

9<sup>th</sup> 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,

I refer to previous correspondence in relation to 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). Specifically, I refer to my email to you on the 24<sup>th</sup> November 2020 which set out these concerns and enclosed a briefing note containing our legal analysis of section 3 of the Bill, and my letter to you on the 4<sup>th</sup> December 2020 which called on you to reconsider your position regarding the retrospective provisions of the Bill with reference to your statement in the Dáil on the 3<sup>rd</sup> of November 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".

We have sought to engage in a *bona fide* manner with this issue from the start. In a submission to the Oireachtas Special Committee on Covid-19 Response in September 2020, FLAC highlighted the importance, from a human rights perspective, of proper engagement and consultation on the part of government in introducing measures in response to the pandemic. There has been a complete failure to engage substantively with our genuine and considered concerns.

The only response I have received from you to date is an email from your office today which stated that our concerns in relation to section 3 of the Finance Bill 2020 were "a matter in the first instance" for the Minister for Social Protection. I was disappointed and bemused with this response as the provisions of the Finance Bill, which was prepared by your Department and introduced to the Dáil by you, are plainly a matter for the Minister for Finance.

These failings were underscored in the Seanad yesterday, in the response of the Minister of State at the Department of Finance, Sean Fleming TD, to the concerns raised by opposition Senators in relation to the retrospective taxation of the PUP. Minister Fleming's response did not engage substantively with the concerns raised by those Senators or by this organisation.

Instead, the Minister maintained that the legislative regime in existence when the PUP was introduced meant that the payment was always going to be subject to taxation. This is a manifestly incorrect statement to make in circumstances where the very existence of section 3 of the 2020 Bill makes it clear that amendments to the tax code are necessary in order for the PUP to be subject to income tax. Further, he claimed that the provisions of section 3 of the 2020 Bill were not retrospective. Again, this

assertion is completely undermined by the text of the very legislation which he was discussing which provides that section 3 “shall be deemed to have come into operation on and from 13 March 2020”. These provisions are plainly retrospective.

Finally, the Minister of State claimed that “while the PUP is technically taxable it is not really taxable in reality because if a person was to earn the PUP of €350 for 52 weeks of the year, then he or she is not in the tax net”. The example he uses of a person who “[earned] the PUP for 52 weeks of the year” does not exist and does not accord with the purpose and content of the legislation. The PUP was only introduced in March 2020 and a criteria for receiving the payment was that a claimant had been previously employed immediately prior to applying for it (and was therefore in receipt of some employment income other than the PUP). Further, Revenue has already found it necessary to announce the introduction of special measures for the payment of the tax liability on PUP claims in order to “minimise any hardship” arising therefrom. This would hardly be necessary in circumstances where “tax is not paid on the PUP in practical terms” as the Minister of State suggested.

I am now calling on you to urgently respond to my previous correspondence in relation to this matter. While the Minister of State at your Department stated yesterday that concerns in relation to section 3 of the 2020 Bill are “a myth and a way of spinning something”, I assure you that our concerns arise from very real concerns at the potential infringement upon the rights of those whose livelihoods have been adversely impacted by the pandemic.

I await your response.

Yours sincerely,

A handwritten signature in blue ink that reads "Eilis Barry". The signature is written in a cursive, slightly slanted style.

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**Eilis Barry**  
**FLAC Chief Executive**