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

47 – 49 Pearse Street, Dublin 2

Minister Paschal Donohoe
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

2 November 2020

By email to: paschal.donohoe@oireachtas.ie
minister@finance.gov.ie

Dear Minister

We wish to bring to your attention a number of important matters arising out of Finance Bill 2020. We ask that careful consideration is given to these matters in the interest of ensuring that the Irish tax system remains fair and equitable and to ensure that there are no unfair barriers to taxpayers in accessing COVID-19 support measures.

Section 11 of the Bill - Covid Restrictions Support Scheme

The Covid Restrictions Support Scheme is an important relief for businesses impacted by Government restrictions introduced for the purpose of preventing or reducing the risk of the spread of COVID-19. The legislation states that the objectives of the scheme are to provide economic stimulus to mitigate the dual impacts of COVID-19 and a potential no trade deal Brexit on the economy. However, the relief as currently provided for in section 11 of Finance Bill 2020 is limited. We are of the view that in the current form, the scheme will not fully achieve the objectives as it does not provide any support for businesses which do not operate out of a premises, albeit such businesses are equally impacted by Government restrictions.

The Covid Restrictions Support Scheme should be aligned with the stated objectives and provide support to all businesses significantly impacted by Government restrictions. In particular, the condition that only businesses with customers precluded or restricted from accessing the premises of a business should be removed.

Section 15 of the Bill – replacement of domestic exclusion from transfer pricing
Section 15 Finance Bill 2020 provides for a new section 835E TCA 1997 which provides for the exclusion from transfer pricing of certain domestic non-trading arrangements. This change is very disappointing given the fact that the CCAB-I has participated in lengthy TALC discussions with Revenue on draft transfer pricing guidelines for a year without any indication that section 835E TCA 1997 would be completely revised in Finance Bill 2020. The redrafted section 835E TCA 1997 will place Irish businesses at a competitive disadvantage compared to competitor jurisdictions where more generous domestic exemptions apply. The revised measures are impractical and will be difficult if not impossible to comply with and will have a particularly detrimental impact on the SME sector.

Typical group arrangements between Irish companies will not benefit from the exclusions proposed in section 835E TCA 1997. The proposed legislation will give rise to real tax costs contrary to the stated policy intention. A typical Irish group's intercompany lending arrangements have developed over a long period of time, when transfer pricing rules did not exist and there was no tax benefit derived from lending from one Irish company to another at low or no interest rates – it was simply the easiest way of transmitting funds where required in a group. Many such groups will not be equipped to determine if the proposed section 835E TCA 1997 will apply to certain loan balances in the timeframe set out in the legislation. The corresponding adjustment provision section 835H, is not fit for purpose and means that, unlike other jurisdictions, a one-sided transfer pricing adjustment may arise under the proposed section 835E TCA 1997.

In this context, we ask that the changes to section 835E TCA 1997 are reconsidered before the Bill is finalised into law. Given the complexity and importance of the issue, and the potential negative impact on SMEs, large Irish companies and MNEs alike, we call for a deferral of the legislation pending a collaborative review involving industry, practitioners, the Department of Finance and Revenue. The CCAB-I would be happy to participate in discussions with the Department of Finance and Revenue on possible remedies.

Section 67 of the Bill – no interest for tax paid on a successful tax appeal
Section 67 Finance Bill 2020 appears to withdraw the payment of interest on tax refunds due to taxpayers where the taxpayer successfully wins a tax appeal having made a payment to Revenue of the disputed additional tax under appeal. Up to now, where a taxpayer was successful in their appeal, refunds of tax earned interest at the rate of 4% per annum. However, if the taxpayer loses an appeal and has not paid the disputed tax, interest at a rate of up to 10% per annum is due on the additional tax. The removal of the payment of interest to the taxpayer as provided for under section 67 Finance Bill 2020 is unfair and acts as a disincentive to a taxpayer to take a tax appeal case. A fair and balanced system would treat the Revenue and the taxpayer in the same manner i.e. the same rate of interest for both sides or no interest for both sides.

We urge the Government to reconsider these measures and to make appropriate changes before the Bill is enacted into law.

Please contact Norah Collender (norah.collender@charteredaccountants.ie) for clarification on any matter outlined above.

Yours sincerely

Peter Vale

Chair, CCAB-I Tax Committee