

Michael Noonan, TD
Minister for Finance
Department of Finance
Merrion Street
Dublin 2

06 October, 2015

Submission on the removal of VAT on Personal Insolvency Practitioners' fees

Dear Minister,

Please find attached our pre-budget submission on the removal of VAT on Personal Insolvency Practitioners' fees.

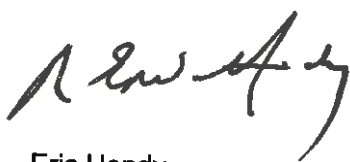
The Association of Personal Insolvency Practitioners (APIP) was formed in 2013 and is the largest representative body of Personal Insolvency Practitioners in Ireland, with 81 members.

It is a key stakeholder in the implementation of the Personal Insolvency Act 2012 and regularly engages with the Government and the Insolvency Service of Ireland in relation to the performance and implementation of Ireland's personal insolvency laws.

APIP is a voluntary organisation and is governed by its members and an elected Management Committee.

Should you have any queries or require anything further please let me know.

Yours faithfully,



Eric Hendy

Chairman of the Association of Personal Insolvency Practitioners

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial
The Steeple Buildings
High Street, Trim, Co. Meath

T 046 943 8461
E Fiona@aco.ie

06 October, 2015

Submission from the Association of Personal Insolvency Practitioners for the removal from Value Added Taxes ('VAT') on Personal Insolvency Practitioners' ('PIPs') fees

The Association of Personal Insolvency Commissioners submits that the current classification of VAT for purposes of PIPS fees is incorrect and that the fees charged should be classified as Exempt from VAT.

Under the Revenue Commissioners Operational Manual the Rate of VAT on fees to be charged by PIPs on their fees is 23%.

The charge to VAT on these services is having the following effects:

- 1 Reduced dividends to the persons owed money (the creditors) by the insolvent person (the debtor)
- 2 The Revenue Commissioners in their role as tax collectors for the state are acting contrary to the aspirations the Personal Insolvency Act 2012 is based on, i.e. to return the debtor to solvency, where they can become a contributor to society again.
- 3 The VAT increases the perceived cost and acts as a deterrent to the individual entering the Personal Insolvency Process.
- 4 Informal Debt Negotiation has in a recent Appeals case been found by the Appeals Commissioner to be a VAT exempt activity. This will make negotiation of a particular debt to be cheaper leaving no solution to the other debts. The debtor and creditors under the informal route both lack the Court protections provided by the Personal Insolvency Act.

The reason used by the Revenue Commissioners that VAT should be charged on PIPs fees are based on the premise that PIPs are acting in roles akin to that of liquidators and receivers.

In practice the role of the PIP has not been such.

In the two years following the establishment of the Personal Insolvency Service, PIPs have not taken in charge land or buildings of Debtors with such assets being either voluntarily surrendered or voluntarily sold by the Debtors on behalf of the creditors and not the PIP.

In the UK, the decision from the First Tier VAT Tribunal found that Individual Voluntary Arrangements (IVA's) should be Exempt from VAT. The IVA system in the UK is closely aligned to the Irish Personal Insolvency System.

In Ireland in the recent Money Village Appeal Case, Debt Management Services were found to be exempt services thereby removing a further taxation burden from the already distressed debtor. In coming to his decision on this case the Appeals Commissioner drew on case law in both Europe and the UK, where debt management industry has long been established and in both jurisdictions, debt management and related services are zero rated for VAT.

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial
The Steeple Buildings
High Street, Trim, Co. Meath

T 046 943 8461

E Fiona@aco.ie

Under two of the current Personal Insolvency Plans, at the commencement of a plan, in a Debt Settlement Arrangement or a Personal Insolvency Arrangement, the write down of debt is agreed by the creditors and debtor. Once the plan commences, it is from the payments made by the debtor that distributions (or payments) to creditors are made. These payments also pay the PIP's fees.

The collection of funds from the debtor by the PIP and the distribution of the same is as clearly defined under Part 2 of Schedule 1 to the Value Added Tax Consolidation Act 2010.

During the lifetime of the Personal Insolvency Plan, the role of the PIP is to ensure that funds are collected from the Debtor and distributed. In the event of default or delays, the PIP has to negotiate on behalf of the Creditors to ensure that the plan completes successfully. If not the case the PIP has to advise the Creditors of the problems that have arisen and to deem the plan terminated.

In a liquidation situation there is no negotiating involved as the business has ceased. A clear indication to how different these roles are. They should not be classed the same in relation to the VAT guidelines.

In most cases the distributions to unsecured creditors are quite low resulting in some creditors not engaging in the process. The lack of engagement by creditors could nullify the recent changes to the Personal Insolvency Act. Should the VAT on PIP fees be removed, the increased dividend to the unsecured creditors would lead to an increase in engagement by unsecured creditors.

Creditors acting positively and rationally in this process is a necessity for the Insolvency System to work effectively and productively. The large amount of repossessions cases listed in our circuit courts presently is a guide to how necessary this system is to the debtors of Ireland.

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial
The Steeple Buildings
High Street, Trim, Co. Meath

T 046 943 8461

E Fiona@aco.ie

Appendix

Extract from
Value-Added Tax Consolidation Act
2010
Schedule 1

EXEMPT ACTIVITIES

PART 2
OTHER EXEMPTED ACTIVITIES

Financial services.

6(1) Financial services that consist of any of the following:

(a) ...

(b) ...

(c) Operating a current, deposit or savings account, and negotiating or dealing in payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collecting and factoring;

(d)

(e) Giving and negotiating credit, and managing credit by the giver of the credit;

(f) Giving, or dealing in, credit guarantees or any other securities for money, and managing credit guarantees by the giver of the credit;.....

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial
The Steeple Buildings
High Street, Trim, Co. Meath

T 046 943 8461

E Fiona@aco.ie

Appendix

VAT: Tribunal decision in Paymex Limited v HMRC

In recent discussions the insolvency profession has drawn HM Revenue and Customs (HMRC) attention to an internal VAT Finance guidance relating to voluntary arrangements contained in [VATFIN3260](#) which states that

'Where the insured person (IP) acts only as the supervisor and has not previously acted as a Nominee then these supplies will be taxable at the standard rate.'

Insolvency practitioners have asked HMRC to clarify this advice in light of the VAT tribunal decision in the case of Paymex Limited and the subsequent HMRC briefs published in response to the Paymex ruling, the content of which were agreed with the insolvency profession.

[Revenue and Customs Brief 27/11](#), issued in July 2011, contained the following paragraph under the heading 'Tribunal Decision'

"The tribunal decided that the services of an IP, including both the nominee and supervisory stages, constitute a single exempt supply for VAT purposes. The tribunal went on to decide that the two core elements were negotiation of debts and transactions concerning payments. Since it had found both core elements to be exempt, it was not necessary for the tribunal to determine which of the supplies were dominant. However it stated that if it had been necessary for it to do so it would have found negotiation to be the 'core' supply."

For the services of an IP to be covered by the Paymex ruling therefore, those services must constitute a single supply for VAT purposes including both the nominee and supervisory stages. Whilst there is no dispute that the nominee element of the supply is exempt for VAT purposes, HMRC does not accept that the supervisory stage, when provided alone, can always be deemed as exempt. The tribunal chairman did not specifically address this point as part of the Paymex ruling.

However, it should also be pointed out that the supply for VAT purposes in a voluntary arrangement is made by the IP firm, albeit through an individual IP. It is HMRC's view, therefore, that where an IP firm provides the services of a supervisor in a voluntary arrangement and no-one from that firm has previously acted as nominee in that particular voluntary arrangement then the supplies made by the supervisor remain taxable at the standard rate. HMRC regrets any confusion that may have arisen in the insolvency profession if this point was not made sufficiently clear in our previous correspondence.

Applying these principles to the following common situations, the VAT treatment will be:

- If the nominee and supervisor are in the same firm
- then their services to the debtor would comprise a single exempt supply

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial

The Steeple Buildings

High Street, Trim, Co. Meath

T 046 943 8461

E Fiona@aco.ie

- where a supervisor from a different firm is appointed either at the creditors meeting or subsequently as a successor IP
 - the supervisor's fees will be standard rated
- where a new firm acquires a portfolio of cases and a new supervisor is appointed
 - the supervisor's fees will be standard rated
- where a new firm acquires a portfolio of cases but the supervisor moves across with the cases so remains in office
 - the supervisor's fees will be standard rated
- the only exception would be if an IP can demonstrate that the core part of their service as supervisor is debt negotiation, in which case HMRC would consider exemption. However as this is usually not the prime purpose of the supervisor or the main role that a supervisor undertakes this situation is unlikely to arise in practice

Company voluntary arrangements (CVAs)

Stand-alone CVAs

Applying the principles of the Paymex decision, where an IP from the same firm acts as both nominee and supervisor so that his services constitute a single supply for VAT purposes and the core activity at the nominee stage consists of debt negotiation, then the supply will be exempt.

Where the administrator acts as nominee

If the CVA is part of an exit route from administration then it is unlikely that the administrator's activities prior to the beginning of the CVA would consist primarily of debt negotiation. The supervisor's fees would therefore be standard rated.

Conclusion

Generally, the VAT treatment will depend on the circumstances of the individual case measured against the above criteria, but much will always depend on the nature and characteristics of the services provided. IPs who are uncertain about the correct VAT treatment of their fees in voluntary arrangement cases should either speak to the specific caseworker or contact the VAT Helpline on Telephone: 0845 010 900 to obtain advice.

Issued 8 July 2013

Chairperson:

Eric Hendy B Comm FCA AITI CTA Dip in Insolvency QFA PIP

Committee:

Tara Cheevers FCPA AITI PIP

Mitchell O'Brien BA FS Dip.Lbc Cert.PM PIP

Alan McGee BA LLB Solicitor Dip in Insolvency PIP

John EV Kenny FCA MCIArb MAE PIP

c/o ACO Financial
The Steeple Buildings
High Street, Trim, Co. Meath

T 046 943 8461

E Fiona@aco.ie