An Roinn Caiteachais
Phoiblí agus Athchóirithe
Department of Public
Expenditure and Reform

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30th July 2021

To: Accounting Officers

DPER Circular: 17/2021

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 9 – Office of the Revenue Commissioners

A Dhuine Uasail,

I am directed by the Minister for Public Expenditure and Reform to circulate, for your information, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 9 – Office of the Revenue Commissioner.

Issues raised

The Minute of the Minister addresses the following five issues:

- Note on excise duty in the Account of the Receipt of Revenue of the State collected by the Revenue Commissioners;
- Temporary Wage Subsidy Scheme (TWSS);
- Bogus self-employment across all sectors;
- Bogus self-employment' in the courier sector; and
- Revenue response to an EU Commission inspection report in 2019

Enquiries

Enquiries in relation to this Circular should be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

David Moloney
Secretary General

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Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Examination of the 2019 Appropriation Account for Vote 9 – Office of the Revenue Commissioners

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its recommendations. In relation to the Committee's recommendations, the Department of Public Expenditure and Reform has engaged with the Office of the Revenue Commissioners and the response to each recommendation is as follows:-

Issue 1 –Note on excise duty in the Account of the Receipt of Revenue of the State collected by the Revenue Commissioners:
Revenue's annual publication entitled *Account of the Receipt of Revenue of the State collected by the Revenue Commissioners* currently lists Excise Duty as a single item in 'Note 1. Exchequer Receipts collected'. However, a range of duties are collected under the term Excise Duty, and the Committee queried several of these duties, such as Mineral Oil Tax and Betting Duty.

In the absence of a breakdown of the individual duties collected in this category the Committee is not in a position to assess and evaluate taxes in this category, and to identify fluctuations from year to year.

Recommendation 1:
The Committee recommends that Revenue includes a detailed note that presents a breakdown of the individual taxes included within the Excise Duty category in *Account of the Receipt of Revenue of the State collected by the Revenue Commissioners*, commencing from the year ended 31 December 2021.

The Minister for Public Expenditure and Reform is informed by Revenue that it accepts this recommendation.

Following the discussion at the Committee on the 19 November 2020, Revenue published a breakdown of Excise receipts, for 2019 and 2020, in the Revenue Annual Report 2020.

In addition, a detailed breakdown of excise receipts by commodity is also available on the Revenue website. Annual excise receipts for each commodity e.g. wine, spirits, diesel, petrol, etc., from 2003 to 2019 inclusive, are included and the 2020 figures will be available before the end of August 2021.

Issue 2 –Temporary Wage Subsidy Scheme (TWSS):

Revenue operated the Temporary Wage Subsidy Scheme (TWSS) from 26 March 2020 to 31 August 2020. The scheme provided more than €2.8 billion in supports to 66,500 employers representing 664,000 employees. The scheme enabled employees, whose employers were affected by the COVID-19 pandemic, to receive significant supports directly from their employer. The TWSS was available to employers who kept employees on the payroll throughout the pandemic.

The TWSS operated in two phases: the transitional phase (26 March to 3 May 2020) and the operational phase (4 May to 31 August 2020). Revenue acknowledged that some mistakes were made during the transitional phase of the TWSS. The Committee notes that employers were paid the maximum entitlement of €410 per each qualifying employee for six weeks, which resulted in a significant additional cost to the Exchequer and reconciliation balances which had to be recouped. This is reflected in a Revenue press release published in March 2021, which states that approximately 90% of reconciliation balances undertaken by Revenue directly relate to this phase of the scheme.

The Employment Wage Subsidy Scheme (EWSS) replaced the TWSS from September 2020 and businesses can avail of the COVID-19 Restrictions Support Scheme (CRSS) through Revenue.

The Committee acknowledges the urgency with which Revenue had to roll out these schemes and commends its work in setting up the TWSS and subsequent support schemes throughout the pandemic. However, the Committee is concerned that the maximum weekly subsidy of €410 was paid out to each qualifying employer during the transitional phase of the scheme.

Recommendation 2:

The Committee recommends that for any future schemes that are rolled out as a matter of urgency, Revenue uses the lessons learned from the TWSS to reduce the potential for overpayments, and the timeframe for resolving same.

The Minister for Public Expenditure and Reform is informed by Revenue that it accepts this recommendation.

The experience and insights gained from the operation of the Temporary Wage Subsidy Scheme (TWSS) have been applied in the legislation, design and operational modalities of subsequent Covid subsidy schemes i.e. the Employment Wage Subsidy Scheme, Covid Restrictions Subsidy Scheme and the Business Restart Subsidy Scheme. While, like the TWSS, these schemes were developed rapidly there was a greater lead-time than for the TWSS and this enabled Revenue to put in place both up-front calculation processes and real-time compliance processes in order to minimise the level of overpayment and subsequent recovery.

As the time available for the Committee meeting last November was constrained due to Public Health restrictions there was not an opportunity to tease out the background to the introduction of TWSS, which was developed and rolled out very quickly at a time of national emergency. The first payments were made just 4 days after the announcement of the scheme and on the day that the legislation was enacted. It was initially expected that the scheme would run for twelve weeks. The urgent priority was to deliver immediate funds that would enable employers to retain employees on their payroll, minimise the incidence of unemployment arising from the Covid-19 restrictions, and to ease the burden on the Department of Social Protection in relation to the Pandemic Unemployment Payment. It was a policy decision to pay the transitional payment pending the implementation of the scheme in full, which was implemented on 5 May. It should be noted that Ireland was the first country that introduced a pandemic related wage subsidy scheme to make payments under that scheme, with, for example, the first payments under the UK scheme paid at the end of May.

Pending the development of a system to calculate the weekly subsidy due to each individual employee, Revenue, with the agreement of the Department of Finance, paid employers an amount equal to the maximum weekly subsidy amount payable i.e. €410, in respect of each relevant employee. Revenue provided employers with instructions on how to calculate the correct payment to each employee and advised employers to retain the surplus for repayment. Employers made a declaration on entry to the scheme that they would repay any surplus when required to do so.

In March of this year, Revenue performed a reconciliation exercise and provided employers with details of their balances owing, and provided a lengthy period, until end June to enable employers to review these balances, address any issues arising and agree a final liability. This process is ongoing with just under 90% of employers, with an aggregate TWSS liability of some €234 million, in a reconciled position on 6 July. €186 million has been returned by the employers with the majority of the remaining employers subject to the debt warehousing provisions.

Issue 3-'Bogus Self Employment':

The Committee examined Revenue's response to tackling 'bogus self-employment'. The Committee was briefed on actions taken by Revenue to combat such activity, including conducting site visits across employment sectors to ensure workers are correctly registered as an employee or self-employed. The *Code of Practice for Determining Employment or Self-Employment Status of Individuals* was published by the Employment Status Group, setting out criteria to provide clarity on whether a worker is an employee or self-employed.

The Committee heard that in the construction sector, 1,673 construction site visits were conducted by Revenue in 2019, with approximately 6,650 individuals interviewed. Just under

400 individuals (6% of those interviewed) were reclassified as employees or registered as new PAYE applicants. The Minister for Finance advised the Dáil in November 2019 that compliance interventions carried out in the construction sector generated a yield of approximately €166 million in the years 2016, 2017 and 2018 combined. Revenue informed the Committee that site visits across all employment sectors totalled 4,091 for 2019.

Official statistics in relation to the financial impact of 'bogus self-employment' in Ireland are not available as the practice is inherently difficulty to quantify, and consequently, estimates as to the impact on the Exchequer vary. As noted in the Comptroller and Auditor General's *Report on the Accounts of the Public Services 2017*, "Despite apparent changes in employment relationships, there has been no significant increase in the proportion of earners in PRSI class S over the past ten years". Accordingly, Revenue are not in a position to provide an estimate on how much the practice could be costing the Exchequer in uncollected taxes.

The Committee welcomes confirmation from Revenue that site visits across employment sectors increased from 2018 to 2019 and acknowledges that site visits were disrupted in 2020 as a result of the COVID-19 pandemic. However, the Committee is concerned that the potential tax lost to the Exchequer due to 'bogus self-employment' may be significant.

The Committee is of the view, considering the scale of the problem that the Code of Practice published by the Employment Status Group does not provide sufficient protection for workers, who may be falsely classified as self-employed.

Recommendation 3:
The Committee recommends that Revenue:

- **increases site visits across all employment sectors to ensure a minimum of 4,000 visits per annum from 2022 with year-on-year increases thereafter,**
- **publishes statistics on site visits conducted, individuals interviewed, and the number of individuals reclassified as employees or newly registered for PAYE on an annual basis, and**
- **works to bring forward legislation to replace the existing Code of Practice to provide stronger and more comprehensive definitions of employment and self-employment.**

The Minister for Public Expenditure and Reform is informed by Revenue that it partially accepts this recommendation.

Revenue's tax compliance programmes are kept under constant review to ensure that they are focussed on the areas of greatest risk. This includes risks associated with bogus self-employment, on which Revenue works closely with other State agencies such as the Department of Social Protection (DSP), and the Workplace Relations Commission (WRC). It is important that the Committee note that figure of the €166m mentioned in the Parliamentary

Question reply Oireachtas/debate/question2019-11-27 by the Minister for Finance, and referred to in the Committee's recommendations, is in respect of yield from Revenue's compliance intervention programme in the construction sector and is not solely as a result of site visits in the sector. It should also be noted that Revenue's records do not provide for the identification of additional payroll tax that was directly attributed to bogus self-employment and unpaid PRSI to be separately extrapolated.

Revenue applies complex risk criteria and data analytics to identify cases for compliance intervention. In planning our programme of compliance interventions for 2022, we will evaluate the risks associated with bogus self-employment as compared to the other risk areas in our overall compliance framework that need to be managed. We intend to conduct standalone and multi-agency site visits as part of our 2022 compliance programme, cognisant of the recommendation of the Committee in relation to the number of site visits, subject to the prevailing pandemic restrictions and the competing demands of our other business requirements.

Revenue will explore opportunities to publish more detailed statistics on site visits, in line with the recommendation, to supplement and enhance the statistics and information published in the Revenue Annual Report. https://www.revenue.ie/en/corporate/press-office/annual-report/2020/ar-2020.pdf. For the information of the Committee, the table below summarises the activity in relation to construction site visits and other sector visits carried out in 2019. This is more reflective of the normal volume of activity before Covid restrictions significantly impacted our 'outdoor' activity.

Year	Construction site visits by Revenue only	Number of contractors, sub-contractors and employees interviewed on site[1]	Construction site visits by Revenue with either[2] DSP or WRC	Number of contractors, sub-contractors and employees interviewed on site	Outcome Individuals registered as new employees for PAYE	Outcome Sub-contractors reclassified as employees	Revenue visits to other business sectors[3]
2020	203	956	157	717	65	3	1,076
2019	829	3,476	844	3,176	297	97	4,091

The Department of Social Protection has the lead responsibility for the 'Code of Practice for Determining Employment or Self-Employment Status of Individuals' ('the Code') and legislation to place this Code on a statutory footing is a policy matter. Revenue has worked closely with DSP and WRC on updating the Code and the updated Code, which is due to be published very soon, seeks to reflect changes in the nature of employment relationships and

[1] Interviews carried out to make individuals aware of his or her compliance and other statutory obligations

[2] This figure of 844 includes 39 visits with both DSP and WRC

[3] Business sectors, included restaurants, public houses, takeaways, nail bars, boutiques, scrap metal dealers, architects, taxi operators and IT service operators

case law developments since the Code was last published, including providing for workers engaged in platform working and the 'gig economy'.

The Committee will be aware that any change to tax or other legislation or the policy underpinning such legislation in relation to employment status for tax or other purposes is a policy matter.

Issue 4 – 'Bogus self-Employment' in the courier sector

Following the Committee's engagement with Revenue, it received correspondence regarding a voluntary PAYE system agreed by Revenue and courier firms in March 1997. The submissions included correspondence from Revenue which outlines the conditions of the voluntary PAYE system available to couriers, and asserts that couriers that fulfil a number of criteria should "in the interests of uniformity" be treated "as self-employed for tax purposes".

Correspondence from Revenue in February 2021 supports this view, stating "in the interest of uniformity Revenue decided, without prejudice, to treat those couriers as self-employed for tax purposes". Revenue confirmed this arose from a Social Welfare Appeals Officer's decision by which "couriers were regarded as self-employed for PRSI purposes". Revenue also confirmed a voluntary PAYE system was operated for couriers that met a number of conditions on "self-employed courier income net of expenses (expenses agreed at 40% of income for motorcycle and 10% for cycle couriers)".

However, the Committee is concerned that the decision to treat couriers as self-employed has resulted in a loss to the Exchequer in uncollected taxes and a loss to the workers affected by this agreement in benefits that self-employed individuals cannot claim.

Recommendation 4:
The Committee recommends that Revenue commission an independent investigation on the financial and sectoral implications of Revenue's agreement with the courier sector in 1997. This investigation should include an examination into:

- **the magnitude of revenue lost to the State as a result of this practice,**
- **the number of workers impacted by the agreement in the sector, and**
- **the financial cost to those workers.**

The Minister for Public Expenditure and Reform is informed by Revenue that it does not accept this recommendation.

There are three separate agencies making decisions in relation to whether workers are employed or self-employed and each agency has its own legal framework and appeal mechanisms to consider. While the same tests are applied in determining the employment status, there may be different outcomes for taxation, social security and employment rights. Decisions relating to the class of social insurance an individual should pay is outside Revenue's remit and is a matter for the Department of Social Protection. Workers may seek a determination on their employment status from the Scope Section in that Department and determinations may be appealed to the Social Welfare Appeals Office (SWAO).

The arrangement with the courier sector provided that where a courier company engaged a self-employed courier that company could opt to withhold, and pay to Revenue, tax on the courier's behalf through the PAYE system. This arrangement primarily facilitated tax compliance on the part of the self-employed courier and ensured that the courier company deducted tax from payments made to the courier and remitted this to Revenue on the courier's behalf. Without this arrangement, the courier would be required to make a lump sum payment each year to cover their annual tax liabilities. It didn't establish that couriers were self-employed, but a courier had to be self-employed to be included in the arrangement. As the Committee is aware this matter was discussed at the Public Accounts Committee in 2000.

Revenue does not have the powers to set up and commission an independent investigation and there is no legal basis for Revenue to do so.

Issue 5 – Revenue response to an EU Commission inspection report in 2019

A number of issues were identified in a report regarding the control strategy for customs values and repayments claims following an EU Commission inspection undertaken in 2019. Revenue informed the Committee that an evidence-based reply challenging the validity of most of the findings was issued and that, at the time of the meeting, a response was awaited. The Committee does not have sight of the report or the response.

Recommendation 5:

The Committee recommends that Revenue:

- **provide the Committee with a copy of the EU Commission inspection report and Revenue's reply,**
- **provide the Committee with a timeline for the matter to be resolved and the costs involved, and**
- **undertakes a risk assessment of the impact on the Exchequer should Revenue's challenge be unsuccessful.**

The Minister for Public Expenditure and Reform is informed by Revenue that it does not accept this recommendation.

The correspondence referred to in the recommendation is part of an on-going audit engagement between Revenue and the European Commission in relation to inspections carried out, in 2017 and 2019, under Council Regulation No 608/2014 of 26 May 2014 laying down implementing measures for the system of own resources of the European Union. As the audit engagement has not concluded it is not possible to provide a copy of the correspondence requested. It is also not possible to give a definitive timeframe for a conclusion of the audit at this time.

Revenue will undertake a risk assessment of the potential impact of these issues on the Exchequer when the audit engagement is concluded.

Given under the Official Seal of the Minister for Public Expenditure and Reform on this the 29th day of July, 2021.

L.S.

David Moloney

Secretary General

Department of Public Expenditure and Reform