



Margaret Falsey
Committee of Public Accounts Secretariat
Leinster House
Dublin 2

12 January 2018

Dear Margaret

At the meeting of the Public Accounts Committee on 30 November 2017, my Department undertook to supply the Committee with further information in response to queries raised during the course of the Committee's examination of the Comptroller and Auditor General Report 2016 – Chapter 20 Corporation Tax receipts.

As requested in your letter dated 12 December 2017, I attach a specific note in respect of three issues raised by the Committee, namely:

1. *A note on the details of the e-tender relating to the overall procurement of management services and specifically fund management services for the proposed escrow account*
2. *A note on the timeline for the proposed recoupment of €13bn of alleged state aid from Apple*
3. *A note in the impact of the €13bn on GDP*

1. Note on the details of the e-tender relating to the overall procurement of management services and specifically fund management services for the proposed escrow account

The recovery of the alleged Apple state aid will be effected by the establishment of an escrow fund whereby the final release will happen only when there has been a final determination in the European Courts over the validity of the European Commission's *Decision of 30.8.2016 On State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple*.

The establishment of this fund involves the appointment of independent third party service providers including:

- an Escrow Agent and Custodian who will be appointed to hold the assets and administer the escrow fund; and
- Investment Managers who will be appointed to manage the escrow fund.

Separate competitive procurement processes are currently taking place to appoint these parties to the fund, in compliance with all domestic and EU procurement rules.

Given the NTMA's existing functions and expertise, the Minister for Finance appointed the NTMA as his agent under section 28 of the National Treasury Management Agency (Amendment) Act 2000 to run the procurement processes on his behalf. The company (Apple) are also involved in this procurement process.

Investment Management Services

The competition for Investment Management services was commenced on 6 September 2017 by way of publication of a call for expressions of interest. This opened Stage 1 of the competition which is the prequalification stage to identify appropriate candidates to be invited to Stage 2 and tender for the role as an investment manager.

In order to be eligible to progress to Stage 2 candidates were required to meet relevant minimum criteria so interested candidates were required to complete a pre-qualification questionnaire (PQQ) and demonstrate that:

- The candidate must have at 31 December 2016 assets under management (AUM) of €500bn and Global fixed income (physical securities with a maturity of greater than 12 months) of AUM of €100bn.
- At the date of the submission of the PQQ response must:
 - Have been managing (i) global fixed income assets and (ii) European fixed income assets for 10 consecutive years; and
 - In the last 3 financial years preceding the date of the PQQ response have provided to an institutional client services of a similar nature to the required Services in respect of a large mandate (€500m minimum) and similar types of securities (investment grade, short to medium duration, euro denominated, fixed income securities) in a separately managed account, in a manner compliant with all relevant regulatory requirements and standards.
- Must be a regulated investment firm in the OECD region.

As was indicated at the PAC the recovery amount will be invested and managed in accordance with an investment policy (which set out investment objective, principles and parameters for investment of the escrow fund) and investment manager mandates (which shall be awarded to each of the investment managers and which sets out the principles and parameters which are consistent with the investment policy).

It is expected that three investment managers will be appointed as a result of the competition.

The escrow fund will be denominated in Euro and invested in low risk, fixed income securities with the principal investment objective to preserve capital to the extent possible in prevailing market conditions.

In general the services required from each prospective investment manager are:

- To design and manage an investment strategy for the portfolio which best achieves the investment objective and which is aligned with the principles and parameters of the investment policy.
- To invest, and to manage the ongoing investment of, the Portfolio, for the purpose of achieving the Investment Objective in a separately managed account while complying with all restrictions of investment including duration, ratings concentration and maturity restrictions and acting on, and complying with, all proper instructions from the Committee or the Parties

in relation to the Portfolio as may be given from time to time including a prohibited securities list;

- To provide ancillary services to the investment management services including
 - Timely interaction with the Escrow Agent / Custodian on all transactions and reconciling positions and valuations with the Escrow Agent / Custodian;
 - Comprehensive risk and performance reports to the Contracting Parties and or the Committee;
 - Price transparency and best execution on transactions;
 - Liquidity monitoring and management;
 - Regular dialogue and meetings with the Contracting Parties or the Committee; and
 - Additional services that the Contracting Parties or the Committee from time to time may require.

Escrow Agent and Custodian Services

The competition for Escrow Agent and Custodian Services was launched by publication of call for expression of interest on 21 July 2017.

In Stage 1 of the competition candidates were invited to complete a pre-qualification questionnaire (PQQ) to enable short-listing of candidates to progress to Stage 2 of the competition (the tender stage).

All candidates progressing to the second stage were required to comply with the following:

- The candidate and each of its sub custodians were authorised by the competent authority of its home jurisdiction to safe keep financial instruments and to provide associated administration services; and were subject to effective prudential regulation and supervision under European Union law or any laws of a third country which have the same effect as European law and are effectively enforced;
- Must have a current minimum long term credit rating of at least A1 (not on negative outlook) as rated by Moody's, or equivalent rating issued by an External Credit Assessment Institution accepted by the ECB as suitable for the Euro system Assessment Framework;
- Must demonstrate that, it has within the last three financial years provided global custodian services as set out in the call for interest. These include services related to the safekeeping of the assets of the escrow fund (including cash) subject to the instructions of the State and Apple and to apply and release the escrow fund in accordance with instructions from or on behalf of the State or Apple;
- It has held in each of the last three financial years (i) total assets under custody of at least €3 trillion or the equivalent in another currency and (ii) total fixed income assets under custody of at least €0.5 trillion or the equivalent in another currency.

In Stage 2 of the competition, the candidates shortlisted were invited to submit tenders for award of the Contract in accordance with the terms of a Request for Tenders document.

Current Status of the procurement processes

Both tender competitions have progressed to Stage 2 and it is intended that candidates will have been identified for Investment Manager and Escrow Agent / Custodian roles by the end of Q1 2018.

2. Note on the timeline for the recoupment of the €13bn in taxes from Apple

In line with the requirements of the European Commission's Decision of 30 August 2016, Apple must be deprived of the benefit of the alleged State Aid. This involves two actions:

- The calculation of the amount of the aid
- The process by which Apple are deprived of this amount of money

As indicated above, it has been agreed that these sums will be placed into an escrow fund.

The timelines for the collection of the alleged State Aid is therefore dependent on having the required infrastructure in place (including agreement in principle on the contracts which will governs the escrow arrangements) to establish the escrow fund, and the appointment of the Escrow Agent / Custodian and Investment Managers.

These appointments must comply with all relevant EU and domestic law, including the EU procurement rules with attendant timing implications. As discussed above, it is therefore unlikely that they will be in place before the end of Q1 2018.

The Commission has estimated that the recovery amount is €13bn but the precise sum is to be calculated using the methodology set out in the Commission's Decision, which is then subject to interest as set out in EU Regulations. This involves over 20 complex and technical tax computations going back 10 years for 2 companies so the calculation is being carried out by the Revenue Commissioners on behalf of the Minister for Finance. Calculations covering more than 90% of the total anticipated recovery amount have already been completed. It is not necessary for the calculation process to be completed before payments can be made into the escrow fund, so the final completion of the calculation process will not delay the beginning of the recovery of the alleged aid. Until such time as the Commission's recovery order is satisfied (and recovery is deemed to be complete) the EU interest that is to be paid by Apple will continue to apply on a compound basis which means that the amount to be recovered will continue to increase until the escrow fund is fully populated.

Every effort is being made to ensure that the recovery of the alleged aid begins as soon as possible. There will be an initial tranche paid and then payment made in stages on a regular basis until all the alleged state aid is recovered.

Given the scale and bespoke nature of the establishment of the recovery process, at this stage it is not possible to provide a definitive date for the completion of the collection of all the alleged aid. However, as set out above, identification of the Escrow Agent / Custodian by end Q1 2018 will then allow for payment into the escrow fund thereafter with payments continuing through the course of Q2 and Q3 2018.

3. Note in the impact of the €13bn on GDP

Following consultation with the CSO and Eurostat, it has been confirmed that there will be no impact on the General Government balance and that there will be no fiscal impact for the period in which the funds are in escrow.

This is because Apple and the Government are challenging the Commission's Decision of August 2016 before the European Courts, and it could be several years before this is ultimately resolved. The basis for this is set out in the European System of Accounts (ESA 2010), Paragraph 20.189 which states

"When a court of justice rules that compensation must be paid, or a transaction reversed, resulting from or related to past events, the time of recording of the expenditure or revenue is when the claimants have an automatic and incontrovertible right for a given amount that can be individually determined, and when it is unlikely that claimants will fail requesting their due. When a court of justice merely sets a principle of compensation, or when the claims must be reviewed for eligibility and in relation to determination of the amount by administrative services, expenditure or revenue is recorded as soon as the value of the obligation is reliably determined."

As a result, the amount and timing are not recognised until a final judgement before the European courts.

Kind regards,



Derek Moran
Secretary General
Department of Finance