

# Apartment Owners' Network

*Representing the owners of apartments and houses in managed estates*

## **BY EMAIL**

minister@finance.gov.ie  
Paschal Donohoe, TD  
Minister for Finance, and Public Expenditure and Reform  
Department of Finance  
Merrion Street Upper  
Dublin 2 D02 R583

18 July 2019

Dear Minister Donohoe,

**Re: Supplementary Pre-Budget Submission in context of Tax Strategy Group Paper TSG 19/04**

We refer to our Pre-Budget 2020 Submission dated 9 July 2019.

We welcome measures to tackle climate change. We note the content of the Tax Strategy Group Paper TSG 19/04 entitled "*Climate Action and Tax*", released on 17 July 2019. In particular, we note proposals in Chapter 4 to re-initiate an income tax relief using the design employed in the now expired Home Renovation Incentive (Section 477B Taxes Consolidation Act 1997) ("the HRI").

We submit that the HRI was discriminatory against owners of homes in multi-unit developments ("MUDs"), principally apartment owners. We therefore submit that any such new incentive should apply equally to all homeowners, regardless of housing type.

The discrimination in the HRI arose because the legislation omitted to take account of the way homeowners in MUDs meet expenditure on home renovation. As outlined in our submission of 6 April 2017 on the Tax and Fiscal Treatment of Landlords Consultation, our meeting with you of 13 June 2018, and previous pre-Budget submissions, an owners' management company ("OMC") is the mechanism by which apartment owners pay for works to those parts of their homes in the common areas. OMCs are made up of all the homeowners in the estate. OMCs are funded exclusively by annual service charges paid the homeowners. Part of the annual service charge meets renovation costs.

Home owners in MUDs were not entitled to relief under the HRI because of a technicality. While they funded renovations, they had not "incurred" the expenditure directly, and the definition of "residential premises" omitted common areas. The OMC (the collective of all of the owners) by engaging and paying the contractor incurred the costs.

Any new legislation employing the design of the HRI must treat equally taxpayers in the same economic position. New law should grant to MUD homeowners relief for expenditure incurred by their OMC on their behalf. If helpful, Appendix I details the changes needed to the HRI.

Kind regards,

*[Sent by email and accordingly bears no signature]*

Bryan Maher  
**Director**

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Apartment Owners' Network Company Limited by Guarantee

Directors: Bryan Maher, Desmond McCabe, David Rouse | Secretary: David Rouse

Company Number: 592683 | Registered Office: Management Suite, Compass Court North, Royal Canal Park, Dublin 15, D15 KW0Y

www.apartmentownersnetwork.org info@apartmentownersnetwork.org

## **Appendix I - Background to amendments of section 477B TCA 1997**

The Home Renovation Incentive scheme should be amended to allow relief to members of owners' management companies ("OMCs") for qualifying expenditure incurred by OMCs on the owners' behalf.

In essence, the OMC as the collective vehicle hiring and paying the contractor is a blocker between the home owner and access to the tax relief. This is a clear inequity in tax treatment, as between the occupiers of conventional/traditional residential dwellings, and the tax treatment of the occupiers of homes in multi-unit developments.

As the HRI under section 477B TCA 1997 is currently constituted neither an OMC, nor its members, are entitled to claim tax relief for the VAT element of the cost of works to the common areas. Where the OMC pays for the works, as, and on behalf of, the collective of the owners, the cost does not qualify for relief under HRI because the common areas are not considered to be "qualifying premises".

Additionally, it is the OMC, fully funded by the members' service charges, directly incurring the expenditure, and paying the contractor. But because the OMC, rather than the members (owners) directly, is doing so, the owners may not access the relief.

In order to qualify for relief, an owner of an apartment/multi-unit development unit (be they occupier or landlord) would be required to pay the contractor directly. However this requirement of the HRI fails to take account of the shared nature and costs of common areas, and the funding mechanism for the renovation of these common areas.

The amendments below allow OMC members relief in respect of expenditure incurred by an OMC on their behalf, and which in all other respects meets the conditions of the scheme. The mechanism is much like the old method of claiming tax relief on bin charges, within management fees paid to the OMC.

### **Amendments to section 477B of Principal Act (Home renovation incentive)**

Section 477B of the Principal Act is amended—

(a) in subsection (1) by inserting the following before the definition of "contractor":

“ ‘annual service charges’ means the expenditure described in section 18 of the Multi-Unit Developments Act 2011;”,

(b) in subsection (1) by inserting the following after the definition of "housing authority":

“ ‘individual’ includes an owners' management company of which the individual is a member;

‘member’ means member of an owners' management company;

‘multi-unit development’ has the same meaning as it has in subsection 1 of section 1 of the Multi-Unit Developments Act 2011;

‘owners' management company’ has the same meaning as it has in subsection 1 of section 1 of the Multi-Unit Developments Act 2011;

‘payment’ or ‘payments’ in respect of qualifying expenditure by an individual shall include a payment or payments of qualifying expenditure made by an owners’ management company of which the individual is a member;”,

- (c) in subsection (1) by inserting the following subparagraph after subparagraph (b) in the definition of “residential premises”:

“(c) the common areas of a multi-unit development within the meaning of subsection 1 of section 1 of the Multi-Unit Developments Act 2011;”,

- (d) in subsection (1) by inserting the following after the definition of “residential premises”:

“ ‘residential unit’ has the same meaning as it has in subsection 1 of section 1 of the Multi-Unit Developments Act 2011;”,

- (e) in subsection (1) by inserting the following after the definition of “unique reference number”:

“ ‘unit’ means residential unit;”,

- (f) by inserting the following after subsection (3):

“(3A) (a) For the purposes of this section, an owners’ management company shall certify-

- (i) the amount of the annual service charges incurred in relation to qualifying expenditure
- (ii) the proportion of the amount in subparagraph (i) attributable to a unit.

(b) The proportion referred to in subparagraph (ii) of paragraph (a) of this subsection shall be the amount the annual service charge in respect of the unit concerned bears to the aggregate amount of the annual services charges arising under section 18 of the Multi-Unit Developments Act.”,

- (g) in subsection (4) by inserting the following after “claimant,” in subparagraph (iv) of paragraph (a):

“or the owners’ management company of which he is a member,”,

- (h) in subsection (14)—

(i) by deleting “and” in subparagraph (iii) of paragraph (a), and

(ii) by inserting the following subparagraph after subparagraph (iii) of paragraph (a):

“(iiia) specify the manner in which an owners’ management company shall undertake the certifications required under subsection (3A), and”.