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Minister Michael McGrath T.D.
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

29 August 2023

**Re: Implementation of Section 897C TCA 1997 (Enhanced Reporting Requirements)
which is subject to a Ministerial commencement order**

Dear Minister

I am writing to highlight concerns the Institute has about the proposed implementation of section 897C of the Taxes Consolidation Act (TCA) 1997, which relates to the reporting of certain non-taxable payments and benefits made by employers to their employees (and directors).

These are:

- small benefits within the Small Benefit Exemption,
- the Remote Working Daily Allowance (RWDA), and
- travel and subsistence payments.

As you know, section 897C was introduced in last year's Finance Act subject to a commencement order to be signed by you, as the Minister for Finance, to allow Revenue to engage with stakeholders on the new requirements. While Revenue has surveyed employers and engaged extensively with software developers, our understanding is that awareness of the new reporting process among employers at all levels is low.

The Institute had been pressing for engagement with Revenue on the implementation of the Enhanced Reporting Requirements (ERR) since last October. Revenue formed a sub-group of TALC in June and in the two meetings that have taken place since then, we have raised



Member of the Confédération
Fiscale Européenne

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Immediate Past President: Karen Frawley.

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concerns about the proposed requirement that employers must report details of these reportable benefits on or before they are made (i.e., real-time reporting).

Difficulties with reporting in real-time

The Institute fully acknowledges the value of collecting data that will enable your Department to ascertain the cost to the Exchequer of non-taxable payments/benefits to better inform tax policy. We also recognise the importance of ensuring compliance with the tax rules for such payments, even if they are already subject to robust scrutiny in Revenue's compliance interventions.

However, in our view, account must be taken of the significant administrative burden and cost that the introduction of these new reporting requirements will impose on employers as well as their consequential impacts on employees.

In our engagement with Revenue, we have sought a more appropriate reporting interval that would satisfy its needs while easing the burden on employers. For example, submitting a monthly report after the month in which the reportable payments are made would be easier for businesses while also delivering on the policy aim of receiving timely data on such payments.

Unfortunately, it has become clear that Revenue plans to proceed with a real-time reporting requirement from 1 January regardless of the difficulties raised. For that reason, we wish to draw your attention to our concerns about the ERR, which is likely to impact all employers in the State.

Revenue has contended that the ERR is merely an 'add on' to the current real-time reporting requirements for taxable emoluments that employers have been operating since the introduction of PAYE Modernisation in 2019. However, our information from members is that ERR is a distinctly different prospect.

Non-taxable benefits and payments are often collated and managed outside of the existing payroll process and are usually recorded on different internal systems within an organisation, sometimes in manual format involving several departments or personnel within an organisation (e.g., HR, management, Finance). While the relevant information is available in the organisation, it can take time to collate it and there can be a time delay between when a local line manager may incur the cost and report it centrally.

By their very nature, such payments are made on an ad hoc basis. For example, employees who incur travel and subsistence expenses may be reimbursed as soon as they submit their expense claims, so that they are not left out of pocket until their next payday. Similarly, vouchers or other tangible items qualifying for the Small Benefit Exemption may be given

from time to time, to individual staff members to reward their work and contribution on individual projects throughout the year.

The Institute's concern is that Revenue is underestimating the work, disruption and cost involved for employers to move to a system that meets the 'on or before' reporting requirement to comply fully and accurately with real-time reporting. Indeed, many employers do not have integrated internal systems that are configured in a manner which will allow them to centrally collate and report the required information in real-time to Revenue.

Employers will need to review and update their payment processes; educate and train the staff responsible for approving expense claims; collate and report data to Revenue; reassign or hire new staff to co-ordinate this process; decide whether to outsource reporting and consider the costs of purchasing updates to third-party payroll and expenses management software to help them comply.

Furthermore, many large multinational enterprises use the same financial operating systems globally within the group. Such systems are not configured to meet the local data requirements that will be required by Revenue under ERR. The necessary changes to systems and processes will have to be reviewed, modified and embedded before Revenue's proposed implementation date of 1 January 2024.

These changes could also have knock-on implications for employees. For example, members have alerted us to situations where some employers currently process employee expense claims as often as twice weekly to ensure their staff are fully reimbursed as quickly as possible. Such businesses would be required to submit eight reports per month to Revenue on or before the expense claims are paid in order to meet their obligations under the new proposed regime, should they continue to reimburse employee expenses at the same frequency.

However, rather than trying to manage multiple reporting dates, many employers are likely to reduce the frequency of reimbursement to perhaps a single date each month. This means employees could have to wait longer for the repayment of genuine business expenses they incur on behalf of their employer. The Institute believes that this will lead to a disproportionate amount of disruption at a time of heightened cost of living pressures, to facilitate the provision of information to Revenue about non-taxable expenses in real-time.

Work on the Income Tax Regulations to underpin the ERR is underway in Revenue and the Institute has provided technical analysis which outlines how the legislation permits it to prescribe a more appropriate reporting interval in the Regulations¹ that would recognise the

¹ Income Tax (Employments) Regulations 2018, section 986 TCA 1997.

balance required between obtaining timely information and avoiding an onerous burden on employers.

Revenue's approach to the administration of certain taxable benefits is very much at odds with its insistence that the ERR reporting must be made in real-time, without any flexibility being afforded on the reporting timeframe in Regulations. For example, taxable notional payments (i.e., for Benefit-in-Kind, perquisites) can be reported in the next pay period rather than in real-time. Moreover, minor and irregular non-cash taxable benefits can be captured on a PAYE Settlement Agreement (PSA) after the end of the tax year. Even Revenue's *Code of Practice for Revenue Compliance Interventions* permits corrections to be made to a payroll submission in the subsequent pay period. As it stands, Revenue is proposing a more onerous approach for the reporting of non-taxable payments/benefits compared to those which are taxable.

It is worth noting that only the first two tangible benefits each year up to the value of €1,000, can qualify for the Small Benefit Exemption since the enactment of Finance Act 2022. This means that if an employer gave an employee a bunch of flowers on, for example, the birth of their baby or a chocolate egg at Easter time, that employee could not receive two vouchers later in the year. In addition, such incidental gifts would have to be reported under ERR, with all the attendant awareness and monitoring of such benefits by employers that this entails.

We welcome Revenue's recent communication to employers that it will soon commence free webinars for employers which will run until mid-November and we have asked our members to encourage their employer clients to register for these sessions. Informing employers about ERR is a good start but the fact remains, employers have a lot of work ahead of them to make the necessary changes to meet the deadline for this new compliance burden.

Conclusion

The Institute has reluctantly concluded that further discussions with Revenue on the real-time reporting requirement will not prove productive (i.e., compelling employers to submit details of 'reportable benefits' on or before they are made).

We will continue to engage on other aspects of the implementation of the ERR and employer preparations in the months ahead, but in the meantime, Minister, we are asking you to consider the contents of this letter before signing the order to commence the provision. In particular, we would ask you to bear in mind the significant administrative burden the new reporting requirements will place on businesses and the potential cashflow impact on employees.

It is our strong view that a more appropriate reporting interval could considerably ease that burden, which is a cost on business, while enabling Revenue to receive timely information

and compliance with the new Enhanced Reporting Requirements. The Institute is happy to provide any additional information you may need.

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

cc Mr Niall Cody, Chairman of the Office of the Revenue Commissioners