

4th December 2020

Minister Paschal Donohoe TD
Minister for Finance
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
D02 R583

Re: Section 3 of the Finance Bill 2020 – Retrospective Taxation of the Covid PUP

Dear Minister Donohoe,

I am writing to you again about FLAC's concerns at the provisions of section 3 of the Finance Bill 2020 (which proposes to retrospectively impose a tax liability on claims for the Covid Pandemic Unemployment Payment), in light of your statement in the Dáil yesterday regarding the presumption against retrospective taxation legislation, wherein you endorsed the principle that "changes to tax law are generally made on a prospective basis such that they apply only from the date on which they have legal effect".

My email to you on the 24th November 2020 set out these concerns and enclosed a briefing note containing our legal analysis of section 3 of the Bill. The findings of our analysis raise the following concerns:

- The retrospective provisions of the 2020 Bill may create an unexpected tax liability which may disproportionately effects those who have suffered the most financial hardship as a result of the Covid-19 pandemic. An analysis of the information available to claimants for the payment since March suggests that they cannot be expected to have been aware that such a tax liability would arise.
- These retrospective provisions may not be in accordance with the constitutional protection of citizen's property rights which only allow for the introduction of retrospective legislation which interferes with those rights in very limited circumstances.

There are now two further points I would like to bring to your attention:

First, I would like to respond to your comments before the Oireachtas Select Committee on Finance to the effect that the provisions of section 3 are "not retrospective". I must respectfully remind you that, in circumstances where section 3(2) of the Bill explicitly provides that section 3 "shall be deemed to have come into operation on and from 13 March 2020", these provisions are plainly retrospective. Further, FLAC's analysis makes clear that, in the period after its introduction, claimants of the PUP could not have been aware that the payment would be subject to taxation. No official information was published to that effect, and political statements to the effect that the payment would be subject to income tax were subsequently contradicted by the provisions of the Social Welfare (Covid-19) (Amendment) Act 2020

Chief Executive – Eilís Barry

which described the original PUP Scheme as having been paid under the Supplementary Welfare Allowance Scheme (a category of payment which is specifically exempt from income tax).

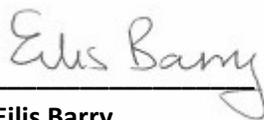
Second, I note your response to Deputy Pearse Doherty on the 3rd December 2020, when he moved an amendment to the Finance Bill 2020 which called for a report on certain provisions of the corporate tax code. In responding to Deputy Doherty's support for changes as to how taxable profits are calculated under Ireland's corporate tax regime, you reminded him of the general principle that "changes to tax law are generally made on a prospective basis such that they apply only from the date on which they have legal effect".

I am not proposing to offer a view as to the correct approach for calculating taxable profits under the corporate tax code. However, I find it difficult to understand how the presumption against retrospective changes to the tax code can be strictly applied in the context of a discussion of the provisions of the Finance Bill relating to corporation tax, and yet be ignored in drafting provisions of the same Bill relating to the taxation of the income of those whose livelihoods have been adversely impacted by the Covid-19 pandemic.

The 2020 Bill was at report stage on the 2nd and 3rd December, however our concerns were not addressed at that juncture. We understand the Bill will now be considered by the Seanad on the 9th December 2020. In light of FLAC's analysis of section 3 of the 2020 Bill, and your own recent endorsement of the general presumption against retrospective taxation legislation, we believe it is now incumbent on you to reconsider your position regarding the retrospective provisions of the Bill and to ensure that the Covid PUP is not taxed retrospectively.

We are happy to meet to discuss these matters further.

Yours sincerely,



Eilis Barry
FLAC Chief Executive