

Tax Treatment of Expenses of Travel and Subsistence for Employees
and Office Holders Consultation
Department of Finance
14 – 16 Upper Merrion Street
Dublin 2

19th August 2015

**Re: Consultation on the Tax Treatment of Expenses of Travel and Subsistence for Employees
and Office Holders**

The Institute of Directors in Ireland (IoD) welcomes the opportunity to submit our views to the Department of Finance consultation on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders.

About The Institute of Directors in Ireland:

The Institute of Directors in Ireland is the representative body for 2,300 directors and senior executives within the private, public and not-for-profit sectors. As the leading voice in the debate on improving corporate governance standards, the Institute of Directors is dedicated to developing and improving the effectiveness and performance of directors and boards throughout Ireland.

Response to consultation:

This consultation response focuses specifically on current taxation practices in relation to the travel and subsistence expenses incurred by non-executive directors. It is the belief and contention of the IoD that current measures relating to the taxation of travel and subsistence of non-executive directors in attending board meetings is considerably out of step with how the role of the non-executive director has evolved and has negative consequences for a range of businesses from SMEs and high potential start-ups (HPSUs), to multinational corporations (MNCs) already based here, and those considering Ireland as a place to do business.

The IoD is seeking the full reimbursement, without taxation liability, of vouched travel expenses incurred by non-executive directors in attending board meetings, through due recognition of the substantive duties which are undertaken by non-executive directors outside the setting of the boardroom and acknowledgement that the non-executive director's "normal place of work" is the

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primary location where he or she operates in their professional capacity as a non-executive director, and not the location of board meetings.

Following the release of eBrief No. 61/64 by Revenue on 22nd July 2014, the IoD highlighted a number of serious concerns directly to Revenue and subsequently to the Department of Finance on the potential consequences of the taxation measures, not only on Ireland's competitiveness and attractiveness as a place to do business, but also in terms of ensuring an environment of effective governance practices. We would like to reiterate these concerns as part of this consultation process. Our objective in making such representations is to demonstrate the critically important role that non-executive directors and boards play in the leadership and governance of businesses in Ireland. We believe that it is critically important to ensure that all businesses are actively encouraged to put in place the best infrastructure so as to ensure exemplary levels of governance and effective leadership. Fundamentally, companies need to be encouraged to appoint non-executive directors and, in tandem, suitably qualified and skilled people need to be encouraged to serve as non-executive directors on boards in Ireland. A taxation policy which places undue expense on non-executive directors and companies is a threat to achieving such levels of governance.

Summarised rationale for change:

1. The definition of a non-executive director's "normal place of work" is outdated

The IoD strongly contests the assumption that the "normal place of work" of a non-executive director is within the organisation(s) where they act as a non-executive director and where board meetings take place. This does not accurately reflect the way in which the role of the non-executive director has evolved in recent years, nor does it make adequate provision for individuals acting in the capacity of a professional non-executive director, who may have multiple directorships and therefore numerous "normal places of work".

The current system of taxation represents an unfair additional cost on non-executive directors and acts as a disincentive for potential non-executive directors to take on the role, resulting in adverse consequences for the effective leadership and governance of businesses in Ireland, which we can ill afford.

The definition of a non-executive director's "normal place of work" needs to be redefined to adequately take into account the reality and complexity of the role. The role and activities of non-executive directors in Ireland extends considerably beyond the historical and narrow perspective of merely attending board meetings.

Non-executive directors are expected to undertake significant preparation in advance of board and committee meetings as well as other duties including, but not limited to:

- Keeping abreast of relevant business developments and legislation
- Contributing to the development of strategy
- Liaising with the Chairperson and management team in providing expert counsel and guidance on particular issues

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- Meeting with a variety of external company advisors, including regulatory authorities, where relevant
- Visiting customers and company locations
- Engaging with employees and other stakeholders
- Meeting a company's financial and professional advisors and credit providers
- Assisting with sourcing funding, where required

The modern non-executive director typically has as their "normal place of work" either an office in their own home or shared office facilities. It is at such locations that much of the work of the non-executive director is carried out, for example, preparing for board and other meetings, reviewing board papers and relevant materials, managing correspondence or carrying out administrative and other essential elements of their role.

2. Significant consequences for businesses

The adverse consequences of the current taxation measures for indigenous businesses and MNCs need to be fully understood and considered. The taxation on the reimbursement of travel expenses for attendance at board meetings raises a number of potential consequences for businesses:

- Fees paid to non-executive directors may be unnecessarily inflated as businesses seek to compensate non-executive directors for this measure. Such fee inflation may put the valuable services of a non-executive director beyond the reach of smaller or early-stage businesses, who would benefit greatly from the expertise of a non-executive director.
- Non-executive directors providing their services on a pro-bono basis to emerging companies in Ireland incur an unjust cost, as the reimbursement of expenses without taxation liability is currently limited to unpaid directorships of non-commercial and altruistic organisations only.
- The global nature of business erases borders and it is now common for non-executive directors to travel from overseas in order to attend board meetings. The current taxation measures do not recognise this and ultimately act as a barrier for internationally experienced non-executive directors to serve on the boards of companies in Ireland. The current taxation measures are also at odds with other initiatives aimed at making Ireland a more tax attractive place to work for internationally mobile workers, such as the Special Assignee Relief Programme (SARP).
- Companies in Ireland may be deterred from seeking international expertise for their boards due to the cost implications of compensating non-executive directors who face taxation on international travel expenses.

Further details on our rationale for change is included as an appendix to this consultation response.

Conclusion

The IoD is firmly of the view that vouched travel expenses incurred by non-executive directors in attending board meetings should be fully reimbursed, without taxation liability. The IoD is seeking acknowledgement that the non-executive director's "normal place of work" is the primary location

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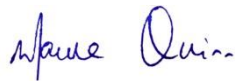
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where he or she operates in their professional capacity as a non-executive director, rather than the location of board meetings.

As business practices in Ireland continue to evolve, there must be greater openness to the review and change of taxation practices to ensure that the best structures are in place for businesses to develop and succeed and to creating an environment that is compatible with the global nature of many business operations.

We appreciate the opportunity to present our views and would be delighted to discuss the issues raised in greater detail or to make any further contributions as necessary.

Yours sincerely



Maura Quinn

Chief Executive

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Appendix

The definition of a non-executive director's "normal place of work"

The current designation of a non-executive director's "normal place of work" as being the company's premises is outmoded and needs to change to reflect the modern day reality and recognise that a non-executive director will undertake significant duties outside of attendance at board meetings. A typical letter of appointment for a non-executive director, regardless of the organisation's size, will acknowledge this by clearly stipulating that the time commitment involved in fulfilling the duties of the role will go beyond mere attendance at board meetings.

All non-executive directors must also devote time and commitment to ensuring that they have the knowledge and experience to effectively fulfil their role. While this has always been the case, it is now even more important following the codification of directors' fiduciary duties for the first time in the Companies Act 2014 and the stated requirement that a director must '*exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both (a) the knowledge and experience that may reasonably be expected of a person in the same position as the director and (b) the knowledge and experience which the director has*'. This required knowledge, expertise and the associated responsibility is common for all non-executive directors in Ireland, whether they sit on the board of a major PLC or small family business. The new Companies Act 2014 recognises this formally.

The negative impact on SMEs and HPSUs

It is well recognised that small businesses play a vital role in the Irish economy, employing approximately 68% of the workforce and generating just over half of the State's annual turnover¹. Ireland's entrepreneurial culture has also grown significantly, with estimates that 14,000 new businesses have been established each year since 2008.

Non-executive directors can directly contribute to the scaling-up of HPSUs and development of SMEs by offering specialised skills, an outside viewpoint, an unbiased perspective and greater objectivity. Their presence also offers assurances to external parties, for example banks or investors, that the business has access to appropriate levels of experience and expertise, which can be instrumental for SMEs or HPSUs in securing capital.

Over the last number of years the IoD has observed a considerable increase in the number of SMEs and family businesses seeking non-executive directors through the IoD's Boardroom Centre - a non-executive director sourcing service. While this is an encouraging development, we believe that the current taxation practices act as a significant barrier for SMEs and HPSUs in seeking external board representation, as the taxation of travel expenses for non-executive directors travelling to and from board meetings can contribute to upwardly inflating fees paid to non-executive directors as organisations seek to compensate for this measure. This additional business cost may put non-executive directors, and the skills and expertise which they offer, out of reach for many SME businesses.

¹<http://www.cso.ie/en/media/csoie/releasespublications/documents/multisectoral/2012/businessinireland2012.pdf>

Experienced non-executive directors are also being deterred from offering their services to emerging companies in Ireland, such as HPSUs, on an initial pro-bono basis. Article 4.10 of the Revenue Statement of Practice SP – IT/2/07 – ‘Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees’, allows exemption, in certain circumstances, from taxation on the travel expenses to and from board meetings to individuals who work on a voluntary and unpaid basis, but only where the functions and aims of the organisation are both ‘altruistic and non-commercial’.

The appointment of independent non-executive directors to the boards of HPSUs can be critical in securing their future and such non-executive directors should not incur out-of-pocket expenses in travelling to board meetings when undertaking such a role on a voluntary unpaid basis.

The international impact

Foreign direct investment has played a major role in advancing Ireland’s economic recovery and development in recent years, and while foreign multinationals companies represent a small proportion of businesses in Ireland, their impact far exceeds their relative size within our economy.

The IoD is concerned that the current taxation measures will impact on Ireland’s business reputation internationally. The cost of doing business is a primary concern for MNCs considering Ireland as a place to do business and as it is more likely that MNCs will have non-resident non-executive directors serving on their boards, thus the additional taxation on the reimbursement of international travel expenses to non-executive directors is a real concern.

Equally, the current taxation measures act as a major barrier to Irish organisations seeking to enhance their board with an internationally experienced non-executive director, as they will face significant additional business costs in the reimbursement of travel expenses when directors are travelling from overseas to attend board meetings.

It is now a requirement for the boards of regulated entities and listed companies in Ireland to be comprised of a majority of non-executive directors under codes such as the Central Bank Corporate Governance Code for Credit Institutions and Insurance Undertakings and the FRC’s UK Corporate Governance Code. Organisations of such public importance should not be disincentivised from looking outside of Ireland when appointing non-executive directors to their boards. Good corporate governance calls for diversity of board composition and the inclusion of foreign-based non-executive directors on the boards of Irish companies, where applicable, can positively contribute to such diversity. The Government, IDA and other relevant bodies have worked hard to increase our profile internationally as an attractive place in which to do business and this tax policy, in our view, threatens much of the successes achieved to date.

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