



Berkeley House
Ballybin Road
Ashbourne
Co. Meath

T: 1850 812 500
T: 01 849 8800
F: 01 849 8801
E: info@dbass.ie

in this issue...

GDPR best practices [page 2](#) • tax briefs [page 3](#)
sme's and impending uncertainty [page 4](#) • business briefs [page 5](#)
tips to reduce your merchant service fees [page 6](#)
legal briefs [page 7](#) • GDPR and cyber insurance [page 8](#)

Best practices for data retention under

GDPR

GENERAL DATA PROTECTION REGULATION



GDPR does not specify retention periods for personal data. Instead, it states that personal data may only be kept in a form that permits identification of the individual for no longer than is necessary for the purposes for which it was processed.

Therefore, in deciding how long to retain personal data for, employers will make their decision based on statutory retention periods, limitation periods for claims, individual business needs and the data quality principles.



Best practices for data retention under GDPR.

The table below has been constructed as a guide for employers, outlining their obligations to retain employment data as per certain employment statutes. It is recommended that employers use these statutory retention periods as a guide for the minimum period of time the relevant employee data should be kept.

In most cases, the most relevant criteria will be how long the records may be needed to defend against any potential claims.

PERSONAL INJURIES CLAIMS

For example, in the event of a potential personal injuries claim, relevant records for the purpose of defending such a claim would ideally be available for a three-year period. A potential breach-of-contract claim would require retaining the relevant records for seven years from the date of breach.

If the claim is specifically threatened or issued, then the employer may hold the records for longer, as is necessary.

EXAMPLE OF EMPLOYEE DATA	STATUTORY RETENTION PERIOD
PAYSLIPS AND RECORDS RELATING TO WAGES	3 YEARS
WEEKLY WORKING HOURS, NAME AND ADDRESS OF EMPLOYEE, PPS NUMBERS, AND STATEMENT OF DUTIES	3 YEARS
RECORDS RELATING TO EMPLOYEES UNDER 18 YEARS	3 YEARS
RECORDS RELATING TO COLLECTIVE REDUNDANCIES	3 YEARS
RECORDS RELATING TO PARENTAL LEAVE	8 YEARS
TAX RECORDS	6 YEARS
RECORDS RELATING TO WORKPLACE ACCIDENTS	10 YEARS
EMPLOYMENT PERMIT RECORDS	5 YEARS OR DURATION OF

In practice, most employers delete former employee data at some point after the end of the minimum required statutory period, but long before the expiry of a seven-year period (six years being the period within which an employee could issue a breach-of-contract claim plus one year for the period of time they are allowed to notify the employer of it).

There is no exact science in respect of determining the retention period appropriate for an individual organisation, as it involves a balancing of the data protection risk (ie, of not keeping data for too long) against the risk of being sued by an employee before the expiry of the relevant limitation period.

As such, the recommended approach to satisfy both Irish employment law and GDPR requirements would be to retain the data for the statutory minimum required period. In circumstances where at the end of that period the employer is still concerned about a particular employee bringing a claim, it is recommended to extend that timeframe (to up to seven years). However, in most instances, unless an employee has issued proceedings within the statutory minimum period for bringing a claim (usually six months), the likelihood of a claim is not very high.

The exception to this is occupational injuries claims. It may be projected that employers will develop a practice of reviewing employee data on a regular or annual basis, for example, and, if there is no good reason for retaining such data, such information or any unnecessary element of it will be routinely deleted.

bryan.dunne@matheson.com

IDENTIFYING APPROPRIATE RETENTION PERIODS

Hopefully, at this point your organisation has either determined, or is in the process of determining, the reasons it holds employee data. Your organisation should by now also be able to identify the legally appropriate

retention periods for this employee data, and what your data retention policy will be. In keeping with the transparency requirements of GDPR and in order to be able to demonstrate compliance, it is vital that

employers communicate to employees, among other things, their reasons for holding employee data and the accompanying applicable retention periods.



Tax Tip!
 Drink water!!! ...Avoid the sugar sweetened drinks tax which was introduced on 1 May 2018

PAYE MODERNISATION

Revenue are currently writing to employers to alert them to the upcoming change in the PAYE system as Revenue are rolling out a new real time system on 1st January 2019. This real time system will enable Revenue to ensure that employees are receiving their correct cutoffs and credits. To that end the incidences of year end over or under payments for employees should be minimal. The main changes to the current system will be:

- 1 **Employees will be able to log on to their Revenue account and view the information that employers have submitted for them**
- 2 **Payroll software will automatically submit the periodic file to Revenue without the need to physically upload the file on the ROS website.**
- 3 **Payroll software will automatically update for changes to P2c files regarding tax credits and cutoff**
- 4 **The correct treatment of illness benefit will be facilitated in the system**
- 5 **P60's, P45's, P30's and P35 forms will no longer be required.**

To that end payroll will have to be updated every week or month as the file will be automatically uploaded to Revenue. Therefore in the event of an error in the payroll, the file will have to be corrected and resent to Revenue. Continuous errors or late submission may cause Revenue interventions.

BUSINESS PROPERTY RELIEF

Business relief is granted on the transfer of relevant business property. The relief applies to the transfer of a business, or a share in a business, or the shares or securities of a company carrying on a business. The relief does not apply to individual assets even if those assets were used in the business.

Where Business Property Relief applies:

- The value of business assets is reduced for a gift/inheritance of relevant business property by 90%, subject to a number of qualifications. The relevant business property must have been owned by the donor or his/her spouse for at least five years prior to the transfer in the case of a gift (or two years in the case of an inheritance). The asset must remain in the business for at least six years to avoid a claw-back of the CAT relief.
- Business property relief also applies to a gift or inheritance of shares in a holding company that holds shares in one or more companies controlled by the beneficiary and his/her relatives, nominees or trustees.
- Business Property relief can result in significant savings however detailed planning needs to be carried out to ensure that no clawback of the relief will occur in the future.
- A similar relief for Agricultural land and assets also exists. However, the beneficiary must also satisfy a "Farmer Test" on the date of the gift or inheritance whereby 80% of his or her assets are farming assets.

MEDICAL EXPENSES



An exemption from Capital Acquisitions Tax (CAT) is available for gifts or inheritances taken exclusively for the purposes of discharging certain medical and related expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity. Such a gift or inheritance is not taken into account in computing a CAT liability.

In order to qualify for the exemption the following criteria must be satisfied:

- The gift or inheritance must be taken by a person who is permanently incapacitated by reason of physical or mental infirmity.
- The gift or inheritance must be taken exclusively for the purpose of discharging qualifying expenses of the incapacitated person. In this regard it is the intention of the donor providing the gift or inheritance that determines the availability of the exemption. In the absence of such an intention, it is not relevant that a beneficiary might decide, after receiving an inheritance, to use it to discharge medical expenses.
- The use of the gift or inheritance for any purpose other than the discharge of qualifying medical expenses does not qualify. The exemption may be withdrawn where Revenue is not satisfied that the gift or inheritance was applied or will be applied in discharging qualifying expenses. It is not necessary that the entire gift or inheritance be used for this purpose but any part used for any other purpose does not qualify.
- Qualifying expenses are those that relate to medical care including the cost of maintenance in connection with such medical care.

PAY AND FILE SUMMARY

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

INCOME TAX

Filing date of 2017 return of income (self-assessed individuals)	31 October 2018
Pay preliminary income tax for 2018 (self-assessed individuals)	31 October 2018
On-Line pay and file date for 2017 return of income	14 November 2018

CAPITAL GAINS TAX

Payment of Capital Gains Tax for the disposal of assets made from 01 January 2018 to 30 November 2018	15 December 2018
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CORPORATION TAX

Filing date for Corporation Tax returns for accounting periods ending in September 2017	21 June 2018
Balancing payment of Corporation Tax for accounting periods ending in September 2017	21 June 2018

SME'S AT GREATEST RISK FROM IMPENDING UNCERTAINTY



The government needs to rebalance its enterprise policy towards protecting SME's and indigenous Irish businesses according to newly appointed President of the Institute of Certified Public Accountants (CPA Ireland).

He said, "External factors including Brexit, interest rate hikes, inflation coupled with an infrastructure deficit on housing are all on the horizon. Government needs to review the range of supports and policies to SME's so that we are not faced with significant job losses across many sectors in the event of another economic slowdown."

The President of CPA is calling for the rebalancing of government policy to provide for fair treatment of SMEs and indigenous business as a priority as President. "SMEs account for over 99% of businesses in this country and employ over 1.5m people. All too often this contribution is ignored by policy makers and we have arrived at a situation where SMEs and personal taxpayers are advertently subsidising the FDI sector", Mr Mohan said.

An important measure of commercial vitality is a country's spending on research and development. Total spend in R&D in Ireland was just 1.6% of GDP in 2012, below the EU average of 2.1% and less than half that of Finland, one of Europe's top performer. Of the already small amounts, only one-third is accounted for by home-grown companies. Foreign owned enterprises accounted for 64% of all R&D expenditure. R&D intensity for Ireland has decreased to 0.8% of GDP for 2015.

"The R&D tax credit and the Knowledge Development Box (KDB) are aimed at encouraging innovation. However, the regime is designed to support the 1,300 of multinationals here. For Ireland to remain competitive with other jurisdictions such as the UK, the government must act to simplify the regime, streamline the regime, streamline the process and

make it fit for purpose for indigenous Irish owned companies.

When the number of companies contributing to overall tax revenue is observed, it is clear that the top ten corporations contribute 40% of the overall tax revenue. This means the country is dependent on a small number of corporations to contribute to the overall tax take, leaving a very concentrated tax base. In a downturn or due to external economic factors our economy is extremely vulnerable to the reliance placed on this revenue stream. In the long-term, an over-reliance on FDI is not ideal for an economy. It is also time to increase funding of the higher education sector to protect our competitiveness and appeal to both the indigenous SME sector and Foreign Direct Investment (FDI). The alignment in education and training with labour market needs is essential.

LIQUIDITY GAP AND COST OF FINANCE

SMEs desperately need access to funding at a competitive interest rate in line with our EU counterparts if they are to realise their potential. The Enterprise Investment Scheme needs to be amended to make it friendlier both to investors, and to SME's. There is also an urgent need to incentivise direct investment in unlisted companies.

BALANCING PERSONAL TAXATION

SMEs are placed in an invidious position when it comes to attracting and retaining talent. Large companies can afford to pay the higher salaries, and this is leading to wage inflation, which SMEs cannot keep up with. An improvement of the Share Based Remuneration Scheme announced in the last budget would allow SMEs to compete on more equal footing for talent by rewarding key employees with equity as well as salary and other benefits. The headline rates of tax and USC must be reduced as well to take the burden off middle earners throughout the economy.

VENTURECLASH OFFERS IRISH SME'S A CHANCE TO WIN \$50,000 IN GRANT FUNDING

VentureClash is a global venture challenge for early-stage companies in digital health, financial technology, insurance technology and the Internet of Things. Within this venture challenge, is the chance to compete for the Innovation Prize, which is worth up to \$50,000. The Innovation Prize will be awarded to a company working in Industry 4.0 and the Future of Security. Areas of interest under Industry 4.0 will include manufacturing technology, systems and methods that

- ➔ Reduce capital and operational expenses
- ➔ Improve productivity and operational efficiency
- ➔ Reduce cost of maintenance as well as scrap and waste

Qualifying sectors under the Future of Security category include:

- ➔ Physical and cyber methods of security for enterprise or retail, home, school and product security
- ➔ Improvements in Internet of Things security that increase the awareness and resilience of industrial machines and processes, automobiles and healthcare
- ➔ Artificial intelligence for automated detection of both physical and digital threats

The Innovation Prize will be presented at the VentureClash finals event, to be held on October 18, 2018, at Yale School of Management. Interested parties may find more information and an application form online at www.ventureclash.com.

SUSTAINABLE ENERGY AUTHORITY OF IRELAND SME LIGHTING SUPPORT SCHEME 2018

The purpose of this support scheme is to assist SMEs in reducing their energy use and costs. The overall goal is to help businesses become more competitive and reduce their carbon footprint through investment in energy efficient technology. A priority technology identified for the sector in 2018 is lighting where an entire facility is retrofitted. Elements of upgrade that are considered for this grant include:

- ➔ New energy efficient light products
- ➔ Decorative, feature or specialised non typical light products
- ➔ Emergency lighting retrofit
- ➔ Smart meter
- ➔ Design costs
- ➔ Equipment hire to assist with installation
- ➔ Project management costs up to a maximum of 5% of project costs

Projects eligible for funding, must be delivered to private sector organisations in the Republic of Ireland and defined as an SME. An SME is:

- ➔ an organisation with less than 250 employees,
- ➔ an annual turnover not exceeding €50 million,
- ➔ and/or an annual balance sheet not exceeding €43 million.

To apply for this funding and for more information, log on to <https://www.seai.ie/grants/business-grants/lighting-support-scheme/>

GDPR HUMOUR

CALLER: Is this Gordon's Pizza?

GOOGLE: No sir, it's Google Pizza.

CALLER: I must have dialed a wrong number. Sorry.

GOOGLE: No sir, Google bought Gordon's Pizza last month.

CALLER: OK. I would like to order a pizza.

GOOGLE: Do you want your usual, sir?

CALLER: My usual? You know me?

GOOGLE: According to our caller ID data sheet, the last 12 times you called you ordered an extra-large pizza with three cheeses, sausage, pepperoni, mushrooms and meatballs on a thick crust.

CALLER: OK! That's what I want..

GOOGLE: May I suggest that this time you order a pizza with ricotta, arugula, sun-dried tomatoes and olives on a whole wheat gluten-free thin crust?

CALLER: What? I detest vegetable!.

GOOGLE: Your cholesterol is not good, sir.

CALLER: How the hell do you know!

GOOGLE: Well, we cross-referenced your home phone number with your medical records. We have the result of your blood tests for the last 7 years.

CALLER: Okay, but I do not want your rotten vegetable pizza! I already take medication for my cholesterol.

GOOGLE: Excuse me sir, but you have not taken your medication regularly. According to our database, you only purchased a box of 30 cholesterol tablets once, at Drug RX Network, 4 months ago.

CALLER: I bought more from another drugstore.

GOOGLE: That doesn't show on your credit card statement.

CALLER: I paid in cash.

GOOGLE: But you did not withdraw enough cash according to your bank statement.

CALLER: I have other sources of cash.

GOOGLE: That doesn't show on your last tax return unless you bought them using an undeclared income source, which is against the law.

CALLER: WHAT THE HELL!!!

GOOGLE: I'm sorry, sir, we use such information only with the sole intention of helping you.

CALLER: Enough already! I'm sick to death of Google, Facebook, Twitter, WhatsApp and all the others. I'm going to an island without internet, cable TV, where there is no cell phone service and no one to watch me or spy on me.

GOOGLE: I understand sir, but you need to renew your passport first. It expired 6 weeks ago...

TIPS TO

Merchant services relate to the broad category of financial services available to businesses to accept payments through secure channels to process a customer's credit or debit card. Typically, these include:

- Credit and debit cards payment processing
- Check guarantee and check conversion services
- Automated Clearing House
- Payment gateway
- Online transaction processing
- Point of sale (POS) systems

As with all Overhead Costs, opportunities exist to reduce Merchant Service Fees, even by comparing the various offers from the market. Additionally, correct usage and implementation of the following tips will reduce your Merchant Service Costs while enhancing your customer's experience;

(1) BROADBAND / IP CONNECTION

Check to see what type of line your terminals are connected to. If you have a broadband router at your business, it is a great idea to connect your terminal to this rather than the standard analogue phone line. There are 2 great reasons for this;

1. The router will eliminate the need for an analogue line. Cancelling this will eliminate any unnecessary Telecoms charges, and
2. The experience is a much faster and more efficient one for both your company and your customers

(2) FOREIGN CURRENCY REBATES ON NON-EURO DENOMINATED CARDS (DCC - DYNAMIC CURRENCY CONVERSION)

If your business has customers from outside the Euro Area (e.g. Sterling and US Dollars etc.), ensure you have the *foreign rebate function* switched on at your terminal point. Again, there are two great reasons for this;

1. Your customers will know exactly what amount will be appearing on their visa statement once converted. This allows for easier reconciliation for them including far easier reconciliation when claiming expenses (for business customers)



REDUCE



2. While as the facilitator, you will earn additional revenue for your business through a FX rebate

(3) OVER THE PHONE / MOTO TRANSACTIONS

Over-the-phone transactions are often referred to as CNP or Card Not Present transactions. MOTO transactions are Mail Order or Telephone Order transactions. Double check that you are processing over the phone transactions correctly. Some terminals are set up that you need to enter these transactions in a different manner to the customer present one. If you are doing this incorrectly, you could be incurring unnecessary surcharges.

(4) CONTACTLESS TRANSACTION

For your customers who spend less than €30 as an average transaction, ensure your terminal can offer contactless transactions. It speeds up the transaction and provides an enhanced customer experience. They just tap and go. No need to delay the transaction by entering the pin.

(5) TAX REFUND TRANSACTIONS

For those of you who are offering tax refund services, you may have a separate terminal for this. Check with your supplier to see if they can offer it to you all on the one terminal. Saves on desk/counter space and frees up power and phone lines for your business. Also allows for a smoother customer experience

MIKE MCGRATH, ARVO.IE

YOUR
MERCHANT
SERVICE
FEES



PARENTAL LEAVE

The Parental Leave Act 1998, as amended by the Parental Leave (Amendment) Act 2006, allows parents to take parental leave from employment in respect of certain children. Leave can be taken in respect of a child who has not yet reached the age of 8 years of age. If a child was adopted between the age of 6 and 8, leave in respect of that child can be taken up to 2 years after the date of the adoption order. Parental leave may also be granted to the parent of a child with a disability or a long-term illness up to 16 years of age.

Parents are entitled to a total of 18 working weeks parental leave per child. Where an employee has more than one child, parental leave is limited to 18 weeks in a 12-month period. The 18 weeks per child may be taken in one continuous period or in 2 separate blocks of a minimum of 6 weeks. However, there must be a gap of at least 10 weeks between the 2 periods of parental leave per child, unless otherwise agreed with your employer.

While employees are not entitled to pay from their employer while on parental leave, nor are employees entitled to any social welfare payment equivalent to Maternity Benefit or Adoptive Benefit, taking parental leave does not affect other employment rights. The employee's position remains as if no parental leave had been taken. So, for example, the time spent on parental leave can be used to accumulate annual leave entitlement.

Under the European Union (Parental Leave) Regulations 2013 when an employee returns to work after parental leave, they are entitled to ask for a change in their work pattern or working hours for a set period. An employer must consider this request but is not obliged to grant it.

CYBER SECURITY

Have you received an odd looking email from an unknown source asking you for your bank details? Or perhaps you have received what looks like a legitimate email from what appears to be a known and reliable source asking you to follow an internal link, but you can't quite figure out what this email is referring to? Cybercrime and online security should now be to the forefront of every business owners mind. Cybercrime can be generally defined as criminal activity carried out using computers and the internet. Most commonly is it is perpetrated by online fraud and theft of finances or confidential data. Cybercrime has become more prevalent and far more advanced in recent times. The email from a source claiming to be an African Prince seeking to share his vast wealth with you is a thing of the past. Instead, emails are coming from email addresses which resemble those of fellow local businesses or email contacts you may have. This is commonly known as "phishing". The Criminal Justice (Offences Relating to Information Systems) Act 2017 now provides legislative footing for offences such as accessing or interfering with the functioning of an information system without lawful authority; interfering with data without lawful authority; and using a computer programme, password, code or data for the commission of these offences. However, it is up to individual businesses to implement companywide procedures to; avoid cyber security risks, report suspected risks and adequately deal with possible cyber breaches.

RIGHTS OF A COMMERCIAL TENANCY

INTRODUCTION

A landlord/tenant relationship in terms of Commercial Leases gives rise to many clauses and conditions that both landlords and tenants should be familiar and comfortable with. This will ensure that both landlords and tenants interests and investments are adequately protected. A commercial tenant possesses many rights in such relationships. The following are examples of just some of those rights.

RIGHT TO A NEW TENANCY

Under *Section 16 of Landlord and Tenant Act 1980* a tenant may be entitled to a new lease at the expiry of their existing lease. To qualify they must fit into one of the following categories:

- (i) The tenant is in occupation for 5 years continuously and uses the premises for business purposes. This five year period only applies to leases which commenced after 10th of August 1994 and the tenant must occupy the tenement for the entire period,
- (ii) The tenant is in occupation for 20 years.

In these circumstances the tenant is entitled to a new lease for a period of up to 35 years or a lesser term as nominated by the tenant, but not less than 5 years.

IMPROVEMENTS TO BUILDINGS

The details of what improvements may be allowed and the rules governing them are typically set out in the commercial lease agreement under "Alterations and Improvements".

If a tenant intends to make improvements to the building, he should serve an Improvement Notice on the landlord. If the landlord ignores this notice then the tenant can go ahead with the works and will be entitled to compensation when leaving. However the landlord can instead serve an improvement undertaking notice on the tenant and execute the works. Where the improvements add to the letting value of the premises the landlord can claim credit for that addition on the next rent review. If the landlord rejects the Improvement Notice, the tenant can apply to the Courts to be allowed to make the improvements.

Compensation for Improvements

Where a tenant quits a tenement because of the termination of the tenancy they are entitled to be paid compensation for each improvement made by themselves or any predecessors in title which adds to the letting value of the premises. However the tenant will not be entitled to compensation if he has surrendered the lease or the termination is for non-payment of rent.

Assignment/Sub-Letting

Tenants should ensure that a provision allowing them to assign or sublet the premises to a third party during the term is inserted into the lease. However, it is important to know the difference between the two:

(i) **Assignment** means that a third party who acquires the original tenant's rights effectively steps into the shoes of the tenant. This means that the original tenant's future obligations to the landlord cease.

(ii) **Subletting** means that a new party is added to the existing relationship. The original lease between landlord and tenant remains. However, the original tenant creates a separate contractual relationship with the new third. A landlord may insist that the lease obliges any subtenant to provide certain covenants to the landlord directly or that the new third party must pay rent at a level not lower than the rent payable in the original lease.



GDPR & CYBER INSURANCE



The EU's General Data Protection Regulation takes effect on 25 May. This will modernise regulation around the processing of Personally Identifiable Information (PII).

This legislation means that businesses have to consider issues such as having consent to contact individuals, only obtaining what information is relevant, ensuring that data is securely stored while in use and safely disposed of when no longer required.

We have seen a marked increase in uptake for insurance which is tailored to protect the insured against potential GDPR-related costs, most commonly via a Cyber Insurance policy.

First things first – yes, fines and penalties are insurable under these policies. However, there are plenty of other potential costs which can be covered, such as:

- Crisis response to gain initial advice from experts
- IT forensics to discover the source of a breach and stop it at source
- The cost of establishing who has been affected, and to what extent
- The cost of notifying those affected
- Credit and/or identity theft monitoring, if required
- Set up a call centre for those affected
- Attend hearing such as with the Data Protection Commissioner
- Defence and court attendance costs and privacy related liability claims

DON'T FORGET CYBER CRIME

Understandably, GDPR is a big focus for many companies. However, Irish companies continue to suffer serious losses to cyber crime. Do not be fooled into thinking that your business might be too small or that you don't have an exposure – clients of all sizes and across a wide number of industries have been caught out.

WHAT IS PII?
IT IS ANY DATA THAT CAN BE USED TO IDENTIFY AN INDIVIDUAL, FROM NAMES, EMAILS AND ADDRESSES TO PPS NUMBERS, BANK DETAILS AND MEDICAL INFORMATION

WHAT IS CYBER CRIME?
AN ALL-ENCOMPASSING TERM FOR ANY TYPE OF LOSS OF MONEY DUE TO CRIME COMMITTED OVER THE PHONE AND/ OR BY EMAIL. ALSO REFERRED TO AS RANSOMWARE, CEO FRAUD, THEFT OF ELECTRONIC FUNDS AND PHISHING.

INCIDENT DATE	AMOUNT STOLEN	COMMENT
FEBRUARY	€226,500	Payment made based on a fraudulent invoice. Tried to call client to verify details but they were in the UK so authorised the transaction.
APRIL	€28,000	Our insured hacked, client of theirs relied on fraudulent bank details.
APRIL	€207,000	Cyber crime - full details not yet provided
APRIL	€40,000	Fraudulent email resulting in payment to the criminals account.
APRIL	€100,000	Yet again, authorised transaction without verifying bank details before transferring.

Some of these losses were particularly sophisticated and we have noticed that the amounts being stolen continue to increase. Again, it is possible to insure against such losses but this cover is not widely available.

bomara@oli.ie