Irish Tax Institute

South Block
Longboat Quay
Grand Canal Harbour
Dublin 2

+353 1 663 1700
www.taxinstitute.ie

Minister Paschal Donohoe TD
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

23 March 2020

Tax measures to counteract the impact of COVID-19 on affected businesses

Dear Minister

On Wednesday of last week, following your meeting with the CEOs of the five main banks, you announced their agreement to a deferral of up to three months on loan repayments for businesses directly affected by Covid-19 as well as a variety of credit and cash flow supports for SMEs.

On Friday, the Minister for Housing, Local Government and Planning, Eoghan Murphy TD announced that local authorities had agreed to a three-month deferral of commercial rates for affected businesses until the end of May.

Both these announcements will undoubtedly be of assistance to businesses at the front line of the sudden and brutal shock brought about by Covid-19. Less than two weeks ago these businesses were healthy concerns, employing large numbers of staff in the hospitality, retail, childcare and leisure sectors. For these business-owners and their employees, the risk to their health has morphed into a grave attack on their livelihoods with a prognosis that is becoming ever more uncertain.

The exchequer is a significant creditor for these businesses – as it is for all commercial concerns - and just as the banks and the local authorities have offered forbearance, they now need that forbearance from you, Minister.

To help shore up cash flow in directly affected businesses, we are calling for:

- a moratorium of three months on tax payments, especially PAYE for affected businesses – the resulting cash flow benefit would enable more businesses to retain and pay their employees
- affected businesses should be given a minimum of 12 months to pay the outstanding taxes, without interest charges, when the crisis has dissipated
- the immediate processing of outstanding tax refunds owed to businesses to release cash back to their balance sheets, including the release of all Professional Services Withholding Tax (PSWT) refunds
- the introduction of a method of postponed accounting for import VAT - a measure enacted in 2019 to support businesses in the event of a 'no-deal' Brexit

Nobody knows how long this crisis will last but we do know it will end and no doubt the government will put in place a robust recovery plan for the affected sectors. Our members believe the temporary reintroduction of the 9% VAT rate on the hospitality sector would provide the required shot in the arm for a sector that is so dependent on discretionary spending by consumers as they emerge from this unprecedented period in their lifetimes.

It is also important that businesses are not penalised for any tax payment issues that arise directly from this crisis over the coming months. Crucially, their tax clearance status should not be affected and their likelihood of selection for an audit or intervention should not increase.

Tax advisers will do their best to keep taxpayers up to date with timely filing of returns. However, accessing the information required to prepare accurate and timely returns will be complicated by business closures, temporary layoffs and the limited online capabilities of businesses in stressed circumstances. Therefore, extending the corporation tax and income tax filing deadlines for 2020 should be considered. Indeed, flexibility on time limits in general will be essential in the current unique situation.

Furthermore, Revenue audits or other visits to business premises should be suspended for the time-being and businesses should be given enough time to get back up and running before audits recommence.

Last week, we sought clarification from the Revenue Commissioners on the above matters and a number of other critical tax administration issues arising from the impact of COVID-19, such as, the impact of force majeure days on cross border workers; the difficulty with filing share scheme returns by the end of the month and the need to increase the capacity of MyEnquiries and other lines of communication with Revenue to handle the high volume of queries from affected businesses. We have attached a copy of this submission in the appendix to this letter.

We would also strongly urge that the implementation of mandatory reporting of cross border arrangements by intermediaries under DAC6 be delayed. Given the severe disruption to business continuity across the economy as a result of Covid-19, the deadline of 31 August 2020 is now unrealistic. Apart from the constraints of remote working, our members and their firms will suffer from the inevitable, exceptional increase in staff absences due to illness and self-isolation. Revenue will be similarly hampered in their task of providing essential guidance to help taxpayers and intermediaries understand what transactions are reportable under this very broad legislation. In these circumstances, we believe that the best course of action is to seek an extension to the reporting deadline of 31 August to Revenue for DAC6.

At the start of this crisis, the Revenue Commissioners announced a number of measures to assist SMEs experiencing cash flow difficulties, including the suspension of interest charges on late payments of VAT and PAYE up to the end of this month. Given the severe and worsening impact of the government restrictions on trade in the affected sectors, these measures are now woefully inadequate. Worse still, they only apply to businesses with a turnover of less than €3 million. Many of the companies most seriously affected have a larger turnover.

These are viable businesses that, less than a fortnight ago, were providing vital services in an economy that has, after all, been a star performer in Europe and the OECD. We need these businesses to survive this temporary economic shock. Their creditors need to give them a lifeline for the duration of this pandemic crisis. So far, the banks and the local authorities have done so: we strongly urge the exchequer to follow suit without delay.

Yours sincerely

Frank Mitchell

Frank Mitchell
Institute President

cc. Mr Niall Cody, Chairman of the Revenue Commissioners

Clarifications sought from Revenue on issues arising from the impact of COVID-19
19 March 2020

Tax Payment Issues

- **Interest on Late Payments:** Revenue's press release of 13 March 2020 focused on relief for SMEs below the €3m limit for MED, noting that interest would not be applied to late payment of January/February VAT and February and March PREM.
  - What is the position with other taxes that may fall due in March, such as Corporation Tax, with due dates for payments later this week (21/23 March)?
  - Will the position be reviewed on a monthly basis as this crisis looks likely to continue beyond March?

- **MED and LCD Taxpayers:** Some MED and LCD taxpayers will also face tax payment difficulties, depending on their sector. The contents of Revenue's press release of 13 March 2020 specifically applies to businesses below the MED and LCD thresholds. MED and LCD taxpayers have been advised to contact the relevant Revenue Divisional contacts. The following points need to be clarified:
  - What are MED and LCD staff saying to affected businesses when a business' tax adviser or the taxpayer contacts MED or LCD to outline the difficulties they are experiencing?
  - For example, does the interest waiver for January/February VAT and February and March PREM also apply, where the business is experiencing cash flow difficulty? Will their tax clearance remain in place?
  - Will MED/LCD clients have to contact the Collector General's Office after contacting MED/LCD, to arrange a phased payment arrangement or a pause in payments?
  - Revenue has noted that debt enforcement has ceased until further notice. Does this apply to all categories of taxpayers?
  - Can Revenue cease issuing "Final Demands" to businesses that are in difficulty meeting their payment obligations? We understand that payment requests and final demands are now automated on Revenue's systems and such communications at an already stressful time may cause additional pressure on businesses and taxpayers.

- **Phased Payment Arrangements:** Businesses are uncertain how long the current situation will last and how long some may remain closed.
  - What type of phased payment arrangement can they enter into at this point and can Revenue waive the requirement for a down payment?
  - Will the detailed information required to support a phased payment arrangement application, as outlined in Revenue's general guidance, be required? Or can a simple streamlined process apply without the requirement to submit a large volume of detailed financial information?
  - Can businesses enter into a payment moratorium for up to 3 months similar to arrangements announced by the banking sector this week?
  - Can the term of a phased payment arrangement be 12 to 24 months, if that is required?
  - Can flexibility be provided to those engaging with the Sheriff on phased payment arrangements also?

    - Due to the seasonal nature of many businesses affected, for example in the retail and hospitality sectors, businesses may already be in arrears for the quieter months of January/February. This will need to be considered in developing an appropriate phased payment arrangement.

- **Direct Debits:** Can Direct Debits (for example in place for PAYE/VAT/Income Tax) be suspended for up to 3 months and be reviewed thereafter?

- **Tax Compliance History:** Payment issues over the coming months due to the repercussions of COVID-19 on businesses should not impact on a taxpayer's record of timely compliance. It should have no impact on their tax clearance and likelihood of selection for an audit or intervention.
    - Please confirm that this will be the case.
    - Where a subcontractor's rate of RCT is 35% due to arrears of tax due in the last two months only – can their rate be revised to 20%?

Tax Refunds

- **Prioritisation of Tax Refunds**: We believe that Revenue should prioritise the processing of tax refunds, currently in the system, to assist cash-flow for businesses.
    - Can refunds delayed due to outstanding VAT RTDs, or iXBRL files be released automatically?
    - Can resources be allocated to the processing of Professional Services Withholding Tax (PSWT) refunds?

Timely Filing

- **Late and Incorrect Return Surcharges:** Tax advisers will do their best to keep taxpayers up to date with timely filing of returns. However, business closures, temporary layoffs and taxpayers with limited online capabilities, will pose difficulties for advisers to access the information required to prepare timely and accurate tax returns.
    - What will be Revenue's approach to applying a surcharge for a late return and other restrictions arising from late filing in such circumstances?
    - We understand that surcharges are automatically applied on ROS. Therefore, will the tax adviser have to contact Revenue to get a surcharge waived?
    - If so, who should they contact and what is the process?
    - Flexibility on time limits in general over the next three months, will be needed in light of the current unique situation.

- **Filing of Share Schemes Returns:** The deadline for submitting 2019 returns for shares schemes, such as KEEP, and approved share schemes is 31 March 2020.
    - Given staff shortages and contingency planning in businesses can this deadline be extended? Claims for KEEP and other reliefs are contingent on the filing of returns by the due date, so it is particularly important that the deadline is extended.

- **Extend VAT Filing Dates:** Can businesses opt to submit VAT returns on a bi-annual instead of bi-monthly basis?

Staffing

- **Staffing in Revenue:**
    - Has resourcing of the Collector General's phoneline been increased to handle additional calls?
    - Can queries and requests submitted via the MyEnquiries service be prioritised, with additional resources to handle the high volume of expected queries from affected businesses?
    - Has Revenue put contingency plans in place to ensure that the various Revenue helplines will be adequately resourced to deal with practitioner and taxpayer queries?

- **Agent Staffing Issues:** In the event of a firm/practice has a COVID-19 outbreak and does not have sufficient staff to handle tax filings:
  - What should they do?
  - Should they contact Revenue and if so, who should they contact?

Revenue Audits and Interventions

- **Audit Scheduling:** Can Revenue confirm that Revenue audits or other visits to business premises will be suspended for the time-being and that businesses will have time to get back up and running, before audits recommence?

- **Compliance Interventions and Desk Audits:** What is Revenue's policy on compliance checks and desk audits in the current situation, given relevant personnel and files may not be accessible?

Tax Technical Issues

- **Employer COVID-19 Refund Scheme:**
  - Does the Employer Refund Scheme apply to part-time staff?
  - Does Employer PRSI apply to the Class J9?
  - It is clear from Revenue's guidance that the Employer Refund Scheme is only available to employers who are unable to make payments over and above the emergency €203 per week, to staff temporarily laid off. If an employer makes a top up payment, does the underlying €203 remain exempt from tax?
  - Can guidance be provided on operational aspects where a top-up payment is made?

- **Irish Residents employed in Northern Ireland:** Where Republic of Ireland resident employees of a Northern Ireland firm, who are working under a Northern Ireland contract of employment, are required to work at home, will Revenue waive the requirement for the Northern Ireland employer to register for Irish PAYE and apply payroll taxes?

- **Force Majeure Stay in Ireland:** Due to travel restrictions or illness some individuals may be unable to leave the State to return to their country of residence. For example:

  – A individual may be present in the State for more days than expected because of the COVID-19 travel ban and may be unable to return to their "home" business location. As a result, they may exceed the relevant days' threshold tests in tax legislation and Revenue guidance that determine payroll withholding and reporting obligations (i.e.30/60/183 days' tests).
  – Similarly, an individual may become tax resident in Ireland, for income tax purposes, solely due to additional days spent in Ireland.
  – The situation could impact Trans Border Worker Relief (section 825A). For example, an employee resident in Ireland but commuting to work each week in the UK/Northern Ireland (i.e. the employee continues to perform their duties and receives employment remuneration but is performing duties from home in Ireland and is now working greater than 30 days here.) If we assume that the foreign employer continues to operate foreign tax on employment income, could Trans Border Worker Relief continue to apply where the 30-day limit of time that applies under the relief in respect of time spent in Ireland is exceeded because of travel restrictions resulting from COVID-19?

  - Would Revenue agree in such circumstances to disregard these mandated days an individual must spend in the State, when determining whether payroll withholding obligations apply and in determining income tax residence?
  - There is a precedent for force majeure situations in the TDM dealing with tax residence (TDM 34-00-01). Paragraph 2 provides for a force majeure, but this only covers a single day.

    'Force majeure' circumstances

Where an individual is prevented from leaving the State on his or her intended day of departure because of extraordinary natural occurrences or an exceptional third party failure or action - none of which could reasonably have been foreseen and avoided - the individual will not be regarded as being present in the State for tax residence purposes for the day after the intended day of departure provided the individual is unavoidably present in the State on that day due only to 'force majeure' circumstances. Example of extraordinary natural occurrences: sudden and severe adverse weather conditions. Example of exceptional third-party failure or action: the breakdown of an aircraft or a labour strike.

  - Confirmation that an individual's presence and requirement to work from home in Ireland due to the COVID-19 travel ban will not give rise to a Permanent Establishment (PE) would also be welcome.

- **eWorking:** Can employers who are paying their employees for the additional cost of working from home, pay the €3.20 per day eWorking payment outlined in Revenue guidance, without deduction of tax? (i.e. that the eWorking guides will apply to Covid-19 remote workers).