



## TALC AUDIT – MEMO ON VAT AND NO LOSS OF REVENUE PROVISIONS DRAFT PAPER

**17 August 2009**

### VAT

The Revenue's draft on no loss of revenue makes the following statement,

*"The definition of 'Group' to include other connected business entities and associates".*

Whilst the document makes no mention of VAT, there is a concern that the above statement indicates the Revenue's intention to restrict no loss of "VAT" revenue cases to situations where the parties are connected business entities and associates. The Institute strongly urges that this treatment should be afforded to unconnected entities.

For the sake of completeness, we have set out below the conditions currently attaching to VAT and no loss of revenue cases.

- It is a requirement that the parties are connected.
- It is a requirement that the taxpayer proves to the satisfaction of the Revenue auditor that no loss of VAT can be evidenced.
- The error must be corrected whereby the appropriate VAT invoices must be raised, VAT charged, collected and remitted to the Revenue.
- In these circumstances, interest and penalties will not be pursued.

The Revenue's Code of Practice for Revenue Auditors states that the restriction of no loss of revenue to group cases is on the basis that, in Revenue's experience, there have been a substantial number of cases of a failure to operate the VAT system. In our opinion, if this was ever the case the culture in regard to tax compliance has changed dramatically over the last number of years.

However, situations do arise where, due to error, VAT is not charged on certain transactions. In cases where VAT if charged could be recovered in full by the purchaser there is no loss of revenue to the Exchequer. By applying the group case treatment outlined above to unconnected parties to rectify the situation VAT is charged, remitted and paid to the Revenue and the purchaser has then to file a claim to recover the VAT. This ensures the integrity of the VAT system is preserved.

The implementation of a penalty being the lesser of 3% of the VAT underpaid capped at €60,000 would ensure the continuation of an incentive for taxpayers to be tax compliant in the future. This would be the case particularly if a repeat of the same error did not come within the no loss of revenue facility.

The real difficulty, particularly in the current climate for taxpayers, is the interest charge of effectively 10% per annum. VAT is a volume based tax whereby an error generally results in significant amounts of VAT on which the interest is calculated. Thus, if somebody in a no loss of revenue case with an unconnected party has failed to charge €100,000 in a 12 month period the interest due at the end of year one is 10% rising to 40% if the error is identified in year four. This arises notwithstanding the fact that there is in fact no loss of revenue to the Exchequer.

This is a very significant imposition and current anecdotal evidence suggests that it is a disincentive to the taxpayer to rectify matters as he is simply unable to afford the interest cost.

We would strongly urge you therefore to extend the no loss of revenue treatment to unconnected parties on the same basis as group cases and subject to the conditions set out in the draft document.