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# Food for thought

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# Directors' compliance statement

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In an effort to promote improved corporate governance from the top down, the Companies Act 2014 (the Act) introduced additional requirements for directors to formally acknowledge their roles and responsibilities as regards the compliance of the company to its relevant obligations (taxation and company law obligations).

A Directors' Compliance Statement is now required to be included in the annual Directors' Report, accompanying the company's financial statements.

All public liability companies and large private companies (i.e. balance sheet > €12.5 million and turnover > €25 million) are required to produce a Statement. Unlimited companies and investment companies are not affected by these requirements regardless of size.

### Requirements

The compliance statement in the directors' report must contain the following:

- a statement acknowledging that the directors are aware that it is their responsibility to ensure that the company fulfils its relevant obligations (tax and company law), and
- confirmation that the following three things have been done by the company:
  - established a compliance policy statement setting out the company's policies designed to secure material compliance with its relevant obligations
  - implemented arrangements and/or structures that, in the opinion of the directors, provide "a reasonable assurance of compliance in all material respects", and
  - co-ordinate annual reviews of those arrangements and/or structures to ensure their relevance and accuracy.

### Comply or explain

If these three requirements have not been satisfied, the Act has introduced a 'comply or explain' mechanism allowing directors explain why a particular requirement has not been satisfied (eg, why a policy statement has not been drawn up or a review has not taken place during the financial year).

### Timing

This new obligation applies to financial statements with accounting periods commencing on or after 1 June 2015.

# Sugar tax

The Irish Government recently held a consultation process ahead of the proposed introduction of a Sugar-Sweetened Drinks (SSD) tax in April 2018.

In the age of the health conscious consumer and expenditure on health and nutrition supplements growing at unprecedented rates, incidences of obesity in Ireland have doubled in the last 20 years.

Research carried out in the UK suggests that obesity costs the UK economy in excess of €20 billion per year, when lost productivity and sick days are taken into account. Such worrying statistics present challenges which require societal responses.

Should the government proceed to introduce a SSD tax? It is likely that any such tax will be volumetric applying to water based and juice based pre-packaged drinks with an added sugar content in excess of 5 grams/100ml. Diet drinks, sports drinks and energy drinks with added sugar of less than 5 grams/100ml, pure fruit juices and dairy based drinks are expected to be excluded.

A resounding theme arising out of the consultation process was the necessity that any SSD tax introduced in Ireland mirrors the Soft Drinks Industry Levy proposed to be introduced in the UK in 2018 to avoid a market distortion.

The proposed tax forms one key part of the Government's comprehensive action plan "A Healthy Weight for Ireland" however, critics suggest that the benefits derived from similar taxes are more theoretical than supported by real world evidence.

Demand for soft drinks is inelastic and the reductions in consumption ensuing from drinks in other countries has been somewhat trivial as illustrated in the following table.

| | Price | Consumption |
|---|---|---|
| **Finland** | ↑ 7.3% | ↓ 3.1% |
| **Mexico** | ↑ 10% | ↓ 6% |

Source: Institute of Economic Affairs

### Challenges but also opportunities

The proposed SSD tax poses both a challenge and an opportunity to companies operating in the drinks industry. Opportunities should arise to develop new products and amend recipes of existing products to bring added sugar levels below the prescribed limits. Such opportunities can often become a challenge as companies must invest in developing products which have yet to generate any return.

There are a number of tax reliefs and incentives potentially available to companies undertaking agri-food Research and Development (R&D) to reduce profits assessable to tax, thereby releasing much needed cash flow. Such reliefs include the R&D tax credit regime, Knowledge Development Box incentive and general and specified intangible assets capital allowances.

In the event that the proposed tax is introduced consumers may substitute well established brands for cheaper private label drinks or manufacturers may choose to bear the cost of the tax rather than hike the consumer price.

### Changes to R&D tax credit regime

In an effort to assist micro and small enterprises, Revenue announced in February 2017 that they would not challenge the science test where a prescribed project is undertaken, a R&D grant is received for the project from Enterprise Ireland or the IDA and the total R&D tax credit claimed for an accounting period (of not less than 12 months) is €50,000 or less.

# Foreign based employees

Revised guidelines which will have a major impact on the tax treatment of foreign employees temporarily working in Ireland.

Revised guidelines issued by Revenue will have a major impact on the tax treatment of foreign employees temporarily working in Ireland. Under the new guidelines, foreign companies may now be obliged to operate Irish PAYE where their employees work more than 30 days per annum in Ireland.

The revised guidelines adapt the "economic-employer" approach (i.e. who obtains the benefits and bears the risks in relation to the work undertaken by the employee) and will limit the circumstances in which employers can claim an exemption from the obligation to operate PAYE in Ireland, for foreign based employees working in Ireland for less than 60 days in a calendar year.

Additionally, the circumstances in which an employer is removed from the obligation to operate withholding taxes on remuneration to individuals who spend more than 60 workings days in Ireland but less than 183 days may be limited under the new guidelines.

It is anticipated that the revised guidance could give rise to cases of withholding tax obligations in two jurisdictions, which would then require resolution under the relevant double tax treaty. This would most likely result in additional administration requirements for employers.

# Agricultural co-operatives and VAT

## The VAT treatment applicable to the operation of agricultural co-operatives has been the subject of much debate.

Agricultural co-operatives are generally formed to provide stability to the particular market they serve, managing supply and production costs while also seeking to achieve sustainable margins for its members, the food/livestock producers. In addition to receiving a membership levy, co-operatives can provide various goods and/or services directly to the food producers while also incurring third party costs in carrying out their function.

For VAT purposes identifying what services or goods that the co-operatives actually supply to its customers and whether not those supplies attract VAT at a positive rate is an area requiring particular consideration and should be reviewed continually. Revenue have expressed an interest in recent cases particularly in respect to farmers, who are not registered for VAT but avail of the flat rate farmers addition.

While co-operatives should firstly look at the contractual relationship between the parties and what in fact is being supplied, they should also be aware of situations where they may be acting as an "undisclosed agent" for VAT purposes. This term in the world of VAT refers to cases where a person acts in his own name but by order and for the account of the principal. This person is "undisclosed" in that the customer believes that he is dealing with a principal rather than a person who is in effect an intermediary. From a VAT perspective the sale of goods by an undisclosed intermediary is treated as a simultaneous supply to and by the undisclosed intermediary.

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