



23 February 2010

Minister Brian Lenihan TD
Minister for Finance
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

Dear Minister

Mandatory Disclosure of Certain Transactions Proposed Committee Stage amendment (February 2010)

Re: Proposed Section 141, Finance Bill 2010 (Committee Stage Amendment).

ITI fully acknowledges the role of an anti-avoidance regime in Ireland, although in framing any new reporting system it is important that the legislation does not in any way discourage commercial investments and transactions.

Experience in the UK shows us that the type of change proposed in Section 141 can greatly increase the cost of tax compliance and the burden can fall largely on the compliant taxpayer.

We will be working closely with Revenue in the consultation that is to follow on the Regulations. In advance of this we believe there are two critical areas which require legislative change at Committee Stage this week. The specific changes we are seeking will affect existing legislation as well as Section 141 of the Finance Bill.

(1) Certainty for Business and Individuals

If we introduce the new proposals, Ireland will find itself in the unique position of operating a General Anti-Avoidance Rule (GAAR) under Section 811 TCA 1997, an optional notification procedure under Section 811A TCA 1997 and a new mandatory reporting regime. The level of uncertainty caused by the existing provisions is now being exacerbated by the addition of new legislation.

Sections 811 and 811A currently provide an open ended window for Revenue to enquire into the affairs of a taxpayer. The inability for such a taxpayer to ever obtain closure on their tax affairs is causing considerable uncertainty for investors and businesses under existing legislation. This can have a seriously detrimental effect on any warranties and indemnities given on genuine commercial transactions carried out by both the indigenous and multinational sectors. In addition, it can expose taxpayers to disproportionate risk in terms of their liability to tax, interest and surcharge over an unlimited period, without any cap.

In this regard, Section 811(4) should be amended to remove the facility for Revenue to form an opinion “at any time”. This would enable the taxpayer to have closure on their affairs after the normal 4 year time limit, which is a proportionate response, when coupled with a mandatory reporting regime. A similar amendment will also be required to Sections 811A (1A) and the new Section 817N (4) – see the attached legislative amendments proposed.

Section 811A was originally introduced in 2006 in lieu of a mandatory reporting regime and therefore we believe that a disclosure under the new reporting regime should also suffice as a Section 811 disclosure.

In framing the Regulations, there should be a time frame within which Revenue are required to respond in substance to disclosures, as well as a timeframe on the taxpayer for making the disclosure.

(2) Promoter penalties

The current levels of per diem penalty for promoters who do not comply with their reporting obligations are very high at €500 a day – Section 817O (1)(b). We believe that these penalties should be subject to a reasonable limit. In fact, the penalties that apply where legally privileged information is involved are capped at €4,000 for an initial period and we believe this cap should apply to all promoters for the initial period in order to avoid disproportionate penalties for some – see the attached legislative amendment proposed to Section 817O.

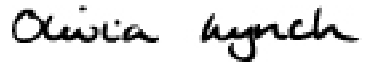
Remarks on Consultative process

A new Section 817Q allows the Revenue Commissioners to make regulations with the consent of the Minister for Finance. The section lists a number of significant matters which the Regulations will cover.

We understand from Revenue that there will be consultation on these Regulations and, as noted above, we will be engaging closely in this process. We would welcome the opportunity to engage with your Department before the finalised regulations are placed before Dail Eireann.

ITI is available to meet with you and/or your officials at any time over the coming days in order to discuss these concerns.

Yours truly

A handwritten signature in black ink that reads "Olivia Lynch". The signature is written in a cursive, slightly slanted style.

Olivia Lynch
President

Legislative amendments sought by ITI in Finance Bill 2010

Section 811 Transactions to avoid liability to tax

.....

- (4) Subject to this section, the Revenue Commissioners as respects any transaction may ~~at any time-~~
- (a) form the opinion that the transaction is a tax avoidance transaction,
 - (b) calculate the tax advantage which they consider arises, or which but for this section would arise, from the transaction,
 - (c) determine the tax consequences which they consider would arise in respect of the transaction if their opinion were to become final and conclusive in accordance with subsection (5)(e), and
 - (d) calculate the amount of any relief from double taxation which they would propose to give to any person in accordance with subsection (5)(c).

Section 811A Transactions to avoid liability to tax: surcharge, interest and protective notification

.....

- [(1A) Without prejudice to the generality of any provision of this section or *section 811*, *sections 955(2)(a)* and *956(1)(c)*, as construed together with *section 950(2)*, shall not be construed as preventing an officer of the Revenue Commissioners from-
- (a) making an enquiry, or
 - (b) taking any action,

~~at any time~~ in connection with this section or *section 811*.

Finance Bill 2010 Section 141

817N - (4) Nothing in this Chapter shall be construed as preventing the Revenue Commissioners from—

- (a) making any enquiry, or
- (b) taking any action,

~~at any time~~ in connection with section 811 or 811A.

817O.—(1) A person who fails to comply with any of the obligations imposed on that person by this Chapter and any regulations made under it shall—

(a) where the failure relates to the obligation imposed on a person under section 817H(2), 817H(3), 817I, 817K(1), 817K(2), 817L or 817M, be liable to—

- (i) a penalty not exceeding €4,000, and
- (ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €100 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph, and

(b) where the failure relates to the obligation imposed on a person under section 817E, 817F, 817G or 817H(1), be liable to—

(i) a penalty not exceeding ~~€500 for each day~~ €4,000 during the initial period, and

(ii) if the failure continues after a penalty is imposed under subparagraph (i) to a further penalty of €500 per day for each day on which the failure continues after the day on which the penalty is imposed under that subparagraph.