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Clerk
Committee for Finance and Personnel
Room 419
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13 June 2011

Dear Shane,

On Wednesday past officials briefed the Committee on implementation of the Mutual Assistance Recovery Directive (MARD). Members raised a number of issues relating to the implications and legal issues for any tax powers that may be devolved in the future. Officials have considered the legal advice previously provided to them by the Departmental Solicitors Office (DSO) and have also liaised with officials in HM Revenue and Customs (HMRC) on this matter.

Corporation tax

Members were particularly interested in how MARD would apply in relation to any future powers that may be devolved in relation to corporation tax. As Members will be aware the amendments that are to be taken forward through the Finance Bill (No.3) 2011 (assuming Executive and Assembly consent) would ensure that Northern Ireland is covered within the remit of the Bill. In considering the provisions of the Finance Bill DSO advised that the Directive, in terms of its recovery powers, covers all taxes and duties levied by Member States. Once the amendments are made the exclusion of transferred matters, within the meaning of the Northern Ireland Act, from MARD would no longer apply. Northern Ireland local taxes would be covered.

Views have been sought from HMRC on the corporation tax issue, the possibility of this being varied in Northern Ireland and its interaction with MARD. They have advised that, from a MARD perspective, a debt is a debt, it doesn't matter what the tax is or the rate that is levied. Views have also been sought from DSO on how the MARD provisions would apply were corporation tax powers to be devolved to Northern Ireland.

DSO have advised that the Mutual Assistance in the Recovery of Debt Directive and its implementing national legislation is the legal basis for arrangements which allows authorities in one Member State of the EU to ask authorities in another Member State for assistance in obtaining information, serving legal documents or recovering a tax or duty debt. Under the Directive these arrangements apply to all taxes and duties of any kind. This would include corporation tax. As a matter of European law, these requirements would continue to operate in relation to corporation tax within the United Kingdom whatever the nature of the new arrangements in Northern Ireland where.

There may, however, need to be technical changes to the implementing legislation within the United Kingdom to reflect changes to the corporation tax arrangements for Northern Ireland depending upon, in particular –

(a) any changes to the functions of HMRC in relation to those arrangements; and

(b) changes to the legislative basis for those arrangements.

Any such changes will not, however, affect the central principle that MARD will continue to be applicable.

Members may be interested to note that HMRC have advised that with UK wide taxes other Member States collect about £2m a year for HMRC that otherwise wouldn't have been collected. At present this would cover the likes of income tax, VAT, corporation tax, etc.

Timing of changes to the EU Directive

Members raised the question of when the EU had agreed the directive and why the Department was only notified of the need for the Legislative Consent Motion in March. Clarification has been sought from HMRC on this. The Directive was agreed by EU Finance Ministers, and published in the Official Journal of the EU, in March 2010. Unfortunately there was a lapse in communications with the devolved administrations (Scotland and Northern Ireland) following this, given a range of internal HMRC discussions over who should deal with the taxes and the legislative vehicle that would be used. HMRC also had a range of issues to resolve in relation to confidentiality of taxpayer information and penalties around incorrect disclosure. Following resolution of these matters HMRC only began to instruct Parliamentary Counsel in late 2010. HMRC did not pick up on the requirement for a formal consent from Northern Ireland and Scotland until March this year, just before dissolution of the last Assembly. At that point it was too late to begin the legislative consent motion in that Assembly's term.

Tabling of amendments to the Finance Bill

Members may wish to note that the amendments to the Finance Bill were not tabled on Thursday 9 June, during Westminster Committee stage as had been envisaged and as Members were advised. Instead the amendment is now to be tabled in the next few days and would be agreed by Westminster during the Bill's report stage. Report stage is scheduled to take place in early July, which would follow any debate in (and agreement by) the Assembly.

Yours sincerely,

Norman.

NORMAN IRWIN