

DUBLIN WATERWORLD LTD

1 South Terrace
Basin Road
Tralee
Co Kerry, Ireland



Tel: +353(0)66 712 1468
Fax: +353 (0)66 7124759
Email: jbmoriarty@eircom.net

Mr John McGuinness TD
Chairman
Public Accounts Committee
Dail Eireann
Kildare Street
Dublin 2

28/2/12

Re: Campus and Stadium Ireland

Dear Chairman

Following the PAC meetings of 8th November 2011 and 16th February 2012 there are a number of items which I believe require further explanation and elaboration from the DTTS, NSCDA, the Revenue Commissioners and the Valuation Office.

At the outset it should be remembered that €14m of taxpayer's money was spent on executive services and professional advisors. In the words of the Supreme Court these people "*gravely misled*" themselves on the law, yet no one has been made accountable.

At the meeting of the 16th February 2012 the PAC was essentially told that VAT legislation is complex, consequently, CSID followed the published Revenue Guidelines and that the guidelines subsequently proved to be an incorrect interpretation of the legislation.

The DTTS would have the PAC believe that Ireland's largest law firm, Ireland's largest accountancy firm, two Senior Counsel, one Junior Counsel, Revenue, the High Court and Arbitrator were all unaware of the VAT legislation between 2002 and 2010.

This is a complete misrepresentation of what actually happened in this needless, wasteful and destructive dispute that has been funded by the taxpayer.

VAT is a self assessment tax. It is up to every taxpayer to ensure that he has complied with legislation. Equally a person from whom VAT is demanded has a right and obligation to ensure that the VAT charge is correct. Revenue Guidelines have no legal status and this is clearly stated in the introduction.

CSID's concealment and misrepresentation of the valuation report was designed solely to prevent DWW and its advisors from establishing that CSID's VAT charge had no basis.

While the witnesses referred to Revenue, Department of Finance and AG advices, it has failed to provide a single independent or objective document stating that CSID had a stateable VAT case and that it was authorized to litigate this.

If CSID received professional advice supporting its position, this advice was incorrect, and the advisors should be made accountable. In my view it strains credulity that none of CSID's advisors were aware of the correct legal position in 2002 or 2003. Consequently the advice that CSID received in 2002/2003 is of central importance.

The Facts

Firstly, CSID was not a taxable person, it was not entitled to be in the VAT net and on that basis Revenue refused CSID's VAT refund applications in 2000/2001/2002/2003.

This is recorded in CSID's 2002 audited accounts and Reflection Paper of 21/10/04.

On 25th March 2002 the Finance Act introduced the economic value test (EVT), to prevent exempt bodies (such as CSID) from manipulating the VAT Regulations.

Notwithstanding this, CSID, in late 2002, procured a valuation report that the Supreme Court would later state was "*from the point of view of CSID, devastating*". The valuer stated that the open market price of the lease was €35m. As the total development cost was €67,520,000, this failed the economic value test (EVT) and CSID could not reclaim the VAT it had paid out to the builder. The Campus Ireland project would be over budget by €145m. CSID had not budgeted for irrecoverable VAT.

With Revenue refusing to refund the VAT, CSID attempted to downstream the problem by fabricating a bogus VAT charge of €10m and issued it to DWW.

Since DWW was professionally advised by KPMG, CSID had to prevent DWW/KPMG from becoming aware of the €35m. An instruction to this effect was issued by PwC in writing on 20th December 2002. As confirmed by the Supreme Court, this was unlawful. It was also contrary to Section 242 of the Companies Act and the VAT Acts.

It is clear that PwC understood the implications of the situation and because of this their advice to CSID in 2002/2003 and the reasons for concealing the report are of critical importance.

CSID's strategy was to conceal the "*devastating*" €35m open market price. It was not that they had a choice of methodologies as they now claim.

As DWW was unaware of the €35m, the debate initially centred on the Valuation Office rental estimate of €3.3m. DWW's advisors viewed this as unrealistic and unsustainable, but DWW was unaware that this estimate was based on an incomplete and incorrect lease submission by CSID or indeed that it was made by a valuer who had flagrantly misrepresented his professional qualifications. Specifically CSID removed the financial and operation schedules of the lease contained in schedules three and seven when it sought the valuation. This has been a matter of some considerable correspondence.

CSID repeatedly refused to discuss the VAT or valuation issue, provide supporting documents or indeed to facilitate an open discussion between the respective advisors. These were not the actions of a bona fide counterparty.

There is no evidence to suggest that CSID supplied the 2002/2003 PwC and legal opinion on VAT that it had to the AG, C&AG, DoF, DAST or Revenue. When these authorities were briefed by CSID it was on the basis that CSID had a robust VAT charge.

CSID's case in both the High Court and Arbitration was that the €35m open market price for VAT was not evidence of the open market price and therefore they were entitled to disregard it and use a formula to calculate VAT. The word "guideline" does not appear in the Arbitrators award or the High Court decision upholding it.

Critically, CSID claimed in its Statement of Claim to the High Court and on Sworn Affidavit that it had a Revenue Assessment. This claim was manifestly false and misleading.

Unknown to DWW or the High Court, in an act of duplicity, CSID's advisors were secretly contacting Revenue two months after the proceedings had issued trying to obtain agreement on cancelling the VAT charge. Revenue refused to engage.

There is no evidence that CSID had advice in 2002/2003 that its VAT charge was correct.

Misleading statements to the PAC

The following are a sample of misleading statements made to the PAC

- €45m spent on masterplanning (16/11/11), at the 16/2/12 meeting this figure had reduced to €1.95m
- €3m paid for executive services (16/11/11), at the 16/2/12 meeting the figure for executive services, professional services and administration costs was €18.5m.
- The AG reversed his 2004 advice that the EVT had failed. This did not happen.
- The Revenue Commissioners advised that the VAT claim had to be included in the proceedings. This did not happen.
- The High Court case with DWW was won. This is misleading, the case was appealed and a settlement letter issued on 13/11/06.
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In view of the numerous misleading and plainly incorrect statements made to the PAC, the PAC should seek copies of the actual documents relied upon rather than descriptions.

The Supreme Court decision

Echoing the 17th November 2004 words of the AG, the Supreme Court also stated (page 8&9) that the EVT had failed because of the €35m open market price for VAT (which CSID had on the written instructions of PwC concealed).

CSID did not mention that it was relying on guidelines nor were guidelines mentioned in their accounts, invoice, correspondence or their written submission to the Supreme Court.

In relation to the formula used by CSID to calculate VAT, the Supreme Court stated *“CSID having received an expert report which was devastating from their point of view, decided to use instead the first of the two formulae set out in Regulation 19”*.

“but these formulae do not produce any binding result unless there is an absence of other evidence..There plainly was such evidence [the €35m open market price]”

“the most substantial part of their evidence [the €35m] was quite wrongly excluded, and on that basis a formula which was plainly adverse to Dublin Waterworld interests was used. This was on the basis that their evidence was not in fact evidence at all”.

“I am further of the view that the Arbitrator [and by extension CSID and its advisors] gravely misled himself on the law in determining that CSID were, entirely at their own option, entitled to rely on the formula”.

What is even more puzzling is that CSID rejected the Supreme Court Judgment that the lease was VAT exempt and on 11th May 2010 applied to the Supreme Court for a fresh arbitration. This action was taken without any professional support whatsoever and on 30th June 2010 CSID went as far as nominating three arbitrators (including Mr Quigley).

Revenue’s actual position

The Revenue position was not as clearcut as the PAC was advised.

In fact Revenue:

- Placed a disclaimer in a prominent place in the introduction to its guidelines
- Refused CSID’s VAT refund applications because Revenue did not accept that CSID was a taxable person.
- Refused in 2002/2003 to confirm if CSID was a taxable person
- Refused in 2002/2003 to confirm if CSID’s VAT charge was correct
- Advised Mr Donagh Morgan on 1st June 2004 that VAT was a self assessment tax and not one that Revenue assessed or confirmed

- Refused to meet CSID in 2005 following requests
- Refused to discuss CSID's proposed cancellation of the invoice
- Was unaware of the legal proceedings when issued in 2005
- Stated in 2010 that CSID was not a taxable person and not entitled to charge VAT in 2003
- Did not support CSID's rejection of the Supreme Court Judgment

The DTTS did not provide the PAC with a copy of the Revenue Guidelines because the Guidelines completely contradict CSID's approach in Section 2.2.2.

In order for the PAC to get greater clarity on the issues of public interest and the manner in which taxpayers funds were used, in my view the specific questions below should be forwarded to the DTTS, NSCDA, The Valuation Office and the Revenue Commissioners and answers sought.

The answers to these questions are readily available.

Questions for the Revenue Commissioners

1. What was the legal status of Revenue Guidelines in 2002?
2. It is stated in the CSID audited accounts for 31/12/02 that Revenue disputed the recoverability of the VAT.

Please explain the nature of the dispute and state when Revenue determined that CSID was a taxable person and how and when was this communicated to CSID?

3. In 2002/2003 correspondence, PwC asked Revenue to confirm if it was satisfied that CSID was properly registered for VAT.

What was Revenue's response to these requests?

4. Did Revenue ever confirm that CSID's invoice for VAT of €10,254,600 was correct and if so when and by what means?
5. In the correspondence with Revenue did CSID/PwC ever indicate that its approach was based on guidelines? And if so please provide copies of the relevant documents.
6. Did Revenue provide CSID with an assessment of the VAT of €10,254,600 as CSID claimed in its Statement of Claim in the High Court 29th April 2005?
7. Did Revenue ever confirm that the Valuation Office estimate of unencumbered rent of €3,376,100 was correct or appropriate?

8. Following the Revenue Solicitors letter of 15th June 2005 to McCann Fitzgerald, what was Revenue's view of CSID claim of a Revenue Assessment and the fact that DWW refused to sign the VAT 4A form?
9. On the 27th November 2002 and the 6th February 2003 PwC stated that the capitalized value of the lease of €65,664,133 and that this exceeded the total development cost. In light of the total development cost of €67,520,000 please explain how Revenue failed to notice that this calculation failed the EVT?
10. According to DWW it began paying utility bills for the NAC (e.g ESB) in October 2002 and was in partial occupation and began trading in the NAC in December 2002, in March 2002 the NAC was officially opened and the lease signed on 30th April 2003. In the opinion of Revenue when was the tax point of the NAC (DWW have stated that they believe it to be have been in December 2002)?
11. On 30th April 2003 Revenue specifically asked PwC if DWW had accepted the Valuation Office estimate of unencumbered rent. PwC did not advise Revenue that DWW had objected to this estimate from the outset. Please explain how Revenue could support CSID's position in light of this?
12. On dates including 31st March 2003, 29th April 2003 and 1st May 2003, Revenue advised CSID that it was not entitled to benefit from Section 4A of the VAT Act. What is Revenue's view of the Section 4A document issued by CSID on 30th April 2003 and its applicability.
13. What was Revenue's view of CSID's application for a fresh arbitration following the Supreme Court Judgment?
14. When did Revenue become aware that its guidelines were incorrect?
15. Was CSID's invoice a valid VAT invoice when it was issued?
16. Was CSID entitled to charge VAT in 2003?
17. Did DWW have an obligation to ensure that CSID's VAT charge was correct?
18. Is Revenue satisfied that it acted appropriately at all times in this matter?

DTTS/NSCDA/CSID

1. Please provide to the PAC the following:

- Legal advice provided to CSID in relation to VAT from 2000 to May 2003
- Advice from PwC in relation to VAT from 2000 to date

- Legal opinion received by CSID on the VAT issue in advance of the High Court case in 2005.
 - Legal advice on the VAT dispute provided to CSID in advance of the Arbitration
 - Legal advice provided to CSID in advance of the High Court appeal in 2005
 - Legal advice provided to CSID in 2009/2010 in relation to the Supreme Court appeal.
 - Legal advice provided to CSID after the Supreme court decision
 - Legal advice provided to CSID after its application for a fresh arbitration in 2010
2. Did CSID advise the AG/CAG/DoF/DAST/Revenue that it had withheld the Valuation Office report from DWW between 2002 and 2005 and did CSID provide these parties with copies of the advices received from PwC and McCann Fitzgerald?
 3. Did the board of CSID issue a resolution to include the VAT dispute in the Commercial Court litigation and if so please supply a copy to the PAC.
 4. Did CSID receive specific advice from PwC on the impact of the €35m open market price for VAT in 2002/2003 and what was that advice?
 5. Please explain the basis on which CSID paid PwC €119,000 for VAT advice in 2002/2003?
 6. Did the Revenue Commissioners ever confirm to CSID that the VAT charge was correct and that it should be included in proceedings and please provide copies of same?
 7. Did the Revenue Commissioners ever provide CSID with an assessment of the VAT and if so please provide a copy of same?
 8. Did the Revenue Commissioners ever issue confirmation that CSID was a taxable person and properly registered for VAT and if so when and by what means?
 9. On what basis did CSID reject the Revenue Commissioners instruction that CSID could not benefit from the 4A procedure when CSID issued the document on 29th April 2003?
 10. Did CSID provide the complete and correct lease to the Valuation Office, specifically did CSID provide Schedules Three and Seven of the Lease to the Valuation Office?
 11. Please identify the VAT and legal experts who supported CSID's VAT position in 2009 and 2010 and please provide copies of their advices on the 2009 DWW correspondence, the Supreme Court case and CSID's application for a fresh arbitration in May 2010.

12. Please provide copies of all advices received from CSID's professional advisors in October/November 2009?
13. Can NSCDA/DTTS state why it has not taken action against the advisors who stated that the VAT transaction had been correctly accounted for and who stated that the NAC would make annual profits of up to IR £ 2,129,000?
14. Please provide a complete breakdown of the €18m spent on professional, executive services and administration costs as well as detailed calculations and build up of costs and a full description of the procurement process followed?
15. Were any bonuses or performance related payment made to any party in relation to the NAC project and if so please provide details.

Valuation Office

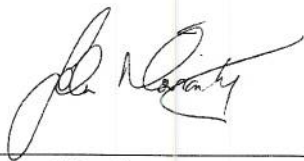
1. Did the Valuation Office receive the complete and correct lease from CSID. Specifically did it receive Schedules Three and Seven and if so when were these received?
2. Did the Valuation Office receive from CSID in 2002 the lease provisions in relation to the encumbrances detailed in the Waterworld Bid, The PriceWaterhouseCoopers Financial Profile and Market Study and the Detailed Agreement on Schedule Seven?
3. Does the Valuation Office stand over the rental estimate of €3,376,100 as an accurate valuation of unencumbered rent as required under the VAT Acts.
4. Can the Valuation Office confirm that for VAT purposes it stated the Total Development Cost of the NAC to be €67,520,000?
5. Why did the Valuation Office allow the Supreme Court to believe that it's valuer had the MRICS when the Valuation Office knew otherwise?

The answers to the above questions and the documents identified will give the PAC an insight into how CSID and what the AG referred to as its **"highly paid advisors"** conducted this matter and their attitude to taxpayers money will in my view be readily apparent.

It remains my firm view that CSID's board of directors and it's executive services team are along with CSID's executive accountable for this fiasco, but they are to date, silent.

I look forward to assisting the PAC with this important work.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'John Moriarty', written over a horizontal line.

John Moriarty

CC PAC members