

CCAB-I Pre Budget Submission 2008

The Defence of Irish Business Interests

“The problem in defense is how far you can go without destroying from within what you are trying to defend from without.”

- Dwight Eisenhower, 34th US president (1890-1969)

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INTRODUCTION

The Consultative Committee of Accountancy Bodies – Ireland is the representative committee for the main accountancy bodies in Ireland. It comprises the Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants, and the Chartered Institute of Management Accountants.

This year's pre-Budget submission from the CCAB-I has as its main theme the defence of Irish business interests.

The Irish taxation system is increasingly coming under pressure from international sources envious of the success of our progressive and low rate system. In our international dealings with other Revenue Authorities, non-governmental agencies such as the OECD, and indeed professional representatives from other territories, CCAB-I representatives find ourselves increasingly defending Ireland's position as a transparent low tax jurisdiction - even though other European Member States have either introduced lower corporation tax rates (Germany) or are planning to do so (France). In particular over the last 12 months, we have engaged with the European Commission in relation to the Common Consolidated Corporate Tax Base proposals. We are fundamentally opposed to these proposals because if they are to be effective, they will necessitate a dilution of Ireland's tax sovereignty. We also believe that they will lead to increased administrative complexity rather than the simplification which is held out as the key advantage by proponents of the proposed regime.

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CCAB-I has also actively engaged in the discussion among various Revenue Authorities, facilitated by the OECD, on trans-national approaches to dealing with tax intermediaries such as the accountants we represent. Our concern is that this OECD project could lead to the introduction of cross border procedures which might suppress the free establishment of multinational businesses. The greatest inherent danger with such discussions is that, in common with the CCCTB proposals, they will dilute the sovereignty of individual countries in determining how taxes are to be administered.

Regarding both the CCCTB and the OECD tax intermediaries study, we have liaised with Revenue and officials from your Department as appropriate in furtherance of the Irish interest.

The proposals and suggestions contained in this, our Pre-Budget Submission for 2008, have been framed against this backdrop. A balance must be maintained between securing the tax base, while at the same time ensuring that administrative procedures are such that the system is seen as fair and comprehensible.

Lastly, we note Revenue's stated intention in their Statement of Strategy 2008-2010 to focus on simplification measures. We strongly endorse this stated intention and indeed many of the proposals contained in this document are designed to support initiatives at official level to this end.

SECTION 1 - DEFENDING IRISH BUSINESS INTERESTS

Payment of Preliminary Corporation Tax

Recommendation – Extend the Finance Act 2007 rules for computing preliminary tax for smaller companies to all companies.

Our previous submissions referred to the difficulty for companies of any size to meet their preliminary corporation tax obligations because of the lack of a rule permitting them to base this preliminary corporation tax payment on earlier years' results.

Significant progress was made in Finance Act 2007 by extending the tax threshold beyond which companies could make preliminary corporation tax payments based on the previous year's results from €50,000 to €150,000. We also acknowledge the progressive nature of the changes which permitted a similar rule to apply for start-up companies, and also an assessment of the overall position of a corporate group when determining any shortfall in preliminary tax payments where the previous year's figure had been in excess of €150,000.

These changes have undoubtedly streamlined the corporation tax system for many companies operating in our economy. However, in these prosperous times, a significant number of companies pay tax in excess of €150,000 in any given year. The new reliefs introduced in Finance Act 2007 are largely unavailable to them. Nevertheless, the

time and interest based penalties which apply to shortfalls in payments of preliminary corporation tax affect these companies even more because of the large sums involved.

It is also arguable, in the interest of fairness and equity, to treat all companies, wherever reasonably possible, in the same fashion. The threshold of €150,000 does not apply on the basis of a company's activities or status – it applies on the quantum of its tax liabilities. We have a concern that this may be regarded as discriminatory.

The matter is further complicated because many of the companies paying tax in excess of €150,000 per annum are multinational entities. As such, these companies will be sensitive to comparable arrangements in other jurisdictions.

We would urge that the valuable reliefs introduced in Finance Act 2007 now be extended to cover all companies.

CCAB-I acknowledges the cash flow concerns for the Exchequer relative to such a move. We would point out that a universal rule for preliminary corporation tax would permit a much more accurate estimation of corporation tax outturns to the Exchequer on a year to year basis.

We would also suggest that it might be feasible, in certain limited circumstances, to require companies to make a top-up payment of corporation tax, say three months after the year end date, when the final outcome from the year is known. We stress again that this measure is tied to a concern for simplification, clarity of treatment and the reduction of unnecessary tax risk for companies. The suggestion is

not based on an attempt either to seek to reduce, or defer corporation tax properly owing.

We would strongly urge therefore that the €150,000 previous year liability 'limit' be removed entirely so that all companies could base their preliminary tax obligations on prior year results.

Professional Services Withholding Tax

Recommendation – To reduce administration burden for non-residents, introduce a clearance mechanism so that they can apply for a clearance that payments need not be subject to PSWT where there is an automatic refund

At present, certain foreign professional services providers can claim a refund of PSWT provided they are resident in either an EU country or in a country with which Ireland has a DTA (and are not operating as a branch). The administrative process would be greatly simplified if foreign based service providers could avail of an exemption from the withholding tax on provision of appropriate certificates of residency. A procedure with close analogies already operates for Tax Treaty clearance.

There would be significant commercial advantages for Semi-State companies if such a procedure were to be adopted, as there is evidence that the cash-flow and administrative costs of the tax are passed on by foreign providers in the overall cost of contracts.

Thresholds for VAT registration

Recommendation - The VAT registration thresholds should be further increased to the maximum allowable limits.

We note that the VAT registration thresholds were raised to €35,000 (for service providers) and €70,000 (for traders) in Finance Act 2007. CCAB-I had mentioned this topic in earlier pre-Budget submissions and we welcome these increases, which help resolve administrative and commercial difficulties especially for business startups.

Similarly we note that the threshold for accounting for VAT on a cash receipts basis was raised to €1,000,000 in Finance Act 2007. Again, we had suggested this in our pre-Budget submission for 2006, and acknowledge this useful measure of relief as a positive development.

There remains an opportunity to consolidate this progress by re-examining the VAT registration thresholds while we still can. Under EU rules, Ireland retains the power to increase VAT registration thresholds to their 1972 values in real terms. We feel that we should avail of the opportunity while it is still available.

This would involve adjusting the VAT registration thresholds to €60,000 for service entities and €120,000 for traders. We think that this measure would be revenue neutral because:

- There would be a reduction in input credit claims, not only by the small business, but by their business customers.

- This Exchequer support leading to better profitability in the early years of business would be reflected in higher income tax, PRSI and corporation tax yields.
- The measure would undoubtedly lead to reductions in black market activity, with corresponding benefits to the Exchequer.
- There would be reduced administrative costs for both the public and private sector.

PRSI – Reinstate Employer Ceiling

Recommendation - The ceiling for employer PRSI should be reinstated.

Employers must pay PRSI in respect of their employees without limit. This has resulted in considerable additional costs for employers. In this challenging time for the Irish economy, it would be important to incentivise employers so that employment figures remain in the celestial range that we have become used to.

On this basis, we would recommend that the employer ceiling be reinstated with immediate effect.

Business Expansion Scheme

Recommendation – Re-examine the types of business which are eligible for BES; Exclude investment in BES from restrictions on the amount of allowances that may be claimed by high-income individuals.

The extension to the Business Expansion Scheme (BES) in Finance Act 2007 will serve developing industry well. The opportunity taken by Government in preparation for the Finance Act 2007 to formally assess the impact of BES confirmed the evidence from our membership of its effectiveness.

CCAB-I feels it might now be opportune to re-examine the types of business which are eligible for the relief. In addition to specified industries, BES has traditionally been available to companies which would have been regarded as manufacturing under the “old” 10% rate rules provided that those companies had received employment grant aid.

Employment grant aid has become a less prevalent element of the industrial environment in recent years. For example, in 2006, IDA Ireland extended such grants to a value of some €25m. However in 2005, the comparable figure was €42m which closely paralleled the 2004 figure. The employment grant criterion may be excluding worthy businesses, which would qualify in all other respects, from the relief.

We also note that from the experience with the enhancements to the scheme in 2007, grant aid can be restricted under the EU State Aid approvals process where the scheme is availed of. These additional

conditions attaching create another hurdle for Irish businesses in attempting to avail of BES.

The Finance Act of 2007 increased the personal investment limits subject to Brussels approval from €31,750 to €150,000. In the Finance Act of 2006 restrictions on the amount of allowances that may be claimed by high-income individuals were introduced. The qualifying allowances including BES are capped at €250,000. In the context of increasing the BES limit to €150,000 and the fact that this is risk capital it is likely to leave investment in BES companies at a severe disadvantage. The qualifying reliefs restriction introduced in the Finance Act 2006 applies primarily to asset-backed property type tax schemes. It is clear the BES does not fall in to this category and should therefore be excluded.

Research and Development Relief

Recommendation – Provide a refundable R& D tax credit to support both the development and exploitation of technology in Ireland

Many companies who are incurring R&D costs in their early years are not making profits and hence are not able to get the benefit of the R&D tax credit until they become profitable. In the UK, there is a provision which allows the tax credit to be refunded to unprofitable SME's.

Consideration should be given to allowing a refund of the R&D Tax Credit up to a maximum annual cap which, for the SME market might be €500,000.

Holding Company Regime

Recommendation – All distributions from subsidiaries to parents which qualify for the substantive shareholdings exemption should be exempt.

The Irish Holding Company regime was introduced in the Finance Act 2004. The regime provided for the exemption from Irish capital gains tax, subject to certain conditions, where a parent company sells shares in one of its subsidiaries. In addition, pooling of tax credits on foreign dividends was also introduced. Ireland is competing with old Holding Company locations such as Luxembourg and the Netherlands, and new locations such as Cyprus and Malta. In addition, in the joint HM Revenue & Customs/HM Treasury paper "Taxation of the foreign profits of companies: a discussion document" published in June 2007, the United Kingdom are proposing a participation exemption for dividends.

While the pooling of tax credits may result in the effective exemption of distributions from tax, it can be unwieldy in a competitive tax environment to persuade international groups that Ireland is an attractive location for holding companies. On this basis, we would strongly recommend that all distributions from foreign subsidiaries be exempt from tax in Ireland. At present only the making of distributions from an Irish subsidiary to an Irish parent is exempt from tax. The substitution of what is frequently an effective exemption with an actual exemption as suggested would have little negative Exchequer impact – in fact we would expect a positive impact overall as more multinationals would decide to locate in Ireland (or for that matter, not leave Ireland) by virtue of a clear exemption policy.

SECTION 2 - NECESSARY REFINEMENTS TO OUR TAX REGIME

The passage of time and changing economic and social circumstances have made some of our existing tax procedures and reliefs less effective than before. In this section of our submission, we examine and make suggestions regarding some of the measures which are presenting difficulties in practice.

Tax relief for holiday cottages

Recommendation – Allow off-season letting of holiday cottages without prejudice to the tax relief otherwise available.

The recent slowdown in residential housing completions suggests it may be necessary to reconsider restrictions on the availability of rented private residential accommodation.

In particular, we highlight the current terms of approval for tax purposes which may apply from time to time to tourism accommodation and other related projects.

The relevant legislation is TCA97 ss 268(3), 352, 353, being buildings or structures which are holiday cottages, holiday apartments or other self-catering accommodation, usually registered under provisions of the Tourist Traffic Acts. The combined effect of these provisions is that such accommodation may not be let long term if the tax relief is

not to be denied. Longer winter or other off season lettings are thus impossible in practice.

There is an increasing demand for short term letting. This in part reflects the increasing numbers of flexible and mobile immigrant workers in the country.

We suggest that the rules governing the letting of holiday accommodation be relaxed for the off-season.

To preserve the intention of the restrictions set out in the legislation, we propose that rental income from "non-holiday" rentals should not be sheltered by capital allowances, but would not of itself prejudice the availability of capital allowances for holiday lettings.

Capital allowances – assets bought and sold in one year

Recommendation – Extend the balancing allowance provisions to assets bought and sold in the one year.

TCA97 s288(1) provides for the making of a balancing allowance or a balancing charge where certain events occur such as the disposal of plant or machinery. The provision only applies where " ... a wear and tear allowance has been made for any chargeable period to a person carrying on a trade". A wear and tear allowance is available where plant or machinery is in use for the purposes of a trade at the end of the chargeable period.

Therefore, there is no legislative basis for allowing a balancing allowance where plant and machinery is disposed of during the chargeable period in which it was first brought into use.

Where the taxpayer experiences a catastrophic event during the chargeable period which results in the loss of plant or machinery, the taxpayer would be unable to claim a balancing allowance. We recommend that balancing allowances should be extended to allow a claim for plant and machinery which are bought and sold in one year.

Capital Gains Tax

Base cost rules

Recommendation – there should be an option to determine market value for assets held long term by reference to 5 April 1974 or 31 December 1991, the latter date being the commencement date for CAT aggregation purposes.

We again put forward our recommendation that there be an option to determine market value for assets held long term by reference to 5 April 1974 or 31 December 1991, the latter date being the commencement date for CAT aggregation purposes. This should ease administrative difficulties in determining 30 year old values as well as addressing the significant inflation problem in taxing gains derived from the disposal of such assets.

There are enormous administrative difficulties, both for Revenue and for taxpayers, in determining 30 year old values as well as addressing the significant inflation problem in taxing gains derived from the disposal of such assets. The need to re-base becomes more acute with every passing year.

Payment dates

Recommendation – The CGT return dates and payment dates should coincide.

At present Capital Gains Tax (CGT) must be paid in two instalments:

- on or before 31 October in relation to gains incurred in the initial period (1 January to 30 September);
- on or before 31 January in the following year in relation to gains incurred in the secondary period (1 October to 31 December).

In addition, returns must be submitted on or before 31 October in the following year.

For simplification purposes, we recommend that the CGT return applicable to the CGT payable in respect of the initial period of a year of assessment should be made at the payment date (by 31 October of that year). Conversely, the payment and return for the secondary period should be both made at the following return date (by 31 October of the following year).

CCAB-I recognises that there could be concerns as to Exchequer cash-flows arising from this amendment. We suggest that the balance between cash-flow considerations and administrative simplification could be met through making the simplified arrangement available where the aggregate consideration from disposals in the three month period does not exceed €1,000,000.

Surcharge on the undistributed income of professional services close companies

Recommendation – Expenditure on capital assets eligible for capital allowances should be taken into account in reducing the undistributed profit liable for surcharge.

CCAB-I has consistently argued that the regime applicable to professional services and investment companies is discriminatory.

Since we moved from the imputation system of tax credits on dividends, there is no correlation between the tax suffered on dividends and the underlying results of a company. It is discriminatory to promote a system which mitigates one form of taxation (the surcharge) by attracting another form of taxation (Dividend Withholding Tax) which have no direct relationship.

The effective rate of tax on investment income for companies (25%) is higher than that which applies to individuals, thereby making redundant an anti-avoidance measure for most types of investment income earned through companies.

A company's after tax profits are taxed on their ultimate extraction to the shareholder normally under standard income tax rules. By obliging the payment of a dividend to avoid the surcharge, the only result is to accelerate the payment of tax. Where income has suffered tax at 25% and is then distributed; taking account of income tax on the shareholder, the tax burden can be up to 55% (ignoring levies). The tax context in which the surcharge was introduced some thirty years ago is now very different. The introduction of self assessment for companies, the introduction of dividend withholding tax, and the

bringing forward of preliminary Corporation Tax payments has achieved the acceleration of payment of tax on the profits of companies generally.

From a commercial standpoint, many professionals are obliged to operate through a corporate structure. This can be for insurance or professional indemnity reasons, for example engineers and financial consultants. It can also reflect industry practice – we understand that many of the major software multinationals will only hire contractors through an operating company, rather than engage individuals directly. There should be no particular tax penalty attaching to following best commercial practice.

However, we also recognise that this surcharge regime needs to be seen in the context of a suite of measures which defends the 12.5% rate of Corporation Tax on trading income. It can be regarded as a device to discourage the use of business incorporation solely on tax grounds.

CCAB-I believes that this purpose can be preserved, if deemed necessary, by adding to the mechanisms available to companies to extinguish the amount liable to surcharge. Surcharges in respect of undistributed professional services income can now only be mitigated through the payment of dividends. We feel that capital expenditure by a company should also serve to mitigate the surcharge.

We propose that in computing the surcharge, expenditure by the company on capital assets eligible for capital allowances should be taken into account in reducing the amount of undistributed profit liable to surcharge. This expenditure should comprise the aggregate

expenditure incurred by the company in the year of account to which undistributed profits relate, and the following year.

This proposal would resolve one of the main difficulties with the surcharge regime – that it serves as a disincentive for companies to accumulate revenue reserves to contain their levels of borrowing or for future reinvestment in capital expenditure. By linking the abatement in surcharge to the capital allowances system, this new relief would be easy to administer and monitor.

Stamp Duty - Incorporation of a business

Recommendation – A stamp duty relief should be introduced for the incorporation of businesses.

A business which is being incorporated avoids Capital Gains Tax under TCA97 s600 if it meets certain reasonable conditions. However, there is no similar stamp duty relief in respect of the same transaction. While it is recognised that not all assets are subject to stamp duty, e.g. assets may pass by delivery; or appreciating assets may be retained, it is necessary that all assets are transferred in order to avail of the Capital Gains Tax relief.

This has resulted in an anomaly in the tax system, whereby a significant stamp duty charge could be payable by the newly established company on the acquisition of the goodwill and property of the business. This is a serious commercial impediment to many business owners.

We would strongly recommend that a stamp duty relief be introduced when businesses are incorporated.

Insurance companies and withholding tax

Recommendation – a unilateral credit similar to that in Paragraph 9D should be introduced for withholding tax on insurance premiums.

TCA 97 Sch24 (9D) introduced unilateral tax credit relief in respect of interest income from non-treaty countries. The same issue arises periodically in relation to insurance or reinsurance premiums received by Irish insurance and reinsurance companies operating in the international arena.

Given the importance of this sector to the Irish economy, and its continued growth internationally, a unilateral credit similar to that in Paragraph 9D should be introduced for such withholding tax on insurance premiums.

The estimated cost of introducing such a credit would be expected to be negligible as business that attracts such withholding tax is not currently transacted through Ireland, and the existence of such a credit would be an additional string to our bow in attracting such business to Ireland.

Capital Acquisitions Tax – Dwelling House Exemption

Recommendation – Extend the dwelling house exemption to unmarried couples

FA07 s116 introduced restrictions to the Capital Acquisitions Tax dwelling house exemption in relation to a gift of a dwelling house where the house was occupied by the disponent as his or her only or main residence in the three years prior to the gift. In this situation, unless the donee had to live in the house as the disponent was compelled to depend on the donee by reason of old age or infirmity, the gift would not qualify for the dwelling house exemption.

While this restriction was introduced as a specific anti-avoidance measure, it has far-reaching consequences. In the case of an unmarried couple, a transfer of the family home to one or other of them, or the transfer of the home into joint ownership, is now subject to gift tax.

We would recommend that the FA07 amendments to the dwelling house exemption be repealed to the extent that gifts of dwelling houses between unmarried couples be exempt from Capital Acquisitions Tax.

Pensions

Contribution limits

Recommendation – Increase the pension contribution limit to €250k

TCA97 s787 provides for a limit on the allowable contribution that can be made to an approved pension scheme as a percentage of the net relevant earnings of the person. This is further restricted by a cap on the earnings of €254,000 as provided in TCA97 s790A.

While we welcome the provision in FA06 for this cap to be increased in accordance with inflation, we believe that the cap of €254,000 is too restrictive. For example, an individual aged between 50 yrs and 55 yrs cannot deduct a pension contribution of more than €76,200 in calculating their taxable income.

It is our members' experience that income tends to increase in the later years of an individual's working life. The earnings cap does not recognise this fact. In addition, the Minister for Social and Family Affairs is actively encouraging those workers who do not contribute to a pension scheme to do so. The restriction on the earnings limit seems to be at odds with this proposal.

On this basis we would strongly suggest that overall limit on pension contributions which attract tax relief be set at €250,000, all other criteria being met.

ARFs

Recommendation – Removal of the imputed distribution in relation to ARFs

FA06 introduced a measure to impute a 3% distribution to the value of assets in an ARF on 31 December each year, with no credit being given for the imputed tax when the money is eventually drawn down. This is a form of double taxation. This is further compounded if the investment return is less than inflation.

Our members have expressed concern in relation to this measure which is seen as forcing them to receive actual distributions from their ARFs. The concern surrounds the main purpose of an ARF for those members – to provide for their old age, where home care or nursing homes may be required. If they receive distributions from their ARFs, their fund is reducing. If they do not receive distributions from their ARFs, their fund is still reducing as a result of the tax on the imputed distribution. Therefore, this imputed distribution may reduce the capital value of the fund.

In this era of aging population, where more and more people will be relying on the State in later life, it seems unreasonable to penalise those people who have provided for their retirement. We would recommend that this measure be repealed.

Refunds of PRSI to self employed persons on foot of pension contributions

Recommendation – Self employed taxpayers should have the same right of PRSI recovery arising from pension contributions as employed taxpayers

CCAB-I wishes to highlight a significant anomaly in the treatment of self employed persons as against employed persons in the matter of pension contributions.

Where a payment is made either to a Personal Retirement Savings Account, an occupational scheme or a qualifying premium under an annuity contract approved by the Revenue Commissioners, a refund of PRSI is generally available to taxpayers. The legislation governing the repayment mechanism, ss 21(1)(c) and 38 of the Social Welfare Consolidation Act 2005 operate as to prevent a PRSI refund in respect of “reckonable income” (trading income) as opposed to earnings which are subject to PAYE under Schedule E.

In short, an employed taxpayer can claim a PRSI refund where he or she makes a pension contribution, but a self employed person can not. This is inequitable and counterproductive in an environment where all citizens are being asked to make proper provision for their retirement.

We would ask that this PRSI treatment for the self employed be brought into line with the treatment for employed persons.

Relief for fees paid for third level education

Recommendation – Remove the condition that approved courses be provided by approved colleges for the purposes of granting tax relief on fees

TCA97 s473A provides for a generous form of tax relief for individuals on fees paid for undertaking third level education. It is entirely appropriate to provide for such reliefs given the emphasis on developing skills in our economy.

The key criteria for the relief are that:

- Fees be paid for an approved course
- The course must be conducted in an approved college

In most instances, these criteria do not give rise to difficulty. Course accreditation is usually granted by the Higher Education and Training Awards Council, and its work in this area is well respected both at home and abroad. However, a separate approval process is required in respect of the course provider. It seems anomalous that one taxpayer attending a HETAC accredited course can obtain tax relief, while another attending a similarly accredited course but at a different educational establishment would be denied it.

As the tax legislation pre-dates the significant reform and advances in the third level sector since the formation of HETAC in 2001, it may be appropriate to review the requirement that the college, as well as the course, be approved.

Relief for professional subscriptions

Recommendation – Professional subscriptions should be deductible as an expense of employment.

At present, employees who pay their own professional subscriptions cannot obtain a deduction from their employment income as the expense is not incurred “wholly, exclusively and necessarily”. Where the employer pays the subscription on the employee’s behalf, and the professional subscription concerned is relevant to the employee’s work, a deduction is normally available to the employer.

We propose a separate relief for deducting such subscriptions from employment income. We envisage that similar conditions as apply to ensure that a taxable benefit in kind on an employee does not arise where the employer pays the subscription should operate. The main condition is that membership of that professional body is relevant to the business of the employer. Revenue regard “relevant” as meaning that it facilitates the acquisition of knowledge which is necessary for the duties of the employment, or directly related to the performance of the employee’s or director’s present or prospective duties in the office or employment.

The introduction of such a relief would help to equalize the position of professionally qualified persons in academia and in certain areas of the public service, where relevant subscriptions might not normally be paid by the employer. It would be very much in keeping with Ireland’s drive towards becoming a “knowledge economy”.

SECTION 3 - MODERNISING THE INTERACTION BETWEEN REVENUE AND THE TAXPAYER

Technical adjustments – corrections without penalty

Recommendation – Permit tax settlements to be made without interest or penalty in defined circumstances where a technical mistake was made.

The Code of Practice for Revenue Audits recognises the concept of “technical adjustments” whereby tax items can be corrected without penalty (though not without interest). However, a range of circumstances must be identified and defined to permit transactions to be treated as “technical adjustments” and hence proceed without exposure to interest or penalties, where it subsequently transpires that the tax interpretation applied might have been incorrect.

In the United States, in certain circumstances, recognition is given where a taxpayer has obtained independent professional advice on a technical point. In such circumstances, if it transpires that a transaction has not been correctly handled from the technical standpoint, the tax arising can be paid over without either interest or penalty.

The introduction of the Revenue Technical Service this year is to be welcomed. However, in paragraph 4 of Appendix C of the “Guidelines on Revenue’s Service to Practitioners and Business Taxpayers”, it is stated that pre-transaction opinions given by Revenue are not legally binding. We would suggest that certain transactions, in respect of which the Revenue Technical Service has been used, should not be subject to interest and penalties where it subsequently transpires that

the tax interpretation is incorrect, provided all relevant information has been provided.

We have in mind here transactions where there is a defined and available tax relief – for example:

- capital gains tax retirement relief – TCA97 s598
- company buy back of shares - TCA 1997 PART 6 Ch9
- eligibility for the participation exemption reliefs – TCA97 s626B

We would see such a procedure as complimentary to, rather than displacing, the existing “expression of doubt” rules. This is the reason we would envisage it applying to a limited number of defined reliefs.

We also suggest that consideration might be given to re-instating the old system of tax certificates; effectively a form of pre-purchased savings bond which could be used to discharge tax without interest or penalty, and which could be of considerable benefit both to the Exchequer and to the taxpayer in the management of cases involving technical difficulty.

Revenue audits

Recommendation – Put in place an effective time limit on the duration of Revenue audits.

At present there is no time limit on the duration of a Revenue audit. This causes practical difficulties for businesses as the business will have to assign a member (or members of staff) to the audit or alternatively employ the services of a tax advisor for the duration of the audit. In addition, Irish subsidiaries of US multinationals will have to provide details of Revenue audits/settlements to the parent

company and the lack of legislative provision limiting the time of the audits can be problematic.

Therefore, we are seeking a legislative measure to put an effective time limit on the duration of Revenue audits.

We feel that a period of six months from the date on which an audit is scheduled allows sufficient time:

- For the taxpayer, as appropriate, to furnish a qualifying disclosure
- For Revenue to assess the disclosure, raise further queries and accept the responses

Or

- For Revenue to conduct its audit
- For the taxpayer to respond satisfactorily to issues raised

After the expiry of six months, unless a query is unanswered by the taxpayer, Revenue would be obliged to conclude its audit.

Exemption from penalties

Recommendation – Extension of the €3,000 threshold to late filing surcharges

The Revenue Code of Practice provides that a penalty is not to be pursued if the aggregate amount of tax in respect of which penalties are computed is less than €3,000 and the default is exclusively in the "insufficient care" category of tax default.

We propose that this €3,000 limit also apply to surcharges imposed by TCA97 s1084 which refers to returns filed late.

Anomalies in the Self Assessment System

Recommendation – Remove practical problems for self assessed taxpayers, including the use of Form 11 versus Form 12.

The emergence of a far larger category of Self Assessed taxpayers is leading to significant anomalies in the first year of self assessment, e.g. the interaction of the loss of home carer's relief with additional PRSI burdens.

Practical problems also arise where a compliant taxpayer, filing Form 12's, falls technically subject to the Form 11 regime and becomes unwittingly caught for preliminary tax.

We suggest that where a taxpayer has filed a Form 12 for a year of assessment, but where in Revenue's view a self assessment Form 11 and preliminary tax payment was in actual fact necessary, the taxpayer be permitted to enter the self assessment regime for the following year of assessment without surcharge or interest in respect of the earlier year of assessment.

Interest on late payment of tax

Recommendation – Adopt the proposal of the Revenue Powers Review Group in full by reducing the 12% rate of interest on late payments to 10% to all taxheads

The reduction of the rate of interest on overdue tax to 10% per annum, introduced in FA05 was welcome, but confined to late payments of the direct taxes. The lower interest rate does not apply to indirect taxes such as excise duties and VAT and taxes such as PAYE, relevant contracts tax, professional fees withholding tax, DIRT and other withholding and exit taxes which are collected by employers and others on a fiduciary basis. The 12% rate operating here should now be reduced to 10% also, to ensure equality of treatment for taxpayers.

Conversely, we suggest that the rate of interest payable on overpaid tax, currently fixed at approximately 4% per annum, should be reviewed in the light of increasing European interest rates, to reflect more accurately the cost of funds to the taxpayer. Ideally the rate should be tracked to the European Central Bank rate plus a margin, as applies for all commercial borrowings.

Interest on Refunds of Tax

Recommendation - Interest on refunds of VAT should be exempted from Income Tax and Corporation Tax from the date VATA72 s21A was introduced i.e. from 1 November 2003. Also interest on overpaid tax should be paid from the date the overpaid tax is due.

Finance Act 2003 made significant changes to the regime on claiming refunds of tax including introducing a basis for allowing interest on refunds of VAT - following on from a series of appeal hearings on this area.

It has long been an established principle that interest on tax which is paid late is not allowable for Income Tax or Corporation Tax purposes and that interest on refunds of tax are likewise not subject to Income Tax or Corporation Tax. This is provided for in TCA97 s865A(4)(b). However, that provision only applies to interest paid under s865A. It does not extend to interest paid under VATA72 s21A. These two sections were introduced respectively by FA03 ss 17 and 125. It appears to have been an oversight that s21A does not carry a provision exempting the interest as the Sections are otherwise almost identical in content.

In addition, Finance Act 2003 provided for the payment of interest on overpaid tax only where the tax has not been repaid within six months of the date the repayment was due. Where a taxpayer underpays tax, the interest to be paid commences on the date the tax was due. This gap in the timeframe is inequitable and should be removed.

We would recommend that interest on overpaid tax should be payable from the date the tax is due.

Registration with the Private Residential Tenancies Board

Recommendation – Remove the tax penalty now associated with failure to register with the PRTB

A transcript from a letter to the Minister for Enterprise, Trade & Employment in relation to FA06 s11 which introduced a significant additional administrative burden on taxpayers, concerning rental income deductions and the operation of evidential requirements of registration with the PRTB, is included in the Appendix.

APPENDIX

Transcript from a letter to the Minister for Enterprise, Trade & Employment in relation to FA06 s11

Mr. Micheál Martin T.D.
Minister for Enterprise, Trade & Employment
23 Kildare Street
Dublin 2

10 September 2007

Dear Minister

CCAB-I Pre-Budget Submission

The Consultative Committee of Accountancy Bodies – Ireland (“CCAB-I”) is the representative committee for the main accountancy bodies in Ireland. It comprises the Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants, and the Chartered Institute of Management Accountants.

This year’s pre-Budget submission from the CCAB-I, which will be sent to the Minister for Finance, has as its main theme the defence of Irish business interests.

This separate submission to your Department which deals with a specific aspect in relation to the defence of Irish business interests is in respect of the requirement for landlords to register residential tenancies in order to obtain an interest deduction in their tax computations.

Section 11 of the Finance Act 2006 introduced a significant additional administrative burden on taxpayers, concerning rental income deductions and the operation of evidential requirements of registration with the Private Residential Tenancies Board.

The requirement for landlords to register residential tenancies is governed by Part 7 of the Residential Tenancies Act 2004, and has been in force for some time. There are sanctions for failing to comply with Part 7. Section 11 adds to these sanctions. It will be appreciated

that the loss of interest relief on borrowings to acquire residential accommodation for letting will in many cases be very severe.

In administering the registration process, the Private Residential Tenancies Board requires landlords to furnish, among other things, the PPS numbers of their tenants. We understand that in practice, applications without this information are rejected. Part 7 of the Residential Tenancies Act provides for the information to be sought, though only on reasonable enquiry. For very good reasons, some tenants may not have a PPS number (for example students, non nationals). This leads to the landlord having difficulties in securing registration. It could conceivably lead to landlords rejecting perhaps vulnerable tenants where a PPS is not forthcoming.

There will also be instances, because of administrative delays, when confirmation of registration might not be received until after the end of the year of assessment to which the letting relates. Further, in situations of successive short lettings to various tenants, unless full and prompt cooperation is received by the landlord from his tenants, and corresponding prompt handling of registrations by the Private Residential Tenancies Board, it will be difficult for the taxpayer to show that the requirements have been complied with "in respect of all tenancies which existed in relation to that premises in that chargeable period".

CCAB-I has no difficulty with the registration requirements of the Private Residential Tenancies Board, or with the concept that failure to register should be penalised. The Residential Tenancies Act 2004 has its own set of penalties which can be applied.

However the tax sanction is severe, and could apply because of circumstances outside the control of the taxpayer, and have knock on effects on tenants. In this time of uncertainty in the Irish residential property market, all controllable uncertainties should be removed. CCAB-I therefore requests that FA06 s11 be repealed.

We would welcome an opportunity to meet with you and representatives of your office to discuss the above submission.

Yours sincerely

Marie Barr
Chairperson, CCAB-I Tax Committee