The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

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Pre-Budget 2018 Submission

Getting tax ready for Brexit challenges and opportunities

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1. Main Recommendations

- In light of Brexit, we need to plan for the implementation of customs controls now to manage the negative impact of being the only state in the European Union with a UK land border.

- The VAT cash-flow cost facing traders who import goods from the UK post Brexit can be alleviated through the introduction of a postponed method of accounting for VAT.

- The Irish income tax system is uncompetitive by international standards. A targeted credit should be introduced to help taxpayers transition from the standard rate band to the marginal rate band. The Government should not yield to populist pressure to increase taxes for high income earners by removing the PAYE credit/Earned Income Credit or by increasing the top rate of the USC.

- If the USC system is merged with PRSI, then the contribution principle should be applied to make a clear link between contributions and benefits.

- A similar regime to the UK's Enterprise Management Incentive should be adopted in Ireland and SME share-based remuneration tax measures should be fully integrated with entrepreneur's relief, company buy-back of shares CGT treatment and the Companies Act 2014.

- The rules and conditions for Entrepreneur's relief should be compatible with CGT retirement relief and Section 600 TCA 1997 relief rules, and the definition of a qualifying group should be amended to recognise common group structures in use in Ireland.

- The CAT rate should be reduced to realign us with international rates applied to similar taxes.

- The restrictions to the Dwelling House Exemption introduced in Finance Act 2016 are too harsh and should be reversed. Targeted restrictions could be inserted into the reinstated exemption to address perceived abuses.

- Tax legislation urgently requires updating to reflect the provisions of the Companies Act 2014.

- Revenue's customer services offering needs to be independently evaluated to generate information to address the issues hindering the tax agent's work when dealing with a client's routine tax affairs.

- The principle of legal professional privilege should not be recognised for services relating to tax planning and tax schemes.

2. About CCAB-I

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

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3. Introduction

The pre-Budget 2018 submission from the CCAB-I focuses on tax measures to assist Irish businesses and taxpayers prepare for commerce post Brexit.

So much of the issues concerning Ireland during the Brexit negotiation process appear to be outside of our domestic control as we have to respect our position as a committed member of the European Union. We are therefore bound by the negotiations which consider the good of all 27 remaining member states. This submission looks at the tax measures we have control over and explores what needs to be done now so Ireland is ready grasp all of the opportunities arising from Brexit.

TK Whitaker, the public servant credited with taking Ireland out of the dire economic straits caused by protectionist policies passed away early this year. We now need a government and public sector with the vision and foresight of TK Whitaker as Ireland picks its step through the Brexit process and what is potentially our biggest economic and social challenge in living memory.

4. The Customs Challenge

The biggest tax challenge for Ireland arising from Brexit is likely to be the cost to traders of VAT and customs duties and the associated compliance burden.

Post Brexit, and without a trade agreement between the UK and the EU, customs duties will add between 2% and 50% or even more to the cost of imports and exports between Ireland and the UK, with the highest levies applying to agri-food, a sector which is crucial to the Irish economy. Approximately 15% of our goods exports and 30% of our goods imports are with the UK. Even if the outcome of talks between the UK and the EU results in free trade, there will still be customs controls applied should the UK depart the Single Market. Irish businesses need to plan for this.

As current EU treaty arrangements stand and if the UK persists with the agenda set out in the Lancaster House statement in February of 2017, some form of trade border will be put in place between the UK and Ireland if we are to honour treaty commitments to the remaining EU member states. Customs checks between the EU and the UK as a third country post Brexit should be designed to minimise delays at border controls. We would advocate a frictionless border which does not involve physical customs posts and instead relies on a sophisticated IT system to implement border controls to facilitate customs payments and declarations. Electronic surveillance and tagging of trucks will be necessary. The solution to these challenges will be found through Revenue Commissioners/HMRC collaboration with approval from Brussels.

Border controls will also increase administration costs for Irish traders because they will either have to recruit a customs specialist or use a customs agent to fulfil their customs obligations. A programme of education and resourcing should be put in place to assist smaller businesses adapt to compliance with the Unified Customs Code, ideally with the support of the European Structural & Investment Funds.

4.1 The Common Transit Area

Every effort should be made to create a mechanism which would preserve the main advantages of the Common Transit Area. This would enable goods to be shipped from Ireland to mainland Europe via the UK without customs penalties. The retention of the Transit Area would also be to the advantage of the UK, not least because of the volume of goods exported from Northern Ireland via Dublin.

5. The VAT Challenge

For imports from outside the EU, importers must pay VAT to Revenue at the time when the customs duties are paid rather than declare it at the time of filing their VAT returns. Imports from the UK will be treated in this manner once the UK leaves the EU and this will place a significant cash flow burden on Irish business at a time of great uncertainty and upheaval.

A solution to this problem is the postponed method of accounting which is provided for in Article 211 of EU Council Directive 2006/112/EC.

5.1 Postponed accounting for VAT

Under postponed accounting, importers do not pay import VAT at the point of entry of the goods and instead declare payment of import VAT in the VAT return period and claim a corresponding input VAT deduction. The effect is comparable to the reverse charge mechanism for intra-community acquisitions of EU goods where importers self-account for VAT and claim a simultaneous credit on the VAT return thus eliminating the cash flow disadvantage for the trader.

The value of goods for VAT purposes includes the cost of goods, the related freight, insurance and the customs duty. Should the UK leave the EU on 29 March 2019, the VAT effect of this change in practice will take effect on 19 May 2019 when VAT returns and payments are due for the month of March 2019.

On average, €3 billion[1] of goods are imported into Ireland from the UK during every two month VAT period. Examining the mix of these goods, we estimate that based on the current EU tariffs on imports from outside of the EU and current VAT rates in Ireland, approximately €600 million of VAT will be payable upfront by Irish importers. Based on the total VAT receipts in 2016, this amounts to 4% of the total intake. Importers would then have to claim a credit for this VAT in the next VAT return which could be filed as much as 10 weeks later.

Under the postponed method of accounting, importers could defer payment of VAT arising on 29 March 2019 and instead declare it on 19 May 2019 where they would take a simultaneous deduction on their VAT return, thus neutralising the VAT cash-flow effect.

If the postponed method of accounting is adopted, we acknowledge that there is a potential loss to the exchequer of revenue from the sector importing goods from the UK for one VAT period. This revenue source does not exist at present and the VAT cost would be neutralised in any event over the year. However the key benefit to this approach is a reduced administrative burden for businesses and Revenue alike and it could also make Ireland more attractive for large companies who wish to set up a base in the EU.

[1] Brexit – Ireland and the UK in numbers , report by Central Statistics Office, December 2016

To date, seventeen EU Member States[2] including Bulgaria, Poland and Romania have adopted the postponed method of accounting. The majority of EU countries operating the postponed method of accounting have land borders with non-EU countries and trade with these countries. As Ireland will find itself with a land border with one of its biggest trade partners on completion of Brexit, then it is rational to implement this approach which has already been tried and tested by many other members of the European Union.

6. Getting the income tax system ready for Brexit

The Programme for a Partnership Government (PPG) recognises the need to keep the tax and revenue base broad, while reducing the rate of tax on work to achieve social and economic objectives. The 2016 Coalition Government is now in its second year of tenure, but no tangible in-roads have been made to address the high tax cost placed on workers in Ireland.

A recent report[3] published by the European Commission sets the European average top rate of income tax at 39.2% but Ireland's top rate of personal tax is almost 9% above this average at 48%. The IDA[4] has also added its voice to calls for reform of employment taxes noting that high personal tax is a deterrent for international companies considering investing here.

While Ireland's income tax system is predicated on being progressive, those on incomes falling just within the higher rate tax band face a disproportionate increase in tax compared with workers on comparable incomes in other EU Member States. Many employers are reporting that wage inflation is negatively impacting business while the benefits of a pay increase are eroded for employees moving from the standard rate band to the marginal rate band in particular. Tax reform is not the only remedy, but is, nonetheless, a significant component of a solution to this problem.

[2] Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania.
[3] Taxation Trends in the European Union for 2017, Data for the EU Member States, Iceland and Norway
[4] IDA's press release for its Half-Year Report 2017

6.1 Tax relief for Individuals on the Average Wage

As with any arrangement where different rates are charged depending on the level of income, there are pressure points in the income tax system where treatment is especially harsh. The 40% rate of income tax applies at income levels of €33,800 which is lower than average national income in Ireland in 2016 of €36,919[5]. The abrupt jump from 20% to 40% in the rate of income tax applied at a level less than average national income is unusual by international standards. In most countries, the top rate of tax only begins to apply at income levels of a number of multiples of the average wage[6].

We recommend the introduction of an additional tax credit, by way of a supplementary PAYE credit to these individual taxpayers who earn less than €40,000, granted by way of a claim. An additional €300 tax credit to employees in this earning bracket would make an appreciable difference to those concerned. According to the latest statistical data from Revenue,[7] 190,281 taxpayers earn between €30,000 and €35,000 while 160,748 taxpayers earn between €35,001 and €40,000. We estimate that providing at targeted tax credit to taxpayers earning between €33,800 and €40,000 would cost the Exchequer €51 million. This is a more efficient use of scarce Budget resources when one considers that a 1% increase to personal tax credits would cost €154 million in a tax year.

Unfortunately a "step" would remain for those earning over €40,000, because they would lose the benefit of the supplementary PAYE credit, but the step may be easier to deal with on a higher income.

The advantage of a claimable credit is that its benefit does not automatically ripple up to higher earners, nor trickle down to those who cannot avail of it because they do not pay enough income tax to absorb it.

[5] Central Statistics Office, Earnings and Labour Costs 2016

[6] Taxpayers in France pay personal tax at the 41% rate on income over €71,898. Taxpayers in Germany pay tax at 42% on income over €54,057.

[7] Statistics & Economic Research Branch, Revenue Commissioner, Ready Reckoner - Pre Budget 2018

In the past, there have been practical difficulties associated with targeting tax reliefs to benefit a particular category of individual, but the capacity of Revenue to administer focused relief claims online has dramatically improved in recent times. In particular, the automation of the Form 12 process currently underway within Revenue should mean that such claims are relatively inexpensive to administer.

6.2 PAYE credit and Earned Income Credit

The PPG contains an intention to remove the PAYE credit for high earners, and it is assumed that this would also extend to the removal of the Earned Income Credit on the same basis. The Income Tax Reform Plan as published last year also postulates on the tax savings if these credits are withdrawn from high income earners. A number of government reports over the years have reasoned that self-employed individuals have access to more beneficial expense deductions which in effect allows a self-employed person to have lower taxable income than an employee with comparable expenses. It is disputable if this view was ever correct as tax deductible expenditure is subject to rules in legislation and long established case law. In recent years, Revenue has focused its attention on auditing expense deductions by the self-employed and applies a more narrow interpretation of the legislation which ensures that only expenditure wholly and exclusively incurred for the benefit of a trade is available in the calculation of taxable profits.

Self-employed taxpayers with income in excess of €100,000 are already subject to a 3% USC surcharge on self-employed income and investments which is not levied on employees earning the same income.

The CCAB-I views any move to push the tax burden further onto the shoulders of the high income earners by removing the PAYE or Earned Income Credit as only serving to compound the problems of attracting FDI as described by the IDA and fuel wage inflation even further.

The PPG also stated that the discrimination in the tax system against self-employed individuals would be removed with the full introduction of a credit for self-employed individuals equal to the PAYE credit by 2018. There is still a differential of €700 to close off by 2018 which we estimate will cost approximately €75 million. While budgetary resources are limited, the bias in the tax system against the self-employed cannot continue and the gap in the available credits should be closed in 2018.

6.3 Merger of PRSI and USC

The Consumer Sentiment Index for May 2017[8] notes that Irish consumers are displaying a somewhat irrational degree of sensitivity to the risk of an economic setback in spite of robust growth in the economy at present. The report states that the negative sentiment can in part be explained as a legacy of the recent downturn but it is also a reflection of the fact that the financial circumstances of many Irish households are still dubious. The report also noted that only a quarter of Irish consumers reported an improvement to their personal finances over the past year while a quarter of Irish consumers reported a decline in living standards.

Consumer sentiment may be boosted if the taxpayer can garner confidence that he or she will benefit from contributions made to the taxation system and social insurance when experiencing financially vulnerable situations such as unemployment and sickness.

In April this year, the Department of Social Protection published the findings of a survey of Class S PRSI contributors[9]. The majority of respondents to the survey, 88%, said they would be willing to pay a higher headline rate of PRSI in return for at least one additional social insurance benefit. A smaller majority, 74%, said that they would welcome an option to keep paying the current headline PRSI rate but also pay additional voluntary contributions in return for extra benefit coverage. Respondents reported low levels of coverage from private insurance, such as income continuance cover and just 28% had private cover for long-term illness and only 2% for unemployment.

As stated by Minister Donohoe during a recent Dáil session, the plans to merge the USC with PRSI are being considered as an alternative to the phased abolition of the USC. It was always going to be a difficult task to find an alternative source of tax revenue to

[8] A joint publication by the ESRI and KBC Bank Ireland
[9] Department of Social Protection, A Survey of Class S PRSI Contributors.

replace the average USC yield of €4 billion per annum. Any changes which integrate the USC and PRSI present an opportunity to apply a contributory principle whereby contributions to tax and social insurance are more clearly linked to a taxpayer's social insurance entitlements. The Department of Social Protection's survey shows that there is clearly an appetite among taxpayers to access more benefits in exchange for increased contributions. This would also give taxpayers as consumers a sense of security which has been lacking in the economy over such a protracted period.

7. Share based remuneration

The PPG made a commitment to explore mechanisms through which SMEs can reward key employees through share-based remuneration. Minister Noonan in his 2017 Budget speech confirmed the development of a new, SME-focused, share-based incentive scheme, to be introduced in Budget 2018. Government consensus with the world of business that share-based remuneration for the SME sector is the way forward is encouraging, but it is imperative that the tax mechanics of the pending regime are effective and can be easily understood and accessed by employees and employers alike.

The best approach to share-based remuneration for the SME sector would be to introduce a regime similar to the Enterprise Management Incentive (EMI) scheme in operation in the UK.

Subject to certain rules and conditions, the EMI scheme offers generous tax advantages to both qualifying companies and participants, as follows:

- no income tax or National Insurance contributions (NICs) are payable on the grant of the share option;
- normally no income tax or NICs are payable when an employee exercises the share option, unless the exercise price is less than the market value of the shares on grant – in that case, income tax and NICs are payable on the discount;
- CGT is payable on the sale of the option shares;
- Entrepreneur's relief ("ER"), which reduces the rate of capital gains tax to 10% on the first £10 million of lifetime gains in the UK, is potentially available on the disposal of shares acquired pursuant to an EMI option. The strict conditions that apply to ER are also relaxed for EMI shares, in certain respects.

The scheme is aimed at qualifying trading companies with gross assets not exceeding £30 million and fewer than 250 full-time equivalent employees at the time the share option is granted.

If this relief is replicated in Irish legislation, then the SME sector will have an opportunity to implement effective share-based remuneration incentives. The characteristics of an effective share-remuneration scheme for the SME section are as follows:

- The tax implications must be simplified and integrated across all the personal taxes and CGT.
- Tax should only arise when the shares are sold because raising funds to pay tax at a time other than when the taxpayer makes gain on a share disposal is very difficult.
- Company buy-back of shares issued as share-based remuneration in SMEs should be treated as a CGT event to accommodate the fact that there may be no other ready market for the employee to sell shares.
- Tax reliefs such as the entrepreneur relief should be amended to allow gains on disposals of shares by employees to qualify for the relief.
- Company law must be fully integrated with tax law for share based remuneration in the SME sector.
- Tax relief for SME share based remuneration should not be subject to conditions which are impractical for commercial reasons. For example, it is uncommercial to impose a condition that all employees should have access to a SME share based scheme.

Reforming tax relief for share based remuneration for the multi-national sector should also be considered in light of the even greater need to strengthen Ireland's FDI offering in the wake of Brexit. Tax relief reform for this sector should focus on share options as this complements the preferred share participation offering in the multi-national sector. Tax law in this sector should be clear and unambiguous to ensure that Ireland is viewed by multi-nationals as a location which is easy to do business.

8. Tax treatments in need of technical repair

8.1 Limitations of revised entrepreneurs relief

There are a number of limitations to the CGT relief for entrepreneurs as provided for in section 597AA TCA 1997 which should be addressed in Finance Act 2018 to get this relief operating to optimal effect.

The current relief does not make any provision for periods of ownership of assets by spouses for the purposes of the ownership test. The relief does not apply to assets personally owned by the shareholder but which are used by the company nor does it apply to assets used by sole traders or partnerships prior to incorporation. In this regard entrepreneurs relief is inconsistent with the qualifying conditions for other reliefs such as retirement relief (section 599/598 TCA 1997), business relief (section 90 to 102A CATCA 2003), and relief for the incorporation of a sole trade (section 600 TCA 1997).

The relief available under section 597AA TCA 1997 currently operates on application of a reduced CGT rate of 10% on qualifying gains of up to €1m in a vendor's lifetime. While the rate reduction in last year's Budget was certainly a welcomed amendment, the relief is still not operating on a par with the UK's regime which provides for a 10% rate of CGT on gains of up to £10m.

Another significant obstacle to accessing this relief as encountered by members of CCAB-I is the restrictive definition of a qualifying group. For example, a holding company "A" has two subsidiaries "B" and "C". A is a pure holding company, B a trading company and C is a dormant company or an investment company. This group currently fails the "qualifying group" test because all subsidiary companies must be trading. This is the case even though the non-trading company may be worthless or it may hold assets of nominal value. As a result, many groups fall outside the definition of a qualifying group. Therefore, entrepreneur relief as currently drafted is inconsistent with the standard commercial structure of many groups of companies. We suggest that the qualifying group test should be amended to mirror the tests for recognising a trading group as per other established CGT reliefs such as section 626B TCA 1997 and section 598 TCA 1997.

Revised entrepreneur relief applies a 10% rate of tax on qualifying gains subject to a life time cap of €1m. However the legislation is unclear on how to determine the portion of a gain qualifying for the 10% rate of CGT. This makes the relief very difficult to operate in conjunction with Retirement Relief under section 599 TCA 1997 on transfers of business assets to children in particular. For example, in cases where the value of the business assets disposed of exceeds €3m and a parent is aged 66 or more, the gain which qualifies for retirement relief is capped at €3m leaving a portion of the gain subject to CGT. However, the legislation does specify if the 10% rate of tax under revised entrepreneur relief applies to the gain qualifying for retirement relief or to the taxable gain. The legislation should be amended to state that entrepreneur relief applies to the gain remaining after retirement relief is claimed.

8.2 Restriction to EII Scheme funding

Finance Act 2015 introduced section 494(4A) TCA 1997 into the EII Scheme legislation to provide for requirements under the General Block Exemption Regulations (GBER) which are EU State Aid regulations. However, our members report that some of the measures under the GBER have greatly restricted access by SMEs to EII Scheme funding. The main problem arises for companies seeking to raise EII funding for a second time. Such a company must prove that funds previously raised through EII/BES/SURE meet the conditions of GBER at the time that the original funding was put in place and the company's business plan at the time of the original funding foresaw the subsequent funding round. It is unreasonable that a company should be blocked from raising funds through the EII Scheme due to the imposition of retrospective rules. The strict interpretation by Revenue that a business plan must have been in place expressly reflecting the intention to raise additional funding is particularly unfair. This condition should be amended to recognise that a declaration by an officer of the company or board minute is acceptable as evidence of the intention to apply for follow-on funding in the absence of a business plan.

8.3 Section 626B disclosure of gain on Form CT1

The 2017 Form CT1 now requires details of a gain arising to a company to which section 626B TCA 1997 relief applies. Such information was not required in the past. This development is causing difficulty as the information required is different to the information used in the preparation of the company's accounts and it is very burdensome for taxpayers to gather the information now required for statistical purposes in the tax return.

The taxpayer must spend considerable time and costs in gathering information in respect of a gain that is exempt for tax purposes and has no impact on the Exchequer. We request that the Government considers the cost to taxpayers when adding statistical data requirements to what is already a very lengthy and complex tax return.

8.4 Section 291A TCA Claims

Companies can claim capital allowances on capital expenditure incurred on intangible assets used for their trade. This is an extremely valuable relief for the purposes of Ireland's FDI tax offering. However there appears to be conflicting conditions in the legislation on the time frame for making a valid claim to Revenue. Section 291A (10) TCA 1997 states that a claim must be made within 12 month from the end of the accounting period in which the capital expenditure on the intangible asset is incurred. However, the asset must also be in use for the purpose of the trade before the end of the accounting period under general principles for capital allowance claims. It is possible that a company may incur expenditure on the intangible asset in one accounting period but not use the intangible asset for the purpose of its trade until the following accounting period in which case the claim for relief under section 291A TCA 1997 may be outside the 12 month deadline as prescribed by Section 291A (10) TCA 1997.

Failures of a section 291A TCA 1997 claim due to timing issues is clearing not in keeping with the spirit of the legislation. We recommend that section 291A (10) TCA 1997 be amended to extend the deadline for making a claim to at least two years. Taxpayers are permitted to make claims and amend tax returns within 4 years of the end of the year giving rise to the refund/amendment so the 12 month rule for section 291A TCA 1997 claims is arbitrary.

8.5 CAT rate

After a number of years of economic recovery, now is an opportune time to consider a reduction to the rate of Capital Acquisitions Tax from 33% to 20% to realign Irish tax rates on capital transactions with international standards.

The 33% rate of CAT is also high by international standards. For example France operates a tapered tax rate starting at 5% to 45%. The 30% rate of tax only takes effect on gifts and inheritances valued over €550,000. The rate in Ireland is punitive by comparison and should be reduced.

8.6 Rebasing costs for CGT purposes

For CGT purposes, the base cost of assets held before 1974 must be calculated using the market value of the asset as of 6th April 1974. This means that a taxpayer must hold records for 43 years or the taxpayer must try to ascertain the market value of the asset some 43 years earlier. The UK CGT system works from the year 1982 as the earliest year for determining the base cost of an asset and we call for a similar rebasing of the earliest year to determine the market value for assets held for a long period by the taxpayer. This will help reduce the record maintenance burden of the taxpayer and it will assist in establishing a more accurate value of an asset where a professional valuation is the basis for determining the acquisition cost for CGT purposes.

8.7 Dwelling House Exemption

The key CAT reliefs available in Ireland are the Dwelling House Exemption, Agricultural Relief and Business Relief. The Dwelling House Exemption was traditionally used by taxpayers who put their savings into their homes or into an investment property and was popular among a large portion of the taxpayer base. Agricultural Relief benefits the farming community while Business Relief is for the benefit of the SME sector.

The Dwelling House Exemption was generally used by a parent to help the next generation get onto the property ladder. The exemption was also important to co-habiting individuals for the purposes of transferring the family home free of CAT from one co-habitant to another.

However this exemption is severely restricted under Finance Act 2016 with effect from 25 December 2016. The exemption is now unavailable for all gifts of dwellings with the exception of gifts to dependent relatives. Restrictions also apply to inheritances. These restrictions have resulted in the all but extinction of this relief on gifts in particular.

The introduction of a limit on the value of a dwelling house for exemption purposes or a condition which only grants the exemption once over the lifetime of a beneficiary would have effectively shut down the perceived abuse of the exemption. We call for the reintroduction of the Dwelling House Exemption subject to the targeted restrictions suggested above. It is important that the Irish tax system is fair to taxpayers who have invested in their homes and properties over their lifetime given the availability of Agricultural Relief and Business Relief for taxpayers who have made other investment choices.

8.8 Domicile Levy

The Domicile Levy was originally introduced to ensure that wealthy Irish tax exiles with Irish located capital would make a contribution to the State. However, the levy also applies to tax resident individuals whose "world-wide income" is greater than €1m, whose liability to "income tax" is less than €200,000 and the market value of whose Irish property is in excess of €5m. A number of key definitions used in the domicile levy legislation are unclear and are inconsistent with other definitions and fundamental principles in tax legislation as follows:

- A deduction for capital allowances and losses is not allowed in the calculation of world-wide income for the purposes of the domicile levy. Accordingly, an individual with no net income due to trading losses will still have income for the purpose of the levy. The CCAB-I calls for the amendment of the definition of "world-wide income" such that income is calculated in the same manner as for income tax purposes.

- The definition of Irish property excludes shares in trading companies. However, it does not exclude trading assets held outside a corporate structure. Related borrowings are not taken into account in determining if the individual exceeds the €5m property limit. In determining whether the €5m Irish property limit is exceeded, trading assets should be excluded and debts relating to the property should be taken into account.

- The domicile levy is reduced by income tax paid but USC paid is not deductible. Taxes paid in other jurisdictions are also ignored when establishing the individual's domicile levy. The USC and taxes paid in other jurisdictions should be offset against the domicile levy due for a tax year.

8.9 PRSI on a deemed income receipt

Section 87B TCA 1997 applies to individuals engaged in a trade of dealing in or developing land. Where an amount of any debt, which is incurred by the individual to fund the acquisition of land held as trading stock is released that amount is treated as a receipt of income in the year of release. Carried forward losses of the trade are available to reduce or eliminate income tax and USC arising. However, a PRSI liability arises on the deemed receipt as losses forward are not deductible for PRSI purposes and a substantial liability can arise for the taxpayer concerned. The CCAB-I has raised this issue on a number of occasions through the TALC process. We understand that changes to PRSI are the responsibility of the Department of Social Protection and we have raised this matter also directly with that government department.

We recommend that trading losses carried forward should be deductible in calculating income liable to PRSI in the same manner as for income tax and the USC and we call on the government departments to work together to put corrective legislation in place as soon as possible.

9. Companies Act 2014

The Companies Act 2014 makes a number of changes to company law which have implications for tax law. For example, a number of tax reliefs used for corporate restructuring are linked to company law however the tax rules are no longer synchronized with the Companies Act 2014. Revenue and practitioners have held a series of meetings over the last two years. The key areas of tax legislation that require amendment on foot of the Companies Act 2014 have been identified (see Appendix 1) and the natural next step is to reflect the identified updates into tax law. The Companies Act 2014 was signed into law almost three years ago. It is unacceptable that corresponding changes to tax law have not been put in place by now and we would urge that the necessary legislative updates be included in the Finance Bill 2018 as a matter of priority. Taxpayers require certainty on the tax implications of corporate transactions which can involve significant sums of money and therefore should be able to depend on the availability of up to date tax legislation.

10. Independent review of Revenue's customer service standards

Members of CCAB-I continue to experience difficulties in communicating with Revenue on behalf of clients. In particular, delays in response times to queries and requests for refund transfers fielded through MyEnquiries result in inefficiencies for both Revenue and taxpayers.

The standard customer service response time of twenty to twenty five days is too long a time frame to wait for a response to many of the types of issues which must now be fielded through MyEnquiries. We recommend that the response time standard be reduced to ten working days for standard queries and five working days for requests to reallocate tax refunds to other tax heads.

Our members also experience delays in dealing with Revenue on the following issues:

- VAT registrations,
- Conclusion of audits, and
- R&D refunds withheld pending the conclusion of audits.

We have raised all of these issues through the TALC process but frequently the examples and experiences of our members are refuted by Revenue on the basis of its own statistics and surveys. An independent review of how Revenue's customer service resources are managed is the only reliable means of assessing the quality of customer service provided to taxpayers and tax agents working on their behalf. A solution can only be established once the issues are independently assessed and recognised. All of the tools are in place to make Ireland's revenue authority one of the most advanced in the world but in order to achieve that status, Revenue needs to take the concerns surrounding customer service raised by practitioners seriously and work with us to find a satisfactory solution.

11. Legal Professional Privilege should not be recognised in tax planning services

Firms of accountants and law firms continue to be treated unequally when it comes to providing information to Revenue. Under current Irish tax rules as per section 817J TCA 1997, a promoter is released from mandatory disclosure reporting obligations where legal professional privilege can be maintained. Case law has established that only legal firms can avail of this protection.

It is clearly in the public interest to have a fair, robust tax system within which taxpayers can know with certainty how they will be taxed. A legal professional privilege (LLP) exemption within the Taxes Acts is discriminatory and affords some taxpayers greater protection under the law by virtue of the kind of firm they choose to handle their affairs. By extension this leads to an inference that advisors who qualify for the LPP exemption are preferred from an official policy perspective, even though they provide exactly the same service as those not qualifying for the exception. This is clearly anti-competitive and of extreme concern to our members.

The need for a public debate on this matter is all the more pressing now as the European Commission also plans to introduce reporting obligations on tax intermediaries who design and promote cross-border tax planning schemes for clients. The Commission's proposed reporting obligation also releases intermediaries claiming LLP from reporting duties. In effect, the Commission plans to introduce rules which will distort the tax agent market across the European Union while at the same time, it is claiming to tackle unfair commercial activity across the Union.

The appropriateness of LPP exemptions within the tax system must be reconsidered by the Irish Government and the European Commission. The CCAB-I believes that existing exclusions in the legislation should be suspended and allowed to rest on the basic legal principle. No further legal enhancements to the LPP principle as it applies to those with a legal qualification should be introduced in Ireland or in the European Union until the basis for the advantage conferred on the legal profession is fully aired and understood.

Appendix 1

Tax legislation identified as requiring update or clarification in light of the Companies Act 2014:

Stamp Duty Act 1999

Section 87B SDCA 1999: Merger of companies
Section 80 SDCA 1999: Reconstructions or amalgamations of companies
Section 79 SDCA 1999: Conveyances and transfers of properties between certain bodies corporate.

Taxes Consolidation Act 1997

Section 617 TCA 1997: Transfer of assets, other than trading stock, within group
Section 615 TCA 1997: Company reconstruction or amalgamation, transfer of assets
Section 247 TCA 1997: Relief to companies on loans applied in acquiring interest in other companies
Section 587 TCA 1997: Company reconstructions and amalgamations
Section 584 TCA 1997: Reorganisation or reduction of share capital
Section 598 TCA 1997: Confirm that Merger/Division does not trigger clawback
Section 599 TCA 1997: Confirm that Merger/Division does not trigger clawback
Section 541 TCA 1997: Debts
Section 130 TCA 1998: Matters to be treated as distributions (clarity on whether there is a distribution)
Section 400 TCA 1997: Company reconstructions without a change of ownership/
Section 308A TCA 1997: Assets transferred in course of scheme of reconstruction or amalgamation.

VAT Consolidation Act 2010

Require confirmation if the provisions of section 64(9) VATCA 2010 continue to be available.

CAT Consolidation Act 2003

Clarification on the impact of withdrawal of section 101/104 CATCA 2003 in light of the Companies Act 2014.