Public Bill Committee

CORPORATION TAX (NORTHERN IRELAND)

WRITTEN EVIDENCE

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON—THE STATIONERY OFFICE LIMITED

PBC (Bill 149) 2014–2015

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I refer to the call for written evidence to the Commons Public Bill Committee which was issued on 29 January 2015 in relation to the Corporation Tax (Northern Ireland) Bill and make submission to same.

1. Introduction

I am the Head of Tax at KPMG in Belfast and am the spokesperson for Grow NI, which is the umbrella grouping representing almost all of the major business organisations in Northern Ireland. The main objective of Grow NI has been to call for the introduction of corporation tax rate varying powers to the Northern Ireland Assembly so as to facilitate the rebalancing of the Northern Ireland economy.

2. Summary

I would make the following key points with respect to the current bill:

(i) The key policy objectives as stated by HM Treasury and HM Revenue & Customs are to incentivise investment in Northern Ireland, minimise the compliance burden on companies, reduce the costs for the Northern Ireland Executive and to comply with the EU legal requirements. I believe that all of these objectives have been successfully met and I would commend HM Treasury and HM Revenue & Customs for their work in this area.

(ii) The proposed "Northern Ireland rate" will only apply to trading profits generated by a "Northern Ireland company" and will not apply to non-trading income or profits. This will provide the requisite incentive to companies operating in Northern Ireland to engage in activities most likely to generate additional employment in Northern Ireland. The legislation is therefore appropriately targeted.

(iii) The creation of a separate regime for SMEs will provide the necessary simplification for small and medium sized companies to benefit from the Northern Ireland rate whilst not having to incur significant additional compliance costs. However, consideration should be given to whether an SME could in certain specific circumstances be granted the ability to elect into the Northern Ireland Regional Establishment Regime.

(iv) The Northern Ireland Regional Establishment rules are consistent with the existing UK tax framework for permanent establishments and have been designed so as to give access to the Northern Ireland regime in respect of activity carried on in Northern Ireland by large companies and groups. The additional compliance requirements are at a level which most large groups are currently equipped to deal with.

(v) The exclusion of trades consisting of lending activity, relevant regulated activity and insurance activity will remove most of the financial services industry from the regime. Whilst this will clearly limit the scope of the regime, it should prevent undue exploitation from this highly mobile sector. The carving out of back office activities of financial service companies from excluded trades is welcome but the complexity involved in defining a back office activity may result in financial service companies with back office activities transferring out such activities into separate Northern Ireland companies.

(vi) There is inevitable complexity in relation to certain aspects of the legislation interfacing with the existing UK Corporation Taxes Act. This is especially the case with respect to intangible assets. However, this is an inevitable consequence of potentially having two different corporation tax rates in the United Kingdom and the additional complexity must be weighed against the ability to artificially exploit a tax rate arbitrage.

3. Specific comments

(i) *Section 357KE* – the definition of "Northern Ireland Workforce conditions" requires that 75% or more of working time that is spent in the United Kingdom is spent in Northern Ireland. I understand that HMRC has carried out statistical research to indicate that most indigenous Northern Ireland companies should fulfil this condition. However there are companies who have a mobile workforce and who occasionally will fail this condition. An example would be companies in the construction sector where occasionally contracts would require a significant proportion of their workforce to work temporarily in Great Britain. It would not be possible to circumvent this problem by creating a GB subsidiary company if the workforce was fluctuating between GB and Northern Ireland. In such circumstances, there would be merit in enabling such an SME to elect into the Northern Ireland Regional Establishment regime so that at least the Northern Ireland element of its profits would qualify for the NI rate rather than all of its profits falling outside the NI rate. Whilst the default position would be that all SMEs fell into the SME regime, such companies would have the option to elect to transfer into the NIRE regime. If a SME company elected into the NIRE regime then it would be choosing to incur the additional compliance costs associated with being within the NIRE regime. To safeguard against any abusive

behaviour, a lower threshold such as 50% of employees being based in Northern Ireland would be required in order for an SME to be entitled to elect into the NIRE regime.

(ii) *Section 375XI* – I note that the Treasury is to be given powers to make regulations to make provision about the meaning of back office activities for the purposes of this part. Given the difficulty in defining back office activity, it would be more appropriate for HMRC to provide detailed guidance on this matter as soon as possible. It is not good policy to specifically not define something initially but indicate that it could be defined in the future by means of regulation.

February 2015

Written evidence submitted by ACCA (CT 02)

About ACCA

ACCA is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people around the world who seek a rewarding career in accountancy, finance and management.

ACCA has 170,000 members and 436,000 students in 180 countries, with 69,000 members and 80,000 students in the UK, and works to help them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 91 offices and centres and more than 8,000 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

The expertise of our senior members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility.

Comments on the Corporation Tax (Northern Ireland) Bill

1. ACCA has considered the Bill from a technical and practical perspective, taking into account in particular the likely impact on our members and their clients in Northern Ireland and the rest of the UK. While we do not seek to comment on the wider political aspects of the Bill, it is inevitable that we consider the wider legislative context within which the Bill must sit, including the interaction with European legislation and specifically the State Aid provisions.

2. In order for the Bill to achieve its intention of enabling a differential tax rate to apply to profits chargeable to UK income tax which arise in Northern Ireland it must provide for identification of those profits. In order to comply with EU rules, the rate must apply in non-discriminatory fashion. The interaction of those rules will mean that even if the NI rate remains the same as the rUK rate, large businesses will be required to identify the split between the two regions.

3. The measure will inevitably add to the costs of business administration for those affected. Such costs will affect profitability, and it is therefore of course vital to the success of the measure that the benefit outweighs the costs.

4. Take the example of a large business operating with comparatively low margin activities in Northern Ireland. The quantum of tax payable on the small amount of profit arising will be low. The benefit of the differential rate may very well be more than offset by the cost of complying with the regulations. The business may respond by attempting to increase the profitability of the NIRE, or if it is already confident that it is operating at maximum efficiency in NI it may simply decide that the effect of the additional administrative burden is to render the operation unprofitable.

5. The administration of capital allowance pools may prove complicated for certain sectors. NI construction companies may well find it more attractive to take contracts in the Republic of Ireland than elsewhere in the UK, as any item of plant which is used in both NI and rUK will in theory need to be "depooled" and tracked individually. Larger businesses, and contracts, may well operate through separate corporate bodies for each project, which may simplify matters to some extent.

6. The creation of separate corporate bodies for each contract is already a feature of the UK construction industry. We note that proposals currently before the European Parliament for the creation of the SUP single member company would provide a simple model for businesses elsewhere in Europe, or indeed investing into Europe from elsewhere, to set up separate trading companies as appropriate.

7. The potential difficulties around capital allowance pools are mitigated by the lack of land border between NI and rUK. Comparatively few businesses operate across the Irish Sea, although courier, haulage and transportation firms which operate sea or air transport between the two parts of the UK tax territory will need to assess the position of vehicles used on both sides of the water.

8. The mechanism for carving out "back office" functions of otherwise excluded reinsurance etc operations and bringing them within the NI rate is simple enough in concept, although it will doubtless pose practical difficulties, especially in defining "back office" as distinct from front or middle office function. That having

been said, it seems likely that comparatively few businesses will be affected, and for those who are, the carving out of back office into a separate legal entity would in any event bypass the need for the election.

9. The SME regime, including the "stickiness" rule to prevent companies alternating in or out of the regime on an annual basis, follows recognised models for establishing size and applying the appropriate regime. While not every SME will have in-house experience of the existing rules, we would expect those affected to be taking appropriate professional advice. A qualified chartered accountant would be able to assist with compliance.

10. We note that the rules for apportioning loss relief are predicated on the NI rate being lower than the rUK rate, but not higher. While this may be a practical likelihood (or even certainty), such asymmetric drafting does beg the question what would happen if the position were to be reversed. More significantly, in the event of further corporation tax devolution, there may well be a situation in which losses may need to be apportioned to regimes with both higher and lower rates. While the Bill clauses will in all likelihood function effectively for the foreseeable future, subsequent further devolution of corporation tax rate setting powers could require a revisit.

11. Overall, the problems posed by the Bill look set to be those of practical administration rather than difficulties with the principles set out in the clauses. Perhaps the most significant of these will be the requirement for all large businesses with both NIRE and rUK taxable operations to maintain two sets of records for tax purposes (and tax purposes alone), a burden which will be regarded as particularly onerous if the NIA does not in fact set a different rate.

February 2015