



INSTITUTE OF DIRECTORS
IN IRELAND

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Minister Michael Noonan T.D.
Minister for Finance
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

2nd November 2015

Re: Income tax exemption in respect of certain expense payments for relevant directors - Finance Bill 2015

Dear Minister,

On behalf of the Institute of Directors in Ireland (IoD), the representative body for over 2,300 directors and senior executives within the private, public and not-for-profit sectors, I am writing to you regarding the provision included in the Finance Bill 2015 for income tax exemption in respect of certain expense payments for relevant directors.

The IoD participated in the consultation process relating to travel expenses in August 2015, and we very much welcome the inclusion of this provision in the Finance Bill 2015 as it signifies a positive step towards acknowledging the critically important role that non-executive directors and boards play in the leadership and governance of businesses in Ireland. However, the restrictive nature of the measure, in applying to non-resident non-executive directors only, is most disappointing and in our view, deeply inequitable.

While the inclusion of foreign-based non-executive directors on the boards of Irish companies positively contributes to board diversity and brings particular skills and expertise to these boards, the role that Irish resident non-executive directors play is equally commensurate in encouraging effective governance practices and providing leadership to a range of Irish businesses. We are particularly concerned about the inequalities and inequities created by the restrictiveness of this measure and moreover, the serious anomalies it presents to the detriment of indigenous Irish business.

We do not believe that there is any merit to applying a distinction between resident and non-resident non-executive directors in the reimbursement of travel expenses in attending board meetings when there is no distinction between the roles that foreign or locally based non-executive directors perform from a governance perspective, nor in terms of their fiduciary duties and responsibilities under the Companies Act 2014.

Part of the IoD International Network

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A company limited by guarantee, registered in Ireland number 197643

Furthermore, such a provision provides large companies, who are more likely to avail of the services of non-resident directors, with an unfair advantage over small Irish businesses, who may greatly benefit from the contributions of a non-executive director.

The amendment in the Bill is a welcome first step in recognising how the role of the non-executive director has evolved in recent years, with substantive duties now being undertaken by non-executive directors outside of the setting of the boardroom. However, this is equally as true for Irish resident non-executive directors as it is for non-resident directors. Their roles are their same and therefore their tax treatment should be the same, based on the fundamental tax policy principle of equity.

It is also our contention that the definition of the “normal place of work” of a non-executive director, whether resident or non-resident, as being the location where board meetings take place is outmoded and does not reflect the reality of the role. This is a broader issue that can only be dealt with in the context of an overall review of the travel expenses tax regime, which we believe now needs to be carried out as a matter of urgency.

The impact on Irish business

We strongly believe that effective governance practices, underpinned by a clear and supportive tax environment, should be actively encouraged for all businesses in Ireland, regardless of size. It should not be promoted just for those with overseas directors on their boards, which in reality only account for a minority of Irish boards. We recognise that foreign direct investment has of course played a significant role in contributing to Ireland’s economic recovery and growth, however this measure appears to position such a contribution above that made by indigenous Irish businesses, which employ a significant majority of Ireland’s workforce and have also substantially driven our recovery. More needs to be done to support Ireland’s entrepreneurial culture and the formative and small businesses in Ireland which would greatly benefit from the expertise of a non-executive director in realising their potential.

This is especially important for high-potential start-up companies which may seek the services of a non-executive director on a small or no fee basis in the early stages. Feedback we have received from IoD members indicates that such start-up companies, operating with limited resources, are often restricted in securing the services of non-executive directors based outside of the immediate locality in which the company is located, due to the frequency of board meetings during the formative stages, and the travel that would be required of non-executive directors to attend such meetings. This considerably narrows the pool from which the expertise of non-executive directors can be drawn. From a non-executive director’s perspective, the added cost of taxation on the reimbursement of travel expenses in attending such meetings is prohibitive and may act as a disincentive, given the high likelihood that their services are provided on a small or no fee basis.

Many large Irish companies have overseas operations and it is common for such companies to routinely hold certain board meetings in such locations. From a governance perspective, this is to be encouraged, as it is essential that board members have the opportunity to visit operations and key markets outside of Ireland to ensure they are familiar with same. However, as the measure currently stands, Irish resident non-executive directors will face taxation on the reimbursement of travel expenses to attend these meetings.

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Such a disparity may contribute to organisations limiting the number of meetings that are held overseas, or to upwardly inflating the fees paid to non-executive directors as organisations seek to compensate for this cost. Neither outcome contributes to developing or supporting Irish business.

The IoD would strongly argue that the presence of Irish expertise abroad in progressing operations of large Irish companies in overseas markets is equally as important as the contribution of foreign expertise on the boards of businesses based in Ireland.

The extent of anomalies

Again, while in no way diminishing the value of the measure that has been taken in the Finance Bill for non-resident non-executive directors, it is important to outline a number of examples of the anomalies created for Irish resident non-executive directors and indigenous Irish businesses. These examples are true representations of non-executive directorships held by a number of members of the Institute of Directors in Ireland.

Director A is a professional, Dublin based non-executive director, holding eleven non-executive directorships and attending board meetings in two locations, Dublin and Kerry. Director A sits on the boards of two charitable organisations based in Dublin and the board of one start-up company based in Killarney, all on a pro-bono basis. Director A is entitled to the full reimbursement of costs incurred in respect of travel, without taxation liability, in attending an average of ten board meetings on behalf of both charitable organisations in Dublin, but is liable to taxation on the refund of costs incurred in respect of travel to attend an average of ten board meetings for the start-up company in Killarney, despite receiving no remuneration for this role. The start-up company where Director A serves as a non-executive director currently employs five people, with annual revenue of €0.3 million. Within three years, the company aims to be employing twenty people and increase revenue to €2 million.

Director B is based in Dublin and holds four non-executive directorships and attends board meetings in two locations, Dublin and Belfast. Director B sits on the board of a regulated entity which holds board meetings in both Dublin and Belfast. Director B is liable for taxation on the refund of travel expenses in respect of travel to attend an average of four board meetings in Belfast each year, while conversely, the Belfast based members of the same board will be entitled to the full reimbursement of travel expenses, without taxation liability, in respect of attending approximately four board meetings in Dublin each year. There is no distinction between the role and responsibilities of either non-executive director and this measure creates such a distinction.

Director C is based in Wicklow and holds five non-executive directorships and attends board meetings in four locations, Dublin, Laois, London and the US. These organisations have a combined revenue of approximately €400m and employ approximately 550 people in Ireland. Director C sits on the board of a large private Irish company with significant operations in Ireland and the US. The board comprises both Irish resident and three non-resident directors and board meetings are held in both Dublin and the US. Director C travels to at least two board meetings in the US per year and is liable to taxation on the refund of travel and subsistence expenses in attending these meetings. The three non-resident directors sitting on the same board will be entitled to the full reimbursement of travel expenses, without taxation liability, in respect of attending the board meetings held in Dublin.

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Director D has been approached to sit on the board of a private Irish company with operations in Dublin and the US. The position will require attendance at six board meetings, four in Dublin and two in the US. The board has two non-resident non-executive directors. As Director D is based in Dublin, he is concerned about the costs involved with accepting this position given the liability for taxation on the reimbursement of travel and subsistence expenses involved in attending the two US based board meetings each year. The two non-resident directors sitting on the same board will be entitled to avail of the full reimbursement of travel expenses, without taxation liability, in respect of attending board meetings in Dublin.

Director E is based in Dublin and holds five non-executive directorships and attends meetings in three locations in Dublin, Cork and London. In total, Director E attends approximately forty board / board sub-committee meetings per year, twenty of which involve travel. Director E is liable to taxation on the reimbursement of travel expenses to approximately twelve board meetings and board sub-committees held in Cork, while a non-resident non-executive director travelling from London who serves on the same board will be able to avail of the full reimbursement, without taxation liability, in respect of attending these board meetings in Cork. Director E is also liable to taxation on the reimbursement of travel expenses in attending approximately eight board meetings held in London.

The above examples highlight the depth of inequity and wide range of anomalies arising from this measure.

The IoD would strongly argue that income tax exemption for certain expense payments for directors should be extended to all non-executive directors in Ireland in respect of fully vouched travel expenses incurred in attending board meetings.

In addition to our discussions with IoD members who will be directly impacted by the inclusion of this restrictive measure within the Finance Bill 2015, we have also consulted with the Irish Tax Institute in preparing this submission. We understand that they will also be making a submission to you highlighting the urgent need to address the outdated tax regime for travel expenses for all taxpayers based on the fundamental principles of certainty, simplicity and equitable treatment for all.

We hope that the Department of Finance will take into account our concerns and give due consideration to the impact that the restricted provision as currently drafted will have on indigenous Irish businesses and Irish resident non-executive directors.

Yours sincerely



Maura Quinn
Chief Executive

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