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# 2015 WHAT LIES AHEAD?

We do not yet have the full economic dataset for 2014, but it is clear that on most fronts it was the most positive year for the Irish economy since 2007. In the first 9 months of the year gross domestic product (GDP) expanded by 4.9% and for the full year growth is likely to come in around 4.7%.

The growth performance was broadly based with exports, business investment spending, foreign direct investment, construction activity, tourism, the agri-food sector, and car sales all making a strong contribution. On the back of this growth performance, the unemployment rate fell to 10.6% of the labour force, the public finances improved although we still borrowed more than €8 billion to run the country, and the 2 large Irish banks returned to profitability and credit conditions improved somewhat, but the economy is still not getting anything like enough credit.

The most fragile part of the recovery story was undoubtedly the personal sector and most businesses interacting with the hard-pressed personal sector found the environment challenging. There are no surprises here because the personal tax burden has increased dramatically since 2008, employment levels fallen and wages have been stagnant at best for most workers.

**CONTINUED OVERLEAF**



# 2015 WHAT LIES AHEAD?

...CONTINUED

The economy has entered 2015 with a strong momentum. All economic indicators are suggesting that the recovery is reasonably robust. Notwithstanding the ongoing impact of the patent issue, exports are doing well; the labour market is continuing to improve; construction and housing activity is strengthening, particularly in the Dublin area; manufacturing output is strong; and car sales are making a significant contribution to the recovery in retail sales. The main caveat to this upbeat assessment is that excluding car sales, consumer spending is still fragile; many aspects of activity are coming off a very low base and growth rates are somewhat exaggerated; and the recovery has been concentrated in the Greater Dublin Area, although there is emerging evidence that the recovery is spreading. Despite these caveats, the economy is doing well, and considerably better than anybody would have predicted just two years ago.

The key risk factors and challenges facing the Irish economy in 2015 and beyond can be categorised as external and domestic.

## External:

- ➔ The Euro Zone economic outlook and the effect of quantitative easing;
- ➔ A move to the hard left in Greece following the January 25th election, with possible consequences for its continued membership of EMU;

- ➔ The Russian crisis, and difficulties in Brazil and China;
- ➔ The UK general election in May and the possibility of a referendum on EU membership in 2017; and
- ➔ Ongoing difficulties in Japan.

## Domestic:

- ➔ The high level of sovereign debt;
- ➔ The high level of SME debt;
- ➔ Personal debt and particularly mortgage arrears;
- ➔ The ongoing pressure on personal disposable and discretionary incomes; and
- ➔ Political developments – an election must be held before the end of February 2016. There is no guarantee that a stable government will be possible due to the growing proliferation of Independents. Political stability has been a key factor in selling Ireland to investors in recent years. This is a source of concern because political instability can often result in poor policy making, with long-term negative consequences.

## IRISH ECONOMIC FORECAST

The following economic forecasts are suggested for the next couple of years:

(Averages)	2013	2014e	2015f	2016f
GDP	+0.2%	+4.8%	+3.6%	+3.3%
GNP	+3.2%	+4.0%	+3.3%	+3.0%
ConsumpRon	-0.8%	+1.7%	+2.5%	+1.5%
Investment	-2.4%	+14.7%	+12.5%	+7.5%
Exports	+1.1%	+8.5%	+6.0%	+4.5%
Imports	+0.6%	+8.6%	+5.8%	+4.0%
CPI	+0.5%	+0.2%	+1.0%	+1.4%
Employment	+2.4%	+1.8%	+2.4%	+1.9%
Unemployment Rate	13.1%	11.3%	10.0%	9.3%



**Tax Tip**

A non-cash benefit not exceeding €250 in value per annum can be given to an employee by an employer tax free!

## CAT - Support, Maintenance or Education

Capital Acquisitions Tax (CAT) imposes a charge on individuals who receive a gift or inheritance where the value of the gift or inheritance exceeds their lifetime tax free threshold. Previously no CAT was charged on monies given by an individual during his lifetime for the support, maintenance or education of his or her children.

Finance Act 2014 introduced an amendment whereby the exemption from tax for support, maintenance and education provided during the individuals lifetime only applies to the period during which the child is a minor or, where in full time education is under the age of 25. Therefore maintenance etc provided after the age of 25 may reduce the amount of the child's lifetime tax free amount and ultimately become taxable at a rate of 33%.

To find out exactly what your families position is... talk to us today.



## RCT NEW PENALTIES

From 1 January 2015 the penalties for non-operation of RCT by a principal contractor will be based on the status of the subcontractor as follows:

- ➔ Where the subcontractor is registered with Revenue and is liable to a RCT deduction rate of 0%, the principal will be liable to a civil penalty of 3% of the relevant payment.
- ➔ Where the subcontractor is registered with Revenue and is liable to a RCT deduction rate of 20%, the principal will be liable to a civil penalty of 10% of the relevant payment.
- ➔ Where the subcontractor is registered with Revenue and is liable to a RCT deduction rate of 35%, the principal will be liable to a civil penalty of 20% of the relevant payment.
- ➔ Where the subcontractor to whom the payment was made is not known to Revenue, the principal will be liable to a civil penalty of 35% of the relevant payment.

**In all the above instances the principal will be required to submit an unreported payment notification to Revenue and pay RCT at the appropriate rate.**

## MICRO-BREWERIES RELIEF

Qualifying Micro Breweries which produced up to 20,000 hectolitres of beer in the previous year are eligible for relief to reduce the standard rate of excise for beer by 50%. From 1 January 2015, qualifying co-operating Micro Breweries that produced up to 30,000 hectolitres of beer and up to 60,000 hectolitres of beer respectively in 2014 are also eligible for the relief.

## PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

### INCOME TAX

Return of share options and rights for 2014	31 March 2015
Filing date of 2014 return of income (self-assessed individuals)	31 October 2015
Pay preliminary income tax for 2015 (self-assessed individuals)	31 October 2015

### CAPITAL GAINS TAX

Payment of Capital Gains Tax for the disposal of assets. Made from 1 January 2015 to 30 November 2015	15 December 2015
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### CORPORATION TAX

Filing date for Corporation Tax returns for accounting periods ending in June 2014	21 March 2015
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Balancing payment of Corporation Tax for accounting periods ending in June 2014	21 March 2015
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## RSS1 FORM- RETURN OF SHARE OPTIONS AND OTHER RIGHTS

Companies are obliged to provide information relating to the grant, assignment or release of rights, or the allotment of shares or the transfer of any asset under rights to Revenue. This information must be submitted to Revenue on a Form RSS1 by the 31 March following the year of assessment where such an event takes place. Revenue is currently working on an electronic version of the form, which should be available by end of February. Once available it will be mandatory that the form be submitted electronically. Revenue will issue a further instruction on [www.revenue.ie](http://www.revenue.ie) in due course.





# *Plucking the goose* **TAX TRENDS FOR 2015**

Over four hundred years ago, Jean Baptiste Colbert was to France's Louis XIV what Michael Noonan is to Enda Kenny – Minister for Finance. His most famous quote is that “the art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing”. In 2015, with a general election not far off and apparently positive signs in the economy, what tax trends can we expect domestically and internationally? Who/what will be plucked and will the hissing be deafening?

Before we turn inward, what's happening internationally? 2014 saw massive press coverage on aspects of many EU Member State corporate tax regimes, including Ireland's. Between the “Lux leaks” revelations, US Senate Committee (and other) criticisms of the so-called “Double Irish” structure, mutterings of imminent EU State Aid investigations into alleged sweetheart deals with household names like Apple, Amazon and Starbucks on effective corporate tax rates, as well as the OECD focus on the base erosion and profit shifting project (“BEPS”), international corporation tax competition was a very hot topic. It looks like more of the same for 2015 with tax moving to the front page. In fairness, Minister Noonan moved swiftly in the recent Budget to deal with any potential fallout and there are some changes in the 2014 Finance Act designed to maintain our strong offering in the international arena where we compete for inward investment projects. It is a delicate balancing act, not only in encouraging “geese” to migrate here but also that those already here don't fly away.

Domestically, the Minister flagged that the recent Budget is the first instalment of a plan to progressively reduce the personal tax burden on low and middle income earners. If that works, the volume of hissing may subside (though probably not among the self-employed). But there are challenges and any positive vibes from slight increases in pay packets may be offset by other costs, particularly if “stealth taxes” (e.g. water charges) cause further leakage of cash from pockets. As the economy improves, however, it is likely that more tax will be collected than has been forecast, and that should help moods.

In 2014, Revenue collected €41.3bn in tax, about 80% of which is not collected directly by Revenue but through PAYE, VAT etc. A recent trend, that seems set to continue, is Irish taxpayers will be expected to do more (and at increased costs) in collecting and paying over those taxes. In broad terms, Revenue say that, in return for this assistance, they aim not to bother compliant taxpayers and to encourage voluntary compliance. They say their IT systems are risk-focused and much better at separating compliant from non-compliant, thereby enabling them to focus their Revenue audit and investigation resources on the bad guys. The new Revenue Audit code uses the term “intervention”, which includes any Revenue contact seeking information such as an aspect query (e.g. invoices to support a claim). The volume of audits and, particularly, interventions has grown substantially over the past decade or so, with no sign of that trend reversing. The recent Finance Act has also given Revenue greater powers to deal with anti-avoidance, with more focus likely. Revenue's apparent aim is to demand more assistance from the compliant and focus their resources on the non-compliant.

## Peer to Peer Lending

Peer-to-peer lending is part of a Global Crowd Lending movement that is proving itself a viable alternative to the traditional banks for SME financing;

Governments and Regulators are starting to see it's rise globally and are beginning to see how important a part of the mix it can become. It is a return to 'co-operative' based banking using technology to engage members of the public with the SMEs in their community. With 70% of people in Ireland being employed by SMEs, you can see why their success is important to the public and the local economy.

The big player in the US is [www.LendingClub.com](http://www.LendingClub.com) which has just recently been taken over by Google (so Google are going into banking)! In the UK the prominent player is [www.FundingCircle.co.uk](http://www.FundingCircle.co.uk) and in Ireland, it is [www.LinkedinFinance.com](http://www.LinkedinFinance.com)

With a global over reliance on bank financing for SMEs, alternatives are emerging to fill the void in the last 2 years. The two sides to the equation make it simple to understand why

- A. Banks not lending to SMEs - FACT
- B. Interest rates on savings and deposits in banks are at a very low level, meaning the public can make better returns on these platforms while supporting SMEs in their communities with finance loans.

Through these platforms, creditworthy companies/soletraders can raise funds usually between €5-100k for loans over 12/36/60 months to help their businesses grow. The lenders are the current loyal customers and hundreds of other small lenders looking for a return. Think about it, 250 small lenders lending you 300 euro each is €75,000. But more importantly each of these lenders has a real interest in the business and will seek to support it any way they can. This provides the business with a fantastic marketing opportunity as well as a great alternative to bank loans.

These loans can usually be gotten faster than through the banks, at a lower interest rate and with less personal guarantees and collateral. It can also increase the businesses customer base and loyalty while they raise finance to grow their business.

Once you are approved on these systems businesses can access Loans for

1. Working capital
2. New equipment purchases
3. Sales & Marketing drives
4. New market expansions
5. Hiring new staff

In Ireland [www.LinkedinFinance.com](http://www.LinkedinFinance.com) plan to help finance 5000 Irish SMEs across all sectors (retail, manufacturing, farming, hospitality, wholesale, professional services, etc) to the tune of €250M in the next 3 years

## Should My Business Have An App?

Should my business have an app? Like most things, the answer is not clear-cut. It is important to differentiate between businesses whose apps are their "product" and those whose apps are more of an "extension" of their businesses.

In a lot of cases, a business does not truly need a mobile app. What they do need is to optimize their website for mobile. This is called a responsive site. It basically means that depending on the size of the screen that your website is viewed on, it automatically resizes itself to look great no matter what device your customer is using. The world is quickly going mobile and if you were to check your website analytics right now, you'd probably find that your site is being viewed on more phones and tablets on a daily basis than desktops.

So, what could an app actually do for your business? This of course, is totally dependent on your industry. For example, if you sell garden furniture, it is doubtful that you can invent a reason for your customers to download your app and use it again and again. However, let's say you run a whiskey company. A worthy feature of your app would be to allow the user to look up hundreds of different mixed drink recipes using your whiskey.

The very first thing you need to ask yourself is "has this type of app been built before?". Your goal should be to build something unique or utilitarian. If your competitors are already doing it, don't waste your time, energy or money... Unless you can do it much better. The public are not clambering over themselves to fill their smartphone home screen with apps - in fact, it's the opposite. As the obsession with photos grows, the amount of storage available on the majority of handsets is reducing. However if you can create something new and unique, it has the potential to drive thousands of downloads and if you can monetize, it can become a very lucrative business indeed.



# COMMERCIAL LEASE FROM THE TENANT'S PERSPECTIVE

Are you a business owner looking to rent offices/retail space or industrial units? The aim of this article (part 1 of 2) is to set out some of the important issues that you may face when signing up a commercial lease.

A FRI (Full Repairing and Insuring) lease often is quite onerous for a tenant for obvious reasons – it is drafted by the landlord's solicitor and of course, they want to be able to lay as much responsibility at the tenant's door as possible. Good business solicitors, acting for a tenant, look at very specific things when examining a commercial lease. The ultimate objective is to ensure that the lease reads as favourably as possible for that tenant and limit their exposure to liability where possible.

Some of provisions that would be examined in more detail include:-

- **Rent:** Is the rent fixed or is it a percentage of the turnover? Is vat payable in addition to the rent? Is there a rent free period? Is there a rent review? In relation to rent review, provisions can no longer require upwards only rent.
- **Repair clauses:** Are the repair clauses in the lease fair and reasonable? Are they too onerous? Often repair clauses can create obligations for a tenant to restore the property to a better condition that it was in on taking the lease. Words such as to "keep" or "put" can result in such an obligation.

To deal with this a good solicitor will advise a tenant to engage an engineer and have a schedule of dilapidations (i.e. list of defects in the property) carried out on the property prior to entering into a lease. This schedule is then attached to the lease. This will prevent a landlord subsequently claiming that a tenant is responsible for defects in the property where those defects have been identified and listed on the schedule. Without this schedule, it would be open to a landlord, under the provisions of a lease, to demand that the tenant "repair" the defect. This could be a significant cost to a tenant.

- **Insurance:** who is liable to pay for the buildings insurance? Is the tenant required to pay a contribution towards this or will the landlord insure the building, simply requesting the tenant to pay the premium for this? It is normal for a tenant to have responsibility for taking out other insurance like public liability, employer's liability and contents insurance.
- **Assignment/sub-leasing:** it is quite common to see provision in leases to the effect that a tenant is not allowed to sublet a lease or assign it onto a third party without the landlord's written consent. These provisions can be quite onerous but with proper drafting by an experienced business lawyer, the clause can be amended setting out the basis in which a landlord will provide his consent.

- **Break clauses:** as with any start up business, the hope is for success but it is always nice to have a net to fall into in case things are not working out. This is where a break clause is important. It will allow a tenant break from the lease usually around half way through the term of the lease. But you can choose when you want this exit to be from.
- **Termination:** where there is a breach of any of the conditions of the lease there is provision for a landlord to go to court to remedy the situation. Where rent is not paid, a landlord can peacefully re-enter the premises.

Other important matters that a business lawyer will be looking to make sure are in order from a tenants perspective include:-

- **Rates:** Are the water and commercial rates paid up to date by the landlord? Where a tenant takes occupancy of a building and the commercial rates are outstanding by a landlord, the current tenant becomes responsible for those outstanding rates.
- **Tax:** Taxation will need to be looked at and whether VAT applies or not to the transaction.
- **Title:** Does the landlord have title to give the lease?
- **Planning:** Does the property have planning permission for the use intended by the tenant? If not, does this pose a problem or is it possible for agreement to be reached where a tenant enters into an agreement to lease and prior to taking on the full lease applies for the planning permission?

Like any commercial contract you would be best advised to seek out some expert advice on whether the terms contained in that lease are fair and reasonable.

In the next issue we will look at the tenants' rights to renewal of a commercial lease.

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## WORKPLACE HEALTH & SAFETY – WHO’S RESPONSIBLE?

In light of the importance of workplace health and safety it is imperative that people are aware of the liability they assume by attending at a place of work.

The Safety, Health and Welfare at Work Act 2005 (“the Act”) expanded the scope of the health and safety duties imposed upon both employers and employees, as well as increasing the reach of personal liability for directors and managers for health and safety offences. The framework of the Act clearly anticipated greater scope for personal liability and this has been reflected in the prosecutions brought by the Health and Safety Authority since the coming into force of the Act.

There are a number of ways in which you can be found to be personally liable for a health and safety offence such as (1) where you are a sole trader or partnership, you will be responsible for discharging all the duties of the employer in your personal capacity; (2) where you assume a duty in your personal capacity which can capture both the employer company and an individual working within that company; and (3) where you, as an employee or director or manager or another person engage in acts in connection with work activities.

In relation to point three above it is important to note the following:

**Employees** – The Act significantly expanded the duties imposed upon employees so that all employees comply with all relevant statutory requirements and take reasonable care to ensure their own safety, and that of others who may be affected by their acts or

omissions at work. The scope of this duty will be largely determined by the role and responsibilities in the particular job.

**Managers and Directors** – Prior to the enactment of the Act potential exposure already existed for managers and directors but the scope has now been expanded. A manager or director can be held liable for an offence if he/she consented to or is otherwise responsible for the neglect leading to the offence. A statutory presumption was introduced by the Act such that a manager or director whose duties include making decisions that could affect the management of the company to a significant extent, will be presumed to be responsible for the acts of the company unless the contrary is proved.

**Duties imposed on persons in connection with work activities** – The Act also ensures that individuals, who are neither an employee nor a manager or director, can also have an obligation to health and safety duties. There is a duty on all persons not to intentionally, recklessly or without reasonable cause, interfere with anything provided for securing health and safety at work.

The implications of being convicted of a health and safety offence can include a criminal record, imprisonment, inability to work in a specific role, and an application being made for a director to be disqualification to act in that role. The Act is far reaching and imposes a responsibility for health and safety on each person at every level in an organisation.

## NEW COURT OF APPEAL

The establishment of a new Court of Appeal (“CoA”) to help clear the four year long backlog of appeals pending before the Supreme Court came about following a referendum passed by a 2 to 1 majority in October of 2013.

On the 29 October 2014, in accordance with Article 64 of the Constitution, 258 certified appeal cases were transferred to the CoA and will be heard by the new tier of the courts. Some 327 appeals certified as ready for hearing will be retained by the Supreme Court.

The establishment of the CoA to hear both civil and criminal matters has replaced the general right of appeal from the High Court to the Supreme Court. There will now be a general right of appeal to the CoA.

It should be noted that appeals can be taken to the Supreme Court from the High Court or the CoA if the Supreme Court is satisfied that the matter involves a matter of exceptional public importance or that it is in the interests of justice that it be heard by the Supreme Court. In addition, the Supreme Court will retain matters including appeals from Court of Criminal Appeal, certain extradition and human trafficking cases, matters referred to the European Court of Justice for a preliminary ruling, and any case stated from the High or Circuit Court. The Supreme Court will also have new powers to facilitate the case management of appeals.

The Chief Justice, Ms Justice Susan Denham, said she was giving effect to the direction as she was satisfied that it was in the interest of justice and the efficient determination of appeals. Eight judges were nominated as judges of the CoA and were formally appointed by President Michael D. Higgins at Áras an Uachtaráin on the evening of the 29 October 2014.

## AGENTS AND DISTRIBUTORS

There are different methods for selling a product or service. Commonly you will see agents and distributors appointed to gain market share.

Agents do not buy and sell in their own account but the supplier is bound by their actions and omissions. A distributor has an independent status regarding their supplier and they buy or sell in their own account. The supplier is not bound by their actions or omissions. When appointing an agent, the supplier is outsourcing the role of selling to another person.

It is a mechanism to avoid taking on employees or perhaps you are taking advantage of an agent’s or distributor’s local knowledge and connections.

In deciding whether to engage an agent or a distributor some of the main differences are set out in the table below.

ACTIVITY	AGENT	DISTRIBUTOR
Title	Title does not pass	Title to goods passes
Contractual	No contractual relationship with customers	Contractual relationship with customers
Control	No control over price	Controls price charged
Risk	No financial risk	Takes on financial risk
After sales service	Rarely provides after sales service	Often provides after sales service
Termination	Entitled to compensation	Not entitled to compensation

# COMPANIES ACT 2014 – TIME TO CHOOSE YOUR NEW COMPANY TYPE

The Companies Act 2014 has finally been passed and was signed by President Higgins on 23rd December 2014. The Act will be commenced on 1st June 2015 to give companies, directors, company secretaries and the Companies Registration Office time to prepare. This article will highlight the key features of the Act, the conversion options and points to consider.

## Key Features

- Loans to or from directors and connected persons must be approved in writing or not deemed to be a loan, be repayable on demand and bear interest
- Audit Exemption for small groups, Designated Activity Companies and Companies Limited by Guarantee
- Charitable companies may not have to file financial statements with the CRO
- Must register any persons (other than officers or persons with limited authority) authorised to bind the company
- Duties of Directors have been codified for the first time
- New Categories of Offences 1-4, offences 1 & 2 being required to be reported by Auditors
- Officer's residential address can be kept private if the officer's personal safety or security warrant exemption
- New Summary Procedures for Directors Declarations
- New Mergers and divisions provisions
- Directors must certify that there is no relevant audit information that the statutory auditors are not aware of
- Majority Written Resolutions with a cooling off period
- Introduction of Director Compliance Statements for Large LTD, DAC, PLC & CLG
- Large LTD, DAC, PLC & CLG companies will be required to have an Audit Committee
- New rules regarding defective financial statements
- Circuit Court Examinership application for small companies

## How does the Act affect your company?

All existing private limited companies will have to make a decision from 1st June 2015 about what company type they wish to operate as. They will have 18 months to make this decision. The main options you have are:-

- "Opt in" to a Company Limited by Shares ("Limited");
- "Opt Out" to a Designated Activity Company ("DAC"); or
- Wait until the transition period has passed and be automatically converted into a Company Limited by Shares on 1st December 2016. Most companies will wish to become a Company Limited by Shares as this will be the company with simple compliance requirements, will have full capacity to carry out any activity and may have only one director.

Existing Private Limited Companies who wish to stay as they currently are with 2 directors and an objects clause should opt out and become a Designated Activity Company. Also companies that are set up for a specific purpose or list debts & securities must also convert into a DAC.

The main differences between the 2 company types are:-

COMPANY LIMITED BY SHARES ("LIMITED")	DESIGNATED ACTIVITY COMPANY ("DAC")
Must end in the suffix Limited or LTD	Must end in the suffix Designated Activity Company or DAC
Minimum of 1 director	Minimum of 2 directors
1 – 149 shareholders	1 – 149 shareholders
No objects clause – full and unlimited capacity	Capacity limited to the objects clause in the Memorandum
Company Secretary cannot be the sole director	Secretary may be one of the directors
May dispense with holding the AGM	Cannot dispense with holding the AGM
No requirement for an authorised share capital	Must have an authorised share capital
Cannot list debts or securities	Can list debts & securities

PLC's, Companies Limited By Guarantee and Unlimited Companies will automatically convert over and they have the choice of amending their name to have the appropriate suffix or wait until the transition period has elapsed and a new certificate of incorporation will be issued with the new suffix.

Questions to Consider Before 1st June 2015

What company type best suits your company?

Do you only want the power to carry out a specific activity or are you funded for a specific activity?

How quick do you want a one director company?

What is the opinion of your members, bankers and other funders?

Are there specific provisions in your Memorandum & Articles of Association or a shareholders agreement?

Can your group avail of audit exemption?

Now is the time to start reviewing your companies to determine what company type best suits that company and whether they want to or are required to convert in the transition period.

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