representative organisation for the private and voluntary nursing home sector. 448 private and voluntary nursing homes provide specialist care in 'homes from home' to over 24,000 people, directly employing 30,000+ staff.

Many nursing homes are the largest employers within their local communities, acting as economic dynamos. The employment provided by them is diverse and wide-ranging. The sector has invested over €2 billion to develop specialist healthcare facilities within our cities, towns, villages and communities.

The majority of private and voluntary nursing homes are small, family-run, owner operated businesses. In excess of 70% of such homes have fewer than 60 beds. They face many of the severe pressures and escalating business costs encountered by small and medium sized operators. These are heightened due to nursing homes being 24/7 businesses.

Private and voluntary nursing homes operate within a unique business environment, under a monopoly purchaser of care – ultimately the State. The NTPF, acting on behalf of the State, is responsible for the setting of fees payable under the Nursing Home Support Scheme, commonly known as Fair Deal. Failure to agree a fee under the Fair Deal effectively leads to the closure of the nursing home.

The threat to the sustainability of providers has been presented by HIQA, the independent regulator of nursing home care. Its recently published *(June 2018) Overview of 2017 HIQA regulation of social care and healthcare services* report informed of the closure of five nursing homes during 2017 due to financial concerns. HIQA states within the report: "*There are examples of certain smaller nursing homes – which provide a more homely environment – closing voluntarily due to concerns over the financial viability of running such services.*"

Key Business Challenges – Private & Voluntary Nursing Homes

For the purposes of this submission and consultation on SME business in Ireland, we have focussed upon three key business challenges that pose severe threats to the sustainability of private and voluntary nursing home providers because of State-sponsored inflation. The State must ensure it is cognisant of the dominant and unique role it fulfils in the funding long-term residential care services in the private and voluntary sector. The reality facing the private and voluntary nursing home sector is that its income is effectively set by the State through the Nursing Home Support Scheme. The sector has a monopoly purchaser in the shape of the National Treatment Purchase Fund (NTPF), and it sets fees for those residents supported by the Nursing Home Support Scheme (Fair Deal). Private and voluntary providers are tasked by the State with providing care for fees that are a national average 60% below those payable to HSE counterparts. It is critical for the sustainability of the provision of specialist healthcare within our local community and for the sustainment of jobs that the State recognises the reality of costs incurred to provide long-term residential care on a 24/7 basis. A sustainable private and voluntary nursing home sector is essential to:

- Ensure we meet the care needs of people requiring specialist care on a round-the-clock basis,
- Sustain jobs in urban and rural communities and local economies,
- Meet our healthcare needs within the community,
- Alleviate pressures upon our acute hospitals by deterring admissions to acute hospitals and facilitating discharges from such.

The State-influenced challenges presented in this submission are with regard to:

- Labour costs
- Commercial Rates
- Recruitment

Labour costs

The nursing home sector is labour intensive. Staff costs account for on average 62% of private and voluntary nursing home costs. Staff retention is of critical importance for care continuity, with our members in private and voluntary nursing homes competing directly with the HSE for staff within an unequitable business environment.

Increases in public sector pay levels, particularly those within health services, have direct impact upon our sector. Private and voluntary nursing homes are operating within a constrained economic environment. The severe discrimination applied in the distribution of State expenditure for nursing home care under Fair Deal is evident when the HSE annual financial statements inform that one-third of the Fair Deal budget is allocated to providers – HSE nursing homes - that provide care to one-fifth of those supported by the scheme. The remaining two-thirds is allocated to support the care needs of 79% of residents supported by Fair Deal[1]. The State, through the NTPF, fails to acknowledge the reality of costs incurred to provide high-dependency care, with fees payable for residents in private and voluntary nursing homes on average 60% below those payable to HSE counterparts[2].

This year (2018) the Fair Deal budget ringfenced an additional €12 million for the HSE in funding to meet increased pay levels within HSE nursing homes. No corresponding

[1] Analysis of number of people supported by the Fair Deal scheme year-end 2017

[2] Analysis of HSE fees payable under the Nursing Home Support Scheme by comparison with private and voluntary fees, February 2018

dedicated funding was ringfenced to meet corresponding pay pressures within private and voluntary nursing homes.

Escalating staffing costs within our sector are presented in the Department of Public Expenditure and Reform staff paper *Nursing Homes Support Scheme Trends and Figures* (October 2017), which states: "And with the general economy approaching full employment, recruitment in the private nursing home sector is becoming more challenging, possible resulting in higher pay rates."

The statutory scheme of support for people requiring nursing home care must not operate in a discriminatory manner. It is critical equality is applied. Failure to do so creates inequality in healthcare provision and discriminates against residents in private and voluntary nursing homes. As presented by HIQA, funding failures led to the closure of five private and voluntary nursing home providers in 2017. More will arise if the reality of costs realised by such homes are not realised by the Statutory Scheme – Fair Deal.

Commercial Rates

The private and voluntary nursing home sector is incurring a disproportionate increase in commercial rates increases under the revaluation programme being undertaken.

An NHI survey has informed the average rates bill under the proposed valuation notices represents an average increase of €583 per bed, per annum, a 116% increase in cost per bed. The range of increase by county was 17% to 277%.

Nursing homes are experiencing a disproportionate increase in their cost base because of the extent of the rates being levied against them under the commercial rates revaluation process. Commercial rates are presenting huge extra cost burdens on a sector that is already experiencing a significant tightening of margins.

It is of note that HSE nursing homes are exempt from commercial rates. Furthermore, disability and other services funded by the HSE are exempt. All nursing homes are persons' homes. The discriminatory practice of applying commercial rates to residents in private nursing homes requires redress. Equality must be applied for residents in private and voluntary nursing homes and those responsible for providing care to them.

Residents of Nursing Homes have been required to move to a nursing home to have their care needs met and must not be discriminated against. They have been assessed by the HSE as needing the specialist care provided by nursing homes on a 24/7 basis. The nursing home becomes their home and this must be recognised by the State. As nursing home residents are long-term occupants and the nursing home is their primary residence, they fall under the definition of "occupier" under the Act. Therefore, in the interest of equality and fairness, private and voluntary nursing home residents should be exempt from commercial rates.

Recruitment

With the country approaching near full employment, a severe shortage in the availability of healthcare assistants is presenting for private and voluntary nursing homes and the wider health and social care service. Before the Oireachtas Health Committee in September 2017[3], Minister for Health Simon Harris informed of shortage of healthcare assistants presenting challenges for healthcare delivery. He told the Committee: "In certain CHO areas there is a capacity issue regarding the availability of home care staff. That will not be a surprise to anybody. In some parts of the country we do not have that problem while in others there is a very significant challenge in that regard." Furthermore, before the Oireachtas Health Committee last July 4th, the HSE Chief Officer for Community Health said bed closures were arising in HSE nursing homes due to workforce issues[4].

NHI and our members continue to engage with employer engagement programmes within the Department of Social Protection in order to maximise opportunities for people to avail of employment in the nursing home sector, developing training programmes to improve the skills and productivity of our workforce. However, the impact of such participation has been negligible.

There are currently circa 16,000 healthcare assistants employed in the private and voluntary nursing home sector in Ireland. An NHI Workforce Survey 2017 informs an additional 4,266 require recruiting within private and voluntary nursing homes this year due to turnover rates and the increasing nursing home population. This is projected to increase by a further 1,000 in 2019, giving a total of 5,214 required additional healthcare assistants.

We are calling for the immediate removal of the role of healthcare assistant from the ineligible categories of employment for permits list. This can fulfil a lead role in alleviating the severe shortage presenting for healthcare assistant employees. Precedent has been set by the Department of Business, Enterprise and Innovation this year with Minister Humphries extending the Employment Permit Regulations to enable the hiring of overseas staff to support the hospitality, agriculture and animation sectors.

Failure to undertake the required action will result in potential closure of nursing home beds with a direct impact on residents requiring nursing home care and on an already stretched acute hospital system.

The pressure on labour costs within our sector is exacerbated by the increased recruitment costs arising because of the scarcity of healthcare staff and the necessity to recruit from abroad.

Recommendations – Public policy

Private and voluntary nursing homes must remain competitive employers. They operate within a unique business environment, under a monopoly purchaser of care that is the State.

[3] Oireahtas Health Committee, Estimates for Public Services 2017: Vote 38 – Department of Health, 27th September 2017

[4] Oireachtas Joint Committee on Health, Hospital Services Discussion, 4th July 2018, Bernard Gloster, HSE Chief Officer for Community Health: "The other reason that bed closures could be experienced in community nursing units is not dissimilar to bed closures in acute hospitals, which is the workforce issue. In different parts of the State we are very challenged in terms of recruiting the workforce we need for those facilities."

The essential role they fulfil in providing vital employment and in meeting healthcare needs within our local communities must be recognised within the State operated funding structure and in its resourcing to support nursing home care. Equality must be applied and the present discriminatory practice in funding allocation must be addressed.

As presented to the Department of Health by DKM Economic Consultants, the "current pricing model [Fair Deal] operates in an ad hoc manner, lacks rationale, consistency and fairness, only applies to the private sector, and in the long run is unsustainable". It further warns: "It is untenable that the State quality regulator can assess differentiated dependency levels and in doing so impose costs on nursing homes, while the State price regulator claims it is unable to reflect the same factor in its pricing decisions."

The CSO is projecting the population aged 85+, those most dependent upon nursing home care, will increase by 49% in the next 20 years[5]. The Alzheimer Society of Ireland projects the number of people with dementia will increase by 42% by 2021[6]. The majority of people with dementia (63%) live at home in the community[7]. But a cohort with high dependency care needs require 24 / 7 person-focussed, specialist care provided by nursing homes.

It is critical that private and voluntary nursing homes within our communities are financially sustainable to meet present and growing requirement and are positioned to recruit and retain specialist staff to meet the high dependency care needs of nursing home residents. Our recommendations advance required development within State policy to address the discrimination and advance a fit-for-purpose funding model, address the discrimination re commercial rates and to address workforce planning. We recommend:

- **Persons availing of care under Fair Deal and those providing the care must be treated equally:** The State cannot continue to preside over the discriminatory practice operating in the funding allocation for nursing home care. The gross inequity in the allocation of State funding must be addressed. HSE providers are receiving fees that are 60% above those payable to private and voluntary counterparts. Residents availing of care under Fair Deal must be treated with equality in the funding contribution allocated to them by the HSE.
- **Private nursing home residents must be exempted from payment of commercial rates:** Residents of nursing homes have been assessed by the HSE as needing the specialist care provided by them on a 24/7 basis. The nursing home becomes their home and this must be recognised by the State. As nursing home residents are long-term occupants and the nursing home is their primary residence, they fall under the definition of "occupier" under the Act. In the interest of equality and fairness, private and voluntary nursing home residents should be exempt from commercial rates.

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[5] CSO, *Population and Labour Force Projections 2016 – 2046*

[6] The Society states there are approximately 48,000 people living with dementia in Ireland. This is expected to increase to 68,216 people by 2021 and to 132,000 people by 2041.

[7] Alzheimer Society of Ireland

- **A funding model that recognises the reality of costs incurred to provide nursing home care:** Nursing homes provide specialist clinical, health and social care to persons with high-dependency care needs on a 24/7 basis. State funding must realise the implications of rising business costs such as these presented. The fee payable must be reflective of the reality of costs incurred, including those associated with intensive staffing, continuous professional development, regulatory compliance, capital investment, and costs incurred within 24/7 dedicated healthcare settings.
- **Immediate publication of the review of the Fair Deal pricing mechanism:** This is required to facilitate imperative discussion regarding a fit-for-purpose funding model to meet the high dependency, specialist care needs of persons requiring nursing home care. Fair Deal was introduced in 2009 and a commitment was undertaken to review the scheme after three years. The review of the scheme published in 2015 recommended a review of the pricing system be undertaken within 18 months. This was due to be completed 1st June 2017. It remains outstanding. We are operating under a scheme that has remained unchanged since it was introduced in 2009. Fair Deal fees remain arbitrary decisions based upon historic prices and geographic location.
- **Introduction of an independent appeals process under the Fair Deal scheme:** Failure to agree a fee during the negotiation process with the NTPF, acting on behalf of the State, will effectively lead to the closure of the nursing home. Nursing homes must be afforded the opportunity for right of independent appeal.
- **Removal of the role of healthcare assistants from the Ineligible Categories of Employment for Employment Permits List on a controlled basis:** The measure is required to address the severe shortage of suitably qualified healthcare assistants. The shortage has led to closure of beds within nursing homes and if persists will lead to widespread closure and significant reduction of capacity within the sector. This would lead to a crisis across the entire health and social care sector.
- **The State must lead in the development of a workforce plan for the entire health service – public, private and voluntary, which places the substantial growth in requirement for gerontological care at the centre of it:** The growing number of older people requiring healthcare services will necessitate requirement for workforce planning to ensure our health services are equipped with the appropriate skill mix to meet older persons clinical, health and social care requirements. The State must lead in this regard. Planning ahead and the development of a strategy can support the creation of thousands of additional jobs within our health services and facilitate Government and cross-party objective of providing specialist health services within our local communities.

We welcome the opportunity to submit to this important consultation and are available to provide further detail and present before the Committee.

ENDS

AUGUST 2018

Submission No. 8

Submission to Seanad Public Consultation Committee

Fostering and Sustaining Irish SMEs

How Public Procurement Could Better Assist the Growth of Irish SMEs

Dr Peter Brennan

EPS Consulting

(Based on a Presentation to the Public Policy Advisors Network Annual Conference, 7 November 2016)

Executive Summary

The value of services, supplies and works that will be procured in Ireland over the next five years will be at least €85 billion. The market is highly competitive. As a consequence, the Government should easily meet the cost saving target of €500m that has been set. However, procurement and tendering transaction costs are far too high, and this suggests something should be done to reduce the potential cost of €1.6 billion falling on public sector buyers and suppliers over the next five years. This is a particular problem for low value contracts where a significant amount of tendering takes place. Another significant issue is the high level of procurement contracts that are awarded to companies based outside the State and the consequent loss in Exchequer taxation and reduced job creation opportunities. The regulatory dilemma is to how to balance the positive features of procurement, while responding to the need for better efficiency and flexibility and, in particular, providing indigenous small business with greater opportunities to win contacts below the EU value thresholds.

Based on these conclusions and with the caveat that the current arrangements for procurement in Ireland have been assessed at EU level as being in line with best practice, the following proposals for improvement are submitted.

Office of Government Procurement (OGP): The OGP should be set up as a statutory agency, as in the absence of such legislation the OGP has a persuasive influence only. It should submit an annual report to the Oireachtas and have legally enforceable powers as a regulator to set procurement policy and operational guidelines for all contracting authorities, including commercial semi-State companies. The OGP should accelerate its current reform programme to drive process and operational efficiencies. Comprehensive guidelines for buyers and suppliers should be published. All contracting authorities with a projected (non-pay) procurement spend over €10m on an annual basis should be required to prepare rolling three-year Procurement Plans.

Small Business Access: The threshold for publishing tenders should be raised from €25,000 to the prevailing EU thresholds and all contracts below these thresholds should be reserved for Irish small businesses registered on eTenders i.e. companies employing less than 50 persons or with a turnover less than €10m, or for bid consortiums involving small businesses. All multi-party framework agreements should be divided into lots and the value of the lots should be as small as is practical. Routine contracts under €50,000 should not be procured by the use of framework agreements. As a quid pro quo, buyers should not be required to provide de-briefings on low value tenders.

Process Improvements: All contracting authorities should be required to use the European Single Procurement Document; a re-usable self-declaration form saved in electronic format on the eTenders website. The open procedure should become the default procurement process used. The Dynamic Purchasing System (DPS) - a low cost procurement process - should be used on a more systematic basis for all routine tenders for supplies and services as this will cut the cost of bidding to suppliers quite dramatically. The coverage of procurements managed by SupplyGov should be expanded and then extended across the public sector; again, with the aim of reducing procurement and tendering transaction costs. Tenders priced abnormally low (as defined by OGP guidelines) should be investigated as part of the evaluation process and deemed non-complaint as appropriate.

As the Tender Advisory Service is of limited use to suppliers given its mandate, the OGP should provide a HelpDesk service - with a broader remit - to small businesses during business hours. OGP should also set up an independent Mediation Service to allow unsuccessful tenderers appeal contract award decisions without having to go to the High Court in the first instance.

Procurement Leakage: The OGP should develop and implement a procurement sourcing strategy across Government that would reduce the current (high) level of procurement leakage (i.e. contracts awarded to companies outside the jurisdiction) to the EU average i.e. from 11% to 3%.

Construction: In consultation with construction professionals and the construction industry, the current suite of guidance should be simplified; put online; and made more 'fit for purpose', especially for contracts below the EU value thresholds for works (€5,225,000).

Training and Research: Companies that win tenders and who wish to leverage their success in export markets should be supported and funded in relation to their training needs by Enterprise Ireland or the Local Enterprise Offices as appropriate. Given the many problems that suppliers have with the quality of tender documentation, the OGP should spent 0.3 percent of the annual value of procurement (€500,000) on certified procurement and tendering training and education for both suppliers and buyers. OGP should also use some of the savings it will generate to co-fund academic research on procurement.

There are significant issues with the availability of data in relation to procurement activity.

Procurement is a critical part of the public sector reform programme yet one could be forgiven for thinking - based on its poor overall profile - it is not a priority issue.

While the OGP has made great strides in recent years, it is timely for a series of policy and process improvements to be made to reduce procurement transaction costs; to prevent contracts going outside the State; and, to secure a much greater share of the procurement market for indigenous small businesses.

Finally, a comprehensive efficiency (VfM) review of procurement in Ireland with reference to benchmarks in other comparable jurisdictions should be undertaken by the Department of Public Expenditure and Reform.

1. Introduction

Procurement is the purchase of supplies (goods), services and works by public bodies (buyers) and by private enterprises.

With limited exceptions (defence and security) all bodies receiving Exchequer funding, including private operators, charities and community groups where more than 50% of their costs are supported by public monies, are required to tender for all contracts regardless of value. The higher the value of the contract the more complicated the procurement rules are and over certain thresholds - for example €135,000 for supplies and services procured by government departments (excluding VAT) - the EU Procurement Directives apply.[1]

The context of this paper is that the procurement market in Ireland is projected to be valued at some €85 billion over the next five years.

Does the current procurement delivery model need to be adapted to take account of the scale of this opportunity? Is the transaction cost of procurement too high? Are too many contracts going outside the jurisdiction? Is the taxpayer getting value for money? Is the system transparent? Is there adequate Oireachtas oversight?

The future of procurement is very much 'work in progress'. The function is now more strategic; more collaborative; more technology-driven; and, these transformational trends are ongoing.

It is timely therefore to assess whether procurement policy in Ireland is delivering value for money and is cost effective.

This paper covers the following issues:

1. A literature review
2. The procurement market
3. Trends and developments
4. Costs and the effectiveness of procurement policy
5. Brexit
6. Using public procurement to achieve public policy objectives
7. Proposals for improvement

2. Literature Review - Overview

Public procurement is a relatively poorly researched area in Ireland in spite of its centrality to public service delivery and public sector reform. It has been argued that public procurement resides on the periphery of management science.[2]

[1] Brennan, Peter and Gillen, Joanne (2016) *Public Procurement: Rules of the Road*,. This textbook provides a comprehensive account of the procurement rules and best tendering techniques.
[2] Flynn, Anthony and Davis, Paul (2014) Theory in Public Procurement Research. *Journal of Public Procurement*, 14 (21). pp. 139-180.

One common finding is that it is hard to isolate the macro-economic impacts of EU procurement legislation due primarily to severe data collection issues. While procurement may generate a 1:4 cost benefit ratio according to some estimates, data limitations mean it is almost impossible to give a reliable assessment of the scale or significance of the positive and negative macro-economic impacts of procurement activity. [3]

A number of studies have examined the economic impacts of EU procurement policy. Efficiency in procurement from competing suppliers is seen as a way to obtain the desired supplies, services and works at the lowest price, aka 'value for money'.

While the 1988 Cecchini study was a starting point,[4] many more recent reports have determined how procurement should be managed in a cost-efficient manner.[5]

The procurement design literature recognises a number of tools and strategies for its effective implementation.[6] However, relatively little is known about the impacts of procurement on businesses.[7]

Based on survey results, a detailed mapping of public procurement was carried out in 2011.[8] In 2012, further data was gleaned by the National Procurement Service.[9]

Given the dearth of academic research on procurement and tendering in Ireland, the Office of Government Procurement (OGP) might be mindful to facilitate and encourage such essential research.

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[3] Commission Staff Working Paper, Evaluation Report, *Impact and Effectiveness of EU Public Procurement Legislation*, SEC (2011) 853, June 2011.

[4] The report estimated the cost of non-Europe in relation to procurement was between €8 billion and €19 billion based on the six Member States surveyed. Updating this figure in 2012 prices for the EU-27 indicates the equivalent gap to be as high as €102 billion. However, the EU procurement legislation has only addressed 35% of these costs.

[5] For example, Deloitte Access Dynamics, *Economic Benefits of Better Procurement Practices* for Consult Australia, 2015 and *Capacity and Capability Review of the Central Procurement Function*, a report by Accenture for the Department of Public Expenditure and Reform, August 2012.This report highlighted the significant problems that arise in collecting data about procurement in Ireland.

[6] For example, *Handbook of Procurement*, Cambridge University Press (2006); Asker, J., and Cantillon, E. (2010) 'Procurement when price and quality matter', RAND *Journal of Economics*, Vol 41, No 1 p1-34; Bower, A and Dertouzos, J., *Essays in the Economics of Procurement*, RAND, 1994; *Economic Issues in Procurement*, a report No 47 for the OECD by Sigma, 2011. Dimitri, Nicola (2013) 'Best Value for Money in Procurement.' *Journal of Public Procurement*, 13 (2): 149-175. These studies are summarised in *The Cost of Non-Europe in the Single Market*, European Parliamentary Research Services, September 2014.

[7] Gallery, Clive and Brock, Duncan (2015) *How Procurement can Demonstrate Business Impacts*.

[8] Flynn, Anthony, Davis Paul, McKevitt, David and McEvoy, Emma (2011) Dublin City University Business Faculty, *Mapping Public Procurement in Ireland*.

[9] National Procurement Service (2012) *Opportunities in Public Sector Procurement*, a report written by the Procurement Research Group, Faculty of Business, Dublin City University.

3. The Procurement Market

Introduction

The market size of public procurement in Europe is quite significant, with some €1.9 trillion in works, goods and services (excluding utilities and defence) tendered annually; or some 18.3% of the EU GDP. [10] Ireland's share of the total EU procurement market is just 0.9%.

Based on notices published on Tenders Electronic Daily (TED), the EU procurement portal, the average distribution of contracts awarded across the EU by value is 25% for goods; 35% services; and 40% works.[11] The corresponding figures for Ireland are quite different, as follows: 30%; 61% and 9%.[12]

Yet the EU's Procurement Directives apply to just over 20% of the total market because contracts below the minimum EU thresholds (i.e. €135,000 for supplies and goods) represent a significant proportion of advertised tenders and there are many exceptions to the EU's procurement rules.

There is a dearth of data about procurement activity in Ireland. For example, there are no up-to-date statistics about: i) the number of suppliers registered on eTenders by jurisdiction; ii) the total value of supplies, services and works procured by all contracting authorities in Ireland; iii) the volume and value of below EU threshold contracts and the size categories of companies that have won these low value contacts; iv) similar statistics for above EU threshold contracts; v) the volume and value of all contracts won by companies outside the jurisdiction and the size category of the bidders; vi) the numbers of tenders published by category and contracting authority, including tenders for contracts below €25,000; vii) the number of bids submitted for all tender competitions based on the procurement procedures used; and viii) the number of mini-competition held and the value of the contracts awarded.

As a consequence, this research is, of necessity, incomplete.

Ireland

According to the Commission, in 2014 (the latest year for which statistics are available), total public procurement expenditure in Ireland was €15.5 billion, or 9% of GDP; reflecting the small size of the public sector in Ireland. Having regard to the Book of Estimates and the (revised) Public Capital Programme 2017-2021 that allocates higher expenditure to capital works (€7.6 billion in 2017), the value of supplies and services procured by commercial semi-State companies (some €3 billion), and voted works to be procured annually the total value of expenditure to be procured will rise to at least €17 billion per annum; or €85 billion over five years.[13]

[10] European Commission, *Public Procurement Indicators (2014)*, DG GROW, February 2016. The corresponding value in 2009 was €2.4 trillion.
[11] European Commission Staff Working Document, *Annual Public Procurement Implementation Report 2013*, SWD (2014) 262 final, August 2014.
[12] European Commission, *Public Procurement, Study on Administrative Capacity in the EU, Ireland Profile*, April 2016.
[13] Department of Public Expenditure and Reform, *Part III, Estimates for Public Services 2017*, October 2016.

Including utilities and defence contracts, with 1,279 notices published on TED, only 23% of what is currently procured represents expenditure on contracts above the EU threshold. Therefore national rules and policy should be driving the procurement market as Ireland has a greater degree of discretion in the management of procurement below the EU thresholds provided the EU procurement principles are respected.

As many Irish suppliers bid successfully into Northern Ireland one should look at the island procurement market as a single market. The projected value of the NI market over the next five years is £13.5 billion or €15 billion.[14]

Therefore Irish suppliers have an opportunity to secure their fair share of a €100 billion procurement market on the island of Ireland.

Metrics

Hereunder are some key metrics comparing Ireland with the EU average using the latest available indicators (2014 unless stated otherwise).

Table 1 – Procurement Metrics

Metric	EU	Ireland
Size of Market (EU-28)	€1.93 trillion	€17.7 billion
Procurement market as % of GDP	18.3%	9.3%
% of contracts over EU thresholds	22%	23%
Number of notices published on TED	169,687	1,279
Average value of contract	€330,000	€864,000
Number of bids per competition (2012)	6.5	6.7
% of framework contracts awarded (2012)		
- **by volume**	15%	na
- **by value**	23%	36%
% of contracts won outside jurisdiction (2012)		
- by value	3.1%	14.3%
- by number	1.3%	12.2%
Micro enterprise win rate – over EU threshold (2012)	18%	27%
and by value of contract	4%	6%
Small enterprise win rate – over EU threshold (2012)	21%	20%
and by value of contract	9%	7%
Medium enterprise win rate – over EU (2012)	17%	19%
and by value of contract	15%	12%
Large company win rate – over EU threshold (2012)	45%	33%
And by value of contract	71%	75%

Source: European Commission, *Study on the Administrative Capacity in the EU* and *Public Procurement Indicators 2014*

Private Sector Procurement

At EU level, competition and price pressures in the private sector are considered weaker than in public sector procurement. However, private procurement is considered to be faster, less costly and

[14] op cit Brennan and Gillen (2016); page 59.

more efficient. This is because the majority of larger companies have established and formalised internal purchasing procedures usually tailored for routine and non-routine buying. There is no comparable and contemporary data for Ireland.

Research about procurement within the private sector is more positive with high-performing companies more likely to view procurement as strategically important and a function delivered through collaborative effort. One measure of procurement's growing stature is that senior management are putting more resources into the function. The highest priority for companies is working one-to-one with suppliers in a strategic way. Achieving cost savings is the primary driver in private sector procurement. [15]

4. Trends and Developments

There are a number of important trends relevant to tendering in Ireland.[16]

Supplier Survey

Bid Services carried out a survey of its clients in June 2016; there were 133 responses, with 83% of respondents classified as small businesses.[17] A summary of the key findings that are relevant to this paper are as follows:

1. **Suppliers bid on a regular basis to both public and private buyers. Only 27% of suppliers are predominantly public sector focused.**
2. **The public sector tendering success rate is less than 25% for almost 87% of suppliers.**
3. **Less than 30% of suppliers have bid in a collaborative manner.**
4. **There is a very high interest in professional training.**
5. **73% of suppliers do not understand the role of the OGP.**
6. **74% do not believe the OGP has improved the tendering system for their sector.**
7. **Only 37% believe the OGP's communications are clear and transparent.**
8. **62% feel the OGP's guidance is not clear.**
9. **The biggest obstacle to tendering is the resistance by buyers to providing a de-briefing (74%) followed by badly defined technical specifications (73%).**
10. **87% never heard about the guidance on green public procurement.**
11. **79% were not aware the new EU Procurement Directives came into effect in April 2016.**

While we address the implications of some of these findings below, it is clear there is a major communications deficit between buyers and suppliers.

[15] *The Future of Procurement*, Oxford Economics, 2015.
[16] See for example, *SMEs' Access to Public Procurement Markets and Aggregation of Demand in the EU*, a study for the European Commission, pwc, ICF GHK and Ecorys, February 2014
[17] Bid Services is the largest procurement and tendering ISO certified advisory company on the island of Ireland.

Frameworks

Aggregation techniques i.e. centralised procurement using framework agreements, are used to improve cost savings (leveraging market power and economies of scale and efficiency of procurement by way of process improvements). At EU level nearly one in four tender competitions by value are awarded by way of a framework agreement and this reflects the fact that centralised procuring dominates the market in most Member States. In countries such as Denmark and Sweden which have well-established centralised purchasing bodies the share of framework agreements is above 80%. In Ireland, frameworks are rarely used in works contracts (4% of all contracts) but are more frequently used for services (9%) and supplies (47%). In addition, nearly 50% of EU framework tender competitions were for contracts below the EU threshold. Across the EU, competition is much fiercer when frameworks are procured with a third of buyers confirming that competition among shortlisted suppliers is higher. Unsurprisingly perhaps, there is a growing trend to use frameworks in most Member States. In Ireland (2016) some 24% of all tenders were procured using framework agreements.[18] In Ireland, an average of 17.6 bids are received for framework tenders; the EU average is 11.4. Across the EU, 25% of companies (of all sizes) are less likely to bid for framework agreements.

Collaborative Bidding

In overall terms at EU level, some 79% of tenderers bid on their own; 4% get involved in a bid consortium; and 17% win work through sub-contracting. Micro businesses are more likely to bid collaboratively (12% against 4% on average).

Public Service Spend and Tendering Analysis Report 2014

This report, published by the OGP, analysed €3.9 billion of procurement spend.[19] As such it captures a mere 25% of total procurement expenditure and its findings are as a result not a true and complete view of procurement trends across the economy. For example, it is claimed that Irish firms win 95% of the contracts tendered. Commission statistics provided by the Irish Government show the leakage rate at more than twice that figure. SMEs secured 55% of the expenditure that was analysed; a very low figure given the definition of SMEs, which encompasses 99.7% of all Irish businesses.[20] Medical, surgical and pharmaceutical supplies was the largest single category of expenditure. The report does not cover the costs of procurement falling on buyers and suppliers nor the efficiency or effectiveness of procurement activity. Given the sample size of contracts reviewed this report does not provide real insights into the dynamics of the procurement market in Ireland.

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[18] op cit European Commission, April 2016.

[19] Office of Government Procurement, *Public Service Spend and Tendering Analysis Report for 2014*, 2016. The data was collected from just 77 of 3,319 contracting authorities.

[20] Data on micro and small businesses and SMEs is collected by the Central Statistics Office.

5. Costs and Effectiveness

Introduction

Procurement outcomes can be measured on the basis of the level of competitiveness achieved (number of bids and participation from cross-border bidders); the costs incurred by buyers and suppliers (in terms of human resource inputs); and, the perception of transparency.[21]

Number of Bids

The number of bids submitted for each tender competition is a proxy of competition within the market place.

The number of tenders published across the EU has more than doubled in the past eight years, while the average size of contract has fallen to some €330,000. Commission data suggests there are far more bids per tender competition in Ireland than in all but two other Member States. In addition, some 25% of EU tenders were awarded without competition, or with one bidder only.

In countries such as Ireland with a higher GDP per capita and in larger countries the typical procurement process receives more bids. The centralisation of procurement has a strong negative impact on the number of bid submissions per competition.

At EU level each public tender receives an average of 5.4 bid submissions with the use of the open procedure attracting more offers. The average number of bids for works contracts is 7.4; 5.3 for services; and 4.5 for supplies. Among buyers at EU level, local authority tenders attract the highest number of bids.

In Ireland, according to the European Commission, the average number of bids per competition is 6.7; the fourth highest in the EU. This is a clear indicator of the degree of competition within the Irish market place.

The Cost of Bidding

As well as the actual running of the tender competition, completing and assessing the bid documents, the cost of tendering includes essential research carried out by both suppliers and buyers before tender is published as well as the cost of ensuring compliance of the preferred bidders at contract award.

The cost of running a restricted procedure is some 30% more expensive than the open procedure. Running framework agreements is the most cost-effective option for both buyers and suppliers by a factor of about 20%. Works contracts are the most costly to procure as on average 58 person-days are involved per tender competition, of which 29 days are supplier days. In contrast, the labour intensity for services contracts is 38 days (16 by suppliers) and only 34 for supplies (14 by suppliers).

[21] The cost and effectiveness of public procurement in Europe was assessed in a report for the European Commission prepared by pwc, London Economics and Ecorys, March 2011. Some 7,300 buyers and suppliers were surveyed. This section draws on the report's empirical findings while using more up-to-date data.

It takes Irish buyers an average of 22 person-days to run a tender competition using the open procedure. The figure rises to 32 person-days for setting up framework agreement. [22]

At EU level, the cost of procurement is estimated at about 1.4% of purchasing volume with tenderers' cost representing 75% of that amount. However, according to the Commission, the cost of running procurement competitions in Ireland is 31% higher than the EU average. This implies a transaction cost of 1.8% of the total value of all procurements. On the basis that Irish tenders to a value of €85 billion will be published over the next five years this implies that some €1.53 billion will be spent by buyers and suppliers; the procurement costs attributable to the public sector will be some €382m and tenderers will spend around €1.15m in bidding.

However, this methodology may, in fact, under-estimate the procurement transaction costs in Ireland given the greater number of bids submitted per tender competition.

In 2014, some 5,440 tenders were published in Ireland. Using Commission data, the average cost to the public sector to run a tender competition is €5,500. As Irish costs are 31% higher than the EU average this translates to a figure of €7,205. [23] This implies an annual cost of procurement to the Exchequer of €39.2m or €196m over five years. As this figure excludes low value contracts (i.e. those below €25,000) that are not published, and the cost of the OGP (€20m in 2017), the public sector's transaction cost of procurement is potentially much higher.

It has been estimated that 83% of suppliers spend between €5,000 to €10,000 on tender submissions. Assuming an average of €7,500 per tender competition and with some 5,440 tenders published annually attracting an average of 6.7 bids per tender, this translates to an annual cost of €273m or €1.37 billion over five years.

Another issue is the cost to suppliers of submitting tenders that are subsequently cancelled, which has been estimated at €25m per annum. [24]

While no official data is available for Ireland, at EU level the cost of running tenders for below EU threshold tenders is as much as 29% of contract value.

These figures raise serious question about the cost efficiency of current procurement practices.

Win Rates

At EU level, micro-businesses win 20% of contracts procured using the open procedure; the corresponding figure for SMEs is 34%. The win rates are 19% and 29% respectively when the restricted procedure is used. This suggests that buyers who use procedures other than the open and restricted procedures are unlikely to award the contract to a small business. SMEs (i.e. companies employing less than 250 people) won 29% of contracts above the EU threshold by value and 59% of below EU threshold contracts. The value of a public contract has the greatest influence on the extent to which SMEs win above-threshold contracts. Therefore the higher the contract value the less likely it is for a SME's chances of winning. Similarly, once the value of a contract exceeds

[22] op cit, pwc report, chapter 2.2.
[23] op cit, pwc report, page 87.
[24] Tender Scout (2015), *The State of Irish Public Sector Procurement*.

€100,000 the less likely it is for a small business to win. Hence the breaking down of contracts into lots improves the prospects of SMEs getting greater access. However, a closer inspection of the data reveals that large companies still dominate contract awards in certain categories.

Table 2 – Share of SMEs in Total Value of Contracts Awarded (%)

	Micro	Small	Medium	Large
Commodities	3	5	9	84
Machinery	3	9	13	75
Medical Products	4	8	39	50
Other Manufacturing	8	23	26	43
Construction	4	8	15	74
Business Services	5	9	12	74
Other Services	6	12	14	68

Source: pwc (2015)

Irish SMEs win 25% of all contracts above the EU threshold and 53% of those below the threshold; close to the EU average success rate.

Modelling indicates the chances of SMEs winning tenders starts to decrease, relatively rapidly, above a value of €60,000 and that contracts over €300,000 are beyond the capacity of most SMEs. SMEs tend to be more successful in construction, business services and manufactured goods. [25]

The European Commission has found that Ireland's increasing use of framework agreements is not SME friendly, given the contract values being procured.[26]

Contracts Awarded to Companies in Other Member States

Cross-border procurement takes place when a public contract in a Member States is partly or fully performed by a supplier from abroad. The 'leakage' of procurement spend is a controversial area. The Commission's analysis in 2011 (based on an assessment of published contract award notices – that admittedly do not capture all decisions) concluded that the average direct leakage rate by volume at EU level in terms of contract awards was 3.4%. The corresponding figure in Ireland was 22.8%. Larger countries tend to have fewer cross-border wins and the centralisation of procurement also contributes positively to the incidence of cross border wins. In addition, works contracts and business services contracts attract the most cross-border interest. Another interesting fact is that utilities are more likely to award contracts to bidders from other jurisdictions by a factor of nearly 50%.

Another study (that looked above EU threshold contracts only) assessed the average EU level of leakage at 3.5% by value; Ireland's rate was 8.8%. This research found that lack of experience with doing business abroad; language barriers and strong competition from local suppliers were the main obstacles to cross-border bidding.[27]

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[25] op cit European Commission (2011), page 108.

[26] op cit European Commission, April 2016, page 113.

[27] *Cross-border Procurement Above EU Thresholds*, a report for the European Commission, Ramboll Management Consulting and HTW Chur, March 2011.

At EU level, foreign company participation in public procurement is more prevalent in smaller Member States with open economies that typically have a smaller industrial base and fewer specialised service providers. In Ireland's case, there is a higher than EU average of import penetration and this, in part, is reflected in the procurement leakage statistics.

The latest (April 2016) estimate of procurement leakage in Ireland is 11% of total contract value.[28] Over the next five years, one might therefore expect contracts to a value of €9.35 billion to go to companies registered outside the jurisdiction. Given we are an open economy it is unrealistic to expect there will be no leakage. If Ireland put policies and processes in place to deliver a procurement leakage target at the EU average (3.1% by value) then this would increase the value of contracts won by indigenous Irish companies by some €6.8 billion. Assuming 30% of this expenditure returns to the Exchequer, taxation would rise by €2 billion over five years and some 4,000 long term sustainable jobs might be created.[29]

There is evidence that suitably trained Irish companies win significant contracts in other jurisdictions. For example, the Go-2-Tender Programme that supports cross-border tendering generates a 124 to 1 rate of return in terms of the cost of running the programme.[30] Given the high procurement transactions costs imposed on suppliers, the OGP (through Enterprise Ireland and the Local Enterprise Offices) should support company tender training targeted at export markets.

Time Efficiency

The time taken to run a procurement competition is determined by the EU Procurement Directives. However, the time taken for a buyer to reach a decision varies considerably. For example, the average time it takes at EU level to complete a tender competition is 108 days, but the difference between the bottom and top performers is 180 days. On average, it takes 242 days to conclude a works contract; 107 for services contracts; and 83 for supplies. Ireland's performance is poor as the time taken to conclude a typical tender is 148 days from start to finish; or 41 days longer than the EU average.[31]

Savings

In order to quantify savings which can be attributable to procurement, one must first separate the effects of the procurement rules from the effects of other national or international regulatory measures and other changes that would have affected the procurement market in any event. The construction of a creditable counterfactual is also challenging. One key finding is that greater savings are achieved the higher the number of bids submitted. However, the public buyer that benefits may capture the savings internally. Use of the open procedure has the capacity to generate the highest

[28] op cit European Commission, April 2016.

[29] There is a lot of literature about the impacts of Government spending on the economy: see for example, NERI (2012) *An Examination of the Effects of an Investment Stimulus*, working paper No 4. Depending on what economic multipliers are used these figures would change; both upwards and downwards.

[30] (unpublished) Go-2-Tender Programme Evaluation (2011-2012), November 2014. During this period the programme was delivered by Bid Management Services.

[31] op cit European Commission, April 2016.

level of savings as such competitions typically attract 35% more bids.[32] In Ireland (2016), 68% of all tenders were procured using the open procedure.[33]

A primary driver of procurement public policy in Ireland is reducing Exchequer expenditure by the use of smart procurement techniques. It has been suggested (without supporting evidence) that upwards of €637m could be saved annually with the categories of professional services and facilities being the top two target areas for cost savings. The Government set a cost saving target of €500m over three years.[34] However, only €160m had been saved by the end of 2015.[35]

While the notion of reducing Exchequer expenditure through smarter procurement is laudable, it appears that in seeking to achieve this policy objective there has been a sharp rise in the cost of bidding by suppliers, in particular for framework agreements.

Transparency

Dialogue with Suppliers

In 2013, the OGP, in conjunction with the Department of Jobs, Enterprise and Innovation, set up a High Level Group on SME Access to Public Procurement. This is the forum that allows SME representative bodies to meet with the senior procurement decision-makers with a view to keeping the efficiency and effectiveness of the procurement rules under review.[36] There is clear evidence that the lines of communication between the OGP and SME representative organisations are active and open.

Oireachtas Oversight

There have been many recent presentations to the Oireachtas on procurement issues. For example, in a presentation to the Joint Committee on Jobs, Enterprise and Innovation, Dr Paul Davis made the case for the adoption of the UK's LM3 methodology and the Welsh 'Community Benefits' measurement tool to determine the local economy impacts when tenders are awarded to local suppliers.[37] The SFA made a submission to the Public Accounts Committee (PAC) on public procurement that argued the policy of saving money at all costs was wrong and that SMEs should get better access to procurement contracts.[38] The Irish School Art Supply Federation has engaged

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[32] Europe Economics, *Estimating the Benefits from the Procurement Directives*, a report for the European Commission, May 2011.

[33] op cit European Commission, April 2016.

[34] Department of Public Expenditure and Reform, *Public Services Reform Plan 2014-2016*.

[35] Department of Public Expenditure and Reform, *Annual Progress Report on the Public Service Reform Plan 2014-2016*, 2016.

[36] Office of Government Procurement (2015), High Level Group on SME Access to Public Procurement, *Progress Report*. No individual suppliers or procurement experts are members of the Group. The SME representative organisations take a keen interest in procurement and have made several submissions to Government on the subject; Chambers Ireland's submission *A Strategic Public Procurement for Ireland* is a case to point.

[37] Submission to the Joint Oireachtas Committee on Jobs, Enterprise and Innovation, Dr. Paul Davis, 16 October 2014. LM3 is dynamic measurement tool that readily identifies the multiplier effect of local economy spending by suppliers who win public tenders. New York City and the State of British Columbia have also demonstrated that awarding tenders to local companies has a significant economic multiplier within the community/region.

[38] Submission to the Public Accounts Committee on issues regarding public procurement, SFA, 5 March 2015.

with the PAC.[39] The OGP has also presented. [40] These and other instances demonstrate that the Oireachtas takes an interest in public procurement. However, there is no evidence that the Oireachtas has ever carried out a critical review of the effectiveness or efficiency of public procurement in Ireland. As the OGP is not required by legislation to submit an annual report to the Oireachtas it is arguable that there is inadequate political oversight into its performance.

Case History – Transparency

As transparency is an indicator of procurement efficiency, it is useful to review the case of the Health Service Executive (HSE) that appeared before the PAC in April 2015 on foot of a report prepared by the Controller and Auditor General (C&AG) about procurement in the HSE. The C&AG report into procurement by the HSE drew attention to a significant number of issues and made a series of recommendations.[41] The HSE accepted the conclusions and in the intervening period before it appeared before the PAC, the HSE implemented actions and procedures to address the issues raised by the C&AG. The PAC found that the HSE is not in a position to determine if it is getting value for money for a significant amount of its spend because it had procured these supplies and services in a non-competitive manner. The PAC also noted that the HSE was under-reporting the extent to which it complied with public procurement policy. Subsequently, in July 2016, the PAC noted that non-compliance with procurement requirements in the HSE is *systemic*.[42]

Corruption

According to the OECD, public procurement is one of the Government activities most vulnerable to corruption.[43] At EU level, on the basis of a study of five sectors in eight Member States, it was found that the direct costs of corruption amounted to upwards of 4.4% of the overall value of procurements. [44] There are no statistics for corruption involving procurement in Ireland. While anecdotal evidence suggests there may be some instances of bias, bribery and favouritism, very few cases have been proven. As has been reported to the C&AG on several occasions, the direct award of contracts to suppliers without tendering is in breach of the procurement rules. While not corruption *per se*, this is an unwelcome phenomenon that still persists. The EU Procurement Directives require buyers to ensure that evaluators do not have a conflict of interest and this should give Accountable Officers a measure of assurance. In addition, any suspected wrongdoings can be reported under the Protected Disclosure Act 2014.

[39] Submission to the Public Accounts Committee on problems facing the industry due to public procurement, the Irish School Art Supply Federation, April 2014.
[40] Statement by Paul Quinn, Government Chief Procurement Officer, to the Joint Committee on Finance, Public Expenditure and Reform, 21 January 2015.
[41] Controller and Auditor General Report 2013, Vote 39, Health Service Executive, Chapter 14, Procurement.
[42] Briefing note for the Public Accounts Committee, *Procurement in the HSE*, July 2016. The HSE cited 205 contracts to a value of €33.1m where the procurement rules were not applied in 2015. The PAC published a report in November 2010 on procurement in the Prison Service and procurement matters generally.
[43] OECD (2016) *Preventing Corruption in Public Procurement*. The OECD's (2014) Foreign Bribery Report quantifies the potential scale of this problem.
[44] Pwc and ECORYS (2013) *Identifying and Reducing Corruption in Public Procurement in the EU*.

Communications

Given that the procurement market in Ireland could be valued at some €85 billion over the next five years there is a relatively low level of pro-active communication between buyers and suppliers. For example, the OGP has yet to publish comprehensive and consolidated guidelines about the application of the EU Procurement Directives six months after they entered into force. Neither does the OGP publish a regular ezine to the suppliers registered on eTenders. The OGP has not yet published contact details of its category managers and its senior management team. Contract Award Notices are not brought pro-actively to the attention of suppliers. The above-mentioned supplier survey and other independent research (Tender Scout)[45] point to shortcomings in the OGP's approach to communications and the consistent quality of tender documentation. On the other hand, suppliers who have attended Meet the Buyer events over the past years have rated very highly the openness and willingness of buyers to engage.[46]

Regulatory Impacts

It is a Cabinet requirement that a Regulatory Impact Assessment (RIA) should be prepared, in consultation with stakeholders, on all proposals for EU Directives before they are discussed within the EU Institutions. [47] A public consultation on the implementation of the 2014 EU Procurement Directives was launched but an assessment of the submissions has not been published nor it appears has a RIA been prepared on the 2014 EU Procurement Directives, which entered into force in Ireland on 18 April 2016. [48] In contrast, the costs and benefits and regulatory impacts of the new EU Procurement Directives have been identified in the UK and Scotland.[49] The Irish RIA should have taken into account the Commission's impact assessment of the draft Directives.[50] Thus the 2014 EU Procurement Directives have been implemented in Ireland without any quantification of the costs and benefits, nor the economy-wide impacts of the legislation.

Brexit

There will be no changes in the current procurement arrangements until the UK negotiates an exit Treaty with the EU i.e. the current EU procurement rules will apply for at least two to three years. If the UK opts for an agreement modelled on what Norway, Iceland and Liechtenstein have with the EU, or if a *sui generis* solution emerges, then the current EU Directives will in all likelihood continue to apply in relation to all contracts over the EU thresholds. Therefore it is probable that all high value contracts in the UK and Northern Ireland will continue to be advertised EU-wide in a Brexit scenario. The NI Administration will have flexibility to manage tender competitions for sub-threshold contracts. As the current arrangements work well there is arguably a case for continuity. If the UK

[45] op cit Tender Scout (2015).
[46] Meet the Buyer events are organised by InterTradeIreland in collaboration with the OGP and the Central Procurement Directorate in Northern Ireland.
[47] Brennan, Peter, EPS Consulting (2014), *Smart Regulation: A Driver of Irish Economic Recovery*.
[48] Department of Public Expenditure and Reform, *Transposition of the new EU Public Procurement Directives*, Consultation Document, October 2014. The EU Concessions Directive has yet to be implemented.
[49] *Regulatory Impact Assessment for Public Contracts (Scotland) Regulations*, 2016.
[50] Commission Staff Working Paper (2011), *Impact and Effectiveness of the EU Public Procurement Legislation*.

secures a deal based on Single Market principles, Brexit is not going to change the procurement environment in the UK and NI. It is one of the few areas where a status quo can be anticipated.[51]

6. Using Public Procurement to Achieve Public Policy Objectives

There has been a growing interest across the EU in using public procurement to help Governments meet wider policy objectives. The literature suggests public procurement has the potential to influence the market in terms of production and consumption trends in favour of environmentally friendly, socially responsible and innovative products and services. [52] [53] The research at EU level finds a reluctance among buyers to address this agenda as it involves additional workloads, the taking of some measure of risk and up-skilling. Ireland's experience is not dissimilar.

This section examines briefly what is happening in relation to green public procurement (GPP), innovation and promoting social policy aims.

GPP

GPP is a process whereby public authorities meet their need for goods, services and works by choosing solutions that have a reduced impact on the environment throughout their life-cycle as compared to alternative products or solutions.[54] Based on what is considered to be best practice at EU level the Environmental Protection Agency (EPA) has published guidance to assist buyers to implement and maintain procedures for GPP. [55] However, to date there is limited evidence from a review of recent tenders that Irish buyers are embracing these GPP principles, in particular in relation to small works contracts. As GPP is not a legal requirement and given the absence of corresponding OGP guidance and no investment in training, this is currently a lost opportunity.

Innovation

Public procurement is increasingly seen as an attractive and feasible policy instrument for the implementation of innovation policy.[56] Irish Government guidelines have been published that set out a range of actions that should be considered by buyers with the aim of stimulating innovation in the economy. However, there is little evidence that the public sector has paid any attention to this plea to adopt innovation-friendly procurement options.[57] An initiative called 'Small Business Innovation Research' (SBIR) has been launched with the aim of using the power of public procurement to find innovative solutions to specific public sector challenges and needs. SBIR supports projects through

[51] House of Commons Library, Briefing Paper, Number 07213, *Brexit: Impact Across Policy Areas*, August 2016. Chapter 3.5 deals with procurement. Around 1.3% of the value of large UK procurement contracts is awarded to companies in other jurisdictions.
[52] European Commission, *Strategic Use of Procurement in Europe,* report written by Adelphi, (2010).
[53] European Commission, *Strategic Use of Public procurement in Promoting Green, Social and Innovation Policies*, Final Report, December 2015.
[54] op cit Brennan and Gillen (2016), page 107.
[55] Environmental Protection Agency, *Green Procurement Guidance for the Public Sector*, 2014.
[56] Uyarra, E and Flanagan, K (2009), *Understanding the Innovative Impacts of Public Procurement*, Manchester Business School Working Paper No 574.
[57] Department of Enterprise, Trade and Employment, *Buying Innovation: The Ten Step Guide*, (2009).

the stages of feasibility and prototyping.[58] It is too early to assess the success or otherwise of the SBIR initiative. The EU Procurement Directives allow buyers to procure using the Innovation Partnership. [59] To date, no OGP guidance has been published about how buyers and suppliers can take advantage of this flexible procurement model. In contrast, in the UK the House of Lords has published a report into the use of public procurement to stimulate innovation.[60]

Social Policy

There was a recent attempt to legislate in a private member's Bill for the inclusion of social and local employment clauses in tender documents. The OGP led a Social Clauses Project Group to explore options having regard to the approach adopted by the Grangegorman Development Agency and the Devolved Schools Building Programme that included social clauses in public works contracts. However, the Government, in noting that the EU Procurement Directives do not require binding provisions, has opted for a voluntary 'best endeavours' approach.[61]

7. Reprise

The Single Market Scorecard concluded that Ireland is one of the high-performing Member States in terms of procurement.[62] The only indicator where Ireland has an 'unsatisfactory' score relates to the quality of the information provided by buyers. A more recent (April 2016) report concluded that Ireland has a highly developed and centralised e-procurement system; it has a streamlined and centralised administrative set up; and, uses procurement extensively to achieve other public policy goals.[63]

While one might dispute the veracity of some of these conclusions, arguably the focus should be on areas where the European Commission has identified weaknesses in the delivery of procurement in Ireland such as training; lack of skills outside the OGP and other major buyers; the provision of a supplier help desk; use of more standard documentation; publication of guidance materials; the perception of corruption; and the undermining of SME participation through the use of framework agreements.

The market for public procurement in Ireland is highly competitive as it is in comparable open economy Member States with high GDP per capita. As a consequence, the Government should easily meet the cost saving targets that have been set.

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[58] Enterprise Ireland is the lead agency and has a mandate to set up, manage and deliver SBIR at national level. In collaboration with SEAI and ESB eCars, EI rolled out the first SBIR competition in July 2014. SEAI issued a second SBIR in October 2015 in the area of smart technology solutions for home owners. EI and Dublin City Council are collaborating to seek low cost, smart and innovative solutions to increase the number of people cycling in Dublin (March 2016). EI has a fund of €1m to co- or part-fund successful SBIR projects.

[59] op cit Brennan and Gillen (2016), page 87.

[60] House of Lords, Science and Technology Committee, First Report, *Public Procurement as a Tool to Stimulate Innovation*, May 2101.

[61] Houses of the Oireachtas, Social Clauses in Public Procurement Bill 2013, Second Stage speech, Minister Simon Harris TD, 17 October 2014.

[62] European Commission, Single Market Scorecard (Public Procurement), (2015).

[63] op cit European Commission, April 2016, page 113.

However, procurement transaction costs are far too high and this raises the question as to what should be done to reduce the potential cost of €1.6 billion falling on buyers and suppliers over the next five years. This is a particular problem for low value contracts where a significant amount of tendering takes place.

Another significant issue is the high level of leakage of procurement contracts outside the economy and the consequent loss in Exchequer taxation and job creation opportunities.

The regulatory dilemma is to how to balance the positive features of procurement, while responding to the need for better efficiency and flexibility and, in particular, providing indigenous small business with greater opportunities to win contacts below the EU thresholds.

8. Proposals for Improvement

Based on these conclusions and with the caveat that the current arrangements for procurement in Ireland have been assessed at EU level as being in line with best practice, the following proposals for improvement are submitted.[64]

OGP: The OGP should be set up as a statutory agency, as in the absence of such legislation the OGP has a persuasive influence only. It should submit an annual report to the Oireachtas and have legally enforceable powers as a regulator to set procurement policy and operational guidelines for all contracting authorities, including commercial semi-State companies. The OGP should accelerate its current reform programme to drive process and operational efficiencies. Comprehensive guidelines for buyers and suppliers should be published. All contracting authorities with a projected (non-pay) procurement spend over €10m on an annual basis should be required to prepare rolling three-year Procurement Plans.

Small Business Access: The threshold for publishing tenders on eTenders should be raised from €25,000 to the prevailing EU thresholds and all contracts below these thresholds should be reserved for small businesses registered in Ireland i.e. companies employing less than 50 persons or with a turnover less than €10m, or for bid consortiums involving small businesses. All multi-party framework agreements should be divided into lots with the value of the lots to be as small as is practical. Routine contracts under €50,000 should not be procured by the use of framework agreements. As a quid pro quo, buyers should not be required to provide de-briefings on low value tenders.

Process Improvements: All contracting authorities should be required to use the European Single Procurement Document; a re-usable self-declaration form saved in electronic format on the eTenders website. The open procedure should become the default procurement process used. The Dynamic Purchasing System (DPS) - a low cost procurement process - should be used on a more systematic basis for all routine tenders for supplies and services as this will cut the cost of bidding to suppliers quite dramatically. The coverage of procurements managed by SupplyGov should be expanded and then extended across the public sector; again, with the aim of reducing procurement transaction costs. Tenders priced abnormally low (as defined by OGP guidelines) should be

[64] See also the submission from Bid Services to the public consultation on the implementation of the 2014 EU Procurement Directives, November 2014. DPER has yet to publish an assessment of the submissions received.

investigated as part of the evaluation process and deemed non-complaint as appropriate. As the Tender Advisory Service is of limited use to suppliers given its mandate, the OGP should provide a HelpDesk service - with a broader remit - to small businesses during business hours. OGP should also set up an independent Mediation Service to allow unsuccessful tenderers appeal contract award decisions without having to go to the High Court in the first instance.

Procurement Leakage: The OGP should develop and implement a procurement sourcing strategy across Government that would reduce the current (high) level of procurement leakage to the EU average i.e. from 11% to 3%.

Construction: In consultation with construction professionals and the construction industry the current suite of guidance should be simplified; put online; and made more 'fit for purpose', especially for contracts below the EU value thresholds for works (€5,225,000).

Training and Research: Companies that win tenders and who wish to leverage their success in export markets should be supported and funded in relation to their training needs by Enterprise Ireland or the Local Enterprise Offices as appropriate. Given the many problems that suppliers have with the quality of tender documentation, the OGP should spent 0.3 percent of the annual value of procurement (€500,000) on certified procurement and tendering training and education for both suppliers and buyers. OGP should also use some of the savings it will generate to co-fund academic research on procurement.

9. Conclusions

There are significant issues with the availability of data in relation to procurement activity across Government.

Procurement is a critical part of the public sector reform programme yet one could be forgiven for thinking - based on its poor overall profile - it is not a priority issue.

While the OGP has made great strides in recent years, it is timely for a series of improvements to be made in terms of policy and process to reduce procurement transaction costs; to prevent contracts going outside the State; and, to secure a much greater share of the procurement market for indigenous small businesses.

Finally, a comprehensive efficiency (VfM) review of procurement in Ireland with reference to benchmarks in other comparable jurisdictions should be undertaken by the Department of Public Expenditure and Reform.

Acknowledgement

I wish to thank my colleagues Joanne Gillen (Bid Management Services) and Francis Carroll (Public Procurement Services) and Sean O'Riordain for their comments and suggested edits of a draft of this paper. The views expressed are mine alone.

CIF SUBMISSION TO THE SEANAD PUBLIC CONSULTATION COMMITTEE ON 'FOSTERING AND SUSTAINING THE IRISH SMALL AND MEDIUM-SIZED BUSINESS SECTOR'

5 SEPTEMBER 2018

EXECUTIVE SUMMARY

The construction industry has long been fragmented, underinvested in, and operating on thin margins. These are not the conditions that support innovation and enable improved productivity. In the context of the National Development Plan 2018-2027 we need to look at ways to incentivise the industry to innovate, invest in more productive skills (such as digital and off-site construction), and deliver more value in the long term. Supporting construction small and medium-sized enterprises (SME's) to grow will help to ensure Ireland's infrastructure serves Irish communities well into the future.

This year's CIF Budget submission focuses on the areas where Government policy can assist Irish businesses operating in the construction sector to grow, invest and innovate. Issues for construction SMEs include supports for start-ups, training and development of staff and helping businesses build strong routes to market domestically and internationally.

The impact of the economic downturn was particularly felt among the many SME businesses that operate in the construction sector and beyond. The industry needs the right conditions for its supply chains to thrive and be confident about investing in new research, innovation, technology and people. The construction industry has previously called on Government to assist in developing a strong and resilient supply chain by creating conditions for construction supply chains to thrive by addressing access to finance, education and skills, and leaner procurement.

The construction industry comprises predominantly SME and micro-enterprises. Over 97 per cent of businesses in the construction industry employ less than 10 people. Over 65 per cent of people employed and engaged in construction work in small companies of less than 10 persons. As an industry it is highly sensitive to the impact of regulation and administrative costs of doing business, (eg, labour costs, transport costs, insurance costs, planning costs, energy costs and taxation).

Small businesses face a disproportionate burden of regulation and administrative costs and are often the companies most in need of business supports, training and access to finance. The rising costs of construction have made productivity a very important issue for the industry. As a result, it is now essential to facilitate SME businesses across the industry to scale up and become more efficient, thereby maximising the return on any investment by the State.

Table 1: Active Construction Enterprises by Employee Size & Class 2015

Enterprise Size	No. Enterprises and Employee Class	Number

Under 10 people	Active Enterprises (Number)	49,192
	Persons Engaged* in Active Enterprises (Number)	71,430
	Employees* in Active Enterprises (Number)	36,409
10 – 19 people	Active Enterprises (Number)	859
	Persons Engaged in Active Enterprises (Number)	11,223
	Employees in Active Enterprises (Number)	11,122
20 – 49 people	Active Enterprises (Number)	381
	Persons Engaged in Active Enterprises (Number)	11,139
	Employees in Active Enterprises (Number)	11,129
50 – 249 people	Active Enterprises (Number)	101
	Persons Engaged in Active Enterprises (Number)	8,898
	Employees in Active Enterprises (Number)	8,897
250 people and over	Active Enterprises (Number)	13
	Persons Engaged in Active Enterprises (Number)	6,030
	Employees in Active Enterprises (Number)	6,030
Source: CSO Business Demography		
******Persons engaged*** **are the total of employees, proprietors and family members. Persons engaged are the sum of employees plus working proprietors. ****Employees*** **are persons who are paid a fixed wage of salary.**		

The Organisation for Economic Co-operation and Development (OECD) has recommended increasing the use of direct public support for business research and development. This would be in the form of grants, increasing the share of funding dedicated to training for those in employment, and providing financial support to workers who undertake postgraduate courses, as a means to target the widening productivity gap between foreign multinationals operating in Ireland and Irish firms.

The share of innovation expenditure by small businesses remains just above 13 per cent in Ireland. Investment in R&D by construction businesses by comparison to other industries is even lower. That's why CIF is recommending the establishment of a *Centre of Excellence for Construction* and a dedicated *National Construction Sector and Education Working Group* to direct funding to construction-related areas at third-level and within the research community.

New research on the future of infrastructure delivery will support Ireland's collective capacity to provide world-class infrastructure that continues to respond to the needs of the economy, technological change, environmental challenges and consumer behaviour. In addition, one of the roles of the proposed *National Construction Sector and Education Working Group* would be to identify EU funding opportunities that would allow for collaborative submission across the industry and the Higher Education sector thereby supporting the growth of Irish SMEs.

Promoting innovation in construction through expansion of Government support for SME-driven R&D, including direct funding measures, and non-bank financing will help increase dynamism across the industry and wider domestic economy. Despite a positive increase in gross new lending to SMEs in the last year, and according to the Central Bank, SMEs continue to face challenges as they attempt to access bank-based sources of financing. Banks' rejection rates for SMEs loans and overdrafts are more than twice the rate in comparative countries and borrower discouragement, at 9 per cent, compares unfavourably with comparator countries.

The Committee should consider widening the R&D Tax Credit scope in line with the UK in order to incentivise SMEs to get involved in R&D activities on a greater scale in Ireland. Construction companies who have tried to avail of the R&D Tax Credit in the past have found it very difficult to access the Tax Credit. Budget 2019 should examine any possible means to widen the parameters of the R&D Tax Credit to better encourage R&D investment by industry. This could take the form of a simplified R&D tax credit scheme for SMEs which allows smaller firms to overcome funding constraints on their innovative activity. Furthermore the Committee should examine ways to improve access to the Employment and Investment Incentive Scheme ("EII Scheme") which is a tax relief incentive scheme which provides all income tax relief to qualifying Investors for investments in certain qualifying SMEs.

The attraction and retention of talent is also fast becoming one of the most critical issues for all industries, not least in the construction indsutry, across Ireland. The availability of managerial and human capital, especially for Irish SMEs, presents significant competitive pressures for the economy. Industrial, economic and fiscal policy needs to be refined so that measures to support indigenous growth and human capital development are strengthened.

By supporting SMEs in the construction sector, and right across the supply chain, we can improve the way Ireland's infrastructure is planned, procured, delivered and operated.

THE ECONOMIC CONTEXT

As one of the strongest performing economies in Europe, Ireland's economy grew robustly in 2017 by 7.8 per cent. International uncertainties and rising labour costs mean that growth will gradually slow and a more moderate growth rate is forecast in 2018 and 2019, at 4.7 per cent 4.2 per cent respectively. The strong performance of the economy reflects positive growth in exports despite international uncertainty, and the normalisation of activity in the banking sector.

Core underlying investment increased by 5.7 per cent in 2017, reflecting a strong increase in building and construction investment. Building and construction investment was up 11.4 per cent year-on-year by end Q1 2018.[1] Underlying domestic demand (i.e. investment) is expected to grow by 4.4 and 4.1 per cent in 2018 and 2019, respectively, which is a solid measure of economic activity. Underlying domestic demand has made a significant contribution to growth in recent years and is now just below its pre-crisis peak.

[1] Central Bank of Ireland, Quarterly Bulletin 3, 2018

Table 2: GDP Growth Forecasts

	2018 E	2019 F
Department of Finance	5.6%	4.0%
Central Bank of Ireland	4.7%	4.2%
ESRI	4.7%	3.9%
European Commission	5.7%	4.1%
OECD	4.0%	2.9%

Source: various, as listed

Brexit is a key risk to the Irish economy and there is also a concern that as the economy approaches near full employment, upward pressure on wages and skills shortages, as well as infrastructure deficiencies, could threaten Ireland's competitiveness. The timely implementation of the NDP 2018-2027 and the commitments made to increasing capital expenditure and investment over the medium term will help to cushion its effects and safeguard the economy in the years ahead.

The medium-term prospects for the construction industry are generally positive following the introduction of the longer-term spatial planning framework and capital investment plan. The plan will help to moderate the influence of external factors, such as Brexit, and place the construction industry, along with the wider economy, on a more sustainable path to growth.

The volume of output in building and construction increased by 7.4 per cent in Quarter 1 2018, with the following increases by building type:

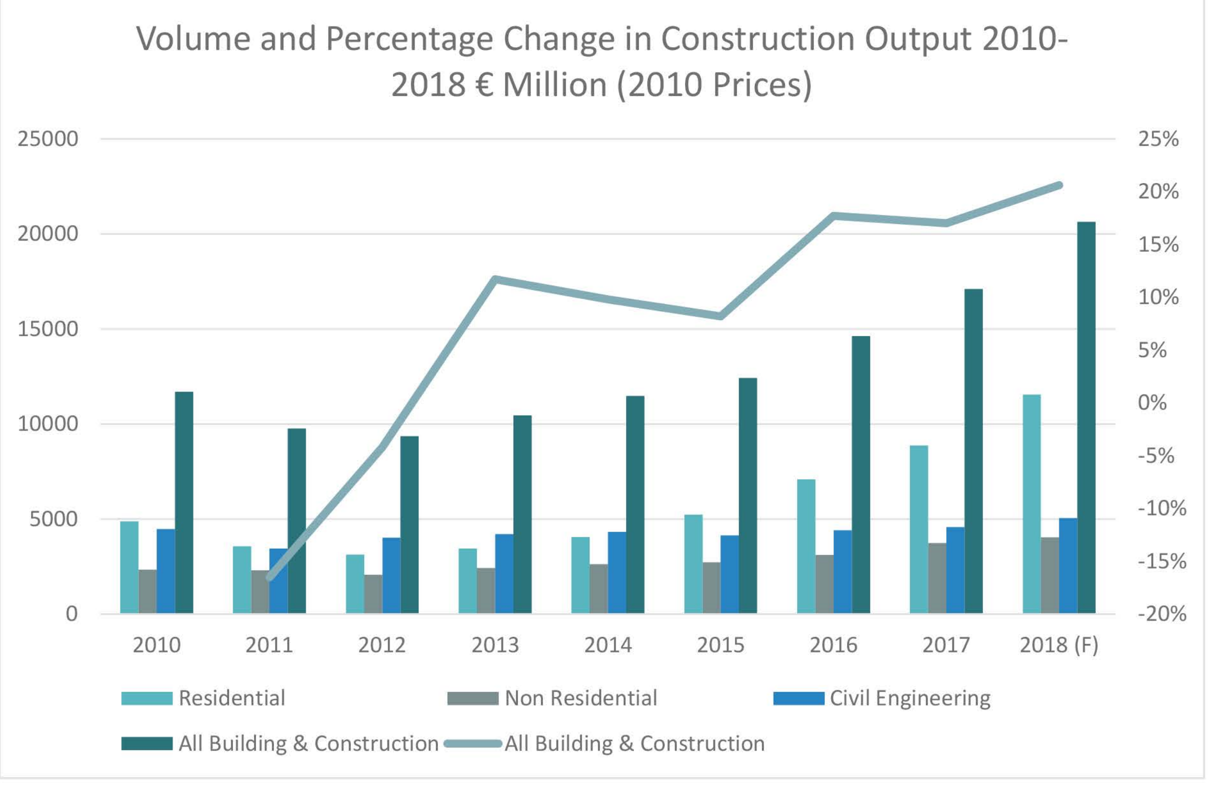
- Residential building +5.6%
- Non residential building +5.5%
- Civil engineering work 1.1%

On an annual basis, the volume of output in building and construction increased by 20.6 per cent in the year to end Quarter 1 2018, with the following increases by building type:

- Residential building +30.0%
- Non residential building +8.1%

- Civil engineering work +10.1%

There was an increase of 18.1 per cent in the value of production in the same period. The value of construction output reached approximately €20 billion in 2017 or just under 7 per cent of GDP.

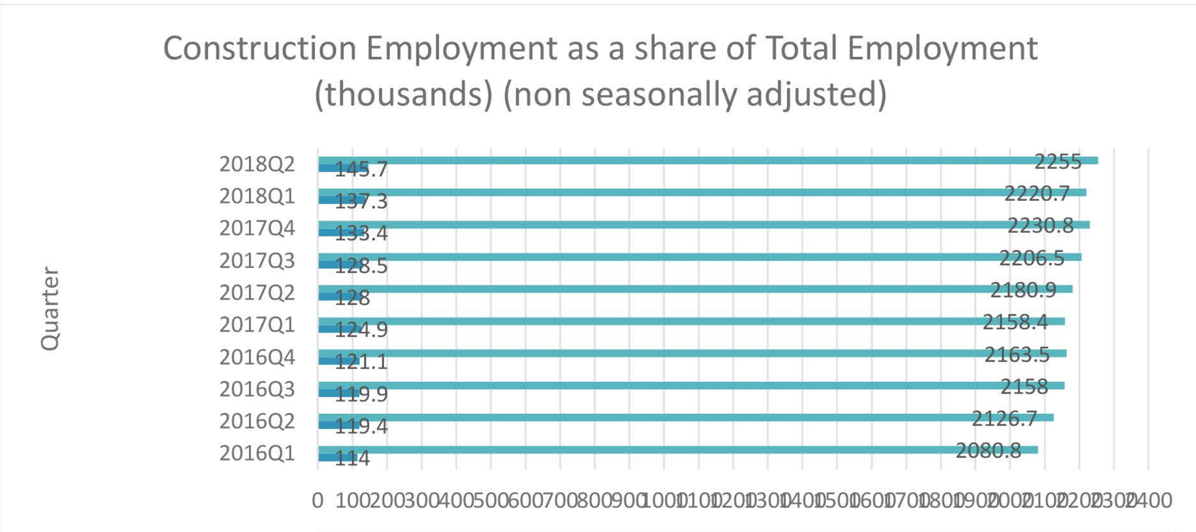


Source: CSO

2017's growth in construction output was driven primarily by construction in the private residential and non-residential sector. In terms of the public sector, it is expected that increasing public capital expenditure will contribute towards an increase in overall output in the period to 2021.

THE LABOUR MARKET

Source: CSO



	2016Q1	2016Q2	2016Q3	2016Q4	2017Q1	2017Q2	2017Q3	2017Q4	2018Q1	2018Q2
Total Employment	2080.8	2126.7	2158	2163.5	2158.4	2180.9	2206.5	2230.8	2220.7	2255
Construction Employment	114	119.4	119.9	121.1	124.9	128	128.5	133.4	137.3	145.7

Source: CSO

The construction industry is highly competitive and labour intensive. Competition for work is based on a number of factors; the two most prominent being labour and materials. Labour costs can account for over 40 per cent of any tender. Therefore, stability with regard to labour costs and an environment where contractors can tender on a level playing field is of paramount importance to the industry. The industry is recovering from the most severe recession in the history of the State. It is essential that the framework exists which will ensure that Irish contractors employing Irish workers can tender on a level playing field. Equally, it is essential that workers in the industry are paid a fair and reasonable wage which in turn will ensure that we attract bright young workers into the sector.

There are a number of challenges currently facing the construction industry with regard to the demand for skills and the threat of building inflation. Following a decade of flat costs, a recent development has been the upward trend in building cost and tender price inflation, the latter of which is currently running at 6.3 per cent per annum. This is indicative of the lost capacity in the industry during the financial crisis as well as the rising cost of labour and materials, and the increasing specialisation of sub-contractors in the industry. Today, the construction industry is experiencing a tightening in the supply of skilled labour; a natural outcome resulting from the fact that there has been almost a decade during which the number of new graduates and apprentices with construction related qualifications has dramatically reduced. One of the other challenges is the lack of foresight or strategic planning over a 5-10 year period. This could be where the Higher Education sector comes in with scenarios for possible futures, i.e robotics, 3D-printing, AI, Circular Economy, etc.

The CSO has published new projections for population and labour force growth to 2051. Ireland's population, which stood at 4.74 million in April 2016, is projected to reach 6.69 million in 2051 (a rise of just under two million persons) if there is high net inward migration and high fertility. Even with lower net inward migration and declining fertility, Ireland's population is still expected to reach 5.58 million in 2051. As the population grows, the CIF is focused on ensuring that construction becomes a sustainable long-term career option. In the longer-term Ireland will benefit from filling skills gaps with students, apprentices and technicians developed through the Irish education system.

The enactment of the Sectoral Employment Order (SEO) is also helping to ensure that contractors can tender for work on a level playing field and craftspeople, construction operatives and apprentices will receive fair and decent wages, sick pay and a pension on retirement. The SEO also ensures that there is a mechanism in place for resolving disputes.

PUBLIC PROCUREMENT

The CIF recommends that the Committee consider the role of fairer procurement in terms of capital expenditure by the State, with regard to safeguarding and developing Irish construction SMEs.

The Department of Public Expenditure & Reform published an Inter-Departmental and Inter-Agency Expert Group Report on PPPs in July 2018. The objective of the report was to provide the Minister for Public Expenditure & Reform with an evidence-based analysis and recommendations on the future role of using PPPs (and concessions) as a procurement option in the delivery of capital infrastructure, to complement traditional procurement methods. The report states that a potential reform that might be considered:

"would be the possible development of a new alternative PPP model, to complement the existing PPP model. Such a new option could comprise a less complex and shorter-term alternative PPP-type contractual arrangement, that could still offer some of the advantages of PPP but for smaller scale projects (maybe €20-50m), over a shorter time period (maybe 10 years). Such an alternative PPP option, if a suitable model could be developed, could also facilitate greater competitive tension in the procurement process. It would open up the 'PPP' market to smaller domestic contractors, who tend to be too small in scale to bid (alone) for traditional PPP projects, compared with the traditional PPP market which tends to be heavily reliant on the participation of a number of larger international players to ensure competitive tension in the procurement process is maintained" (page 4).

Our current procurement regime deals with everything but value for money for the client. It is overly focused on lowest price. The price quality ratio is so important in public procurement, as in any mature economy it recognises that we should be moving towards the whole life cycle cost of the infrastructural asset. Our position is fully captured in the sustainable procurement programme that we are currently pursuing with Government.

At present, construction as a sector is characterised by low profitability and productivity compared with other sectors of the economy. With low margins, it's not possible to compete to deliver cheaper solutions. This is where technology and fairer procurement will play an increasingly crucial role - not only helping us build smarter new infrastructure but also improving how our current operational assets perform by focusing on the whole life of the asset.

Collaborative procurement and Early Contractor Involvement as set out in our Budget 2019 submission will help to shape the scope and scheduling of projects leading to smoother project delivery. In addition, we are proposing that Government examine ways in properly resource and increase the commercial capacity of procuring bodies and planning authorities as implementation of the NDP gets underway.

From Ireland's perspective, the timely implementation of the National Planning Framework (NPF) and the National Development Plan 2018-2027 (NDP) is essential to meet the critical physical and social infrastructure needs of a growing country – especially in areas such as transport, housing, health and education. The industry, therefore, welcomes the fact that the Department of Public Expenditure and Reform has established a *Project Ireland 2040 Delivery Board* with senior representatives from all of the infrastructure and investment Departments to oversee implementation of the plan and ensure fluid project management.

SME Businesses in construction – as well as investors, designers, and providers – need certainty of the forward work programme, something which the new NDP should provide. The capital projects tracker, which is currently under development, should lead to a liquid pipeline of infrastructure opportunities.

Another positive development to emerge from the new NPF/NDP is the establishment of a *Construction Sector Group*, which will work to ensure regular dialogue between Government and the construction industry. It is widely acknowledged that a healthy, sustainable, competitive and well-functioning construction industry, which offers good long-term quality employment and construction output, is essential to the achievement of the goals of the NPF and the delivery of the priority projects as outlined in the NDP. Policy actions within the area of skills development and R&D should be aiming to accompany the national strategic outcomes identified within the NDP.

APPENDIX – CIF BUDGET 2019 SUBMISSION

See the attached CIF Budget Submission which sets out close to fifty recommendations to assist those SME businesses operating in the Irish construction industry today.

Submission No. 10

Fostering and Sustaining the Irish Small and Medium-sized Business Sector

Submission to The Seanad Public Consultation Committee on fostering and sustaining the Irish Small and Medium-sized business sector.

Presented by: Retail Excellence

September 2018

About Us

Retail Excellence was stablished in 1995 and is the largest retail industry body in Ireland which is owned by the Members, for the Members. Retail Excellence represents almost 2,000 leading retail companies in Ireland who operate in excess of 13,000 stores and employ 130,000 people directly.

We are an organisation which invests in innovative and learning, market intelligence, human resource services, Government representation and Member networking initiatives.

Our Members are the most progressive and innovative retailers in the country.

Introduction

With record numbers back to work, unemployment figures at an all-time low and economic growth being a forecaster's safe bet, it is clear that Ireland has regained some of its purr from the days of the Celtic Tiger. What this means for Irish retail is a little less clear. While sales trends recorded in the industry demonstrate an upward trajectory - albeit marginally so - it is imperative that we put what these mean firmly in perspective.

On a quarterly basis, Retail Excellence, in conjunction with our partner Grant Thornton, collates trading data from thousands of member retail operations, which is a brilliant indicator of the performance of the industry or otherwise. The overwhelming picture being consistently painted since mid-2017 is that a degree of vulnerability continues to exist. While figures might be marginally up, this has occurred at the expense of intensive marketing campaigns undertaken by retailers and consequentially reduced margins.

Irish retailers operate 45,000 businesses with 282,000 employees directly employed in the industry (the largest private industry employer in Ireland) and an associated employment multiplier effect which increases that figure exponentially. As a direct consequence of retail activity, €7 billion is contributed to the Exchequer on an annual basis. Therefore, as the largest retail representative body in Ireland, the views of our membership and the challenges facing them from the VAT differential between Ireland and the UK, insurance and general business costs, competitiveness, talent acquisition and retention, housing availability and affordability, non-tax compliant cheap imports and the extraordinary growth in online spend needs to be earnestly considered.

Positioning retail in its rightful place as a significant arm of the economy is a key objective of Retail Excellence, which is why we continue to advocate for the industry and ensure that government policy is framed with retail-focused solutions in mind.

Irish retailers are facing external challenges which demand unique solutions to issues such as Brexit, sterling devaluation (Irish consumers spent €418m in 2017 in Northern Ireland with Irish excise figures falling by €300m in Q3 2017) and the onslaught of cheap non-EU imports, whose prices are sometimes distorted as a consequence of VAT or duties not being paid on them. However, like all well-oiled contrarians, we can point out all the problems facing our industry but it is solution-focused Budget proposals which are critical in ensuring the long-term sustainability of the industry. At Retail Excellence, we are focused on assisting retailers to grow, thereby increasing sales, employment opportunities and ultimately return to the Exchequer. This submission seeks tobe positive and whilst outlining challenges we will also provide a clear set of proposals which we strongly feel are critical to ensure further positive economic and employment trajectory for the betterment of all of Ireland, both urban and rural.

Retail Excellence: playing a part in sustaining and growing the economy.

TAX FAIRNESS

The biggest threat to bricks and mortar stores in Ireland and consequentially the retail mix and vibrancy of our town centres is the onslaught of cheap, non-European imports coming into the country. Currently two-thirds of all online spend is fulfilled by businesses operating outside of this jurisdiction with a significant portion of imports emanating from Asia, America and beyond. Given this amount equates to over €14 million per day, it is physically impossible for the authorities to intercept each and every parcel. As a result, this represents a significant loss not only to retailers in Ireland but the Exchequer in VAT receipts, duties and other taxes. It also raises the spectre of associated issues to include false advertising of prices, product liability and counterfeit goods. However, we are not alone in facing this problem. Currently the European Commission estimates the cost in terms of lost revenue to the Member States is in the region of €150 billion per annum.

Proposed measures which will help sustain and grow the industry:

• Oblige online marketplaces to ensure all advertisers on their website have VAT numbers displayed and that said VAT number is valid prior to any business advertising on their platform

• Hold online marketplace, jointly and severally liable for unpaid VAT of overseas sellers operating on their websites where an overseas seller advertising on the site has not registered for an Irish VAT number

• Increase resources to enable the authorities to conduct audits on Distance Sellers, apply liability notices and impose tax penalties where warranted

• Reduce the VAT exempt amount consumers can import from €22 to €0

• Reduce the general duties exemption amount consumers can import from €150 to €0

• Reduce the VAT threshold wherein Distance Sellers are obliged to register from the current amount of €35,000

CONSUMPTION TAX

We must focus on reducing the cost of living for consumers, thereby putting more money into people's pockets and supporting the domestic economy. The national conversation regarding increasing pay rates ignores the fact that it is take home pay rather than salary pre-taxation that citizens value. While Retail Excellence and retailers believe that fair pay rates is a moralistic right, in order to implement it, retailers and other small businesses need to be assisted by Government taxation policies as they cannot carry that burden on their own. Furthermore, Brexit has resulted in weaker STG£ which in turn has undermined our price competitiveness.

Proposed measures which will help sustain and grow the industry:

• Reduce our regressive VAT rate of 23%. The standard rate of VAT (23%) is one of the highest in the world. Introduced as a temporary response to the financial crisis, the 23% rate is damaging demand and must be reduced to 20%. With a weakened sterling and a 3% VAT differential, consumers are reacting with their hands and feet. €418 million was spent by Irish consumers in Northern Ireland in 2017. Exacerbating this further is the fact that 2/3 of all online spend is fulfilled by businesses operating outside Ireland, thereby representing a significant loss to Irish retail but also to the Exchequer. At this point, while an incremental reduction will have limited impact we would welcome a commitment to any reduction to the current VAT rate

• Retention of the 9% VAT rate for labour intensive sectors

• Ensure that businesses are not overburdened before becoming viable entities by increasing the existing VAT registration thresholds to €40,000 and €80,000

• Ensure equality of treatment for the self-employed by removing the 3% USC Surcharge

COST OF EMPLOYMENT

Wages continue to be the single largest expenditure item for retailers and the excessive cost of same acts as an obvious blockage to the creation of new retail industry jobs and a key contributor to lost retail hours of work. The doubling of the Employers PRSI rate for low paid workers from 4.25% to 8.50%, in addition to the increase in the National Minimum Wage (NMW), has created a significant hindrance. The Low Pay Commission has recommended that any increase in the NMW should be met with an equal and proportionate decrease in the Employers PRSI rate. Retail Excellence commissioned DKM Economists whose report found that successive Governments have increased the cost of employment in the Irish retail industry by over €1.1 billion per annum exclusive of the NMW increase.

Proposed measures which will help sustain and grow the industry:

- Biennial determinations of the Low Pay Commission on the national minimum wage. Retail Excellence warns that continued pay inflation will result in product price inflation and a move should be made to biennial determinations which will help retailers accurately compile detailed projections for their businesses

- Introduction of a permanent 4.25% Employers PRSI rate for low paid workers earning less than €380 per week to enhance job retention and creation in the retail industry. A reduction in the PRSI rate to enable employers to meet the cost of the national minimum wage increase is set out in the Programme for Partnership

- Introduce pay harmonisation between employees and the self-employed so tax credits for the latter is equal to the former at a rate of €1,650 instead of €1,150. The current situation acts as a disincentive to individuals entering self-employment or starting their own business

COMPETITIVENESS

A significant part of the SME competitiveness problem relates to high business costs (Source: NCC's "Costs of Doing Business in Ireland 2015") and previous reports note issues around UORR rent on legacy leases, commercial rates, utility costs (energy costs 6th highest in EU), credit & financial costs (SME loans <€1m are 60% pricier than EU average), transport costs (diesel costs 4th highest in EU), waste costs, liability insurance costs, business services costs (9th most expensive to enforce a legal contract, and 6th longest to achieve that), and labour costs.

Proposed measures which will help sustain and grow the industry:

- Reduce local authority commercial rates by better funding local Government

- Introduce emergency legislation to immediately tackle rising insurance costs in Ireland which are proving prohibitive for many Irish retailers and will cause loss of economic opportunity and closure of some businesses. In particular, allocate funding for the establishment of independent appeals body from decisions of PIAB (Personal Injury Assessment Board) which will determine the fairness of awards or otherwise from the body of first instance. This will greatly reduce the financial, resource and time cost incurred by retailers in fighting claims in Court, whilst safeguarding the Plaintiff's constitutional right to justice who would be entitled to judicially review the decision of the Appeals Board

- Raise the exit rate from lower tax band per annum per individual. The fact that much overtime and bonuses are subject to high-income tax acts as a disincentive to productivity and meaningful participation of employees

- Bring Ireland's entrepreneurial relief on Capital Gains Tax in line with that of the UK (10% on the first STG£10m gain and 20% thereafter) to ensure Ireland's competitiveness in a post-Brexit era

ONLINE SUPPORT

The growth of online operations is the biggest challenge facing the industry. Over the course of 2018 €600 billion will be spent online by European consumers. Thus it is clear that every retailer has export potential and therefore it is imperative Irish retailers get a slice of this pie. That said, 22% of Irish SMEs have no online presence. Of the 78% that do, 75% of them do not have fully functioning eCommerce websites capable of processing payments (IEDR figures). When you consider that €850,000 is spent by Irish consumers every hour online and that €600,000 of this is lost to businesses operating outside Ireland it is clear that the time to act is now.

Properly funding online sales businesses and utilizing all State agency supports for the benefit of internationally focused retailers will mean increased returns to the Exchequer through additional revenues from VAT receipts, Corporation Tax and PAYE.

Proposed measures which will help sustain and grow the industry:

• An increase in the percentage contribution to applicants under the Digital Trading Voucher provided by Local Enterprise Offices

• Development of a new funding tier under the Digital Trading Voucher aimed specifically at internationally focused retailers who require increased supports to take on the global consumer market or at the very least introduce a loan scheme to facilitate innovation and digitisation of their businesses

• Development of a Strategic Retail Support Unit within State Agencies like Enterprise Ireland which will support and assist retailers from a network, logistics, linguistics perspective when they seek to diversify into other European, Asian and American markets

• Funded training and financial support for businesses setting up online to meet the support needs arising from the growth of eCommerce. With the increasingly boundary-less nature of retail, Budget 2019 should look at providing such educational funding supports to upskill employees so they can establish and/or enhance their ecommerce capacity and digital strategies in order to acquire international custom

RETAIL FINANCE

Retail provides employment to 282,000 people in every village, town and city in the country, which is the same as the combined number employed in IT, agriculture, forestry, fishing and financial services. It contributes €7 billion annually to the Exchequer and yet successive budgets fail to offer retail-focused solutions. Current retail performance is defined by multi-speed recovery, marginal gains and continuous declines in the footwear, jewellery and clothing sectors which is of grave concern. In particular, consumers are displaying a guarded optimism shaped by cash constraints or caution and possibly both which has led to a degree of price sensitivity. Consequentially, online spending continues apace (two-thirds of spend leaves the country) and trends suggest an increase in over-the-border spending (€418 million in 2017) brought about as a result of our unique geographical position and sterling devaluation.

Therein lies the devastating impact Brexit is having on the industry and in particular those retailers along the border area.

Without adequate finance options to help enhance in-store customer experience through investment and modernization of retail premises, the use of digital and technology and the expansion of the retail offer, we will not be able to confront the threats posed to the retail industry.

Proposed measures which will help sustain and grow the industry:

- The introduction of a strategic retail fund to help Irish retailers stave off the worst excesses of Brexit
- The immediate focus on the introduction of a business focused bank akin to Metro Bank (UK) where half of its balance sheet lending is targeted at SMEs
- A change in lending policy away from bricks and mortar security to the assessment of the strength of a business plan submitted

TOWN RENEWAL

Retail Excellence has been to the forefront in terms of developing policy in this area and advising town committees, Chambers of Commerce and Local Authorities on how to get the best from town centres, encouraging people to come back, developing an evening economy and enhancing the quality of experience for local citizens.

Towns are fundamentally important in society. They are a place where a community congregates. A meeting point. The retail industry is an essential part of this fabric in terms of helping provide vitality and competitiveness. However, we urgently need a recalibration of existing policies which are not working. We must recognise that towns and consumer demands have changed utterly. They are no longer places where people go to transact for goods. Increased investment is required in many regional towns and villages to enhance their streetscapes to encourage consumer spending, making them more attractive places in which to live, work and raise a family.

Proposed measures which will help sustain and grow the industry in rural areas:

- Introduce a Living Over the Shop tax incentive scheme for retailers with vacant stockrooms and space over their premises so they can convert them into town centre living which will help alleviate the housing affordability and availability issues currently facing employees and will add vibrancy to the town centre

* Repurpose the vacant commercial units countrywide and streamline the change of use process so this stock can be fully utilised as residential, for community purposes, office units etc

- Increase in funding for the Town and Village Renewal Scheme
- Re-establishment of Town Councils

• Introduce a fund to make certain retailers exempt from rates for a period in order to encourage a retail mix and improve the offer

RATES

Rates is a considerable outlay for many businesses.

Proposed measures which will help sustain and grow the industry:

• Introduction of a cap on how much bills can rise or fall

• In circumstances where business rates increase following re-valuation, that Government facilitates a transitional arrangement to help businesses adapt i.e. limit the amount bills increase each year. So, businesses facing higher rates will see their bills increase incrementally over a five year duration.

INFRASTRUCTURAL INVESTMENT

Nationally, there is an infrastructural crisis in housing, transport and utilities, which is having a significant impact on various aspects of retailers' businesses but in particular is having a detrimental effect on talent acquisition and retention. The Government urgently needs to intensify the delivery of the 'Building on Recovery: Infrastructure and Capital Investment 2016- 2021', Rebuilding Ireland, the Ireland 2040 Plan and prioritise capital spending in Budget 2018 and beyond.

Proposed measures which will help sustain and grow the industry:

• Implementation of the national Broadband Plan forthwith

Acceleration of the home building Programme so as to deliver affordable and available properties to buy or rent for employees in the retail industry.

• Delivery of the 'Building on Recovery: Infrastructure and Capital Investment 2016 - 2021'

• Prioritise capital spending in the interests of dealing with our infrastructural crisis and encouraging further FDI to our shores in the aftermath of Brexit

TALENT ACQUISITON

As Ireland's unemployment rate continues to fall the retail industry is being faced with substantial difficulties when it comes to the acquisition and retention of staff. With many viewing retail as a transient or temporary career it is imperative that the full story behind employment in the industry is told. Whilst many experience retail as a sales assistant the changing face of the industry now means that graduates from digital marketing, data science amongst a whole host of other courses are increasingly attractive to retail employers.

Proposed measures which will help sustain and grow the industry:

* Delivery of an apprenticeship programme for the industry

* Urgent delivery of a Chef training programme to deal with the recruitment crisis being felt by food retailers

• Increase the Small Benefits Exemption (voucher) from €500 to €650, which is equivalent to approximately one week's wages for those on the average industrial wage. The increase will enhance spending in local economies by approximately €45m per annum

Submission No. 11

Seanad Public Consultation Committee

Small and Medium-Sized Business in Ireland

Submission by

Tom Healy

On behalf of

The Nevin Economic Research Institute

4th September 2018

The role of small and medium-sized enterprises is crucial to the goal of a renewed domestic enterprise sector. The unrelenting pressure of competition, technological change and environmental challenges, not to mention the uncertainties and risks associated with Brexit, call for a coordinated approach to enterprise development. In our role as an all-island economic research body funded by the trade unions we propose an all-island approach where such is feasible and to the benefit of communities in both jurisdictions.

Ireland has followed, in many respects, a different pathway to that followed in other Northern European countries in terms of industrial and business development over recent decades. It will not be possible to re-invent the shape and nature of enterprises, here, suddenly. A pragmatic and 'what works' approach needs to be explored in key areas of difficulty as well as opportunity. Many businesses will continue to be forced to find new markets or reinvent themselves as patterns of consumer demand and trade change. To this end, appropriate state supports and the development of an environment that is favourable to innovation, investment and risk-taking is vital.

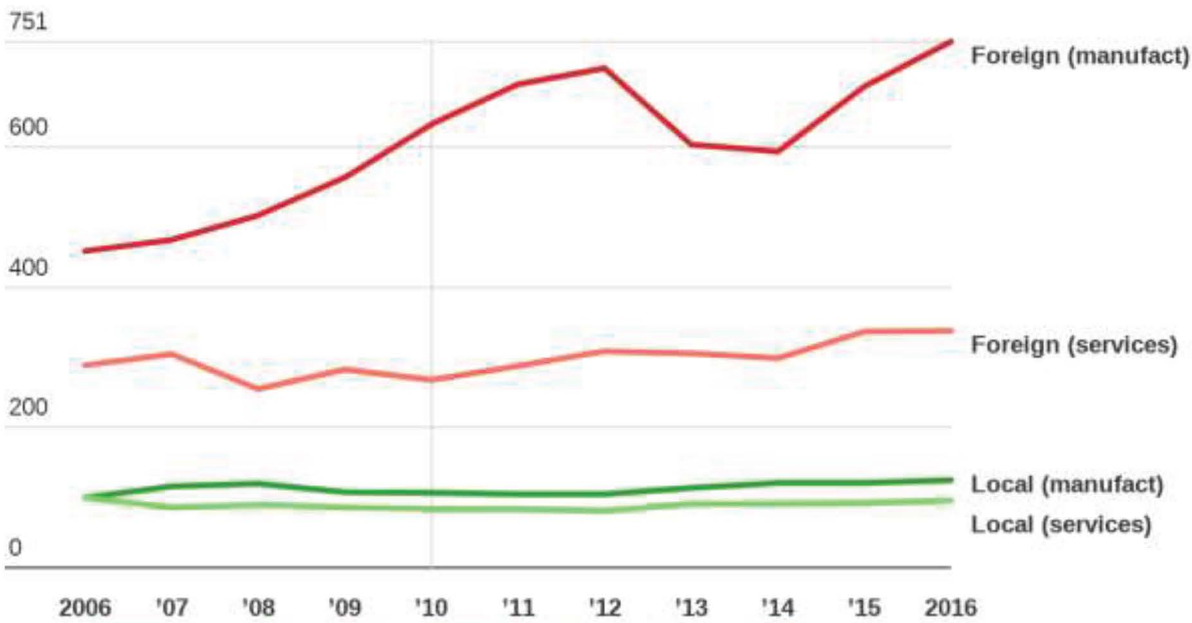
We see in the challenge of environmental change a huge opportunity for small and medium-sized enterprises to target new markets and activities including services and products that will enable Ireland to transition to a low- and, eventually, zero-carbon economy.

To date, attempts over many decades to develop a much stronger indigenous enterprise base have not yielded the results hoped for. Export capacity, productivity and market share, with some notable exceptions, have been disappointing. A disproportionate focus of domestic enterprise activity during the boom years of the early 2000s has been in low-productivity sectors including property development. Compared to Northern and Central European economies, a disproportionate amount of activity and employment has been concentrated in distributive and hospitality sectors while manufacturing has been relatively smaller.

The OECD, in its most recent Economic Survey of Ireland, points out that 'the capacity of local firms to absorb and implement new technologies is impeded by relatively weak managerial skills. This partly reflects the low proportion of workers participating in lifelong learning activities.' Productivity in Irish-owned enterprises has been largely stagnant over the ten-year period, 2006-2016. By contrast, foreign-owned firms have surged ahead (influenced in part by reclassification of activities from 2015).

Chart 1: Productivity of labour in enterprises, 2006-2016

Output = 100 in 2006 in Irish owned enterprises



Source: OECD Economic Survey of Ireland (2018) • Get the data • Created with Datawrapper

We suggest a broad focus on the environment that supports small and medium-sized enterprises. Costs including tax rates and breaks are important. While the evidence points to some cost issues including legal, regulatory and energy-related, it is not apparent that total labour costs (including social insurance contributions) or effective personal income tax rates are barriers to enterprise development in the Republic of Ireland. It is the case that some relatively high-tax countries in Europe show high rates of productivity in its small and medium-sized firms.

A dynamic enterprise culture can co-exist with a strong social safety net as well as an active State that takes the lead, co-ordinates and supports private SMEs as well as the development of a more diversified mix of enterprises by type of ownership.

We propose the following:

Access to finance capital is frequently cited as an obstacle to development. We propose a much strengthened Strategic Banking Corporation Ireland with the capacity to lend, on favourable terms, to small businesses. This could be developed, over time, into regional networks of branches offering advice, funding and intervention. The option of equity holdings in new start-ups should be extended. Existing state holdings in the banking sector could be better marshalled to create such a structure more analogous to the KfW in Germany or, indeed, the Sparkassen banking system, there.

Skill levels in the workforce and at manager or owner level is a challenge for SMEs. A programme of long-term investment in management skills, apprenticeship courses and upskilling is required. This is an area where Ireland is weak relative to many other Northern European countries.

A reformed ***social insurance*** model needs to be created for the self-employed so that everyone has the chance to become an entrepreneur either on their own or in partnership with others. A social security system would provide strong income supports. A first step would be to introduce pay-related unemployment benefit which would ameliorate loss of employment or business. This could be on the basis of payments equivalent to 75 percent of previous income. This would allow people space to develop new opportunities. Strong social security supports could extend to pay-related illness, maternity/paternity pay and family supports, and pensions. Social security could help unleash the entrepreneurial potential of civil society if they feel they have strong income supports and in-kind benefits (e.g. affordable childcare) to fall back on. We need to think of failure as an opportunity to learn and rebound, rather than the end of the game. Similarly, social insurance systems should not penalise the formerly self-employed vis-à-vis employees, as doing so discourages entrepreneurship.

Plurality of enterprise models should be considered. We suggest that labour should be seen as a key factor in production and value-added rather than, simply, as a production cost. Enterprises should be seen as belonging to a social space with many stakeholders involved. Ireland is comparatively low in measures of workplace representation and collective bargaining coverage. New forms of partnership and participation could enhance company performance and productivity.

Although written over 30 years ago, the following extract from an ESRI publication still has relevance in considering a strategy to develop locally-based but export-oriented small and medium-sized enterprises.

> "I*n making these points, however, we would not claim that the encouragement of new small enterprises in the private sector is the only, or perhaps even the main, avenue to the development of indigenous manufacturing entrepreneurship. The development of established private enterprise, the scope for new forms of enterprise such as workers' or producers' co-operative, and even the possibility of direct state manufacturing enterprise in selected areas, are also major areas that should be considered*" (Kennedy and Healy, 1985:83).

Across the globe, many different types of enterprises co-exist and compete with other enterprises for the benefit of local communities. In many European countries, these may take the form of workers' co-operatives, municipal enterprises and civil society and social enterprises run on a not-for-profit basis. The possibility of new enterprises being established by local authorities or as part of existing commercial state enterprises is worth exploring. The National Centre for Partnership and Performance could be reconstituted with a renewed mandate to analyse and trial new enterprise practices and partnerships. Likewise, we suggest that that Enterprise Ireland be enabled to provide a special suite of measures for Companies of Excellence encompassing best practice in employee participation and innovation, in exchange for equity holdings.

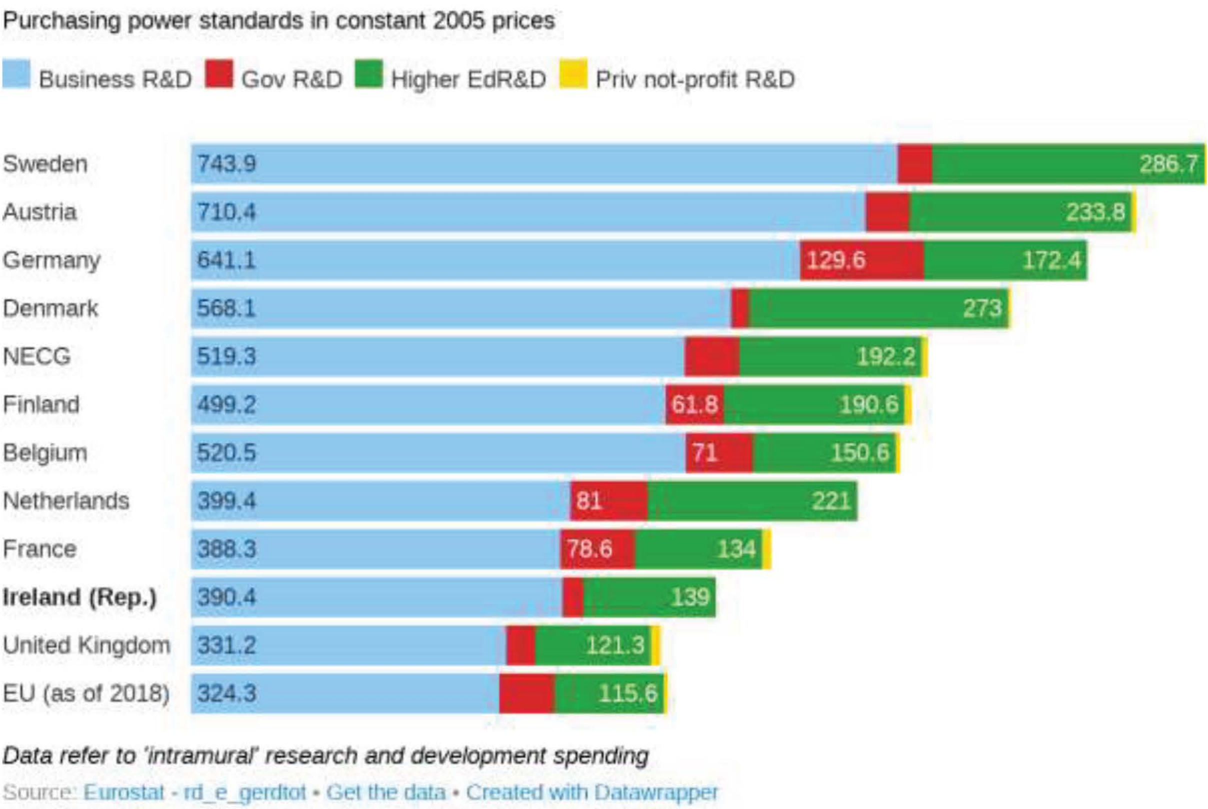
Devolution of power to the local could enable local government to facilitate municipal and civil society enterprises. (It is likely that people and their representatives in Donegal would have a better idea of their entrepreneurial potential than a centralised state agency in Dublin). Local Enterprise Offices, as recommended by Yosuke and Westmore (2018), could play a more active role in identifying potential supply linkages.

National innovation policy needs to be strengthened. This will require a more state-led approach to targeted innovation support in potential areas of growth and market expansion. Given the challenges of scale, overseas marketing bases and the contribution of higher education, the State has a key role to play in making it easier for SME's to break into new export markets.

The government plays a key role in the development of innovation inputs most importantly through its funding of R&D, education, and knowledge infrastructure. The Irish Government's Innovation 2020 strategy commits to a research intensity target of 2% of GDP with one quarter of this coming from public investment in R&D. Dr Tom McDonnell (2017) of the NERI has made the case for higher public spending on research and development and tertiary education. This can particularly benefit SME's who may face funding, talent and marketing constraints. The Chart, below, demonstrates the weakness of public spending on R&D among comparator 'Northern' European countries (similar to Ireland either by virtue of size or overall level of economic development).

Investment in public infrastructure including transport and broadband are critical to SMEs across Ireland. Access to broadband – especially in many rural areas – is still a major obstacle to development. This must be rectified by a national broadband investment programme with scaled up commitments of money and firmer targets and timelines.

Chart 2: Expenditure on Research and Development per inhabitant in Northern European Comparator Group countries in 2016



A simple focus on R&D is not sufficient as innovative capacity depends on more than just R&D. The economy's innovative capacity is a function of education and skills levels, the cost of acquiring knowledge, government policies that support R&D, and the quality of capital markets, among other things. Mariana Mazzucato points out that Germany's successful competitiveness strategy is driven by its ability to build a strong innovation system, with patient long-term finance (e.g. KfW), strong science-industry links (Fraunhofer institutes) and above average R&D/GDP spending.

The OECD has made a number of recommendations in relation to Ireland's innovation policy including the following:

- Drastically consolidate funding and actions into a smaller number of government agencies in order to make it easier for business to access support.
- Set up an outward facing one-stop-shop for enterprises to help them connect with the broader innovation system

- Independent and regular evaluation of the various innovation policy tools.
- Provide Higher Education Institutions with multi-year funding envelopes in order to improve their ability to employ researchers and engage in medium-term research.

Tom Healy
Director
Nevin Economic Research Institute
Dublin and Belfast

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Note:

This submission with prepared with the assistance of Dr Tom McDonnellat the Nevin Economic Research Institute (NERI). The NERI is a trade union supported, independent think tank with a presence in Dublin and Belfast. Dr Tom Healy is director and has, in his previous professional life, worked at the ESRI, the Northern Ireland Economic Research Centre, the OECD, the National Economic and Social Forum and the Department of Education and Skills (Dublin). He was a joint author with the late Dr Kieran Kennedy of *Small Manufacturing Industry in Ireland* published by the ESRI in 1985.

The NERI acknowledges the advice of Michael Taft of SIPTU in the preparation of this submission. All views expressed, here, are those of the NERI and do not necessarily reflect the views of trade unions funding the NERI.

Submission No. 12

Green Party

Public Consultation Submission on Small and Medium Business

August 2018

Green Party/Comhaontas Glas, 16/17 Suffolk Street, Dublin 2.
T: 01 6790012 E: info@greenparty.ie

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1. Introduction

The Green Party has, among its ranks, entrepreneurs running SMEs all around the country. They are operating in retail, tourism, and hospitality sectors, among others. Some employ up to 80 people. They have contributed their experience to the policies which govern our party's position on business, employment, and community. In this submission, we have drawn together the elements of those policies most suitable for the deliberations of the Seanad Public Consultation.

We believe that transparent, ethical and community-based business can strengthen and grow our society in a manner that is inclusive and wide reaching[1]. Unlike current ethical business models – which are largely initiated by the companies and business groups in conjunction with legislative bodies – we recommend a ground-up, community-driven, decision-making process that focuses on regional needs and opportunities[2].

Right now, both nationally and globally, we need economic strategies that are sustainable and ecologically sound. Such strategies implicitly recognize the value of SMEs and should therefore be encouraged.

2. Summary

The Green Party has a high regard for small-to-medium enterprise, particularly of an indigenous nature. We are looking to support such enterprise. We would also like to see the power of SMEs fully utilized through co-operation with SME sectors in the EU and around the globe.

Firstly, our submission looks at the type of supports SMEs need in the immediate term, such as financing, technology, and reduced operating costs. However, we go further and look at new ways for SMEs to organize their business community, through locally driven development and shared

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1 Bedi A, Alpaslan CM and Green S (2015) A meta-analytic review of ethical leadership outcomes and moderators. *Journal of Business Ethics*, 1–20. DOI: 10.1007/s10551-015-2625-1

2 Macklin, Rob, and Karin Mathison. "Embedding ethics: Dialogic partnerships and communitarian business ethics." *Journal of Business Ethics* (2017): 1-13

ownership models. The positive impact of SMEs on local communities cannot be underestimated.

3.0 Supporting SMEs

3.1 **Alternative Financing**

Pillar banks have not done justice to Irish SMEs. We support the introduction of a new regional public banking model which will lend to small and medium business in regions, using the same professional not-for-profit banking model that operates in Germany.

In conjunction with the continued development of Credit Unions, we call for the development of democratically accountable Community Banks, designed to encourage local people to invest in local economic activity, channelling local savings into economically and environmentally sound community enterprises. Microfinance Ireland is a promising programme by the government and we would argue for expansion of it.

3.2 Business Rates

Business Rates should be abolished and replaced with a site value tax, which would incentivise economically productive SMEs, rather than just rent collection by landlords.

3.3 Rural Broadband

The Green Party sees broadband as a Public Service Obligation. Thus, the rollout of high speed broadband across Ireland must be a key priority in the support of rural communities and the viability of technology-related rural jobs. As such, we see broadband availability nationwide as of utmost important to future rural sustainable life and, to this end, wish to see acceleration of the programme.

3.4 Commercial Tenancy

We would like to see the establishment of a Commercial Tenancies Board, similar to the RTB. Many small businesses struggle when a dispute arises with their landlord and the only recourse is the expensive court system. They also struggle with upward-only rent reviews and steep rent increases. A Commercial Tenancies Board would support SMEs and could even remove property disputes from an overloaded court system.

4.0 Enhancing the Business Community

4.1 Locally Driven Development

Small-to-medium businesses are a core component of the revival of the local economy, which, in turn, promotes self-reliance within communities and regions. It makes them less vulnerable to the damaging effects of economic decisions made elsewhere and over which they have no control. Strong communities, with access to finance and resources are better for all.

We in the Green Party believe that a focus on community solidarity in business practice would result in a more decentralised economy and that inevitably this would reduce inequalities in wealth between different districts and different sectors of the economy – something that would greatly benefit SMEs.

We propose that a greater proportion of taxation be levied locally, and more expenditure decisions be made at local level by local government. National taxation and strategic planning will still take place even as regional development is given a new and more dynamic focus.

We ask the Seanad Committee to consider the following:

- Prioritise funding and support for the retention of small and medium businesses with value to the community such as existing Post Offices. This is particularly key in towns and villages that act as community hubs for rural Ireland
- We believe that consumer choice and information are key to fostering community solidarity in business. Therefore, we call a register of ethical and Green businesses so that consumers can use their buying power to favour ethical economic behavior.
- To promote local economic management and planning, we call for the creation of Local Business Partnership Bodies. Membership should not be limited to those actively operating businesses but include a wide range of community individuals[3]

4.2 Shared Ownership Models

We submit to the Seanad that the state should seek to create a mechanism to allow the transfer the ownership of existing businesses to its employees and stakeholders. This would be especially appropriate for small to medium businesses that may not be able to continue to generate adequate profits to attract outside investment, e.g. shops, post offices and other socially important businesses in rural locations.

Rather than continuing as a business owned by an individual or small number of people (with the associated burden on them), equity ownership could be spread affordably amongst a larger number of the community. This would also be ideal for a business whose owner is seeking to exit but staff wish to continue, or of a 'staff buy out' of a branch of a chain that wishes to close that particular branch.

Some of the inspiration for this position includes the Cooperativa Sociale model in Italy (designed to deliver local educational health and social services) and the Löntagarfonderna plan introduced in Sweden in the 1970s. All standard company types would be eligible, with the exception of Limited Liability Partnerships and Societas Europaea Companies.

Mechanism

The introduction of shared ownership could be effected in the following way; existing shareholders may pass an ordinary resolution under the company's memorandum of association to issue new share capital with the value up to 12.5% (or the prevailing corporate tax rate) of the company's net profits for the last full reporting year. Shares issued under this legislation would automatically be assigned to the company's cooperative. The value of shares issued may be claimed as a credit against the company's corporate tax liability for the same reporting year, with a cap set at the company's total corporate tax liability for that reporting year. Shares issued under this scheme would be exempt from stamp duty.

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1. 3 Donaldson, T., & Dunfee, T. (1999). *Ties that bind: A social contracts approach to business ethics*. Cambridge, MA: Harvard Business School Press.

In addition, existing shares in a company may be sold or gifted at any time to the cooperative without either incurring capital gains tax liability on the part of the seller, nor gift tax liability on the part of the receiver. Bequeathing of shareholdings to the cooperative by share owners would also not be liable for inheritance tax.

Non-profit financing for the purchase of shares in businesses by employees' trusts at face-value would be provided to the cooperatives by the proposed Public Banking system for SMEs, and by a special non-profit investment body set up at a national level for larger companies, within the usual parameters of prudent lending. Where deemed feasible, prudent and absolutely necessary, incentives may also be provided to commercial lending institutions to do the same.

Shares acquired by the cooperative may not be disposed of without special permission from the Registry of Friendly Societies (or a succeeding body, if it is deemed logistically necessary) at the Companies Registration Office (CRO). The cooperative would be required to prove that its members would be financially hurt by retaining the shareholdings; opportunity profit will not be admissable.

Membership of the cooperative will consist of the ownership of one (and one only) unit of the trust. All full-time employees (as registered with the Department of Social Protection) would be entitled to join without charge. Thereafter, entry into a cooperative will be dictated by the cooperative's charter – part-time employees and other stakeholders may also be admitted, under the discretion of the cooperative's membership. All extant and future discrimination legislation would apply. Membership units of the cooperative would be non-transferable. When employment is terminated, the unit would be expunged.

Requirements of this model of Cooperative Business

The structure of the cooperative would be at the will of its members, however it would be required to be constitutionally, explicitly democratic; decisions of the cooperative would be required to be taken democratically, by representation in person by members, or by recallable representative if this is impractical. The cooperative would be required to vote as many of its representatives on to the company's board of directors as is possible (limited by its shareholding). Decisions of the cooperative and elections to its bodies would be required to be fairly representative of its membership. Decisions of the cooperative could not materially benefit one member or a group of members over another. Cooperatives would seek to maintain positive, productive relations with their relevant trade unions.

5.0 **Business, Climate Change and Justice**

The use of our SMEs trading power, in conjunction with European counterparts, could be used to establish new international trade rules. This would help to reconcile conflicts at national and international levels between free trade and sustainable resource management, which would, in turn, place environmental protection and sustainable development above the pursuit of profit.

Possible aspects for inclusion are whole-life transport costs, energy creation and pollution costs and initiatives that enable countries to discriminate between products on the basis of the way they are processed/produced. Obligations on developing countries to comply with higher standards should be linked to the provision of transitional technical and financial support.

The Green Party believes that all trading agreements and relationships on a micro and macro level within our economy should operate in harmony with the principles of reduction in consumption of resources, reuse and repair if possible, recycle and reclaim if viable and to consider the whole life and impact of consumer goods during their transaction and use. We believe that this ethos should be developed in line with best practice in employment and labour relations, particularly in relation to our indiginous SMEs. We aim to address the volume of international trade that could have severe impacts on developing countries (in terms of society, environment and economy), many of which have become dependent on exports.

On this basis we believe the following initiatives should be considered:

- Irish governments to work in conjunction with the International Labour Organisation and their Decent Work For All campaign to ensure employment standards both for Irish residents and global workers
- All civil and public service purchasing contracts with SMEs to be Fairtrade and sustainable production best practice
- An education and enterprise outreach scheme to Irish owned business that promotes the Ethical Trading Initiative and the UN Guiding Principles on Human Rights and Business (Ruggie Principles)
- The creation of Irish Sourcing Code of Conduct based on the Ethical Trading Initiative (ETI) Base Code that Irish and multi national businesses can participate in to ensure all products traded respect core international labour practice and ban products that use slave labour or exploititive working conditions to create.
- In line with our Food Policy and our Agriculture Policy we submit for consideration a move towards more regional markets of food production and trade that would deliver greater food security for the nation.

Submission No. 13

APPLIED MANAGEMENT LEARNING

Submission to Seanad Public Consultation Committee

Small and Medium Enterprises

5 September 2018

Increasing Success Rates while Reducing Failure Rates of Start-Ups and SMEs in Ireland

1.0 Executive Summary

This is a proposal to review and reallocate Government funding that will take account of broader entrepreneurial activity across the country, beyond the current focus of only export-led businesses. The emphasis here is upon increasing business and employment success rates while reducing business failure rates and mitigating the very substantial wealth destruction to the economy, which is currently underreported. Introduction of a system of evaluated accreditation for start-ups is proposed that will 'level the playing field' and maximise survival rates through pragmatic robust business planning.

2.0 Situation: Start-ups and failures in Ireland in 2017

Start-Ups	
New Limited Company Registrations:	22,354
New Business Registrations	
(Partnerships, Sole Traders etc.):	24,130
Total recorded Start-Ups	**46,484**
Business Cessations	
Limited Company Dissolutions only:	10,791
Total Number of Limited Companies	
Trading in Ireland:	214,000
Length of Time in Business for Start-Ups	
Fewer than 4 Years:	40%
More than 4 but fewer than 6	13%
More than 6 but fewer than 10	16%
10 Years or more	31%
Directorships	
New First-Time Directors	30,397
Of which:	
Male/Average Age	67% / 42.5
Female/Average Age	33% / 43
Bad Debts	
Total Bad Debts:	€6.2bn
Failing Companies	€3.19bn
Personal Insolvency	€3.01bn

Source: Vision.net

3.0 Observations:

3.1 Perception

Evidence does not support public perception or indeed some institutional reporting in relation to successful performance for both start-up and established SME activity in the economy. In fact, the lack of a mandate or overall economic impact is remarkable.

Business Representative Bodies

Body	*Membership*	*% of total limited companies*
IBEC	7,500	3.5%
ISME	10,500	4.9%
SFA	8,000	3.7%

Government Bodies

Body	*Clients*	*% of total annual start-ups*
LEOs	5-6,000	10.8% -12.9%
EI-HPSU	103	0.4% (Ltd Cos)

Incubators and Accelerators

~40 in total	~1000	~2%

Angel Investment

HBAN (€12.8m)	45	0.2%

3.2 Focus

Largely media driven, there is a disproportionate focus by support groups on 'tech' and 'export-oriented' start-ups. It is worth noting that in 2017, of the top 1000 fastest growing start-ups in Europe only 17.5% were classified as either 'tech' or 'fintech' companies (source: *Financial Times*).

All the major funding lines are geared towards export-led companies – it is not possible to become an HPSU-funded start-up (with average grants of €300,000) unless this criterion is met. As a consequence, the vast majority of start-ups that deal in the local economy get little or no support and failure rates are unnecessarily high.

The pervasive image of the start-up founder as a 'twenty-something' in a hoodie with a laptop is inaccurate. In reality the average age is 43. In fact, a 50-year-old is twice as likely to set up a successful tech company as a 25-year-old (source: *The Irish Times*).

There is an unaddressed wealth destruction related to failure – up to €1 billion per year. This has not only an immediate economic impact, but also has significant potential negative outcomes for physical and psychological health, together with associated impacts on families and social cohesion.

At present there is no national standard for accreditation of start-ups, which could provide essential investor encouragement. The absence of this inhibits the prospect of releasing dormant cash in the economy that could support and encourage start-up success. Such a mechanism would create huge potential for long-term job creation (28% of all jobs are in micro enterprises).

4.0 Recommendations:

4.1 Refocus Supports

We recommend a review and reallocation of Government funding through Enterprise Ireland that would encourage more indigenous and home-market start-ups and give them a life-enabling share of the funds. In addition, a post-audit system should be implemented on distributed funds to clearly identify successful and unsuccessful usage. This would facilitate future adjustments. An independent third party should do this.

Revisit the area of training associated with start-ups. Current arrangements and facilities are inefficient; the format is out-dated and reaches only a limited number of entrepreneurs. Better and more easily distributed information is the key.

4.2 Set Ambitious Achievable Goals

Aim for a 2**X**:½**X** goal: that is, doubling the number of successful start-ups and halving the failure rate by 2028. This is feasible. Every year this would create 20,000 new jobs and save 10,000 from failure.

4.3 Set up a Q-Mark for Start-ups

Introduce a new national ‘quality standard’ accreditation system for start-ups to determine viability and long-term potential. This would create a level playing pitch and facilitate fairer allocation of Government funds. MBA Global has an actionable plan for this.

4.4 Create a Showcase

Create a national database of investor-ready, bona-fide, accredited start-ups. This may also be tax incentivised.

5.0 Benefits

The benefits of this proposal would reach far and wide in setting and achieving new targets such as:

- Increased business success rates, employment stability and economic wealth creation
- Significantly reduced failure rates would mitigate the associated wealth destruction it causes.
- A reprioritised and reconfigured funding distribution and how training is rolled out would ensure better application of tax-payers’ money as well as measurable tangible returns for general economic benefit.
- Newly refocused funding availability would provide encouragement and act as an enabler to a brand new and potentially vibrant SME segment, which would contribute to the economy.

Submission No. 14

SEANAD PUBLIC CONSULTATION COMMITTEE
SMALL AND MEDIUM SIZED BUSINESS IN IRELAND

ISME compliments Seanad Éireann for its Public Consultation on SMEs in Ireland. We have been asked by the Seanad to comment upon:

- Access to finance
- Recruitment of suitably qualified staff and ongoing training/skills development challenges (including mentoring)
- Retaining staff
- Building strong routes to market
- Broadband and Poor Connectivity (including transport)
- Cost of doing business in Ireland (i.e. rates etc.)
- Macro-economic and political challenges and volatility
- Start up support for entrepreneurs – low risk tolerance/culture – planning permission issues etc.
- Challenges in selling on, or transferring a business to family members
- Poor integration and communication perception of State agencies
- Other relevant challenges to be identified

Because ISME is a broad-based, multi-sector trade association, achieving consensus among our membership on prioritising the issues above would be impossible. Geography, enterprise size, enterprise maturity, and business sector all impact the issues above. What SMEs DO broadly agree upon is firstly, that substantial macro-economic threats exist to our society and economy, and secondly, that the policy responses from the State to these macro-economic threats are inappropriately focussed on the foreign multi-national corporation (MNC) sector.

The Macro-Economic and Political Challenges and Volatility
This we consider the most important issue at present, therefore we mention it first.
There is a remarkable degree of consensus across most economic commentators that we are not prepared for the challenges ahead. The NTMA is advising us that Ireland is highly dependent on a small number of US companies. The NCC also warns about this excessive sectoral concentration, reminding us that just 10 companies pay 39% of our corporation tax. The Central Bank's Quarterly Bulletin for Q3 2018 explicitly identifies domestic overheating, high Government debt, Brexit, changes to the international tax regime and US trade tariffs as material threats to Ireland. The ESRI's spring and summer Quarterly Economic Commentaries have voiced concern about global trade, Brexit, and the sustainability of Ireland's corporate tax base. The Irish Fiscal Advisory Council's Fiscal Assessment Report for June 2018 reiterates the Government debt warnings of others, tells us that negative shocks are inevitable, and says '*the Government needs a credible plan for the medium term*.' The OECD warns us that productivity in our domestic businesses is static or declining, and that national productivity figures are inflated by foreign multinationals. UK and US bond yield curves are at, or close to, inversion. McKinsey's estimate of US companies' off-shore reserves comes to some $1trn. That represents a serious temptation for the US administration for a tax amnesty.
We could give more examples. The point however is this: such a consensus of downside macroeconomic warnings did not exist a decade ago, before the Great Recession. While we cannot reliably *predict when* the next down-turn will occur, we can confidently *predict that it will* occur, in the short to medium term. Yet Ireland's industrial policy is almost exclusively invested in foreign MNCs; the sector most threatened by the macroeconomic situation. Even Ibec, in its Pre-Budget Submission 2019 accepts the need to focus on SMEs.
The last major strategic analyses of the indigenous enterprise sector were Telesis (1982) & Culliton (1992). We consider it vital to employ a major consultancy to carry out a 21st Century review of industrial policy, with terms of reference to develop an Irish version of the German Mittlestand Action Program appropriate to indigenous SMEs. We need to pivot industrial policy towards indigenous enterprise as a matter of urgency.

Access to Credit
Access to credit remains a significant issue for most SMEs. The Central Bank has estimated the premium (small firm financing premium, SFFP) paid by SMEs to be at least 1% in research published in December 2016.[1] ISME members suggest the premium is significantly greater than this. The EU Commission SBA Factsheet for Ireland 2017[2] below notes that the cost of borrowing for our SMEs is significantly more than it is among peer economies.

[1] https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/research-technical-paper-09rt16.pdf?sfvrsn=6
[2] https://ec.europa.eu/docsroom/documents/26562/attachments/15/translations/en/renditions/native

Guarantees, cross-guarantees, warranties, personal guarantees, and other requirements in support of the most basic of business finance are also onerous. Last year we revealed that the directors of a member company had been required to sign undated letters of resignation as collateral for a credit facility. This year, a member has advised us that one of the pillar banks has sold their overdraft to a fund.

SMEs are bridging the gap by financing capital expenditure from working capital. While this may sound prudent and thrifty, it results in a contraction of a business's balance sheet, an issue the Credit Review Office has seen fit to issue a guidance note to SMEs upon in their latest commentary.

Recruitment and Retention of Staff

The market is hardening, and recruitment of staff, particularly at the more skilled end, is becoming much more competitive. This is always an issue for SMEs, because they are rarely in a position to pay salaries that are competitive in comparison to the public sector, the semi-state sector, or foreign MNCs. The notion of a skills 'trickle-down' to the SME sector is not merely untrue, it is reversed. MNCs are able to hoover the best employees from domestic employers with higher remuneration. SMEs involved in professional services in particular are under pressure to retain skilled staff. This is especially so within the Greater Dublin Area; conversely it is somewhat easier to retain staff in the regions, where salary competition is lower, as are costs of living.

Some construction firms report difficulty recruiting for skills such as civil and structural engineering as they are not graduating in sufficient numbers locally. The expense and shortage of accommodation is leading to some SMEs either providing housing at below-market rents, or finding it impossible to attract talent to certain areas.

The cost of housing is also producing some strange discontinuities in the jobs market. The income limits imposed by local authorities for eligibility for social housing means that many potential employees (or promotion candidates) are discouraged by the possibility of exceeding local income limits. We see this as highly detrimental and socially undesirable.

Building Strong Routes to Market

The EU Commission SBA Factsheet for Ireland 2017 notes that our completion of single market directives, and our ease of market access for new and growing firms, lags that of our peers. In view of the potential difficulties of transiting Northern Ireland and Great Britain post Brexit, ISME believes we will have to invest more time and energy in establishing marketing, supply, and physical distribution channels beyond and around the UK in the future.

Broadband Connectivity (including transport)

We survey our members quarterly on the issues affecting them. In our most recent survey, Trends Q2 2018 28% of our members stated that inadequate broadband was a significant issue for their business. We are wholly dissatisfied with the progress of the National Broadband Plan. ISME was disappointed with the level of Government engagement with the broadband issue in the Project Ireland 2040 literature. It expressed the main objective (National Policy Objective 24) as follows:

> ***Support and facilitate delivery of the National Broadband Plan as a means of developing further opportunities for enterprise, employment, education, innovation, and skills development for those who live and work in rural areas.***

The budget for the project was described as 'confidential.' We should reflect seriously on why all but one of the tendering contractors have withdrawn from such a large state contract. We should also question whether a planning strategy which states that it is the '*Government's ambition to ensure that the opportunities presented by this digital transformation are available to every community in Ireland*' is compatible with one which states that planning density should be prioritised, where possible. It may well be, particularly when it comes to very low-density rural areas, that one size does not fit all. We should have the courage to express that clearly and openly to people. Other utilities, such as water, electricity and foul water, are not provided to all rural dwellers on a 'last mile' basis.

In summary, we no longer have confidence in the NBP to deliver. We have suggested, in our Pre-Budget Submission 2019, that the Government actively considers the re-purchase of the wholesale network into State hands, and its lease to retail operators.

In the context of Brexit, it is prudent to consider seaborne Continental EU access via Zeebrugge and Rotterdam. The introduction by Germany, France and Austria of statutory minimum wage laws (so-called *MiLog* and *Loi Macron*) applicable to transit workers is a flagrant breach of the single market rules, and is the subject of infringement investigations by Commissioner Bulc. It is quite absurd for the EU Commission to be enforcing the 'four freedoms' upon the UK during the Brexit negotiations while simultaneously permitting member states to introduce local laws in breach of the TFEU. The Government must, through the Commission, get these laws struck down, and quickly.

Cost of doing Business, and National Competitiveness

Every single ISME survey shows cost and competitiveness as areas of concern. Consumer prices matter because they set an expectation among employees that their employer will meet them. ISME, as the sole independent representative of small business in Ireland, should be represented on the NCC.

The Cost of Labour in Ireland is high relative to peer economies, and is regulated to an inappropriately high degree. As of July 2018, we have the second highest national minimum wage[3] (NMW) in Europe. It is forecast to rise again in January 2019.

The costs of Commercial Property are very high for a small economy, in a country with a low-density population. While the Land and Conveyancing Law Reform Act 2009 banned upward only rents from 2010, many such leases are still in place. ISME believes that upward only rent reviews (UORR) should be outlawed in their entirety. We are in receipt of specific legal advices that no impediments exists to the banning of UORR clauses.

While the inputs to Energy Costs have been falling for several years, medium and large users have been hit with large increases in the PSO levy. The PSO levy is designed to support renewable generation plants primarily, but also certain peat and gas plants in order to increase the security of the energy supply through the promotion of renewable energy generation and the use of indigenous fuels. Some SMEs have seen a 277% increase in the cost of the PSO levy over the last four years, even as they have invested heavily in energy efficient technologies to reduce their energy consumption.

Our rates of CGT, taxation of share-based remuneration, standard rate VAT, and personal taxation for those above the average industrial wage are very high. Incentives to attract talent, such as SARP; and to innovate, such as the R&D tax credit regime; are weighted heavily towards large companies and the MNC sector, despite these occupying only a tiny part of Ireland's business demography.

Insurance costs have now become such a serious issue, they are business-threatening for some SMEs. We understand that the Personal Injuries Commission Report by Justice Nicholas Kearns benchmarking general damages awards will show damages in Ireland to be five times greater than those for the same injury in peer countries. There is no financial, constitutional, legal, or moral justification for this. It is a disgrace, and has been allowed to persist because it benefits vested interests.

The progress of the Cost of Insurance Working Group (CIWG) on the matter has been glacial. Most of its 'actions' are in fact processes, very few of which, upon completion, will result in lower insurance costs. The CIWG has shirked the issue of meaningful control of Book of Quantum award levels. It is ISME's informed opinion that there is no such legal or constitutional impediment to legislating for caps upon general damages; this is already the case under the Civil Liability Act 1961, and the Supreme Court has already capped damages for catastrophic injuries in Sinnott .v. Quinnsworth Limited [1984]. The emotive cases are already taken care of. All that is absent is the political will to tackle the cottage industry that is personal injuries litigation. We estimate the value of legal costs in this area alone to amount to some €350m annually.

Consistent with our policy on lowering insurance costs, we ask the Seanad to bear in mind our imperative for the introduction of a statutory offence of Perjury. Not alone would this assist in reducing insurance costs, it would facilitate the prosecution of white-collar crime.

Start up support for entrepreneurs – low risk tolerance/culture – planning permission issues

Start-up supports for business are generally good. However, as in the macro challenges above, there is no agency dedicated to the approximately 100,000 companies which do not 'fit' in the IDA, EI or LEO.

The Key Employee Engagement Program (KEEP) in the Finance Act 2018 was so badly structured as to be virtually unworkable for SMEs.

The planning (and objections) systems are a blight across our economy. In common with the cost of insurance issue, a constant factor is the long drawn-out nature of resolution, which absorbs significant legal cost.

While our insolvency/bankruptcy framework has radically improved in recent years, it under performs by comparison with our neighbours, according to the EU Commission SBA report (2017).

Lastly, our SME community quite consistently complains that IDA has money to lavish on MNCs, while SMEs are effectively ignored by other state agencies unless they have significant export potential.

Challenges in selling on, or transferring a business to family members

There is a 90% CAT relief in the transfer of business assets from one generation to another. However, this only applies where control of the business transfers at the same time. In many cases, it is not appropriate or possible to transfer 100% of the assets of a business at one time. This is particularly common where buildings are concerned; in many cases, as one generation of a business withdraws from the executive function, it will retain buildings as assets rented to that business. But subsequent transfer of those buildings will not qualify for CAT relief. This should be amended.

[3] https://ec.europa.eu/eurostat/statistics-explained/images/3/3a/Minimum_wages%2C_July_2008_and_July_2018_%28EUR_per_month_and_%25%29.png

Poor integration and communication perception of state agencies.

Regrettably we find, in dealing with Government Departments and agencies, there is too often a response that a particular matter is the preserve of a different Department. We acknowledge that, from a legislative point of view, this may be the case. But from a practical, day-to-day perspective, the outputs of several different Departments directly impact SMEs. Navigating these can be most challenging for SMEs, where the most precious commodity is rarely money, it is time.

In the same manner as most businesses have had to embrace lean/six sigma principles to survive, we feel that a similar approach is required in all areas of government and administration. For example, the Government was right to adopt a 'one-stop shop' approach to its communication effort with the www.gov.ie website. It follows that a great deal of what appears on Departmental websites should be properly curated and cleaned up, to ease access for the public and business.

Other relevant challenges: Brexit

While the UK Government's DExEU is publishing technical papers of relatively low orders of sophistication and depth, Irish SMEs are being asked to 'plan for the worst' while hoping for the best. The extent to which they can meaningfully plan beyond matters of customs and VAT impacts is debatable. ISME has taken an activist role in preparing its members for Brexit. However, we must point out that the ability of firms to work up detailed contingency plans for a currently unquantified and ill-defined Brexit is severely constrained, especially towards the small and micro enterprise end.

SMEs are already facing pressure due to sterling depreciation. This obviously benefits our members who are importing, but those exporting are suffering. Very few ISME members are hedging. We are advising exporters to source as much of their inbound supplies as possible in sterling. However, this can only help so much. Irish taxation policy is not accommodative of SMEs, particularly those which export. ISME believes we will need to more aggressively encourage exports beyond the UK if Brexit results in a departure from the Customs Union.

We believe that the Revenue should be willing to put forward imaginative solutions to the VAT-at-point-of-importation issue for imports from the UK. This will have a severe cash flow impact on SMEs, yet it could be mitigated in whole or in part by Government action.

However, while financially painful, VAT and Customs issues are predictable and therefore can be mitigated. Of much more impact will be the issue of non-tariff barriers:

- These can be technical measures, such as sanitary and phyto-sanitary measures for food, or non-technical 'Rules of Origin.' Brexit could mean the end of the mutual recognition of driving licences, vehicles, registration documents, and certificates of professional competence for drivers.
- Regarding Data Protection, the EU rules for transfer of personal data to a third country will apply to the UK. If the UK decides to diverge from the protections provided in the GDPR regulations, this will be highly impactful for the delivery of services, particularly financial and insurance services, in Ireland.
- A big area that will be impacted by Brexit is private international law. This could have a possible consequences in the areas of family law, adoption, custody, divorce, and access to children. If the UK totally withdraws itself from the EU, and ECJ jurisdiction, it will remove itself from the 'norm' of reciprocity. Under current rules, when a person is divorced in the UK, that divorcee is entitled to automatic recognition in Germany or Ireland.
- Company law could be similarly affected. UK companies may lose their limited liability status. This would have significant implications for shareholders if a third party were to sue.

In summary, whole areas of business will be affected by Brexit in non-economic ways, which are very difficult to predict. More than 40 years of custom, practice, and cross-border mutual recognition are threatened in ways we simply cannot quantify. It is no longer sufficient for Government agencies to ask SMEs to 'plan for the worst' when the regulatory environment post-Brexit is unknowable. This is an area where we need far more help than we have had to date.

Tourism Ireland - response to the Seanad Public Consultation Committee's consultation on Small and Medium Sized Businesses in Ireland

Introduction

Tourism Ireland welcomes the opportunity to respond to the Seanad Public Consultation Committee's consultation on Small and Medium Sized Businesses in Ireland.

Much of the subject matter of this consultation – e.g. training/skills development, costs of doing business etc – falls within the remit of our sister agency, Fáilte Ireland, the National Tourism Development Authority. However, given the vital role that overseas tourism plays in sustaining and growing Ireland's tourism industry – which is comprised, in the main, of small and medium sized businesses – Tourism Ireland would like to share some insights which we hope will be helpful to the committee in arriving at their conclusions.

Tourism Ireland's role

Tourism Ireland is responsible for marketing the island of Ireland as a holiday destination overseas. It was established as one of the "six areas of co-operation" under the framework of the Belfast Agreement of Good Friday 1998 and operates under the auspices of the North South Ministerial Council through the Department of Transport, Tourism and Sport in Ireland and the Department for the Economy in Northern Ireland.

Our objective is to grow overseas tourism revenue and visitor numbers to the island of Ireland and to help Northern Ireland to realise its tourism potential. We operate in 23 markets overseas and work with Fáilte Ireland, Tourism NI, tour operators, air and sea carriers and airports and sea ports, to promote the island of Ireland year-round.

Importance of overseas tourism to Small and Medium Sized Businesses

Tourism is a significant economic driver for the island of Ireland. In fact, it is our largest indigenous industry, employing more than 300,000 people across the island. This represents more than ten per cent of all Irish jobs – jobs at every skill level; and jobs in rural, coastal and border areas that have fewer opportunities for FDI and other forms of economic development. Tourism jobs cannot be outsourced in the way that other forms of employment can. Tourism as a whole represents an excellent investment for the state, delivering a 34:1 return on investment.[1]

Overseas visitors continue to grow in importance for the island of Ireland, accounting for, on average, 44% of all trips, 68% of spend and 69% of nights each year. In 2017, there were 10.6 million overseas visitors to the island of Ireland, whose visits delivered revenue of €5.6 billion.

The provision of overseas marketing opportunities for Irish tourism businesses – and helping build strong routes to market – is one of Tourism Ireland's key performance indicators. On average, up to 12,000 overseas marketing opportunities are taken up each year by tourism businesses from across Ireland, helping them reach potential visitors in 23 markets. These include:

- An opportunity to sell directly to potential visitors, tour operators and travel agents at international consumer and trade fairs such as ITB Berlin, CMT Stuttgart, World Travel Market (London), Britain & Ireland Marketplace (London), the British Tourism and Travel Show (Birmingham), Celtic Connections (Glasgow), the Royal Highland Show (Edinburgh), IFTM Top Resa (Paris), Pure Meetings and Events (Paris), International Luxury Travel Market (Cannes), IMEX America (Las Vegas), Milwaukee Irish Fest and the Stone Mountain Highland Games (Atlanta) and more;
- An opportunity to participate in tourism trade missions to key markets such as China, India, Australia and New Zealand, the UAE, the United States and Canada;
- Advertising and co-operative marketing opportunities on TV, radio, online, print and out-of-home; subway stations, buses, tubes and trams;

[1] Irish Tourist Industry Confederation, August 2018

- Inclusion in publicity activities – accessing more than 22,000 international media contacts – such as press releases, ezines, competitions or as part of familiarisation itineraries for visiting media and trade;
- Business listings on our international site, Ireland.com, which provides a 24/7 international shop window on all that the island of Ireland has to offer potential visitors. Ireland.com attracts around 20 million unique visits each year and is available in 11 languages;
- An opportunity to include business information and images in a range of weekly, fortnightly and monthly e-zines to targeted trade, media and consumer databases;
- In addition, Tourism Ireland, Fáilte Ireland and Tourism NI have developed and successfully piloted a 'China Ready' training programme for tourism businesses here in Ireland. More than 20 tourism operators around the island of Ireland have already completed this programme, learning about the Chinese language, culture, food and drink, specific requirements and needs of Chinese visitors, routes to market, signage etc.

Challenges

While overseas tourism performance is strong at the moment, a number of significant vulnerabilities are evident beneath the surface:

- Brexit – the UK's vote to leave the EU was followed by economic uncertainty and a decline in the number of British visitors to Ireland. It is widely recognised that a hard Brexit would cost Irish tourism directly around €260 million in the immediate aftermath (2019)[2];
- Ireland's "share of voice" in key markets has declined due to sustained reductions in marketing funds. The implication of this is that the Irish tourism economy will fail to grow at the same rate as competitor destinations in the medium-to-long term;
- A decline has been recorded in Ireland's value-for-money rating amongst overseas visitors[3] (although additional hotel capacity is due to come on stream in the medium term which should reduce pressure on hotel rates);

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[2] ITIC, *Brexit Bulletin*, July 2018
[3] Fáilte Ireland, *Value for Money Analysis, Overseas Holidaymakers*, July 2018

- Global influences such as aviation fuel prices – in the US, aviation fuel prices have increased by around +25% since last year – and currency fluctuations also have the potential to impact negatively on travel to Ireland.

Indeed the recent financial downturn is a sobering reference point for assessing Irish tourism businesses' exposure to global and domestic shocks. Between 2007 and 2011, total tourism revenues dropped from €6.453 billion to €5.294 billion[4], a drop of almost -20%, and overseas visitors to Ireland declined by almost 1.5 million – resulting in devastating impact on jobs and the viability of thousands of businesses across the sector, particularly in rural areas. Many of the country's hotels – from iconic destination hotels to established family-run businesses in rural areas – became distressed and under the control of financial institutions. The worst hit areas were the East & Midlands, South East, Mid-West and West, which saw tourism businesses close and wide-ranging retrenchment.

Overseas tourism – helping sustain and grow our tourism industry into the future

Focus on sustainable tourism growth

- Tourism Ireland's strategic focus this year and leading into 2019 is on achieving sustainable visitor growth i.e. attracting more visitors to Ireland in the off-season (spring, autumn and winter) and, through its overseas promotional activity, encouraging more tourists out into those areas which are less visited. For example, we are rolling out a 'Wonders of the Wild Atlantic Way' campaign in two phases in Britain this year, the key focus of which is to extend the holiday season beyond the peak summer months, by enticing people to visit in the spring and autumn and encouraging them to visit the lesser known parts of the Wild Atlantic Way – the north west being one example. The campaign highlights direct access from London, Manchester, Birmingham, Glasgow and Edinburgh to the west of Ireland. Similarly, the latest tourism brand – Ireland's Hidden Heartlands – which is being developed by Fáilte Ireland for the domestic tourism market over the next year or so before being rolled out internationally by Tourism Ireland, will bring more international visitors into our rural communities. Sustainability will form a central part of our new Corporate Plan for the years 2020 to 2022.

[4] Total tourism to ROI including carrier receipts and same day visits

Implement the findings of recent market reviews

- Tourism Ireland has recently undertaken reviews of the US, German, and emerging markets (such as China, India, the Middle East and Japan) and a review of the British market will shortly be completed. The reviews, which have been devised in conjunction with island of Ireland tourism industry leaders, sister agencies and overseas trade contacts, provide blueprints for further sustained tourism growth in each of these markets out to 2021 and beyond. However, Tourism Ireland is currently without the resource required to unlock the potential identified in these strategies and additional Government investment will be required.

Defend our market share in Britain in the face of Brexit

- Despite the increasing importance of other markets, Britain continues to be a vital market for tourism to Ireland. It provides seasonal and regional dispersion of visitors across the country and can still contribute significantly to achieving renewed regional and seasonal spread objectives. 43% of British visitors come to Ireland between October and March. In the short term, Tourism Ireland will need to defend Ireland's market share in Britain and reassure British holidaymakers that a warm welcome awaits them here, whatever the Brexit situation. However, additional investment will be required to roll out consumer campaigns to address holidaymaker concerns around the implications of Brexit.

Conclusion

Failure, in positive times, to take measures to safeguard Irish tourism against future threats will leave the economy and the country's largest indigenous industry vulnerable – and the many small and medium sized businesses of which it is comprised – and threatens the outlook for sustainable tourism growth in the coming years.

ENDS

Submission No. 15

Irish Tax Institute

Pre-Budget 2019 Submission

Tax policy and the administration of it can be a game changer in creating the right culture and environment.

WHAT DO IRISH BUSINESSES NEED TO INCREASE PRODUCTIVITY?

- BUSINESS ENVIRONMENT WITH TAX CERTAINTY
- ACCESS TO FINANCE
- MANAGERIAL CAPABILITY AND HUMAN CAPITAL
- INNOVATION AND R&D

BUSINESS ENVIRONMENT WITH TAX CERTAINTY

Certainty can only be achieved through clear tax rules and Revenue guidance, increased predictable and consistent tax administration and effective dispute resolution mechanisms.

There are only 8 weeks to scrutinise complex tax legislative changes from date of publication of the Finance Bill to enactment. In the UK, draft legislation is published 5 months in advance of the Finance Bill.

There are thousands of taxpayers waiting "in the queue" to have their appeals heard. The backlog is growing by 180 new tax appeals per month.

Adequate resourcing of the Tax Appeals Commission and alternative dispute resolution mechanisms are needed to deal with the backlog of tax appeals.

ACCESS TO FINANCE

A lack of internal and external finance in SMEs is hampering innovation and investment in skills.

EII – the income tax incentive for investors, plays a vital role in scaling start-ups and small business but there are many blockages within the scheme.

Capital Gains Tax is the tax that matters most to investors – Ireland has the 3rd highest rate in the OECD.

Ireland's targeted CGT entrepreneur relief locks out 'angel investors.'

MANAGERIAL CAPABILITY AND HUMAN CAPITAL

Irish SMEs have difficulties recruiting and retaining skilled workers.

64%↑

Wages in multinationals are 64% higher than in domestic companies. Irish SMEs and start-ups cannot match these high salary levels, hindering their growth and export potential.

Given the high personal tax rates, a workable share options regime (KEEP) is critical.

There is no SARP equivalent to help SMEs attract talent and skills they need from outside Ireland to grow their businesses.

INNOVATION AND R&D

Restrictions on outsourcing and collaboration in the R&D tax credit is at odds with best practice internationally.

Low uptake of R&D tax credit scheme among SMEs due to administrative blockers and cost of processing claims.

%

Almost half of the companies that availed of the R&D tax credit found it difficult to prepare and administer.

35%

Only 35% of companies intended to avail of the R&D tax credit in the next 18 months.

Executive Summary

Many domestic and international bodies have highlighted the need to focus on Irish owned business to build resilience in the Irish economy. The Central Bank, the Irish Fiscal Advisory Council, the National Competitiveness Council, the IMF, the OECD and the European Commission have all commented on the matter. We have made huge strides in many areas; financial services, medical devices, tech and fintech to name some but the productivity of Irish companies is declining.

Focus on Irish business

While much work has been done on enterprise policy, the need to address the productivity and prospects of Irish companies cannot be ignored. The transformative nature of technology and digitalisation makes it an imperative.

Several issues must be tackled if Irish business is to succeed and both tax policy and tax administration issues will be central to making it happen.

What Irish business needs

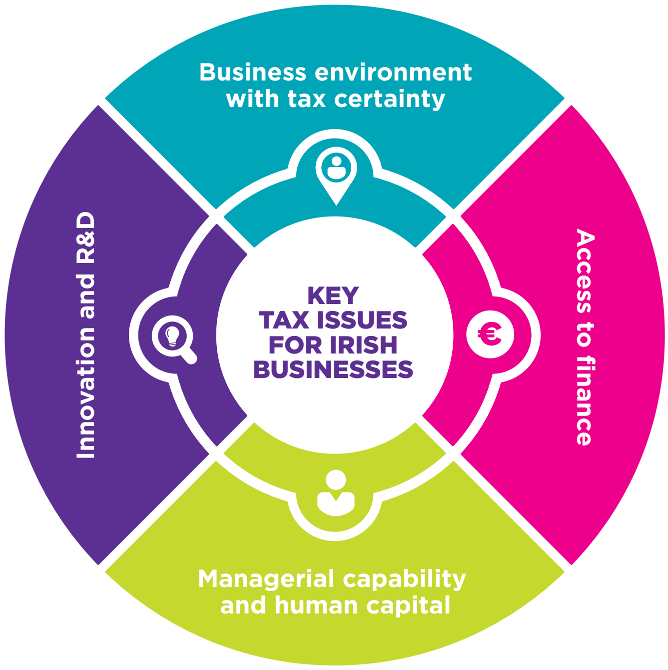
The OECD[1] warns that the resilience of the Irish economy hinges on unblocking the productivity potential of Irish businesses. The OECD says Ireland needs to give entrepreneurs what they need to grow their business. In some cases, access to finance is holding individuals back from taking the step into entrepreneurialism.

The European Commission[2] also highlights productivity issues. The IMF[3] too has stressed the need for productivity growth of Irish companies, through greater support for innovation, and enhancing partnerships of SMEs with research institutions.

The National Competitiveness Council[4] says Ireland has significant potential to increase productivity, but innovation is the key for Irish businesses to evolve into new products, markets and sectors, as well as improving management and further training.

Irish businesses need access to finance and help and expertise to make the right strategic decisions. They need finance for long-term capital investment, human capital, innovation and R&D. This will determine their future success.

It is accepted internationally that tax policy and the administration of it can be a game changer in creating the right culture and environment.



For businesses, certainty is key to confident decision making. With Brexit looming, Irish businesses need, now more than ever, certainty over their tax affairs.

The impact of tax measures such as EII, Revised Entrepreneur Relief, the workability of the R&D regime for SMEs and the effectiveness of our new share options scheme (KEEP) are central to the strategic gear shift that Ireland needs.

Against that backdrop we cannot allow our tax regime to be a blocker of what is good.

Business environment with tax certainty

Political, economic and trade changes beyond our control are bringing uncertainty to the Irish business environment and the outcome remains unknown. The OECD and the IMF[5] have identified practical tools to ensure tax certainty for business through improved tax policy and law design, consistency by tax administrations and effective dispute resolution mechanisms.

Global turbulence now gives urgency to this issue. Irish businesses need certainty over their tax affairs and this can only be achieved through clear tax rules, increased predictable and consistent tax administration and effective dispute resolution mechanisms.

The Finance Bill process

One of the key challenges in the Irish tax policy-making process at present is the insufficient time available to scrutinise and consider potential unintended consequences of legislation once policies have been announced in the Budget. With some very limited exceptions, tax legislation is not published in draft format for discussion in advance of the publication of the Finance Bill. The result is that the legislation only appears for the first time in late October and must pass through all stages of the Dáil and Seanad and be signed by the President before the end of the year.[6]

There are less than three weeks for tax law to be considered from the date of publication to when it is debated at Committee Stage in the Dáil and only two months for the entire process to be completed and the law enacted. Apart from key income tax changes and other sensitive matters, tax legislation should be published for consultation in advance of the Finance Bill.

Need for effective dispute resolution mechanisms

According to the OECD and the IMF, an effective dispute resolution regime plays a critical role in establishing certainty for businesses.

Where disputes arise over the facts of a case or the interpretation of the law, taxpayers may appeal directly to the Tax Appeals Commission. However, there is a heavy build-up of cases in the appeals system, with taxpayers waiting years to have the disputed matter resolved. Urgent action is needed to resolve the backlog in the tax appeals process.

Access to finance

Irish businesses need finance, but they remain heavily reliant on internal funds and on banks.[7] A lack of internal and external finance is hampering innovation amongst SMEs[8], not to mention investment in skills and other important areas.

There is a serious need to look at alternative financing options such as venture capital and angel investors. They are willing to undertake riskier investments. They come with the crucial ingredient that Irish businesses need, and other countries are availing of: mentoring, experience, international business contacts and a hands-on advisory role. While the tax system of other countries embraces angel investors, Ireland locks them out. Critically, Ireland's Revised Entrepreneur Relief is not available to them.

Considering Brexit, the financing constraints for SMEs are most relevant. Research shows it is likely to deter them from exporting. It also shows that Irish companies reporting to have experienced financing difficulties are less likely to engage in exporting activities.[9]

Given the severity of limited access to finance for Irish business, which requires much needed capital to innovate, to hire and train the best staff, our existing tax measures that promote investment become central. These are:

- Ireland's targeted Capital Gains Tax (CGT) relief for entrepreneurs;
- The income tax incentive for individuals who invest in Irish business – the Employment Investment Incentive (EII); and
- The income tax refund scheme available to individuals who start their own business — the Start-up Relief for Entrepreneurs (SURE).

Broadening Revised Entrepreneur Relief

The backdrop of Ireland's high CGT rate makes the analysis of the measures even more important. CGT is unquestionably the tax that matters most to investors and influences their behaviour. Ireland has the third highest CGT rate in the OECD – 13 percentage points above the OECD median.

Ireland's targeted Revised Entrepreneur Relief helps to reduce the high CGT burden on the sale of a business to a limited extent. But this tax measure is uncompetitive when compared with the UK. Entrepreneurs' relief is available in the UK at 10% on the first Stg£10 million gain compared with €1 million in Ireland. (This means the overall effective tax rate on a gain of €10 million in Ireland is 30.7% compared with 10% in the UK).

The relief locks out the important 'angel investors' who not only invest money but experience and industry expertise, a vital factor when we consider the deficit in managerial capability in Irish businesses highlighted by the OECD.

The 10% CGT reduced rate is available only to actual owners and managers of a business and not to third party investors, such as angel investors. The entrepreneur must hold at least 5% of the company's shares and have worked full-time in the business to qualify for the relief.

Need for effective EII and SURE schemes

The Institute welcomes the current consultation being undertaken by the Minister for Finance and Public Expenditure and Reform on the other financing tax measures for Irish businesses – the EII and SURE.

The EII encourages investors to place finance in early stage and small businesses that have limited funding options. They very often rely on finance from family and friends. It plays a vital role in scaling start-ups and small businesses to the next level of growth.

While the EII is a welcome scheme, there are now many blockages within it. Several design features are barriers to investment, such as splitting the tax relief into two tranches, the revised connected party rules and the annual investment limit.

The EU state aid General Block Exemption Regulations (GBER),[10] under which the EII operates, are also having a significant impact on the scheme. It adds to the cost and complexity of claiming EII. There is also a restrictive administrative process which is stifling the use of the relief.

It is particularly difficult for businesses who have been in operation for seven years to qualify for EII under the rules. Under the GBER, companies trading for more than seven years must either:

a) be entering a new geographical market with a new product or service; or
b) have previously raised BES/EII funding within their first seven years of trading.

The GBER restrictions also affect businesses that are less than seven years old in cases where they previously raised EII and now want to raise further investment. The GBER provisions are applied retrospectively to business plans prepared before its introduction, as the follow-on investment must have been foreseen in the original business plan. The business must have foreseen in that business plan, its exact financial requirements for funding throughout the first seven years if further investment utilising the EII scheme is envisaged. This is unrealistic from a commercial perspective. The SURE is an income tax refund scheme available to individuals who start their own business. But it is only available to those who were previously PAYE workers. This means that a previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for the relief. This feature of the SURE acts as a significant barrier to its effectiveness and discriminates against new business founders who were previously self-employed and are starting up another business.

Managerial capability and human capital

The OECD stresses that Ireland needs to think about how to raise the capacity of businesses to implement new ideas and technologies. The Government's National Development Planning Framework also acknowledges the role of human capital.

Research shows that managerial skills in many Irish companies are too weak to allow these businesses to identify and exploit opportunities offered by global companies on their doorsteps.[11]

Wages in multinationals are 64% higher than in domestic companies[12] and the difference is 74% for multinationals of non-EU origin. Irish SMEs and start-ups do not have the money to match these high salaries, hindering their growth and exporting potential.[13]

Need for a workable KEEP share scheme for SMEs

Under these circumstances, Irish SMEs have difficulties recruiting and retaining skilled workers and so our share option regime, the Key Employee Engagement Programme (KEEP) becomes critical. Given the high personal tax rates, a workable share option scheme that can help Irish SMEs to attract talent to grow their business is essential. But the KEEP contains limitations which are significantly impacting its feasibility and ultimately, its success in achieving its policy aim.

Issues surrounding the qualifying criteria for individuals; the design of the cap on share options and the narrow definition of a qualifying holding company under the KEEP are creating difficulties for SMEs to qualify.

New SARP regime to help SMEs attract overseas talent

As the economy approaches full employment, SMEs that are export focused and producing products and services in knowledge intensive areas need to be able to access international talent. Ireland's Special Assignee Relief Programme (SARP) is a policy tool that helps attract talent from abroad, but it effectively locks out Irish SMEs because it is available only to assignees within a multinational group. A new regime focused on SMEs should be considered.

Innovation and R&D

According to the OECD, Irish companies need to invest more in their own research and development activities because they are the drivers of productivity.

Ireland has an attractive R&D tax credit regime, but administrative blockers and the cost of processing claims, are weighing heavily on its success in terms of low take up among SMEs. Research undertaken by the Institute in 2017 found only 35% of all companies surveyed intended to avail of the R&D tax credit in the following 18 months, although this would rise to over 60% if there was more clarity around criteria for qualification. Almost half of the companies who claimed the R&D tax credit found it difficult to prepare and administer.

Of huge concern is the fact that the R&D tax credit regime restricts outsourcing and collaboration, a condition which is at odds with best practice internationally, which actively promotes outsourcing and collaboration with the university sector.[14]

Conclusion

Irish business has the significant potential to increase productivity. Supporting them to internationalise and diversify their products and markets can ensure Ireland's tax base is more resilient to the global changes beyond our control. It is now time to act. Tax policies should be implemented and administered in a seamless way that is easy to understand and apply and are barrier-free for Ireland's SMEs.

Focus on Irish business – what Ireland needs to increase productivity

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Political, economic and trade changes beyond our control are bringing uncertainty to the Irish business environment and the outcome remains unknown. **Considering Brexit, Irish businesses need, now more than ever, certainty over their tax affairs, through clear tax rules and the ability to obtain tax opinions from Revenue.** The OECD/IMF have identified practical tools[15] to enhance tax certainty: • Reducing complexity and improving the clarity of legislation through improved tax policy and law design. • Increasing predictability and consistency by tax administrations. • Effective dispute resolution mechanisms have a critically important role to play in establishing certainty.	**The Finance Bill process is so condensed that there is insufficient time to scrutinise legislation** once announced in the Budget and consider potential unintended consequences of legislative changes. According to the OECD/IMF, *"…legislative and tax policy design issues are a major source of tax uncertainty, mainly through complex and poorly drafted tax legislation."* [16] Often businesses need to obtain an opinion from Revenue where there is uncertainty over the interpretation of tax provisions. We understand from feedback from members that it can take 3-6 months to receive an answer to a technical query from Revenue Technical Service (RTS). If a business cannot obtain a timely response from RTS, this can adversely impact tax relief claims or the decision to proceed with a transaction.	• Apart from key income tax changes and other sensitive measures, **tax legislation should be published for consultation in advance of the Finance Bill**.[17] This could be done on an issue by issue basis throughout the year in the same way that consultation takes place on important policy matters. The UK's tax policy-making process facilitates scrutiny of both policy and legislation, at each stage of the budgetary process.[18] • **Revenue opinions are an inherent part of any self-assessment tax system around the world and must continue.** Revenue has recently introduced enhancements to RTS, including scope for direct engagement with an RTS expert on complex queries and tracking of queries to identify response times. Revenue intend to keep RTS under review and identify improvements.[19] It is essential that meaningful technical responses can be obtained within a timeframe that is in line with published customer standards. • To increase tax certainty for business, **a comprehensive up-to-date list of Revenue precedents should be published**.
An effective dispute resolution regime plays a critical role in establishing certainty for businesses.[20] Taxpayers may appeal directly to the Tax Appeals Commission (TAC) if they are aggrieved by an assessment or determination by Revenue. But there is a heavy build-up of cases in the appeals system.	• TAC has an overwhelming number of appeals on hand and this is increasing daily. • The cost of taking an appeal is of huge concern to taxpayers, given the high cost of interest if the taxpayer is ultimately unsuccessful. The rates of interest in Ireland (8% and 10%) are particularly high when compared with the UK, which has a rate of 3.25% (i.e. tracked at 2.5% above the current Bank of England Base Rate of 0.75%).[21]	The Institute welcomes the review of the TAC's resources which is currently underway. **It is crucial that the TAC is adequately resourced** so that it can operate as intended.

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Taxpayers are not responsible for the delays that have accumulated in the system, but they must pay for these delays, at very high interest rates, should they prove to be unsuccessful with their appeal.	Taxpayers who are waiting 'in the queue' to have their case heard risk a very high tax bill if unsuccessful due to the backlog in the system. • In most cases, taxpayers require legal representation to take an appeal, making the cost of proceeding with the appeal prohibitive for small taxpayers. • Increasingly, Revenue appeal determinations by the TAC in favour of the taxpayer to the High Court. This further increases the costs of proceeding with an appeal for taxpayers.	**Other actions also need to be taken to improve the appeals process[22]:** • A 'stop' on interest until the backlog can be resolved. • Clarity upfront on the basis for Revenue assessments. • An external mechanism to review assessments entering the appeals regime. • Alternative Dispute Resolution mechanisms (mediation or arbitration) should be introduced to reduce the backlog. The UK has a well-developed ADR regime.[23] • A 'small claims court' model for disputes on straightforward issues.
Making tax compliance as easy and cost-effective as possible is essential to maintain Ireland's competitiveness and attractiveness as a good place to do business. Ireland is rated highly in the EU and worldwide as an easy country in which to pay business taxes (4th worldwide in 2018).[24] Maintenance of Ireland's high standard and competitiveness can only be achieved by: • An ongoing focus on the delivery of quality services to business. • Minimising additional compliance costs for business.	Timely processing of taxpayer correspondence is vital to business operations. **Delays in processing VAT registration applications** can add to costs for businesses and hold up VAT refund claims. • Businesses need a VAT number promptly to invoice their sales and recover VAT on their costs. • We understand from feedback from our members that VAT registration applications can take 6 – 10 weeks to be processed. Revenue check applications extensively which can slow down the issue of a VAT number.	• **An ongoing focus on high quality responsive Revenue services for business is vital.** Improving key services for business and tax agents are core elements of Revenue's strategy over the next two years (e.g. timely query-handling and improvements to the telephone service).[25] Revenue use 'call answering time' as the measure of telephone service. HMRC are exploring new metrics, examining performance measures used by commercial call centres, customer exit surveys to gather real-time feedback on call-handling and models to estimate the cost saving to taxpayers (both call cost and opportunity cost) of shorter phone queue times.[26] It may be worth exploring such new metrics in an Irish context. • Revenue intend to introduce a two-tier approach to VAT registrations, which would allow straightforward registrations to be processed more quickly, while applications that are more complex or present a higher risk could be examined in more detail. The two-tier approach should be introduced without delay.

Business environment with tax certainty

The business problem	The cause of the problem	What needs to be done
Investment in electronic services, while welcome, does not displace the need for direct engagement with Revenue to obtain certainty for taxpayers on their tax affairs.	Tax compliance can be particularly burdensome for smaller employers and additional obligations should be minimised wherever possible. The introduction of **PAYE modernisation** in 2019 will significantly increase the frequency of payroll reporting and associated costs for smaller employers, many of whom currently do not use payroll software.	• The Institute welcomes Revenue's engagement with business on the new PAYE regime and Revenue's stated intention to work closely with small employers who may not have payroll software or payroll providers to enable them to fulfil their PAYE reporting obligations in a cost-effective way.[27] The smallest employers should be provided with free PAYE calculation tools to assist them to comply with the new obligations. HMRC provides free payroll software for small employers to help them comply with the UK PAYE real-time reporting regime.[28]
Minor errors or unintentional breaches of the tax rules can result in significant and disproportionate penalties. Fixed penalties that apply to breaches of tax rules were significantly increased in 2008.[29] In many cases, the penalties trebled in amount. The conditions that determine when a penalty applies also changed. It is no longer necessary for a taxpayer to "knowingly" breach the rules. If a taxpayer disagrees with a penalty Revenue is imposing, their only option is to challenge Revenue in Court.	**PAYE modernisation** will result in additional obligations on businesses, and minor breaches could result in substantial penalties. • For example, the absence of an up-to-date employee register at the business address can give rise to a fixed penalty of €4,000 (notwithstanding that this information may be held by the employer's payroll agent.)	• It is timely and necessary to **examine the proportionality of fixed penalties**, given introduction of the new real-time PAYE regime for employers. As Revenue continue to increase their focus on employers' compliance with PAYE obligations, the cumulative effect of these measures could result in the build-up of significant costs for taxpayers, which is disproportionate to any errors made, at a time when they are grappling with a new system.[30]

Access to finance

The business problem

Irish businesses need access to finance.

Irish companies remain heavily reliant on internal funds and on banks.[31]

A lack of internal and external finance in SMEs is hampering innovation and investment in skills.[32]

Considering Brexit, the financing constraints for SMEs are most relevant. Research shows its likely to deter them from exporting.

There is a serious need to look at alternative financing options.

The **Employment and Investment Incentive (EII)** is a financing tax measure for Irish businesses. It encourages investors to place finance in early stage and small businesses that have limited funding options.

EII plays a vital role in scaling start-up and small business to the next level of growth.

While the EII is a welcome scheme, there are now many blockages within it.

The cause of the problem

Policy design features of EII act as barriers to investment:

- Splitting tax relief into two tranches significantly reduces the attractiveness of the EII. Investors have no influence over whether the company will achieve the necessary employment targets to allow them to claim their second tranche of relief.
- 'Connected party' rules deny the relief to the founder and in situations where a start-up may look to family members and friends to raise investment at the outset.

  We understand that HMRC only consider linear relatives for the equivalent UK EIS scheme (e.g. spouse, civil partner, parent, and child and not brother or sister).
- R&D activities do not qualify for EII in their own right. This makes it difficult for sectors (like Medtech) to qualify for EII, where prolonged periods of R&D activity typically take place before trading begins.
- The annual investment limit is too low.
- EII operates under the EU State aid General Block Exemption Regulations (GBER)[33] which has added to the cost and complexity of the relief.
- It is particularly difficult for businesses seeking to raise a second tranche of EII funding and for businesses who wish to raise EII after they have been in operation for seven years.

A restrictive administrative process is stifling the use of EII:

- The GBER provisions are applied retrospectively to business plans prepared before its introduction.
- Backlogs in obtaining outline approval (pre-clearance) from Revenue that a company may qualify for EII.
- Significant delays in issuing tax relief certificates to investors, once they have provided finance to the EII company.

What needs to be done

EII tax policy recommendations:

- Carry out an economic analysis of the impact of the GBER on the operation of the EII.
- Provide full EII relief in year one.
- Amend EII rules to recognise R&D as a qualifying trade.
- Review the impact of the connected party rules on SME start-ups.
- Raise the €150,000 Annual Investment Limit. (The UK equivalent scheme applies a Stg£1m annual cap).[34]
- Extend EII relief to USC and PRSI.

Simplify the administration of EII:

- Additional resources should be committed to processing EII applications, as a matter of priority.[35]
- Simplify the outline approval process for the relief.
- Review the information that must be provided to Revenue to provide more clarity on the information required to support an EII claim.
- Address areas of uncertainty through enhanced Revenue guidance.
- Allow taxpayers to claim EII tax relief against their prior year tax liability. This would reduce the strain on administrative resources, as the timing of the investment would not be directly linked to the relief.

Access to finance

The business problem	The cause of the problem	What needs to be done
The **Start-up Relief for Entrepreneurs (SURE)** is an income tax refund scheme available to individuals who start their own business. But it is only available to those who were previously PAYE workers. The SURE refund can only be claimed after the investment has been made by the new business owner. There is limited public awareness of SURE.	**Restrictions in SURE are limiting its use:** • Only **29** SURE applications[36] have been received so far in 2018. • As the SURE refund can only be claimed after the investment has been made, the new business owner must find the upfront cash from elsewhere to invest in the business and pay running costs at the outset. • The individual needs to have paid sufficient income tax through the PAYE system in the previous four years to claim SURE. • A previously self-employed person, who has paid equivalent levels of income tax through the self-assessment system, does not qualify for SURE.	• Extend SURE to include new business founders who were previously self-employed and are starting up another business (as well as those coming from employment). • Allow the SURE refund to be claimed upfront to invest in the new business. • An extensive government information campaign should be rolled out (via the media and the Local Enterprise Offices) to promote SURE.
Capital Gains Tax (CGT) is a key determining factor for investment in businesses – it can help or hinder the process. It is the tax that matters most to investors and influences their behaviour **Ireland's CGT rate of 33% is the 3rd highest in the OECD.** Ireland's high CGT rate is restricting external investment in Irish business. It is creating reluctant business owners who may hold onto businesses beyond the point where they have capacity to grow them to the scale required to expand in to export markets. Ireland's targeted 'Revised Entrepreneur Relief', which allows for a lower 10% rate on business gains, is then important in that it helps to reduce the CGT burden on the sale of a business to a limited extent.	**Ireland's entrepreneur relief is uncompetitive when compared with the UK.** • In the UK, the relief applies to Stg£10m, while in Ireland the gain is limited to €1m. This means the overall effective tax rate on a gain of €10m in Ireland is 30.7% compared with 10% in the UK. • **Ireland's Entrepreneur relief locks out 'angel investors'** who are willing to invest money, experience and industry expertise in ambitious young companies. Business angel investment in Ireland is low compared with other countries. **Revenue's interpretation[37] of entrepreneur relief is also limiting its use** in three common situations: • Where there is a dormant company in a group. • Where a group is party to a joint venture. • Where a company/group holds investments or leases trading premises.	• Entrepreneur relief is restricted to owner-managers and locks out much-needed external investors from the possibility of a lower CGT rate. This disparity should be removed. • The €1m lifetime threshold for entrepreneur relief needs to be increased to a minimum of €10m to compete effectively with other countries for international capital. • To provide certainty for business, the legislation[38] should be amended to remove restrictions to entrepreneur relief in situations where a group holds a dormant company or has a shareholding in a joint venture company of less than 51%. • The legislation should also be amended to allow for either an apportionment of relief when a company holds investments or earns rental income or alternatively full relief to be claimed provided such activities fall below a certain level.

Managerial capability and human capital

The business problem	The cause of the problem	What needs to be done
Irish SMEs have difficulties recruiting and retaining skilled workers, hindering their growth and exporting potential.[39] The OECD[40] stresses the need for human capital. Ireland needs to think about how to raise the capacity of Irish businesses to implement new ideas and technologies. The ability of Irish SMEs to attract the right talent is crucial to their future direction. Managerial skills in many Irish companies are too weak to allow them to identify and exploit opportunities offered by global companies on their doorsteps.[41] Wages in multinationals are 64% higher than in domestic companies[42] and the difference is 74% for multinationals of non-EU origin. Given the high personal tax rates, a workable share option regime, the **'Key Employee Engagement Programme' (KEEP)** becomes critical.	**KEEP contains limitations,** which significantly impact its feasibility and ultimately, its success in achieving its policy aim: • Issues surrounding the qualifying criteria for individuals; the design of the remuneration limits and the narrow definition of a qualifying holding company are creating difficulties for SMEs to qualify. • There is no certainty that a company's share valuation of KEEP shares will be accepted by Revenue.[43]	**KEEP legislation needs to be amended:** • There is a cap on the value of share options that can be granted under KEEP. The third part of the test which requires the options to be below 50% of the employees' annual emoluments is restricting high-growth companies in start-up mode availing of the scheme and should be removed. The UK equivalent share scheme, Enterprise Management Incentive, does not cap the value of the share options by reference to the employee's annual emoluments. • The KEEP provisions envisage that an individual will be an employee of and carry out the duties for a single company. Employees who transfer to a group company should be allowed to retain their KEEP options. • Holding companies generally do not only own shares and are not always the 100% parent company, which is what is required under KEEP. The definition of a 'holding company' should be amended to adopt a similar definition to that contained within entrepreneur relief. • It is common for company share schemes to manage the delivery of shares to eligible employees under a trust arrangement. They will often make available shares for key recruits from a pool of existing shares set aside for that purpose. The flexibility to operate these common and accepted practices is not available under KEEP and that is significantly limiting the use of the regime. • A substantial challenge for SMEs wishing to operate a KEEP scheme will be to provide assured liquidity for their shares, as not all these companies are likely to be sold or listed on a stock exchange, but the KEEP does not permit the buy-back of shares. • CGT treatment does not continue to apply if the SME undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding. • 'Safe harbour' approaches to share valuation for KEEP purposes should be developed to ensure the scheme is more accessible, easily understood and capable of implementation without undue duplication of effort and cost to SMEs.

Managerial capability and human capital

The business problem	The cause of the problem	What needs to be done
There is no Special Assignee Relief Programme (SARP) equivalent regime to assist SMEs with the cost of acquiring talent from overseas. Attracting talent from overseas is important when it comes to developing start-up businesses and building entrepreneurial hubs. Finding and keeping skilled human capital is fundamental to growing Irish businesses to scale in the face of major risks and uncertainties ahead, like Brexit. SMEs that are export focused and producing products and services in knowledge-intensive areas need to be able to access international talent.	SARP provides income tax relief for certain employees who are assigned to work in Ireland from another group company abroad: • It is an assignment relief that applies only to individuals already working for an international group abroad for six months who are then assigned to Ireland. • The combination of the international assignment feature and the high salary level (€75,000) effectively precludes Irish SMEs from using the relief.	**Consideration should be given to developing a new talent regime like SARP but targeted at SMEs.** This would help SMEs attract the talent and skills they need from outside Ireland to grow their businesses. Lessons should be learned from the operational difficulties with the existing SARP scheme to ensure that the administration of any new scheme is simplified: • Customer services standards should apply to any refunds. • The period to notify Revenue of a qualifying employee should be reasonable to allow adequate time for the multiple issues that need to be addressed first when a new assignee arrives in Ireland. (Currently only 30 days under SARP). • The deadline for the employer to report qualifying employees should be in line with the income tax return deadline.
Work patterns have transformed in the past ten years in Ireland, as they have globally. Individuals are expected to travel and be more mobile in their roles both across Ireland and in foreign markets, seeking new business opportunities. Freelance work has also grown in the past ten years. Businesses with employees who do not operate out of a fixed base can struggle to understand **how to apply the tax rules on travel and subsistence expenses**. Small businesses that must operate from a home-based office but travel to clients' premises experience similar difficulties.	**Uncertainty remains over the tax treatment of a range of common business travel arrangements:** • Freelance workers • Individuals working from home • Employees working across multiple locations • Virtual office workers • Domestic and overseas secondees. • Site based workers Current tax legislation does not adequately deal with the challenges of modern working patterns and this is reflected in Revenue guidance, some of which is conflicting. A consultation on the tax treatment of travel and subsistence expenses[44] was carried out in August 2015 but no feedback has been published on the outcome of that review to date.	• **Legislation in this area urgently needs to be brought up to date** to ensure that expenses incurred for business purposes, which do not provide a personal benefit to an employee, can be reimbursed without deducting tax. • A Feedback Statement on the consultation should be published without further delay.

Innovation and R&D

The business problem	The cause of the problem	What needs to be done
Innovation is central in the strategic plans for other countries when it comes to growing their SMEs. The link between innovation and productivity has been highlighted by the OECD, IMF and the European Commission. **Ireland has an attractive R&D tax credit regime, but administrative blockers are weighing heavily on its success in terms of low take up among SMEs.** **The R&D tax credit regime restricts outsourcing[45] and collaboration, which is at odds with best practice international standards.[46]** The most impactful science can come from international collaborations between academia and industry.[47]	Irish Tax Institute research[48] shows that 75% of companies surveyed were aware of the R&D tax credit and 20% had claimed it. Of those who availed of it, **almost half found the R&D tax credit difficult to prepare and administer.** **Only 35% of all companies surveyed intended to avail of the R&D tax credit in the next 18 months.** Although **this would rise to over 60% if there was more clarity around criteria for qualification.** Existing Revenue guidance is not geared towards SMEs and contains a caveat which means businesses cannot rely on its contents.[49]	**Remove the outsourcing restrictions in the R&D tax credit regime.** **Every effort should be made to remove administrative blockers for businesses that need to claim the R&D tax credit:** • A Revenue pre-approval process would bring much-needed certainty for taxpayers and subsequently prevent disagreements and costly future audits. HMRC operates an "Advance Assurance" service for small companies submitting their first claim.[50] • Ireland needs an SME focused campaign and Centre of Excellence within Revenue, like the extensive and specialised R&D tax credit supports in the UK. • Sector specific Revenue guidance for each industry sector such as food and beverages, ICT, bio-medical, all of which engage in very different R&D processes.

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For more information please contact:

Olivia Buckley
Communications Director
Direct: +353 1 6631706
Email: obuckley@taxinstitute.ie

Anne Gunnell
Director of Tax Policy & Representations
Direct: +353 1 6631750
Email: agunnell@taxinstitute.ie

Irish Tax Institute

South Block
Longboat Quay
Grand Canal Harbour
Dublin 2

www.taxinstitute.ie
+353 1 663 1700
@TaxInstituteIrl

Summary of Recommendations

Our recommendations for Finance Bill 2018 focus on the nine key areas below, further details of which are provided in the body of the submission.

1. **Key Employee Engagement Programme (KEEP):** The KEEP contains seven significant limitations which significantly impact the feasibility of the scheme and ultimately, its success in achieving the policy aim of helping SMEs to attract and retain talent. These are:

    a) the impact of the remuneration test on high growth companies in start-up mode
    b) the definition of a 'qualifying individual'
    c) the definition of a 'holding company'
    d) the requirement for new issued shares
    e) share buy backs need to be facilitated to assist with liquidity
    f) reorganisations are not specifically catered for within the provisions of KEEP, and
    g) agreed approaches to share valuations and the development of 'safe harbours' are required.

    To address these limitations, we recommend the following amendments to the existing legislation:

    - The third part of the remuneration test requires KEEP share options to be below 50% of the employees' annual emoluments, which is restricting high-growth companies in start-up mode availing of scheme. To preserve cash in the start-up phase of such companies, the cash element of a key employee's remuneration package is often modest, with share options forming the majority of the package being paid. Share options may very well exceed 50% of annual emoluments in these circumstances; therefore, the third element of the remuneration test cannot be met and KEEP cannot be used.

      While we acknowledge the role of remuneration limits in a share option regime, they should be based on absolute values to ensure that high growth companies in start-up mode are not prevented from availing of the scheme.

    - The current KEEP provisions envisage that an individual will be an employee of and carry out duties for a single company. However, employees may carry out work for the holding company and one or more subsidiaries or transfer between group companies, as well as devoting their time to the qualifying KEEP company within the group. This will be dictated by business needs. We believe the definition of a 'qualifying individual' should be amended:

        - to allow an employee who transfers to a group company to retain their KEEP options (that qualify for CGT treatment), provided all the other conditions of section 128F TCA 1997 are satisfied, and
        - to allow more practical flexibility (particularly in SMEs), so that employees who spend substantial time in the KEEP company will qualify for the relief even where they carry out some duties for other group companies.

    - Holding companies generally do not only own shares (i.e. a holding company can hold money in a bank account to discharge its running expenses or advance a loan to a subsidiary) and are not always the 100% parent company, which is what is required under the existing provisions to qualify for KEEP. We recommend that the definition of a holding company under the scheme should be amended to adopt a similar definition to that contained within Revised Entrepreneur Relief where a holding company *"means a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51 per cent subsidiaries"* and which provides for a qualifying group.

- For commercial reasons, it is common for company share schemes to manage the delivery of shares to eligible employees under a trust arrangement. Furthermore, they will often make available shares for key recruits from a pool of existing shares set aside for that purpose. The flexibility to operate these common and accepted practices is not available under KEEP and that is significantly limiting the use of the regime. To address this gap, the regime should enable existing, as well as new shares, to qualify for use. This could be achieved by deleting the reference to 'new' in part (a) of the definition of a qualifying share option under section 128F TCA1997.

- The provisions of the KEEP scheme do not accommodate the buy-back of shares and this can have significant implications for the liquidity of the business. A substantial challenge for SMEs wishing to operate a KEEP scheme will be to provide assured liquidity for their shares, as not all these companies are likely to be sold or listed on a stock exchange. Section 176 TCA 1997 should be amended to reflect that a buyback of shares acquired under KEEP can be expected to meet the conditions for the benefit of the trade test in that section and consequently, subject to CGT treatment.

- The current legislation does not provide for the continuing availability of CGT treatment if the SME undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding. Therefore, we recommend the adoption of similar provisions in KEEP to those contained within the Revised Entrepreneur Relief legislation, which secure the entitlement of a qualifying individual and a qualifying company to meeting the scheme requirements when a reorganisation takes place.

- We believe that agreed 'safe harbour' approaches to share valuation for KEEP purposes should be developed, similar to the approach to valuations adopted under accounting standards. This will ensure the scheme is more accessible, easily understood and capable of implementation without undue duplication of effort and cost to SMEs.

2. **Professional Subscriptions:** In the best interests of the development and standards of Ireland's professions, we urge that the statutory basis for exemption from BIK under section 118 (5E) TCA 1997 is reinstated for professional subscriptions.

   We have attached a copy of our evidence-based report, *Building Ireland's Future – The Role of the Professions* that has been prepared with a number of other like-minded organisations, which demonstrates the role of professional bodies in Ireland's future.

3. **Special Assignee Relief Programme (SARP):** Under existing SARP legislation, an employer is required to notify the Revenue that an employee will be eligible for the relief within 30 days of that employee arriving in Ireland to perform his/her employment duties.

   When a new assignee arrives in Ireland, multiple practical issues need to be addressed, which can result in the SARP notice being inadvertently overlooked or delayed by the employer, resulting in the refusal of the relief. Refusing the employee relief on the basis that the employer has not submitted the notice on time can result in a financial penalty that is entirely disproportionate for something that is effectively outside the control of the employee.

To address this, we recommend removing the 30-day notice requirement from the part of the legislation that defines a 'relevant employee' for SARP purposes.

Alternatively, the current time limit of 30 days could be extended to 90 days, which would be a more adequate timeframe to allow for the multiple issues that need to be addressed first when a new assignee arrives in Ireland.

4. **Revised Entrepreneur Relief:** There are issues with the current Revised Entrepreneur Relief legislation[2] (as interpreted in Revenue's Operational Manual),[3] which are limiting its use in three significant situations and creating barriers to investment. These are:

   - where a dormant company is present in the group;
   - where the group is party to a joint venture;
   - where the group/company is holding investments and/or leasing trading premises.

   We recommend that section 597AA TCA 1997 is amended to remove restrictions to Revised Entrepreneur Relief in situations where a group holds a dormant company or has a shareholding in a joint venture company of less than 51%.

   The legislation should also be amended to allow for either an apportionment of relief when a company holds investments or earns rental income or alternatively full relief to be claimed provided such activities fall below a certain level.

5. **The potential impact of section 135 TCA 1997 on the sale of family businesses/SMEs:** Finance Act 2017 inserted a new subsection 3A into section 135 TCA 1997. The policy intent at the time of introduction was *"to deal with a number of specific tax avoidance schemes which have been uncovered by the Revenue Commissioners."*[4]

   However, unlike other targeted anti-avoidance measures in Irish tax legislation, section 135 TCA 1997 does not include a *bona fide* test, which is normally used to prevent unintended consequences from arising.

   The effect of the new subsection 3A is to impose income tax (rather than CGT) treatment on selling shareholders in any situation where Revenue take the view that a company has retained profits in excess of the company's commercial needs. Without a *bona fide* test to target this measure, it is having a significant impact on succession within family businesses, management buy-outs (MBOs) and arrangements to provide liquidity in shares for employees involving 'close companies'.

   In our view, inserting an exclusion for *bona fide* commercial transactions into section 135 TCA 1997 would provide the necessary level of certainty to taxpayers when considering their scaling options.

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[2] Section 597AA TCA 1997
[3] Revenue Operational Manual 19.06.02B – Capital Gains Tax Revised Entrepreneur Relief
4 Minister Paschal Donohoe, T.D. at the Committee Stage debate on Finance Bill 2017, 8 November 2017

6. **Merger of a closely held company and interaction with the close company surcharge:** Finance Act 2017 amended Irish tax legislation to reflect mergers and divisions, so to ensure that the successor company can step into the shoes of the transferor company for certain filing, reporting and payment obligations following a merger or division. A technical point has now arisen, which has not yet been considered in tax legislation, where the dissolving company in a merger is a closely held company.

   Section 400 TCA 1997 imposes a surcharge on undistributed investment and rental income of a close company. Where a dissolving company has income subject to the close company surcharge in the period before a merger but has not yet made a distribution before it takes place, the successor company should be permitted to step into the shoes of the transferor company for the purposes of making a distribution within the 18-month time period, stipulated in section 434(2) TCA 1997.

7. **Proportionality of Penalties and Interest:** Tax legislation and regulations contain numerous fixed penalties. Fixed penalties regularly apply to breaches of administrative requirements in tax law. The level of the penalty can be substantial, amounting to €3,000 or €4,000 for each instance of non-compliance, even when there is no loss of tax revenue to the Exchequer. The PAYE regulations contain several of these fixed penalty provisions.

   We believe it is now timely and necessary to examine the proportionality of fixed penalties, given the introduction of the new 'real-time' PAYE regime for employers from 1 January 2019. As Revenue continue to increase their focus on employers' compliance with PAYE obligations, the cumulative effect of these measures could result in the build-up of significant costs for taxpayers, which is disproportionate to any errors made, at a time when they are grappling with a new system.

   Interest is charged on the late payment of tax in Ireland at annualised interest rates of 8% and 10%, far in excess of the Irish mean overdraft rate[5]. In contrast, HMRC in the UK currently imposes interest at a rate of 3% (i.e. 2.5% above the current Bank of England Base Rate of 0.5%). In the Institute's view, the rate of interest imposed on the late payment of tax should reflect the actual cost to the Exchequer and be tracked to prevailing ECB market rates.

   It is unfair that taxpayers must pay for the delays, that they are not responsible for, which have accumulated in the tax appeal system at very high interest rates, should they prove to be unsuccessful with their appeal. Taxpayers are also being prevented from appealing assessments where they do not believe tax is due, because of the fear of these high interest charges. This impacts on their rights as taxpayers to natural justice.

   Statutory interest should be "stopped" on cases that are in our congested appeals process until at least such time as the current levels of congestion have been dealt with and taxpayers have a clear understanding of the time line for a decision.

8. **VAT Deferral Licence for Importers:** With the UK indicating that it may leave the European Single Market and Customs Union as part of the Brexit process, we believe the State should

[5] The Irish mean overdraft interest rate was 2.4% in 2016.

consider introducing an Irish VAT deferral licence regime for importers, similar to the regime that currently operates in the Netherlands. The ability to defer the time at which import VAT must be accounted for without affecting the transportation of the goods, would provide a clear cash flow benefit to importers in Ireland.

9. **Establish a Brexit working group to consider the potential tax implications:** Brexit will bring, not only customs and excise and VAT implications but also, knock-on effects for direct taxation. Irrespective of the outcome of the EU/UK negotiations, we could begin the work now to identify and consider the tax policy of such issues. Therefore, we recommend establishing a Working Group between practitioners and the Revenue Commissioners to discuss and explore such matters, similar to the forum that was set up at the time of the introduction of the new Companies Act in 2014, which proved useful in identifying how Irish tax legislation needed to be updated to reflect the new Act.

1. Key Employee Engagement Programme (KEEP)

We welcome the introduction of the new KEEP share scheme, which provides an opportunity for SMEs to compete with listed companies, to attract and retain key employees. However, KEEP contains seven limitations which could significantly impact the feasibility of the scheme and ultimately, its success in achieving the policy aim of helping SMEs to attract and retain talent.

These are:

a) The potential impact of the remuneration test on high growth companies in start-up mode
b) The definition of a ‘qualifying individual’
c) The definition of a ‘holding company’
d) The requirement for new issued shares
e) Creating liquidity in KEEP shares
f) Where a SME undergoes a reorganisation
g) The need for agreed approaches to share valuations and the development of ‘safe harbours’

a) *The potential impact of the remuneration test on high growth companies in start-up mode*

Undoubtedly, it is challenging to draft measures for a broad population of SMEs in Ireland which includes companies still in start-up mode with high growth potential (but limited cash resources) and more mature companies (possibly of longstanding) which are owned by a family or related persons. These are very different types of company, but both have the commercial need to attract and retain key individuals, whilst competing for that talent with listed companies that can offer equity-based awards.

The design of the third part of the remuneration limits[6], which requires that KEEP share options must not exceed 50% of the employee’s annual emoluments, appears to restrict high growth companies in start-up mode availing of the scheme. This is particularly the case for companies in the hi-tech sector. To preserve cash in the start-up phase of such companies, pay practices have developed which often result in modest cash remuneration paid to key employees in tandem with share-based awards.

We suggest that, rather than discriminate in practice against the remuneration strategies of these companies and the mix of cash based and equity-based remuneration that they offer employees, the KEEP measures should simply set absolute value limits, such as those included in subparagraph (i) and (ii) of part (d) of section 128F (1) TCA 1997. It should be left to companies to determine the proportionate mix of cash and share-based remuneration as a commercial matter and to follow market driven pay award practices.

We suggest therefore that the remuneration test[7] be removed from the KEEP provisions so not to restrict high growth companies in start-up mode availing of the scheme.

[6] See definition of a “qualifying share option”, part (d) (iii) under section 128F (1) TCA 1997
[7] See definition of a “qualifying share option”, part (d) (iii) under section 128F (1) TCA 1997

b) *The definition of a 'qualifying individual'*

Under KEEP, the individual exercising the qualifying share option must be a full-time employee or full-time director of the qualifying company and devote substantially whole of his/her time to the service of that company throughout the entirety of the relevant period.

The current provisions[8] envisage that an individual will be an employee of and carry out duties for a single company. In reality, an individual may hold the office of director or have a formal contract of employment with one group member but their services are available to other group companies. For example, employees may carry our work for the holding company and one or more subsidiaries and devote their time to the qualifying KEEP company within the group, as the business needs dictate.

Furthermore, while the existing legislation provides for the exercise of a KEEP option within 90 days of an employee ceasing employment, there is no provision for continued ownership of the options where the employee works for or transfers to another group company.

We believe an employee, who transfers to a group company should be permitted to retain their KEEP options that qualify for CGT treatment, provided all the other conditions of section128F TCA 1997 are satisfied and that the manner in which employee relationships work within SMEs should be accommodated within the scope of the legislation.

c) *The definition of a 'holding company'*

The scheme recognises that an employee may acquire KEEP shares directly in a company, which is engaged in a qualifying trade or acquire shares in a holding company. However, the definition of 'holding company'[9] under the existing legislation makes it practically impossible to give employees KEEP shares where the business corporate structure has a holding company.

Holding companies generally do not only own shares (i.e. a holding company can hold money in a bank account to discharge its running expenses or advance a loan to a subsidiary) and are not always the 100% parent company, which is what is required under the existing provision to qualify for KEEP.

A holding company often oversees and manages the activities of subsidiaries and in doing so, may charge and recoup management expenses whether in the course of the conduct of a services trade or otherwise. This means that the assets of a typical holding company do not consist wholly of the holding of shares that comprise the entirety of the issued share capital of another company, as is required by the existing provisions.

We recommend that the definition of a holding company under KEEP should be amended to adopt a similar approach to Revised Entrepreneur Relief, where a holding company *"means a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51 per cent subsidiaries"*[10] and which provides for a qualifying group.[11]

[8] See definition of a 'qualifying individual' in section 128F (1) TCA 1997'
[9] Section 128F (4) TCA 1997
[10] Section 597AA (1) (a) TCA 1997
[11] See definition of a 'group' and 'qualifying group' in section 597AA (1) (a) TCA 1997

d) *The requirement for 'new' issued shares*

A qualifying share option under the KEEP scheme requires that "*new ordinary fully paid up shares*"[12] are provided to a qualifying individual when the option is exercised. However, in many cases, an SME may wish to use shares set aside, for example, 5% or 10% of the shares in the company, as a pool of shares that would be available to key employees as they are recruited.

By removing the requirement to have new shares, this would allow a company to appropriate and deliver existing shares to qualifying individuals. Delivery of existing shares to employees upon exercise of an option could also be appropriate in circumstances where an employee leaves the company and is replaced by a new recruit (e.g. where existing scheme shares could be bought back from the departing employee by the SME).

It is common in the case of other share schemes that a company may choose for commercial reasons to manage the delivery of shares to eligible employees under a trust arrangement or they may choose to set aside a pool of shares to be made available as key employees are recruited. Such flexibility could be permitted under the KEEP if existing rather than new shares qualified under the scheme.

We suggest that this flexibility of delivering existing shares could be permitted by deleting the reference to 'new' in part (a) of the definition of a qualifying share option under section 128F TCA1997.

e) *Creating liquidity in KEEP shares*

A substantial challenge for SMEs wishing to operate a KEEP scheme will be to provide assured liquidity for their shares, as not all these companies are likely to be sold or listed on a stock exchange. SMEs may need to consider how to create a market in the absence of a third-party exit, such as the owner, other employees or the company itself buying back the shares from an employee.

In general, a company buyback of shares is treated as income rather than capital. However, section 176 TCA 1997 provides that CGT treatment can apply to a buyback or redemption of shares if it is considered to be for the benefit of the trade. The KEEP provisions include a *bona fide* commercial reasons test[13] to be met as part of the scheme's requirements. We therefore ask that that section 176 is amended to reflect that a buyback of shares acquired under KEEP can be expected to meet the conditions for the benefit of the trade test in the section.

In addition, KEEP does not impose an ownership or holding period for the shares on the employee once the shares have been acquired under the terms of a KEEP scheme. Section 177(6) TCA 1997 should be amended to align its application with the understood policy intent of the KEEP provisions which is not to impose a post-acquisition holding period on scheme shares. The section should also clarify that CGT treatment can apply to KEEP shares acquired by the employee (the 'vendor' for the purposes of section 177). This subsection already includes

[12] See part (a) of the definition of a 'qualifying share option' in section 128F (1) TCA 1997
[13] Section 128F(11) TCA 1997

provisions related to approved employee share schemes which, unlike KEEP, impose certain holding period requirements on the scheme shares, once acquired by the employee.

An ancillary amendment should also be made to section 178 TCA 1997 to remove the requirement to substantially reduce shareholder ownership where the shares have been acquired under KEEP. As outlined above, it is foreseen that many SMEs will need to put in place redemption or buyback mechanisms to provide liquidity in scheme shares to employees. An amendment to section 178 is necessary to allow the SME to buyback employee KEEP shares in tranches and not be required to repurchase the entire employee's holding at one time.

Furthermore, KEEP shares should be excluded from the requirement under section 178(1) TCA 1997 to have a substantially reduced shareholding immediately following the buyback/ redemption.

We believe that without the amendments outlined above, KEEP will be unworkable for many companies who will not be in a position to offer listed shares e.g. on ESM or a third-party sale event to provide liquidity in their shares.

f) *Where a SME undergoes a reorganisation*

The current KEEP legislation does not provide for the continuing availability of the relief in the event that the SME (e.g. holding company and its subsidiaries) undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding.

We would suggest amending the KEEP legislation to include similar provisions to those contained within the Revised Entrepreneur Relief legislation,[14] which seeks to address reorganisations[15] that might affect the entitlement of a qualifying individual and a qualifying company to meet the scheme requirements.

g) *The need for agreed approaches to share valuations and the development of 'safe harbours'*

One of the most significant practical issues that will face SMEs implementing KEEP will be to achieve as much certainty as possible that the valuation conditions have been met (e.g. that the share option price is not less than the market value of the shares at the date of grant).

The valuation of shares can be a complex exercise; especially for non-listed SMEs and valuation costs can place a significant burden on smaller enterprises in delivering share awards employees.

Revenue published guidance[16] on the operation of KEEP in April. However, in addition to providing general guidance on the KEEP provisions, we believe comprehensive guidance on share valuations is also required to support companies adopting the scheme. We believe this

[14] Section 597AA (1) (b) (i) and (ii) TCA 1997
[15] Corporate reorganisations under section 586 and 587 TCA 1997
[16] Chapter 9, Share Schemes Tax and Duty Manual

would make the process more accessible, easily understood and capable of implementation without undue duplication of effort and cost.

This could be achieved by:

- Developing templates or safe harbour approaches for valuing shares in a SME. This would mean that a taxpayer would have assurance from Revenue that the share valuation is not less than market value for tax purposes, where the taxpayer had adopted the safe harbour approach to valuing the KEEP shares.

- Agreeing that, for the purposes of meeting a market value requirement for an employee share, a market value determined by reference to:

  › a third-party share valuation event (such as investment by a private equity or angel investor),
  › a valuation exercise that meets the safe harbour requirements described above, or
  › standard share valuation exercise

  that has occurred within the previous 12 months can meet the tax requirements for establishing the market value of the shares, provided there was no material change in the circumstances of the company.

Institute Recommendations:

To address the limitations of the KEEP scheme, we recommend the following amendments to the existing legislation:

- The third part of the remuneration test requires KEEP share options to be below 50% of the employees' annual emoluments, which is restricting high-growth companies in start-up mode availing of scheme. To preserve cash in the start-up phase of such companies, the cash element of a key employee's remuneration package is often modest, with share options forming the majority of the package being paid. Share options may very well exceed 50% of annual emoluments in these circumstances; therefore, the third element of the remuneration test cannot be met and KEEP cannot be used.

- While we acknowledge the role of remuneration limits in a share option regime, they should be based on absolute values to ensure that high growth companies in start-up mode are not prevented from availing of the scheme.

- The current KEEP provisions envisage that an individual will be an employee of and carry out duties for a single company. However, employees may carry out work for the holding company and one or more subsidiaries or transfer between group companies, as well as devoting their time to the qualifying KEEP company within the group. This will be dictated by business needs. We believe the definition of a 'qualifying individual' should be amended (a) to allow an employee who transfers to a group company to retain their KEEP options (that qualify for CGT treatment), provided all the other conditions of section 128F TCA 1997 are satisfied, and (b) to allow more practical flexibility (particularly in SMEs), so that employees who spend substantial time in the KEEP company will qualify for the relief even where they carry out some duties for other group companies.

- Holding companies generally do not only own shares (i.e. a holding company can hold money in a bank account to discharge its running expenses or advance a loan to a subsidiary) and are not always the 100% parent company, which is what is required under the existing provisions to qualify for KEEP. We recommend that the definition of a holding company under the scheme should be amended to adopt a similar definition to that contained within Revised Entrepreneur Relief where a holding company "means a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51 per cent subsidiaries" and which provides for a qualifying group.

- For commercial reasons, it is common for company share schemes to manage the delivery of shares to eligible employees under a trust arrangement. Furthermore, they will often make available shares for key recruits from a pool of existing shares set aside for that purpose. The flexibility to operate these common and accepted practices is not available under KEEP and that is significantly limiting the use of the regime. To address this gap, the regime should enable existing, as well as new shares, to qualify for use. This could be achieved by deleting the reference to 'new' in part (a) of the definition of a qualifying share option under section 128F TCA1997.

- The provisions of the KEEP scheme do not accommodate the buy-back of shares and this can have significant implications for the liquidity of the business. A substantial challenge for SMEs wishing to operate a KEEP scheme will be to provide assured liquidity for their shares, as not all these companies are likely to be sold or listed on a stock exchange. Section 176 TCA 1997 should be amended to reflect that a buyback of shares acquired under KEEP can be expected to meet the conditions for the benefit of the trade test in that section and consequently, subject to CGT treatment.

- The current legislation does not provide for the continuing availability of CGT treatment if the SME undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding. Therefore, we recommend the adoption of similar provisions in KEEP to those contained within the Revised Entrepreneur Relief legislation, which secure the entitlement of a qualifying individual and a qualifying company to meeting the scheme requirements when a reorganisation takes place.

- We believe that agreed 'safe harbour' approaches to share valuation for KEEP purposes should be developed, similar to the approach to valuations adopted under accounting standards. This will ensure the scheme is more accessible, easily understood and capable of implementation without undue duplication of effort and cost to SMEs.

2. Professional Subscriptions

Section 118 TCA 1997 was amended in 2011, so that the payment of a subscription to a professional body by an employer on behalf of an employee is treated as a taxable benefit-in-kind (BIK), subject to PAYE, PRSI and USC.

With the withdrawal of the statutory basis for exemption from BIK from 2011 onwards, professional membership fees are only deductible for tax purposes under the general legislative framework[17] governing the deduction of employment expenses, where the fees are incurred wholly, exclusively and necessarily by an individual in the performance of the duties of his or her employment.

Revenue recently issued a new Manual[18] on the tax treatment of professional subscriptions. Revenue's interpretation in their new Manual appears to apply a stricter interpretation of the "wholly, exclusively and necessarily" test to narrow the range of circumstances in which an employee's professional membership subscription can be paid by their employer without deduction of PAYE, when compared to their previous guidance[19] issued in 2011.

Revenue's new Manual[20] identifies three circumstances in which professional fees will be considered incurred wholly, exclusively and necessarily in the carrying on of an office or employment. The Manual makes it clear that Revenue will only consider the test to be met (so that no BIK is due), if either:

1. Membership of the professional body is a statutory requirement for the role involved;
2. A practising certificate or licence is required to carry out the role; or
3. The role requires a right to plead or be heard before a court/tribunal (and that right is only available through membership of the professional body).

Membership of professional bodies and the necessary adherence to codes of professional conduct, continuous professional development, lifelong learning and knowledge-development are important in the delivery of high quality service and in growing the Irish economy.

Through lifelong learning, professional bodies ensure that their members are highly informed, educated and equipped to deal with the latest developments in their respective specialisms. This ranges from new law and EU Directives, through to the latest technical advances and trends that both the public and industry need to adjust to and for which they absolutely require professional services.

Now, more than ever, the promotion of the highest standards and continuous learning are essential to supporting businesses with international challenges and opportunities, such as Brexit. The skills of our professions in Ireland will be central to this country remaining agile and capable of dealing with change. We need a skilled labour force who are performing at the highest standards of quality, professionalism, knowledge and innovation.

Many State agencies require membership of a professional body as evidence of achieving the necessary high standards of practice. For example, the Central Bank of Ireland require employees of financial institutions to have a level of fitness and probity[21] appropriate for their function. The Central Bank's fitness and probity standards[22] expect banks to satisfy themselves that employees in a controlled function/pre-approved controlled function or minimum competency roles have relevant professional qualifications and ensure that the employees

[17] Section 114 TCA 1997
[18] eBrief No. 04/2018
[19] eBrief No. 19/2011
[20] eBrief No. 04/2018
[21] Part 3, Central Bank Reform Act 2010
[22] Guidance on Fitness and Probity Standards 2017

annually maintain those professional qualifications through continuous professional development.

If such bank employees do not keep their professional qualifications up-to-date each year, then the employer bank will be in breach of their fitness and probity statutory obligations.[23] We understand from members working in banks that Revenue has accepted professional subscriptions paid by an employer on behalf of an employee, as not being taxable, where the employee's role falls within the Minimum Competency Code 2017, while a narrower view has been taken by Revenue regarding controlled/pre-approved controlled function roles, resulting in taxable BIK being imposed on a significant number of these subscriptions.

The Central Bank of Ireland is actively pursuing a policy for increased professionalisation of financial services staff to ensure the highest possible standards within the industry going forward. We believe employer banks should be helped to accomplish this important policy goal and providing a clear statutory exemption for employer paid professional subscriptions would achieve this.

The payment of a professional subscription, and the adherence to the ethical and professional codes of one's membership body, is a clear expression of a desire and commitment to keep professionally informed, educated, connected and knowledgeable and to practice to the highest standards of one's chosen profession. It is a statement of commitment to the highest international standards of practice, that best serve our country and its people.

The specific requirements of the "wholly, exclusively and necessarily" test in section 114 are overly restrictive and make it very difficult for many employees across a wide range of sectors to have their professional membership subscriptions paid by their employer without deduction of PAYE. This is a situation which is at cross purposes with Ireland's need for a skilled labour force who should be encouraged to continue their knowledge development and to perform at the highest standards.

In the best interests of the development and standards of Ireland's professions, we urge that the statutory basis for exemption from BIK is reinstated for professional subscriptions. This could be achieved by amending section 118 (5E) (c) to reactivate the relief.

Institute Recommendations:
In the best interests of the development and standards of Ireland's professions, we urge that the statutory basis for exemption from BIK under section 118 (5E) TCA 1997 is reinstated for professional subscriptions.

3. Special Assignee Relief Programme (SARP)

SARP provides income tax relief to a particular group of employees who are assigned to work in Ireland from another group company abroad. The aim of the relief is to reduce the cost to employers of assigning skilled individuals in their companies from abroad to take up positions in the Irish-based operations, in order to facilitate the expansion of the business in Ireland.

[23] Section 21 Central Bank Reform Act 2010

Under the current SARP legislation,[24] an employer is required to notify the Revenue that an employee will be eligible for the relief within 30 days of that employee arriving in Ireland to perform his/her employment duties.

We are aware of cases where the strict application of the 30-day rule has resulted in the refusal of the relief to eligible employees, in circumstances where the employer has not sent the notice within the 30-day period. We believe the application of a rule which makes a relief dependent on the actions of a third party (the employer) is at odds with the basic principle that a relief is personal to the individual and ultimately must be claimed on the individual's statutory tax return.

There is no obligation on the individual to claim SARP relief during the course of the year. Like any other relief, SARP can be (and in many cases, is) claimed by way of refund at the end of the tax year.

The present time limit of 30 days takes little account of practical realities. When a new assignee arrives in Ireland, multiple practical issues need to be addressed. Often, the new assignee is taking over a senior role in the company, in addition to organising housing and perhaps schools for their children. The assignee must also obtain a PPS number. All of this takes time, and in such circumstances, the SARP notice can be inadvertently overlooked or delayed by the employer.

Refusing the relief on the basis that the employer has not submitted the notice within 30 days can result in a financial penalty that is entirely disproportionate. For example, where an individual is earning €500,000, the effective penalty would be as much as €255,000 for something that may effectively be outside of their control. This effectively creates a 'penalty', which is not provided for in the legislation.

We understand from Revenue that the information is required for statistical purposes. However, there is a separate statutory requirement[25] for employers to make an annual return of the employees qualifying for SARP, which requires significantly more detail than the notice required within 30 days. The 30-day requirement was inserted by an amendment which became effective from 1 January 2015. There is no indication that the absence of this procedure in prior years critically affected the operation of the relief, nor indeed that the operation of the relief in the latter years has been significantly enhanced by its existence.

To address this issue, we would recommend removing the 30-day requirement from the part of the legislation that defines a 'relevant employee'[26] and perhaps, place it elsewhere in the section, for example, within the reporting provisions.[27] This would break the link, which creates the automatic 'penalty' for the employee referred to above, arising from an employer failing to lodge the notice within 30 days of arrival.

Alternatively, the current time limit of 30 days could be extended to 90 days, which would be a more adequate timeframe to allow for the multiple issues that need to be addressed first when a

[24] Section 825C (2A) (e) TCA 1997
[25] Section 825C (10) TCA 1997
[26] Section 825C (2A) (e) 1997
[27] Section 825C (10) TCA 1997

new assignee arrives in Ireland, including the employee obtaining a PPS number. Any amendment that would have the effect of extending the notice period would be entirely tax neutral, as changing the notice period would not result in any actual tax cost to the Exchequer.

Institute Recommendations:

Under existing SARP legislation, an employer is required to notify the Revenue that an employee will be eligible for the relief within 30 days of that employee arriving in Ireland to perform his/her employment duties.

When a new assignee arrives in Ireland, multiple practical issues need to be addressed, which can result in the SARP notice being inadvertently overlooked or delayed by the employer, resulting in the refusal of the relief. Refusing the employee relief on the basis that the employer has not submitted the notice on time can result in a financial penalty that is entirely disproportionate for something that is effectively outside the control of the employee.

To address this, we recommend removing the 30-day notice requirement from the part of the legislation that defines a 'relevant employee' for SARP purposes.

Alternatively, the current time limit of 30 days could be extended to 90 days, which would be a more adequate timeframe to allow for the multiple issues that need to be addressed first when a new assignee arrives in Ireland.

4. Revised Entrepreneur Relief

There are issues with the current Revised Entrepreneur Relief legislation[28] (as interpreted in Revenue's Operational Manual),[29] which are limiting its use in three significant situations:

a) where a dormant company is present in the group;
b) where the group is party to a joint venture;
c) where the group/company holds investments and leasing of trading premises.

a) *A dormant company is present in the group*

According to Revenue's Operational Manual, Revised Entrepreneur Relief is not available in situations where a dormant company is present in the group. This is a very significant limitation to the relief because a subsidiary company can commonly become dormant over time. This might happen where the company has ceased to trade or where the trade has been transferred to another group company and the company cannot be wound up or liquidated due to company law legislation for the protection of creditors. A group company could have dozens of trading subsidiaries, out of which only one is dormant, yet the relief is completely denied to the entrepreneur in this situation.

[28] Section 597AA TCA 1997
[29] Revenue Operational Manual 19.06.02B – Capital Gains Tax Revised Entrepreneur Relief

b) *The group is party to a joint venture*

One of the conditions of Revised Entrepreneur Relief is that all subsidiaries must be minimum 51% subsidiaries for the relief to apply. If a group is party to a joint venture and holds less than 51% of the joint venture company, this again can result in full denial of the relief.

c) *The holding of investments and leasing of trading premises*

When either the holding of investments or the leasing of trading premises takes place within a group company, this can exclude an entrepreneur from claiming Revised Entrepreneur Relief.

In the current low interest rate climate, it is common for businesses to invest cash generated from trading activities rather than leaving it on deposit – this results in them holding investments. Similarly, many companies who expect high growth in the short-term will often buy or lease premises that exceed their current needs but will meet their future expectations. These businesses will occasionally rent the excess space out to a third party until they need to expand into the space. Both these activities are efficient from a commercial perspective. They improve cash flow, while utilising the companies' assets to their full potential. Yet they can impact on this important tax relief.

We would ask that consideration be given to either apportioning relief in circumstances where there is a mix of investments and qualifying activities (similar to the retirement relief provisions[30]) or to allowing the relief in full where non-trading activities are below a certain *de minimus* level. This is the approach adopted in the UK, where Entrepreneur's Relief is available on the sale of shares in a holding company, provided non-trading activities in the group do not comprise of more than 20% of the group's overall activities.

Institute Recommendations:

There are issues with the current Revised Entrepreneur Relief legislation (as interpreted in Revenue's Operational Manual), which are limiting its use in three significant situations and creating barriers to investment. These are:

- where a dormant company is present in the group;
- where the group is party to a joint venture;
- where the group/company is holding investments and/or leasing trading premises.

We recommend that section 597AA TCA 1997 is amended to remove restrictions to Revised Entrepreneur Relief in situations where a group holds a dormant company or has a shareholding in a joint venture company of less than 51%.

The legislation should also be amended to allow for either an apportionment of relief when a company holds investments or earns rental income or alternatively full relief to be claimed provided such activities fall below a certain level.

[30] Section 598 TCA 1997

5. The potential impact of section 135 TCA 1997 on the sale of family businesses and SMEs

Finance Act 2017 inserted a new provision into section 135 TCA 1997 which is impacting the passing on of a wide range of family businesses and management buy-outs (MBOs) involving 'close companies.'[31]

The new section 135(3A) TCA 1997 is an anti-avoidance provision which applies to situations involving close companies. However, the vast majority of companies in the SME sector are 'close companies', so the impact of the provision has been extensive.

Subsection 3A now imposes income tax treatment on selling shareholders in any situation where Revenue take the view that a company has retained profits in excess of the company's commercial needs, rather than allowing those shareholders to obtain capital gains tax (CGT) treatment. Unlike other anti-avoidance provisions in Irish tax legislation, section 135 TCA 1997 does not include a *bona fide* test. It is normal practice in targeted anti-avoidance legislation to exclude transactions effected for *bona fide* commercial reasons, so as to avoid any unintended consequences that could arise as a result of the legislation.

Considerable concern exists regarding the potential effect of section 135 on scaling up and passing on of businesses in the SME sector, in the absence of a statutory *bona fide* test. Feedback from our members is that the provision is causing uncertainty in circumstances where owners of family businesses or SMEs are implementing transactions, notwithstanding the existence of Revenue guidance.[32]

Why it is important that businesses can be passed on to the next generation

There comes a stage in the life of many businesses when they reach the limit of their potential with the current ownership structure and funding. If the business is not sold at the point when the owners are ready to sell, then it is effectively left in the hands of reluctant owners and can stagnate. In most cases, the sale or part sale of a company is a positive decision. The business does not stop with the sale, it simply continues with new funding and under a new ownership and governance structure. The purchase and sale of businesses is an indication of health in an economy and should be encouraged. It provides a vibrant environment for investment and creates confidence in the business ecosystem.

In January, Revenue published guidance[33] on section 135 which includes an example to illustrate the situation the new subsection 3A is targeting.

Example 3.3 states:

"Barry and Bob run a bakery and own 100% of the shares of BB Bakery Limited ('BBBL') equally. The company has built up cash reserves over the years and has retained profits of €1,400,000. Bob wishes to exit the business and have BBBL buyout his shares. However, rather than have BBBL purchase his shares directly, where the buy-back would trigger an

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[31] Section 430 TCA 1997 defines a close company as an Irish resident company that is under the control of 5 or fewer participators, or by participators who are directors, whatever the number.
[32] eBrief 03/18: Tax and Duty Manual 06.02.05 – Section 135 TCA – Anti-avoidance, Part 6/Chapter 2, January 2018
[33] eBrief 03/18: Tax and Duty Manual 06.02.05 – Section 135 TCA – Anti-avoidance, Part 6/Chapter 2, January 2018

income tax charge for Bob, Barry arranges to set up a new company ('NewCo') to purchase the shares. NewCo purchases Bob's shares for €700,000. The consideration in respect of the acquisition is left outstanding. BBBL subsequently pays a dividend of €700,000 to NewCo which NewCo uses to pay the deferred consideration to Bob.

The provisions of section 135(3A) TCA apply to treat the payment of €700,000 to Bob as a distribution made by BBBL to Bob on which Bob is subject to income tax. Barry has entered into an arrangement to secure the payment of consideration to Bob from the assets of BBBL and the assets of BBBL have been depleted by €700,000. Previously Bob may also have sought to claim retirement relief in relation to the €700,000 payment received.

It should be noted that had Barry sourced the payment from his own resources then Bob would have been subject to CGT on the disposal of his shares."

In Example 3.3 above, the provision seeks to treat the payment as an income tax distribution, preventing Bob from claiming CGT treatment and retirement relief on his exit from the business, where the payment for his shares has been sourced from BBBL. Revenue's rationale for challenging this disposal is not expressly stated in the example but outlined further on in the guidance, where it is confirmed that if a selling shareholder "*in contemplation of the sale … retains profits in excess of the company's commercial needs, rather than taking a dividend,"*[34] then it is subject to income tax rather than CGT.

It is unclear why CGT is not the appropriate tax treatment in the circumstances set out in Example 3.3, given Bob is disposing of his interest in the business and incurring the genuine economic consequences of that disposal.

If Bob in the given example was a sole shareholder, he could simply liquidate the company, obtain CGT treatment on the proceeds returned to him, and claim retirement relief. The application of subsection 3A could arguably encourage Bob and Barry to alter their approach and decide to liquidate BBBL to qualify for CGT treatment, which would unfortunately necessitate the closing of the bakery, the redundancy of its employees, and the local economy losing the benefit of the future output from that business. It is unfortunate that shareholders of SMEs may now consider liquidating a viable business, rather than passing it on to the next generation who can expand and grow it into the future.

Exiting the business via a MBO

Revenue's guidance[35] on section 135 also includes an example of a MBO. A typical MBO involves the management team of a company, setting up a new company to purchase the company (the target) from the existing shareholders. Generally, the funds used by the management team to buy-out the owner are initially sourced from a bank/equity house, and that bank loan is then repaid from dividends paid up from the target company to the new company. The purchase price is essentially being funded from the target company's resources, as the new company does not have any assets (other than the shares it has acquired in the target company), nor any income stream (other than from the target company) and in most cases a management team will not have the sufficient personal resources to fund the purchase.

[34] Example 3.4.2, Tax and Duty Manual 06.02.05 – Section 135 TCA – Anti-avoidance, Part 6/Chapter 2, January 2018
[35] Tax and Duty Manual 06.02.05 – Section 135 TCA – Anti-avoidance, Part 6/Chapter 2, January 2018

Revenue guidance confirms that *"… subsection 3A only has application where a member enters into the relevant arrangements and does not apply to bona-fide financing arrangements entered into by a purchaser. Therefore, whereas a bona fide MBO may involve the provision of financing out of the assets of the target company, the provisions of section 135(3A) TCA will not apply unless the member has engaged in an arrangement to ensure that the consideration is met from the assets of the company."*

However, as there is no statutory *bona fide* test in the legislation, it is a matter therefore for Revenue to decide which transactions will or will not satisfy the *bona fide* motive test.

Banks and equity houses will often only provide funds where appropriate security is in place and will insist on knowing how the funds lent will be repaid. As outlined above, in MBO situations, repayments are typically from funds sourced from the target company, by way of a dividend. Providing security to the bank will necessarily involve some action on the part of the target prior to completion of the sale.

For example, the Companies Act 2014 prohibits a company from granting financial assistance in connection with the acquisition of its own shares unless a Summary Approval Procedure (SAP) is completed. As the SAP requires the members to pass a resolution approving the financial assistance, the exiting shareholder would necessarily be involved in those arrangements. There is a risk therefore, in the absence of a statutory *bona fide* test, that complying with the SAP procedure could result in *bona fide* MBOs falling foul of the new provision, notwithstanding the existence of Revenue guidance.

It is arguable there should be no distinction between a MBO and a family member taking over the business in any case, as the objective in both scenarios is for the business to survive and continue into the future.

Liquidity arrangements for shares in private companies

Where a closely held private company has shares held by employees, the shareholders of the company may put arrangements in place to allow a connected company to purchase shares of exiting employees on agreed terms. The connected company used as the share acquisition vehicle is typically funded by the employer company. It acts as a type of warehouse to provide liquidity in the shares upon agreed terms, in circumstances where shareholders have agreed to have a pool of shares available for employee awards. It also facilitates timely purchase of shares from exiting employees as there can be greater legal complexity associated with buyback/redemption of shares at a particular point in time.

For example, senior management who were required to take an 'equity stake' in their employer company may hold small shareholdings in the company and now wish to exit. They are not eligible for retirement relief or entrepreneur relief on capital gains arising on the share disposals. These arrangements provide a market (liquidity) in the shares which would not otherwise be available for shares in a private company.

The employees have the assurance that they will be able to sell their shares upon departure from the company, whether upon termination, leaving to take up another position or retirement. The remaining shareholders in the company, having agreed to make a pool of shares available for employees, do not have to manage fluctuations in their respective holdings and have provided a mechanism to acquire shares from exiting employees in an orderly manner.

Measures taken by private companies to provide liquidity in their shares, by putting in place buy-out arrangements for exiting employees is wholly aligned with the wider policy objective of encouraging share-based remuneration in private companies and SMEs. Such arrangements should not be expected to be within scope of section 135 (3A) where the sale and purchase of the shares is for *bona fide* commercial reasons.

We know that SMEs form the backbone of the Irish economy. They account for 99.8% of enterprises in Ireland and 69% of the employment in Ireland,[36] with family businesses accounting for more than 40%[37] of all private employment. The new section 135 (3A) is causing uncertainty for these companies, which is delaying and preventing the scaling of many businesses, at a time when they are already facing significant Brexit challenges.

In our view, inserting an exclusion for *bona fide* commercial transactions into section 135 TCA 1997 would provide the necessary level of certainty to taxpayers and their advisers when implementing transactions involving the disposal of shares in a company with cash on its balance sheet.

A *bona fide* test is included in the anti-avoidance provision section 817 which can treat certain payments arising on disposal as a distribution. As section 817 operates to apply distribution treatment in certain scenarios we suggest that a *bona fide* test could be applied to subsection 3A along similar lines.

The bona fide test in Section 817(7) reads as follows:

"*This section shall not apply as respects a disposal of shares in a close company by a shareholder where the disposal was made for bona fide commercial reasons and not as part of a scheme or arrangement the purpose or one of the main purposes of which was the avoidance of tax*."

Institute Recommendations:

Finance Act 2017 inserted a new subsection 3A into section 135 TCA 1997. The policy intent at the time of introduction was *"to deal with a number of specific tax avoidance schemes which have been uncovered by the Revenue Commissioners."*[38]

However, unlike other targeted anti-avoidance measures in Irish tax legislation, section 135 TCA 1997 does not include a *bona fide* test, which is normally used to prevent unintended consequences from arising.

The effect of the new subsection 3A is to impose income tax (rather than CGT) treatment on selling shareholders in any situation where Revenue take the view that a company has retained profits in excess of the company's commercial needs. Without a *bona fide* test to target this

[36] CSO Statistical Yearbook of Ireland 2017, 20 October 2017
[37] The Irish Times "There's business, and then there's the family business", 27 February 2017
38 Minister Paschal Donohoe, T.D. at the Committee Stage debate on Finance Bill 2017, 8 November 2017

measure, it is having a significant impact on succession within family businesses, management buy-outs (MBOs) and arrangements to provide liquidity in shares for employees involving 'close companies'.

In our view, inserting an exclusion for *bona fide* commercial transactions into section 135 TCA 1997 would provide the necessary level of certainty to taxpayers when considering their scaling options.

6. Merger of a closely held company and interaction with the close company surcharge

Finance Act 2017 inserted a new chapter[39] in tax legislation to reflect mergers and divisions effected under Companies Act 2014. Broadly, it ensures that certain filing, reporting and payment obligations of the transferor company, transfer to the successor company following a merger or division.

A technical point has now arisen in circumstances where the dissolving company is a closely held company which has not yet been considered in tax legislation. Section 400 TCA 1997 imposes a 20% surcharge on the investment and rental income of a close company,[40] which is not distributed to its shareholders within 18 months of the end of the company's accounting period.

The issue arises therefore where a dissolving company has income which is subject to the close company surcharge in the period(s) before the merger, but it has not yet made a distribution before the merger has taken place and it cannot make a distribution post-merger.

The successor company should be permitted to step into the shoes of the transferor company for the purposes of making a distribution within the 18-month time period stipulated in section 434(2) TCA 1997, for example, by reference to the distributable reserves position of the transferor company at the time of the merger.

Institute Recommendations:

Finance Act 2017 amended Irish tax legislation to reflect mergers and divisions, so to ensure that the successor company can step into the shoes of the transferor company for certain filing, reporting and payment obligations following a merger or division. A technical point has now arisen where the dissolving company in a merger is a closely held company which has not yet been considered in tax legislation.

Section 400 TCA 1997 imposes a surcharge on undistributed investment and rental income of a close company. Where a dissolving company has income subject to the close company surcharge in the period before a merger but has not yet made a distribution before it takes place, the successor company should be permitted to step into the shoes of the transferor

[39] Part 21, Chapter 2 TCA 1997
[40] Section 430 TCA 1997 defines a close company as an Irish resident company that is under the control of 5 or fewer participators, or by participators who are directors, whatever the number.

company for the purposes of making a distribution within the 18-month time period, stipulated in section 434(2) TCA 1997.

7. Proportionality of Penalties and Interest

The Institute fully appreciates the rationale for imposing penalties and charging interest on late filings. However, there are two important areas where we believe the level of sanction imposed is disproportionate to any error made.

a) Fixed penalties

Tax legislation and regulations contain numerous fixed penalties. Fixed penalties regularly apply to breaches of administrative requirements in tax law, such as, notifications to Revenue, invoicing and the maintenance of books and records. The level of the penalty can be substantial, amounting to €3,000 or €4,000 for each instance of non-compliance, even when there is no loss of tax revenue to the Exchequer.

The PAYE regulations contain several of these fixed penalty provisions. In our view, the matter of proportionality of penalties is particularly important now, in light of the introduction of the new 'real-time' PAYE regime for employers, beginning next January – a transition that will undoubtedly be very challenging for taxpayers.

Often, taxpayers can be completely unaware that they have breached their tax obligations and liable to a penalty. For example, one of the lesser-known requirements in the PAYE regulations is that all employers are required to maintain a Register of Employees at their business premises. This register must include the name and address of each employee, the date an employee commenced/ ceased employment and it must be available to Revenue for inspection. Employers who fail to maintain this register (or a copy of it) at their business premises can be liable to a penalty of €4,000, notwithstanding that their tax adviser or payroll agent may already hold this information.

Another example is the €3,000 fixed penalty that can be imposed on an employer who does not notify Revenue when taking on a new employee either by submitting a P45 from their previous employment or by submitting a P46 (Notification to Revenue of particulars of a new employee for whom a Tax Credit Certificate (P2C) is required). In addition to this, if the employer is a company, then the Company Secretary can be liable to a further penalty of €4,000 for each breach of this requirement.

We have been informed of a case where Revenue sought fixed penalties of €14,000 from a jointly assessed couple, who were the sole employees and directors of their own company, on the basis that they did not have a register of their (two) employees and a P45/P46 had not been submitted on commencement of their employment with the company. These penalties were imposed as part of a Revenue audit, notwithstanding that the couple had, otherwise, been given a clean bill of health on their tax affairs.

The cumulative effect of these measures is that taxpayers who may have no outstanding tax liability can be subject to significant penalties.

In our view, the level of fixed penalties can often be disproportionate to the errors to which they relate. We believe that the penalty rates in legislation and regulations should be re-examined to ensure that they do not result in overly harsh treatment of taxpayers who make innocent mistakes.

We have included a summary of fixed penalties in the Taxes Consolidation Act 1997 and the offence to which they relate at Appendix I for illustrative purposes. There are also a significant number of fixed penalties applying to offences under the VAT Act, CAT Act and stamp duty legislation. For example, if any of the stamp duty levies imposed on cash cards, debit cards, credit card accounts, charge cards, life insurance premiums, pension schemes and banks remain outstanding, current legislation[41] imposes a fixed penalty of €380 a day for each day the levy remains unpaid (in addition to interest on late payments of tax), which equates to €138,700 a year, regardless of the levy payable.

We believe it is now timely and necessary to review fixed penalties imposed under Irish tax legislation, as new PAYE regulations will be drafted over the coming months in preparation for the new real-time reporting regime commencing next year. As Revenue continue to increase their focus on employers' compliance with PAYE obligations, the current penalty regime could result in significant costs for taxpayers who are otherwise broadly compliant with their tax obligations.

b) Interest on delayed payment of tax

Interest is charged on the late payment of tax in Ireland at annualised interest rates of 8% and 10%, far in excess of the Irish mean overdraft rate, which was 2.4%[42] in 2016. Indeed, Irish stamp duty legislation[43] imposes an annualised interest rate of 30% on the failure to deliver a statement for certain payments of interest that are re-characterised as distributions.

In contrast, HMRC in the UK currently imposes interest at a rate of 3%, i.e. 2.5% above the current Bank of England Base Rate of 0.5%.[44] In applying the UK interest penalty regime the rate applied by HMRC is tracked at 2.5% above Bank of England base rate.

This is an issue that the Institute has raised on a number of occasions in the past but continues to be challenging for taxpayers. It is right and proper that interest should be imposed to recompense the Exchequer for the time delay in receiving any underpayment of tax and provide a level playing field for taxpayers who do not pay on time. However, current high levels of interest charged on the late payment of tax in Ireland far outweigh the cost to the State and, in some cases, are causing considerable hardship.

Institute Recommendations:

- We believe it is now timely and necessary to examine the proportionality of fixed penalties, given the introduction of the new 'real-time' PAYE regime for employers from 1 January

[41] Part 9, Stamp Duties Consolidation Act 1999.
[42] National Competitiveness Council Report: Cost of Doing Business in Ireland 2017, June 2017, p. 48
[43] Section 126 (7), Stamp Duties Consolidation Act 1999
[44] http://www.bankofengland.co.uk/Pages/home.aspx

2019. As Revenue continue to increase their focus on employers' compliance with PAYE obligations, the cumulative effect of these measures could result in the build-up of significant costs for taxpayers, which is disproportionate to any errors made, at a time when they are grappling with a new system.

- Interest is charged on the late payment of tax in Ireland at annualised interest rates of 8% and 10%, far in excess of the Irish mean overdraft rate. In contrast, HMRC in the UK currently imposes interest at a rate of 3% (i.e. 2.5% above the current Bank of England Base Rate of 0.5%). In the Institute's view, the rate of interest imposed on the late payment of tax should reflect the actual cost to the Exchequer and be tracked to prevailing ECB market rates.

8. VAT Deferral Licence for Importers

In light of Brexit, consideration could be given to introducing a VAT deferral licence regime for importers, should the UK leave the European Single Market and Customs Union. The importation of goods into Ireland from outside the EU is a taxable event for Irish VAT purposes and Irish VAT must be paid at the time of importation.

The Netherlands has introduced a special import VAT deferral regime (known as an Article 23 licence) for taxpayers with non-EU imports, which results in a cash flow benefit for them. An 'Article 23 licence' in the Netherlands allows a business to account for the VAT on imported goods in its Dutch VAT return under the reverse-charge mechanism, instead of paying the import VAT at the time of importation. The ability to defer the time at which import VAT must be accounted for without affecting the transportation of the goods, provides a clear cash flow benefit to importers in the Netherlands.

In general, the following conditions must be fulfilled to apply for the VAT deferral licence under the Dutch VAT system:

- the applicant must be resident or have a permanent establishment or a fiscal representative in the Netherlands;
- the applicant must import goods on a regular basis and
- the applicant must keep clear administrative records of the imported goods.

Institute Recommendation:

With the UK indicating that it may leave the European Single Market and Customs Union as part of the Brexit process, we believe the State should consider introducing an Irish VAT deferral licence regime for importers, similar to the regime that currently operates in the Netherlands. The ability to defer the time at which import VAT must be accounted for without affecting the transportation of the goods, would provide a clear cash flow benefit to importers in Ireland.

9. Establish a Brexit working group to consider the potential tax implications

Brexit will be challenging for all businesses and it will bring, not only customs and excise and VAT implications but also, knock-on effects for direct taxation. Even though the final Brexit package has yet to be brokered, with still many unknowns, there are some tax issues that we can reflect on now.

Take for example, the availability of group relief which currently applies to EU companies. Post-Brexit how will the group structures of companies with a UK subsidiary or an Irish branch of UK company be impacted? Will UK companies effectively be leaving capital gains tax groups following Brexit?

There are also property issues to consider. For example, land in Northern Ireland will no longer be land in the EU and this could create CAT issues when evaluating agricultural relief.

Irrespective of the outcome of the EU/UK negotiations, we could begin the work to identify and consider the tax policy of such issues. This could be achieved by establishing a Working Group between practitioners and the Revenue Commissioners to discuss and explore such matters. A similar forum was set up at the time of the introduction of the new Companies Act in 2014 to identify how Irish tax law needed to be aligned and updated for the provisions in the Companies Act. We recommend that such a forum is established in the coming months, in advance of the UK's exit from the EU in March 2019.

Institute Recommendations:

Brexit will bring, not only customs and excise and VAT implications but also, knock-on effects for direct taxation. Irrespective of the outcome of the EU/UK negotiations, we could begin the work now to identify and consider the tax policy of such issues. Therefore, we recommend establishing a Working Group between practitioners and the Revenue Commissioners to discuss and explore such matters, similar to the forum that was set up at the time of the introduction of the new Companies Act in 2014, which proved useful in identifying how Irish tax legislation needed to be updated to reflect the new Act.

Appendix I

Table of fixed penalties in the Taxes Consolidation Act 1997

Section	**Matter**	**Penalty Amount €**
152	Dividend warrant	200
305	Claiming repayment of tax	3,000
486B	Renewable energy generation investments	4,000
783	Retirement annuities	3,000
886	Obligation to keep records	3,000
887	Electronic records	3,000
889	Third-party returns	3,000
895	Foreign accounts	4,000
896	Offshore products	4,000
898N (9)	Savings Directive	3,000
898N (10)	Savings Directive	19,045 plus 2,535 per day
898Q	Savings Directive	3,000
900	Production of books and records	4,000
902	Request for information	4,000
903	PAYE inspections	4,000
904	RCT inspections	4,000

Section	Matter	Penalty Amount €
904A (8)	DIRT inspections	1,265
904A (9)	DIRT inspections	19,045 plus 2,535 per day
904C (7)	Life assurance companies – inspection of records	1,265
904C (8)	Life assurance companies – inspection of records	19,045 plus 2,535 per day
904D (7)	Investment undertakings – inspection of records	1,265
904D (8)	Investment undertakings – inspection of records	19,045 plus 2,535 per day
904E (6)	Authorised insurers – inspection of records	1,265
904E (7)	Authorised insurers – inspection of records	19,045 plus 2,535 per day
904F (7)	Qualifying lenders – inspection of records	1,265
904F (8)	Qualifying lenders – inspection of records	19,045 plus 2,535 per day
904G (6)	Qualifying insurers – inspection of records	1,265
904G (7)	Qualifying insurers – inspection of records	19,045 plus 2,535 per day
904H (4)	Qualifying savings managers – inspection of records	1,265
904H (5)	Qualifying savings managers – inspection of records	19,045 plus 2,535 per day
904I (6)	Dividend Withholding Tax – inspection of records	1,265
904I (7)	Dividend Withholding Tax – inspection of records	19,045 plus 2,535 per day
904J (7)	PSWT – inspection of records	1,265
904J (8)	PSWT – inspection of records	19,045 plus 2,535 per day
904K (7)	Notices of attachment – inspection of records	1,265
904K (8)	Notices of attachment – inspection of records	19,045 plus 2,535 per day

Section	**Matter**	**Penalty Amount €**
905	Inspection of records	4,000
906A	Information from financial institutions	19,045 plus 2,535 per day
907	Application to Appeal Commissioners - Information from financial institutions	19,045 plus 2,535 per day
907A	Application to Appeal Commissioners - Information from third-party	19,045 plus 2,535 per day
917A	Property transfers to non-resident trustees	4,000
917B	Non-resident trustees	4,000
917C	Returns by trustees	4,000
939	Summoning of witnesses by Appeal Commissioners	3,000
987(1)	PAYE regulations	4,000
987(2)	PAYE regulations	3,000
1052 (1)	Request to make returns under Columns 1 and 2 of Schedule 29	3,000
1052 (2)	Request to make returns under Column 3 of Schedule 29	4,000
1054 (2) (a)	Company Secretary – re request under Column 1of Schedule 29	2,000
1054 (2) (b)	Company Secretary – other	1,000
1054 (3)	Company Secretary – re s1053/ s1077E	1,500/3,000
1055	Assisting in making incorrect returns	4,000
1058	Refusal to allow deduction of tax	3,000
1071 (1) (a)	Corporation tax returns	2,000
1071 (1) (b)	Corporation tax returns – Company Secretary	1,000
1071 (2)	Corporation tax returns	4,000

Section	Matter	Penalty Amount €
1071 (2)	Corporation tax returns – Company Secretary	2,000
1073 (1) (a)	New companies	4,000
1073 (1) (b)	New companies – Company Secretary	3,000
1074 (a)	Corporation tax	4,000
1074 (b)	Corporation tax – Company Secretary	3,000
1075 (1)	Corporation tax	3,000
1075 (2)	Corporation tax	3,000
1075 (3) (a)	Corporation tax	4,000
1075 (3) (b)	Corporation tax – Company Secretary	3,000
1091 (3)	Interest warrants	200
1091 (3)	Interest warrants	3,000