



**Irish Taxation
Institute**

Educating, Developing & Representing

Commission on Taxation Submission

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The Irish Taxation Institute

The Irish Taxation Institute (ITI) is the leading representative body for taxation affairs in Ireland. Our membership comprises qualified members, accountants, barristers, lawyers, and other corporate and business professionals. Our mission is to support an efficient, fair and competitive tax system that promotes an understanding of and expertise in taxation and encourages economic and social progress. Our 5,000 members work with corporate leaders, Government, State agencies, representative groups, professional organisations and the general public. Through our membership of the Confédération Fiscale Européenne, we monitor and influence legislation and tax policy developments in the EU and internationally.

For 40 years, ITI has been Ireland's foremost provider of qualified tax advisers through our three-year (AITI) and one-year (TMITI) tax qualification courses. Our professional development programme provides continued education, appropriate advice, specialist seminars and other support services for members. This ensures qualified tax advisers remain professionally competent throughout their working lives. Through our nationwide branch network and comprehensive committee structure, our members are actively involved in developing and advancing research on taxation, economic and social policy. Drawing on this expert team, ITI produces a comprehensive suite of taxation publications covering the full range of tax topics.

ITI is governed by a 21-member Council made up of senior business executives and managed by a dynamic executive team.

Executive Summary

This submission sets out our views and detailed proposals on a number of key themes. We are convinced of the need for an ongoing review of tax policy and that innovative approaches, as in the past, will benefit all stakeholders, the economy and indeed Ireland's competitiveness internationally. We are acutely aware of the changing economic context in which the Commission is conducting its work. However, this also presents an opportunity for us to revisit core elements of tax policy and ensure that this policy is appropriate for the environment in which we find ourselves. We must ensure that we not only sustain but enhance our competitive position.

The recommendations in this document are presented in that context and our comments are focused on four main themes:

1. Increasing the efficiency of the tax administration system
2. Creating a more effective legislative process
3. Maintaining a tax system to underpin economic growth
4. Carbon Taxes

In our view, these four themes are central to Paragraphs 6a and 6f of the Commission's Terms of Reference:

- 6a* "consider how best the tax system can support economic activity and promote increased employment and prosperity while providing the resources necessary to meet the cost of public services and other government outlays in the medium and longer term"
- 6f* "investigate fiscal measures to protect and enhance the environment including the introduction of a carbon tax"

Our detailed proposals to support these themes are set out after this Executive Summary.

Theme 1 Increasing the efficiency of the tax administrative system

An efficient tax administration system is one which is simple, which provides certainty to taxpayers and which is fair and transparent.

An efficient system is essential for all stakeholders.

- ***Taxpayers and their advisers***

All taxpayers need to understand their basic rights and obligations. The system should provide ready access to the information which either they or their advisers need to comply, at a reasonable cost.

- ***Revenue Authorities***

Revenue want to collect tax and administer the system in the most effective and efficient way possible and with the most appropriate use of their resources.

However, an independent survey of the PAYE taxpayer population commissioned by ITI in 2006 found that one in every two PAYE taxpayers did not understand their tax due and a third did not understand the basic information they receive each year on their tax position e.g.

their tax credit certificate, P60, payslip etc.¹ We believe this position has improved somewhat since 2006 due to campaigns by Revenue and the Institute.

Improvements have been made to the system in recent years which have simplified matters for taxpayers, tax advisers and Revenue. ITI welcomes the introduction of the Revenue Technical Service (RTS) which was launched 12 months ago to provide technical assistance to taxpayers and advisers. The intention at the time was that Revenue would carry out a review of the RTS system at the end of 2008 and we believe this review would be very worthwhile. In particular, ITI would like to see certain aspects of the system considered:

- consistency in the treatment of technical queries amongst the different Revenue regions
- Revenue response times to queries
- the publication of precedent material

While the roll out of Revenue's on-line service (ROS) has also been very beneficial, basic tax administration and compliance burdens continue to be significant for business. In another recent ITI poll, half of those who use the ROS system stated that it had reduced red tape "a lot" and a quarter rated the system as excellent². However, we are still not as efficient as we could be and this is placing an unfair burden on all taxpayers. In fact, some of the greatest remaining difficulties arise where self assessment principles have been set aside in favour of certification and requirements for other forms of documentation e.g. Relevant Contracts Tax (RCT), Dividend Withholding Tax (DWT), Professional Services Withholding Tax (PSWT) and Third Party Returns. In their report "Small Business is Big Business", the Small Business Forum found that compliance costs are increasing for small business particularly and that tax administration is a significant burden for Irish small business³. For a flavour of this complexity see Appendix 1 to this submission entitled "Pay and File Obligations for Small/Medium Business".

Certainty is another key requirement for an effective tax system. Taxpayers, and particularly investors, dislike surprises and we must strive to create and maintain a certain tax environment for them.

Finally, it is crucial for the credibility of the tax system that it is, and is seen to be, fair and transparent. Fairness must operate as between taxpayers to ensure equal treatment in comparable situations. But it must also operate as between the administration and the taxpayer so that equivalent rights and obligations fall on both.

ITI proposals for a more efficient system

In Section 1 of this submission, we set out 16 detailed proposals aimed at improving the efficiency of the tax administration system. These proposals are categorised as between those relating to simplicity, fairness and underlying reform of certain taxes.

Simplicity and reform

The EU Commission and a number of European countries have identified regulatory reform as an important element of the Lisbon Agenda which aims to make the EU "the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic

¹ ITI/Sunday Business Post RedC Opinion Poll June 2006

² ITI/Sunday Business Post RedC Opinion Poll October 2007

³ Small Business Forum "Small Business is Big Business" May 2006 p15

growth with more and better jobs and greater social cohesion, and respect for the environment by 2010".⁴

A critical element of the regulatory reform agenda is the drive to reduce administrative burdens imposed by regulation. These burdens are the costs of meeting the information requirements of Government regulation. In simple terms, as far as tax is concerned, the costs of complying with tax law. International studies show that the tax system is the largest contributor to administrative burdens - for example in the Dutch system, three of the top ten most burdensome regulations related to tax law.⁵ The EU Commission and a number of European countries have adopted targets to cut administrative burdens by 25% net over a four year period⁶.

ITI proposes that the Commission on Taxation recommend the adoption of a similar target by the Irish Revenue Commissioners and that its achievement be verified by an appropriate external agency.

We recognise that the Revenue Commissioners have introduced a number of significant measures in recent years to simplify the tax system particularly for small business and we urge the continuation of this programme. The focus of this work should primarily be on small business which is the most dynamic sector of the economy and the sector on which the burden of compliance is relatively high.

We set out in this submission a number of specific proposals which could form part of this simplification programme, for example, simplification of the Capital Gains Tax (CGT) Pay and File regime, simplification of tax returns, and the possible extension of the VAT reverse charge mechanism to all Business to Business (B2B) transactions.

The net effect of the simplification programme would be:

- A significant improvement in the business climate and
- An increase in the productivity of the public sector.

Promoting fairness

Fairness is also a key tenet of Irish public policy. ITI makes 6 specific proposals to develop a fairer tax system, including the appointment of an independent Tax Ombudsman and reform of the Tax Appeals System.

Theme 2 A more effective legislative process

As a country, we should be striving to operate international best practice in setting tax policy. We want a modern legislative and policy setting system which is fit for purpose. The system needs to be flexible, democratic and open to independent review. It needs to support entrepreneurs and be simple for taxpayers to understand.

⁴ Presidency Conclusions of the Lisbon European Council 23/24 March 2000

⁵ "The Standard Cost Model; a framework for defining and quantifying administrative burdens for businesses", Dutch Cabinet, 2004

⁶ Commission of the European Communities "Action Programme for Reducing Administrative Burdens in the EU", Brussels 2007, p9

In terms of setting overall tax policy, an inclusive and collaborative approach is key. From the earliest stages of policy setting, formal input should be invited and obtained from a cross section of stake-holders, be they business, Revenue, the PAYE sector etc. Legislation should, where possible, be grounded in consensus. Examples where consultation has worked well in general terms are the recent VAT on Property review and the review of tax incentives. Areas where it could be particularly effective in future include the incentivisation of small business, attracting investment from emerging economies, and turning into reality our goal of developing a knowledge based economy.

The actual process for setting the legislation also needs to be addressed. Our Finance Act is currently required to be enacted within four months of the Budget date⁷ and because all tax legislation is included in this Act, there is simply no time for proper scrutiny or debate, either by stakeholders or by the Oireachtas itself through the parliamentary process.

ITI proposals for a more effective legislative process

In Section 2 of this submission, we set out suggestions for improvement of the fiscal consultative and legislative process. The detailed proposals are based on international best practice and have been implemented in other jurisdictions. They include:

- The establishment of a multi-stakeholder tax policy forum comprising representatives from the Department of Finance, Revenue, business, PAYE taxpayers and relevant professional bodies such as ITI. The forum would be established after the work of this Commission on Taxation is complete.
- The introduction of a separate technical Finance Bill
- A structured process for post implementation review of major tax policy changes to gauge the socio-economic impact they have had.

Theme 3 A tax system to underpin economic growth

For our third theme, we focus on the need to attract investment by both foreign and domestic business to Ireland.

In recent years, Ireland has adopted a policy of low taxation which has broadly served us well. Low income and employer taxes have encouraged employment and the low 12½% corporation tax rate has been critical for investment from both at home and abroad. In moving forward it is important to maintain this policy of low taxation. In many ways, this is the best incentive of all for promoting employment and prosperity across the taxpayer base.

Now is a good time to reflect on the specific tax policies that have worked in delivering investment and consider whether any adjustments of major policy changes are now required. The key attractions we offer are:

- A low tax regime; particularly the 12½% corporation tax rate and our comparatively low labour taxes
- Our holding company regime
- Our knowledge economy

⁷ Section 4(g) The Provisional Collection of Taxes Act 1927

- Effective tax incentives

ITI commends government's commitment to low tax rates and particularly the 12½% corporation tax rate. However, we must remain alert to the possible implementation of CCCTB in other EU Member States and to developments in other competing jurisdictions so that we can react as appropriate. We no longer offer the lowest corporate tax rate within Europe and while mindful of that, we must also recognise that the tax rate is only one element of the total package. We acknowledge the developments that have been made to the holding company regime here in recent years which have facilitated new business development in this important sector and would urge that the current regime be retained and built upon where possible for the foreseeable future. From an administrative point of view, simplification of withholding taxes and the tax regime for foreign dividends would improve matters.

We also need to consider medium term solutions to the issues of dealing with non-treaty, non-EU jurisdictions while the longer term issue of expanding our treaty network is addressed. Although we do have incentives for research and development (R&D)⁸, we are not leading in this market and need to significantly enhance our regime if we want to pursue global knowledge based business and be competitive.

ITI proposals to help under-pin economic growth

After the Commission has completed its work, the multi-stakeholder tax policy forum that we referred to establishing above, should be mandated to review whether our tax policy is "Fit for Purpose" in the current economic climate. It should make recommendations to Government for change, where necessary. The policy forum would also review the application of our anti-avoidance regime (see 3.6 below). ITI would also like to see certain aspects of the recent changes to general anti-avoidance law addressed in Finance Act 2009, (see Proposal 28).

Other areas which we would like to see reviewed are:

- The double taxation relief regime
- Taxation of foreign dividends
- Our treaty network and alternatives thereto

And we need to recommit to knowledge based incentives such as the existing R&D credit and possible relief for know-how.

Theme 4 Carbon taxes

ITI suggests that there are four important principles to be followed in the introduction of a carbon tax:

1. Any carbon tax should be revenue neutral.
2. It should be set at a level that takes account of the level in other countries: maintaining competitiveness is essential. The levels which apply in the UK are particularly important to us and we could usefully look to their experience as they have had taxes, levies and incentives in place for some years.

⁸ Section 766 and Section 766A Taxes Consolidation Act, 1997 (TCA 1997)

3. It should not apply to entities in the EU emissions trading system (ETS), as this would lead to double taxation.
4. It should operate in such a way that administrative and compliance costs are minimised.

Summary ITI Proposals

Theme 1 Increasing the efficiency of the tax administrative system

Simplicity

1. Implement a systematic approach to the simplification of the tax administration system. ITI recommends that the goal is a 25% reduction in the net burden of tax administration over the next 4 years.
2. Simplify tax returns e.g. introduce a 2 page income tax return and a plain English rewrite campaign.
3. Apply the principles of self assessment more fully to taxes such as DWT and RCT.
4. Adopt specific simplification measures for small and new businesses (see 1.1.4 below).
5. Reform the CGT pay and file regime.
6. Inflation-proof tax thresholds and introduce a disposals limit for CGT rather than the existing exemption on gains.
7. Seek a VAT general reverse charge provision for B2B transactions.
8. Work to further extend ROS but not to introduce mandatory e-filing.

Fairness

9. Appoint an Independent Tax Ombudsman / Revenue Adjudicator to provide a ready avenue of appeal on matters of Revenue practice.
10. Urgently review the Irish Tax Appeals System.
11. Regularly review interest rates on underpaid and overpaid tax and keep them aligned with bank rates and with each other.
12. Introduce a new board structure for Revenue and separate the offices of Chairman and Chief Executive of the Revenue Commissioners. Introduce a significant number of non-executive directors to the governing board of the Revenue Commissioners.
13. Establish a scheme to compensate taxpayers for unnecessary loss or hardship caused by Revenue actions/inaction.
14. Review the Revenue Customer Service Agreement to ensure it meets best practice set out by the OECD in their "Taxpayers Charter"⁹.

Reform of certain taxes

15. Simplify PRSI and Levies.
16. RCT – realign the rate and apply a fixed penalty regime to administrative errors.

⁹ Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2006) May 2006, table 9 p49

Theme 2 A more effective legislative process

Consultation

17. Establish a multi-stakeholder tax policy forum once the Commission on Taxation has completed its work.
18. Introduce post implementation review of tax law.

Parliamentary process

19. Introduce a Pre-Budget Report.
20. Advance the Budget date to ensure that tax credits are processed prior to the year end.
21. Establish a Parliamentary Joint Committee dealing only with taxation.
22. Introduce a separate technical Finance Bill.
23. Make independent tax expertise available to TDs and Senators.
24. Introduce a separate Taxes Management Act.

Theme 3 A tax system to underpin economic growth

25. The multi-stakeholder tax policy forum we referred to establishing at Proposal 17 above should be mandated to review whether our tax policy is “Fit for Purpose” in the current economic climate and should make recommendations to Government for change, where necessary. The policy group should also specifically review the application of our anti-avoidance regime.
26. A system of certification and continuous review should be applied to tax incentives.
27. Encourage employee participation in share schemes and pension schemes (see 3.5 below).
28. In relation to Section 811A:
 - Section (1A) 811A¹⁰ should be deleted and the 4 year time limit reinstated
 - Section (1C) 811A¹¹ should be deleted so that the Appeal Commissioners continue to opine on the same basis for all taxpayers in relation to Section 811.
29. Consider reform of:
 - Double taxation relief regime
 - Taxation of foreign dividends
 - Our knowledge based incentives
 - Our treaty network and alternatives thereto

¹⁰ Section (1A) 811A TCA 1997

¹¹ Section (1C) 811A TCA 1997

Theme 4 Carbon taxes

30. ITI suggests that there are four important principles to be followed in the introduction of a carbon tax:
 1. Any carbon tax should be revenue neutral.
 2. It should be set at a level that takes account of the level in other countries: maintaining competitiveness is essential. The levels which apply in the UK are particularly important to us and we could usefully look to their experience as they have had taxes, levies and incentives in place for some years.
 3. It should not apply to entities in the EU emissions trading system (ETS), as this would lead to double taxation.
 4. It should operate in such a way that administrative and compliance costs are minimised.

1. Theme 1: The Efficient Operation of the Tax System

An efficient tax administration system is one which is simple, which provides certainty to taxpayers and which is fair and transparent.

An efficient system is essential for all stakeholders i.e. taxpayers both business and non-business, tax advisers and the Revenue authorities. The system should provide ready access to all information needed for the PAYE taxpayer to understand their basic rights and obligations. Business is entitled to expect that their tax obligations can be fulfilled at a reasonable cost, thus helping to maintain their competitiveness. Revenue do not want to be wasting unnecessary resources on administration which does not contribute effectively to the collection of tax.

Outlined below are our detailed proposals aimed at improving the efficiency of the system. They are categorised between simplicity/certainty, fairness of administration and underlying reform of key taxes.

1.1 A simple and certain system

Improvements have been made to simplify the tax system since the last Commission on Taxation. The introduction of self assessment has been one of the most important fundamental changes to the system and has broadly been very successful. In more recent years, the move to the Calendar Basis of assessment has also helped to stream-line matters.

However, ITI believes that a higher priority needs to be given to simplification over the coming years.

1.1.1 *Systematic approach to simplification*

Tax compliance obligations stem from a wide variety of sources:

1. Irish primary tax legislation
2. Irish secondary legislation e.g. regulations
3. Irish Revenue practice notices
4. EU legislation
5. OECD protocols
6. Other international obligations

The scale of obligations is vast. Our domestic consolidated primary legislation (i.e. category 1. above), covering income tax, corporation tax and CGT runs to 3,000 pages alone.¹² This is before taking into account Stamp Duty, VAT, CAT, any regulations, EU legislation or any other category of obligation. Neither does this take account of Customs and Excise or Social Welfare legislation and regulations which are very specialist and would amount to thousands of additional pages. Within this vast array of legislation lie dozens if not hundreds of requirements on business to provide information to Revenue, the Department of Social and Family Affairs and other bodies.

¹² Taxes Consolidation Act 1997

ITI has carried out some initial work in trying to identify the main tax compliance obligations of a business operating in Ireland. We attach at Appendix 1 our summary analysis of the main tax compliance obligations associated with business activities. This is not a definitive list but it is a useful starting point for discussion.

Very interesting work has been carried out in The Netherlands¹³ and the UK on reducing the burden of red tape including tax administration obligations. In broad terms, the exercise involves measuring the current burden of compliance, determining measurable goals for reducing the net burden and then designing a systematic process to achieve this. In our view, we should be working towards a 25% net reduction in the burden of administration over the next 4 years. We would be happy to provide further details to the Commission if that would assist.

1.1.2 Simplified tax returns

Visitors to the Revenue website www.revenue.ie will see the wide array of tax returns and related forms that are currently used in the administration of the system. We would hope that the sheer number and complexity of these forms is reviewed as part of the 25% systematic reduction exercise outlined above. However, we also have some specific comments and recommendations on the forms themselves.

We suggest that one aim of the Commission must be to make the system simpler for the compliant taxpayer who is trying to deal with their obligations. If the system is not simple then taxpayers could be foregoing reliefs to which they are entitled purely as a result of not fully understanding their rights as well as their obligations. Following Finance Act 2003 changes, taxpayers are now only entitled to claim tax overpaid in the past four years (previously ten years). This four year cut-off can have a harsh effect on taxpayers and this is a concern that we raised when we appeared before the Joint Committee on Finance and the Public Service on 17 January 2007.¹⁴ The reduced period for making a claim increases the need to ensure that claiming a taxpayer's entitlements is made as simple as possible.

The basic income tax return Form 12 is 16 pages long. It currently requires the filing of more information than is necessary and some of the information duplicates information that has already been gathered. Completion of Form 12 is time consuming and inefficient, both for those completing the return and for the Revenue officials who need to review it for accuracy. Its layout and the language used in it also leads to confusion among taxpayers.

ITI recommends separating the tax return into two core pages covering personal details and basic income options, with supplemental pages as required. This would ensure that taxpayers and Revenue do not have to deal with a high volume of unnecessary pages. Simplification of the Form 12 was specifically recommended by ITI at its appearance at the Joint Committee on Finance and the Public Service in 2007.

Tax forms and associated leaflets and explanatory material can be intimidating for PAYE taxpayers. Revenue material such as this should be reviewed and rewritten in plain English. Good initial work has been done by Revenue in this regard on the 2008 Certificates of Tax Credit campaign.

¹³ "The Standard Cost Model; a framework for defining and quantifying administrative burdens for businesses", Dutch Cabinet, 2004

¹⁴ Joint Committee on Finance and the Public Service, Parliamentary Debates 17 January 2007 www.oireachtas.ie

The provision of information also needs to be more transparent and there needs to be greater accountability provided. Taxpayers must be able to see that the information which they are gathering for Revenue, often at great cost and inconvenience, is actually being used. This is not always apparent; take for example business' experience with the Third Party Returns Form 46G, which can take days to complete and yet it is not clear to ITI that the information is ever used.

1.1.3 Self assessment for all taxes

In general, taxes that require clearance procedures are proving to be unduly burdensome e.g. clearances for certain CGT transactions, for DWT etc. The requirement for external clearance be it from auditors, other government departments etc, conflicts with the principle of self assessment. This causes serious administrative difficulties for business. Self certification procedures should be adopted and subject to audit in the normal way.

1.1.4 Small business and new business initiatives

As highlighted by the Small Business Forum in their report¹⁵ the World Bank ranked Ireland 11th out of 155 countries in 2006, as regards ease of doing business. On the downside, the Forum also found that compliance costs are increasing and that tax administration is a significant burden for Irish small business.

More focus also needs to be placed on encouraging Irish people to leave employment and set up their own new business, thus broadening our economic base outside the multinational sector. The tax system could be more supportive of this major economic challenge for new entrepreneurs.

Listed below are some proposals to assist small and developing businesses.

1. Allow small businesses to submit just one tax return. The form could cover:

- VAT – straightforward details of input and output credits
- Income tax in the case of sole traders
- Corporation tax in the case of incorporated entities
- PAYE/PRSI in respect of any employees
- Close company aspects

The form could be restricted to businesses below a certain turnover level.

2. Increase the VAT registration threshold to €5,000 for both goods and services.
3. Extend the VAT cash receipts basis to businesses with a turnover of less than €2m.
4. Simplify VAT bad debt relief and revise the conditions to ensure that the relief is available within a short time of the debtor defaulting.

¹⁵ Small Business Forum, "Small Business is Big Business" May 2006, p16

5. Retain the PAYE tax credit for individuals who have left employment to set up business. Certain income thresholds could be set.
6. Remove the pension differentials between self-employed and employed persons.
7. Simplify business tax commencement rules. These are complex and inequitable and can result in tax rates of up to 60-70%. Alternatively, introduce a cash basis for small business income tax similar to the VAT cash basis.

1.1.5 Capital Gains Tax administration

The current system of self-assessment system for the filing and payment of CGT is complex and inefficient. Three separate events need to be considered for any year of assessment.

- A payment date of 31 October for CGT arises on chargeable gains from 1 January to 30 September in that year
- A payment date of 31 January in the next following year of assessment in respect of chargeable gains arising in the period from 1 October to 31 December
- A return of chargeable gains must be made on or before 31 October in the year following the year of assessment

This system, with two payment dates and a filing date, is at odds with Revenue's commitment to "pay and file" systems for other tax heads. The taxpayer, or their agent, must look at CGT related affairs three times in a 12-month period in order to meet their obligations. From a cash flow point of view it can be difficult to close property contracts, particularly in the current market. The result is that tax is payable before the funds have been received by the tax payer which has to be fundamentally inequitable. Nonetheless, Revenue have confirmed as recently as 22 April 2008, that interest will be charged where contracts are delayed for "whatever reason".¹⁶

1.1.6 Inflation-proof tax thresholds

The annual CGT threshold (at €1,270) is unrealistically low and is not inflation adjusted. Just as tax credits and bands are generally adjusted for inflation, ITI believes that there should be a mechanism for all tax thresholds such as the CGT threshold to be inflation adjusted.

ITI also proposes that a CGT disposal limit is adopted rather than an exemption threshold on gains. This would simplify matters considerably for taxpayers engaged in small transactions.

1.1.7 VAT reverse charge

As both a simplification measure and an anti-fraud mechanism, ITI proposes that Government canvas the EU Commission for authority to introduce a general reverse charge provision for business to business (B2B) transactions.

1.1.8 Revenue On-line Service (ROS)

The Revenue On-line Service (ROS) has introduced great improvements to the administration of the system. There are further areas where on-line services could usefully be extended, such as e-RCT, e-stamping, e-registration and filing of Form 12 online. These are currently

¹⁶ Revenue ebrief no. 20/2008, 22 April 2008

being explored by Revenue and we welcome such initiatives. It would also greatly assist taxpayers if ROS were to carry forward information such as names, addresses, PPS numbers and basic tax credits.

However, proposals also exist to introduce mandatory electronic filing in the medium/long term. While e-filing is a very useful option for taxpayers and Revenue alike, ITI is not in favour of mandatory electronic filing for all citizens. Not all citizens would be confident in the use of the electronic medium and this must be respected.

We would also caution against additional information collection questions being added to on-line tax returns simply because it is relatively easy to collect multiple information in this way. The overall aim of a 25% reduction in the administration burden must always be kept in mind.

1.2 Fairness in dealing with the administration

1.2.1 *Independent Tax Ombudsman*

Unlike other jurisdictions, there is no independent Tax Ombudsman here who specializes in tax matters and who can independently assess a taxpayer's position where they are dissatisfied with the treatment they have received from Revenue. Internal and external Revenue review processes exist for taxpayers to challenge Revenue administrative decisions. The latest available statistics on the external review process¹⁷ show that the position Revenue had taken was upheld in 27 out of 31 cases in 2007 i.e. 87% of the time. However, ITI's concern is that this "external review" is actually administered by Revenue and comprises one Revenue reviewer and one external reviewer. This arrangement lacks transparency and accountability.

An independent survey of the PAYE taxpayer population commissioned by ITI in 2006¹⁸ found that 89% of those polled believe there should be an independent organisation to look after the interests of taxpayers. An independent Ombudsman would ensure the rights of taxpayers were protected and would monitor the system as a whole.

The Ombudsman's role would include acting as an advocate for individual taxpayers who feel disadvantaged by the system. This role would also include evaluating the fairness and efficiency of our tax administration at a systemic level with appropriate reporting and recommendations for change to the Oireachtas.

Taxpayers should be entitled to expect that their rights are independently protected and that they are entitled to a swift, cost-free administrative appeals mechanism if they feel their rights are being infringed (see 1.2.2 below).

1.2.2 *Irish tax appeals*

The operation of the tax appeals system is of considerable concern to ITI and we have carried out detailed research on the matter.¹⁹ In particular, there are concerns around the perceived independence of the Office and the inequality of treatment between Revenue and the taxpayer that arises from the current structures. For example, Revenue, who will always actually be party to the cases, are resourcing certain functions of the Office such as the list of cases for

¹⁷ Revenue Annual Report 2007, table 26, p52

¹⁸ ITI/Sunday Business Post RedC Opinion Poll June 2006

¹⁹ ITI, Irish Appeals System, March 2008 available on www.taxireland.ie

hearing. Equally, Revenue have access to all previous decisions of the Appeal Commissioners of which there are thousands, whereas the taxpayer only has access to those details which the Appeal Commissioners have chosen to publish. Only **two** cases have been published in the last five years and only thirty-two cases in total have been published.²⁰

In our view, the Irish tax appeals system is failing to deliver a fair and efficient service for our taxpayers and is in urgent need of reform. The full conclusions from the Executive Summary to our report of March 2006 are attached at Appendix 2.

1.2.3 Interest on underpaid/overpaid tax

For non-fiduciary taxes i.e. taxes such as income tax, CGT etc which are the liability of the payer itself, the rate of interest currently due on underpaid tax is 10%²¹ per annum. This contrasts with a rate of only 4%²² per annum due on tax which is overpaid by the taxpayer. The distinction between rates on fiduciary taxes such as PAYE, VAT and RCT is even more marked at 11.75%²³ versus 4%. By way of contrast, the UK interest rates currently prevailing are 6% per annum on underpaid tax and 4.75% per annum on tax overpaid.

Furthermore, interest accrues on underpaid tax from the date the tax is due. However, where tax is overpaid, the interest for the taxpayer only runs from 93 days after a valid claim for repayment has been made.²⁴

ITI fully accepts that interest should be charged on tax that is paid late. However, interest is simply supposed to compensate the Exchequer for the cash flow effect of the delay in payment. Significant penalties exist for late payment and interest should not be a further penalty, as is currently the case. Revenue do not have jurisdiction to waive interest in exceptional or hardship cases nor can they make non-statutory interest payments to taxpayers on overpaid tax under their general care and management function. This makes the inequity regarding the disparity between rates even more acute.

The levying of interest at these penal rates is particularly difficult to comprehend in cases where there is no loss of tax to the Exchequer. Such instances arise particularly in VAT situations where an error by one taxpayer often results in a compensating error for another taxpayer so that the net result to the Exchequer is nil loss overall. Similar situations can arise in other significant areas of taxation such as RCT.

Our interest rates should also be reviewed regularly to ensure they are appropriate given prevailing bank rates. The last review of interest on non-fiduciary taxes was 1 April 2005 and for fiduciary taxes was 1 September 2002.

1.2.4 Changes to the Board of Revenue

ITI proposes that the recommendations of the Steering Group on the Review of the Revenue Commissioners are revisited, particularly in relation to the Governing Board of Revenue.

In its Parliamentary Enquiry into DIRT, the PAC Sub Committee on Certain Revenue Matters recommended that the Department of Finance undertake a review of the Office of the Revenue Commissioners. This report was produced by a steering group appointed by the

²⁰ www.appealcommissioners.ie

²¹ Section 1080 TCA 1997

²² Section 865A TCA 1997

²³ Section 21 Value Added Tax Act 1972

²⁴ Section 865A(2) TCA 1997

Minister for Finance on foot of that recommendation.²⁵ Following further instruction by the PAC sub-committee on 20th June 2000, the Group's terms of reference were amended to include a review of prosecution and appeal procedures and the possibility of a Revenue Court and Prosecution Counsel.

The Steering Group made recommendations in a number of areas²⁶:

- The composition of the governing board and management board of Revenue
- A revised Revenue organisational structure
- Changes to the Appeals System
- Comments on a Revenue Court

The Revenue organisational structure that was recommended has largely been implemented. The issues raised on the Appeals System remain to be addressed and, in fact, correspond with a number of the issues ITI identified in our own research (see 1.2.2 above). The overall view on the Revenue Court was that, of itself, it would not improve prosecution rates.

The key recommendation on the Governing Board of Revenue was for the separation of duties between a Chairman and Chief Executive and for the appointment of non-executive directors. This represents best practice in the area of corporate governance. These recommendations have not been implemented to date. Our view is that these recommendations are still valid and should be implemented without delay.

It is also interesting to note from an OECD report in 2006²⁷ that in a number of countries, a management/advisory board (comprising externally appointed officials) has been interposed between the revenue body and the relevant minister/arm of government to provide a degree of independent advice on the general operations of the revenue body and tax administration matters in general e.g. Canada Revenue Agency (CRA), Finland's National Board of Taxes, Inland Revenue Authority of Singapore (IRAS), United States Internal Revenue Service (IRS). If such an oversight body is not to be established here, then non-executive participation in our Revenue Governing Board is the minimum we would recommend in terms of oversight.

1.2.5 Compensation for Revenue delays

Tax legislation fully provides for penalisation of the taxpayer where they are late in paying tax, filing a return etc. An extensive regime of interest and penalties apply in these cases. What is not legislated for is loss/hardship to the taxpayer caused by delays or omissions of the Revenue Commissioners.

This discrepancy was highlighted very clearly by the Ombudsman in his Special Report in November 2002²⁸. The Ombudsman commented:

“I am heartened to see that the principle of equal treatment for people in similar circumstances is uppermost in Revenue's mind despite its continuing refusal to put it into practice”

²⁵ Public Accounts Committee on Certain Revenue Matters, Chapter 2 part 2, December 1999

²⁶ Report of the Steering Group on the Review of the Office of the Revenue Commissioners, 5 September 2000

²⁷ Tax Administration in OECD and Selected Non OECD Countries: Comparative Information Series May 2006, p9

²⁸ Redress for Taxpayers, Special Report by the Ombudsman, November 2002, p5

The main recommendation by the Ombudsman in this report was that Revenue should introduce a general scheme to compensate taxpayers where it is solely or significantly to blame for delay in refunding tax overpayments.

In response to the Ombudsman's report, Revenue advised the Joint Committee on Finance and the Public Service in 2003 that it had set up a working group to consider an administrative scheme of redress compensation for taxpayers²⁹. The Implementation Group of Secretaries General had also been asked at the time to review the legislative policy and practical issues which arise on reforms of redress for the citizen when dealing with the Civil Service.

ITI would like to see such a redress scheme for taxpayers put in place. A similar scheme has been established in the UK³⁰.

1.2.6 Revenue Customer Service Charter

The Revenue Customer Service Agreement requires review to ensure it meets best practice set out by the OECD in their "Taxpayers Charter – illustrative description of taxpayers' rights"³¹.

1.3 Reform of certain taxes

1.3.1 PRSI and levies

PRSI is one of the most complex areas of taxation currently in operation. Its provisions are dealt with in a number of Social Welfare Acts and in hundreds of Regulations. As well as PRSI itself, taxpayers are also liable to a Health Levy. Whilst the Department of Social and Family Affairs is responsible for the administration of PRSI, the Department of Health is responsible for the administration of the Health Levy.

The PRSI system has numerous classes and different categories and it is very difficult for taxpayers to understand. As a result, the tax is far from transparent and ITI recommends that a review is carried out with the aim of simplifying its application.

1.3.2 Relevant Contracts Tax (RCT)

Realignment of the rate

The Irish RCT system is also very complex and very onerous in terms of its administrative obligations. There are a number of inequities and difficulties with the existing system.

The withholding rate is currently 35%³² and this is imposed on gross income. This rate dates back to a time when the standard rate of income tax was 35% and the RCT withholding rate was pinned to that standard rate. This collation with the standard rate was recommended by the previous Commission on Taxation.

²⁹ Joint Committee on Finance and the Public Service, Briefing on Ombudsman Report on Redress for Taxpayers, opening statement by Mr Frank Daly, 12 February 2003

³⁰ HMRC guide "Complaints and Putting Things Right", www.hmrc.gov.uk

³¹ Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2006) May 2006, table 9, p49

³² Section 531(1) TCA 1997

“The rate of deduction of tax from payments under construction contracts should be tied to the standard rate”³³

However the standard rate of income tax has fallen over the intervening years to 20% and the withholding rate of RCT has not been adjusted. ITI proposes that such a re-alignment is now made.

Double taxation issue

One of the main inequities of the current RCT system is that Revenue are entitled to collect the full amount of tax from a principal contractor where he has made an administrative error such as failing to obtain a payments card from a sub-contractor. This tax is collected together with possibly interest and penalties even though tax may already have been accounted for on the same income by the sub-contractor. This is double taxation and must be addressed.

³³ Tax Administration, Fifth Report of the Commission on Taxation, October 2005, p115

2. Theme 2: A More Effective Legislative Process

As a general rule, tax legislation is implemented in Ireland entirely through one annual Finance Bill. The Provisional Collection of Taxes Act 1927 effectively imposes a four month time limit on enacting the Finance Bill from the date of the Budget.³⁴ This tight timeframe leaves very little opportunity for real scrutiny by any of the parties involved, be they Dáil, Seanad, Select Committee or taxpayers.

As an example of the tight timeframe, let us consider the timetable for passing of this year's Finance Bill, which comprised 200 pages of legislation.

45-days elapsed from publication of this Bill to enactment, broken down as follows:

- Budget on 5 December 2007
- Finance Bill published on 29 January 2008
- Second stage debate on 5/6 Feb (Dáil)
- Select Finance Committee, 19/20 Feb. 86 amendments were proposed by the Tánaiste alone at this stage plus all the Opposition amendments.
- Report Stage Dáil, 5/6 March
- Finished in Dáil, 6 March
- Second stage in Seanad, 12 March
- Committee and remaining stages in Seanad, 13 March
- Concluded in Houses of the Oireachtas on 13 March
- Signed by Presidential Commission that same week

In practical terms the only real opportunity for consultation that currently exists is between publication and Committee stage i.e. based on the 2008 Bill, that was between 29 January and 19 February 2008. The time constraints involved in this process are clear and are unsatisfactory. This is not a new observation. Indeed, when the previous Commission on Taxation considered the legislative process in 1985, it commented:

*“We are faced with a clear conflict of evidence. Generally speaking, the public service is satisfied with the present legislative processes and the procedures for consultation with interested parties and sees no need for change. Others are dissatisfied.”*³⁵

They pointed to a number of examples at the time, where inadequate consideration of proposals in the Budget or Finance Bill lead to confusion or subsequent reversal of policy. There have been plenty more examples of this since 1985. A review of the debates of the Oireachtas and specifically of the Select Committee on Finance and Public Service in relation to Finance Bills 1999 and 2004 show that little or no parliamentary debate took place in relation to the significant powers conferred on the Revenue Commissioners in these two Bills.

³⁴ Provisional Collection of Taxes Act 1927, Subsection 4(g)

³⁵ Tax Administration, Fifth Report of the Commission on Taxation October 1985, p63

The previous Commission on Taxation made the following recommendations for change.³⁶

1. Draft legislation on taxation should be published in advance to the greatest extent possible to allow more time for public evaluation of proposals.
2. A Standing Joint Oireachtas Committee on Fiscal Affairs should be established. This Committee should deal with the Committee Stage of the Finance Bill, and other fiscal matters, and have powers to send for papers and records, hear witnesses and report the bill to the Dáil, with or without amendments.
3. A technical advisory committee representative of the main professional bodies in the taxation area should be established to assist the Revenue Commissioners and the Department of Finance in identifying aspects of taxation law and administration that need to be improved. This recommendation has now been enacted through TALC (Taxes Administration Liaison Committee).
4. Temporary transfers of staff at middle-management level between the Office of the Revenue Commissioners and the Department of Finance should be instituted on a systematic basis.
5. Statutory consolidated of tax legislation should take place at regular intervals.

The CBI Tax Task Force in the UK have also carried out a recent in-depth review of the UK tax legislative process as part of their report “*UK Business Tax: a Compelling Case for Change*”³⁷. They are very clearly of the view that “a “no surprises” legislative and administrative process is a critical element of a competitive environment in the UK. Their key recommendations both in the area of consultation and parliamentary scrutiny are:

- Improve transfer of expertise between HM Treasury/HMRC and the commercial sector
- Publish a detailed three year rolling programme of legislative priorities
- Ensure that robust impact assessments accompany new policies – the focus should be on addressing competitiveness and simplification
- Formalise the tax consultation process to include early consultation (including on policy), clear objectives, wide representation, and an environment of openness and trust
- Limit budget secrecy – most new corporate tax law should be enacted outside the confines of the annual finance bill
- Adopt a purposive approach to drafting legislation, to ensure that objectives are fully articulated
- Enhance the effectiveness of parliamentary scrutiny – more time, better resources and more independence
- Set up an independent Tax Law Commission to review tax law once it has been enacted
- Ensure that HMRC can deliver better tax administration for both large and small businesses

³⁶ Tax Administration, Fifth Report of the Commission on Taxation October 1985, p69/70

³⁷ UK Business Tax: A Compelling Case for Change, CBI Tax Task Force, November 2006

All indications are that our current system of parliamentary scrutiny on taxation matters is not fit for purpose, is certainly not best practice and must be significantly improved. See also the Irish Times Editorial in Appendix 3.

There are steps that can and need to be taken and these are discussed below. They have been split between proposals on consultation and the actual parliamentary process.

2.1 Consultation

2.1.1 Multi-stakeholder tax policy forum

A multi-stakeholder tax policy forum should be established comprising representatives from the Department of Finance, Revenue, business, individual taxpayers and relevant professional bodies such as ITI. There is precedent for a similar forum in the existing TALC (Tax Administration Liaison Committee) arrangements, the Company Law Reform Group (CLRG) and the Taxation Sub-group of the Banking and Treasury Group operating under the remit of the Department of the Taoiseach.

This forum would be responsible for initiating tax policy ideas for consideration by Government. It would meet say twice a year to obtain views on the development of effective tax policy to meet prevailing economic needs and to continuously monitor whether we are meeting our EU and other international obligations. It could also be convened at short notice if consultation on an urgent policy matter was required, for example if a European Court of Justice ruling resulted in Irish law in a particular area being out of line.

Revenue would clearly be an important party at this forum as the body charged with care and management of the tax system, and with their experience on tax administration matters. However, a broad approach is needed for the development of innovative policy and it would be important to also have a range of experience from the private sector including those working at the cutting edge of the knowledge economy and financial services and those with experience of the challenges for small business.

2.1.2 Post implementation review of tax law

An independent Commission, which may or may not be the same as the Policy Forum recommended at 2.1.1 above, should be given responsibility by Government for analysing major policy changes post implementation and publishing the results.

2.2 Changes to parliamentary process

2.2.1 Pre-Budget Report

The UK Chancellor of the Exchequer normally presents a pre-Budget report in November or December each year as a precursor to the Budget in the following Spring. The Pre-Budget report presents updated assessments and forecasts of the economy and public finances, describes reforms that the Government is making and sets out the Government's priorities and spending plans for the next 3 tax years. The Chancellor also normally uses the Pre-Budget report to announce the tax rates, thresholds and allowances for the forthcoming tax year and to highlight other tax measures to be proposed in the Budget.

The existence of a Pre-Budget report also facilitates consultation with interested parties on proposed Budget changes given the short time frame between the Budget, the Finance Bill and subsequent Finance Act.

While we fundamentally believe that major tax policy changes need to be introduced through a separate Finance Bill, the use of a Pre-Budget Report similar to the UK would at least increase awareness at an earlier stage of proposed policy changes.

2.2.2 *Budget date*

As a result of Budget Financial Resolutions occurring so close to the year end, tax credit certificates are issuing 2-3 months after the beginning of the tax year. To allow credits to be processed prior to the beginning of the tax year, ITI suggests that the Budget date is moved forward.

2.2.3 *Parliamentary Joint Committee*

The Select Committee on Finance and the Public Service currently considers the Finance Bill at Committee Stage. However, this Select Committee has a wide remit. What is required is a dedicated Select Committee on Taxation whose terms of reference should include scrutiny of all aspects of tax law to ensure that the proposals improve Ireland's competitiveness and are consistent with the principles of simplicity, certainty, transparency and fairness.

This Committee would have a permanent staff to support its work and would also requisition external expertise to evaluate proposals, where required. It would also be required to independently review Government estimates on the budgetary impact of proposed tax legislation.

2.2.4 *Separate technical Finance Bill*

Government should commit to ensuring that major policy initiatives which require proper debate and scrutiny are not included in the annual Finance Bill. They should be the subject of a Technical Bill which should be published some months after the usual Finance Bill. To the extent that more resources are required to implement these two Bills, such resources should be provided in the interests of better long term legislation.

2.2.5 *Tax expertise available for TDs and Senators*

Independent tax expertise should be made available to all Dáil Deputies and Senators so that they have the facility to carry out independent analysis of proposed tax law. In the US, the Congressional Budget Office provides independent support on tax matters to the Senate and Congress.

2.2.6 *A separate Taxes Management Act*

We recommend that legislation conferring powers on the Revenue Commissioners currently contained in the Direct Tax Code, Indirect Tax Code and Capital Tax Code be consolidated into a Taxes Management Act and that this Act be amended in future years in a legislative cycle independent of the Finance Bill cycle.

3. Theme 3: A Tax System to Underpin Economic Growth

ITI welcomes the Government's commitment to lower income taxes in the Programme for Government 2007-2012³⁸ and the commitment to support the Business Expansion and Seed Capital Schemes which recognise the key role played by small businesses in the economy. Although our low tax policies have worked well for us to date, we must stay vigilant to increases in the tax burden if we are to remain competitive: OECD Revenue Statistics show that Ireland saw its tax burden rise by more than one percentage point between 2005 and 2006.³⁹

Ireland took a very pro-active approach to winning international business in the 1980's when we focused strongly on financial services, information technology and pharmaceuticals. As a result, we clearly gained first mover advantage over similarly sized economies and achieved success far beyond all expectations. This happened through a combination of an educated workforce, focused tax policy and our legal and regulatory framework. The challenge now is to ensure that we attract and retain the high value added activities.

There is no doubt that Ireland remains an attractive place to do business in 2008 but it is important to ask ourselves "why?" ITI suggests there are several key attractions to our tax regime.

- Our low tax regime particularly the 12½% corporation tax rate and comparatively low labour taxes
- Our holding company regime
- The knowledge economy
- Effective tax incentives

We need to explore the value of each "offering" and the exposure to erosion by competition from established and emerging economies.

3.1 The 12½% rate

Government commitment to maintaining this low rate has been critical in attracting overseas investment and in supporting indigenous business. It is a transparent rate on profits and investors very much value the certainty that comes with Government assurances on its continuation. As noted in Section 1 above, certainty is of fundamental importance to investors. Measures which introduce uncertainty into the system should be avoided where possible.

We welcome the explicit commitment to the maintenance of the 12½% rate set out in the Programme for Government. To remain competitive it is essential that Ireland retains the flexibility to set its own corporation tax policy without hindrance. For this reason, ITI also reiterates its support for the Government's position in opposing the concept of a Common Consolidated Corporate Tax Base as is currently being developed by the European Commission.

³⁸ Programme for Government 2007 – 2012, Irish Government, published January 2008

³⁹ OECD Revenue Statistics Annual Report, Chart E p47, October 2007

We should not regard the 12½% rate as an absolute floor rate and should remain open to considering an adjustment downwards should conditions warrant it.

3.2 Holding company regime

There is no doubt that Ireland has improved its regime for holding companies in recent years and this has enhanced its attractiveness as a location for investment. Income of non-Irish resident subsidiaries is only taxed in Ireland when it is remitted here by way of dividend and the rate of corporation tax on these dividends was reduced from 25% to 12½% in Finance Act 2008.⁴⁰ This reduction in tax rate was welcome but administrative difficulties are arising in its application. Appendix 4 demonstrates the range of possible tax treatments for foreign dividend income. Credit is available here for foreign tax suffered by an overseas subsidiary and onshore pooling of “unrelieved foreign tax” is available. Important reliefs have also been rolled out on CGT and Capital Duty.

However, we need to decide whether we truly want to be a jurisdiction of choice for holding companies and, if we do, we need to eliminate some of the bureaucracy that currently detracts from the range of good measures that we have.

There are some key elements still absent:

- Relief from withholding tax on outbound interest, royalties and dividends
- Full exemption on dividends (see comments above and Appendix 4).
- Full consolidated tax grouping
- A more comprehensive system of rulings whereby taxpayers could obtain certainty of treatment and binding pre-transaction clearances. This is provided to some degree at present through Revenue Technical Services (RTS) but a more comprehensive service is required.
- A wider treaty network. While we currently have concluded 45 treaties, the rate at which this network is growing has slowed down considerably. Only 5 treaties have come into force in the past five years and this is becoming a real obstacle in this marketplace. We appreciate that delays can arise with either country in treaty negotiations but believe that if we are to commit fully to embracing global investment and we cannot expand our treaty network quickly enough to keep up with this, then we need to reflect on our domestic law restrictions for “good” investor locations.

3.3 The knowledge economy

Ireland could be a world class centre for intellectual property excellence and management. ITI believes that it is time to prioritise the incentivising of **research and development (R&D)** activity if we are to compete in a credible manner in that arena. As Irish based companies seek to move up the value chain, it will also become important that the related know-how, technology, brands and intellectual property are owned by Irish companies and that Irish based staff control the design and implementation of related Intellectual Property (IP) strategies. At present, there is no provision for corporation tax relief to be claimed by an Irish company on the acquisition of brands, non-industrial know-how, or goodwill in respect of intellectual property. In addition, the current limited relief for know-how does not apply

⁴⁰ Finance Act 2008, Section 39

when acquiring know-how from a related party⁴¹, and therefore discourages large multinational companies from centralising their IP management and design processes in Ireland.

The potential benefits of developing a knowledge economy are not reserved solely for large foreign multi-nationals locating here. Indigenous Irish businesses of all sizes compete effectively in world markets and can only continue to do so if they invest in leading edge technology and processes. This activity also has the potential to generate sustainable employment in smaller local industries such as the organic food industry and specialist manufacturing sectors.

A number of key reports have driven policy in the area of research and development over the past number of years including *Building Ireland's Knowledge Economy and the Strategy for Science, Technology and Innovation 2006 - 2013*.⁴²

An important tool in this overall strategy is the R&D tax credit introduced in Finance Act 2004, which has been modified in subsequent years including Finance Acts 2007 and 2008⁴³. Essentially the provision allows for a 20% tax credit for incremental expenditure on R&D incurred by trading companies. While widely welcomed at the time, there are a number of problems with the current provisions and while R&D expenditure has increased significantly in recent years, the total amount remains low by international standards. Again, most of our competitor jurisdictions have similar credit systems in place and it is therefore time to review our model and make the required changes so that the case for undertaking R&D activities in Ireland becomes a compelling one. It is worth noting the success that has been achieved in the UK since the introduction of their regime in 2000 and its extension to large companies in 2002. An OECD comparison shows that after Canada, the UK offers the most generous tax credits in the world. The result has been a steady increase in R&D investment with growth of 7% between 2003 and 2006. It is also worth noting that of the 5,500 companies that claimed the R&D tax credit in the UK in 2004, over 80% of the claimants were small and medium enterprises (SMEs)⁴⁴.

In our 2008 Pre-Budget submission, we focused on the difficulties facing the knowledge based sector and made a number of proposals to address the difficulties outlined above. This detailed analysis is contained at Appendix 5.⁴⁵ We acknowledge the changes that were subsequently made in FA 2008.

3.4 Effective tax incentives

ITI acknowledges the important role that tax incentives have played in the development of successful Irish taxation policy over the past three decades. Incentives have contributed to the financial services, pharmaceutical and manufacturing industries that we have in Ireland today. They have led to new and expanding companies, job creation, improved products and services, increased exports, sporting and cultural and heritage investments, the development of third level facilities, the IFSC, Dublin docklands and regeneration of large urban and rural areas. They have also contributed to research and development advancement and we believe there is even more scope for investment in this sector (see 3.3 above).

⁴¹ Section 768 TCA 1997

⁴² Strategy for Science, Technology and Innovation 2006 – 2013, Department of Enterprise Trade and Employment, June 2006

⁴³ Section 766 TCA 1997

⁴⁴ HMRC, "Supporting Growth in Innovation", July 2005

⁴⁵ ITI Pre Budget Submission, September 2007 available on www.taxireland.ie

The Business Expansion Scheme (BES) has also made a real social and economic contribution, particularly for the small business sector.⁴⁶ In a recent survey of companies that used BES, 52% said it made them more ambitious to grow and 47% attributed the launch of new or improved products and services to BES⁴⁷.

Incentives also have an important role to play in future tax policy, for example, on the important issue of carbon taxes, alternative energy sources, investment in transport infrastructure, delivery of a nationwide broadband network and proper regional development. Of course, any consideration of new incentives must take cognisance of EU State Aid rules.

As part of the general consultation process on tax incentives that took place in 2005 we wrote to the then Minister for Finance, to express our views on optimizing the use of tax incentives.⁴⁸ We were subsequently invited to appear before the Joint Committee on Finance and the Public Service on 21 September 2005, to outline our ideas in more detail. The full text of the submission to the Joint Committee is contained at Appendix 6.

- It is clear that positive benefits flow from targeted tax incentives and they should continue to be used for priority areas.
- The incentives should be driven by socio-economic needs.
- A system of certification was recommended for new investment projects.
- Government departments should be responsible for identifying socio-economic needs relevant to their portfolios and certifying whether relevant incentivized projects meet that need.
- Incentives should be subject to continuous review and they should have a finite shelf life.

We believe that these principles still hold true today.

In order to ensure that Government Departments remain focused on reviewing the scope and feasibility of incentives in their particular portfolios, there needs to be a dedicated group of independent persons responsible for overseeing the adoption, monitoring and reviewing of incentives. This would be required on an ongoing basis after the work of this Commission on Taxation is complete.

3.5 Employee incentives

Successive Ministers for Finance and Enterprise, Trade & Employment have repeatedly (a) encouraged wider employee financial participation in their employers, particularly through share schemes and (b) participation in pension schemes. The area is currently being discussed and debated in detail following the publication of the Green Paper on Pensions.⁴⁹ The outcome of this debate will be critical in establishing a pensions framework into the future. Both employee share participation plans and pension schemes have an important role to play in improving productivity and aligning the interests of employees and the firm they work in.

⁴⁶ Section 488 – Section 508 TCA 1997

⁴⁷ Department of Finance “*Review of Business Expansion Scheme*” 2006 Survey Results, January 2007

⁴⁸ ITI Submission to Joint Committee on Finance and the Public Service, September 2005

⁴⁹ Green Paper on Pensions, Department of Social and Family Affairs, October 2007

There is no incentive given under current tax legislation to encourage long-term share participation by either employees or ex-employees.⁵⁰ We believe that employees may be more easily encouraged to invest in employer shares rather than anonymous units in pension funds. Measures to incentivise share ownership and retention can have an important role to play in increasing pension provision levels. However, the incentives to continue to hold the investment on a long-term basis are all contained within the tax legislation applicable to pension schemes rather than share schemes. Our proposal outlined below is designed to remedy such problems and improve the take up and retention of shares as well as increasing the levels of provision for retirement.

Proposal

Employees should be given the opportunity and incentive to transfer shares acquired under broadly based employee share schemes into a pension scheme. Such a measure would encourage employees to retain their shares and potentially increase their provision for retirement. Specifically, we propose that the existing legislation and revenue practice be modified so as to remove obstacles to transferring and holding shares acquired under employee share schemes in a pension portfolio.

The key areas for consideration are:

1. Employees who acquire shares under an approved share scheme would agree to place these shares or a portion of these shares into a pension vehicle. This could be through a PRSA or an existing approved pension scheme.
2. The transfer (which would in the normal course of events be treated as a deemed disposal) should attract no liability to CGT.
3. Further capital gains and dividends on shares held in the pension scheme would be allowed to roll up tax-free, as is the case with any other pension scheme asset.
4. The trustees of the pension scheme would be able to trade the shares after a given holding period. In particular as the employee approaches retirement and requires a less risky and more diversified portfolio.
5. The proceeds of the pension scheme would be subject to income tax in the normal fashion on retirement.

3.6 Ireland's anti-avoidance regime

While the comments above highlight so much of what is positive about tax policy in this country, ITI has real concerns about the application of the anti-avoidance regime here. Irish law contains both specific and general anti-avoidance provisions. The specific provisions challenge particular transactions in particular circumstances as set out in the legislation. The general provision is contained at Section 811, TCA 1997 and allows Revenue take certain actions in any situation if they form the opinion that a transaction is a tax avoidance transaction. Sections 811 and the associated 811A were amended in Finance Act 2008 as outlined below.

⁵⁰ Employee Share Ownership Plans are the only form of approved share scheme that facilitate long term share participation. However, the growth of Employee Share Ownership Plans has been hampered by the complex regulations which apply to these plans.

We have two main areas of concern:

1. The overall application of the anti-avoidance regime by Revenue; and
2. The specific changes to Sections 811 and 811A enacted in Finance Act 2008 (FA 2008).

Application of the overall regime

ITI fully acknowledges the role of an anti-avoidance regime in Ireland. However, we are concerned that the present regime is causing un-warranted disquiet amongst investors and is damaging the integrity of the tax system.

ITI proposes that the multi-stakeholder tax policy forum referred to in 2.1.1 above would be charged with reviewing our anti-avoidance regime to determine whether its application is impeding economic growth.

FA 2008 amendments to s811 and s811A

FA 2008 amended sections 811 and 811A in several respects.⁵¹ Broadly speaking, the changes were made to increase disclosure of transactions which Revenue might consider to be tax avoidance transactions. However, the changes enacted cause us concern in two respects:

1. The burden of proof before the Appeal Commissioners has been fundamentally altered for taxpayers who choose not to avail of the Revenue's voluntary protective notice scheme for disclosure of transactions. Where the taxpayer has lodged a protective notice, the Appeal Commissioners will opine as to whether the transaction is a tax avoidance transaction. Where the taxpayer chooses not to lodge a protective notice the Appeal Commissioners will opine as to whether it could "reasonably be considered to be" a tax avoidance transaction. In effect, two taxpayers involved in two identical transactions would be treated differently by the Appeal Commissioners simply because one did not file a voluntary notice with Revenue.
2. The right of the compliant taxpayer to have their affairs closed after a four year time limit has been set aside where Revenue wish to carry out enquires under Section 811. This protection has been removed under Section 811 even though there is no suggestion of any fraudulent or negligent behaviour on the part of the taxpayer. Time limits operate in our legislation even in circumstances where a taxpayer has committed a revenue offence. In that instance, Revenue must bring proceedings against the person within 10 years of the date the revenue offence is committed. A completely open ended enquiries window under Section 811 will fundamentally affect any tax warranties/indemnities as investors in takeover situations could still be liable to Revenue action in, say, fifty years time. This will introduce a degree of uncertainty amongst investors that is unfounded.

In relation to Section 811A, ITI proposes that:

- Section (1A) 811A, TCA 1997 is deleted and the 4 year time limit is reinstated
- Section (1C) 811A, TCA 1997 is deleted so that the Appeal Commissioners continue to opine on the same basis for all taxpayers in relation to Section 811.

⁵¹ Section 140 Finance Act 2008

Overall proposals on economic growth

- The multi-stakeholder policy group that we referred to establishing in Section 2.1.1 should be mandated to review whether our tax policy is “Fit for Purpose” in the current economic climate and should make recommendations to Government for change, where necessary. The policy group would also specifically review the application of our anti-avoidance regime.
- In relation to Section 811A:
 - Section (1A) 811A⁵² should be deleted and the 4 year time limit reinstated
 - Section (1C) 811A⁵³ should be deleted so that the Appeal Commissioners continue to opine on the same basis for all taxpayers in relation to Section 811.
- A system of certification and continuous review should be applied to tax incentives.
- Specific proposals are included to encourage employee participation in share schemes and pension schemes.
- We need to consider reform of:
 1. Double taxation relief
 2. Taxation of foreign dividends
 3. Our knowledge based incentives (see also Appendix 5)
 4. Our treaty network and alternatives thereto

⁵² Section (1A) 811A TCA 1997

⁵³ Section (1C) 811A TCA 1997

4. Theme 4: Carbon Taxes

Proposal

ITI suggests that there are four important principles to be followed in the introduction of a carbon tax:

1. Any carbon tax should be revenue neutral.
2. It should be set at a level that takes account of the level in other countries: maintaining competitiveness is essential. The levels which apply in the UK are particularly important to us and we could usefully look to their experience as they have had taxes, levies and incentives in place for some years.
3. It should not apply to entities in the EU emissions trading system (ETS), as this would lead to double taxation.
4. It should operate in such a way that administrative and compliance costs are minimised.

Appendices

Pay and File obligations for small/medium business

Obligations arising on setting up a business

Corporation tax

- Notify the Revenue within 30 days when a company comes within the charge to tax and register for corporation tax by completing Form 11F CRO.

VAT

- VAT must be charged and paid on the supply of goods and services by taxable persons; goods imported into the State and the Intra Community Acquisition of goods. Taxable persons must furnish details specified in regulations to Revenue for the purpose of registering for VAT and complete Form TR2.
- Companies not established in the EU supplying electronic services to customers in the EU must register and account for VAT on these services.
- Persons who elect to register for VAT must account for VAT where appropriate.

PAYE/PRSI

- Register for PAYE/PRSI by completing Form TR2.

Ongoing calendar obligations

Corporation Tax

- For Accounting periods ending after 1st January 2006, pay preliminary tax of at least 90% of the expected final liability for the tax year by 21st day of the month preceding the end of the accounting period. (If the company's corporation tax liability in the preceding accounting period was less than €200,000, it can opt to base the preliminary tax payment on 100% of the previous year's tax liability).
- File Form CT1, Return of income, within nine months of the end of the accounting period. If this date is after the 21st day of the ninth month the filing date is brought back to the earlier 21st day of the ninth month (21 day rule).
- "Extracts from Accounts" must be completed in all cases where the company (or group of companies) has a turnover of less than €20m. Where the turnover exceeds the limit, a full set of audited accounts must be submitted.
- Pay any balance of tax due when filing the return (i.e. within 9 months of the end of the accounting period, subject to the 21 day rule referred to above).

VAT

- File Form VAT 3, bi-monthly VAT return by 19th of the month following that taxable period.
- Pay VAT due for bi-monthly period by 19th of the month following that taxable period.
- File annual return of trading details by 19th of the month following the end of the calendar year or accounting period.
- Persons who make Intra-Community Acquisitions of new means of transport shall make payments in accordance with the Act or regulations.
- Taxable person must furnish statements of intra-Community supplies (VIES returns) either monthly or quarterly.
- Taxable persons must make periodic INTRASTAT statistical returns in relation to goods supplied to customers in other Member States or goods acquired from suppliers in other Member States subject to turnover limits.
- Persons in receipt of services from abroad are liable for VAT in certain circumstances.
- Persons are obliged to account for VAT on the supply of investment gold, establish the identity of their customers in certain circumstances, and keep records as appropriate.
- Premises providers must notify Revenue of details concerning mobile traders and non-established promoters.
- Group remitters are obliged to account for VAT in respect of liabilities of group members.
- Dealers in second hand goods who use the margin scheme must comply with the conditions which apply to that scheme.
- Auctioneers must use the special scheme for dealings in auction scheme goods and must comply with the conditions of that scheme.
- Flat rate farmers must issue an invoice in respect of the supply of agricultural produce or services to taxable persons.
- Dealers who use the special scheme for means of transport must comply with the conditions of that scheme.
- Dealers who use the special scheme for agricultural machinery must comply with the conditions of that scheme.
- Taxable persons are obliged to keep full and true records of all transactions which affect or may affect his or her liability to tax. Persons engaged in business are obliged to keep invoices issued to them.
- Certain persons must issue invoices or other documents for supplies of goods and services within time limits as set out in regulations.
- Persons engaged in business must produce records when required.
- Secretary or acting secretary is answerable in addition to the company for all obligations required under VAT legislation.

PAYE/PRSI

- Pay total PAYE/PRSI deducted from employee remuneration and file Form P30, monthly PAYE/PRSI return by 14th day of the month following the end of the calendar month in which the deductions were made.
- File Form P35, completed annual PAYE/PRSI return by 15th February following the end of the relevant tax year and issue Form P60 to each employee.
- File Form P11D, Return by employer of benefits, non-cash emoluments and payments not subjected to PAYE provided to directors and certain employees by 31st May of the year following the relevant tax year (upon receipt of form from Revenue).
- File annual details of deductions from employees in respect of employee pension contributions, PRSA contributions and RAC premiums.

Income tax

- Pay preliminary tax (at least 90% of final liability or 100% of preceding year's liability) for year of assessment by 31st October of that year.⁵⁴
- File Form 11, Return of income for year of assessment by 31st October of the following year.¹
- Pay any balance of tax due when filing the return (i.e. by 31st October following that tax year referred to above).¹
- File Form SO2, Share options and other rights return by 31st March following the relevant tax year.
- Pay income tax deducted at source from certain annuities, annual payments and patents payable out of taxed and untaxed income as part of the company's preliminary tax payment due by 21st day of the month preceding the end of the accounting period. This applies to both resident and non-resident companies.
- File return of income tax deducted at source from certain annuities, annual payments and patents payable out of taxed and untaxed income (i.e. within nine months of the end of the accounting period, subject to the 21 day rule referred to above). This applies to both resident and non-resident companies.
- Pay income tax deducted at the standard rate of tax from rent payable to non-residents as part of the company's preliminary tax payment due by 21st day of the month preceding the end of the accounting period.
- Obligated to deduct tax from interest on quoted Eurobonds, make a return of interest on quoted Eurobonds paid without deduction of tax, and retain declarations of non-residence in respect of ownership of quoted Eurobonds.
- Complete appropriate declarations in relation to interest paid with respect of wholesale debt instruments and include details on relevant third party return.

⁵⁴ Self-assessment rules apply to all individuals with non-PAYE income and to all directors controlling 15% or more of the share capital of certain companies (even if their entire income is subject to PAYE).

- Charge and payment of tax deducted under Schedule C in respect of Public Revenue dividends.

Relevant Contracts Tax

- File Form RCT1, declaration for each relevant contract.
- Obligation on a sub-contractor to provide evidence of identity and obligation on principal contractor to examine sub-contractors' certificates.
- File Form RCT 46 in order to apply for a relevant payments card (Form RCT 47) in respect of a sub-contractor who produces a valid C2 subcontractor's certificate of authorisation.
- File Form RCT46A in order to apply for a relevant payments card (Form RCT47) in respect of a sub-contractor for whom the principal contractor holds a relevant payments card where the contract is on going at the end of the tax year.
- Record payments made without deduction of Relevant Contracts Tax on relevant payments card (Form RCT47).
- Record payments made, under deduction of Relevant Contracts Tax at 35%, to a sub-contractor for whom the principal contractor does not hold a relevant payments card on Form RCT 48 and issue Relevant Contracts Tax Deduction Certificate (Form RCTDC) in respect of each payment made to each subcontractor.
- Pay total Relevant Contracts Tax deducted from payments to subcontractors and file Form RCT 30, completed monthly return by 14th day of the month following the end of the calendar month in which the deductions were made.
- File Form RCT35, completed annual Relevant Contracts Tax return by 15th February following the end of the relevant tax year and issue Form RCTDC to each subcontractor in respect of each payment.
- Certified sub-contractors are required to keep records of payments received.
- Subcontractors are required to provide all such information to principal contractor which would allow the principal contractor to comply with regulations.
- Both subcontractors and principal contractors are obliged to produce documents and records when requested.

Professional Services Withholding Tax

- Pay total Professional Services Withholding Tax deducted from payments made for professional services and file Form F30, completed monthly return by 14th day of the month following the end of the calendar month in which the deductions were made.²
- File Form F35, completed annual Professional Services Withholding Tax return by 15th February following the end of the relevant tax year and issue Form F45 in respect of each payment made to a professional service provider.⁵⁵

⁵⁵ Pay and file obligations apply to "accountable persons" only.

Third Party Returns

- File Form 46G (company), Return of Third Party Information within nine months of the end of the accounting period in relation to payments made to any person that exceeded €6,000 during the accounting period, including fees, commissions and payments for copyright.
- File Form 8-2, Return of Third Party Information within nine months of the end of the accounting period in relation to any income received belonging to another person.
- File Form 8-3, Return of Third Party Information by Letting Agents and Managers of Premises within nine months of the end of the accounting period.
- File Form 8-4, Return of Certain Information in Relation to Rent Subsidy within nine months of the end of the accounting period.
- File Form 8B-A, Return of Third Party Information by Financial Institutions paying or crediting interest within nine months of the end of the accounting period.
- File Form 8B-B, Return of Third Party Information by intermediaries who act in or in connection with the opening of foreign accounts with deposit holders within nine months of the end of the accounting period.
- File Form 8D, Return of Third Party Information by intermediaries in relation to offshore products within nine months of the end of the accounting period.
- File Form 8E, Return of Third Party Information by relevant deposit takers in respect of special term accounts by 31st March following the relevant tax year.
- File Form 8F, Returns of Particulars of transactions in tangible moveable property for a consideration in excess of €19,050 upon notice given by Revenue.
- Form 21R, Return of Third Party Information by nominee holders of securities within 9 months of the end of the accounting period.
- Where an auditor or tax advisor of the company has notified the company in writing that they have become aware of certain revenue offences during the examination of the accounts, the company must take action to rectify the matter or notify the Revenue of the offence not later than 6 months after the time of communication by the auditor/advisor.

Directors' Compliance

- Section 45 of the Companies (Auditing and Accounting) Act 2003, imposes an obligation on directors of certain companies to prepare, approve and review (at least every three years) a written statement on their company's compliance with its relevant obligations. Relevant obligations consist of all obligations under the Companies Acts and under tax law, together with obligations under certain other enactments.
- In addition to including the compliance statement in the annual Directors' report, directors must also include in their report an acknowledgement of their responsibility of securing compliance; confirmation that the company has internal procedures in place designed to secure compliance; confirmation that the directors have reviewed the effectiveness of these procedures during the financial year and their opinion as to whether they used all reasonable endeavours to secure compliance during the financial year. The Act states that the company's procedures will be considered to be designed to secure

compliance and to be effective for that purpose if they provide “a reasonable assurance of compliance in all material respects”.⁵⁶

EU Savings Directive

- Paying agents are obliged to report names and addresses of certain residual entities.
- Paying agents are obliged to establish identity and residence of individuals to whom interest has been paid.
- Paying agents are obliged to report the details of EU residents to whom interest has been paid and the amount of such payments.
- Paying agents are obliged to report details of interest payments made or secured for residual entities.

General

- A person carrying on a business is required to state its tax reference numbers on any document (being an invoice, credit note, debit note, account, statement of account, voucher etc) issued in the course of that business.
- Any person carrying on a business which is subject to tax is required to keep certain records in order to ensure true tax returns can be prepared.
- Where a person preserves records by using electronic data processing, they may be required by notice in writing from the Revenue to supply within 21 days of the serving the notice, details of the process used.
- Where a company operates a tonnage tax trade, it is obliged to keep records of that trade separately from any other activity carried on by the company.

Specific transactions

Obligations arising when paying a dividend

Dividend Withholding Tax

- Obligated to complete a declaration of entitlement to exemption from Dividend Withholding Tax.
- Pay Dividend Withholding Tax deducted from distributions made by 14th day of the month following in which the distributions were made.
- File Forms DWT Declaration and DWT Distribution Details, Dividend Withholding Tax Return by 14th day of the month following in which the distributions were made.
- Provide a statement to recipients in respect of each relevant distribution.

⁵⁶ The requirement to prepare a compliance statement, when brought into force, applies to all plcs and private companies limited by shares having a balance sheet total of over €12.5m & a turnover of over €25m in the accounting period.

- A qualifying intermediary has specific obligations in relation to the retention of Dividend Withholding Tax declarations; providing declarations to the Revenue on request and reporting compliance to the Revenue.
- An authorised withholding agent has specific obligations in relation to the retention of Dividend Withholding Tax declarations; providing declarations to the Revenue on request, reporting compliance to the Revenue and the payment and filing of Dividend Withholding Tax.
- Returns of distributions made by companies operating under “staple stock arrangements” to be made by 14th day of the month following in which the distributions were made.
- Pay Dividend Withholding Tax which is required to be deducted on settlement of market claims by 14th day of the month following in which the distributions were made and provide a statement in respect of each distribution.
- File annual Dividend Withholding Tax Return in respect of market claim settlements by 15th February following year of assessment.

Obligations arising when transferring assets

Capital Gains Tax

- Pay Capital Gains Tax by 31st October in the tax year in respect of disposals made between 1st January and 30th September in that tax year.^{2,57}
- Pay Capital Gains Tax by 31st January of the following year in respect of disposals made from 1st October to 31st December in the tax year.^{2,4}
- File Capital Gains Tax return by 31st October in the year following the year of assessment.^{2,4}
- File Form CG50 when disposing of certain assets where the consideration exceeds €500,000 in order to obtain a tax clearance certificate (Form CG50A).
- File Form CG50B, certificate of deduction of Capital Gains Tax from consideration and pay tax withheld within 30 days of acquiring certain assets.
- File a return of relief claimed under the provisions relating to cross border mergers, divisions of assets, transfer of assets and exchanges of assets within 9 months of the end of the accounting period in which the transfer occurs.
- May be required on notice from the Revenue to provide details where property is transferred to a non-resident trust.
- A settlor of an offshore settlement must provide a statement of particulars of property transferred to a non-resident trust within 3 months of transferring the property.

VAT

⁵⁷ These rules apply to disposals of development land by a company. For disposals of assets other than development land, the pay and file obligations are the same as those for the company in relation to its income (see “corporation tax”).

- Certain persons are obliged to account for VAT on the supply of immovable goods. A person who surrenders or assigns leases in property must issue a document to the recipient of the property showing certain details.
- Persons who acquire an interest in immovable goods in accordance with the transfer of business rules must account for an amount of VAT in certain circumstances.
- Lessors of immovable goods who waive their exemption from VAT must account on cancellation of such waiver.

Stamp Duty

- Instruments falling under the following headings in Schedule 1 are chargeable with stamp duty:
 - Bill of Exchange or Promissory Note.
 - Conveyance or Transfer on sale of any stocks or marketable securities.
 - Conveyance or Transfer on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the State.
 - Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance – rate of stamp duty is determined by insertion of appropriate certificate in instrument.
 - Duplicate or Counterpart of any instrument chargeable with any duty.
 - Exchange.
 - Lease – rate of stamp duty is determined by insertion of appropriate certificate in instrument.
 - Policy of Insurance where the risk to which the policy relates is located in the State.
 - Share Warrant.
- Present document for stamping together with Form ST21, particulars delivered within 30 days after execution and pay stamp duty due.
- If a document is submitted for adjudication, stamp duty is due within 14 days after issue of notice of assessment.

Other

- File Form AOS1 in respect of company purchasing its own shares within 9 months from the end of the accounting period in which it makes payment or within 30 days of receiving notification from the Revenue to submit the return.
- Obligated to notify Revenue within 60 days of becoming aware of a scheme of arrangement which could affect the tax treatment of a company share buy back.
- Obligated to return the acquisition of a material interest in an offshore fund by specified return dates (i.e. within 9 months of the end of the accounting period, subject to the 21 day rule referred to above in the case of a company and by 31st October following the year of assessment in the case of an individual or partnership).

Obligations arising from changes in employment

- Obligated to deliver particulars of payments made on retirement or removal from office within 14 days after the end of year in which the payments were made.

- Obligated to forward a nil PAYE/PRSI return within 9 days from the end of the month, where a registered employer is not liable to remit any PAYE/PRSI in that particular month.
- Obligated to notify Revenue within 14 days of ceasing to pay emoluments.
- An employer is required to register an employee within 9 days beginning on the day which he becomes so liable.
- An employer is obliged to maintain a register of employees throughout the year.
- An employer is obliged to deduct tax from notional payments made to or on behalf of an employee.
- Obligated immediately to complete Form P45 and provide copies of the form to the Revenue and the employee, where an employer ceases to employ an employee.
- An employer is obliged to immediately notify the Revenue of a death of employee.
- Obligated to immediately notify the operation of emergency basis of taxation to the Revenue.
- Obligated to produce employment records for inspection upon request by an authorised officer.
- File a return of payments made under approved occupational pension schemes within 30 days of Revenue notification.

Miscellaneous

- Obligated to notify Revenue of circumstances requiring withdrawal of BES relief within 60 days of becoming aware of those circumstances.
- Obligated to notify Revenue where a tonnage tax company ceases or becomes a member of a group within the period of 12 months beginning with the date on which the company became or ceased to be a member of the group.

The Irish Appeals System

The Rules and Procedures Governing Irish Tax Appeals March 2008

Top 5 administrative recommendations

A common theme runs through all of the above recommendations; namely the necessity that the Office of the Appeal Commissioners be adequately funded.

1. **Procedures manual for the office** – the Appeal Commissioners should be responsible for drawing up a procedures manual for all aspects of the appeals system, including timing issues. This manual should be published on the Appeal Commissioners’ website¹.
2. **Process of appointment of the Appeal Commissioners** - the process could be made more transparent through the use of an appointments system similar to that of the “Top Level Appointments Committee” (TLAC).
3. **Minimum of 3 Appeal Commissioners** – a minimum of three Appeal Commissioners should be appointed to deal with the number and complexity of cases involved.
4. **Independence of the Appeal Commissioners** – the actual and perceived independence of the Appeal Commissioners from Revenue, and others, must be enforced. Independence could be reinforced by, for example:
 - Direct submission of the Form AH1 (notification of an appeal) by the taxpayer to the Appeal Commissioners;
 - Independent recruitment of adequately qualified staff to manage the office and caseload and to document proceedings. This could include recruitment of a stenographer.
5. **Re-design and re-launch of Appeal Commissioners’ website** – The current website is hosted by ITI. Perhaps this arrangement should be reviewed in order to enhance the office’s independence. ITI believes the website should be redesigned into a comprehensive information source for all stakeholders in the appeals system. The website could include background information on the office, the procedures manual, published determinations, password protected case progress reports and other useful tools.

Top 5 legislative recommendations

1. **Time limits for all aspects of an appeal** – there should be a comprehensive review of all time limits relating to an appeal with a view to drawing up legislative limits at all stages. These time limits should be comparable and practical across all tax heads and all stages of an appeal.

2. **Legislative requirement to publish an Annual Report** - An Annual Report should be produced by the Office of the Appeal Commissioners covering, amongst other issues:
 - a. The number of cases heard in the year
 - b. Tax heads covered
 - c. Successful parties i.e. number won by Revenue and number won by the taxpayer
3. **Harmonisation of legislation** – harmonisation of legislation regarding appeals under all tax heads is required.
4. **Legislative requirement for written decision** - The receipt of a written decision from the Appeal Commissioners is obviously critical to both parties. Legislation should provide that a written decision must issue in all dispute cases.
5. **Legislative obligation to publish decisions** - as well as issuing written decisions in all argument cases, ITI seek a change to the existing legislation in Section 944A Taxes Consolidation Act 1997 (TCA) which provides the Appeal Commissioners with the option to publish written decisions where taxpayer identity is protected. ITI believes there should be a legislative obligation to publish all decisions of an argument nature on the website of the Appeal Commissioners within a reasonable time limit. This should be possible in an adequately resourced office.

Irish Times Editorial on the Finance Bill Process

Thursday, March 13, 2008

THE IRISH TIMES
 24-28 TARA STREET, DUBLIN 2
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Poor scrutiny and the Finance Bill

THE OIREACHTAS debates and passes the annual Finance Bill to give legal effect to the tax proposals the Minister for Finance outlines in his Budget statement. Today, the Seanad completes a brief 5½-hour discussion of this year's Bill which the President will sign into law shortly. The Finance Bill is, without question, one of the most important items of legislation in the parliamentary year. And yet the legislature gives it much less scrutiny than it merits, given its size and complexity.

The Finance Bill amounted to some 200 pages and 144 sections this year. As in more recent years, at every stage of the Bill's journey through the Dáil and Seanad, the measure was subject to a closure or time motion. This crude parliamentary procedure is used to curtail debate in order to hasten the passage of legislation. In the case of the Finance Bill, the Government set a limit on the time for discussion during the different stages of its passage into law.

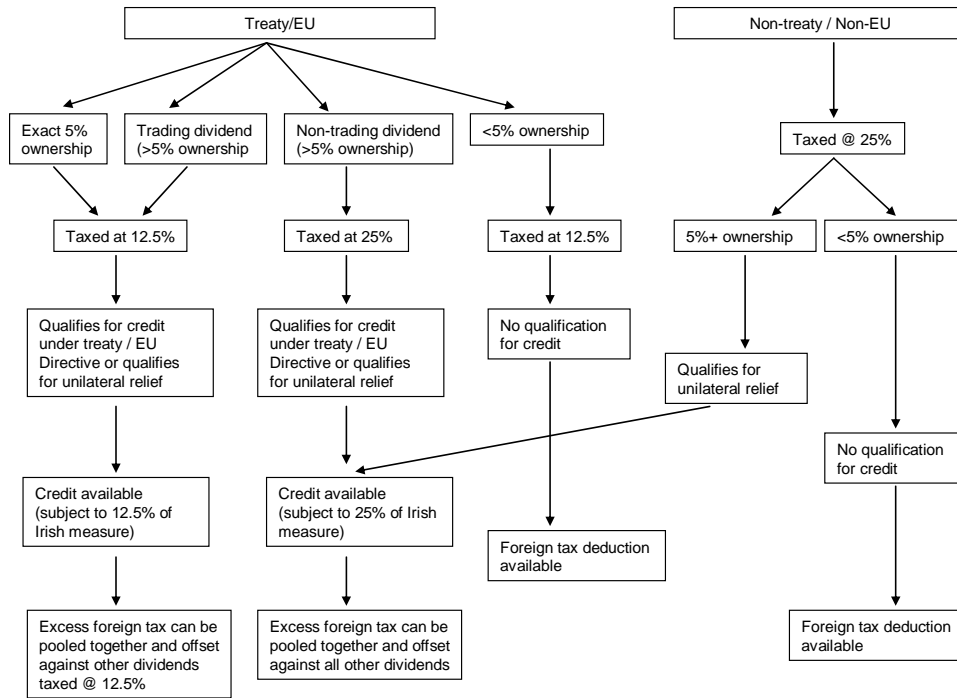
At committee stage, where the detail of legislation is considered, such an inflexible curtailment of debate produces an unacceptable outcome. For where sections of the Bill are not reached before the time limit for their discussion expires, they are not discussed at all. And where sections are under consideration, they may be inadequately discussed. This year's legislative timetable ensured that the Finance Bill, which was published on January 29th, would pass all stages in the Dáil and Seanad with remarkable speed some six weeks later, thanks in large measure to the parliamentary guillotine.

A few decades ago, the use of the guillotine to curb debate on legislation was the exception rather than the rule. And rarely, if ever, was it applied to the enactment of the Finance Bill. Today, government by guillotine has become the rule rather than the exception – to the detriment of proper parliamentary scrutiny. Legislate in haste, repent at leisure. Certainly, it is time to question the manner in which major legislation, like the Finance Bill, is enacted by the Oireachtas. It is a matter that should concern the Opposition parties – as parliamentary watchdogs – much more than it does.

Admittedly, the Government does face time constraints in enacting the Finance Bill. But these cannot justify the means employed to pass such important legislation without time for proper parliamentary consideration. Under statute, the President must sign the Finance Bill within four months of Budget day. Nevertheless, that allows ample time for a much less structured debate in the Oireachtas than present and past governments have been willing to facilitate.

The guillotine was used in the British parliament in the 19th century as a device to defeat efforts by the Home Rule party to filibuster debates or to obstruct the passage of legislation. Ironically, the guillotine is now used much more frequently in the Dáil than at Westminster; and not as some exceptional measure of last resort but as a routine form of time management to advance a government's legislative programme. It is time the Oireachtas woke up and made an issue of its parliamentary emasculation.

Taxation of Dividends



ITI Analysis of the Knowledge Based Economy

Summary Extract from Pre-Budget Submission 2008

Problems with current regime

Awareness and statistics - While the credit has been available since 2004, evidence of the low levels of take up of the credit shows that there is a relatively low awareness of the credit, as well as the possible areas of activity to which it may be applied

Narrow focus - The credit has obvious application for industries such as pharmaceuticals and IT which are research-driven. However, there are many industries which Ireland has strength in that could benefit from incentivising new processes, products, technologies, etc. Such industries include financial services, food processing and manufacturing.

Rate of credit - While the 20% rate for the tax credit in Ireland compares well with other jurisdictions, we are mindful of the fact that some other jurisdictions (e.g. Singapore, Czech Republic) increase the attractiveness of their rate through tax holidays and additional grant structures.

Base year - The credit operates on the principle of a base year from which incremental expenditure on R&D is measured. The original base year of 2003 was due to roll forward in 2006 but was frozen as part of Finance Act 2007 for a further three years in recognition of the fact that most large scale projects run for an average of five to seven years. However, the use of an incremental rather than a volume-based approach remains a significant weakness of the Irish system with many other jurisdictions adopting a volume-based approach.

Sub-contracted activities - Due to the complexity involved in many research projects, companies outsource elements of the project to other experts in the field and our legislation only allows for outsourcing of 15%. This percentage remains extremely low.

Companies in start up situations - The credit is of little or no value to start up companies with no tax liability. These are the very companies where R&D should be promoted and encouraged.

Administrative complexity for small businesses - While we welcome the recent simplification of procedures for small R&D claims that have already been approved for grant assistance, the current regime adopts the same approach for an SME company applying for a relatively small credit and a large multinational undertaking significant R&D activity here. The cost and time involved in working through the process acts as a disincentive, particularly for very small companies.

Awareness and statistics

- o Launch of awareness campaign on a collaborative basis across a wide range of industries.
- o Compilation of regular statistics - on the number of companies claiming the credit, amounts claimed, types of research conducted, etc.

- Narrow focus**

Drafting of promotional material to clarify that all types of research and development could potentially qualify for the credit, assuming the basic criteria set out in the legislation have been fulfilled. We believe there is a wide variety of businesses whose research activities could qualify but for whom the options have never been explained and explored. Considering our very solid foundations in areas such as financial services, software, food processing and specialist manufacturing, there are many opportunities to encourage enterprise and innovation in these sectors.
- Rate of credit**

Evaluation of our regime against those of our competitors to ensure we are remaining competitive and with the objective of leading the field. This may well necessitate the consideration of an increased rate of credit although that would be heavily influenced by any decision to move from a base year to a volume-based approach.
- Base year**

We would advocate moving to a volume-based system which would be simpler to both market and administer than the current incremental approach. It recognises the long term nature of the investment process and sends the right signals to business as it would benefit companies with sustained research activity, those starting from a very low base and those with growing levels of expenditure. A volume-based system would act as an incentive to continue research and development activity even if levels of expenditure are reduced in tighter economic times. Crucially, it would not penalise companies who reduce their expenditure for a year after a period of very significant investment. The manner in which a volume basis is rolled out needs to be addressed as currently different business operations within, say, a multinational pharmaceutical, may have different R&D policies and each business operation is unable to control its own R&D credit claims as the group's expenditure is taken into account in deciding whether there is an increment in spending as opposed to the relevant business operations. The same issue will arise in a volume-based system unless legislation is introduced to allow companies to elect to have segmented business operations, which are assessed separately, based on the fact they control their own spend and thus are entitled to determine their own credits by reference to that spend and in accordance with the law. We fully recognise that certain other safeguards may be needed, such as a tiered system to protect from excessive annual fluctuations. However, it is an area that needs to be addressed to ensure the credit is a real tool in our total competitiveness package.
- Sub-contracted activities**

In recognition of the significant amounts of R&D that need to be outsourced, we would advocate increasing the % allowed to 25% over the life of the project. This would go some way to recognising the commercial realities of such activity.
- Companies in start up situations**

We would advocate a form of surrender system as allowed in other jurisdictions, whereby the start-up company could get some immediate benefit. For example, the credit could be set off against some other non- corporation tax liability. Alternatively, some form of "BES" type solution could be explored whereby the credits could be passed onto the investor group for as long as the entity has no tax liability. The UK regime allows for cash refunds for small businesses engaged in R&D.
- Simplification of administrative procedures**

In line with our comments in relation to awareness and promotion, it is essential that the administration of the regime itself does not discourage companies from claiming the credit. This is particularly crucial for small entrepreneurial businesses where senior management time is at a premium. We would recommend the adoption of a more streamlined process for smaller entities, particularly once they have come through the process once and many of their credentials will already have been verified.

- **Allied issues**

A further issue of relevance to this agenda includes the requirement for a pooling system for credits for overseas tax on royalties received, akin to that in place for dividends.



**Irish Taxation
Institute**

Educating, Developing & Representing

**PROPOSALS FOR A CERTIFICATION PROCESS
FOR TAX INCENTIVES AND EXEMPTIONS**

Irish Taxation Institute

November 2005

Executive Summary

Concerns have been raised by the Oireachtas as to whether tax incentives and exemptions are fulfilling their objective of delivering on identified social or economic outcomes. These concerns have led to the current review of certain incentives and exemptions.

In this document, the Irish Taxation Institute proposes the introduction of a certification process which could be used for both tax incentives and exemptions to provide assurance to the Oireachtas and to the public on the appropriate use of tax incentives and exemptions.

While our certification cycle has nine key steps, it revolves around four cardinal principles :

- ◆ A tax incentive should only be considered after advance application by the relevant Government Department. An application should contain a clear articulation of the social or economic objectives and a cost-benefit analysis.
 - ◆ An appropriate set of performance indicators, as a means of measuring the effectiveness of the incentive, should be identified in advance.
 - ◆ A review mechanism should be established in order to measure whether or not the incentive delivers on identified objectives.
 - ◆ The incentive should be introduced for a defined period of time (which could be adjusted, as required, by the Oireachtas).
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Background

In our submission on tax incentives to the Minister for Finance, the Irish Taxation Institute made the following proposal:

“We recommend that the Government put in place a system for certification for new investment projects. This would mean that new projects would attract property incentives only where a relevant Government Department has certified that the project in question will meet either a social, economic or structural need in the area in which it is proposed.”

We believe such a certification system would enable Government to define the specific projects to be prioritised for investment incentives. If the results of the evaluation indicated that a particular area would benefit from the development of new facilities, the enhancement of existing facilities, or the promotion of a particular activity, then the relevant Government Department or Agency should make application to the Department of Finance that any projects which meets the particular needs of the area should attract tax incentives. This would also enable the Department of Finance to compare and contrast the cost and the benefits of particular reliefs and exemptions with direct public expenditure.

The suggestion was put forward in the context of nursing homes, private convalescent facilities, private hospitals, sports injury clinics and child care facilities. We believe that it could be extended to other reliefs, incentives and exemptions.

We also recommended that the Department of Finance carry out an annual review of each certified incentive, both in terms of meeting its targeted objective, its structural success and its cost to the Exchequer.

The benefits of certification are:

- With the benefit of up-to-date information (probably one year in arrears), the Oireachtas could target the areas where development is most required.
- The problem of potential over-supply would be addressed.
- Incentives would only operate in areas where there would be a desired social and economic impact.
- The use of incentives by investors could be monitored.

During our appearance before the Joint Oireachtas Committee on Finance and the Public Service on 21 September 2005, the Institute was invited, and undertook, to develop our proposals on certification. We have done so in this document.

Our proposed approach should operate against an appropriate legislative and administrative backdrop, overseen by the Oireachtas, with the following components:

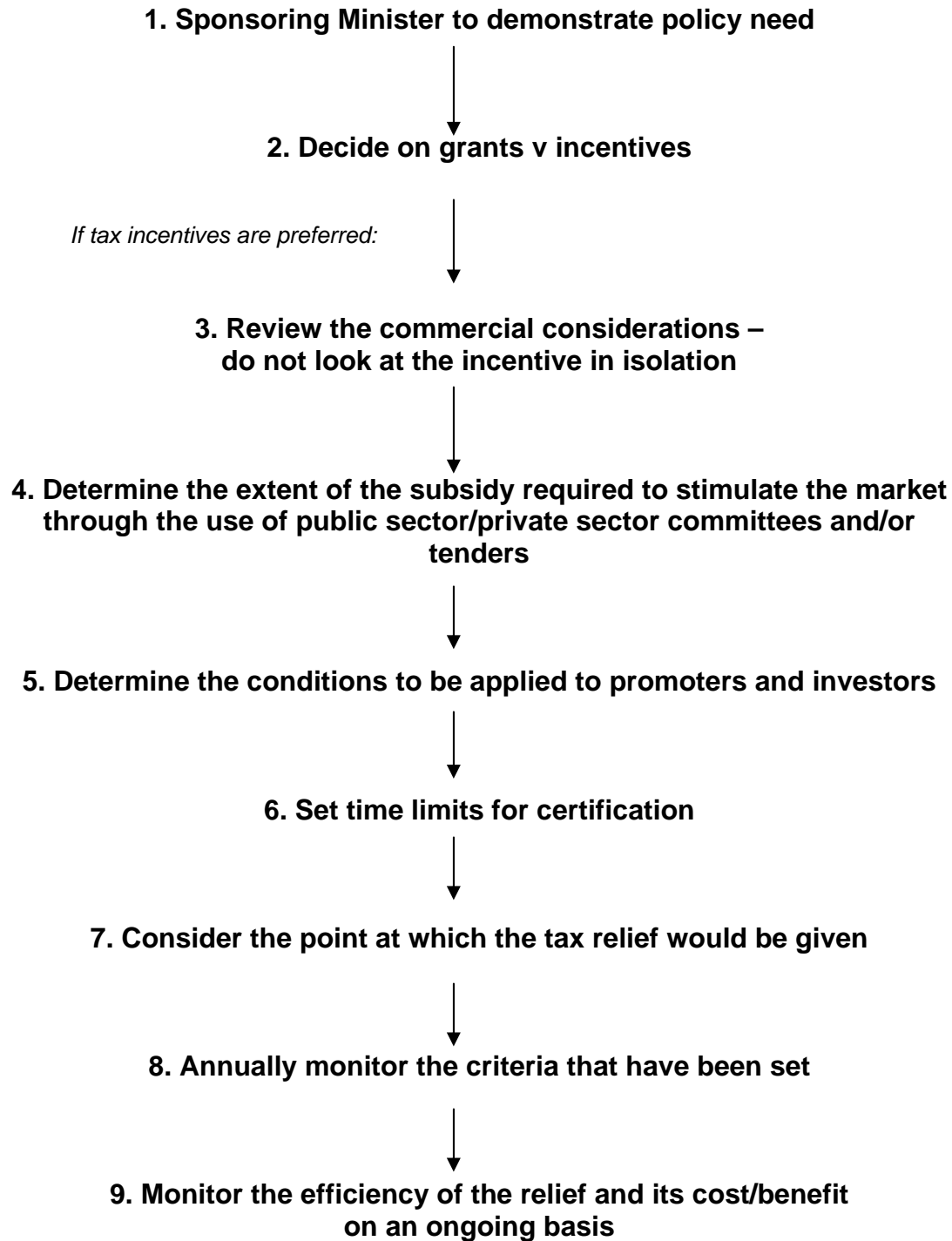
- Primary legislation, which would require the approval of the Oireachtas for any subsequent changes.
- Regulations, which would permit the sponsoring Minister, in agreement with the Minister for Finance, to make non-fundamental modifications as the need arises.
- Guidelines, which would not have the force of law but would provide a non-binding “layman’s guide” to both promoters and investors in relation to the incentives in question.

We believe that the proposed certification process will allow the Oireachtas to:

- Clearly identify the social or economic need that can be addressed using a tax incentive.
 - Establish clear criteria, in advance, to be used in measuring the success or otherwise of the incentive in meeting that need.
 - Estimate the anticipated cost and benefits to the Exchequer arising from the incentive.
 - Carry out an effective audit of the use of the incentive on an annual basis.
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The Certification Cycle

We have summarised the certification cycle in the flowchart below and in the remainder of our submission we have expanded on each of the points.



Step 1 The sponsoring Minister demonstrates the policy need

The first step in proposing the introduction of any fiscal support would be for the sponsoring Minister to demonstrate that it fulfils an identified social or economic need. The sponsoring Department should provide an in-depth analysis of the options together with the benefits and costs associated with each proposal to the Department of Finance.

Example (for demonstration purposes only)

It is a stated aim of Government to significantly widen the usage of broadband. Tax incentives could be used in two distinct ways to achieve this objective:

1. Incentivisation could take place at the level of the broadband supplier by granting enhanced capital allowances for investment in broadband provision, and/or
2. Incentivisation could take place at the consumer level by granting a tax credit to taxpayers who install broadband in their private homes.

In either case, under our proposed certification cycle, the first requirement would be for the Minister for Communications, Marine and Natural Resources to demonstrate the benefits that would arise to the State from increased broadband usage. The Minister's department would be required to provide a cost-benefit analysis (this might well be based on broad economic assumptions, given that precise benefits may be difficult to assess) arising from either tax incentive approach.

Step 2 Consider tax incentives versus grants/subsidies

The second step would be to conclude upon whether tax incentives are the most appropriate means of subsidising the activity – the basis for dismissing alternative methods (such as grant aid) should be documented. As part of this step, the expected EU position on State Aids should be addressed.

Step 3 Consider the commercial environment

If it is decided that a tax incentive would provide the most appropriate support, an examination should be undertaken of the broader commercial environment in which that incentive would operate.

This examination should include consideration of matters such as the following:

- How would the anticipated commercial return for the investor compare with other investment opportunities in the market? In our example above, how would the returns from investing capital in a broadband supplier compare with other equity investments of a similar profile? The analysis may need to factor in the increasingly international market for investors.
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- The Revenue Commissioners reserve the right to audit the company and the project.

Relief for expenditure on **Significant Buildings and Gardens** involves an application to both the Minister for Arts, Sport and Tourism and the Revenue Commissioners. The application to the Minister relates to horticultural, scientific, historical, architectural or aesthetic value, and to the Revenue Commissioners that reasonable access is afforded to the public in respect of the building or garden. The legislation specifies what type of access is required and the price must, in the opinion of the Revenue Commissioners, be reasonable and not operate to preclude the public from seeking access to the building.

The Artists' Exemption is a relief that is only available following a submission to the Revenue Commissioners. The applicant must be resident in the State and not resident elsewhere, or ordinarily resident and domiciled in the State and not resident elsewhere. The relief will be given only if the Revenue Commissioners determine, after such consultation as they consider appropriate, that the individual has written, composed or executed a work or works generally recognised as having cultural or artistic merit. It is only the profits or gains of such works that qualify for the exemption and the work or works in question must also be original and creative.

to be addressed. The success of any tax incentive will depend on the criteria that must be satisfied to qualify for tax relief.

Promoters

➤ At promoter level, the conditions will be dictated by the particular policy requirements. For example, planning, size and cost may be considerations for residential incentives; for commercial/industrial incentives, the profile of the tenant and the nature of their activity may be primary considerations. There are many examples of very detailed specifications required for existing and lapsed incentive schemes. The Appendix to this letter contains examples of criteria to be satisfied for different schemes. However, they do not have a consistent certification methodology such as that proposed in this submission. On examination of the Appendix, it will be noted that many of these schemes required advance Departmental certification and provide useful precedents in establishing the criteria for any new tax incentive schemes.

Investors

Similarly, at investor level, there are many examples from existing schemes of criteria that investors must meet in order to secure tax relief. The criteria include:

- The nature of the required investment (for example, purchase of shares or property).
- The type of income that can be sheltered with the relief.
- The required duration of the investment
- The permitted exit mechanism.
- Caps on the investment and qualifying relief.

Complexity

In deciding the criteria to apply to promoters and to investors, it is important not to over-complicate the criteria to be met. An example of over-complication is the Seed Capital Scheme where the promoter is also the investor. This is integrated into the Business Expansion Scheme, which was already one of the most complex reliefs to satisfy. The combined legislation involves 21 sections and 57 pages of legislation.

For the intended beneficiary, it is excessively complicated and daunting. The scheme is intended to encourage individuals who may have been made redundant to commence a new business opportunity, but the rules applying to it are so complex that they deter those who might benefit from availing of it.

Step 6 Time Limits for Certification

Complexity of criteria also raises questions of delay. A certification process should involve undertakings by the approving bodies that, provided they are given the

relevant information, they will issue approvals within a set period of time. Any investment decision takes account of the time value of money, and the longer the period between the investment of monies and the securing of relief, the less attractive the investment becomes. Furthermore, such delays increase the extent to which interest needs to be taken into account, and there is often a direct correlation between interest rates and the extent of subsidisation needed for a tax incentive to work.

Step 7 Consider the point at which the tax relief would be given

The next step is to consider when a particular tax relief should be given. The timing might be determined by the nature of the project in question. There are a number of alternatives within our current framework of incentives and exemptions: relief on incentives such as film relief and BES is available at the outset of the project, i.e. before the underlying activity begins. In contrast, a property project such as a qualifying hotel must be completed and in operation before capital allowances may be claimed by those investors, even though they may have incurred the expenditure over the previous two years.

We suggest that the incentive operates so that the investor is granted tax relief within a time-frame that is commercially attractive, but not before the State is satisfied that key criteria regarding the investment have been met. For example, tax relief would not be available for a health care project before the relevant State authority certified that the building was in compliance with planning and Health Executive requirements.

The incentive mechanism should also allow for an appropriate withdrawal of relief if the terms of the incentive fail to be met.

Step 8 Annual monitoring

The annual monitoring requirement would remain in place until such time as the criteria attaching to the granting of the relief have been satisfied in full.

Step 9 Ongoing review of the incentive

Any new tax incentive should involve a mechanism to estimate the annual cost and benefit to the State of the relief in question.

Conclusion

We believe that the certification cycle will lead to greater assurance for the Oireachtas and for taxpayers generally that tax incentives are more focused on addressing social or economic needs. We also believe that the certification process will enable the Oireachtas to measure the contribution arising from incentives and the nature of investors availing of relief more effectively. Useful precedents already exist in the tax code for some elements of the certification cycle. It should not require significant legislative change to put the remaining elements of the cycle in place to achieve a consistent certification methodology.

Appendix

Certification used in existing schemes

Certification already applies to a greater or lesser extent in relation to the property incentives under review.

To qualify for the **Town Renewal Relief Scheme**, the qualifying premises must be located within the designated area and listed as a qualifying building on the map prepared and approved by the local authority and Department of the Environment, Heritage and Local Government. In order to ensure the reliefs were focused on the physical and socio-economic renewal of those areas, a mix of residential and commercial allowances were granted to various properties in over 100 towns in Ireland. Accordingly, a targeted approach to regenerating the smaller towns with a population of less than 6,000 people was developed. In order to qualify for the extension to 31 July 2006, a valid planning application had to be lodged by 31 December 2004.

The 1999 **Urban Renewal Scheme** was based on the concept of Integrated Area Plans prepared by local authorities on the basis of guidelines drawn up by an expert advisory panel on urban renewal. The relief applied to commercial/industrial and residential premises within qualifying areas and qualifying streets. Again there was a targeted and organised approach to redeveloping and regenerating certain urban areas. Accordingly, each local authority has a map listing the qualifying buildings in their area and the specific type of relief available for each property. On this basis, relief is only available if the approved type of expenditure is incurred and the property is used in accordance with the plan. For example, if the relief available is for refurbishment expenditure only and the type of relief is residential, then the capital allowances will only be available for refurbishment costs of a residential unit. In addition, planning permission will only be granted in accordance with the relief awarded to that property.

In order to qualify for the extension to 31 July 2006, the local authority must certify in writing that 15% of the qualifying expenditure was incurred before 30 June 2003.

The **Rural Renewal Relief Scheme** is geographically focused and targeted at the Upper Shannon region. It provides for residential and commercial tax incentives in all of counties Leitrim and Longford, as well as parts of Cavan, Sligo and Roscommon. The objective of the Rural Renewal Scheme is to increase investments in these locations that have experienced decline over recent years and improve the geographic spread of investments. In order to qualify for the extension to 31 July 2006, a valid planning application had to be lodged by 31 December 2004.

In general, to claim relief for **residential accommodation** (owner-occupier or Section 23 type relief) under the Town Renewal, Urban Renewal and Rural Renewal Relief Schemes, the claimant requires a Certificate of Compliance and/or a Certificate of Reasonable Cost from the Minister for the Environment, Heritage and Local Government. The Certificate of Compliance is concerned with standards of

construction, the provision of water, sewerage and other services and that the total floor area of the house is within the specified floor area limits. The Certificate of Reasonable Cost relates primarily to the Minister being satisfied that the amount specified in the certificate in relation to the cost of construction is reasonable.

For a **park-and-ride facility** to qualify for capital allowances, the relevant local authority, in consultation with such other agencies as may be specified in guidelines issued by the Minister for the Environment, Heritage and Local Government, must issue a certificate in writing to the person constructing or refurbishing the facility saying that it is satisfied that the park-and-ride facility complies with such guidelines before relief will be given. Again, an application for certification can only be decided after the development has been completed but a “comfort letter” may be sought in advance.

Multi-storey car park reliefs apply now only for areas outside the county boroughs of Cork or Dublin and certification requirements similar to those outlined above apply. The criteria apply to planning and design, traffic and parking management policies, pricing structures and hours of operation.

For qualifying **childcare facilities**, the qualifying building must comply with Article 9, 10(1) or 11 as appropriate of the Childcare (Pre-School Services) Regulations. The regulation and monitoring of the pre-schools is the responsibility of the relevant health authority.

The legislation for **residential developments for third-level students** requires planning authorities to have regard to guidelines issued by the Minister for Education and Science, in consultation with the Minister for the Environment, Heritage and Local Government, with the consent of the Minister for Finance. A Certificate of Reasonable Cost is required before relief may be claimed.

Other reliefs are integrated into the pre-existing legislation regarding capital allowances for industrial buildings or structures. These include hotels, nursing homes, convalescent homes, qualifying hospitals and sports injury clinics.

A **nursing home** must come within the meaning of Section 2 of the Health (Nursing Homes) Act 1990 and be registered under Section 4 of that Act.

A qualifying **hospital** (within the meaning of the Tobacco (Health Promotion and Protection) Regulations 1995) must be a private hospital (within the meaning of the Health Insurance Act 1994 (Minimum Benefits) Regulations 1996) and

- Have the capacity to provide and normally provides medical and surgical services to persons every day of the year,
 - Have the capacity to provide out-patient services and accommodation on an overnight basis of not less than 70 in-patient beds, or day-case and out-patient medical and surgical services and accommodation for such services of not less than 40 beds,
-

- Contain an operating theatre or theatres and related on-site diagnostic and therapeutic facilities, and
- Contain facilities to provide not less than five of the following services: accident and emergency, cardiology and vascular, eye, ear, nose and throat, gastroenterology, geriatrics, haematology, maternity, medical, neurology, oncology, orthopaedic, respiratory, rheumatology, and paediatric.

The hospital must also undertake to the Health Service Executive:

- To make available annually for the treatment of persons who have been awaiting in-patient or out-patient hospital services as public patients, not less than 20% of its capacity, and
- In relation to the fees to be charged in respect of the treatment afforded to any such person, that such fees shall not be more than 90% of the fees which would be charged in respect of similar treatment afforded to a person who has private medical insurance. There are also additional conditions to be satisfied.

Qualifying **sports injury clinics** are defined along similar lines to those that apply for qualifying hospitals.

Holiday cottages, to qualify, must be registered in a register of holiday cottages established by Fáilte Ireland.

The above list is not intended to be exhaustive but to demonstrate that a certification process already exists, which varies in terms of specifics to the particular relief intended to be claimed.

Also of relevance is the certification that applies to some of the non-property-based incentives, such as the Business Expansion Scheme, Seed Capital Scheme, Artists' Exemption, and Significant Buildings and Gardens Relief.

The **Business Expansion Scheme** relief is capped at €31,750 and is available against total income. Relief cannot be claimed without a certificate from the Revenue Commissioners. That certificate is only provided if the company, the company's trade, the investor and the investment satisfy specific criteria.

There are many conditions to be satisfied. Amongst them, a company must be unquoted and carry out a qualifying trade for a minimum three-year period. The investor cannot have more than a 30% interest in the company and the investment must be by way of ordinary share capital, the shares must be held for five years, and the investors can have no guarantee that they will receive any amount back on their shares either before, at, or after the end of the five-year period.

If the BES company carries on or intends to carry on certain trades, a claim for relief must be accompanied by a certificate from the relevant Minister or agency. Depending on the trading activity involved, that certifying Minister or agency could be the Minister for Agriculture and Food, the Minister for Arts, Heritage, Gaeltacht

and the Islands, or the Minister for the Marine and Natural Resources, (as may be appropriate). The agencies included are Forbairt, the Industrial Development Agency (Ireland), Shannon Development, Údarás na Gaeltachta, Bord Fáilte Éireann, An Bord Iascaigh Mhara and An Bord Tráchtála.

It has been the practice of the Revenue Commissioners, since the introduction of the Business Expansion Scheme in 1984, to provide pre-investment conditional approval which has brought a welcome comfort and limited certainty to the scheme .

The **Film Relief Scheme** is probably the most analysed and scrutinised incentive we have. It was originally introduced in 1987. Two independent assessments of the scheme were carried out in 1995 and 1998. Many changes have been introduced to it over the years, some based on these assessments and perceived abuses in its operation. As a consequence, it is now probably the best regulated incentive.

Monies cannot be raised under the scheme unless a letter has been obtained from the Revenue Commissioners stating that a full application has been received by them. A full application requires the submission of a detailed analysis of the proposed film project and the backup documentation.

The amount to be raised for each project is specified and does not exceed the cost of either EU-based personnel who are employed in the State on the film or goods, services and facilities provided for the film by companies with a fixed place of business in the State.

The certificate containing the conditions that apply to the particular project must be brought to the attention of the investors and, in the event that the conditions or any of them are not satisfied, the relief may be withdrawn.

A specific company must be used for each project and the auditors to that company must verify to the Revenue Commissioners that the conditions for the relief have been satisfied on a line-by-line basis.

The combination of the following is unique in the context of tax incentives:

- Applicants must supply detailed information to the Revenue Commissioners in advance of any fundraising.
 - The Revenue Commissioners and the Department of Arts, Sport and Tourism must approve the project, and the certificate issued by the Revenue Commissioners must specify the amount that may be raised for the project and the conditions that must be satisfied for the relief.
 - The Revenue Commissioners do not issue a certificate without first meeting with the applicant.
 - The auditors of the applicant company must confirm that the conditions under which the relief was granted have been satisfied within a specified period after the film has been completed.
 - Failure to satisfy the conditions will result in withdrawal of relief.
-

- The Revenue Commissioners reserve the right to audit the company and the project.

Relief for expenditure on **Significant Buildings and Gardens** involves an application to both the Minister for Arts, Sport and Tourism and the Revenue Commissioners. The application to the Minister relates to horticultural, scientific, historical, architectural or aesthetic value, and to the Revenue Commissioners that reasonable access is afforded to the public in respect of the building or garden. The legislation specifies what type of access is required and the price must, in the opinion of the Revenue Commissioners, be reasonable and not operate to preclude the public from seeking access to the building.

The Artists' Exemption is a relief that is only available following a submission to the Revenue Commissioners. The applicant must be resident in the State and not resident elsewhere, or ordinarily resident and domiciled in the State and not resident elsewhere. The relief will be given only if the Revenue Commissioners determine, after such consultation as they consider appropriate, that the individual has written, composed or executed a work or works generally recognised as having cultural or artistic merit. It is only the profits or gains of such works that qualify for the exemption and the work or works in question must also be original and creative.

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