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Bealtaine 2012

Houses of the Oireachtas

Committee of Public Accounts

Report on VAT Costs on the National Aquatic Centre

May 2012

31/CPAS/003

Chairman's Preface

I welcome the publication today of the PAC Report on the charging of VAT on the National Aquatic Centre.

The Report, while dealing with a narrow issue about whether VAT could be charged on a lease, raises issues that have broader relevance for State bodies who become involved in litigation. The State should only get involved in litigation where a successful outcome is necessary to either prevent the State from being exposed to unnecessary costs or where it confers a significant benefit on the State.

If we take the case taken by CSID, which went all the ways to the Supreme Court, the rationale that I have outlined above simply did not apply. Even if the case was won, the exchequer would have derived no net benefit.

A second lesson arising from the handling of this case is that there should be an onus on the State not to withhold information simply because it damages its case. It is the case that CSID withheld a report from the States valuer (the Valuation Office) from a party that it wanted to levy a VAT charge of €10 million and this prolonged a case that incurred ongoing legal costs as it would its way to the Supreme Court.

A third point to that arises from this Report relates to the extent to which advisors and consultants do the job they are paid to do. In this case CSID relied on highly paid VAT advisors whose analysis of the application of VAT relied on guidelines produced by Revenue instead of undertaking a comprehensive analysis based on VAT law. I question whether these advisors provided value for money.

Finally, the performance of Revenue in this case raises awkward questions for it and it should review its handling of this case.

This legal action was taken against the correct and common sense advice of the offices of both the Attorney General and the Comptroller and Auditor General, and a number of opportunities to bring the dispute to an end were wasted. What I find most disheartening is that there appears to be no acknowledgement that mistakes were made right through the handling of this case.

In recommending this Report to the Dáil, I draw the conclusion that this case should have never been pursued by CSID/NSCDA on behalf of the State.

John Mc Guinness TD

Chairman of the Committee

11th May 2012

VAT Costs on the National Aquatic Centre

Introduction

The background to this issue is that following the development of the National Aquatic Centre [NAC] in Abbotstown in 2002, Campus Stadium Ireland Development Company Limited (CSID) sought to charge VAT of €10.25 million on the capitalised value of the 30 year lease of the NAC to the operator of the lease, Dublin WaterWorld Limited [DWW]. The operator disputed the charge and ultimately the matter was the subject of both court and arbitration proceedings until, in 2010, the Supreme Court ruled that the lease was not subject to VAT. Ultimately had the Supreme Court found that the lease was liable for VAT, it would have conferred no net benefit to the exchequer once DWW was a taxable person entitled to full recovery on its inputs. The issue was the subject of two Committee meetings on 10th November, 2011 and 16th February, 2012 and the debates of these meeting are on the Committee website at http://debates.oireachtas.ie/committees/. The legal strategy pursued by CSID raises a number of broader issues including the fact that Revenue guidelines on VAT were found to be incorrect by the Supreme Court. Ultimately the issue from a public accountability perspective is whether a Department or a State company should be litigating where no net benefit can be derived for the State from a successful outcome.

Accountability issues

The accountability issues examined by the Committee were:-

- The VAT strategy
- The legal strategy employed in re the VAT
- The role of the Attorney General's Office
- The role played by the Department of Finance
- The reliance on guidelines issued by the Revenue Commissioners

VAT Strategy

The NAC was part of the proposed National Sports Campus to be developed in Abbotstown in County Dublin. CSID came under pressure to have the NAC completed in time for the Special Olympics in the summer of 2003 and a lease was signed with DWW in April 2003. The NAC was constructed at a cost of €74 million which includes VAT on construction of just under €10 million. CSID sought to levy VAT on the 30 year lease it signed with DWW and in so doing CSID would have been able recover the VAT on construction. As VAT was to be charged to DWW on entering the lease, the VAT costs were not added to the asset cost of the NAC as recorded in the balance sheet of CSID. In all the projections about the cost of developing the facilities on the Campus, it was always the intent that VAT would be recouped and indeed, when the project started out in 2000, the law was clear that the VAT on the construction costs could be recouped as the VAT charge could be borne on the lease. However VAT law changed in Finance Act 2002 which meant that only economical leases could result in the recoupment of VAT paid on construction costs.

The charging of VAT is a complex process and to that end Revenue issue guidelines for their inspectors and these are often used by tax payers to ensure compliance with taxation rules. At its simplest level, in order to be able to charge VAT, the capitalised value of the lease, as calculated by a competent valuer, must be greater than the development cost. This is generally known as the economic value test [EVT]. In this case CSID used the Valuation Office which

calculated the NAC as having an open market value of €35 million and an unencumbered rent of €3.376 million per annum. The problem for CSID was that this calculation of the open market value meant that the NAC had failed the economic value test. The law on the EVT was clear in November 2002 as it had been changed through the introduction of anti-tax avoidance measure that was designed to protect the VAT received on the construction of facilities where this was projected to be greater than the VAT that would arise on a thirty year lease. At that stage there should have been a reassessment of the VAT strategy by the Department and CSID, but instead, because Revenue guidelines had not taken full account of the change in 2002 anti-avoidance measures, CSID were able to use the unencumbered rent formula to get a capitalised value on the lease which meant that the VAT charge could be passed on to Dublin WaterWorld. Revenue were also contacted by the VAT advisors to CSID regarding the VAT issue and, using its guidelines, it gave the go ahead for CSID to use this unencumbered rent formula. So in effect, had the VAT liability not been contested, Revenue appear to have been prepared to go along with a VAT proposal that would have seen it repay €10 million that it had collected even though unsure that it could subsequently recoup a similar amount on the lease. As we know now, the NAC is uneconomical and what would have happened is exactly what the Finance Act 2002 tried to prevent. Revenue, notwithstanding its own guidelines and notwithstanding the fact that the potential repayment would have gone back to the State via CSID, appear to have been careless in the way it was prepared to go along with the potential of a loss of its tax take. To be clear, Revenue got the Valuation Office report which showed an open market value of €35million which should have led them to question the economic return it would have received if it was forced to repay the VAT construction costs. If ever there was a test case for the new anti-avoidance provisions, surely this NAC case was it and yet this did not appear to register with Revenue. It should have given no comfort to CSID in 2003 as to how the VAT strategy would play out and that would put an end to the whole issue. It is a pity it did not have the foresight to do just that. It is also the Committee's view that Revenue can be thankful for the intervention of the Supreme Court in 2010, as the scenario that appeared likely to develop, had this issue been settled before the Supreme Court ruling, would ultimately have led to Revenue being unable to recoup the VAT that would have been reclaimed on the construction costs and to that end it would have been negligent in protecting the tax take.

The Committee was told that CSID had used the Revenue guidelines in order to pursue its strategy and that, as such, the strategy had passed both arbitration and a High Court tests. The Supreme Court ultimately found the Revenue guidelines to be defective; however significant cognisance appears not to have been given to the weakness in the CSID VAT strategy once the matter was to be contested by way of litigation. The reliance placed on Revenue guidelines is dealt with later in the chapter. The evidence available to the Committee suggests that, once the charged was raised, CSID pursued the issue initially on the basis that, as there would be no cost to DWW which could reclaim the VAT, CSID saw no reason why this matter could not be settled by agreement given the fact that DWW could reclaim the VAT. It was also the case that, in 2004, CSID had agreed to drop the issue having regard to both a management letter received from the office of the Comptroller and Auditor General and also an unsupportive assessment of its position from the office of the Attorney General *(see the next paragraph where this issue is dealt with under the legal strategy)*. Therefore in late 2004 the Department of Arts, Sports and Tourism in full knowledge that the whole VAT issue involved a circular transfer of money where in effect the status quo would have seen the State not financially disadvantaged, accepted that it had to take the VAT costs on its accounts. The Department of Arts, Sports and Tourism had an opportunity at that stage to take control of the situation and yet it allowed the issue to develop into an on-going dispute between CSID and

DWW which ended up in the Supreme Court in 2010. The performance of the Department in allowing this issue to develop, especially after the High Court decision of 2005, was poor to say the least. It took no steps to get a detailed opinion from the Department of Finance and it set aside sound advice received both from the C&AG and the Attorney General. That advice was key to dealing with this issue and yet, for reasons that are not accepted by the Committee, it was ignored and for that the Department of Arts, Sports and Tourism must bear the main responsibility.

Legal Strategy

As mentioned above, in 2004 the office of the C&AG, in a management letter arising from the audit of the accounts of the CSID, raised the fact that costs were being incurred in pursuit of the VAT even though the exchequer would ultimately derive no benefit from this. The office of the Attorney General agreed with the common sense view of the C&AG and ultimately the Board of the CSID decided not to pursue the issue.

The decision to seek again the recovery of VAT was subsequently revised as it became part of a set of claims by CSID against DWW that sought forfeiture its lease on the NAC. The VAT issue resurfaced as it added to the list of breaches of the lease and ultimately strengthened the hand of CSID in its case against DWW. It was also included as a legal tactic in trying to ensure that the case would be heard by the Commercial Court where the case would progress quicker. The legal advisors to CSID also were of the opinion that this VAT element of the overall claim for forfeiture was likely to be referred to arbitration and this is what happened when the matter came before the Commercial Court. The concern of the Committee is that considerably time and public monies have been invested in pursuit of a legal strategy that would ultimately have given no benefit to the State. While the Committee accepts that the inclusion of the VAT issue was part of a legal strategy that ultimately resulted in DWW relinquishing the lease on the NAC, it has made a finding that once this had been achieved (arising from the Court decision in 2005) that the question of the pursuit of the VAT should have been subject of a formal review when the initial judgement of both the C&AG and the office of the Attorney General would have come into consideration. Had this happened, the issue could have been dealt with satisfactorily and at a minimal cost to the State.

The reasons given to the Committee as to why the legal strategy did not change, were that

(i) The earlier advice from the office of the AG had been superseded by subsequent advice which was to the effect that the issue be pursued.
(ii) The Department of Finance, having been consulted on the issue and having consulted Revenue, had directed that as a VAT charge had been raised that CSID had no option but to pursue it.

The Advice of the Attorney General's Office

The following evidence was submitted to the Committee in respect of the role of the office of the Attorney General

(i) Letter dated 17th November 2004 in which the advice was to use common sense and discontinue the pursuit of the VAT issue
(ii) Letter dated 20 December 2004 where the VAT issue was raised in the context of the overall claim being pursued by CSID for breaches of covenant on the lease

(iii) Input by way of track changes to a Departmental letter dated 23 February 2005 to CSID in which it recommended getting further legal advice on including the VAT issue on the claim against Dublin WaterWorld.

(iv) Letter dated 2 February 2010 which deals with issues raised by Dublin WaterWorld and which was issued before the Supreme Court judgement.

Arising from the letter of 17th November, 2004, CSID, having consulted the Department, agreed not to pursue the VAT issue further. The VAT issue came back into the frame in December 2004 when it was decided to take legal action against Dublin WaterWorld for failure to comply with the terms of the lease. In preparing the overall case for Court, the legal advice from the office of the Attorney General was to check whether the VAT issue could be attached to the claim with CSIDs legal advisors and it was decided by CSID subsequently to attach the VAT issue to the statement of claim because it was another breach of the lease. The Committee accepts that in December 2004 and in 2005 stance of the office of the Attorney General changed from advising non pursuit to the issue of strengthening the case of CSID in its bid to secure forfeiture. What the Committee find surprising is that, following on from the Court decision which led to forfeiture of the lease by DWW, that there was no reappraisal of the legal strategy. The Office of the Attorney General was not consulted when the VAT issue became a stand-alone issue as the Court in dealing with the substantive issues relating to the lease in 2005 referred the issue of the VAT to arbitration. The Committee is of the view that an opportunity was available to the Department of Arts, Sports and Tourism and CSID to deal with the VAT issue in 2005, in accordance with the advice of both the C&AG and the November 2004 advice office of the Attorney General and that further legal costs would have been avoided and time and energy on the part of all parties to the on-going litigation need not have been diverted to this issue had this course of action been taken. Such a move would have provided the best economic value to the taxpayer having regard to the inherent risk that always attaches to litigation. The Department did not exercise is authority as the *de facto* only shareholder of CSID to call a halt to needless litigation and it could have done this if it applied the common sense approach advocated by the C&AG and supported by the Attorney General. Ultimately, the Department failed to exercise the authority it had in order to sort out the VAT issue to the satisfaction of all parties.

The role of the Department of Finance

The Committee was informed by the Accounting Officer that the Department of Finance had given an instruction that the VAT issue had to be pursued in 2005. The documentation supporting this contention is an internal memo in the Department of Arts Sports and Tourism dated 11th February 2005 which states " …*Department of Finance has indicated orally that it could not consent to abandoning the attempt to recover the VAT because of existing legislation*". It appears that the Department of Arts Sports and Tourism did not, subsequent to the High Court decision which resulted in forfeiture of the lease, refer the VAT issue back to the Department of Finance for a considered opinion and instead relied on the stated oral stance taken in February 2005 as a basis for allowing this matter incur a large legal bill as it wound its way eventually to the Supreme Court in 2010.

What the Committee find more concerning about the stance of the Department of Finance is that it should have been fully aware that:-

(i) pursuit of the recovery of VAT from DWW would have conferred no net benefit to the exchequer and was more likely to lead to higher costs and

(ii) the Finance Act 2002, which had been drawn up by the Department officials, had made a key change to the VAT law when it introduced an anti-avoidance measure called the Economic Value Test (EVT) and that this test had been failed by CSID, as outlined above.

At a minimum the Department of Finance, in getting involved in issues such as this, must have procedures whereby its advice and or instructions are in writing so that a clear record is created for accountability purposes. The Department failed in this regard. The reliance of the Department of Arts Sports and Tourism on oral instructions and the fact that it assumed that those instructions gave it no leeway to back-out of the VAT issue also indicates a failure on the part of that Department to ensure that it had a fully supported case. The danger in relying on oral advice is that it can never have the reliance of accuracy for interpretation purposes that is conferred by the written word. It also impedes the accountability process as the extent to which the Department was fully au-fait with the VAT issue can never be known. The Committee can only conclude that this is a poor way of doing business and will make recommendations to counteract this practice.

It is not possible now to determine what information passed between the Departments or whether the staff in the Department of Finance who deal with VAT legislation and VAT policy were consulted on the circumstances pertaining to this VAT issue. Any detailed analysis by the Department of Finance should have had to take account of the fact that the project failed the EVT and that should have alerted the Department to question whether VAT was liable on the lease. It is also unclear if the Department of Finance were aware that the pursuit of VAT on the lease would have led to no direct benefit for the State as clearly outlined in the advice received from the C&AG. Based on the evidence by the Accounting Officer, it appears that the Department of Finance relied on Revenue for advice and as that advice was based on faulty guidelines, the oral instruction was given to pursue the VAT issue. The Committee, having regard to the C&AG advice, can only conclude that the Department of Finance may not have been brought fully up to speed on the issue when it became involved and, more than likely, will be surprised that its stance was interpreted by the Department of Arts Sports and Tourism as giving no leeway to having this VAT charge dropped.

Reliance on Revenue Guidelines

One of the key issues to emerge from the VAT issue is that Revenue guidelines, which were found by the Supreme Court to be an incorrect interpretation of VAT legislation, were relied upon by CSID in support of its VAT and legal strategy. The Committee notes that for taxpayers generally, these guidelines are a useful way interpreting complex tax legislation especially self-assessed tax such as VAT. It was surprised however to note the extent to which reliance was placed on guidelines for the purposes of Court proceedings, especially where a State body has engaged the services of VAT experts. The Committee would have expected that highly paid experts retained by CSID to deal with the VAT issue would have examined the legislative provisions in great detail and would have given CSID a full assessment of the strengths and weaknesses of the VAT case as part of the preparation for court proceedings. These VAT experts should have been fully aware of the anti-tax evasion provisions of the Finance Act 2002 in relation to the economic value test which had not been accurately reflected in the Revenue guidelines on VAT.

These guidelines had outlined three methods of calculating the capitalised value of a lease, an open market value and two methods using a multiplier of the unencumbered rent. It was only where an open market value could not be calculated that the other two methods could be used. The open market price (the primary method), which the Valuation Office calculated to be €35 million, meant that CSID failed the EVT. The Valuation Office report also put a value on the unencumbered rent of €3.376 million (5% of the construction costs). When using the multiplier formula contained in the VAT regulations, it gave the lease a capitalised value of €75,960,000 and this allowed the CSID to raise a VAT charge on DWW in the sum of €10,254,600. While the VAT Guidelines provided that the lessor, in this case CSID, had a choice as to which of the three methods to use, the Supreme Court found that such a choice was not available given that the open market price [€35 million] had failed the EVT.

While accepting that this is a complex and technical issue, what the Committee find puzzling is that that there was this desire to push ahead with this VAT issue, given that the matter was being contested by DWW and given the major disparity between the open market price of €35million and the capitalised lease value of almost of almost €76 million. CSID, though its financial advisors, had got a way round the negative finding of the open market value but in order to pursue its case against DWW, it did not share this information. The Committee finds that this failure to share the information, which ultimately was used by DWW to argue against the VAT charge, to be sharp practice which should have no place in the way the State conducts its legal business. The explanation given to the Committee for not sharing the documentation with Dublin WaterWorld was that it was on the basis of advice from financial advisors. The Committee can only conclude that, notwithstanding the fact that it was ill advised, CSID as a State Company should have acted in a more transparent way in dealing with this issue by giving access to the report of the Valuation Office to the party in which it was locked in dispute over payment of the VAT of over €10 million. It should not have taken the Supreme Court to tell a State Company with direct access to top legal and professional advice and with access to the office of the Attorney General that the legitimacy of any charge and especially one that runs into millions should be clearly outlined to the person who is expected to pay this charge. The Committee can only conclude that full transparency on the findings of the Valuation Office could have ended the dispute regarding VAT as early as 2002.

Conclusion

The VAT dispute between CSID and DWW should not have happened primarily because the State would have derived no benefit from the outcome of the case. It should also not have happened in view of the valuation report from the Valuation Office which did not favour the case for charging the VAT on the lease of the NAC which would have seen the VAT paid on the construction costs being repaid. CSID relied on Revenue guidelines in litigation and it is doubtful if any guidelines were intended for such purposes. Legal costs and resources have been wasted and these costs will have to be met from the public purse. The legal strategy, based on the evidence supplied to the Committee, was sketchy and the Office of the Attorney General should have been asked for a definitive position in 2005 following on from the High Court decision which forfeiture of the lease on the NAC. The reliance on oral advice from the Department of Finance reflects poorly on both the Department and on the Department of Arts, Sports and Tourism. Finally CSID, as a State company, should have shared the information contained in the 2002 report of the Valuation Office and had this happened much of what followed, including legal battles, could have been avoided.

Findings

(i) CSID, with the active support of the Department of Arts Sports and Tourism, pursued a VAT charge for between 2002 and 2010 even though it was aware that a successful outcome would not have derived a benefit for the State. In that regard the advice of the C&AG was ignored.

(ii) The basis for charging VAT on the 30 year lease of the NAC was weakened by the Report of the Valuation Office which calculated that the open market value was less than the development cost and thus the project had failed the economic value test. That key finding in Report was withheld from Dublin WaterWorld from 2002 until it had to be revealed in 2005 as part of High Court proceedings. This is a critical failure on the part of a State authority.

(iii) CSID relied on Revenue Guidelines to interpret VAT law even though it had retained the services of VAT experts. Such guidelines which as it turned out were faulty as they did not take account of a key anti-tax avoidance measure introduced in the Finance Act 2002 were never intended as interpretation of tax law for litigation purposes. These highly paid VAT experts did not do what they were paid to do.

(iv) Revenue not only failed to update its guidelines to take account of the anti-avoidance measures that were introduced in the Finance Act 2002 but also got involved in this dispute and appear to have given credence to the idea that it would ultimately have to make a rebate of the VAT payments made on the construction of the National Aquatic Centre even though the project had failed the economic value test based on the open market value calculated by the Valuation Office. The Revenue was fortunate that, as a result of the Supreme Court finding, no such rebate will have to be made. Revenues overall handing of this issue can best be described as careless.

(v) A review of the legal strategy being pursed on the VAT issue should have been undertaken by the Department of Arts Sports and Tourism and CSID when the High Court referred the VAT issue to arbitration in 2005. The Department failed to grasp that this VAT issue needed to be ended once DWW had forfeited the lease in accordance with the advice of the C&AG.

(vi) The legal strategy pursed on the VAT issue was not underwritten by clear and robust advice from the office of the Attorney General.

(vii) The Department of Arts Sports and Tourism relied on oral advice from the Department of Finance to support the on-going quest by CSID to recover VAT. It is doubtful if the Department of Finance were fully *au-fait* with all aspects of this case when it gave its advice to pursue the VAT issue and in particular whether it had access to the Valuation Office findings and also to the opinion of the C&AG. In the circumstances, the Department of Arts Sports and Tourism should have ensured that the underwriting support of the Department of Finance was more comprehensive.

(viii) The Department of Finance appears to have disregarded the provisions of the Finance Act 2002 when it advised that CSID had no option but to pursue the VAT issue.

(ix) An incalculable amount of time and resources has been tied up on the pursuit of a VAT claim that, even if successful would have conferred no net benefit to the State.

(x) In addition to the time and resources that have been tied up on the pursuit of the VAT issue, the State has had to meet its own legal costs of €240,000 and is also liable to pay the legal costs of Dublin WaterWorld which is likely to be substantial

(xi) Opportunities to settle this issue were available at key stages from 2002 onwards and yet the Department of Arts Sports and Tourism, CSID, the Department of Finance and the Revenue all failed in their responsibilities to the State in not taking advantage of such opportunities on a VAT issue that should never have been pursued.

Recommendations

1. Legal strategies should be underpinned by a cost benefit analysis that encompasses the risks associated with litigation and the benefits and costs that are likely to be associated with both success and failure of the litigation.

2. The robustness of any legal case instigated by a State Body should reply primarily on the legal framework in place and care should be exercised where reliance is place on guidelines that are not a statement of the law and may have been produced for other purposes.

3. Departments, in sanctioning any form of legal action, should not rely on oral advice from the Department of Finance and/or the Department of Public Expenditure and Reform.

4. The Department of Finance and the Department of Public Expenditure and Reform should review its procedures in relation to giving oral advice especially in respect of forthcoming litigation and should give written advice whether by formal letter or email.

5. Given the 2011 split of the Department of Finance, the new Department of Public Expenditure and Reform, in advising a State body in respect of a taxation charge, should liaise with the budgetary division of the Department of Finance which has responsibility for policy on taxation and which draws up the annual Finance Bill. This information so supplied by the Department of Public Expenditure and Reform should be in addition to any legal advice received by the State Body from the office of the Attorney General.

6. The office of the Attorney General should, in reviewing the Supreme Court decision in the case of CSID v DWW, examine whether it is necessary to issue guidelines to State bodies in respect of the sharing of information with the other parties in an effort to prevent disputes escalating to litigation.

7. Revenue should review the way changes to tax law are incorporated into guidelines so as to ensure that avoid a recurrence of the situation in 2002 when a key anti-avoidance measure was incorrectly interpreted by Revenue.

8. Revenue should now carry out a formal review of its handling of the CSID VAT issue, having regard to the finding of the Supreme Court in 2010 and in view of the findings in this Report.

9. The Department of Public Expenditure and Reform should review the performance clauses in contacts of consultants so that under-performance by consultants has an appropriate penalty applied.

Appendix 1

Orders of Reference of the Committee of Public Accounts

(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

(*a*) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

(*b*) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

(*c*) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

(*a*) power to send for persons, papers and records as defined in Standing Order 83(2A) and Standing Order 85;

(*b*) power to take oral and written evidence as defined in Standing Order 83(1);

(*c*) power to appoint sub-Committees as defined in Standing Order 83(3);

(*d*) power to engage consultants as defined in Standing Order 83(8); and

(*e*) power to travel as defined in Standing Order 83(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

(*a*) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and

(*b*) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of thirteen members, none of whom shall be a member of the Government or a Minister of State, and five of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

Appendix 2

Membership of the Committee of Public Accounts – 31st Dáil

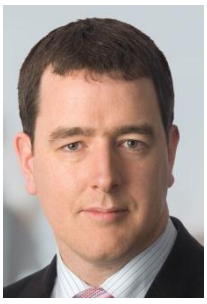
Connaughton, Paul J. (FG)

Deasy, John
(FG)

Donohoe, Paschal
(FG)

Fleming, Seán
(FF)

Harris, Simon
(FG)



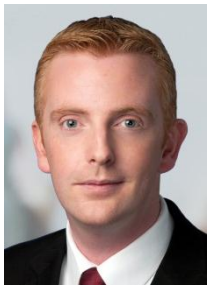
McCarthy, Michael (Lab)

McDonald, Mary Lou (SF)

McGuinness, John
(FF) – *Chairman*

Murphy, Eoghan
(FG)

Nash, Gerald
(Lab)



Nolan, Derek
(Lab)

O'Donnell, Kieran
(FG) – *Vice Chairman*

Ross, Shane
(Ind)