SINN FÉIN POSITION PAPER ON

CORPORATION TAX AND THE BAILED-OUT BANKS

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Introduction:

Earlier this year AIB announced a profit of €1.6bn, Bank of Ireland of €1bn and Permanent TSB €40m. These banks have some things in common, all have returned to profitability and all were rescued at huge expense to the Irish people.

They have one other thing in common – all are set to enjoy years of tax free profits. This is because of a Fine Gael/Labour decision in 2014 to change the law to allow bailed out banks to use 100% of the losses they incurred in previous years to be offset against future profits. Up until this change these banks could only offset 50% of their prior losses against profits in any give year.

The result is that these banks, two of which made a profit of over €1bn in 2017, will not have to pay tax for up to 20 years in some cases like AIB whose CEO Bernard Byrne told the Finance Committee as much.

Sinn Féin opposed this Fine Gael/Labour decision and are now calling for the free ride for the banks to end.

It is time the banks bailed out by the Irish people started paying tax.

This paper sets out the how the current system works, international norms, recent changes in Britain which also has a bank levy and a State-owned bank, and the reasons why the government must end the sweetheart deal in the Budget.

Background:

When the NAMA Act was introduced in 2009 it included a provision placing a cap on how much these "NAMA banks" could carry forward in losses in future years. Minister Brian Lenihan said: *"the provision in the 2009 Act … will limit the set-off of carried forward losses against trading income of a participating institution, and all other participating institutions in the same group, to no more than 50% of that income. The net effect of the provision is that the income of a group of participating institutions cannot be reduced by more than 50% by set-off of losses carried forward."*

It is this provision, this small sensible measure to make sure the banks would pay something once they became profitable that the last government removed.

As Fine Gael were removing this provision Sinn Féin were calling for it to be protected but Pearse Doherty's amendment was voted down at Committee.

Since then the banks have returned to greater profitability and the true cost of the Fine Gael decision has become clearer.

In the most recent Finance Bill a Sinn Féin amendment was again voted down with Fianna Fáil abstaining.

Now, Sinn Féin are calling for the twenty-year tax break for these banks to be ended.

Carrying Forward of Losses: how it works

"Carrying forward" of losses allows banks and other companies to use losses made in the past to pay less tax or no tax on profits made in the current or future years.

For example, a company that made losses of €3billion over the last five years can use this to pay no tax on the next €3 billion of profits they make in a year.

So the losses of €3bn can be used to offset tax due on the €3bn profits.

Because Ireland doesn't have a time limit in place the massive losses built up by Irish banks can be used until they are exhausted allowing banks avoid corporation tax for this whole period. In AIB's case this will be for twenty years.

The carry forward rules as they work in Ireland pay no heed to the fact that these banks (AIB and BOI) had bad loans transferred to NAMA and that they were bailed out by the people.

In the above example if a 25% cap were placed on what could be carried forward in any year then the company would pay tax. They could only carry forward 25% of the €3bn (€750m) of losses increasing its taxable profits from zero to €225m. This is effect would mean it would pay tax on three quarters of its profits in any given year.

Likewise, placing a time limit on how long the losses could be used for would result in tax being paid. Placing a ten year limit would mean, regardless of the scale of the accumulated losses, that they could not be used after a decade.

AIB has €2.6 billion of these credits (Deferred Tax Assets/ DTAs), Bank of Ireland has €1.2 billion of DTAs and Permanent TSB (PTSB) some €350 million. This means AIB will not pay a cent on tax until €20.8billion has been used up, Bank of Ireland until €9.6bn in profits have been made tax free and PTSB after €2.8bn in profits.

Ireland, a Special Case?

The government is keen to point out that the carrying forward of losses is a standard provision in Irish and international tax law. This may be true but it only is part of the story.

Firstly, as we have seen specific caps were in place for the bailed-out banks. Secondly research from the OECD shows that in fact Ireland's blanket use of historic losses with no cap or time limit in place is actually quite unusual as can be seen in the table. (Source OECD[1])

In fact, of the EU countries included in the report only Ireland, Luxembourg and Sweden operate such a generous regime for the carrying forward of losses.

Britain has, since the data was published, decreased to 25% the cap on losses that can be carried forward for banks. According to a PWC report, *"One third of the eighteen banks were affected by the legislation, resulting in an additional £300 million of corporation tax in 2017"*[2]

Like Ireland, British banks also pay a bank levy which brought in €3bn for the British State in 2017. Additionally in the Summer Budget 2015 Britain introduced a surcharge of 8% on banks' profits with its stated policy aim: *"As the banking sector recovers and profitability improves, the government believes it is now appropriate to reform how banks are taxed. The surcharge will link the contribution a bank makes to its profitability and will operate alongside the existing Bank Levy, a charge on banks' balance sheets."*[3]

So, in an international context, Irish tax law is generous to businesses carrying forward past losses. This position paper only considers the status of the bailed-out banks.

1 Hanappi, T. (2018), "Loss carryover provisions: Measuring effects on tax symmetry and automatic stabilisation", OECD Taxation Working Papers, No. 35, OECD Publishing, Paris. http://dx.doi.org/10.1787/bfbcd0db-en

2 https://www.ukfinance.org.uk/wp-content/uploads/2017/10/PWC-2017-TTC-report-for-the-banking-sector-26-Oct-2017.pdf

3 https://www.gov.uk/government/publications/bank-corporation-tax-surcharge/bank-corporation-tax-surcharge

International comparison

Country	Carry-Forward	Carry-Back	Limit to Deductability of Tax Losses
Australia	unlimited	0	
Austria	unlimited	0	Reduction of max. 75% of taxable income per year
Belgium	unlimited	0	
Canada	20	3	
Chile	unlimited	unlimited	
Costa Rica	3	0	(1)
Czech Republic	5	0	
Denmark	unlimited	0	
Finland	10	0	
France	unlimited	1	Deductions above EUR 1 million are restricted to 50% of taxable income per year (2)
Germany	unlimited	1	Deductions above EUR 1 million are restricted to 60% of taxable income per year (2)
Greece	5	0	
Hungary	5	0	Reduction of max. 50% of taxable income per year (3)
Iceland	10	0	
Ireland	unlimited	1	
Israel	unlimited	0	
Italy	unlimited	0	Max. 80% of taxable income (100% for losses referring to the first 3 years) (4)
Japan	10	0	(5)
Luxembourg	unlimited	0	
Mexico	10	0	
Netherlands	9	1	
Norway	unlimited	0	
Poland	5	0	Max. 50% of accumulated tax losses per year
Portugal	12	0	Reduction of max. 70% of taxable income per year
Singapore	unlimited	1	
Slovak Republic	4	0	Max. 25% of accumulated tax losses per year
Slovenia	unlimited	0	Reduction of max. 50% of taxable income per year
South Africa	unlimited	0	
Spain	unlimited	0	Max. 60% (2016) and 70% (2017+) of the taxable base before the capitalization reserve per year (6)
Sweden	unlimited	0	(7)
Switzerland	7	0	
Turkey	5	0	
*UK	unlimited	1	
USA	20	2	

* Britain has since made changes as mentioned above

The case for change:

Record waiting lists, hundreds waiting on trollies every day, 10,000 homeless people in the State including 3,755 children… on the face of it the case to tax the banks is clear cut.

The various excuses trotted out by government are weak. Fundamentally, they fail the fairness test.

We are not discussing the corner shop that went bust or the local farmer who filed for bankruptcy. These banks played a direct and disastrous role in crashing the economy. They do not deserve the same treatment as any other business.

The issue of whether the State has a stake in the banks is a distraction. Hypothetical sales value and estimates of share prices are abstract compared to the concrete return that tax provides. Recurring steady tax is factored into the tax base allowing it to be spent on current demands and not merely to write down debt at a time when borrowing has never been cheaper.

That is not even taking into account the fact that in Bank of Ireland's case these tax free profits are going in the main to private shareholders - something Fine Gael are planning for all the banks.

The State's Corporation Tax base is also dangerously concentrated as report after report has shown. This measure would bring in hundreds of million of euro in corporation taxes reducing the State's vulnerability in this area.

The Minister for Finance has focussed in on the bank levy as the reason banks shouldn't pay taxes too. This is a weak argument. The levy has been useful in making sure the banks paid something in recent years and it should continue but is not linked to profit in any way. It is a red herring.

At a recent Finance Committee hearing AIB told the Committee no less than 17 times that it was "normalising". For the banks this was used to justify loan sales and a return to the days of big bonuses. For Sinn Féin normalisation includes paying taxes the billions of euro in profits the banks are now making.

For these reasons Sinn Féin believe there must be change. The tax holiday the banks are enjoying is too good to be true for them. It must end.

The options:

The moral and economic case for restoring a tax liability onto the banks has been made, and in Sinn Féin's view won.

The question therefore is how to achieve a fair scheme to make sure the banks are paying tax. There are two main approaches taken internationally- a maximum cap on tax losses that can be written off against profits in a year, i.e. a 20%, 50% etc, cap and a time limit - a "use it or lose it" rule putting in place a maximum number of years losses can be carried forward for. A combination of these approaches is also used.

In an Irish context we must recall that at 12.5% our Corporation Tax is low. In effect, a percentage cap makes sure some of this is paid. So a 50% cap, if fully used, would result in a bank paying a 6.25% tax rate, all other factors being equal and given a sufficient amount of losses.

In theory, this approach would allow banks to stretch out the losses over a longer period. A 50% approach means the banks could use the losses to write off against their profits over twice the number of years as is currently the case, 25% would mean losses could be written off for four times as long and so on.

Clearly, stretching the losses over a longer period is less attractive for banks given the effects of inflation. However in AIB's case, for example, a 25% cap could mean AIB not paying tax for up to eighty years, a 50% cap for forty years. This is unacceptable. Therefore a cap should be coupled with a time limit.

The time limit approach is more straight forward and puts in place a definite end point after which historic losses cannot be used in any way to reduce tax liability.

Sinn Féin are proposing that in an Irish context the appropriate approach is a 25% cap on losses that can be carried forward coupled with a time limit of ten years.

The effect of this modest proposal is that three quarters of the banks' profits would be taxable going forward and they will pay the full rate after ten years.

In 2018 the combined profits would have netted hundreds of millions of euro in revenue. This will be the case for years to come regardless of who owns the banks if these proposals are accepted.

Quotes:

Sunday Business Post, Editorial, April 2018:

By taxing them (the banks) properly, the state would send out a message that the cosy relationship between the financial sector and the state is over, and it would also allow the state to recoup money from the banks that it could actually use for the public good.

Justine McCarthy, _Sunday Times_, March 2018:

If Doherty's proposal to halve the banks' tax relief were to be adopted,….. It would also send out an important message that the bottom line in the calculations of the state is not institutions' profit margins but fairness to citizens.

Seamus McCarthy, Comptroller and Auditor General addressing PAC – February 2018

"There was a restriction on the use of losses by NAMA-participating banks for a period.
….It is gone but it goes to the point that limits can be imposed."

Pearse Doherty, Sinn Féin, March 2018:

"These are profits being made on the backs on very high interest rates for SVR mortgage holders. The government must take action now and ensure that these banks are taxed fairly."

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