

Michael Finneran T.D.
Chairman of the Joint Committee on Finance and the Public Service
Dáil Éireann
Leinster House
Kildare Street
Dublin 2

19 February 2008

Dear Deputy Finneran

Subject: Finance Bill 2008

Thank you for the opportunity to discuss our observations on Finance Bill 2008 with yourself and Deputy Mansergh last week. As requested, this letter expands on the points we discussed with you at our recent meeting.

We note that the lists of Committee stage amendments have now been published and we remain available to discuss any aspects of Finance Bill 2008 with you or your fellow Committee members as it progresses through the Committee. The section references in this letter are to the Bill as initiated. We hope that the issues we raised with you, as detailed below, will assist you and your Committee colleagues in your deliberations.

As we outlined in our opening comments to you, the Irish Taxation Institute (ITI) places a strong emphasis on the need for fairness and simplicity in the Irish tax system. This ties in closely with the current emphasis on minimising “red tape” for taxpayers both in the private and corporate sectors.

Retirement relief – section 48

Finance Bill 2008 introduces a “bona fide” test for taxpayers wishing to claim this significant relief from capital gains tax. We understand from Revenue that the test is being introduced to combat some limited instances of “misuse”. However, these are very much minority cases and we feel that the “blanket” introduction of a bona fides test may disproportionately increase the administrative burden associated with claiming this relief.

Capital allowances and business cars – section 28

While ITI understands the need for incentivising “green” behaviour through the tax code, this should be done as simply as possible. Currently businesses are able to claim tax relief for the cost of business cars and section 28 is now linking that relief to CO2 emission levels. While this is a welcome tax policy, there are 7 pages to explain the

legislation in the Bill and we believe it will lead to very complex record-keeping on a per car basis in order to determine the relief. The complexity will be disproportionate to the value of the relief in many cases and our concern is that taxpayers may no longer make the claim as a result.

Relevant contracts tax (RCT) – section 32

As a result of the “connected persons” rules applicable to RCT, anyone connected with a person or company involved in construction operations is brought within the RCT system and is obliged to operate RCT on any payments to sub-contractors for work of a construction nature. While these rules are designed with the understandable aim of tackling “mischief” in the construction industry, due to the wide-reaching definition of connected persons, individuals are often brought within RCT in unintended circumstances. The following example may assist in demonstrating this:

- Mr A owns a construction company.
- Mr A’s daughter, Ms B owns a site and wishes to build a private residence.
- Due to the connected person rules, Ms B will have to operate RCT on all payments relating to the house as she is deemed to be a principal contractor by virtue of her connection to her father.

VAT reverse charge for the construction sector

As discussed, we understand the reasons behind the introduction of a VAT reverse charge mechanism in the construction industry. We would, however, make the following observations:

- A strong information campaign is required within the construction sector to “educate” both principal and sub-contractors on their new obligations under the reverse charge mechanism. This is particularly critical given the huge number of taxpayers in this sector whose VAT payment profile is going to change significantly.
- Given the extent of the exercise, it is important that reasonableness prevails in dealing with taxpayers who make mistakes under the new regime, particularly in situations where there is no loss of revenue to the Exchequer.

Taxation of Foreign Dividends – section 39

Ireland has an attractive holding company regime which has been bolstered by the abolition of capital duty and the introduction of relief for disposal of subsidiaries in recent years. The further enhancement of this regime which the above section provides is welcome. Notwithstanding this, the consistent view expressed by our members at the forefront of liaising with potential FDI investors to Ireland is that the proposed new regime is very complex and difficult to explain to overseas companies.

While we welcome the reduction in the headline rate of tax on foreign dividends from 25% to 12.5%, the change falls short of the attractiveness of a participation exemption which the Irish business community, and other stakeholders, has been repeatedly calling for in order to stay in front in an increasingly competitive international market. There is a

concern that overseas investors have more attractive options than Ireland when choosing a jurisdiction to locate in.

Crèches, hospitals, mental health centres and the mid-Shannon corridor – section 26

The restrictions proposed in the Bill in the claiming of capital allowances under the above schemes are such that parties connected with property developers will no longer be eligible for relief. We understand that these changes may have been introduced as a result of EU State Aid concerns. We would welcome consideration at Committee Stage of whether the State Aid concerns could be addressed in a way that does not unnecessarily limit the use of these important reliefs in practice due to the broad definition of “connected” that is proposed.

Equity & Fairness – parity of treatment

In the course of our recent meeting we spoke about the great work carried out by last year’s Committee on Finance and the Public Service and in particular the recommendations made, as published in the Committee’s interim report in April 2007. In this regard, we now strongly recommend the adoption of one of the Committee’s recommendations below in addition to requesting that the Committee consider the interest issue, also detailed below.

Four-year rule

As you are aware, a taxpayer is only entitled to make a claim for a refund of tax within four years of the end of the chargeable period to which the claim relates. Revenue Inspectors are subject to a four-year time limit for investigating claims made however there is no time limit in cases of suspected fraud or neglect. This effectively gives Revenue an open-ended period in which to make enquiries as to a taxpayer’s return.

Perhaps the Committee might discuss the restoration of the ten-year look back rule for claiming refunds and/or providing for Revenue to deal with cases of hardship in this regard as part of their care and management of the taxation system.

Interest on under and over paid taxes

Where a taxpayer fails to pay the correct amount of tax to Revenue the rate of interest levied on overdue tax is 0.0273% per day or approximately 10% per annum. Where a taxpayer overpays tax to Revenue interest of 0.011% per day is paid to the taxpayer, which approximates to 4% per annum. In addition, where the overpayment cannot be said to be as a result of the misapplication of the law by Revenue, the interest only runs from the day 6 months after a valid claim for the refund has been filed with Revenue. We ask that the Committee consider the above inequities in the context of the implementation of the recommendations made by the Joint Committee on Finance and the Public Service in its interim report in 2007.

If you have any queries please do not hesitate to contact me or my colleagues Cora O’Brien on (01) 6631 719 or at cobrien@taxireland.ie or Úna Maguire on (01) 6631 738 or at umaguire@taxireland.ie

Kind regards

Yours sincerely

Mark Redmond
Chief Executive
Irish Taxation Institute

Cc: Martin Mansergh T.D.