

F7/03/10

18 July 2011

Circular 5/2011

Minute of the Minister for Finance for the
Committee of Public Accounts on the -

Committee of Public Accounts
First Interim Report on the Loss of Fiduciary Taxes arising from abuse of
Limited Liability

Dear Accounting Officer,

I am directed by the Minister for Finance to enclose, for your information and guidance, a copy of the Minute of the Minister for Finance in response to the first Interim Report on the Loss of Fiduciary Taxes arising from abuse of Limited Liability.

Kevin Cardiff
Secretary General
Department of Finance

To: All Accounting Officers

Minute of the Minister for Finance
on the Committee of Public Accounts – First Interim Report on the Loss of
Fiduciary Taxes arising from abuse of Limited Liability

The Minister for Finance has examined the Committee's First Interim Report on the Loss of Fiduciary Taxes arising from abuse of Limited Liability and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

Recommendation No. 1

That the legislative provision of the UK authorities which could make directors, with a track record of non-compliance for tax purposes, personally liable for PRSI contributions collected by the company be introduced into Irish law as a deterrent to continued malfeasant behaviour of directors.

These are policy matters for the Minister of Social Protection in the first instance.

The Minister is informed by that Department that:

- the UK approach to national insurance contributions (NIC - the UK equivalent of PRSI), which is recommended by the Committee, does not place a personal liability on Directors in relation to NIC liabilities but levies an equivalent penalty,
- any legislative amendment to give effect to the Committee's recommendation should not change the current practice where the employer (i.e., the company) remains responsible for the PRSI liability.

The Minister for Finance understands that there are already significant control mechanisms currently in place with regard to the proper remittance of PRSI. These include:

- In liquidation situations, PRSI is a super priority debt to the State – before taxes and levies;
- Employers who fail to remit PRSI face fines and criminal convictions;
- Employers may have to personally repay the Department of Social and Family Affairs any social welfare payment made to an employee because they:
 - failed to pay PRSI for him or her,
 - did not give accurate information, or
 - failed to keep accurate records.

The Minister is also informed by his colleague that:

- any penalty to be imposed on directors may, to some extent, relate to their personal PRSI liabilities as employees or self-employed persons,
- the payment of a penalty should not confer any entitlement to benefits and pensions. If, for example, a self-employed director pays a penalty in relation to his own PRSI liability, he or she should still have to separately make good his or her PRSI liability in order that his or her PRSI record may be updated.

The Minister for Finance notes the view of the DSP, and has asked the Department concerned to keep the Committee's suggestion under review.

Recommendation No. 2

That the review of the phoenix monitoring programme be widened to examine the interactions between Revenue and those companies where there was a significant write-off of tax with a view to establishing whether further measures are necessary in order to minimise the level of write-off.

The Minister for Finance is informed by the Revenue Commissioners that a comprehensive review of the range of oversight checks that are an integral part of the phoenix monitoring programme has recently been completed. That review has been extended to encompass the interactions between those companies where there was a significant write off of tax and this extended review is significantly advanced. It is intended that the review will be completed by the end of this year.

Recommendation No. 3

That company law provide that company directors are required to have their tax affairs in order when incorporating a new company or on being appointed to an existing company

Recommendation No. 4

That the Company Law Review Group examine whether the current levels of capitalisation required when incorporating a limited company in Ireland could be increased to a moderate level.

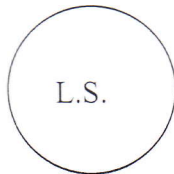
These are policy matters for the Minister for Jobs, Enterprise and Innovation in the first instance.

The Minister set out the priority issues in the Company Law area for the Group to examine, make recommendations and report. As provided for under the Act, the Group, in advising the Minister must promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity.

The Minister for Finance will ask the Minister for Jobs, Enterprise & Innovation to draw the attention of the Group to the recommendation.

The Company Law Review Group is a statutory advisory expert body charged with advising the Minister for Enterprise, Trade and Innovation on the review and development of company law in Ireland. The Review Group was accorded statutory advisory status by Part 7 of the Company Law Enforcement Act 2001 and makes recommendations on a work programme assigned to it by the then Minister for Enterprise, Trade and Innovation over a two-year period.

Given under the Official Seal of
the Minister for Finance on this
the day of ,
2011



Kevin Cardiff
Secretary General
Department of Finance