LAW SOCIETY OF IRELAND

Budget 2025 Submission

4 September 2024

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Submission on Budget 2025

The Law Society of Ireland highlights five key priorities for Budget 2025. The implementation of the measures we propose in those areas will materially alleviate existing challenges in the justice system, enable greater access to justice, and ensure a fairer, more just Ireland.

The forthcoming Budget represents a real opportunity to make policy decisions and direct resources to areas of the justice system where they can have greatest impact. That is why this Budget 2025 submission proposes a series of measures to relieve capacity constraints that impact the administration of justice and the effective administration of public policy. These measures are fundamental to supporting a holistic justice system that reflects the evolving nature of Irish society and the advancing economy.

Having a well-resourced and efficient legal system is critical from an access to justice perspective. It is also of importance in the context of Ireland's competitiveness. Such a legal system underpins justice delivery, the protection of rights, economic stability and growth, social cohesion, and equality. In turn, a well-functioning legal system can enhance Ireland's international reputation, making Ireland more attractive for foreign investment and international partnerships.

At present, the legal system lacks adequate funding and is therefore failing to realise its true potential. A summary of our five key priorities for Budget 2025 is set out below.

1. Access to justice for all

- Invest in the civil and criminal legal aid schemes to ensure access to justice for the most vulnerable by increasing legal aid fees and payments to solicitors to ensure a sustainable service.
- Expand the Civil Legal Aid scheme to cover additional categories of cases.
- Administer the promised investments into the family courts to improve the experience of families dealing with difficult legal situations and reduce the severe delays in various family law applications before the courts.
- Establish the Mediation Council of Ireland with the requisite funding and resources needed to increase recourse to mediation as a means to resolving disputes.
- Provide funding for the Decision Support Service to implement an online solicitor portal to enable solicitors to support clients to put in place Enduring Power of Attorney arrangements.
- Safeguard small solicitor practices with direct business supports for new operating models, technology and training.

2. Deliver a modern and effective courts system

- Invest in the modernisation and digitalisation of the courts by enhancing the availability of WI-FI in court rooms, increasing the use of virtual hearings in the High Court and Circuit Court and introducing a real-time list of cases scheduled before the courts.

- Implement the recommendations in the Report of the Judicial Planning Working Group to appoint 20 additional judges and supporting court staff in 2024.
- Re-open the public counter of the Probate Office so that people can attend the office to have matters dealt with in a timely manner.

3. Reform conveyancing to increase housing supply

- Invest in e-conveyancing to streamline residential property transactions, contributing to the alleviation of the housing crisis.

4. Widen access to legal education and supporting the legal sector to enhance skills

- Extend the SUSI eligibility criteria to support more trainee solicitors to undertake programmes on a hybrid basis.
- Unlock the National Training Fund to encourage greater employer engagement in upskilling and continuous professional development through Law Society Skillnet in emerging areas related to law, technology, and business support.
- Provide funding for the development and management of a new legal professional apprenticeship programme to widen the talent pool entering the legal profession.

5. Enhance Ireland's Tax Code

- The Capital Acquisitions Tax needs to be reviewed to prevent it from infringing on vulnerable people's rights.
- Appropriate safeguards and protections for taxpayers should be reviewed when an additional tax code is passed.
- Anomalies with Revenue need to be resolved in a timely manner.

Introduction

The Law Society of Ireland (the **Law Society**) is the educational, representative, and regulatory body of the solicitors' profession in Ireland. The Law Society delivers high-quality legal education and training and places significant emphasis on civic engagement, supporting local community initiatives and driving diversity, inclusion, and access to the profession.

Solicitor practices of all sizes can be found at the heart of Irish cities and towns across the country. Most solicitor practices are small businesses, geographically and regionally diverse, providing skilled jobs in their local areas. Solicitors support every other sector of the economy, providing advice to businesses and organisations, supporting industries to grow, and providing solutions to legal issues when needed.

The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy. Our Budget 2025 priorities focus on securing appropriate levels of investment to deliver the legal and justice system that is critical to Ireland in the 21st century. By supporting the courts system, providing alternative resolution avenues and ensuring an accessible, substantiable legal aid system, Budget 2025 can provide a platform for continued success across society, industry, and in the delivery of public services.

1. Access to Justice for All

Funding Civil and Criminal Legal Aid

Access to justice is a core value of the Law Society. It is essential for Ireland to have a justice system that is both effective and sufficiently funded to ensure access to justice where people need it.

Civil Legal Aid

Civil legal aid is of fundamental importance in modern society as it ensures access to justice for all, fair legal outcomes and protection of rights. To reflect the changing needs of Irish society, the scope, financing, and administration of civil legal aid requires urgent reform. The Law Society calls for the imminent publication of the report on the Review of the Civil Legal Aid Scheme, chaired by former Chief Justice Frank Clarke, to provide the necessary road map for reform.

The financial eligibility criteria for civil legal aid has not been reviewed since 2006, when Ireland had a very different economic and demographic profile.

The current monetary limits and allowances of the Civil Legal Aid Scheme are insufficient to deliver the service that meets the needs of Irish society. These levels should be reset for the current economic reality and reviewed every three years for their suitability.

The remit of the scheme should also be expanded to cover the following areas:

- Local Authority housing disputes
- Mortgage possession proceedings
- Multi party actions
- Defamation
- Tribunals, including quasi-judicial tribunals
- Adoption Authority hearings, and
- Social welfare appeals.

The fees for the legal aid Private Practitioner Scheme (**PPS**) need to be reviewed upwards to a minimum basic fee of €750 + VAT, with daily retainer fees thereafter for court attendance, to engage more solicitors in this area of work. The current fee structure is not economically viable for most solicitors. This results in a lack of available practitioners in many areas of the country leaving many people unable to access legal aid and therefore access to justice is denied.

In addition, the financial structures and fees for legal aid are impacting the Independent Law Centres' ability to attract and retain legal professionals, reducing their ability to provide an efficient and timely service, or in some areas, any service at all.

As many civil legal aid cases centre on family law cases, the Law Society recommends an increase in funding levels for Section 32 reports, which detail any issue that affects the welfare of a child, under the Guardianship of Infants Act 1964. Section 32.9 of this Act allows a judge to decide what proportion of an expert report will be paid by parties.

We believe that any additional aid provided to a person already in receipt of legal aid should be sufficient to cover necessary expert reports and court attendance. Furthermore, those not in receipt of legal aid may not be able to afford expert reports or the attendance of experts in court. Court based provision of services such as mediation, family psychologists, and domestic violence support would assist users and streamline services.

Criminal Legal Aid

The criminal legal aid system in Ireland is in crisis.

Access to legal representation, is a fundamental human right and every effort must be made to avoid a two-tier system. The Government must invest in a sustainable criminal defence profession to protect the constitutional rights of citizens to legal advice in criminal cases where a person cannot afford to pay for it.

Demand for solicitors providing services to the State's criminal legal aid system is increasing. However, many practitioners are choosing to leave the profession to work in other areas of law or to work for the State, because the remuneration provided is not commensurate with the demands of the role.

Fees for criminal legal aid work were cut several times during the financial emergency more than a decade ago, and despite the increasing complexity of criminal legal work in that period, these rates have still not been reviewed.

Criminal legal aid fees are almost 30% less than they were before the cuts were imposed without taking account of significant inflation over that time. This is despite the subsequent reforms and changes to work practices in the profession including increased workload, both in quantity and seriousness of cases, and rising business overheads.

Continued inaction will directly contribute to the creation of an inequitable legal system made up of those who have ready access to legal representation, and those who do not - whether that is due to affordability, or geography.

In addition to the restoration of fee levels, criminal legal aid fees should be reviewed every three years to reflect the prevailing economic and social realities.

In parallel, the criminal legal aid operating system requires a significant technology upgrade. This necessary investment to digitise the system will help reduce backlogs and make the process more streamlined and more accessible to members of the public seeking to apply for criminal legal aid.

Demographics and Accessing Legal Services

Legal aid reform is particularly important given Ireland's changing demographics towards an ageing population. An ageing and retired population will need increased access to legal aid.

The number of people aged 65+ is projected to rise to 1.9m by 2051. According to Age Action Ireland, half of all single adults aged 65+ in Ireland have an annual disposable income of less than €350 a week. More than half of older people in Ireland rely on State Pensions and other social protection payments for most of their income.[5] The capacity of the legal aid system should continue to keep pace with societal demands that arise from these demographic changes.

We recommend that Government:

- Restore criminal legal aid fees and commit to regular review of fees to reflect the full economic value of the service.
- Publish the Report on the Review of the Civil Legal Aid Scheme.
- Increase payments to solicitors on the Private Practitioner Scheme (PPS) so that it becomes viable for solicitors to provide legal services to support the Independent Law Centres.
- Reset and review the monetary limits for civil legal aid fees every three years.
- Expand the Civil Legal Aid scheme to cover additional categories of cases, including Local Authority housing disputes, defamation, Adoption Authority hearings, and social welfare appeals.
- Provide additional funds to ensure the inclusion of Section 32 reports (Voice of the Child Reports) as otherwise it is not heard in family law proceedings.
- Increase payments to professionals for court reports as difficulties and delays in getting court reports is a barrier to the resolution of matters.
- Resource and fund additional legally qualified staff in the Law Centres, and technological integration between the Legal Aid Board, private practitioners, the Courts Service, the Department of Social Protection, and the Revenue Commissioners.

Enhance Online Capabilities for Decision-Making Arrangements and Enduring Powers of Attorney

There are ongoing challenges with the operation of the new procedures for Enduring Powers of Attorney (EPAs) under the 2015 Act which came into force in April 2023.

The current online system for EPAs being operated by the Decision Support Service (DSS) is overly complicated and very difficult to navigate, limiting the ability of many people to express their preferences through the creation of an EPA.

Members of the public and solicitors are experiencing significant challenges when seeking to put in-place decision-making arrangements including EPAs. This, in turn, is creating significant delays and confusion in registering EPAs. The current approach needs to be streamlined and simplified, which will deliver cost efficiencies for the DSS.

The online application system does not allow solicitors or any other professional to prepare applications on behalf of clients where they are not able to do so or do not wish to. A solicitor portal is required to facilitate solicitors assisting a client's application in a secure manner when requested. Similar portal or login capability is provided by other public bodies including the Revenue Commissioners and the Injuries Resolution Board. The recently announced eProbate system also allows such access.

We recommend that Government:

- Simplify the current process for preparing and registering an EPA arrangement.
- Provide secure online access via a solicitor portal so that solicitors can assist their clients navigate the DSS processes.

- Create web-based application forms to enable individuals to consider the key elements of an EPA application and engage legal advice if necessary.

Establishment of a Mediation Council

When we think of resolving entrenched disputes, often the tendency is to immediately think of courts. However, increasingly parties to a dispute recognise that the resolution of a dispute can be achieved by other means, such as through conciliation, mediation, or arbitration.

The option to resolve a dispute though an alternative dispute resolution (**ADR**) mechanism can represent a far more attractive option when compared with going to court. ADR is often less costly, more flexible, more confidential, less stressful, and can achieve a conclusion faster than going to court.

The Mediation Act 2017 provides a statutory framework to promote the resolution of disputes through mediation as an alternative to court proceedings. The 2017 Act provides for the establishment of the Mediation Council of Ireland. Its functions include the promotion of public awareness on the availability and operation of mediation services, and the development of standards in the provision of mediation services. It will also have responsibility for preparing codes of practice and establishing a register of mediators.

Although the Mediation Act is now several years old, the Mediation Council has never been established. The main obstacle has been the absence of any State funding. We believe the benefit of the Mediation Council for the State, the public and the court system will be transformative and will lead to significant cost savings. The establishment of the Mediation Council has been identified as a core priority in the Department of Justice's Access to Justice Plan 2024 and should now be actioned.

We recommend that Government:

- Formally establish and resource the Mediation Council of Ireland to promote the greater use and acceptance of mediation as an alternative to more protracted, more costly, court-based litigation.

Safeguard Access to Small Legal Practices

Sole practitioners and small practices are the backbone of the legal profession, providing expertise in diverse and wide-ranging areas of law on a nationwide basis.

The business model of smaller practices will need to evolve in response to a more demanding and rapidly changing business environment, reflecting the wider trends of climate action, digitalisation and rising business regulation and costs. Some of the challenges that smaller solicitor practices face include low profitability, increased regulatory requirements, staff shortages, and limited options available in the context of planning for retirement.

Talent recruitment and retention in smaller practices remains a critical issue in regional areas. Combined with challenges related to retirement and succession planning, smaller regional

practices are under pressure. The age profile of the solicitors in many of these practices show that a substantial portion will reach retirement age over the next decade as, at present 65% of sole practitioners fall into the 50+ age bracket.

Legal deserts arise when there are limited options for legal representation due to limited availability of solicitors. The Law Society sees early indicators of the likelihood of legal deserts emerging in many parts of rural Ireland. Large counties including Tipperary, Mayo, Westmeath, Kilkenny, Carlow, Leitrim, Offaly, and Laois have just one trainee solicitor, while Roscommon, Monaghan and Longford have none.

The pressures on legal services outside major towns and cities is in line with wider trends across Irish society, including reduced access to GPs and other professional services outside urban areas. Innovative solutions with the objective of attracting and retaining solicitor practices in rural areas are now required to meet the needs of such communities. A practice support framework for rural solicitors may comprise targeted business supports for training, locum services and technology adoption.

We recommend that Government:

- Establish a rural practice support framework that provides direct business supports for anchoring solicitor practices in rural communities.
- Reduce the cost of business by incentivising a shared-services business model for the provision of collocated professional services.
- Provide technology funding grants to support small practices to enhance digitalisation and cybersecurity.
- Ensure that small practices and legal businesses can avail of Government funded business supports, that are available to other SMEs across the economy.

Embrace the use of Artificial Intelligence

There is strong potential for Artificial Intelligence (**AI**) tools to disrupt regulatory frameworks and systems.

In the justice system, the benefits of AI lie in increased efficiency in the automation of routine tasks including document review and analysis, legal research, case management systems, legal advice platforms and cost management by optimising resources. However, embedding AI in a legal system must reflect values of fairness, transparency and, of course, legality.

Certain EU legislation is of relevance to the use of AI: GDPR (maintaining confidentiality of person's data and use of personal information in automated decisions) and the EU AI Regulation. How these operate within the Irish legal system, taking account of individuals' legal and constitutional rights, needs to be understood, explained and regulated. The fundamental point will be to establish a governance structure which will give regulatory and legal authorities and individuals confidence that accumulation and analysis of data is subject to meaningful oversight, thus maintaining trust in the overall system.

As part of the national implementation of the EU AI Act, Ireland has the potential to create a low risk 'regulatory sandbox' for the testing of AI systems for use in the provision of legal aid and other legal services. This would create a safe development and testing environment given the 'high-risk' inherent in the use of AI to streamline legal service provision.[2] Making the legal and justice system more technologically enabled and efficient by utilising the potential of AI, is increasingly important given the speed with which AI is becoming embedded in operating systems globally.

We recommend that Government:

- Allocate adequate funding for the creation and resourcing of a regulatory sandbox designed for improving and streamlining the administration of justice.

2. Deliver a Modern and Effective Courts System

The court system is the crucial platform for the administration of justice in Ireland. The current length of proceedings in Ireland is far above acceptable standards, with the length of civil proceedings in the High Court in 2002 averaging at 871 days.

Modernisation and Resourcing of the Courts System

Despite an investment announcement of over €55 million in the courts system in 2024, modernisation of the courts system remains slow, and rates of digitalisation and physical accessibility are lagging compared to other EU member states. Left unresolved, this will be exacerbated by demographic changes which will make accessibility requirements more pressing.

The Courts Service must be able to adapt and respond to the growing demand for digital public services. The Courts Service's budget must allow for the technical equipment of court rooms, and the implementation of tech-focussed, practical initiatives. These include virtual hearings in the High Court and Circuit Court, the introduction of a real-time list of cases scheduled before the courts, the roll-out of online case search tools for all courts, and the provision of in-court E-portal facilities.

Government must ensure there is a sufficient complement of judges and court staff to facilitate cases moving through the system and the delivery of written judgements in a timely manner. It is essential that the additional resources required by the Courts Service to support the increased number of judges, as recommended by the Report of the Judicial Planning Working Gorup, are provided for in Budget 2025.

The Law Society welcomes the recent publication of the Public Private Partnership (**PPP**) in relation to the Hammond Lane site[1]. Family courts currently offer inadequate facilities and processes to protect children, couples experiencing relationship breakdown, and survivors of domestic violence.

The development of the new Family Court complex must happen in consultation with solicitors and other stakeholders to ensure that the new facilities are equipped to make the system more efficient, accessible, and fit for purpose. The welfare of children and their families must be at the centre of this development. An increase of capacity and resources for family law is vital to combat current delays and complications families are facing.

We recommend that Government:

- Provide funding for the Courts Service to improve the physical condition and accessibility issues at many courthouses so that they can run at full capacity and demonstrate inclusion.

[1] 'Hammond Lane Dublin Family Courts Public Private Partnership (PPP) Project Launched to Market Today' (Department of Justice, 08 August 2024): https://www.gov.ie/en/press-release/a9746-hammond-lane-dublin-family-courts-public-private-partnership-ppp-project-launched-to-market-today/.

- Provide additional funding for the appointment of more judges and court staff in line with the recommendations of the OECD and the Report of the Judicial Planning Working Group.[2]
- Provide sufficient funding for the design and implementation of a digital transformation programme to underpin the operation of a modern, larger courts system to meet current and future needs.
- Establish a paperless court service at Supreme Court level, with the ultimate ambition to roll this out across the wider courts.

Re-Opening of Public Offices

The ability of members of the public, as well as solicitors, to access public offices of state agencies is an important feature of access to justice.

We recommend that Government:

- Re-open the public counter of the Probate Office so that people can attend the office to have matters dealt with.
- Increase the staffing complement to the Courts Service, and other public entities, so that public offices remain accessible to members of the public who need to conduct business on an in-person basis, including the Central Office of the High Court.

[2] Modernising Staffing and Court Management Practices in Ireland (OECD, 13 January 2023): https://www.oecd.org/en/publications/modernising-staffing-and-court-management-practices-in-ireland_8a5c52d0-en/full-report.html and https://www.gov.ie/en/collection/af6ff-judicial-planning-working-group-report/

3. Reform Conveyancing to Increase Housing Supply

The Law Society has continuously advocated for reform of the conveyancing process to streamline property sales, alleviate long waiting times, and help relieve the ongoing housing crisis. We believe that some of our recommendations can be implemented within a short timeframe whilst others will need continuous funding and resources to succeed. It is in everyone's interest to ensure that conveyancing becomes a cost-efficient and timely process.

The Law Society's recently published 'Speed Up Your Property Sale' guide, authored in co-operation with the Society of Chartered Surveyors Ireland, sets out the process for sellers of property which can help navigate the complexities of selling a house in the current system and market.

To make property sales more efficient, a digitalised system of standardised documents under a central document management system at the Land Registry within Tailte Éireann is required. This would include the standardisation of local government management agency documents. In addition, the digitalisation of statutory declarations and statements of truth could significantly reduce current waiting times in the probate and conveyancing process.

The implementation of these simple measures could be facilitated through the targeted funding of IT upgrades and support for all authorities within a targeted all-of-government approach. The targeted funding of research into the efficient digitalisation of property sales should also include blockchain and AI approaches that have usefully supported probate and conveyancing systems in other countries.[3]

We recommend the timely development and implementation of an e-conveyancing system in Ireland. All relevant applications and services should be readily available online from the relevant authority, and documentation should be accessible through a single portal. Increased transparency and accessibility of government authorities responsible for providing the necessary documentation for real property conveyances would promote a frictionless property market. This would represent a net gain for the Irish economy and could potentially help alleviate the current residential housing crisis by bringing houses to the market more quickly.

We recommend that Government:

- Adopt an all-of-government approach towards conveyancing.
- Embrace the global trend towards e-conveyancing and invest in a single-authority access point for all property transactions.
- Digitalise all documentation in the conveyancing process.
- Invest in support for all relevant services to standardise forms and reduce delays.

[3] For example, through public-private consortiums in Sweden: Anetta Proskurovska and Sabine Doerry, 'The Blockchain Challenge for Sweden's Housing and Mortgaging Markets', *Environment and Planning A: Economy and Space* Vol. 54, Issue 8 (17 August 2022): https://journals.sagepub.com/doi/full/10.1177/0308518X221116896.

4. Widen Access to Legal Education and Qualifications and Support the Sector to Enhance Skills

Removing barriers to legal training

The Law Society provides a substantial number of grants and funding to trainee solicitors and students. For example, the Law Society provides the Small Practice Traineeship Grant (which aims to provide financial assistance to trainee solicitors in remote or rural firms) and the Access Scholarship Programme (which aims to both financially and practically assist students who may be from disadvantaged socio-economic backgrounds). The Law Society also runs a Bursary Scheme and allows trainees to access a Hardship Fund during times of financial difficulty.

As the Law Society has increased its financial support for trainee solicitors, the corresponding supports from the Student Universal Support Ireland **(SUSI)** grant have declined, as the SUSI eligibility criteria are prohibitive. If a trainee solicitor receives any supports from the Law Society, they do not qualify for a SUSI grant even if they are from a background of socio-economic disadvantage. SUSI have also deemed trainees attending the Professional Practice Course (PPC) Hybrid course[4] as ineligible for grant funding as the course is delivered through blended learning. As a result, in 2023 only eight trainees were in receipt of SUSI grants in comparison to over 40% of trainees in 2004.

We recommend that Government:

- Ensure that the Law Society's Access Scholarship Programme and Small Practice Traineeship Grant funding constitutes non-reckonable income when assessing eligibility for a SUSI grant.
- Extend the SUSI grant to the PPC Hybrid (Part-time). The availability of the SUSI grant to trainee solicitors on the PPC Hybrid would underscore a commitment to diversity and inclusivity.

New Opportunities through a Legal Professional Apprenticeship Model

The consortia-led national apprenticeship model provides an alternative pathway to qualification as a solicitor and would sit alongside the current full time and hybrid training models. This model of training would permit learners to start working in a legal role and over time acquire various qualifications leading to qualification as a solicitor.

We envisage the apprentice trainee qualifying as a para-legal, undertaking a part-time law degree and qualifying as a solicitor. These qualifications operate as "off-ramps" allowing candidates to pause the qualification process should the need arise. The candidate will obtain these qualifications on a part-time basis while working and earning a salary.

[4] The fused PPC brings the entire taught elements of solicitor training into one academic year, providing substantial logistical and practical advantages to trainees and firms. The fused Hybrid PPC is identical, but it makes greater use of online learning, allowing trainees to stay in full time employment as well as engage with the PPC without having to relocate to Dublin.

We are currently engaging with external academic partners to put in place a part time focused law degree that can form part of this new training model. New certified programmes are being introduced to our diploma offering to facilitate this new model. A new certificate in legal secretarial studies will be offered in Autumn 2024 and a new Law Society certified para-legal qualification will form part of the 2025 offering.

Once these building blocks are in place, we can engage with the Apprenticeship Alliance to ensure the apprenticeship development funding and grant support is available to potential consortia members, training providers and employers. This will encourage solicitor firms who have traditionally not taken on trainee solicitors (but who employ law clerks) to engage with the process. It also provides opportunities for solicitors to train across a variety of industry sectors as in-house legal counsel and for the public sector to develop its own talent pipeline of solicitors.

We recommend that Government:

- Support the development of an innovative national apprenticeship programme for the legal profession in collaboration with the Apprenticeship Alliance.
- Encourage public sector bodies to engage in this programme as a means to grow a sustainable talent source.

Law Society Skillnet Funding to Enhance Emerging Skill Needs

Sustained investment in people and skills will be central to the legal profession successfully navigating increased digitisation and regulation, and other business challenges that arise, while also focussing on enhancing deep legal skills that are fundamental to a thriving sector.

Sole practitioners and smaller practice owners, being both business owners and solicitors, need to possess business and legal skills to succeed. Small practices also face challenges common to other small to medium enterprises in Ireland including talent recruitment and retention, workforce development and learning, business succession planning, and application of innovative technologies.

The advent of artificial intelligence and ‘lawtech’ has the potential to significantly disrupt the sector, with smaller practices lacking the technology expertise to determine the appropriate course of action. Rising to these challenges requires new knowledge, competencies, technology, and skills. Law Society Skillnet is well placed to support the legal profession in lifelong learning and business upskilling.

We recommend that Government:

- Increase National Training Fund finance to Skillnet Ireland to support networks, including Law Society Skillnet, to deliver training programmes to support small to medium businesses to unlock digital transformation, and business and workforce planning.

5. Enhance Ireland's Tax Code

Many law firms and solicitors advise clients on their Irish tax obligations and, as a result, have extensive experience of the operation of the Irish tax system across all tax heads. We have identified a number of aspects of the Irish tax system that do not operate as well as they should or that do not operate as intended. These shortcomings can lead to the perception that the tax system operates unfairly. Fairness in a tax system engenders trust, which, in turn, has a positive impact on tax compliance.

Tax Measures and Inequalities/Unjust Impacts

Avoiding inequalities and unfair impacts can be seen as a laudable aspiration for the tax code. Such measures often disproportionately affect more vulnerable groups in society. Taxes which are fair and are seen to be fair result in greater buy-in and compliance among taxpayers (and the reverse is also true). The work of solicitors in practice gives a unique insight into specific cases where our tax system is producing perceived inequalities or particular hardships for different groups. For the purposes of this submission, we have focused on capital acquisitions tax (**CAT**) as a case in point.

Annex I sets out details of the following specific examples of perceived inequalities/unjust impacts in relation to CAT:

1. Payment of CAT by a long-term partner.
2. Qualifying benefits of permanently disabled individuals.
3. Anomalies regarding support and maintenance exemptions for children of a deceased parent.
4. Treatment of vulnerable persons with regard to CAT and state entitlements.
5. Loss of dwelling house relief (DHR relief) owing to ownership or inheritance of a lesser interest in a second property.
6. Tax burden faced by smaller families.
7. Charitable giving.

We recommend that Government:

- Review the tax code to remove anomalies that disproportionately affect more vulnerable groups in society.
- Review the Dwelling House Exemption having regard to the needs of cohabiting couples.
- Remove anomalies in support and maintenance exemptions for children of deceased parents.
- Review the restrictive nature of the condition imposed by Section 86(3)(b) of the Capital Acquisitions Tax Consolidations Act 2003.
- Review the CAT legislation to mitigate against the higher inheritance tax bills paid by smaller families.
- Introduce a tax relieving measure to support philanthropy in estate planning.

Imbalance between Revenue Powers and Taxpayers' Rights/Protections

There is a growing trend in tax legislation to enhance the powers of the Revenue Commissioners (**Revenue**) without developing appropriate protections and safeguards for taxpayers to ensure that those powers are not improperly used or deployed against taxpayers who are doing their best to comply. If this trend is left unchecked, asymmetries between Revenue's powers and taxpayers' protections will lead to a perception that the tax administration framework is unfairly weighted against the taxpayer. Such perceptions are likely to undermine trust in the tax system which could negatively affect compliance rates.

The growing imbalance between Revenue powers and taxpayer protections has not been developed by design. Rather, it likely reflects a piecemeal approach to the development of the legislation in this area under which changes have been introduced gradually from year-to-year, without scrutiny of how those provisions sit against the wider system and in the absence of any public consultation. To illustrate this imbalance, some examples related to (i) statutory time limits, (ii) interest on underpaid and overpaid taxes, (iii) the facility for taxpayers who are trying to comply to express doubt on a position taken in their return and (iv) exercise of Revenue powers, have been included in **Annex II** below.

Budget 2025 should assess the balance of Revenue powers and taxpayer safeguards. We consider that recent changes to Irish tax law over the past few years have shifted the balance unfairly in favour of Revenue to the detriment of taxpayers who are doing their best to comply. We have identified some specific examples to illustrate that shift but consider that a full review of this area is warranted. Full details are set out in **Annex II.**

We recommend that Government:

- Review the tax code to identify and rectify imbalances between Revenue powers and taxpayers' rights and protections.

Specific Provisions of Tax Code Regarding Non-Resident Vendors

The Revenue's interpretation of current tax legislation purports to impose a tax liability on solicitors for capital gains tax and income tax payable by non-resident clients selling property in the State. An amendment to this legislation is necessary to clarify the intended scope and confirm that the solicitor has no potential liability as an agent when acting purely in the formalities of a sale and does not need to seek associated clearance from Revenue (which results in unwarranted complexity and delay for solicitors and their clients). Full details are set out in **Annex III.**

We recommend that Government:

- Amend legislation to provide a clear recognition that releases a solicitor from any potential liability as an agent that does not require a solicitor to seek clearance from Revenue before release of the proceeds of sale to a non-resident vendor.

Conclusion

The Law Society appreciates the opportunity to contribute towards the Government's pre-Budget process.

The Law Society is keen to highlight the importance of the allocation of public funds in Budget 2025 to improving access to justice, modernising the courts infrastructure and the conveyancing system, and reforming areas of the tax code.

The Law Society remains available to assist government departments with input on any aspect of the Budget process. We look forward to further engagement on the key priorities for justice and law reform in Budget 2025 as highlighted in this submission.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie

ANNEX I

TAX MEASURES AND INEQUALITIES/UNJUST IMPACTS

The Law Society wishes to highlight as a priority the avoidance of inequalities and unjust impacts in taxation, taking CAT as a case in point. Some specific examples are set out below.

1 Payment of Capital Acquisition Tax by a long-term partner

Section 88A of CATCA 2003 provides that any gift or inheritance received by a qualified cohabitant under a Court Order pursuant to s. 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 shall pass free from Capital Acquisitions Tax (CAT).

By contrast **a benefit left to a qualified cohabitant by will or deed is treated as an inheritance taken by a stranger in blood for the purposes of CAT (whereas the exact same provision, if ordered by a Court, would pass free from tax).**

This anomaly can also have the effect of discouraging a testator from making provision for their long-term cohabiting partner in the knowledge that any provision made by order of the Court, would pass free from CAT. Such an approach carries risk and uncertainty in circumstances where an application may be challenged by their estate and in circumstances where the application to the Court may not otherwise succeed. In addition, the value of any Court Order cannot exceed the share that a spouse/civil partner would have been entitled to.

Owing to our client facing role as a profession we recognise the plight of qualified cohabitants who are unprotected in our tax legislation. The impact of the absence of a tax relieving provision can have a disproportionate effect on the couple's finances. For example, a taxable benefit arises on the proceeds of a joint account or on the receipt of the proceeds of an insurance policy funded by the deceased cohabitant, which is often not fully understood. The only solace that can be offered to couples is that future legislative changes may bring redress in circumstances where they are not married. The Law Society on behalf of our clients whom we represent is now calling for that redress.

For cohabiting couples, while the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 did introduce the concept of the "qualified cohabitant" and provide some measure of protection and tax relief for a qualified cohabitant, we recommend that a corresponding recognition of the status of a qualified cohabitant be provided for in our tax system generally.

The Law Society also calls for a review of Dwelling House Exemption having regard to the needs of cohabiting couples. At present cohabiting couples, who otherwise satisfy the requirements of the Civil Partnership Act, 2010 to be considered qualified cohabitants cannot transfer the property inter vivos from the sole name of one cohabitant into the joint names of both without incurring CAT. Tax free transfers can only be made on death. Section 52 of the Finance Act 2016 restructured Dwelling House Exemption significantly, confining it for the most part to inheritances where the beneficiary has been residing in the property. The Law Society's members regularly see in practice the difficulties caused by this limitation. The Law Society further calls for the review of the Dwelling House Exemption having regard to the needs of qualified cohabitants.

2 *Qualifying benefits of permanently disabled individuals*

Section 84 CATCA 2003 exempts benefits taken exclusively for the purposes of discharging qualifying expenses of certain individuals. In the past, once it could be verified that benefits are being applied for such purposes, the benefits were then treated as exempt.

However, Revenue has now formally taken the view that the section refers to benefits made (as opposed to taken) exclusively for the relevant purposes and it is the Revenue's view that there must be intention in the mind of the disponer for the exemption to apply. In this way Revenue requires evidence from the disponer that s/he provided the benefit exclusively for that purpose. The effect of this is that a general bequest without conditions attached, or indeed a benefit taken on intestacy would not, in Revenue's view, qualify for exemption according to Revenue's guidelines.

The view taken by Revenue appears to be a change in policy, relying on an unreported Appeal Commissioners case and, in any event, appears to be contrary to the legislation, which refers to benefits taken, not benefits made. It is also contrary to a recent decision of the Tax Appeal Commission:

https://www.taxappeals.ie/_fileupload/Determinations/2019/32TACD2019(1).pdf .

Given the nature of the exemption sought by a beneficiary who is clearly exposed to medical expenses which could be somewhat alleviated by a gift or inheritance, it would seem inappropriate for such a restrictive approach to be taken. Given that the qualifying expenses are defined, it would seem unlikely that this matter could be open to abuse, and, in any event, Revenue has the right under the section to satisfy itself that the benefit has been or will be applied for the appropriate purpose.

The conditions regarding applying the benefits to qualifying expenses can be agreed by the beneficiary (or his trustee or attorney on his behalf) to ensure compliance with the legislation.

Section 84 (2) CATCA 2003 provides that a gift or inheritance which is taken by a permanently incapacitated individual exclusively to discharge qualifying expenses is exempt from Capital Acquisitions Tax. Qualifying expenses are quite narrowly defined as relating to medical care and the cost of maintenance of such medical care.

The Revenue's position appears to be in direct contradiction to the Tax Appeal Commission Case referenced above where the Appeal Commissioner stated "*it is the intention of the recipient of a gift or inheritance in receiving that gift or inheritance, and not the intention of the disponer in making the gift or inheritance, that is relevant to determining eligibility for relief from Capital Acquisitions Tax pursuant to section 84 of the Capital Acquisitions Tax Consolidation Act 2003".*

We recommend the following changes are made to the legislation:

- to clarify that there is no requirement to restrict the exemption in the manner outlined above or provide evidence of the intention of the donor;
- to provide that the beneficiary would be allowed (or those acting on behalf of the beneficiary in cases where the disability is of a cognitive nature) to take the benefit free from CAT, subject to Revenue's power to audit where deemed appropriate and
- to expand the definition of 'qualifying expenses' to provide for general maintenance of the done to include general carer and therapy costs.

3 *Anomalies re support and maintenance exemption for children of deceased parent*

Section 82 (2) CATCA 2003 as amended by Section 81 Finance Act 2014 provides an exemption for certain payments of money or monies worth to, inter alia, a child of a disponer for the support, maintenance, or education of such child up to the age of 25 if in full time

education or where the child is permanently incapacitated as defined. Section 82 (4) extends this exemption to money or monies worth received by a minor child of the disponer or a child in full time education up to the age of 25 at a time when both the disponer and the other parent of the minor child are dead.

This gives rise to an inequitable anomaly which has become more pronounced as a result of the reduction in threshold amounts and societal changes in recent years. This anomaly is caused by the requirement that the other parent of the minor child be dead.

Example:

Parents of a two-year-old child die simultaneously and leave their entire estate in order to provide for the care, maintenance and education of that child. This provision will be exempt from CAT for so long as that child is a minor or in full time education up to the age of 25.

However, the relief would not be available where (for example) a lone parent was raising the child and the other parent has no role in the child's life, on the death of that lone parent.

In the above example, the exemption is denied solely on the basis that the other parent is still living, even in circumstances where there may have been no relationship between the parents or the child and the surviving parent and that the surviving parent may never have contributed to the support and maintenance of the child.

Law Society Recommendation regarding anomalies in support and maintenance exemptions for children of deceased parent

It is proposed that Section 82(2) CATCA 2003 be extended to apply in the case of benefits taken from deceased parents for support, maintenance or education without the restrictions contained in Section 82(4).

4 Treatment of vulnerable persons with regard to capital acquisitions tax and state entitlements

The use of a discretionary trust is an important part of estate planning for an individual who is incapable of managing their affairs. The trust allows the management of the trust assets by trustees selected by a testator which provides some peace of mind to a testator trying to make arrangements for a vulnerable beneficiary after their lifetime. Exemption from Discretionary Trust Tax is available once the conditions are met. A taxable benefit does not arise for Capital Acquisitions Tax purposes unless an appointment is made out of the trust. In addition to the taxation benefits, the beneficiary's entitlements to means tested state supports are not affected owing to the non-ownership of the trust assets by the beneficiary. The importance of the discretionary trust for a vulnerable beneficiary is recognised by the State through tax legislation and through the disregard of trust assets in determining eligibility for state benefits.

Solicitors and indeed organisations supporting individuals with special needs both actively promote and create awareness of the importance of the discretionary trust. And while we as solicitors can advise and help those clients who come to us to put a discretionary trust in place, there are also cases where families do not have the benefit of legal advice. As solicitors we encounter difficult cases where proper arrangements were not made for a beneficiary incapable of managing their affairs. For example, cases where a parent of a vulnerable beneficiary dies intestate or where a well-meaning grandparent, aunt or uncle makes provision for a vulnerable beneficiary in a Will without creating a trust. There is no remedy in law available if the beneficiary is incapacitated to allow the trust to be created by a post death variation in lieu. A legacy or benefit which should otherwise have served to enrich their life could now result in them losing their state benefits.

The Law Society is calling for provision to be made in law to allow for a discretionary trust to be created on behalf a beneficiary who otherwise meets the conditions set out in Section 17 CATCA 2003 in circumstances where the trust was by error or by omission

not created for them by the donor and is also calling for mitigation against the impact on state entitlements in such circumstances.

5 Loss of DHR relief owing to ownership or inheritance of a lesser interest in a second property

An exemption from Capital Acquisitions Tax is available under Section 86 of the Capital Acquisitions Tax Act 2003 for the receipt by a beneficiary of a dwelling house provided certain conditions are met. A beneficiary cannot have an interest in more than one dwelling at the date of the inheritance in order to qualify for the relief which includes both full ownership and lesser interests. As set out in Revenue' Capital Acquisitions Tax Manual Part 24 a part share in another dwelling house, however small the share, makes a successor ineligible for the exemption. The restrictive interpretation of this condition in relation to ownership of lesser interests and more particularly inheritances of lesser interests from the same disponer often results in beneficiaries losing out on an important relief necessary for them to keep their family home.

This protection is lost to a beneficiary who may own a share in a lesser property of which they may not be able to derive any present value. This protection is also lost to a beneficiary who also inherits a share in a residuary property, but which share may ultimately even be sold by the Estate.

The policy rationale behind dwellinghouse exemption is to protect the family home by ensuring that a beneficiary who has been living with the disponer and will continue to reside there after the inheritance does not have to sell the home to pay Capital Acquisitions Tax. The withdrawal of dwelling house exemption owing to the acquisition or ownership of a lesser interest results in beneficiaries losing out. This loss can result in hardship. In circumstances where property prices are at an all-time high, the restrictive nature of condition 86(3)(b) of the Capital Acquisitions Tax Consolidation Act 2003 requires review. The current catch-out approach should be dispensed with.

The Law Society is calling for a review of the restrictive nature of the condition imposed by Section 86(3)(b) of the Capital Acquisitions Tax Consolidation Act 2003.

Tax burden faced by smaller families

The Capital Acquisitions Tax Group A Threshold for benefits taken by a child is currently €335,000. Benefits received in excess of the threshold are subject to CAT at 33%. Owing to increased property values children are increasingly in a position where they cannot afford to inherit their family home (in the absence of dwelling house relief being available to them). This tax burden is often all the more experienced by smaller families. As practitioners we observe the perceived unfairness felt by testators who have contributed to society via their lifetime taxes and yet their estate will be subject to CAT in circumstances where their peers with larger families will have a greater portion of their estate relieved from CAT owing to the availability of the Group A threshold per child. Indeed, a testator without children but with close family members and friends who they would like to see benefit from their lifetime of hard work experiences this tax disparity all the more.

A further difficulty arises for a couple who wish to provide for their respective nieces or nephews or siblings on the death of the survivor of them. Testators often provide for nieces and nephews in Wills in circumstances where they do not have children. Generally, the financial resources required to fund such bequests can only be made on the death of the surviving spouse. Eligibility for the group b or group C threshold is determined by the blood relationship to the deceased which thus results in an inequality in CAT treatment between the nieces and nephews on each side depending on which spouse died first.

The Law Society is calling for a review of the CAT legislation including rates and thresholds to mitigate against the higher inheritance tax bills paid by smaller families and to provide CAT relieving measures for single persons or couples without children wishing to benefit their circle of relatives.

6 *Charitable giving*

The Law Society is calling for the introduction of tax relief measures to support philanthropy. As the level of personal wealth and the confidence borne by inter-generational wealth increases in Ireland, there is an opportunity to develop and foster greater philanthropy to support our charitable organisations and community initiatives.

This issue may be seen as an example of a missed opportunity, but there are also some elements of inequality/unjust impacts (for example a person who wants to redirect a bequest to a charity must take the benefit and pay tax on it first, even if they never actually derive any benefit from it, thus depleting the value which can be passed on for charitable purposes).

Ireland has a strong tradition of charitable giving, but compared to our neighbours the UK and US, strategic and long-term giving (philanthropy) is still relatively in its infancy. In terms of estate planning, while charitable exemption is available for a charitable beneficiary there is no other tax stimulus to a potential donor to leave a portion of their estate to charity. Advisors need to be empowered to objectively raise the issue of philanthropy with clients at an appropriate time. A tax incentive would be very useful in initiating discussions between clients and their advisors and broadening the conversation of estate planning -both in terms of Will making but also lifetime giving (where appropriate to their circumstances), and in turn, incentivise giving in line with the person's means.

In the UK, where the testator leaves a percentage of their estate, the overall estate is subject to less inheritance tax. Under the Irish system, inheritance and gift tax is charged on the beneficiary and incentives could be introduced to reflect this - such as, if the donor gives a percentage of their overall estate to charity all beneficiaries benefit from a lower rate of tax on their inheritance, or where a specific bequest in the Will or lifetime gift is made with direction that a percentage be applied for charitable purposes, that the balance of that benefit would be subject to a lower rate of tax. A change in approach such as this, would stimulate conversation and promote philanthropy.

There is an appetite amongst the diaspora to substantially contribute to Ireland and to the communities, clubs and organisations that remain at the heart of our Irish abroad. Our rich cultural, and sporting heritages provides our diaspora with a connection to Ireland. This appetite is not matched by tax measures to support the desire to financially support Irish cultural associations promoting the arts, sports and heritage.

The introduction of tax relieving measures could accelerate the potential investment in Irish charities and voluntary organisations. The Law Society is calling for a review of our Capital Acquisitions Tax legislation to encourage philanthropic giving which may involve tax relieving provisions for the estate of the testator incorporating a charitable donation in their Will or by Deed and which may also involve tax relieving provisions for a beneficiary wishing to donate a portion of their bequest to charity. Such provisions will render it possible for solicitors to actively promote charitable giving in estate planning.

The Law Society is calling for an introduction of tax relieving measures to support philanthropy in estate planning.

ANNEX II

SPECIFIC EXAMPLES OF THE IMBALANCE BETWEEN REVENUE POWERS AND TAXPAYERS' RIGHTS/PROTECTIONS

The Law Society submits a review should be carried out regarding the imbalance between Revenue powers and taxpayers' rights/protections.

Specific examples are set out below under the following headings:

1. Time limits
2. Interest on tax
3. Right of taxpayer to express doubt
4. Powers exercisable based on opinion of revenue officers

1 Time limits

Time limits on Revenue's ability to raise assessments

One example of where an imbalance in the tax system has developed is the rules on when the Revenue can issue assessments in respect of past tax years. In general terms, the tax rules provide that once four years have passed after the end of the year that the tax return was filed by the taxpayer, Revenue, subject to certain exemptions (e.g., cases where the taxpayer had acted fraudulently or negligently) is precluded from issuing an assessment.

The time limit rules were designed to provide Revenue a reasonable time to examine the return made by the taxpayer and to raise a different assessment if they considered that the taxpayer assessment was incorrect. The four-year time limit also was intended to give certainty to taxpayers on their tax treatment. Without the protection of a time limit, the taxpayer would have no way of knowing whether their self-assessment had been accepted by Revenue and could face a Revenue assessment ten, or twenty years later. That assessment would also result in interest for the taxpayer which is levied at an 8% rate (see below). A time limit also relieves taxpayers of the obligation to retain records indefinitely and reflects the fact that the longer after an event a question is raised, the more burdensome it is for the taxpayer to find the answer. As such, the four-year rule strikes an important balance between certainty and safeguards for taxpayers and upholding the integrity of the tax system by affording Revenue sufficient time to tackle non-compliance robustly.

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

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

More recently, in determinations issued by the Tax Appeals Commission and in decisions issued by the Superior Courts, it has become apparent that Revenue is very willing to issue

assessments to taxpayers outside the four-year time limit. In one recent High Court case, Revenue successfully argued that they were entitled to issue an assessment outside the four-year time limit in a case that did not involve fraud or negligence on the part of the taxpayer and that an inaccuracy in the return was sufficient to disapply the time limit (Revenue Commissioners v Tobin [2024] IEHC 196). The approach of Revenue and the decision of the High Court raise serious concerns about the effectiveness of safeguards for taxpayers in this area. It appears from the decision that the exclusions have entirely overridden the general rule.

The absence of a statutory time limit that taxpayers can rely on with any degree of certainty is problematic from a policy perspective. It also leaves the Irish rules out-of-step with the approaches taken by other jurisdictions. The current approach takes no account of culpability and makes no distinction between taxpayers who have acted fraudulently or negligently and those that have tried but failed to comply. That approach is unfair, overly blunt and inconsistent with other parts of the tax rules, notably the approach to penalties when tax is underpaid.

Time limits on recovering overpaid tax

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

In addition, the claim submitted within the four-year time period must be a valid claim before payment is made by Revenue. Whether a not a claim is valid depends on whether Revenue have all information they may reasonably require determining whether the repayment is due. The timeline for seeking repayments is, therefore, not fully within the taxpayer's control. A recent decision of the Tax Appeal Commission suggests that a "valid claim" must be made within the four years. If that is a correct interpretation of the law, if a taxpayer made a claim for repayment of overpaid tax two years after the end of the tax year to which the claim related and Revenue took time to request information that they considered they required for the claim, the taxpayer's timeline continues to run while Revenue decide what other documentation or information they require. This can unfairly prejudice taxpayers' rights to reclaim overpaid tax and leave a taxpayer out-of-time to make a valid claim.

2 Interest on tax

Another example of where an imbalance in the tax rules has developed is in respect of interest chargeable on underpaid tax and overpaid tax. The rules apply different standards and rates to interest charged to taxpayers on underpaid tax and overpaid tax recoverable by taxpayers.

Interest on underpaid tax

Interest on underpaid tax is charged to taxpayers at a daily rate of 0.0219% (section 1080 TCA). That works out at 7.9935% annually (we use 8% for ease of reference). For comparison, the current European Central Bank rate is 4.25%. It is important to note that the interest is payable in addition to penalties. As such, the purpose of the interest charged should be understood to be limited to compensating the State for the time value of money.

Separately to interest, the tax rules typically require tax-geared penalties to be applied to a taxpayer that has underpaid tax (section 1077F TCA). A tax-geared penalty of up to the amount of the underpaid tax can be applied, but the level of such penalties is reduced when the taxpayer has not deliberately defaulted and has cooperated with Revenue to resolve the issue. Revenue is also empowered to apply fixed penalties in certain circumstances. As such, it appears that the requirement to pay interest is not designed to operate as a penal measure (or, at least, is not designed to operate as the only penal measure available to Revenue).

Interest on overpaid tax

The tax rules provide for interest to be paid to taxpayers on overpaid tax (section 865A TCA). However, the interest rate applied to such repayments, at 0.011% per day, is half of the rate that is applied to underpaid tax. In addition, the taxpayer's right to interest does not begin to accrue until 93 days after the day on which the claim for repayment becomes a valid claim. As noted above, and reflected in Revenue's guidance, an administrative delay on the part of Revenue can impact on the timing of when a claim becomes a "valid claim" and therefore on the entitlement to interest.

In 2020, the rules relating to taxpayers' rights to claim interest on overpaid tax were further diluted and the right to claim interest on overpaid tax was withdrawn for taxpayers who appeal a tax assessment issued by Revenue (section 960GA TCA). Many taxpayers who appeal Revenue assessments opt to pay the disputed tax to protect themselves from the excessive interest rate that Revenue can apply to underpaid tax (in the event Revenue is successful in the dispute). Before the 2020 change, those taxpayers were entitled to receive a repayment and to claim interest on the overpaid tax (albeit at the 4% rate and only 93 days after a valid claim was filed) if they were successful in their appeal and it was determined that Revenue incorrectly assessed tax. Tax appeals can take years to resolve, particularly when cases are appealed to the superior courts. As such, the right to recover interest is an economically meaningful one that endeavours to restore taxpayers who appeal an assessment that is incorrectly raised to the economic position that they would have been in had the appeal not been raised.

Denying such rights to taxpayers is out-of-step with international norms. For example, under EU law the Court of Justice of the European Union has repeatedly emphasised that the entitlement to recovery of monies levied in breach of EU law incorporates a mandatory obligation on national authorities to award interest in respect of such repayments (Case C-591/10 *Littlewoods Retail Limited and Others v HMRC* and Joined Cases C-13/18 and C-126/18 *Sole-Mizo Zrt. and Dalmandi Mezőgazdasági Zrt.*).

The disparity in treatment of interest charged to taxpayers and recoverable by taxpayers is unfair, hard to justify and supports the perception that the rules are unfairly weighted against taxpayers. It could also result in a perception among taxpayers that the system is stacked against them.

3 Right of taxpayer to express doubt

In recognition of the complex nature of tax rules and burden placed on taxpayers under a self-assessment system, the Irish rules permit taxpayers to express doubt on a position they have taken in their tax return (section 959P TCA).

From a taxpayer perspective, the advantage of making an expression of doubt is that the taxpayer is treated as making a full and true disclosure in their return (with respect to that matter only) and, in the event Revenue disagrees with the position taken, the tax only becomes due 30 days after the date Revenue issues an assessment in response to the expression of doubt. As such, the statutory limitation period begins to run from the date the return including the expression of doubt is filed and the taxpayer is not exposed to interest on underpaid tax in the event that Revenue does not accept the position the taxpayer took.

From a Revenue perspective, expressions of doubt assist in the review procedure as they draw Revenue attention to aspects of a taxpayer's return where the taxpayer is uncertain of the appropriate treatment. They encourage transparency from taxpayers and promote dialogue between the taxpayer and Revenue.

Revenue is authorised to reject a taxpayer's expression of doubt as not genuine in cases where:

- general guidance has been issued on the point;
- a Revenue officer is of the opinion that the matter is sufficiently free from doubt; or
- a Revenue officer is of the opinion that the taxpayer is acting with a view to the evasion or avoidance of tax.

The ability for Revenue to reject an expression of doubt was significantly extended in Finance Act 2012 and the same safeguards for taxpayers who are doing their best to comply are not incorporated into the revised version. It is hard to understand the policy rationale for limiting the utility of a provision that is designed to encourage compliance and transparency. It should be noted that in practice the approach of Revenue to expressions of doubt has also changed since the change in legislation and many taxpayers have reported a reluctance on the part of Revenue to accept expressions of doubt as genuine. This Revenue practice will likely be counterproductive and result in less transparency on points of doubt.

4 Powers exercisable based on opinion of revenue officers

Increasingly, additional powers are granted to Revenue under tax law on the basis of the opinion of a Revenue officer. For example:

- the four-year time limit can be disapplied if a Revenue officer is not satisfied with the sufficiency of a return delivered by a taxpayer (section 959AC TCA);
- a Revenue officer is permitted to issue an amended assessment *"in such manner as the officer considers necessary*" in cases where they are not satisfied with the sufficiency of a return made by a taxpayer (section 959AC TCA);
- the protections afforded to a taxpayer who is unsure how tax rules apply to a particular transaction or income and flags that in their tax return (under an 'expression of doubt', section 959P TCA) can be disapplied by a Revenue officer as outlined already above.

There are no requirements in the legislation about the level of experience or authority that a Revenue officer must have to exercise these far-reaching powers. Taxpayers do not always have the right to appeal the exercise of those powers to the Tax Appeals Commission (forming an opinion that an expression of doubt is not genuine is subject to appeal) and can only rely on judicial review as a means of securing an independent review. Judicial review remains within the jurisdiction of the High Court and so is an expensive remedy to access and therefore is only available to taxpayers with deep pockets. In addition, many taxpayers are reticent to bring judicial review proceedings as the cases, which typically deal with sensitive taxpayer information, are heard in public. Further, where the powers given to Revenue are drafted in broad terms, challenging the exercise of the powers in judicial review proceedings can be fraught with difficulties in the absence of any clear criteria establishing how the powers should be exercised.

In conclusion, as noted above, the Law Society submits a review should be carried out regarding the imbalance between Revenue powers and taxpayers' rights/protections.

ANNEX III

SPECIFIC PROVISIONS OF TAX CODE REGARDING NON-RESIDENT SALES

The Law Society wishes to highlight as a priority a review of legislation relating to CGT and non-resident sales.

The Revenue's interpretation of current tax legislation purports to impose a tax liability on solicitors for capital gains tax and income tax payable by non-resident clients selling property in the State. The Law Society is seeking amendment to this legislation to clarify the intended scope.

Section 1034, 1035 and 1043 of the Taxes Consolidation Act, 1997 provide that a non-resident person is assessable and chargeable to income tax and capital gains tax in the name of any representative of any kind located in the State.

Section 1039 deals with restrictions of chargeability and provides as follows - *that nothing in this Chapter shall render a non-resident person chargeable in the name of - …. (b) an agent, not being an authorised person carrying on the regular agency of the non-resident person …in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.*

The legislation stems from Sections 200, 201 and 205 of the Income Tax Act, 1967 and also Schedule IV the Capital Gains Tax Act 1975. The provisions of Section 200 and 201 were first enacted in Section 41 of the Income Tax Act, 1842.

The difficulty which arises is determination of the meaning of 'regular agency'. It is the view of the Law Society that a solicitor whose activities are confined to carrying out specific transactions for his client and is neither a business agent, nor some other form of general agent for his client, should not be held to be an authorised person carrying on the regular agency of his client. It is further the view of the Law Society that a solicitor who merely acts in a legal capacity and is an agent solely for the purpose of ensuring his client's legal compliance with the legal formalities on the sale of a property is not carrying on his client's "regular agency".

The Revenue Commissioners have taken an opposing view and purport to impose a potential liability to income tax and capital gains tax on solicitors when acting for non-resident vendors on the disposal of property in the State. Tax and Duty Manual Part 45-01-05 provides "*Sections 1034 and 1043 TCA 1997 provide that a non-resident person is assessable and chargeable to income tax and capital gains tax in the name of any representative of any kind, e.g. including a solicitor, located in the State*". It is the view of the Law Society that the Revenue's interpretation goes beyond what the legislation actually says. The legislation describes a person carrying on the regular agency of the non-resident person. We submit that this is very different to a solicitor acting on a one-off or transactional basis only for a client, where it is not reasonable to expect the solicitor will know the business and affairs of that client or for the solicitor to bear a tax liability on their account.

Given the potential risk for a solicitor if an assessment was raised against them, solicitors have traditionally sought letters of no audit from Revenue prior to the release of funds when acting in a sale for a non-resident vendor. Lengthy delays were experienced in the issuing of letters of no audit and as such a compromise was reached between the members of TALC, being the deemed clearance process provided for in TDM 45-01-05. While the clearance process was a welcome improvement to the lengthy delays experienced, it has added increased complexities for a solicitor acting on behalf of a non- resident vendor and delays can still arise. There is also an administrative burden for Revenue in processing clearance applications. The Law Society continue to meet with Revenue to seek to address various procedural issues that

arise with the clearance procedure, but it is has become clear that the most appropriate way to address the issue would be for the underlying legislation to be amended, so that such an application for clearance is no longer required.

Therefore, while it is recognised that there is a clear need to collect the tax liability owing by a non-resident vendor on a disposal of a property, an alternative process for collection of any tax liability directly between Revenue and the taxpayer is appropriate, achievable and necessary. We submit that the Revenue's interpretation is not warranted by the wording of the legislation, but in light of the Revenue position, the legislation now needs to be made clear. Given that the solicitor is merely completing the formalities of the sale, the potential risks for a solicitor in acting for non-resident vendors requires legislative redress.

The Law Society is calling for an amendment to the legislation or a clear recognition in

the legislation that releases a solicitor from any potential liability as agent and that does not require a solicitor to seek clearance from Revenue before release of the proceeds of sale to a non-resident vendor.

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