

# Tax and legal update

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### Company pensions – funding after retirement

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### Companies (Statutory Audits) Act 2018

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### 31 December 2018 deadline for the submission of the first KDB claims

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### Are you optimising VAT recovery for your business?

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### Company pensions – funding after retirement

Have you accessed your company pension benefits but continued to work after the event? Many people believe retiring their company pension ceases the ability to continue pension funding. This may not be the case, but is subject to a number of conditions.

To fund a pension through company contributions, an individual must be in active service and taking a salary from the company in question. When calculating the maximum pension contributions a company can make on behalf of an employee, a number of factors must be taken into account. This is not the same calculation for personal contributions, which is based on an age-related percentage of earnings. The revenue calculation which applies to company contributions takes into account details such as:



Gender



Marital status



Date of birth



Salary



Service with the company



Normal retirement date



Existing pension benefits  
(from current and previous employment)

If an individual has retired their company pension and continued service, it is not possible to fund for the service post retirement. However, if the individual was entitled to a larger fund up to their date of pension drawdown (within Revenue limits), it may be possible to bridge this gap via a lump sum payment from the company.

### Companies (Statutory Audits) Act 2018

The Companies (Statutory Audits) Act 2018 (the Act), was signed into law on 25 July 2018 and came into force on 21 September 2018.

There is now a single body of legislation in Ireland regulating the profession of statutory auditor and the conduct of statutory audit. The Act introduces a number of amendments to the Companies Act 2014 with provisions including:

- additional supervisory powers have been given to the Irish Auditing and Accounting Supervisory Authority (IAASA);
- a company that files its annual return late will not lose the entitlement to an audit exemption in respect of that financial year, but will instead lose it in respect of the two following years; and
- the process for filing the annual return will be streamlined, so that both the return and the financial statements must be filed within 56 days after the annual return date.

The Act reproduces the content of the 2016 Audits Regulations and revokes those Regulations in full.

### Powers given to IAASA

Supervisory powers of IAASA have increased to ensure effective monitoring, oversight and enforcement. There is an introduction of new sanctions which may be imposed by the IAASA on statutory auditors for breach of certain provisions. These include the power to:

- give direction to cease certain conduct or remedy conduct that gave rise to the breach;
- give a reprimand to a specified person in relation to that conduct;
- give direction to pay to IAASA an amount calculated, in the case of a statutory audit firm, by reference to the number of statutory auditors in the firm; and
- prohibit a statutory auditor or key audit partner from carrying out statutory audits or signing the audit report.

IAASA is required to publish on its website details of any sanctions it imposes. Where there has been an infringement relating to the audit of a public-interest entity, IAASA must inform the Office of Director of Corporate Enforcement (ODCE) and assist the ODCE with any investigation of a director arising.

### Annual returns and audit exemption

#### Loss of audit exemption

The Act provides that where a company's audit exemption is lost due to late filing, the two financial years following the financial year in which the company failed to file on time will need to be audited. This will remove the need for a company from having to commence an audit on a financial year that has already ended.

### A single filing period for annual returns and financial statements

The Act proposes to introduce a 'single step' approach for companies when filing their annual returns and financial statements. The Department of Business, Enterprise and Innovation (DBEI) have indicated that this is to be a 56 day period.

The sections of the Act intended to implement this change have not yet commenced and the current position remains.

When seeking to extend a company's Annual Return Date (ARD), the Act also provides that a company will have 56 days from the ARD to file the annual return and the application to extend. However, this section has also not yet commenced.

### Has the Act commenced?

On 21 September 2018, the majority of the Act commenced, with the exception of sections 3(1)(a), 3(1)(h), 3(1)(i), 3(1)(j) and section 9, relating to the filing of annual returns and filing periods of applications to extend the ARD.

It is expected a new piece of legislation will be published in the coming months to streamline the two step filing process, outlined above, into a single step.

### 31 December 2018 deadline for the submission of the first KDB claims

31 December 2018 is the deadline for the first claims under the Knowledge Development Box (KDB) scheme introduced in Finance Act 2016. Companies with a year end of 31 December that plan to claim for the year ended 2016, should be in the advanced stages of calculating the scope of relief available ahead of submission before month end.

The KDB was introduced with the aim of incentivising companies to develop, hold and use Intellectual Property (IP) in Ireland. Ireland was the first IP scheme to receive OECD approval and offers tax on profits from **qualifying assets** of as little as 6.25%.

The KDB is a natural extension of the R&D tax credit and once this IP becomes a **'qualifying asset'** and starts to generate income it is eligible, bridging the gap between R&D and commercial activity. In summary a qualifying asset is

one of the following, which is as a result of **conducting qualifying R&D**:

- copyrighted software;
- qualifying patents; or
- for smaller companies, an invention that is certified as being novel, non-obvious and useful.

The KDB allows for an effective corporation tax rate of 6.25% on **'qualifying profits'** the value of which is derived from the IP which has been created.

If you feel your business may have scope for making a KDB claim prior to the deadline or if you would like to discuss this initiative in more detail, feel free to get in touch with our Innovation Tax team to discuss this further.

### Are you optimising VAT recovery for your business?

An important question for every business is the extent to which VAT may be reclaimed on its inputs (ie purchases). One of the fundamental principles upon which the VAT system is based is that a VAT registered business supplying taxable goods and services should be in a tax neutral position with regard to VAT. Therefore, a VAT registered business is entitled to claim a deduction for VAT incurred on costs related with the person's supplies of taxable goods or services. The rules can be summarised as follows:

- VAT on costs directly incurred in making taxable supplies is fully recoverable
- VAT on costs directly related to exempt activities is not recoverable; and
- where VAT is incurred on costs relating to both exempt and taxable activities, an apportionment of VAT is made to determine the amount of recoverable VAT.

Section 59(2) VATCA 2010 provides an extensive list of areas in which VAT incurred can be deducted by an accountable person.

It may also arise that purchases may be used for both taxable and exempt activities. In such cases, only the amount of VAT which is appropriate to the taxable business is deductible. Where a person engages in both taxable and exempt activities (ie dual-use inputs) it is necessary to apportion the VAT between the inputs used for taxable and exempt activities.

A VAT registered business is entitled to deduct VAT charged for any of the qualifying activities (ie transport outside the state of passengers and their accompanying baggage, certain financial and insurance services supplied outside the EU or directly in connection with the export of goods to a place outside the EU and supplies of goods and services outside the state which would be taxable supplies if made in the state).

Section 61 of the Irish VAT Act 2010 provides for VAT recovery on costs which relate to taxable and exempt supplies. Finance Act 2016 amended Section 61 to provide for the turnover method as the primary method of apportionment for dual-use inputs for VAT recovery purposes. The turnover method is calculated by examining the ratio of the amount of the tax exclusive turnover from deductible supplies or activities for a period against the amount of the tax exclusive turnover from total supplies and activities.

### Recent case law from the Court of Justice of the European Union (CJEU) concerning VAT recovery

Volkswagen Financial Services (UK) Ltd (C-153/17)

This case concerned the VAT treatment of Hire Purchase (HP) transactions and HP suppliers' entitlement to VAT recovery on their general overhead costs relating to HP transactions.

In summary, the CJEU held as follows:

- The treatment of a HP transaction as involving a VAT taxable supply of goods and a VAT exempt supply of credit is compatible with the EU VAT Directive. This reflects the current VAT treatment of HP transactions in Ireland.
- VAT on overhead costs incurred by HP suppliers should be partially recoverable based on a method which takes into account both the taxable supply of the goods and the exempt supply of credit. This was contrary to the Advocate General's analysis, which suggested that VAT recovery should not be available on costs which were incorporated into the price of the VAT exempt supply of credit.

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