

Business Regulation Forum Submission

Introductory remarks

The Institute of Chartered Accountants in Ireland ('ICAI') is pleased to respond to the invitation from the Business Regulation Forum for written submissions on the impact of regulation on business and competitiveness in the Republic of Ireland.

ICAI is the largest professional accountancy body in Ireland. Operating on 32 county basis, ICAI has over 15,000 members who are employed in the business sector or who operate professional service firms which provide statutory audit, accounting, taxation and general financial advisory services to businesses.

ICAI has long advocated regulatory simplification and supports Government's initiatives in this area. We agree that regulation should meet the principles set out in the Government's White Paper on Better Regulation; necessity, effectiveness, proportionality, transparency, accountability and consistency. We are aware that this is an area on which Government has been working since the publication of the White Paper and welcome particularly the commitment to the Regulatory Impact Assessment process which emerged from this.

The establishment of the Business Regulation Forum itself is an indication of the growing awareness in Government that the search for an appropriate regulatory balance involves ongoing liaison between the regulator and the regulated. The report of the Small Business Forum and, in particular, the recommendation to increase the audit exemption threshold to the maximum level allowed under European law, give further cause for confidence that Government is aware that the regulatory changes of recent years require a corresponding readiness to assess their impact and make changes where necessary.

The most significant change in the regulatory environment in recent years has been the transfer of powers from Government Departments to industry or sector specific regulators. The establishment of the Financial Regulator, the Competition Authority, the Office of the Director for Corporate Enforcement and the Irish Auditing and Accounting Supervisory Authority are all examples of this process. This trend is unlikely to be reversed. We know, for example, that there is a proposal to establish an independent regulator for the auctioneering profession. Similarly, in addition to these general enforcement bodies, the number of industry specific bodies has also grown. Comreg, the Irish Aviation Authority and the Energy Regulator are examples.

It is difficult to assess the financial impact of these developments on Irish business. Businesses are as likely to be preoccupied with compliance itself as with having time to count the related costs. But, the sheer pace of change, the volume of new regulation and the proliferation of regulatory bodies is considerable and confusing.

ICAI is very well placed to comment on regulatory issues affecting business in Ireland since its members work with business in all sectors of Irish industry.

Members of ICAI, either through their employment in business or their role as business advisors, assist and support businesses of all sizes and in all industry sectors

in their compliance with a multitude of laws and regulations as well as fulfilling their own role of compliance with legislation, which in the case of practising accountants also include many statutory ‘whistleblowing’ duties.

The regulatory environment in Ireland is unnecessarily complicated by:

- The plethora of regulators with whom Irish business must interact;
- The disjointed nature in which regulatory requirements are developed and introduced by regulators acting in isolation from each other;
- The lack of thorough consultation, involving all stakeholders, prior to the introduction of regulation; and
- The high cost to business of dealing with regulators and the role business plays in helping operate regulatory systems.

ICAI believes the financial and administrative burden that regulation places on business could be relieved through a number of initiatives focused on delivering more integrated, considered regulation. Specifically ICAI proposes:

- The development of a ‘Consultation Code’ to regularise the process of engagement with stakeholders in the generation of new regulation;
- The creation of a ‘Regulators’ Forum’ where regulators could discuss proposed regulation to avoid duplication of effort and potential conflict between regulations; and
- The undertaking of a review of compliance costs for current regulation and a continued commitment to considered ‘Regulatory Impact Analysis’ on the introduction of future regulation.
- Given the growing volume of regulatory bodies it is essential that the proposed ‘Consultation Code’, ‘Regulators’ Forum’ and ‘Regulatory Impact Analysis’ extends beyond Government departments and offices to the full complement of regulatory agencies.

We discuss each of these in further detail below.

Development of a ‘Consultation Code’

ICAI believes advance consultation on issues of pending regulation is crucial for the achievement of sensible and effective regulation. We welcome the Taoiseach’s recent launch of “Guidelines on Consultation for Public Sector Bodies” and strongly encourage further development of the formal consultation framework. A single ‘Consultation Code’, should be adopted by all government departments and regulators, to govern the due process of consultation on the introduction of new regulatory requirements. Important elements of this ‘Consultation Code’ would include:

- Consultation to be started early in the development of regulation;
- Consultation to be open to all stakeholders who should be invited to respond;
- Informal consultation with stakeholders to be conducted in advance of written consultation periods where appropriate;
- Written consultation periods to be a minimum of 12 weeks;

- Consultation papers to include focused questions in clear and concise language;
- Consultation to be open-minded and be seen to be open-minded;
- The consultation process to include a Regulatory Impact Analysis where appropriate; and
- The consultation process to include feedback to the responses received.

ICAI recently welcomed the Irish Auditing and Accounting Supervisory Authority's "Invitation to Comment on the Matter of Legal Protection of the Term 'Accountant'". The consultation period was a short 8 weeks however with the latter weeks also forming part of the ODCE's consultation period on its draft "Guidance on Audit Committees". In order to facilitate a thorough consideration of proposed regulation and the collection and distillation of the views of the profession it is essential that sufficient time is allowed for the consultation process. ICAI considers 12 weeks to be the appropriate minimum consultation period.

The importance of allowing sufficient time for the consideration of all the implications of proposed legislation and regulatory requirements cannot be underestimated. Regulatory requirements must be readily and uniformly understood and applied by all those subject to it.

The reporting obligation under Ireland's anti-money laundering legislation is an example of how unclear legislation can give rise to difficulties in practical application. Since accountants, auditors and tax advisors were brought within the scope of the anti-money laundering regime in 2003, ICAI has had ongoing contact with the Department of Finance, the Department of Justice Equality and Law Reform and with the Money Laundering Steering Committee in relation to difficulties posed by the language of the Criminal Justice Act 1994, as amended. ICAI, as a constituent of the Consultative Committee of Accountancy Bodies, Ireland ('CCAB-I'), issued a Briefing Paper highlighting for its members the difficulties with the anti-money laundering legislation. A copy of that Briefing Paper is included with this submission.

Government is currently in the process of implementing European Union Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the 3rd Anti-Money Laundering Directive'). ICAI sees the implementation of the 3rd Anti-Money Laundering Directive as an opportunity for Government to create transparent legislation which facilitates consistent compliance by all bodies designated for the purposes of the anti-money laundering regime and is communicating with the Department of Finance in this regard. ICAI is currently working on a formal submission in relation to the issues in this area and will be happy to share that submission with the Business Regulation Forum in due course.

Open-minded consultation by Government with relevant stakeholders in relation of the transposition of EU Directives will contribute to more transparent, user-friendly and domestically appropriate legislation in Ireland. This will also help prevent EU regulation, which as far as the corporate sector is concerned, is aimed primarily at large, listed or public interest entities, being transposed at an inappropriately low level.

Establishment of a ‘Regulators’ Forum’

The variety of requirements of the many regulators interacting with Irish business can be onerous and can give rise to practical problems when regulations are introduced without appropriate consultation either with other regulators or stakeholders. A regulator may introduce a requirement for special reports or information which may be difficult or impossible for business to provide or which may be inconsistent in terms of timing or content with that required by another regulator.

It is not unusual for a regulator to seek assurance from an auditor or external accountant in relation to the financial information of a business or project under its supervision. Often, however, the level of assurance anticipated by a regulator is beyond that which can be given by the accountant or auditor. The regulatory agency may have an unrealistic expectation of a guarantee of accuracy or certification of information which in most cases is not feasible due to the complex assurance framework which governs the work of accountants and auditors.

As a consequence of individual regulators operating in isolation from each other there is a greater risk for new regulation to unintentionally duplicate or conflict with existing legislation or regulation. For example, the Commission for Aviation Regulation currently requires licence renewal applications of travel agencies under its supervision to be accompanied by financial statements ‘duly audited’, despite the fact that many travel agencies are unincorporated and would not otherwise be required by law or regulation to have an audit. This requirement at best creates an extra burden in terms of time and financial cost and in some cases puts travel agencies in the position of being unable to fulfil their regulatory requirements.

Dialogue between regulators, and with the accounting and auditing professions, in the course of developing new regulatory requirements could result in the elimination of this kind of ‘expectation gap’ and support the generation of appropriate alternative forms of assurance reports which would meet the objectives of the regulatory bodies. ICAI proposes the establishment of a formal mechanism that would facilitate such interaction when regulatory agencies are developing regulatory requirements particularly those that relate to the production and provision of financial information.

A further example of how a disjointed approach to regulation can complicate the regulatory environment is provided by the multitude of reporting or ‘whistleblowing’ duties of accounting professionals arising under criminal, corporate and taxation legislation. These obligations typically require the professional in question to report a breach or suspected breach of legislation to a nominated enforcement agency. Difficulties arise in complying with these ‘whistleblowing’ obligations because they involve:

- Reporting to a myriad of regulatory bodies – indeed the same offence or breach of regulation may require reports to more than one body;
- Reporting breaches of a variety of statutory law and regulatory codes – the same incident can give rise to a reportable event under more than one statute or code; and

- Different thresholds of evidence of proof prior to the reporting obligation being triggered;

As a consequence of the absence of a harmonised ‘whistleblowing’ framework an accounting professional may spend a disproportionate amount of time analysing the circumstances surrounding a potential reportable event to identify to whom, in what format and under which regulations reports may be required. An ICAI discussion paper on this subject, “Blow the whistle, who, why, when and where?” is included with submission.

The application of a proper consultation process in relation to each piece of legislation giving rise to these ‘whistleblowing’ duties and their consideration at a ‘Regulators Forum’ amongst regulatory bodies having an awareness of existing regulation in the area would, ICAI contends, have achieved the objectives of the regulators in a more considered and user-friendly manner. It is important that the current ‘whistleblowing’ framework is reviewed and streamlined.

Review of compliance costs

Research recently carried out by Indecon International Economic Consultants on behalf of the Small Business Forum indicated that taxation requirements are seen, by business, as the largest regulatory burden borne by business.

For almost two decades, the Irish taxation system has been predicated fully on the concept of self assessment, whereby the taxpayer prepares and retains the appropriate taxation records, submits returns annually to Revenue, and is then subject to screening and checking under the Revenue Audit process. This approach has many advantages for business and Government, but one of the major disadvantages is that it shifts the burden of tax compliance, and thereby increases tax compliance costs. Furthermore it permits the introduction of stringent and complex tax compliance rules which must be operated by business, but which might never have been contemplated if the day to day application of those rules remained the responsibility of Revenue.

We would strongly urge that a review of tax compliance costs to business be undertaken, perhaps along similar lines to that recently conducted in the United Kingdom. Without prejudice to the actual outcome of such a study, it could well provide further evidence of the benefits of:

- More streamlined tax compliance procedures better integrated with requirements from other Regulators,
- The abolition of defunct compliance procedures – for example it makes no sense to be obliged to provide Revenue with sufficient details to compute a tax liability, when, under Self Assessment, the onus for computing the liability falls to the taxpayer,
- The introduction of standard designated effective dates for new regulations, rather than the multitude of effective dates which now prevail – the 2006 Finance Act has seven different effective dates for different provisions, not to mention those provisions which are subject to Ministerial Order,
- The carrying out of Regulatory Impact Assessments on proposed future changes to tax law.

The tax committee of the Consultative Committee of Accountancy Bodies, which we chair, has prepared in recent weeks a discussion paper, "Revenue Customer Service". This sets out a series of recommendations for the reduction in service delivery difficulties which are currently being experienced by businesses in their dealings with the Revenue Commissioners. That discussion paper is included with this submission. Failures and deficiencies in the service provided by the Revenue Commissioners are the main drivers of high compliance costs.

Extension of the requirement to conduct Regulatory Impact Analysis to all regulatory bodies

ICAI supports Government's Regulatory Impact Analysis ('RIA') initiative and welcomes its extension to all government departments and offices following the initial piloting of the process. We believe it is important however that the RIA regime extends to all regulatory bodies so that all potential new regulation in Ireland is subject to a systematic and thorough examination in terms of understanding the burden it is likely to place on business.

Concluding remarks

The Institute of Chartered Accountants in Ireland welcomes the initiative of the Minister in establishing the Business Regulation Forum to examine and review the current regulatory environment for conducting business in Ireland. The increased competition on a global basis for attracting foreign investment means that it is imperative that we provide a framework that facilitates the development of indigenous business and does not inhibit foreign investors from establishing their businesses in Ireland and making a sustained contribution to the wealth of the country.

We hope you find our comments useful and would be pleased to provide you with any further information you require on any of the issues raised. Please do not hesitate and contact Aidan Lambe, Director, Representation and Technical Policy at ICAI at (01) 6377307 in that regard.

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ICAI Discussion Paper – Blow the whistle, who, why, when and where?, May 2005
CCAB-I Anti-Money Laundering Briefing Paper, August 2003
CCAB-I Discussion Paper – Revenue Customer Service, April 2006