



An Roinn Iompair
Turasóireachta agus Spóirt

Department of Transport,
Tourism and Sport

Oifig an Árd Runaí • Office of the Secretary General

Príomh Oifig
44 Sráid Chill Dara, Baile Átha Cliath 2, Éire.

Head Office
44 Kildare Street, Dublin 2, Ireland.

Lo-Call 1890-443311 +353-1-604 1348

+353-1-604 1349 www.dttas.ie

secretarygeneral@dttas.ie

**Correspondence 3.2
Meeting – 12/01/2012**

21 December 2011

PAC-R-217

Ms Eimear Lavelle
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2



Dear Eimear

I refer to your letter dated 30 November requesting a note on issues raised in correspondence received by the Committee from Mr John Moriarty.

I have consulted with the National Sports Campus Development Authority (NSCDA) in relation to the issues raised by Mr Moriarty. Each of the issues are addressed under the bullet points headings used by Mr Moriarty in his correspondence.

- **The Executive services team was paid €3m**

The Executive Services Team was paid a percentage based fee for their services. However, the Executive Services Team was also paid for all other costs incurred in the provision of the services for which it was contracted as well as other expenses incurred in the performance of their duties. NSCDA are at present examining archived files on the Executive Services contract and invoices paid, together with minutes of Board meetings to ascertain the various changes in rates of fees paid.

- **The Revenue Commissioners had confirmed in 2003 and 2011 that CSID's VAT charge of €10,254,600 was correct and must be included in the proceedings.**

As stated by Mr Moriarty, VAT is a self-assessment or self-accounting tax. It is my understanding that Revenue rarely makes determinations on individual VAT charges, although Revenue audits may arrive at decisions on the proper and appropriate accounting for VAT. In my evidence to the Committee on 10 November, I read from a letter dated 26 September 2011 from Revenue to PWC, a copy of which I furnished to the Committee on 16 November.

The Revenue letter confirms that Revenue's interpretation at the time was that CSID was obliged to issue an invoice to DWW based on a valuation method outlined in Regulation 19 once the valuation method passed the EVT; that Revenue only formed the view that CSID was not a taxable person following the judgment of the Supreme Court that Revenue's

interpretation of Regulation 19 was incorrect; and that the registration of CSID for VAT and the issuing of an invoice for VAT on the capitalised value of the lease were the subject of correspondence with Revenue at those times and Revenue satisfied itself that they complied with Revenue interpretation, procedure and practice at those times.

The decision to include the unpaid VAT invoice which had been issued by CSID in legal proceedings for breaches of the lease on the NAC was taken by CSID on foot of its own legal advice and was agreed and approved by the Department, following consultation with the Department of Finance, who consulted the Revenue Commissioners, and advised that it could not consent to abandoning the attempt to collect the VAT due.

- **In 2005 the AG revised and superseded his 2004 advice.**

On 16 November 2011, I furnished the Committee with copies of correspondence, including a copy of a letter dated 20 December 2004 from the Attorney General's Office and an e-mail dated 11 November 2011 from the Attorney General's Office confirming that they made changes to a draft letter from the Department to CSID. A copy of the subsequent letter which issued to CSID on 23 February 2005 was also provided

- **PwC advised CSID/NSCDA at all times.**

Mr Moriarty states that the facts do not support this and that PwC did not attend or participate in any way at the Supreme Court. As the Supreme Court appeal taken by Dublin Waterworld was based on two points of law, following the decisions of both the independent Arbitrator and the High Court in the tax dispute, NSCDA was represented by its legal advisers and Counsel at the Supreme Court. NSCDA did however continue to seek advice and opinion from PwC, as the original tax advisers to CSID, on any tax issues which arose relating to the Supreme Court action and the resultant decision/ruling of the Court.

- **The NAC requires a subsidy of €1.03m per annum.**

Mr Moriarty states that the audited accounts of NSCDA (Operations) Limited "do not support this assertion" and refers to an annual subsidy of €3m. Sanction has given by the Department to the NSCDA to provide operational subsidies of up to €1.03m per annum to the National Aquatic Centre from its annual current exchequer allocation. This level of operational subsidy has not been increased nor has it been exceeded by NSCDA. However, NSCDA also provides additional, approved capital grants to the NAC to meet costs associated with capital improvements, non-routine capital maintenance and capital acquisitions.

The Department has not directly assumed a number of the NSCDA costs, as stated by Mr Moriarty. The only costs relating to NSCDA which the Department has met directly relate to legal costs incurred and invoiced by the Chief State Solicitors Office in dealing with the DIAL proceedings. The Department contributed 50% of the legal fees payable in respect of the "security of costs" issue in that case.

- **The proceedings with Dublin Waterworld Limited were not settled.**

In my response to Deputy Nolan, I stated that the other proceedings were not settled, the High Court found for CSID.

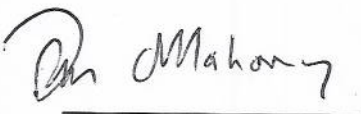
I was differentiating between an “out of court” settlement, such as that arrived at by the State in the DIAL case, and the fact that the High Court had ruled in favour of CSID on the substantive case regarding breaches of the lease on the National Aquatic Centre. This latter High Court ruling was appealed by Dublin Waterworld. This appeal was subsequently dropped and the two parties agreed to proceed, or settle the action, on the basis of the High Court ruling. While this may be viewed by Dublin Waterworld and others as a “settlement”, the matter was concluded on the basis of the High Court ruling in CSID’s favour.

- **Additional comments**

In his correspondence, Mr Moriarty also states that I appear to misunderstand the effect of the Supreme Court decision which was to confirm the exact interpretation of the relevant VAT regulations and that my suggestion that the Supreme Court decision was a “game changer” is incorrect. I do not believe that I am incorrect in my view or that I misunderstand the decision, which was to overturn the original Arbitrator’s award and the High Court ruling endorsing same. The Supreme Court ruled that a direct interpretation of the regulations should have been applied by the Arbitrator, whereas CSID, together with its advisers, followed the common interpretation and practical application of the VAT regulations in force at the time and as supported by the Revenue guidelines on the issue. This is clearly stated in letter from Revenue dated 26 September 2011. Revenue’s letter clearly states also that the Revenue Commissioners only formed the view that CSID was not a taxable person following the delivery of the judgement of the Supreme Court that Revenue’s interpretation of Regulation 19 was incorrect.

Mr Moriarty further states that either “CSID received incorrect advice or CSID ignored the advice it received”. It is NSCDA’s view that neither is correct. CSID received advice which was consistent with the common interpretation and application of the VAT regulations in force at the time and acted on this basis.

Yours sincerely



Tom O'Mahony
Secretary General