



South Block
Longboat Quay
Grand Canal Harbour
Dublin 2

+353 1 6631700
www.taxinstitute.ie

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

8 November 2022

Submission Post-Finance Bill 2022 (as initiated)

Dear Minister

The Institute is pleased to see many of the recommendations we made in various submissions to you reflected in Finance Bill 2022, as initiated. We also welcome the measures to give legal effect to the Temporary Business Energy Support Scheme announced by you in Budget 2023.

However, there are two provisions contained in the Finance Bill which have caused concern for the Institute and its members. We have set out our reservations regarding these provisions in detail below.

1. Section 31: Amendments to Section 79 TCA 1997

Definition of a “relevant monetary item”

Section 31 of Finance Bill 2022 amends section 79(1)(a) TCA 1997 by inserting a new definition for a “relevant monetary item” in order to amend the treatment of gains or losses resulting from foreign exchange movements in certain circumstances relating to trading activities.

Section 79 TCA 1997 clarifies the tax treatment for trading companies of foreign exchange gains and losses arising in the profit and loss account on any “relevant monetary item or relevant contract”. Such exchange gains and losses typically arise when the company undertakes trading transactions in currencies other than its functional currency for accounting purposes. Prior to Finance Bill 2022, a “relevant monetary item” for the purposes of section 79 was defined as “moneys held” or payable by the company for the purposes of a trade carried on by it.



Member of the Confédération
Fiscale Européenne

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In the context of section 79 TCA 1997, Revenue's historical position¹ was that they would generally accept that:

- all exchange differences on circulating capital accounted as actually debited or credited in the profit and loss account, as trading receipts or deductible expenses for tax purposes, regardless of whether or not they were realised in the period, and
- unrealised gains or losses arising on trade debtors as a result of foreign currency movement to be taxable or deductible.

However, as we outlined in our Pre-Finance Bill 2022 Submission, following recent discussions at TALC, we understand Revenue's current position is that they do not consider "moneys held" for the purposes of section 79 to include foreign currency deposited with a bank or trade debtors. Such a narrow interpretation of "moneys held" would lead to significant practical difficulties and could require foreign exchange gains and losses on bank accounts to be separated out from other assets and liabilities.

Therefore, we welcome the move in section 31 of the Finance Bill to expand the definition of "relevant monetary item" to include trade debtors and trading bank accounts. It is noted in the Explanatory Memorandum that the amendment is intended to allow for foreign exchange gains or losses in respect of trade debtors and non-Euro currency deposits held in a trading bank account to be treated in the manner that currently applies to foreign exchange gains or losses on trade creditors and euro currency deposits held in a trading bank account.

However, in our view, as currently drafted, the unduly narrow definition of "relevant monetary item" in limb (ii) of paragraph (a) will prevent most companies from availing of section 79 TCA 1997 with respect to their non-Euro currency trade bank accounts.

Specifically, the requirement that the "sole purpose" of the account is the lodgement and disbursement of amounts that are taken into account in computing profits or losses of a trade carried on by the company does not reflect the reality for most companies with foreign currency bank accounts. We would suggest that this may be at odds with the overall policy intention of the section.

In practice, the application of the "sole purpose" requirement would deny the treatment afforded by section 79 to an account where trading receipts received into the account are retained in the account and ultimately used to acquire fixed assets for use in the trade or to pay a dividend.

¹ Paragraph 3.2 .1.1 of the Irish Tax Institute's commentary book *Taxing Financial Transactions*, Finance Act 2010 notes Revenue's practice in the context of section 79 TCA 1997. The contents of the early editions of this book (pre 2010) were reviewed by Revenue.

We do not believe it is intended that section 79 TCA 1997 treatment would be disapplied in such circumstances where the treatment would be available had the same acquisition of fixed assets or payment of dividend been funded using physical non-Euro currency bank notes rather than a bank account. In order to address this issue, we suggest that the reference to “sole purpose” in the definition of “relevant monetary item” be amended to read “sole or main purpose”.

Definition of a “trade receivable”

Section 31 of Finance Bill 2022 defines a “relevant monetary item” to include “a trade receivable of the company”. In our view, as drafted, the definition of “trade receivable” in paragraph (b) does not adequately capture the range of trading receipts received by Irish businesses. For example, it does not appear to capture royalties received under a licensing arrangement entered into in the course of a trade or lease rentals received by a lessor in the course of a trade.

In order to address this issue, we suggest that the definition be amended to read as follows:

“‘trade receivable’, in respect of a company, means an amount recorded in the company’s balance sheet as owed to that company in respect of a trade carried on by it;”

Alternatively, the definition could be amended to describe a broader range of trading transactions that would give rise to trade receivables as set out below:

“‘trade receivable’, in respect of a company, means an amount recorded in the company’s balance sheet as owed to that company in respect of goods, services, assets, credit or rights sold, provided or licensed by that company for the purposes of a trade carried on by it;”

2. Section 15: Foreign pension lump sums

Section 15 of the Bill introduces a new section 200A Taxes Consolidation Act (TCA) 1997 relating to the treatment of lump sums drawn down from foreign pension arrangements. As currently drafted, there is a concern that section 15 could result in a reduction of the tax-free amount available under section 790AA TCA 1997 by the amount of foreign lump sums paid after 1 January 2023, even in circumstances where the individual was not resident or ordinarily resident in Ireland at the time that those foreign lump sums were received. This is on the basis that such foreign lump sums would be treated as “lump sums” for the purposes of section 790AA(1)(d)-(e) TCA 1997, regardless of the residency status of the individual on the date of receipt.

This would effectively tax an individual on amounts received before they came within the scope of Irish tax. To address this issue, we recommend that section 200A(9) TCA 1997 is updated to provide that the section should not apply to foreign lump sums paid to an individual that is neither resident nor ordinarily resident at the time of payment.

We hope that the matters outlined above can be considered in the context of the Committee Stage discussions on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Colm Browne', with a long, sweeping underline that extends to the right.

Colm Browne
Institute President