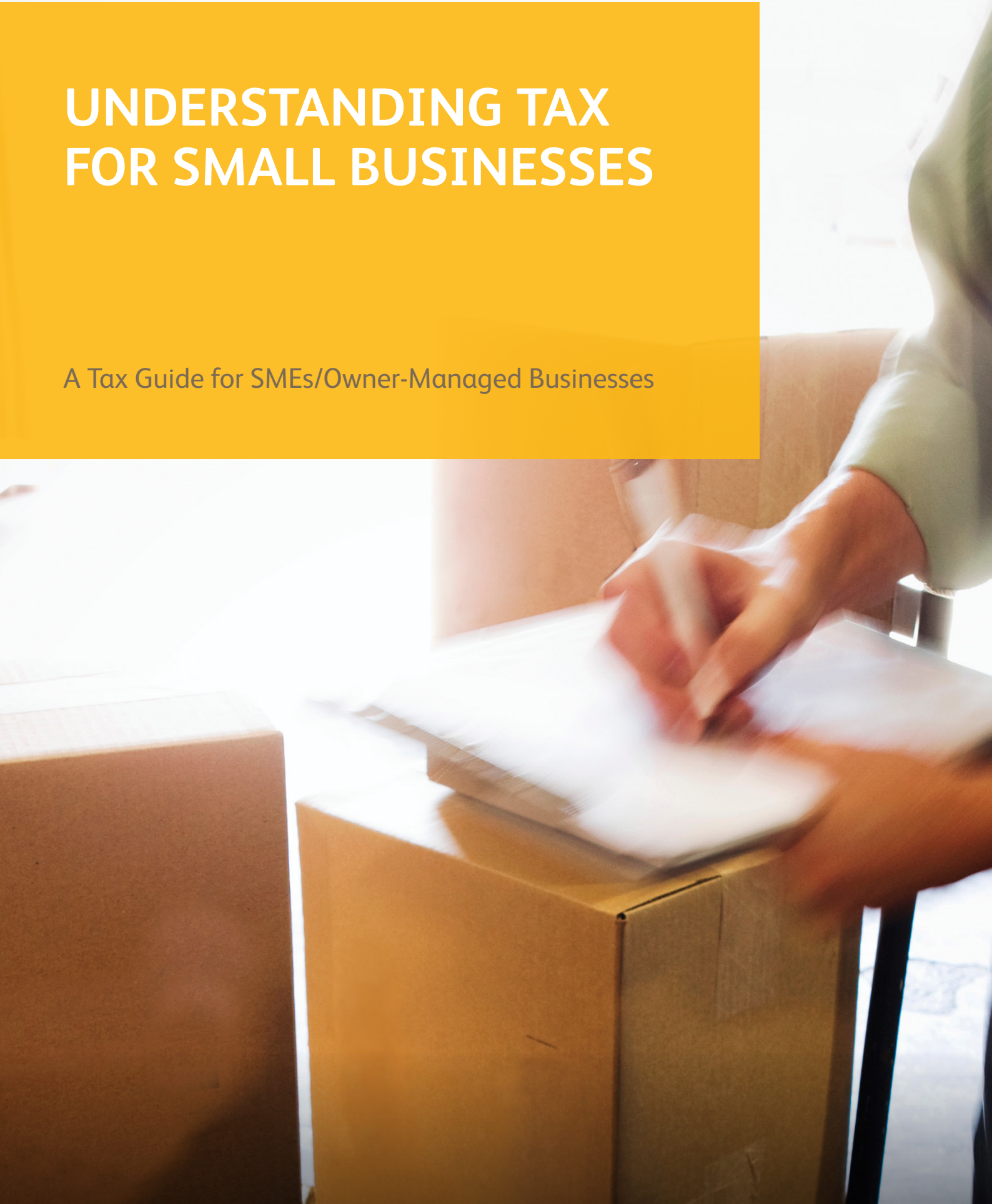




**Irish Tax
Institute**

UNDERSTANDING TAX FOR SMALL BUSINESSES

A Tax Guide for SMEs/Owner-Managed Businesses



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The Irish Tax Institute is the leading organisation in tax education and practice in Ireland. It represents over 4,000 AITI Registered Tax Consultants who provide tax expertise and advice to thousands of businesses and individuals in Ireland and internationally, while many are employed in senior roles in the corporate sector, Government, Revenue, State bodies and international agencies.

The Institute is the leader in tax education in Ireland for over 40 years and its School of Taxation is renowned for its excellence and the quality of its tax graduates. The AITI qualification, which is recognised by the EU, is the outstanding qualification in tax consultancy in Ireland while the Institute's TMITI course is widely respected as the preferred route into a tax compliance career.

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The ITI is governed by a Council made up of senior business executives and managed by a dynamic executive team.

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For further information on how to apply for any of the reliefs or exemptions mentioned in this guide, please contact an AITI Registered Tax Consultant or see www.revenue.ie. For a listing of AITI Registered Tax Consultants in your area, please visit www.taxinstitute.ie.

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Introduction

Tax is a major cost consideration for all businesses, and this guide gives an overview of the tax issues that all small and medium-sized enterprises (SMEs) should consider. This document:

- » summarises the relevant tax obligations to consider when commencing your business,
- » identifies some tax pitfalls and opportunities for existing businesses to consider and
- » provides a brief summary of the tax issues to be aware of when transferring or selling your business.

This guide is written to provide practical advice, checklists and tips with a view to ensuring that the tax affairs of SMEs are organised in an efficient manner. It also provides an overview of some of the main tax reliefs and incentives available to SMEs to enable them to expand and grow.

For further information on how to manage your tax affairs efficiently, contact an AITI Registered Tax Consultant. A listing of AITI Registered Tax Consultants in your area is available at www.taxinstitute.ie.

Part 1 -Getting Started: Checklist of Decisions

Tax is a cost of doing business that can have significant implications for your cash-flow. It is vitally important that you structure your business correctly to minimise this cost and that you register for taxes properly and in a timely manner to avoid potentially significant interest and penalty charges should you fail to meet your obligations.

The following is a checklist of the main decisions required to establish your business in a tax-compliant manner.

Decision	Completed (Y/N)
Determine the business structure that best fits your circumstances	
Ensure that you register for tax, correctly and on time	
Identify the taxes that your business could be liable to pay	
Ensure that you understand when you have to pay each of these taxes and when you have to file the associated returns	
Consider the record-keeping and accounting system that you will use to allow you meet your legal obligations	
Consider the tax reliefs and incentives that may be available for starting and/or funding your business	

It is advisable that you consider the above queries with your AITI Registered Tax Consultant. However, we set out below some information that will help you to identify your tax obligations and provide some tips for avoiding unnecessary taxes and, indeed, potential interest and penalties.

1.1 Determine the Appropriate Business Structure

When starting a business, consideration must be given to the structure that best suits your personal and business objectives. The correct structure will depend on your objectives and projections for the business, and the common structures are reviewed below. In general, a business will be structured as a sole trader, a partnership or a company.

1.1.1 Sole trader

If you choose to operate as a sole trader, the business will be registered for taxes in your name and the profits will be subject to income tax. If you are trading under a business name, that name must be registered with the Companies Registration Office (www.cro.ie). Unincorporated sole traders do not enjoy the benefits of limited liability available to limited companies (below), and you may, therefore, be personally exposed to any liabilities or losses of the business.

1.1.2 Partnership

If two or more individuals wish to work together, they may enter into a partnership arrangement. The partnership must register its name with the CRO and register for the relevant taxes with the Revenue Commissioners by completing and submitting a Taxes Registration Form TR1. The partnership will be issued with a separate tax registration number from the individual partners. An annual partnership tax return will be required, and the respective shares of income and gains will also have to be returned in the individual income tax returns of each partner. Generally, each partner will be personally liable for any liabilities or losses of the partnership, although much will depend on the nature of the partnership and the agreement reached.

1.1.3 Limited liability company

If you choose to operate the business through a company, you will be required to register the company with the CRO. The company will then operate the business and will be regarded as a separate entity from you for tax and other purposes. Generally, the shareholders' accountability for losses or other liabilities of the company should be limited to the extent of their contribution to the capital of the company.

If you commence business as a sole trader or partnership, you can transfer your business to a company in the future, although care should be taken in structuring any such transfer in order to minimise the taxes arising.

1.1.4 Decision aid

One of the first decisions will be whether you should set up your business as a sole trader or via a separate limited liability company. Below is a table setting out some of the key differences that will help you to decide on the appropriate structure for your business.

Consideration	Company	Sole trader
Limited liability	A company can provide protection from the liabilities and losses of the business.	A sole trader will be personally liable for liabilities and losses of the business (subject to insurance).
Set-up costs	Initial costs will be incurred to incorporate a company and register it with the CRO.	There will be no incorporation or CRO company registration costs. A small fee will apply for registering a business name.
Ongoing administration costs	Additional accounting and company law obligations will apply for a company, including filing annual returns and accounts with the CRO. This is likely to result in higher ongoing administration costs.	Compliance administration costs will be minimised.
Tax rates	A company will pay corporation tax at 12.5% on trading profits. A company may also qualify for corporation tax exemption in the first three years of trading. Income tax will arise on money extracted from the company, whether through salary or dividend. (See Note 1.)	All profits will be subject to income tax in the hands of the sole trader in the year in which it was earned. The rate of income tax is up to 41%, and Pay-Related Social Insurance (PRSI) and Universal Social Charge (USC) will also have to be considered.
Pensions	In most cases a corporate structure will offer the working director/shareholder greater options in respect of the level of pension contributions that can be made into the individual's pension scheme. In addition to pension contributions by the individual from salary, the company can make additional pension contributions on behalf of the director/employee in a tax-efficient manner.	There are certain restrictions on the level of tax-relievable pension contributions that can be made by an individual each year.

Note 1

While the low, 12.5% corporation tax rate (and the start-up relief) look very attractive, it must be considered that, when such profits are extracted from the company, the funds will be liable to income tax, PRSI and Universal Social Charge (USC) in the hands of the individual owner. This can in some cases lead to double taxation. Certain passive income (such as rents and interest) can be subject to a 25% rate of tax in a company. If the company is regarded as a “close company” for tax purposes, additional surcharges may also apply where such income is not distributed within 18 months from the end of the accounting period (see Section 2.4 for an explanation of close companies).

1.2 Registering for Tax

All entities are obliged to register for taxes as soon as they commence in business (for corporation tax this must be within one month of commencing business activities, and for VAT this must be within 30 days of becoming an accountable person – see Section 1.3.3). To register for taxes you will need to identify the taxes that your business may be liable to pay. Section 1.3 sets out more details on each tax that may affect your business. In the vast majority of cases the obligation to register for taxes is met by filing a single tax registration application form at the earliest possible date. In the case of unincorporated entities (sole traders, partnerships etc.) a Form TR1 is used, while companies are required to complete a Form TR2. These forms are available from your local tax office or on Revenue’s website, www.revenue.ie. Registration can also be done online for certain taxes. See section 1.2.1 for information on Revenue’s Online Service.

1.2.1 Revenue Online Service

You can now also register to pay most taxes via Revenue’s Online Service (ROS), available on the Revenue website. ROS is a **secure, interactive**, Internet-based facility that provides for the electronic payment and filing of taxes, either by taxpayers themselves or by their agents on their behalf. A business can file returns online, make payments, calculate the liability to tax and claim repayments via this service. Another benefit of using ROS is that the pay and file deadlines for certain taxes are extended when you pay and file using ROS. These extensions are discussed in further detail in Section 1.4. Certain taxpayers are required to pay and file their tax through ROS under Revenue’s mandatory e-filing programme. In particular, since 1 June 2011, all companies are required to pay and file most taxes online. Information on the mandatory e-filing programme is available on Revenue’s website.

To register for ROS you will need to follow the three-step process outlined on the Revenue website (www.revenue.ie) under “Register for ROS”. The entire registration process typically takes eight working days, so you should ensure that you start the process in sufficient time before any filing deadlines that may apply.

Tips

- Register for taxes early. In some cases there can be a delay in the processing of tax registrations, and this can cause some trading difficulties, particularly when acquiring products from other Member States. Late registration could also result in a delay in recovering any VAT on set-up costs and pre-trading expenditure.
- If you are subject to a requirement to pay and file your taxes online but do not have the capacity (i.e. lack the technology or through age or infirmity) to do so you can contact Revenue to seek an exclusion from the requirement. It is important to apply for an exclusion early so that if Revenue refuse your request you can make alternative filing arrangements.
- Given the benefits of ROS, it is advisable to register for ROS at the earliest opportunity.
- You may be able to claim a tax deduction against your income tax or corporation tax liability in the first period of trading for certain expenses incurred in setting up the business in the three years before commencing to trade; for example, you may be entitled to a deduction for business-related leasing costs, legal fees or interest on loans incurred during that time.
- If you incur significant costs before commencing to trade, you may wish to register for VAT before trading commences in order to reclaim VAT incurred on such expenses. A person can register for VAT as soon as it is clear that they will become liable to VAT in their business. If a business exceeds certain turnover thresholds (see Section 1.3.3), it is obliged to register for VAT; however, it is not necessary to wait until the registration thresholds are exceeded to do so.

1.3 Identifying the Taxes that Your Business Could be Liable for

The taxes for which your business is obliged to register will depend ultimately on your business structure and activity. This section provides an overview of the taxes that could apply to your business, together with the corresponding tax rates and the tax returns required. It is important that you are aware of these before you start in business. The payment and return filing obligations for each of these taxes are dealt with in Section 1.4.

Set out here is a list of the possible taxes for which you may have to register, followed by a brief description of each.

Tax to consider	Relevant (Y/N)
Income tax, PRSI, USC for the owner	
Corporation tax	
Value-added tax (VAT)	
PAYE/PRSI/USC on employees	
Capital gains tax (CGT)	
Relevant Contracts Tax (RCT)	
Dividend Withholding Tax (DWT)	
Professional Services Withholding Tax (PSWT)	

1.3.1 Income tax, PRSI and USC

Income tax, PRSI and USC will be chargeable on the taxable profits earned by individuals operating as sole traders or in partnership. (The USC replaced the income levy and health from 1 January 2011.) You should note that taxable profits are not the same as accounting profits, and adjustments may need to be made to the accounting profit to determine the taxable profit. For example, capital profits such as from the sale of an asset must be deducted from the accounting profit and, similarly, items of capital expenditure, such as depreciation, should be added back to the accounting profit for tax purposes. Although accounting depreciation is added back to determine your profits for tax, you will see in Section 2.3 below that a business can get a deduction for tax depreciation (known as a capital allowance). You should also be aware that there are special rules around the calculation of taxable profits for the first three accounting periods of the business; however, these rules are complex and beyond the scope of this guide. It is recommended that you seek advice from an AITI Registered Tax Consultant in this regard.

If you operate through a company, any payments that you receive from the company, whether in the form of dividends/distributions or salary, will be subject to income tax, PRSI and USC. It is important to note that there are different tax considerations for the company depending on the type of payment it makes. For example, the company will be subject to employer PRSI (usually 10.75%) on salary payments, or it may get a corporation tax deduction for salary payments and employer PRSI but not for dividends.

Income tax applies at the standard rate of 20% up to certain limits and 41% on the balance. See Appendix 1 for more details.

PRSI and USC arise on income whether it is received by a self-employed individual or by salary or as a dividend from a company. These are complex taxes, and the rates will vary depending on the circumstances and the amount of income received. Details of the PRSI and USC rates and thresholds are set out in Appendix 1.

1.3.2 Corporation tax

If you conduct your business through a registered company, corporation tax will be charged on any taxable profits. As above, taxable profits are not the same as accounting profits, and adjustments may need to be made. Special rules apply in calculating the taxable profits for the first three accounting periods of the company and, again, specialist advice should be sought from an AITI Registered Tax Consultant.

Once you have determined the net taxable profit for the company, the following corporation tax rates apply:

- » On trading profits, the rate is 12.5%. Up to 31 December 2010, a 10% rate applied to trading income of manufacturing companies.
- » A rate of 27% applies to deposit interest paid or credited on or after 1 January 2011. The rate was previously 25%.
- » On other non-trading profits, such as rental income, the rate is 25%. This rate also applies to trading profits of a small number of specialised trades (such as mining, land dealing and petroleum activities), as well as capital gains on the disposal of certain assets.
- » For new companies starting to trade in 2009 or 2010, a complete exemption from corporation tax on trading profits applied where the tax otherwise payable would not exceed €40,000. Partial corporation tax relief was available where the liability was over €40,000 but less than €60,000.
- » The relief has been extended to new companies starting to trade in 2011. However the way in which the relief works (for all new companies commencing since 2009) has changed for accounting periods beginning on or after 1 January 2011. Instead of operating as a complete exemption, the relief is now linked to the amount of employers' PRSI paid by the company. The relief continues to apply for the first three years of trading. There are a number of conditions attaching to this exemption – see section 1.6.2 for further information.
- » Certain companies, regarded as “close companies”, can be subject to certain surcharges – see Section 2.4 for more details on close companies.

1.3.3 Value-added tax

Careful consideration should be given to the rate of VAT applying to supplies of goods or services made by your business. The rate of VAT chargeable on your supplies will depend on the nature of the product or service. The supply of certain goods and services is exempt from VAT, while other supplies are subject to VAT at rates of 0%, 4.8%, 5.2%, 9%, 13.5% or 21%. If the supplies are VAT-exempt, you will not be entitled to recover any input VAT on your costs. However, businesses supplying goods or services that

are subject to VAT at 0%, 4.8%, 5.2%, 9%, 13.5% and 21% will be entitled to recover VAT generally on costs, provided that they are registered for VAT (see Section 1.2). There are, however, some costs on which no business can recover input VAT, such as expenditure on entertainment, personal expenses and expenditure on petrol (purchased otherwise than as stock-in-trade).

The information given on invoices normally establishes the VAT liability of the supplier and the entitlement, if any, of the customer to a deduction for VAT charged. It is vital, therefore, that these are properly drawn up and carefully retained. VAT law contains specific requirements in terms of the information that must be included on invoices, including the date of issue, a sequential number, the full name, address and VAT registration number of the supplier, and the full name and address of the customer.

Applying the correct VAT rate to your supplies is essential, and it can be a complex process if you are supplying a variety of products or services. If you are not charging the correct rate of VAT, you may be subject to significant interest and penalties should the matter be uncovered during a Revenue audit. Contact an AITI Registered Tax Consultant for advice if you have any doubts in this area.

Any business selling products or services exceeding a certain value must register for VAT (unless its supplies are VAT-exempt). The current turnover thresholds over which a business must register for VAT are €37,500 per annum on the supply of services and €75,000 per annum on the supply of goods. A business can elect to register for VAT if its turnover is below these amounts, even though it is not required to do so. This may be advisable if considerable input VAT has been incurred on commencing the business – for example, on acquiring (including leasing) or developing business premises or on other pre-trading business expenditure – which may then be reclaimed.

When registering for VAT, you may want to apply for the cash-receipts (or “money-received”) basis of accounting. The option to do so is given on the registration form (TR1 and TR2). Where a business avails of the cash-receipts basis, VAT can be paid on the basis of when cash is received rather than when the invoice is issued. This helps to avoid the cash-flow difficulty of accounting for VAT on a supply when the invoice has not been paid by the customer. You may be entitled to use the cash-receipts basis where annual turnover (excluding VAT) is less than €1 million or 90% of turnover is from VATable supplies to non-VAT-registered people. More information on the cash-receipts basis and how to opt in is available from the Revenue website.

1.3.4 PAYE/PRSI on employees

If your business has employees, you must operate PAYE/PRSI and USC on their wages. You will also be required to operate employer PRSI on employee wages. PAYE and employee PRSI/USC are taxes that you withhold from the salary payments to your employees and pay over to Revenue on behalf of the employees. However, employer PRSI is an actual cost to the business. For the period 1 January 2011 to 1 July 2011, where any employee had a weekly wage of less than €356, the rate of employer PRSI was 8.5% of the employee’s wage. This rate has been reduced to 4.25% from 2 July until the end of 2011, following the Government Jobs Initiative. Where the employee’s weekly wage is €356 or more, the rate

is 10.75% on all remuneration including the first €356. See also Section 1.6.1 of this guide in relation to certain reliefs from employer PRSI that may apply when recruiting new employees who were previously unemployed.

See Appendix 1 for a more detailed overview of the income tax, PRSI, health levy and USC rates and thresholds.

1.3.5 Capital gains tax

Capital gains tax at the rate of 25% may apply on profits from the sale of certain capital assets. For example, if you sold part of your business premises at a profit, the profit may be subject to CGT.

1.3.6 Relevant Contracts Tax

This withholding tax may apply if you operate in the construction, meat-processing or forestry sectors and make payments to sub-contractors in those sectors. If you are subject to RCT, you must withhold tax of 35% from payments to relevant sub-contractors unless you have received prior Revenue approval to make the payments without deduction. If your business, as a principal contractor, fails to withhold RCT correctly from payments to its sub-contractors, the RCT liability falls on your business. With the rate of RCT at 35%, this could be a very significant cost. The main areas of difficulty in relation to RCT tend to be:

- » failing to identify all of the situations in which a principal contractor/sub-contractor relationship exists between your business and its contractors,
- » failing to complete the joint RCT1 declaration demonstrating that an employment relationship does not exist and
- » paying a sub-contractor without deduction of tax after the sub-contractor has produced his or her Form C2 but before you have obtained a relevant payments card from Revenue.

If your business operates in one of the relevant industries (construction, meat-processing or forestry), you should regularly obtain the advice of an AITI Registered Tax Consultant to ensure that you are not creating a risk for your business by not meeting your RCT obligations.

Significant changes are to be made to the RCT system from 2012. The current paper-based system is to be replaced by a mandatory electronic system. The current rates of RCT i.e 0% and 35% are to be replaced with a three-rate withholding scheme (0%, 20% and 35%). The rate to apply will be determined according to Revenue's assessment of the subcontractor's tax compliance record.

At the time of writing, the new scheme is subject to a Commencement Order, to be signed by the Minister for Finance. If you are a subcontractor it may be timely to review your compliance record now with your tax agent to ensure that you are fully tax compliant and will not be subject to withholding tax at the highest rate i.e 35%.

1.3.7 Dividend Withholding Tax

This withholding tax applies to companies that make dividends or other distributions to their shareholders. Where applicable, DWT is withheld at the rate of 20%. For example, where a company decides to make a dividend of €1,000 gross to an Irish individual shareholder, it must withhold €200 (20%) and pay this directly to Revenue. The individual receiving the dividend can claim a credit for the withholding tax when filing his or her tax return.

1.3.8 Professional Services Withholding Tax

If you supply certain services to the State (including semi-State bodies), PSWT at a rate of 20% will be withheld from the payments you receive. You should receive a Form F45 from the relevant State body, which is a certificate of the PSWT deducted from the payment made to your business, and it is important that you retain this form.

Credit for PSWT deducted should be claimed when submitting the income tax or corporation tax return forms for the relevant accounting period. Revenue may request the Forms F45 for verification.

Where you consider that the amount of PSWT deducted from payments is in excess of the likely final liability to tax, you may be entitled on application to your local Revenue office to an interim refund of the excess rather than waiting to have it credited against the final tax liability. Certain conditions apply, and more information is available from the Revenue website.

1.4 Due Dates for Paying Taxes and Filing Returns

Set out below is a summary of the key filing and payment dates for each tax.

1.4.1 Income tax

Self-assessed income tax is paid in two instalments for each year. Preliminary tax is payable on or before 31 October of the tax year (e.g. preliminary tax for 2011 must be paid by 31 October 2011). The balance of tax (second instalment) is due the following 31 October, when filing the tax return. The preliminary tax must equate to at least 90% of the final liability or 100% of the preceding year's liability. In addition, if you pay your income tax by monthly direct debit, you can base your preliminary tax payment on 105% of the pre-preceding tax year's liability.

The income tax return is due by 31 October of the following calendar year (e.g. the tax return for the year ended 31 December 2010 is due on or before 31 October 2011).

Tips

- Filing your return via ROS will normally extend the payment and filing date by around two weeks (the extended date changes slightly each year). For example, for 2011 the extended ROS pay and file deadline is 15 November 2011, rather than 31 October.
- Some taxpayers are required to pay and file online. Consult your tax agent if you are in any doubt about your obligations.
- Avoid unnecessary surcharges and relief restrictions by submitting your returns and payments on time, as automatic surcharges are applied for the late filing of returns.
- Consider paying preliminary tax by monthly direct debit.

1.4.2 Corporation tax

For a business operating through a company structure, corporation tax must be paid over a number of dates depending on the size of the liability.

For “small companies” (companies that had a corporation tax liability of €200,000 or less in the previous accounting period), a preliminary payment must be paid one month before the end of the accounting period (by the 23rd of the month). For example, a company with a financial year ending on 30 November must make a preliminary payment by 23 October. The amount of tax payable can be based on either:

- » 100% of the tax liability for the previous period or
- » 90% of the actual final tax liability of the current period.

The balance of tax is paid when filing the CT1 (discussed below).

For a company whose liability exceeded €200,000 in the preceding accounting period, the tax must be paid in three instalments:

- » For the first instalment, the company must pay either at least 45% of the liability for the current period or 50% of the liability for the prior period. This must be paid within six months from the start of the current period (no later than the 23rd of the month).
- » The second instalment, to bring the total preliminary tax paid to at least 90% of the final liability, must be paid within one month from the end of the period (no later than the 23rd of the month).
- » The balance of tax is payable on the filing of the corporation tax return, Form CT1.

The Form CT1 needs to be submitted to Revenue within nine months of the end of the current accounting period (no later than the 23rd of the month).

Tips

- Since 1 June 2011, all companies are required to pay and file their taxes online. If you obtain an exemption from this requirement from Revenue, you will be required to pay/file your taxes by the 21st of the relevant month.
- Filing and paying via ROS will extend the deadline by two days, to the 23rd of the month.
- Consider whether paying tax based on the prior year's liability will reduce the preliminary tax requirement and minimise the risk of underpaying preliminary tax.
- Ensure that sufficient preliminary tax is paid to avoid interest charges.

1.4.3 VAT

VAT payments are generally based on the calendar year, and the following are the relevant filing and payment dates:

- » In general, a Form VAT3 must be filed, and any VAT liability paid, for every two-month period by the 19th day of the month following the period (e.g. the January/February return must be filed by 19 March).
- » Where total VAT payments for the year are €3,000 or less, the trader can file six-month returns.
- » Where total VAT payments for the year are between €3,000 and €14,000, the trader can file four-month returns.
- » Traders who pay VAT by direct debit need file only one annual return at the end of their accounting period.

Tips

- Filing and paying via ROS will extend the deadline by four days, to the 23rd of the month.
- Depending on the level of your VAT liabilities, it can be possible to file your returns every four months, six months or annually. This can assist with cash-flow requirements for your business.
- Where refunds are due, file returns early.

1.4.4 PAYE, PRSI and USC for employees

If you have employees, the following tax return and payment dates are relevant:

- » A monthly Form P30 must be filed by the 14th day of the following month, accompanied by the PAYE, PRSI and USC withheld from employees (as well as employer PRSI).
- » An annual summary Form P35 must be filed by 15 February following the end of the tax year.
- » If total annual PAYE/PRSI payments do not exceed €28,800, the returns may be filed on a quarterly basis (with Revenue agreement).

- » After the end of the calendar year, you need to provide each employee with a Form P60 and an end-of-year USC Certificate.

Tips

- Filing and paying via ROS will extend the deadline by nine days, to the 23rd of the month.
- Consider whether your business qualifies for the quarterly filing option.
- Certain non-cash benefits (such as a company car) can be subject to PAYE, PRSI and USC, and care should be taken not to omit taxing such benefits.

1.4.5 Capital gains tax

Details of any disposals of chargeable assets should be included in the annual income tax returns for individuals and on a company's Form CT1 where applicable. The CGT payments are due as follows:

- » For individuals, where a gain arises on a disposal made between 1 January and 30 November, the due tax is payable by 15 December.
- » For individuals, where a gain arises on a disposal made between 1 December and 31 December, the due tax is payable by 31 January.
- » For companies making a gain on the disposal of development land, the CGT payment dates are as above. However, other taxable gains made by companies are filed and paid on the same basis as their other taxable profits.

Tips

- There are a number of significant reliefs from CGT, and it is important to ensure that all possible reliefs are considered.
- Ensure that details of all disposals are included on your income tax return to avoid surcharges.

1.5 Books and Records

You are obliged by law to maintain proper books and records. In addition to providing you with the relevant information necessary to manage your business properly, this will allow you to file your tax returns on an accurate and timely basis and will avoid unnecessary interest and penalties. You should consult with your AITI Registered Tax Consultant as soon as possible to agree on an appropriate system.

In addition to the obvious advantages of a good accounting and record-keeping system, the following points are relevant:

- » You are obliged by tax law to maintain proper books and records to support your tax returns.
- » You must retain such records for at least six years.

- » If you have reclaimed VAT on the purchase or construction of property, you may be required to retain records relating to that property for up to 20 years.
- » Certain industries, e.g. businesses using cash registers, require additional information to be retained. Details of those requirements are available in the Information Leaflet entitled “Cash Registers” on the Revenue website.
- » Revenue are actively carrying out spot checks on businesses to ensure proper records are kept.

1.6 What Tax Reliefs or Incentives are Available to Start-ups?

The following reliefs, although they apply to all businesses, are particularly relevant for start-up businesses.

1.6.1 Reliefs for all businesses

Interest on loans to fund your business

If you borrowed money to invest in your business, whether to acquire shares or to make loans to the business itself, you may be able to get a tax deduction for the interest incurred on the loan, subject to a number of conditions. Loans made after 7 December 2010 will no longer qualify for relief.

It is recommended, that you get specialist advice on the most appropriate means of funding for your business.

Pre-trading expenditure

As noted in Section 1.2.1 above, once you have started to trade, you may be able to claim a tax deduction for qualifying expenses incurred in respect of the business in the three years before the commencement. For tax purposes, these expenses are treated as if they had been incurred at the time that the trade started. Such expenses may include business-related leasing costs, legal fees and the cost of preparing business plans and feasibility studies.

Recruiting employees

If your business is recruiting new employees, consider the Revenue Job Assist Scheme, which may provide a double tax deduction for wages and employer PRSI for the first three years that you employ a person who was previously unemployed for 12 months or more. More information is provided in Information Leaflet IT59 “Revenue Job Assist – Information for Employers”, available from the Revenue website.

Alternatively, a second scheme, the Employer Job (PRSI) Incentive Scheme, may be appropriate. It provides for an exemption (as opposed to a tax deduction, provided under the Revenue Job Assist Scheme) from employer PRSI for 12 months where certain conditions are met in recruiting new employees who have been unemployed for at least six months.

Consider the activity of the business

Certain additional tax initiatives may be available depending on the activity of the business – for example, relief for expenditure on R&D (see Section 2.3.2). You will need to consider this on a case-by-case basis with your adviser.

1.6.2 Reliefs for companies

There are certain reliefs and exemptions that are available only to companies. Each of these reliefs is subject to numerous conditions, and expert advice should be sought, but below is a summary of the main provisions.

Corporation tax exemption

Companies which were incorporated on or after 14 October 2008 and start to trade during 2009, 2010 and 2011 may, subject to meeting certain conditions, be entitled to a relief from corporation tax on profits for the first three years of trading.

For accounting periods commencing before 1 January 2011, a complete exemption from corporation tax on trading profits applied where the tax otherwise payable would not exceed €40,000. Partial relief was available where the liability was over €40,000 but less than €60,000.

For accounting periods commencing on or after 1 January 2011, the relief is linked to the amount of employers' PRSI paid by the company in respect of its employees and directors.

It is important to note that the relief does not apply to certain trades such as those involving the primary production of agricultural products, the processing and marketing of agricultural products, export related activities etc. Furthermore, the relief will not apply where the trade was previously carried on by another person in the State.

Seed Capital Relief

Seed Capital Relief provides income tax relief on investments in shares in a new company by certain individuals who leave employment (or who are made redundant) to set up a newly incorporated company that carries on a qualifying trade, e.g. manufacturing.

The relief is on the new entrepreneur's income tax paid in one or all of the previous six years, at his or her marginal tax rate. However, the amount that can be tax-deducted from the total income of any one year is capped at €100,000. Therefore, a total investment of €600,000 in shares in the new company can be used to claim a refund of all income tax paid in the previous six years.

There are a number of conditions to be met in relation to the investor and the type of business undertaken by the new company in order for the relief to apply. The income tax relief available under the Seed Capital Scheme is due to run until 31 December 2013.

Business Expansion Scheme

The Business Expansion Scheme (BES) provides tax relief to individuals for the purchase of ordinary shares in new or existing businesses that carry out qualifying trading operations, including certain manufacturing, tourist, service, R&D and recycling operations.

Companies can use this relief to raise funds. The maximum amount that a company can raise from the BES is €2 million, subject to a maximum of €1.5m in any 12-month period.

The BES allows the individual investors to obtain income tax relief on their investments. The maximum investment amount on which an individual may obtain income tax relief is €150,000 per annum. Relief is available at the investor's marginal rate of income tax. There are a number of conditions that must be satisfied for the relief to apply.

Employment and Investment Incentive Scheme

The BES and Seed Capital schemes have been replaced by the Employment and Investment Incentive Scheme (EIIS). The scheme is subject to approval from the European Commission at time of writing, but the key reforms proposed are as follows:

- » Certain limitations on the businesses who can avail of the scheme will be removed. This means that the scheme will become available to the majority of small and medium sized trading companies.
- » The maximum level of funding that a company can raise through the EIIS will be €10m (compared to €2m under the BES). The maximum amount which can be raised by a company in any one year will increase to €2.5m
- » The required holding period for shares will be reduced from 5 years to 3 years. The tax relief for investors will be reduced from 41% to 30% in recognition of the reduced holding period.
- » A further 11% tax relief will be provided at the end of the holding period where it is proven that employment levels have increased at the company or the company has increased its expenditure on research and development.

Introduction of the scheme is subject to EU approval and a Ministerial Commencement Order, the existing BES and Seed Capital regimes remain in force until then.

Deduction for finance costs

Where full-time or part-time employees or directors of a company have taken out a loan to invest in or lend to their employer company or a connected company, they can get income tax relief for interest paid by them on the loan. The relief is available at the individual's marginal rate of income tax. There are a number of conditions including:

- » Where the funds are loaned to the company, interest relief is available only if they are used wholly and exclusively for the company's business or trade.
- » The company must be either a trading company or a parent company of a trading company.
- » No relief may be obtained in respect of interest on loans to acquire shares that qualify for BES or Seed Capital Relief.
- » There will be no relief for individuals on loans taken out after 7 December 2011.
- » The conditions relating to the relief are complex, and you should obtain the advice of an AITI Registered Tax Consultant if you are interested in claiming it.

Part 2 – Ongoing Tax Issues for Your Business

All owners and managers of small and medium-sized businesses should consider the following tax issues.

2.1 Ongoing Tax Considerations

It is advisable that you review your tax position on a regular basis to determine whether it is appropriate to register for certain taxes that may not have been relevant for the business before, e.g. RCT, VAT (on reaching the VAT registration thresholds). Your business structure may also change – e.g. as the business expands, a corporate structure may become more appropriate, and this will give rise to different tax considerations, as outlined in Part 1.

2.2 Cash-Flow Tips

It is important that you review the following to consider possible improvements to your business's cash-flow.

Tax	Cash-flow tips
VAT	<ul style="list-style-type: none"> • Consider filing via ROS to avail of extended filing and payment deadlines. • Review total VAT payable to see if your business is eligible to file returns and make payments on a less frequent basis or via direct debit. • File your returns on time to avoid interest. Revenue's interest rate is calculated on a daily basis and equates to an annual rate of 10%.

VAT	<ul style="list-style-type: none"> • Consider availing of the VAT “cash-receipts” basis. This helps to avoid the cash-flow difficulty of accounting for VAT on a supply when the invoice has not been paid by the customer. More information on the cash-receipts basis and how to opt in is available from the Revenue website. • Consider whether a claim for bad-debt relief can be made. Where bad debts arise and VAT has been accounted for on the supply, there may be scope for VAT bad-debt relief to be claimed. • Ensure that you receive proper VAT invoices in relation to expenses to reclaim all VAT incurred. • Review turnover to see if it has fallen below the obligatory registration level. This is particularly helpful if your sales are to non-registered persons and if you are not normally in a constant VAT refund position. The threshold for the sale of goods is €75,000 per annum and for services is €37,500 per annum. • Where at least 75% of your turnover is sales to customers outside of Ireland, it may be possible to register with Revenue to receive all supplies without VAT. Applications for authorisation should be made on Form VAT 13A, which is available from the Revenue District responsible for your tax affairs or may be downloaded from the Revenue website under “VAT Forms”.
PAYE/PRSI	<ul style="list-style-type: none"> • Consider filing via ROS to avail of extended filing and payment deadlines. • Review total PAYE/PRSI payable to see if your business is eligible to file returns and make payments on a less frequent basis or via direct debit. • Consider where employer PRSI savings may be made if you are taking on new employees: <ul style="list-style-type: none"> » Where your business is taking on new employees, consider the Revenue Job Assist Scheme, which gives your business a double tax deduction for wages and employer PRSI for the first three years in respect of each eligible job where the employee was previously unemployed for 12 months or more. » Your business may qualify for the Employer (PRSI) Job Incentive Scheme. Under this scheme, where an employer creates a new job and employs a person who has been unemployed for six months or more, there will be no employer PRSI contributions for the first 12 months of the employment. You can only get an exemption from employer’s PRSI for a limited number of employees. This limit is 5% of your existing workforce or, for smaller companies, a maximum of 5 new jobs. » Consider the potential reduced rates of PRSI that may apply if you are implementing pay cuts or engaging new staff. The lower rate of employer PRSI (of 8.5%) has been halved for all jobs that pay up to €356 per week from 1 July 2011.

PAYE/PRSI	<ul style="list-style-type: none"> • Be vigilant if you pay employees mileage and subsistence rates, as the “tax-free” rates have reduced significantly. • Note that if your business is awaiting a statutory redundancy rebate and is experiencing particular difficulties in meeting its tax obligations as a result, there is a facility to offset the rebate against the tax due. • Pay your liabilities on time to avoid interest. Revenue’s interest rate is calculated on a daily basis and equates to an annual rate of 10%.
Income tax	<ul style="list-style-type: none"> • Consider filing via ROS to avail of extended filing and payment deadlines. • Review trading losses in the business. If you are a sole trader, it may be possible to offset any trading losses against tax on other income in the year. • If your spouse works in the business, review whether it would be beneficial to pay him or her a salary to avail of the increased standard-rate tax band for a married couple. • Reclaim any withholding tax (RCT and PSWT) at the earliest possible dates. • Consider pension payments as a means of reducing your taxable income. • Pay your liabilities on time to avoid interest. Revenue’s interest rate is calculated on a daily basis and equates to an annual rate of 8%.
Corporation tax	<ul style="list-style-type: none"> • Ensure that your returns and payments are made on time to avoid surcharges of up to 10%. • Ensure that sufficient preliminary tax is paid in order to avoid possible interest charges (at an annualised rate of 8%). • Review trading losses in the business. Any surplus trading losses can be offset against profits of the previous accounting period, which may result in a refund of corporation tax. • Consider tax relief for R&D. Any claim must be made within 12 months of the end of the relevant accounting period. • Scrapping old assets on which capital allowances are available may create a balancing write-off. • Reclaim any withholding tax (RCT and PSWT) at the earliest possible dates. • Where a company is regarded as a “close company” (see Section 2.4), avoid the 20% surcharge by ensuring that sufficient distributions are made in a timely fashion.

2.3 Maximise Tax Reliefs

You should ensure that your company is benefiting from any reliefs that may be available. The following are some of the more common reliefs to consider:

- » business expenses,
- » research and development (R&D) tax credit,
- » losses,
- » capital allowances,
- » tax exemption for patents and
- » intellectual property.

2.3.1 Business expenses

You can claim a tax deduction against your business profits for any business expense that you have incurred in order to earn your profits. These expenses are normally referred to as revenue expenditure. Revenue expenditure is your day-to-day running costs and it covers such items as wages, rent and running costs of vehicles or machinery.

There are, however, certain expenses for which you cannot get a deduction for tax purposes. The general rule is that you cannot claim for any private expenses, i.e. any expense that is not wholly and exclusively paid for the purposes of the trade or profession. Client entertainment expenditure (i.e. the provision of accommodation, food, drink or any other form of hospitality) is specifically disallowed, and therefore you cannot claim a tax deduction for such expenses.

Furthermore, you cannot deduct capital expenditure in calculating your taxable profits; however, you can claim what are known as capital allowances on certain expenditure (see Section 2.3.4).

2.3.2 R&D tax credit

As an incentive to companies carrying out certain R&D activities, a tax credit was introduced. If the annual level of expenditure on qualifying R&D incurred by a company has increased over the level of such expenditure in 2003, a tax credit of 25% of the incremental expenditure is given. This is in addition to the normal deduction for revenue expenditure against the 12.5% corporation tax rate. For example, if a company spends €10,000 more on qualifying R&D in the year to 31 December 2010 than it did in the year to 31 December 2003, it will reduce its corporation tax liability by €3,750 in respect of this additional expenditure, (i.e. €10,000 x 25% + €10,000 x 12.5%). The relief must be claimed within 12 months from the end of the accounting period.

Any excess credit not used in the current period can be carried back against profits of the prior period and can give rise to a tax refund. Where a company does not have a liability that can be reduced or refunded by the tax credit (i.e. a loss-making company), the unused tax credit can be repaid over a three-year basis subject to certain limitations. Recent changes in legislation mean that the amount that

can be refunded has increased to a maximum amount equal to the payroll liabilities of two years, (i.e. the current and prior year). This cap may not apply in full where a refund of credits has been received in the past by reference to the corporation tax paid. For those with a 31 December accounting period this new cap will apply from the 2012 accounting period.

A tax credit of 25% of the full cost of a building used for the purposes of R&D can be available, subject to certain conditions. There are provisions for a clawback of relief where the building is sold or used for a non-R&D purpose within 10 years.

This can be a very useful relief for companies in the SME sector, but many are not aware that they would qualify for this relief. A recent KPMG survey found that only 6% of SMEs claim R&D credits.

This R&D relief is available only to companies. You may wish to consider incorporating if qualifying R&D expenditure is incurred as part of your business. This relief is not limited to “white coat” scientific research but also includes “brown coat” development work in design and engineering that involves overcoming difficult technological problems. This can include creating new processes, products or services, making appreciable improvements to existing ones, and even using science and technology to duplicate existing processes, products and services in a new way. Some examples of qualifying activities include software development, engineering design, new construction techniques, bio-energy, “clean-tech”, agri-food, and life and health sciences.

Tip

- Review your business activities to determine if you qualify for R&D tax credits.

2.3.3 Losses

This can be a complex area, and specialist advice is recommended. Ultimately, the relief available for losses will depend on whether the business is operated as a sole trader/partnership or through a company. In both cases it is important that losses are maximised and that any prior-year refunds are claimed in a timely manner.

If you are a sole trader/partnership, it may be possible to offset any trading losses arising for a particular year against other taxable income in that year. To the extent that the loss is not fully absorbed in this way, it may be carried forward and relievable against future trading profits **from the same trade**. Special loss rules apply in relation to a sole trader/partnership business that is winding up.

In the case of incorporated businesses, a trading loss in an accounting period may generally be offset against the following:

- » other trading income (and foreign dividends taxable at 12.5%) that arise in the same accounting period,
- » trading income in the immediately preceding accounting period and
- » trading income of future accounting periods.

To the extent that the loss cannot be used against trading income, it can be converted into a tax credit that may be used to reduce the corporation tax payable on passive income and chargeable gains. Special loss rules also apply in relation to an incorporated business that is winding up.

2.3.4 Capital allowances

A capital allowance is a tax deduction for expenditure incurred on capital equipment, e.g. office furniture. It is worth reviewing your fixed-asset register to see if you are claiming capital allowances on all qualifying assets. Capital allowances may be claimed in respect of expenditure incurred on:

- » plant and machinery, including fixtures and fittings (12.5% p.a.),
- » motor vehicles (12.5% p.a.) and
- » industrial buildings (4% p.a.).

Certain properties in tax-incentivised areas may also qualify for increased allowances.

Accelerated capital allowances (i.e. a tax write-off given over a shorter period) are available on cars that have low CO² emissions and for expenditure on certain energy-efficient equipment (e.g. electric and alternative-fuel vehicles, lighting, heating and ventilation systems).

Tip

- Ensure that any invoices for purchases of the above items are included in the current year if purchased close to the year-end. This will enable you to claim a full period's capital allowance in the current year.

2.3.5 Tax exemption for patents

Prior to November 2010, if you or your business had invented a product or process that involved radical innovation, that you patented, you may have been able to receive tax-free royalty income in respect of the use of that product or process. This exemption has been withdrawn.

2.3.6 Intellectual property

If your company has acquired certain intangible assets, it may be entitled to claim a tax write-off for the capital cost of the acquisition. From May 2009, tax relief is available for capital expenditure incurred by companies on a broad range of intangible assets, including trade names, brands, know-how, publishing titles, copyright and goodwill directly attributable to those intangibles. This tax write-off can be in line with the accounting write-off or, if the asset is not amortised in the accounts or is a long-life asset, a company can elect to apply the tax write-off over 15 years. Relief for the capital expenditure and any interest costs is restricted to 80% of the related annual income. Any unused allowances may be carried forward. A clawback of the relief can arise if the intangible assets are sold within 10 years.

2.4 Be Aware of the Rules Relating to “Close” Companies

A close company is a company that is controlled by five or fewer shareholders (a “shareholder” for these purposes is not necessarily a single party but can include related or associated parties) or is controlled by its directors. The vast majority of companies in the SME sector are close companies, and it is important to be aware of the specific tax consequences that arise on transactions involving such companies.

These include:

- » A 20% surcharge may be levied on the after-tax non-trading income of a company that is not paid out as a dividend within 18 months of its year-end.
- » A 15% surcharge arises on 50% of professional services income of a company if the income is not distributed within 18 months (it is important to consider whether your business would be regarded as carrying on professional services).
- » Interest paid on directors’ loans may be treated in certain circumstances not as a tax-deductible expense but as a distribution (or dividend) paid to that director.
- » Other expenses incurred by a company for its directors may also be treated as distributions instead of tax-deductible expenses. The result is that expenses cannot be offset against the trading income of the company, leading to a tax cost of 12.5% of the expenses paid.
- » Companies must pay a “deposit” to Revenue on loans made by the company to its shareholders of 25% of the net loan amount. The close company obtains a refund of this deposit only when the loan is repaid by the shareholder. The company loses the deposit if the loan to the shareholder is written off. It is also important to note that there are company law regulations governing loans to directors. In particular, loans exceeding 10% of a company’s net assets breach company law. Breaches of company law can result in prosecution.
- » Close companies and their owners can incur high effective tax rates as a result of the complex rules above, particularly where the company is in receipt of rental or other non-trading income.

2.5 Dealing with the Revenue Commissioners

2.5.1 Revenue audits

Most businesses should expect a Revenue audit at some stage in their life cycle. If you have been selected for audit, it is important that you prepare correctly and disclose any errors or underpaid tax at the start of the audit. If this is done correctly, it will minimise the cost to your business through:

- » significantly reduced penalties,
- » non-publication on the list of tax defaulters and
- » non-prosecution under criminal law.

Early co-operation can be beneficial in arriving at a settlement. Revenue has issued a “Code of Practice for Revenue Audit”, which sets out your rights and the procedures to follow to minimise penalties etc., and it is advisable to seek correct advice on your rights, obligations and the benefits of dealing correctly with the Revenue audit.

If you have not been selected for audit but have realised that you have underpaid tax, it is possible to make an unprompted voluntary disclosure, which, if correctly done, will also result in the above benefits.

2.5.2 Managing cash-flow difficulties and tax arrears

Although Revenue acknowledges the significant cash-flow difficulties facing many businesses, it has stated clearly that it “cannot and will not become a banker of last resort”. It will, therefore, pursue tax debts in a timely manner.

If a tax liability runs into arrears and Revenue has not recovered the tax under the normal demands, it has the following powers:

- » It can refer the debt collection to the Revenue Sheriff, who can seize assets of the business and sell them to pay the tax debts.
- » It can issue a “power of attachment order” to a debtor who owes the taxpayer money, requiring the money to be paid directly to Revenue.
- » A court judgment against the taxpayer can be sought, which can result in the forced sale of assets, an instalment order or a bankruptcy petition.

In recognition of the cash-flow difficulties facing taxpayers, Revenue established the “Case Decision Escalation Framework” (available on its website), which provides for procedures to help to manage business tax debts without having to instigate the more serious recovery methods set out above. Therefore, in dealing with Revenue it is vitally important that you or your AITI Registered Tax Consultant communicate properly and work with Revenue to allow it to restructure the tax debt, e.g. to agree a phased payment basis.

2.6 Employment-Related Issues

2.6.1 Employed v self-employed

If an employer does not deduct PAYE, PRSI and USC on payments made to a person under the mistaken belief that he or she is self-employed rather than an employee, Revenue is likely to pursue the employer. Revenue has issued a “Code of Practice for Determining the Employment or Self-employment Status of Individuals”, which can be found on its website. This is an area that Revenue is currently actively reviewing and is the subject of numerous Revenue audits. Each engagement should be looked at case by case, with careful consideration given to whether the individual is an employee or sub-contractor.

Before any contractor is paid without the deduction of PAYE/PRSI and USC, steps should be taken by the employer to ensure that the individual qualifies as a self-employed person for tax purposes. You should review the terms of any sub-contractors that you engage to ensure that they would not be regarded as employees.

If you are in doubt about whether an individual is an employee or is self-employed, you should seek advice from an AITI Registered Tax Consultant.

2.6.2 Tax relief for certain new employees

If you are considering hiring new employees, bear in mind the Revenue Job Assist Scheme and the Employer (PRSI) Incentive Scheme. More details on these schemes and the tax or employer PRSI savings that they may provide are given in Section 1.6.1.

2.6.3 Tax relief for termination payments

Many businesses will be faced with the necessity to reduce staff numbers at some stage. If you have to reduce staff numbers, you should consider the following relevant points.

Statutory redundancy rebates

Where statutory redundancy must be paid by the employer to departing employees (typically, where the employee was employed continuously for two years, but see also www.djei.ie for other conditions), the employer is entitled to a 60% rebate from the State. In many cases, there can be delays in receiving this rebate, which can give rise to cash-flow difficulties for the business. Revenue has agreed, on application, to reduce any outstanding tax liabilities by the amount of rebate due if a business is experiencing particular difficulties in meeting its tax obligations as a result of the delayed receipt of the rebate. This is a very welcome scheme and can avoid a business encountering unnecessary tax defaults. The appropriate form for completion is available on Revenue's website.

Relief for other redundancy payments

In many cases, the employer may decide to give the employee a redundancy package in excess of the statutory requirements. In such cases, it is important to note that, in the absence of reliefs, PAYE and USC should be operated on such payments. Significant reliefs are, however, available where employees do not have a contractual entitlement to such payments. In addition to the statutory redundancy, a basic exemption of €10,160 plus €765 for each complete year of service can be paid without the operation of PAYE/PRSI or USC. Subject to Revenue approval, this can be increased by a further €10,000 if no tax-free lump sum was received by the employee within the previous 10 years and no tax-free lump sums are payable from an occupational pension scheme. This relief requires prior Revenue approval, and the employer should not apply the relief in making the payment until that approval is received from Revenue. There is also a further method, commonly referred to as the SCSB (Standard Capital Superannuation Benefit), which can result in further increased tax-free lump sums, particularly

for those with long service and/or on high remuneration packages. Any amounts given in excess of the reliefs will be subject to PAYE, and the USC, which should be withheld from the termination payment to the employee. Employee PRSI and employer PRSI are generally not payable on termination payments.

2.6.4 Employing family members

If your spouse or other family members are to be involved in running the business, you should note that:

- » Salary costs will be deductible in computing profits of the trade only insofar as they are incurred wholly and exclusively for the purposes of the trade. Therefore, the duties of the family member should be clear.
- » PAYE/PRSI/USC obligations can arise on any salary paid, with corresponding tax filing obligations.
- » A PAYE credit is not available to a director who controls more than 15% of the ordinary share capital of a company. Similarly, the spouse of such a director cannot claim a PAYE credit. The PAYE credit may be claimed by children of the director who work full-time in the business in certain circumstances.

2.6.5 Remuneration of employees

When structuring an employee's remuneration package, the following points should be borne in mind:

- » It is possible to make a discretionary annual non-cash gift to each employee of up to €250 without the requirement to operate PAYE, PRSI or USC. If this is provided for in the contract, it will not be regarded as discretionary.
- » Travel passes can also be provided to employees without deduction of PAYE, PRSI or USC. In addition, the provision of bicycles and safety equipment to employees who cycle to work is exempt from PAYE, PRSI and USC, subject to certain limits.
- » Employer PRSI is chargeable on 50% of the pension contributions paid by employers for the benefit of employees. In most cases, employer pension contributions are not treated as a taxable benefit-in-kind in the hands of the employee.
- » Other non-cash remuneration (other than pension contributions) are subject to PAYE, PRSI and USC. Care must be taken to ensure that tax is being deducted accordingly, as the employer will be liable for any underpayment. Such benefits are referred to as benefits-in-kind and include private use of a company car, payment of medical insurance on behalf of an employee and free use of accommodation.

Part 3 – Transfer or Sale of Business

There are many tax and commercial issues to consider when selling or transferring your business. Every set of circumstances will be different and will give rise to different tax issues. It is important that specialist and timely advice is received.

It is beyond the scope of this summary to give a detailed analysis of all of the tax implications on the transfer or sale of a business; however, the following tax heads and associated reliefs may be relevant and should be considered.

3.1 Capital Gains Tax (for the Seller)

Capital gains tax is a tax on gains arising from the sale or transfer of assets. Therefore, a CGT charge may arise for you if you sell or transfer shares in your private company and that sale or transfer results in a gain. Similarly, you will need to consider CGT implications if you sell or transfer assets of your unincorporated business.

The standard rate of CGT is currently 25%. At its very simplest, a gain for CGT purposes is calculated on the difference between the sale proceeds and the aggregate cost of the asset. However, it is important to note that, where the transaction involves a gift or sale at undervalue (e.g. between related parties), the consideration received can be replaced by the market value for the purposes of ascertaining the CGT liability. For details of the tax filing and payment deadlines for CGT see Section 1.4.5.

3.1.1 Main reliefs/exemptions

The following reliefs/exemptions from CGT may apply and should be considered.

Retirement relief

This provides CGT relief for a person who is aged 55 or over on the sale or transfer of business assets that he or she has owned for 10 years or more. A number of other conditions also apply. Business assets can include personally held assets used in the trade and shares in a family company.

Where the transfer of the business assets is to a child (and certain nieces/nephews or grandchildren in limited circumstances), retirement relief can provide complete exemption from CGT. For transfers of

business assets to anyone other than a child, there is currently a limit of €750,000 on the proceeds in respect of which CGT relief may be claimed (marginal relief may apply where the proceeds exceed that limit).

Despite the name, retirement relief may be available where the individual remains actively engaged in the business after the transfer. Where the conditions are met, the relief can be applied automatically. This can be a complex relief, and various conditions apply. Each case will need to be reviewed in detail, and specialist advice should be sought.

Transfers on death

No CGT liability arises where assets (including company shares or other business assets) are transferred on the death of the business owner (e.g. through his or her will). The recipient of the asset will be considered to have bought the asset for its market value at the time of death. This is relevant for CGT purposes if and when the beneficiary subsequently sells the asset.

Other CGT reliefs and exemptions may be relevant on the transfer or sale of assets, and specialist advice from an AITI Registered Tax Consultant should be sought.

3.2 Gift Tax/Inheritance Tax (for the Recipient)

If you are transferring shares or other business assets at undervalue – for example, by way of gift or inheritance – the recipient may be subject to capital acquisitions tax (CAT). CAT is the charge to tax that applies when you receive a gift or an inheritance. The current rate of CAT is 25% on the value of the gift or inheritance that exceeds a tax-free amount (“threshold”). The tax-free threshold that applies will depend on your relationship to the person from whom you received the gift or inheritance (the “disponer”). There are three categories of tax-free threshold. For gifts or inheritances received in 2011, the amounts of those tax-free thresholds are outlined below.

Relationship to disponer	Group	Threshold 2010
Son/daughter/child of civil partner	A	€332,084
Brother/sister/niece/nephew/grandchild/parent (in some circumstances, a parent taking an inheritance from a child can qualify for the Group A threshold)	B	€33,208
Others	C	€16,604

It is important to note that these are lifetime thresholds. This means that, in determining the amount of threshold that you can avail of, you need to include the value of previous gifts or inheritances that you received from all persons in that threshold group. CAT at 25% is payable on the excess of the value of the gift or inheritance you received over the tax-free threshold amount.

3.2.1 Main reliefs/exemptions

There are a number of reliefs and exemptions from CAT that may apply. The following are some of the most relevant ones in the context of transferring a business asset. This is not an exhaustive list, and specialist advice from an AITI Registered Tax Consultant is recommended.

- » There is no CAT liability on a gift or inheritance from a spouse.
- » Where applicable, business property relief allows certain business assets (including shares in certain family companies) to be transferred at an effective CAT rate of 2.5%, as opposed to the normal rate of 25%. In effect, this relief reduces the taxable value of the gift or inheritance to 10% of the market value. It is subject to a number of conditions.
- » Similar to business property relief, agricultural property relief allows certain agricultural assets (including land and machinery) to be transferred at an effective CAT rate of 2.5%, as opposed to the normal rate of 25%. This relief also effectively reduces the taxable value of the gift or inheritance to 10% of the market value, subject to a number of conditions.

3.3 Stamp Duty (for the Recipient)

The rate of stamp duty depends on the type of property that is being transferred. Stamp duty is charged at 1% on the value of shares. Transfers of other forms of property (other than stocks and shares and residential property) attract stamp duty at rates of up to 6% depending on the consideration paid. Different rates apply to residential property.

3.3.1 Main reliefs/exemptions

The following are some of the main stamp duty exemptions and reliefs that should be considered in the context of transferring a business:

- » There is no stamp duty charge where assets pass on a death.
- » Transfers of assets between lawful spouses are exempt from stamp duty (this can include certain transfers on divorce).
- » Stamp duty rates are halved for transfers of property (other than shares or residential property) between certain related persons.
- » Certain “young trained farmers” may qualify for exemption from stamp duty on the receipt of certain agricultural assets. For more information on this exemption, refer to Revenue’s leaflet “Stamp Duty Relief for Young Trained Farmers”, which is available from the Revenue website.

The above is not a comprehensive overview of the stamp duty considerations on the transfer of a business asset, and specialist advice from an AITI Registered Tax Consultant should be sought.

It should be noted that the reliefs available for spouses will also apply to qualifying civil partners. See Revenue’s website for more details.

3.4 VAT

VAT may arise on the transfer of a business by way of gift or sale. This will depend on the parties to the transaction and the nature of the assets being transferred. However, where the assets are capable of being run as a business, subject to satisfying certain conditions, relief from VAT on the sale or transfer may be available. The transfer of a business to a person who is not registered or entitled to register for VAT in Ireland is not covered by this relief. More information on this relief is available on the Revenue website.

3.5 Income Tax/Corporation Tax (for the Seller)

The transfer or sale of a business may give rise to income tax or corporation tax issues that should be considered in advance. The following are some of the issues that should be considered; however, this is not a comprehensive overview of all of the potential issues. Each of the following is subject to complex rules, and it is recommended that specialist tax advice from an AITI Registered Tax Consultant be sought.

- » If income tax relief was obtained on the acquisition of shares in the business, it is important to consider whether the sale of the shares could give rise to a clawback of the income tax relief.
- » Where capital allowances have been claimed on assets (fixtures and fittings etc.), the sale of those assets before the expiry of their tax life may give rise to a balancing allowance or a balancing charge.
- » Special cessation rules apply to calculating the taxable income for your final accounting period.
- » Where losses were incurred in your last year, these may be offset against gains for the last three years of trading.

Appendix 1: Tax Rates

We include a summary of the most common current tax rates, credits and thresholds in this Appendix.

Income Tax Rates

Personal Circumstances	Tax Year 2010	Tax Year 2011
	€	€
Single/Widowed without dependent children	36,400 @ 20% Balance @ 41%	32,800 @ 20% Balance @ 41%
Single/Widowed qualifying for One-Parent Family Tax Credit	40,400 @ 20% Balance @ 41%	36,800 @ 20% Balance @ 41%
Married Couple (one spouse with income)	45,400 @ 20% Balance @ 41%	41,800 @ 20% Balance @ 41%
Married Couple (both spouses with income)	45,400 @ 20% (with an increase of 27,400 max.) Balance @ 41%	41,800 @ 20% (with an increase of 23,800 max.) Balance @ 41%

Note: The increase in the standard rate tax band is restricted to the lower of €27,400 in 2010 and €23,800 in 2011 or the amount of the income of the spouse with the lower income. The increase is not transferable between spouses.

Income Tax Exemption Limits

Personal Circumstances	Tax Year 2010	Tax Year 2011
	€	€
65 years of age or over	20,000	18,000
Married, 65 years of age or over	40,000	36,000
Additional for 1st and 2nd dependent child (each)	575	575
Each subsequent dependent child	830	830
Marginal Relief Tax Rate	40%*	40%*

Taxpayers with low levels of taxable income may be exempt from tax altogether as a result of the tax credits available to them.

* The Marginal Relief Tax Rate applies only to persons 65 years of age or over.

Main Personal Tax Credits

Personal Circumstances	Tax Year 2010 €	Tax Year 2011 €
Single Person's Tax Credit	1,830	1,650
Married Person's Tax Credit*	3,660	3,300
Widowed Person's Tax Credit*		
– qualifying for One-Parent Family Tax Credit	1,830	1,650
– without dependent children	2,430	2,190
– in year of bereavement	3,660	3,300
One-Parent Family Tax Credit*	1,830	1,650
(with qualifying dependent children)		
Widowed, Deserted, Separated or Unmarried		
Home Carer's Tax Credit (max.)	900	810
PAYE Tax Credit	1,830	1,650
Age Tax Credit		
– Single/Widowed*	325	245
– Married*	650	490
Incapacitated Child Tax Credit	3,660	3,300
Dependent Relative Tax Credit	80	70
Blind Person's Tax Credit		
– single person	1,830	1,650
– one spouse blind	1,830	1,650
– both spouses blind	3,660	3,300
Additional Relief for Guide Dog	165	165
Incapacitated Person		
Allowance for Employing a Carer	50,000** max.	50,000** max.

* Since 1 January 2011 qualifying civil partners have similar entitlements to married couples. More information on the tax treatment of civil partners is available on Revenue's website.

**Relief for Employing a Carer is allowable at the individual's highest rate of tax, i.e. 20% or 41% in 2010 and 2011.

Universal Social Charge

The Universal Social Charge (USC) which came into effect on 1 January 2011, is a tax payable on gross income, including notional pay, after any relief for certain trading losses and capital allowances, but before pension contributions. The USC effectively replaces the health contribution and income levy.

All individuals are liable to pay the USC if their gross income exceeds the threshold of €4,004 p.a. (€77 per week).

The standard rates and income thresholds are as follows:

Part of Aggregate Income	Rate			
	Aged under 70 years		Aged 70 years and over	
	No Medical Card	With Medical Card	No Medical Card	With Medical Card
The first €10,036	2%	2%	2%	2%
The next €5,980	4%	4%	4%	4%
The remainder	7%	4%	4%	4%

Rates applying to “relevant income” in excess of €100,000 are as follows:

Rate			
Aged under 70 years		Aged 70 years and over	
No Medical Card	With Medical Card	No Medical Card	With Medical Card
10%	7%	7%	7%

Notes:

- (i) “Relevant income” is basically self-employment income and almost all forms of income that are not subject to PAYE.
- (ii) The above higher rates only apply to relevant income in excess of €100,000

PRSI 2011

There are a number of classes that can apply for PRSI purpose; please refer to the Department of Social Protection website for further details at www.welfare.ie. We illustrate below the rates applicable to the more common employee Class A1 (where the employees earns more than €500 per week) and the self employed (Class S1).

Employees are exempt from PRSI on the first €127 per week. Employee's earning less than €352 per week are exempt from PRSI. The employees' annual earnings ceiling has been abolished.

The lower rate of employers PRSI (of 8.5%) has been halved for jobs that pay up to €356 per week. This applies from 1 July 2011.

Employees (Class A1): 1 January 2010 to 31 December 2010

Weekly pay band	How much of weekly pay	Contributors	Rate
More than €500	All	Employer	10.75%
	First €127	Employee	0%
	Balance	Employee	4%

Self-employed persons (Class S1): 1 January 2010 to 31 December 2010

Weekly income	PRSI rate
More than €500	4%

Where reckonable income for a self-employed person is less than €5,000, no PRSI liability arises.

Income Levy for 2010

Details on the income levy for 2010 are set out below and is relevant to tax returns for the 2010 tax year. The income levy (and health levy) were replaced from 1 January 2011 with the USC. The income levy applied on gross income from all sources before any tax reliefs, capital allowances, losses or pension contributions. The 2010 annual rates and thresholds of the income levy were as follows:

2%	Income up to €75,036 per annum
4%	Income between €75,037 and €174,980 per annum
6%	Income in excess of €174,980

The income levy did not apply to:

- individuals who hold full medical cards (a "GP-only" medical card is not a "full" medical card),
- individuals whose annual income does not exceed €15,028,
- individuals aged 65 or over whose annual income does not exceed €20,000,
- married couples, one or both of whom are aged 65 or over, who are jointly assessed and whose combined annual income did not exceed €40,000
- social welfare payments,
- Income subject to DIRT.

PRSI and Health Levy 2010

Please note the income levy (and health levy) were replaced from 1 January 2011 with the USC, PRSI remains. Employees are exempt from PRSI on the first €127 per week but not from the health levy. Employees earning €352 or less in any week are exempt from PRSI for that week. Where earnings exceed €352 per week, the employee's PRSI-free allowance remains at €127 per week.

Employees who earn less than €500 in any week in the tax year 2010 were exempt from the health levy for that week. Self-employed individuals whose income for 2010 did not exceed €26,000, were exempt from the health levy for the year.

Employees (Class A1): 1 January 2010 to 31 December 2010

Weekly pay band	How much of weekly pay	Contributors	Rate on first €75,036	Rate on balance over €75,036
More than €500	All	Employer	10.75%	10.75%
	First €127	Employee	4%	4%
	€127.01 – €1,443	Employee	8%	4%
	Balance	Employee	9%	5%

Self-employed persons (Class S1): 1 January 2010 to 31 December 2010

Annual income	PRSI and health levy rates
Less than €3,174	0%
€3,175 to €26,000	Greater of €253 or 3% (PRSI only; no health levy)
€26,001 to €75,036	7% (includes 4% health levy)
Over €75,036	8% (includes 5% health levy)

Note: the above rates also apply to proprietary and non-executive company directors not insurable under Class A.

VAT

Current VAT rates

Rate	Supply
21%	This is the standard rate of VAT in Ireland (effective from 1 January 2010). It applies to supplies not subject to the rates below.
13.5%	Fuel for heating and certain other goods and services
9%	A reduced rate of VAT applies to supplies of certain services, largely in the tourism industry. A full list is available on Revenue's website
5.2%	Farmers' flat-rate addition
4.8%	Livestock, greyhounds and the hire of horses
0%	Exports, certain food and drink, oral medicine, certain books and booklets, certain animal feeding stuffs, certain fertilisers, seeds and plants used to produce food, clothing and footwear appropriate to children under 11 years of age

There are many variations to the rates above, including exempt-rated supplies (exempt goods and services consist principally of financial, medical and educational activities, as well as admissions to and promotion of certain live theatrical and musical performances).

VAT is a complex area, and it is recommended that you contact an AITI Registered Tax Consultant for further details.

Appendix 2: Some Useful Links

www.taxinstitute.ie

www.djei.ie

www.revenue.ie

www.ida.ie

www.sfa.ie

www.enterprise-ireland.com

www.forfas.ie

www.enterpriseboards.ie

www.finance.gov.ie

www.ibec.ie

www.ibec.ie/gradlink

www.fas.ie

www.welfare.ie

www.cro.ie

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