Covid-19 and Tax:
Some Thoughts and Observations

by Gary O'Mahony

"That's mad, Ted!" I am not sure Fr. Dougal's catchphrase, typically accompanied by his wide-eyed bewilderment, adequately conveys how many of us feel in these mad (or, to borrow another Irishism, GUBU) times. Quite apart from public health measures, the Government is aiding businesses dealing with a dramatic drop in revenues and cashflow through a suite of measures, including various grant/loan schemes and rent/rates supports, which are beyond the scope of this article.

In a broader sense, prior certainties now seem uncertain and we cannot yet say for sure when (what, a few short weeks ago, passed for) normality will return (or indeed what exactly it might look like).

The "new" Revenue approach

However, one change we probably can say for definite is temporary, is Revenue's recent (radical) transformation from collecting in and chasing up tax due to now administering tax relief and deferral measures. Its key focus presently is on areas like:

- Issuing refunds,
- "Warehousing" tax payments (e.g. PAYE/VAT) for a year (with no late payment interest/penalties, and a reduced annualised interest rate of 3% (from 10%) thereafter),
- Ensuring temporary wage subsidy scheme (TWSS) payments are processed (or, as Chairman Cody put it in a radio interview on 31 March last, "Revenue is sitting on money it wants to pay"); and
- "Suspending audit and other compliance activity on taxpayers' premises until further notice".

This article is to briefly assess the impact of this (temporary) change in Revenue's approach, and what may ensue post-pandemic.

TWSS

Section 28 Emergency Measures in the Public Interest (Covid-19) Act 2020 deals with TWSS. At the time of writing, Version 9 of Revenue's guidance thereon is the latest and it is still being tweaked regularly (so it is difficult to comment on it now other than in broad-brush terms). Suffice to say, as Chairman Cody did in that interview, if continuing to trade and suffering a significant impact, "you would be recklessly trading if you didn't apply for the scheme".

However, the post-pandemic reckoning requires consideration. As matters currently stand:

- You/your clients may be asked to justify why you applied for TWSS (so it is prudent to keep records – i.e. employer eligibility and supporting proofs) and you may need to repay some/all TWSS payments received (essentially applying self-correction under the Revenue Audit Code),
- The trade-off for a 0.5% J9 employer PRSI rate on amounts paid by the employer is no corporation tax deduction (which sets aside the "wholly and exclusively for the purposes of the trade" principle); and
- Some employees will have an income tax bill later this year as TWSS is not currently listed as a tax-exempt social welfare payment; also, if a "high-earner" (for TWSS purposes) takes a pay cut or waives a bonus, it is assumed Revenue's salary sacrifice rules do not apply, though clarity may be needed.

A concern expressed was whether availing of TWSS could, under the EU General Block Exemption Regulation (GBER) rules, that need to be considered for BES/EII financing, cause a potential EU State Aid difficulty if also availing of such

financing; it should be checked in each case, but it seems TWSS is not, under GBER, a "State Aid" for BES/EII purposes.

Revenue administration

Commentators suggest behavioural changes may be a positive by-product of Covid-19 (e.g. working remotely trumps a traffic jam). Revenue are encouraging (even more than heretofore) online communication (e.g. through My Enquiries), with public offices closed and helplines scaled back (unless dealing with TWSS/ROS).

They are prioritising "the approval and processing of repayments and refunds, primarily VAT and PSWT", but also have confirmed corporation tax (including R&D) refunds "will also be prioritised".

Though not currently active in audits on taxpayer premises, Revenue are, "where possible, continuing to engage with businesses to finalise open interventions through My Enquiries or by phone" (if working remotely, an OECD recommendation is the caseworker shouldn't discuss it near smart speakers due to confidentiality concerns). So, it seems no new interventions for now (Revenue had flagged they were ready to rock in 2020 after their recent district re-alignment). As a planned Revenue RCT bulk rate review was deferred, it may also be timely to "self-review" RCT compliance.

Tax pay/file position

Whatever about paying (e.g. Revenue are warehousing PAYE and VAT), it makes sense to continue filing if for no other reason than non-filers seem an obvious choice for Revenue when they restart interventions. That said, the CT1 late filing surcharge (and loss restriction rules) "is suspended until further notice" for periods ending June 2019 onwards. It is possible to apply to Revenue to extend the "normal" 18-month period for close companies to make a distribution by a further nine months. It may also be worth looking at "clever" use of corporation tax losses for cashflow purposes by, say, changing accounting dates.

Payment of LPT was deferred by two months too (to 21 May).

There is little mention to date on income tax pay/file (it is several months to the deadline) but this may need to happen yet. For clients with refunds, early filing makes sense, as does considering cashflow planning around use of losses.

Current tax clearance status remains in place.

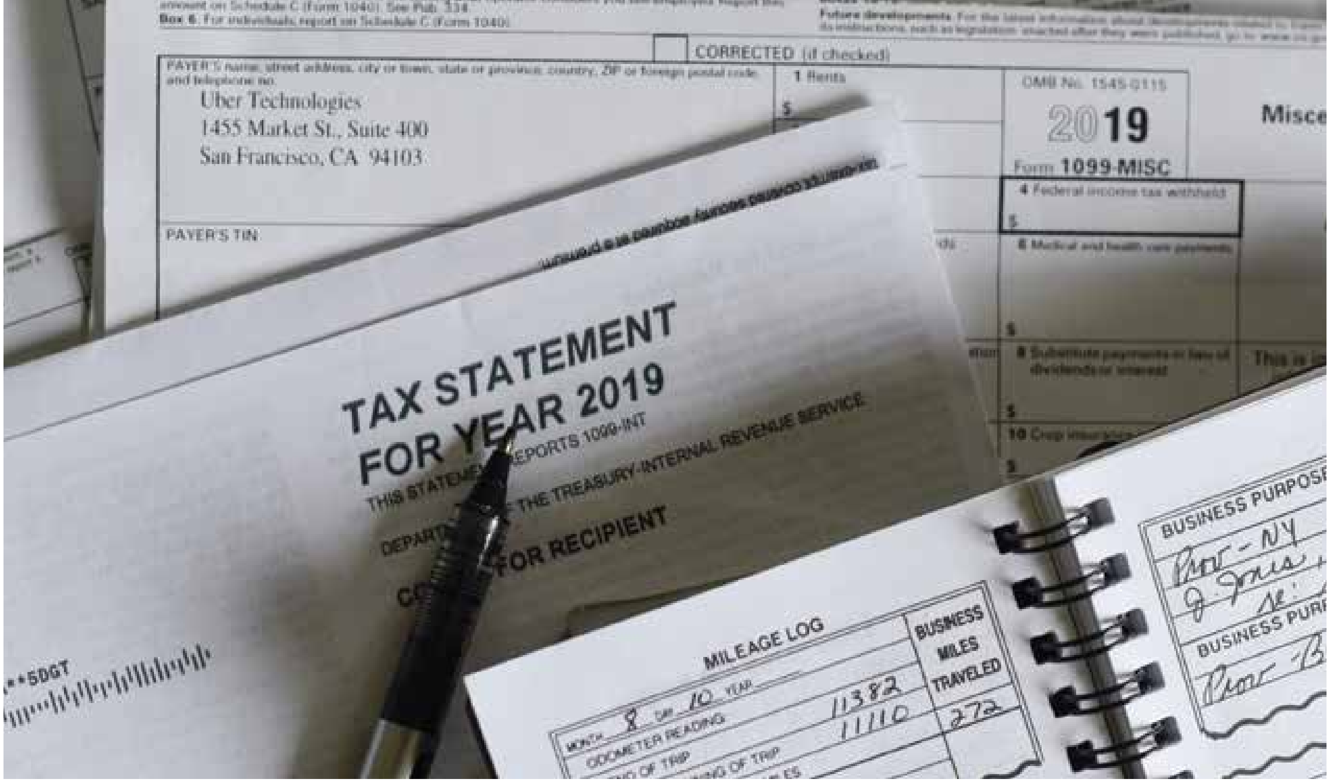
In acknowledging "tax payment difficulties are an inevitable pandemic impact", Revenue confirmed both that "all debt enforcement activity is suspended until further notice" and "we will work with taxpayers to resolve their tax payment difficulties". We may all need to be familiar with Revenue's phased payment arrangement rules soon.

Other tax issues

The lockdown means remote working and travel restrictions, which raises income tax points. For example, Revenue has issued guidance on certain BIK issues, as follows:

- Employer-provided equipment for home working, as well as travel and accommodation cost reimbursements (e.g. certain flights/taxis), are typically not taxable.
- €3.20 a day can be paid tax-free under Revenue's e-Working guidance (arguably, many of us are remote workers now and may, in some form, remain so, possibly with more tax relief).
- Four options are given to determine if a BIK still arises on an employer-provided vehicle, and there are special rules for motor industry employees.

Prior to travel restrictions, there were many tax scenarios where days present in/absent from Ireland were important and such global mobility issues are also covered by Revenue guidance (which applies force majeure rules where appropriate; essentially, days absent/present can be disregarded if certain conditions are met). Guidance also addresses corporation tax residence (in similar circumstances) – this is important



to avoid tax costs from unintended permanent establishments or similar.

VAT/customs duty concessions are also in place if importing goods needed to combat Covid-19.

The future

A Commission on Taxation was established in February 2008 and its (550 page) report issued in September 2009. It had been twenty-five years since the last comprehensive review of our tax system and, over the next few years, its impact could be seen in Finance Act changes. Speaking at the time, Minister for Finance Brian Lenihan stated: "This report's longer-term strategic perspective and its focus on the future will help shape the taxation system for the next decade and beyond. Given that focus, implementation of many complex and often inter-related recommendations in the report are likely to be phased in over several years."

Some innovative measures from around then remain (more generous intangible asset tax reliefs; the three-year start-up exemption) and could have an even bigger role to play going forward. For example, will we see, often of necessity, a raft of new start-ups by those recently made redundant? Some generous reliefs were also considered and either abolished (property-based tax incentives largely disappeared and feature far less now) or tweaked then/soon after. What now for, to pick some "popular" reliefs then tweaked, CGT retirement relief or CAT business relief/agricultural relief? Will they be retained (at all or on less generous terms)? Or do they potentially have a continuing role to play, possibly on more generous terms? A cautionary note on how quickly things change – pressure was being applied in Q4 2019 to increase our €1 million lifetime entrepreneur relief to align more with the then UK limit of £10 million (reduced in Q1 2020 to £1 million by Chancellor Sunak).

With the benefit of hindsight, a pattern emerging from that report was broadening of the tax base with a focus on certain areas and some rate increases/relief reductions to pay the economic price of that national emergency. When the bill for Covid-19 is totted up, the current (gaping, and expanding) hole in the public finances needs to be filled. What options are open via the tax system?

Looking further afield for extra guidance, in addition to the EU, the OECD has become ever more influential in how we shape our tax policy. A recent report it issued ("Tax and fiscal policy in response to the coronavirus crisis: strengthening confidence and resilience") reviews steps taken globally to date and makes suggestions for future tax policy. In observing that, where recovery is uneven or weak, fiscal action can strengthen it, the report also notes that public finances will eventually need to be restored. In so doing: "All options should be explored, including revamping old tools, introducing new ones, and bolstering ongoing efforts to address international tax challenges posed by digitalisation". The (48 page) report suggests such "tools" may include "extraordinary" revenue raising measures to start filling national public finance holes quickly, plus considering wholesale reforms or new systems of tax on new bases.

What might all that mean?

Domestically, income tax rate increases around 2009 were (and may still be) politically unpalatable, so it took a different form (USC); what form can/will that now take, if at all? CGT/CAT rates and CAT thresholds/reliefs were fair game ten years ago (and may be again) so some clients may consider claiming such reliefs now (before a new government is formed). Will we see temporary incentive VAT rates, like the 9% rate, again for certain badly affected sectors to encourage consumer spending? And what options are open via excise duty or other consumption tax increases?

Internationally, we presumably want our 12.5% rate to continue, but the OECD report suggests even greater focus now (building on mounting international pressure) on digital companies and multinationals to pay more tax in other (typically larger) countries to "match" how/where their products/services are used/enjoyed (which may not be good news for our corporation tax yield). We can expect this international scrap for multinational tax revenues to heat up.

With far more regular Department of Finance consultation processes that feed into the annual Finance Act process (as well as EU/OECD influence), an exercise on the scale of the 2009 report may not be needed but a re-visit now of some fiscal measures brought in (or overlooked) around then may help with predictions on likely tax changes to help economic recovery from the current crisis. If OECD suggestions pan out post-pandemic, change to the way it was may lie ahead soon.

Conclusion

Minister Donohoe recently said we're in a better place (financially anyway) than we were post-Celtic Tiger and is predicting a quick recovery (suggesting he expects "economic activity will reach its pre-crisis level in 2022"). Let's hope, both that he's right (and we're ready for the bounce when it comes, as it will) and that, in the meantime, fiscal stimulus measures keep our economy on standby. We'll have to pay the Covid-19 price somehow/sometime, but the bill/payment terms are not yet known.

So, for now, stay safe and remember, like the last major economic crisis (and those before it, and those yet to come), this too shall pass....

Gary O'Mahony

Principal of O'Hara Dolan & Co, a tax firm with offices in Longford and Maynooth that has been providing specialist tax advice to the accountancy and legal professions for 30 years. gary@oharadolan.com