

Business Regulation Forum

SUBMISSION BY THE
Institute of Certified Public Accountants in Ireland

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1 : The Institute of Certified Public Accountants in Ireland (CPA) – Overview

The Institute of Certified Public Accountants in Ireland is one of the country's leading professional Accountancy Bodies. The Institute has 5,000 members and students.

60% of our members work in business – finance, services, manufacturing, & public sector.

The balance – 40% – are engaged in public practice.

The Institute of Certified Public Accountants in Ireland welcomes the opportunity to make this submission. We believe, because of our day-to-day involvement in business – particularly medium and smaller businesses – we have a valuable and relevant perspective on the effects – good and bad – of regulation on business. Our submission is based on the first hand experience of our members who work in both financial positions in businesses and in public practice advising businesses.

Our understanding of the issues confronting business has been enhanced by the development of a partnership programme with the Small Firms Association during 2005. Part of this is a programme of Financial Information Bulletins aimed at Owners/Directors of Small Businesses to help educate them in matters of accountancy and their responsibilities.

CPA believes that regulation is necessary in today's world. In our own profession we accept the need for – and implement – very stringent regulations. A good regulatory framework is in the interests of our members, their clients, employers, and critically, the public.

We believe there are areas in which more regulation is in the public interest, and these are detailed in our submission.

Similarly, we believe there are areas where we would question the need for regulation.

Our principal theme is to take account of the impact of regulation on Medium and Small businesses. We challenge the accepted wisdom of a one size fits all regulatory regime. This is because the effects of regulation fall disproportionately on smaller businesses. In a world of regulation overload, the end result is likely to be non-compliance in many areas. In our view it is preferable to have less regulation, properly policed, rather than a raft of ignored regulation. The latter creates an culture of bringing compliance into disrepute.

For our members Government Regulation is a major issue. In a recent survey of CPA members conducted by Amarach Consulting, when asked to identify factors of most concern, Government Regulation was nominated by our members in practice as the single biggest issue facing business today.

In order to assess the benefits – or otherwise – of any regulatory proposals we recommend that a process be put in place to assess, before introduction, the impact that such proposals may have.



2 : Impact Analysis

Issue

Regulations being introduced without adequate consideration of all consequences for all stakeholders.

Consequences

Regulations that are

- Unclear as to cost implications
- Costly to implement
- Administratively burdensome
- Not complied with, thus falling into disrepute
- More burdensome than is warranted by the problems they purport to resolve

Suggested Solution

We recommend that prior to the introduction of any regulation that impacts upon business that the likely impact on all stakeholders be analysed. A model exists in the environmental area where an EIS is demanded to ensure that all possible impacts are understood in advance.

Such an analysis would scope

- The **benefits** that would accrue to
 - Employees
 - Employers
 - Suppliers
 - The local community
 - Shareholders, directors and managers
 - Government – national and local
- The likely **costs**, both financial and in terms of other resources to
 - Employees
 - Employers
 - Suppliers
 - The local community
 - Shareholders, directors and managers
 - Government – national and local
- The **impact** on Ireland's economic competitiveness
- The **impact** on Direct Foreign Investment
- The **impact** upon specific sectors – for example tourism, agriculture, etc.

Such an impact analysis could be carried out on behalf of the Department of Enterprise, Trade and Employment, in consultation with all interested parties. In this context we would particularly recommend inclusion of representatives of medium and small businesses and their advisors.

We are not prescriptive on whether a particular measure should be introduced or not – we simply want to ensure that the implications are published and understood. It may well be that a particular measure has a high financial cost – but is necessary. However, there are cases where the cost may be unclear because it is not identified. Appendix 1 to this submission outlines an example in the health and safety area where the cost implications are unclear.

This Appendix makes the valid point that regulation is introduced at a macro level, but has to be managed – and paid for – at a micro level.

In the final analysis, with clear understanding of the impact there may arise proposed regulations which, no matter how laudable the aims (and the acceptance in the media) the cost simply cannot be justified. A balanced approach is required, as is a careful risk/reward analysis.

We believe such an approach is more important now, given the changing nature of National Partnership Talks, which have moved in character from pay deals to one where regulation introduction is at the heart of current negotiations. It is important that all those affected are consulted prior to regulation introduction. All of the stakeholders are not represented at partnership talks – for example not all small firms, or the vast majority of private sector employees, are represented.



Issue

The designation "Accountant" may be used by any person in business, and is not reserved for use by holders of a professional accountancy qualification.


Consequences

When one goes to e.g. a solicitor or doctor, or many other professionals, one does so secure in the knowledge that the professional has undergone appropriate training and that a professional body in the public interest regulates the individual.

The Accountancy Profession is among the most highly regulated in the business world. Despite this level of regulation it is possible for any person to present themselves to the public as an accountant, and operate outside all regulations. This poses a risk for the public and dilutes the effectiveness of the regulation of the profession. Protection of the term accountant would, at a minimum enable the public to distinguish between those qualified to give financial advice and those not qualified.

Suggested Solution

Legal definition of and protection of the term Accountant.



4 : Rollover Relief in certain circumstances

Issue

Rollover relief for business assets for CGT purposes has been abolished.

Consequences

For a company wishing to re-invest in its business assets, and grow the business, the imposition of Capital Gains Tax on disposal of bona-fide business assets when they are being replaced (and upgraded) is an unduly onerous burden. In the case of a business property, if a company wishes to facilitate the expansion of its business by the replacement of the property, it is now liable to a total tax of 29% (20% CGT - with no indexation relief, and a further 9% stamp duty). This is, in effect a tax on business expansion.

Suggested Solution

Reintroduction of Capital Gains Tax rollover relief for bona fide business assets in trading companies.



5 : VAT Registration Limits

Issue

VAT registration limits for business are €27,500 (services) and €55,000 (products).

Consequences

An administrative burden is placed on small/start-ups to comply with VAT regulations at very low levels of turnover. The levels were increased in the recent budget, but changes were so minimal as to be meaningless. The comparable UK figure is c €91,500 for all businesses. As the amount of revenue generated from the low levels of registration is likely to be very small, the purpose cannot be one of revenue generation. It involves a disproportionate cost for small businesses.

Suggested Solution

Raise the threshold limits to the UK level of c €91,500 for all businesses.



6 : VAT Registration

Issue

The VAT registration process, and availing of simplification methods can be too burdensome.

Consequences

The consequences of the cumbersome processes are cost in terms of time spent on “chasing” VAT registrations through the system, loss of revenue for business through delays in receiving registration, and possible inability to avail of S4A shift mechanism relief because of process.

Appendix 2 maps the process followed in a recent attempt by a foreign company attempting to register for VAT, and avail of S4A relief.

Suggested Solution

Revenue could use the registered office address as the relevant address for tax registration purposes, in the absence of a company having a trading address. Subsequently, if the company opens a trading address the file could be transferred to the district dealing with the trading address.

The best solution would be to have a central registrations office where all tax registrations are dealt with, using the registered office of the company as the relevant address, in the absence of a trading address.



7 : Companies Limited by Guarantee

Issue

All companies limited by guarantee are obliged to have an audit.


Consequences

Many companies limited by guarantee are community-based organisations with low turnover, or management companies of, for example, apartment blocks. The requirement for organisations with low turnover to have an audit is onerous in terms of administrative burden, and financial cost of audit.

We question the sense in obliging small organisations to undertake a full audit in compliance with the complexities of International Auditing Standards which have been mandatory since December 2005.

Suggested Solution

While accepting there needs to be control on financial management, particularly where voluntary contributions are concerned, these companies should be eligible to avail of audit exemption. As an alternative they could be subject to an operating review which reports on the appropriation of funds and the maintenance of books and records, rather than compliance with International Auditing Standards.



8 : Dealing with Business failure

Issue

Under current legislation directors face prosecution when businesses fail, even for genuine reasons.

Consequences

In the event of a business failure – even for bona-fide business reasons, directors face prosecution on foot of cases taken by the liquidator. Under the Company Law Enforcement Act 2001, liquidators are required to report to the Director of Corporate Enforcement on the conduct of the directors of the company in liquidation. If the Director of Corporate Enforcement does not grant the liquidator relief, the liquidator is obliged to take a High Court action to seek to have the directors restricted.

This regulation weighs disproportionately on directors of smaller businesses with limited resources. The impact of this regulation means that the cost of appointing a liquidator has risen substantially as the liquidator may have to take a High Court action.

When a small business fails, in many cases directors cannot fund a liquidation out of their own resources and if there are no assets in the company many of these companies are left unliquidated, leaving the directors with personal exposure. In other circumstances where a liquidator is appointed and brings a High Court action against the directors, in some cases the directors simply do not have the funds or the inclination, following the failure of the business to challenge the High Court action and consequently end up with a restriction.

Suggested Solution

Legislation should be completely reviewed and directors granted a presumption of innocence until proven guilty without recourse to the High Court.

This review should focus on the impact of current legislation and any proposed changes on the directors of smaller companies with limited resources.



Issue

On retaining a sub-contractor in specified industries (construction, meat processing and forestry), 35% of payments must be withheld and paid over to Revenue if subcontractor cannot produce a C2 form.

Consequences

This places an undue administrative burden when retaining a subcontractor. In addition, it is not universally applied – for example when retaining subcontractors for private domestic work. Further, there is a difference between the amount to be withheld under this system (35%) and other systems (e.g. DIRT, Dividend Withholding Tax and Professional Withholding Tax - 20%).

The administration of this process is unduly complex. The effect is to unnecessarily burden compliant taxpayers and runs the risk of making the black economy more attractive.

Appendix 3 maps the approval process involved in RCT.

Suggested Solution

The utilisation of ROS would assist in alleviating the administrative burden.

This issue would provide an ideal pilot for Impact Analysis to assess the real costs and benefits, and we would recommend such a pilot.

Appendix 1

Viewpoint October 2005

Making the financial case for health and safety: an accountant responds

Accountants are sparse on the ground in the world of health and safety, but one, who is well known in safety circles, Lorna Mason takes up the theme of this year's Health & Safety Review annual conference: *Convincing the accountant - making the financial case for health and safety.*

Having listened with interest to the many excellent presentations at the HSR conference, I remain unconvinced, either as an accountant or as a business owner, that safety pays.

As a business owner, my gut feel is that, no matter how much I spend on insuring against risk to employees or others, my costs continue to increase as a result of safety observance. This may manifest itself in engineering changes, extra mechanical aids, PPE or training.

As an accountant I consider the dilemma between the case made by the speakers and the view of the small, or larger, business owner and conclude that we are not comparing apples with apples. The regulatory authorities are computing macro-economic data largely made up of the costs incurred by the state and insurance industry. The business owner is concerned with the micro-economic situation, whereby he has paid his contribution, in taxes and insurance premia, to macro safety costs but still has to foot the bill for more onerous safety management in his own business.

Can the small business owner quantify his increased costs? Probably not, being already too busy running the business to accurately trap safety costs, any more than quality or HR costs are being fully analysed. So, to get accurate costings we need to go to the larger companies, who have the expertise and economies of scale to trap all these overheads and apportion them accurately to each business activity. The practice in larger, more structured companies is to allocate a budget to each of the service cost centres, then apportion that total cost over each of its client cost centres on a pre-defined basis.

So can we assume that all larger companies know the real cost of safety to their enterprise? The feedback from my accounting colleagues suggests that they do not. All the older disciplines are being budgeted for and accounted for on a cost apportionment basis. However, it seems that safety has not yet come of age in most companies and is being hived off, and hidden, in lots of places. PPE is considered a cost of production, even though the safety officer specifies it and insists on its implementation – and the production manager is not impressed at the resultant cost over-runs on his budget. Safety training is lost in HR, who also are unlikely to be enthusiastic about the depletion of their budget.

The result is that the state agencies tell us safety pays and perhaps it does, at the macro level. Industry feels it is paying twice but neither large nor small enterprises know exactly what they are paying. And the safety officer may well be under-resourced but is certainly less accountable to his employer than other department heads.

I believe this is about to change, impelled by both internal and external drivers.

Business itself is spending increasing amounts on safety observance, so it must accurately budget for the cost and seek accountability from the safety department. The usual way of achieving this is to make safety a separate cost centre and, depending on the company, the true safety budget may already be larger than other costs which are already accurately accounted for.

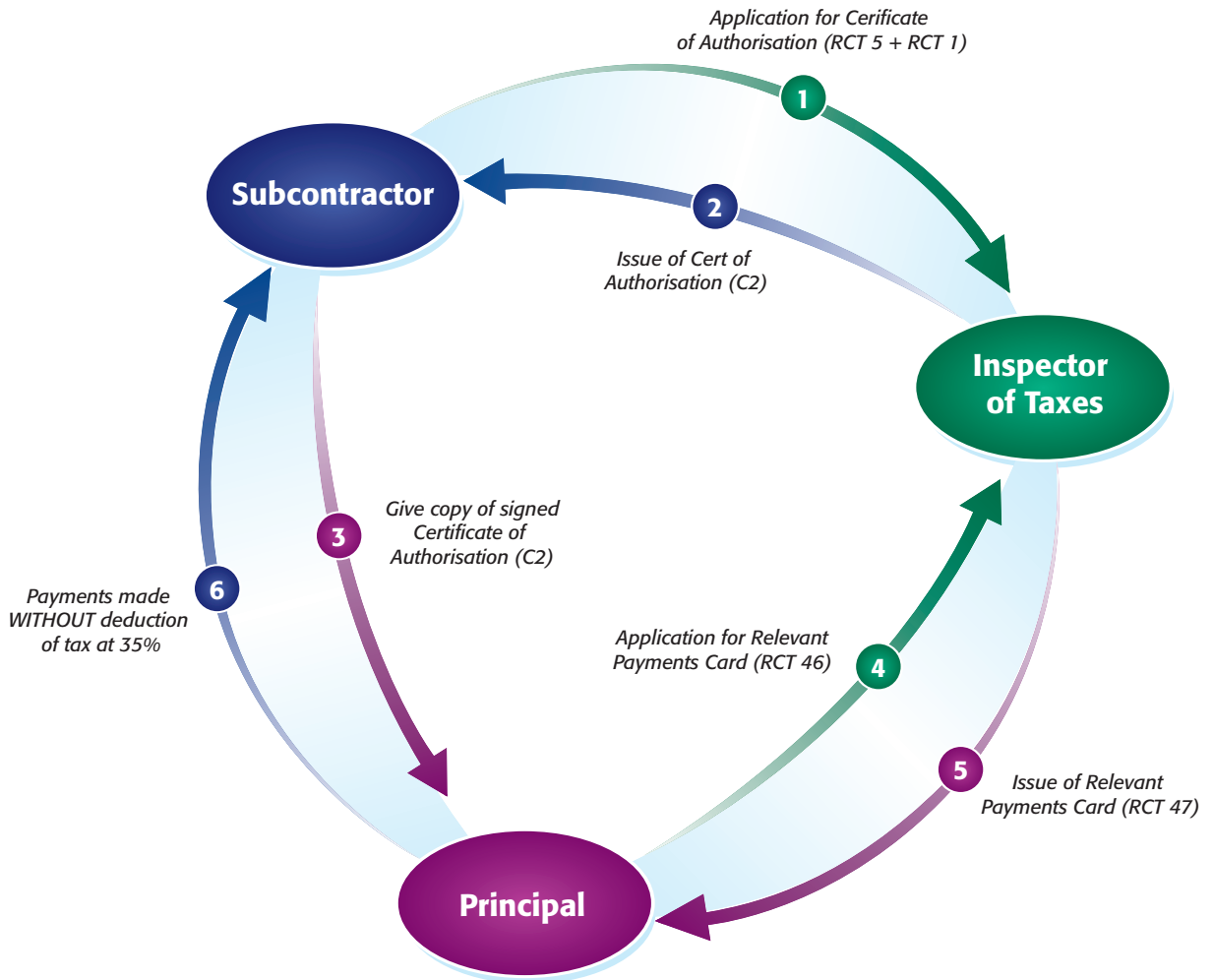
(Lorna Mason, CPA, MBA, is managing director of the health and safety training materials provider Circle Organisation. Prior to forming Circle Organisation, Lorna was finance director with Time Warner Ireland and general manager of various Time Warner subsidiaries in Ireland and Europe)

THIS IS AN EXTRACT FROM AN ARTICLE FIRST PUBLISHED IN HEALTH & SAFETY REVIEW OCT 05

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Appendix 3 : Relevant Contract Tax

RCT – Approval Process





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