

Mr Paschal Donohoe, TD
Minister for Finance
Department of Finance
Kildare Street
Dublin 2

19 August 2020

By email

Re: Pre-Finance Bill 2020 - Submission

Dear Minister,

The Law Society of Ireland (**'the Society'**), as the representative body for the solicitors' profession in Ireland, provides various recommendations (which include both domestic and international measures) for your consideration in the preparation of the Finance Bill 2020.

Recommendations are drawn from the knowledge and experience of the Society's Committees. In representing communities across Ireland, our solicitor members are well-placed to identify recurring issues and so, in addition to specific taxation measures, we recommend others which seek to improve and protect the financial well-being of citizens.

Last year, the Society submitted a lengthy budget submission following a call for same by the Committee on Budgetary Oversight. Our budget priorities remain little changed since then and so, we simply highlight some additional and key items for consideration in this year's Budget plan.

Housing Measures

Help to Buy Scheme

The Help to Buy Scheme, which was designed to enable a first-time buyer to avail of relief on a new-build or a self-built home, became operational on 19 July 2016.

We recommend that the scheme be extended to include a relief (either in full or in part) for second-hand homes so as to create a balance in the market. We are of the view that this would also create a broader range of properties available to new purchasers.

Stamp Duty

Until 8 December 2010, a first-time buyer had full relief from Stamp Duty on any type of property.

We recommend that this relief be reinstated for first-time buyers which would offer some benefit to the cohort of purchasers who cannot benefit from the Help to Buy Scheme.

Residential Development Stamp Duty Refund Scheme

The current stamp duty on the transfer of a site is 7.5%. A refund of 11/15^{ths} of the stamp duty paid can be claimed if the conditions set out in Section 83D of the Stamp Duty Consolidation Act 1999 are met.

We recommend that the refund be increased to 6.5% to bring the effective rate into line with the current 1% rate on residential property.

Land Registry Fees

Land Registry fees are a significant cost for first time buyers. For example, Land Registry fees on the purchase of a property with a value of €200,000-€400,000 are €700, registration of a mortgage incurs a further fee of €175 and the cost of a folio and file plan is €40.

We recommend that consideration be given to a reduction in Property Registration Authority transfer fees for average price homes and/or a reduction in fees for new entrants to the market.

Nursing Home Support Scheme

Our previous submissions sought to extend the 3-year cap rule under the Nursing Home Support Scheme to the proceeds of sale of the principal residence. This remains a live issue for elderly persons and their families. The existing limitation of the cap (to the retained residence), not only hampers the release of housing stock, it also creates practical difficulties for nursing home residents who incur maintenance, insurance and security costs in retaining empty properties.

We recommend that, where a house which qualifies as a principal private residence is sold, the proceeds of sale should be assessed on the same basis (under the financial assessment) as if the house had not been sold.

We also recommend that the 80% take from rental income of the principal private residence be exempted in full from the means calculation for the first three years (while the capital value of the asset is assessed) and thereafter, be substantially reduced to allow residents to retain some benefit from the rental of the property.

OTHER DOMESTIC MEASURES

Right of Appeal for a Person who suffers the cost of VAT

A party who bears a VAT charge and wishes to challenge such a determination has no right to do so under the Value Added Tax Consolidation Act 2010 ('VATCA'). The fact that the taxpayer has no *locus standi* irrespective of the merits of their argument runs contrary to the suggestion that the Irish tax regime is open, transparent and equitable.

VATCA is drafted on the basis that all interaction with the Revenue Commissioners relating to a VAT charge will be between Revenue and the accountable person. It is the accountable person who will receive the notice of assessment and accordingly, the accountable person who has the right of appeal. VATCA does not give the person who suffers the cost of VAT any direct right of appeal.

Example

X contracts to sell goods/services to Y. If VAT applies, X is the accountable person in relation to the sale/supply. The contract provides that the price includes such VAT as applies under VATCA. Revenue confirm (in an assessment given to X) that VAT applies on the sale/supply. Y is advised that there are reasonable arguments to indicate that Revenue is not correct in the assessment and that VAT should not apply. In order to complete the contract, Y must pay the purchase price plus VAT to X. However, as Y is not the accountable person in relation to the sale/supply, there is serious doubt as to whether Y can appeal the assessment of Revenue under VATCA. If X agrees to conduct the appeal in the name of Y, an appeal would be possible, but this is not a satisfactory position for either X or Y.

The Society recommends that VATCA be amended to allow a person who bears a VAT charge to appeal against that charge. It is understood that the UK operates a more flexible system of appeal for those who are not regarded as the accountable person in the sale/supply of goods/services.

Reduction in VAT Rate for Legal Services

On 18 January 2018, the European Commission proposed new rules to give Member States more flexibility to set VAT rates which would permit the setting of several reduced rates in addition to the standard VAT rate of minimum 15%. Subject to Member States ensuring a weighted average VAT rate of at least 12%, and ensuring the standard rate of VAT is applied to certain goods (including alcoholic beverages and tobacco), it is proposed that Member States will have flexibility in deciding what the reduced rates can be applied to.

We urge the introduction of a reduced VAT rate for legal services generally, or at least for services requested or utilised by individuals. There is a good rationale for this. Legal services by their nature are different from other services. Firstly, they are not generally taken up according to an individual's choice rather people resort to their use, either because they are being sued/prosecuted or because they must do so in order to have their rights protected/enforced. As with health services, legal services are not deemed to be consumer services other than in circumstances where people seek to protect/enforce their rights.

Secondly, the rule of law (which is the same for everyone) and the principle of equal access to justice, holds that litigants should be treated in the same way as far as access to, or implementation of legal services is concerned. VAT, particularly where charged to individuals or when irrecoverable, leads to inequality through the increase in the price of services for individuals, whereas it is neutral for economic traders who can seek recovery of VAT.

Indeed, the State itself is levied with a VAT charge on obtaining legal services (through legal aid provided to individuals to ensure access to justice and to protect individuals' constitutional rights). In the context of legal aid in particular, the imposition of VAT on a service which is provided to protect the constitutional rights of an individual, highlights the inappropriate application of what is effectively a consumer tax on such services.

With that in mind, the Society requests consideration of the introduction of a reduced rate of VAT on the provision of legal services. In this regard, the reduced rate would mirror reductions which have applied to such services in the past.

International Measures

Article 4 of the EU Anti-Tax Avoidance Directive 2016/1164 ('ATAD')

Article 4 of ATAD introduces a new interest limitation rule which caps the amount of interest (both related and third-party debt) which may be claimed by a company to (broadly) 30% of EBITDA¹.

Ireland availed of the derogation to defer implementation until 1 January 2024 on the basis that it already has national targeted rules for preventing BEPS² risks which are equally effective to the interest limitation rule set out in ATAD.

However, it is understood that the European Commission disagreed with the technical basis for this and has commenced infringement proceedings aimed at requiring the earlier introduction of these measures by Ireland.

Our view, as a matter of law, is that Ireland is entitled to the deferral on the basis that it has extensive, complex and long-standing rules which contain restrictions on the tax deductibility of debt in order to prevent tax avoidance. Unlike several other EU countries, Ireland also imposes withholding tax on interest payments unless relieved. That said, we ultimately expect that the interest limitation provisions will be introduced prior to 2024.

We believe, as a legal matter, that it is vital that these new measures are consistent and work harmoniously with the extensive rules which already exist in Irish law regarding the tax deductibility of interest payments already referred to.

The principles of good legislation have been defined internationally as “*legislation that is necessary, clear, coherent, effective and accessible*”³.

We believe that considerable complex technical work remains to be done to ensure that these new rules achieve these results alongside the extensive rules which already exist on deductibility. We expect that this will involve further consultation between the Department of Finance, the Office of the Revenue Commissioners and industry.

As such, the Society recommends that the implementation date for these new measures should be 1 January 2022 at the earliest (and stipulated as such in the Finance Bill 2021) in order to ensure that these highly complex measures are correctly transposed into domestic law.

Technical amendment to the scope of the Capital Gains Tax ('CGT') group relief

The CGT group relief under section 617 of the TCA 1997 applies only to “corporation tax on chargeable gains” and not to CGT on chargeable gains. With the exception of development land, only gains on assets which are being disposed of, or acquired by non-resident companies carrying on a trade in Ireland through a branch or agency, could be sheltered by the CGT group relief. Non-resident companies which dispose of specified Irish assets to other group members cannot avail of the group relief. This does not appear to be the intention of the legislation. The asset remains within the charge to CGT for a subsequent disposal outside of the group.

We recommend that Section 617(1) should be amended to apply to corporation tax and CGT on chargeable gains.

¹ Earnings before interest, taxes, depreciation, and amortisation

² Base erosion and profit shifting

³ <https://www.gov.uk/guidance/good-law>

Conclusion

Notwithstanding the challenge facing Government in setting this year's Budget, we believe that opportunities exist to adopt measures which have the potential to make real improvements to the financial well-being of our citizens.

We are available to meet with you to discuss our ideas in the lead up to this year's Budget and as ever, we welcome engagement through TALC on the Finance Bill process.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Ruth Higgins', followed by a horizontal line extending to the right.

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Ruth Higgins
Taxation Committee Chairperson