



The Consultative Committee of Accountancy Bodies-Ireland

The Institute of Chartered Accountants in Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

Burlington House, Burlington Road, Dublin 4

Mr Brian Lenihan T.D.
Minister for Finance
Government Buildings
Merrion Square
Dublin 2

27 November 2008

Dear Minister

Finance (No.2) Bill 2008, S91 and Schedule 5

Dear Minister

I write to you on behalf of CCAB-I, the Consultative Committee of Accountancy Bodies – Ireland, to highlight in particular the above provisions in the Bill which, inter alia, codify in legislation many of the procedures in the *2002 Code of Practice – Revenue Auditors* (“the Code”) in the context of the introduction of an “appealable penalties” regime.

Let me say at the outset that CCAB-I has no difficulty with the intention of the legislation, expressed well in the Explanatory Memorandum to the Bill:

... to legislate to implement the conclusion in the Law Reform Commission’s Report A Fiscal Prosecutor and a Revenue Court that, having regard to the provisions of the European Convention on Human Rights, a person should be given an opportunity to have an independent tribunal examine whether that person is liable to a civil penalty for contravention of tax or duty legislation.

Further, we appreciate that to do so requires the statement in statute law of aspects of the settlement of tax audits, investigations, enquiries and self corrections currently provided for in the Code.

Now that the professions and the Revenue Commissioners have had six years experience in operating settlements under the Code, there is general recognition that its provisions constitute one of the better aspects of the Irish Tax System. It has underpinned the successful conclusion of Revenue Investigations such as the Single Premium Insurance Policies project and the Offshore Assets project. It underpins the current Revenue investigation into undeclared funds in certain bank deposit accounts. The Code has been praised by the OECD, and its approach adopted by other Revenue

Authorities, notably in the United Kingdom. It has reduced Revenue time spent in pursuing undeclared or overlooked liabilities while at the same time providing a coherent structure for taxpayers and their advisers in resolving outstanding tax issues. Its success is measured by the recovery, over the years since its inception, of well over €1bn in back taxes in tandem with a reduction of more than 60% in the number of Revenue audits.

The issue of potential incompatibilities of aspects of the Code with the European Convention on Human Rights is not a new one. The Explanatory Memorandum refers to the work of the Law Reform Commission; their work dates back to 2004. Yet the legislation as proposed in the Bill seems to overlook key considerations by the LRC, for example the appeal of penalties in the first instance to the Appeal Commissioners. It could also materially alter aspects of the Code as it currently operates. The new legislation does not match all the features of the Code, for example in terms of the definition of the type of disclosure which may attract reduced penalties.

The current Code was drafted with an extended period of consultation between Revenue and other stakeholders, not just accountants. Revenue tell us that the new legislation is not intended to operate without revisions to the Code. We believe it is not possible to replace a well established and successful process in the timescale available as the Bill passes through the Oireachtas. A flawed process would have two main consequences – a reduction in the number of taxpayers coming forward voluntarily to disclose tax shorfalls, and delays in the resolution and settlement of cases under investigation by the Revenue Commissioners. Both consequences would have Exchequer cost and diminish the coherence of the Self Assessment system.

We ask, Minister, that at Committee Stage, you would modify Section 91 to provide for its commencement by Order. This will allow time for matters to be teased out to ensure we are not losing the benefits of the existing Code procedures. Ideally, it would also allow referral of the impact of the legislation for consideration by the Commission on Taxation.

Yours sincerely,



Brian Keegan

Director of Taxation, Institute of Chartered Accountants in Ireland