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March 6<sup>th</sup>, 2024

Dear Mr McGrath,

We are writing to the Department of Finance to articulate our stance on the current state of tax legislation concerning Counsellors and Psychotherapists.

According to VAT Treatment of Medical Services, VAT exemption is limited to the provision of medical care services by recognised medical professionals who are registered on a statutory register in the State or equivalent legislation applicable in other countries. The service provided must be medical care and it must be provided by a person in the exercise of the medical profession.

Statutory Instrument No. 170 of 2018 (Health and Social Care Professionals Act 2005 (Regulations 2018)) of 2 July 2018 designates psychotherapists and counsellors as a regulated profession and establishes the Counsellors and Psychotherapists Registration Board. Professional counselling and psychotherapy services provided by persons registered by this Board are exempt from VAT from the date of their registration.<sup>1</sup>

However, counsellors and psychotherapists cannot be registered practitioners, as the appropriate CORU registers are not accessible to them at present.

According to the World Health Organisation (WHO)<sup>2</sup>, mental health conditions are increasing worldwide. There has been a substantial increase in the demand for mental health support, as widely reported by various sources. Revenue's current position seems to offer little relief despite the heightened need.

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<sup>1</sup> <https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Services/services-medical.pdf>

<sup>2</sup> [https://www.who.int/health-topics/mental-health#tab=tab\\_1](https://www.who.int/health-topics/mental-health#tab=tab_1)

With the public health system straining under pressure, the IACP, as the largest professional body for counselling and psychotherapy, aims to propose that Counsellors and Psychotherapists be considered for VAT exemption.

## **About the IACP**

The IACP was established in 1981 to identify, develop, and uphold professional standards of excellence in Counselling and Psychotherapy.

Our work advocates for best practices, nurtures the development of the profession, and ensures the welfare of the public. As a registered Charity (CHY 6615) representing over 5,900 members, the IACP stands as the largest counselling and psychotherapy association in Ireland.

For more than 40 years, the IACP has been committed to promoting and advancing the profession of counselling and psychotherapy through high-quality education, training, and professional development. We actively lobby and advocate for increased investment in counselling and psychotherapy, striving to establish universal access to these essential services. Additionally, we raise awareness of the value and benefits of Counselling and Psychotherapy, supporting our members to uphold the highest standards for the benefit and protection of individuals seeking therapy.

At the heart of the IACP's mission is the protection of the public, achieved through the rigorous IACP accreditation process. This ensures that practitioners possess appropriate qualifications and adhere to acknowledged standards of professional capability. The accreditation provides clients with assurance that practitioners operate within an established ethical framework. The IACP accreditation sets forth stringent minimum criteria for entry into the profession, supported by robust governance oversight to continuously maintain and uphold these standards. The IACP has a comprehensive Code of Ethics and Practice that members must adhere to, alongside strict supervision and CPD requirements, as well as a robust Complaints Procedure.

We accredit individual members and Level 8 and 9 Training Programmes in Counselling and Psychotherapy.

We actively represent the counselling and psychotherapy profession at both national and international levels, collaborating with other national and international counselling and psychotherapy associations to advance the global development of these professions.

Our members are on the frontline of mental health service provision in Ireland. The specific challenge our members face pertains to the current VAT treatment for Counsellors and

Psychotherapists. We will now delineate various aspects of the VAT regime that adversely impact our members' ability to provide these important services to the public.

## **1. Thresholds**

The extremely low turnover threshold for VAT registration in Ireland, set at €40,000 (from 2024), stands in stark contrast to the UK threshold of £85,000 GBP within a 12-month period, placing considerable burdens on small businesses.

The registration thresholds need to be raised, as the current level is inadequately low and has failed to keep pace with inflation. This low threshold is negatively impacting the provision of counselling and psychotherapy services to the public.

Our association primarily comprises sole traders offering services to private individuals (non-registered), and the obligation for practitioners to absorb VAT has led many members to limit their service provision to stay below the €40,000 threshold and avoid VAT registration. Consequently, it becomes economically unviable for practitioners to offer services in the €40,000-€50,000 range due to the necessity of absorbing VAT costs.

## **2. Compliance Costs**

The combination of the low registration threshold is compounded by the issue of compliance costs.

Sections 76 to 78 VATCA10 specifically deal with the requirement to submit VAT returns. Typically, VAT is reported on a bi-monthly basis using Form VAT3. This form, along with payment for any VAT owed, must be received by the Collector General on or before the designated filing deadline.

For both counsellors and psychotherapists, clients are typically not VAT registered. Consequently, they cannot reclaim VAT on counselling and psychotherapy fees. While counsellors and psychotherapists are entitled to claim deductions for practice expenses like electricity, phone, and rent, the associated 'input VAT' is usually not significant. This requirement serves as a barrier to the expansion of private, affordable counselling and psychotherapy. It becomes particularly noteworthy at a time when the government is actively promoting the expansion of mental health services.

## **3. Consumer Bears the Tax**

VAT is an indirect tax, ultimately borne by the consumer, in this context, the client. Especially during these challenging times, any additional cost represents a significant barrier

for vulnerable individuals seeking essential mental health support. This impediment hinders their ability to access crucial assistance when needed.

Currently, there exists an anomaly where psychologists and psychiatrists can provide VAT-exempt services, but this privilege is not extended to counsellors or psychotherapists. Given the heightened importance of facilitating and encouraging access to mental health support during this crisis, any measure that aids in this regard should be promoted.

The role of counsellors and psychotherapists has become more crucial than ever as the nation grapples with financial insecurity, bereavement, societal breakdown, and prolonged uncertainty stemming from the aftermath of the Covid-19 pandemic.

We appeal to you to advocate for the extension of the VAT exemption to all individuals who are IACP accredited members, as well as fully qualified psychotherapists and counsellors registered with the IACP.

The tax implications of providing all psychotherapists/counsellors with a VAT exemption, which is essentially agreed upon in principle with the establishment of the CORU Registers for Counsellors and Psychotherapists, should be relatively insignificant within the overall fiscal budget, or indeed, the overall Health Budget, but it would allow counsellors and psychotherapists to provide essential services to their clients in need.

#### **4. Services Vatable by nature/ characteristic of service**

VAT is a European Tax and is subject to the principles of proportionality, neutrality, and equality.

##### **Sense of Proportion**

Proportionality is a requirement of any measure, which affects an area of policy or legislation within the European competence. In general, terms it might be viewed as a principle of minimal interference: the rights afforded to the Member States and their citizens under the various treaties (including the right to property) should be curtailed only to the extent that it is necessary to pursue legitimate objectives, and no further. The relevant case law is rich with linguistic innovations designed to illustrate this relatively intuitive concept. You should not employ a steam-hammer to crack a nut. Only a heavy hand would use a cannonball to kill a fly etc.

For situations where the remedial measure is not so manifestly excessive, the proportionality or otherwise can be established by reviewing the measure against a three-part test:

- (i) Is the relevant measure an appropriate measure for the attainment of a legitimate objective?
- (ii) Are the means employed limited to what is necessary for the attainment of the objective?
- (iii) Is the restriction imposed or disadvantage ensuing unacceptable considering the objective being pursued?

The broadness of this discretion implicitly acknowledges the potentially penal elements of tax enforcement and arises from a preference to have such matters legislated for at the Member State level, within the systems of tax enforcement already on place. As a general rule of interpretation, where a directive is silent as to the appropriate mechanisms for its own enforcement, Member States will be given some latitude as to how the directive should be administered and policed.

This broad national prerogative was applied by Simon Brown J, in the P&O Ferries case, to dismiss a claim that the UK penalties system was contrary to European law for want of proportionality. But arguably this case has been superseded by more recent decisions of the ECJ which have stipulated that the enforcement discretion is not complete. In fact, there are two important qualifications to it:

- (i) The procedural and substantive mechanisms for enforcement must be analogous to similar areas of domestic law; and
- (ii) The penalties/measures must be both effective and proportionate.

Therefore, although there is an amount of freedom afforded to the Member States as to how VAT compliance should be maintained, proportionality is required. This view was confirmed in the *Gabalfrisa* decision, where the ECJ ruled against a relatively non-intrusive administrative measure which had been implemented by the Spanish Government in order to reduce the possibility of VAT fraud or evasion.

Proportionality is relevant in this instance as there has been significant progress in terms of establishing counselling and psychotherapy in the medical profession space over the past twenty years and now the Revenue have put a “registration test” roadblock on favourable VAT treatment.

## **5. Equal Treatment**

Equality is a general principle of European law, which can be put into any submission in context of lack of equality of treatment between Psychologists and Counsellors / Psychotherapists.

## **Psychologists are VAT exempt. (Historical reason given by Minister) (Dail Debate October 12 2021)**

### **Minister of Finance:**

*I understand that Psychologists were listed as designated professionals in the Health and Social Care Professionals Act 2005, although the register of psychologists envisaged by that legislation has not yet opened. I am advised by Revenue that, because the supply of services by psychologists were exempt from VAT for many years prior to the 2005 Health legislation, that pre-existing exemption has been maintained pending commencement of the Psychologists register.*

The principle of equality, fundamental in European law, serves as a cornerstone in addressing disparities within the healthcare sector, particularly concerning the treatment of professionals. An evident example of this inequity lies in the differentiation between psychologists and counsellors/ psychotherapists regarding VAT exemption.

Psychologists currently benefit from VAT exemption, a privilege rooted in historical considerations, specifically dating back to the Health and Social Care Professionals Act 2005. Despite psychologists being designated professionals in the Act, the envisaged CORU Psychologists' register has yet to open.

The pre-existing VAT exemption for psychologists, maintained by Revenue, traces back to the period before the 2005 Health legislation.

However, this historical justification lacks the contemporary relevance needed to address the dynamic nature of the counselling and psychotherapy professions. As these fields essentially navigate a new professional landscape, relying solely on historical reasons appears inadequate.

Counsellors and psychotherapists have made significant strides in establishing themselves as essential mental health professionals, contributing substantially to the continuum of care. The evolving landscape of mental health professions necessitates a forward-looking approach to assess the current and future significance of counsellors and psychotherapists within the broader healthcare framework.

Advocacy for equal VAT treatment is rooted in the principles of fairness and consistency in taxing healthcare services. Ensuring that psychologists, counsellors, and psychotherapists receive equitable treatment reflects a commitment to recognising the vital contributions of all mental health professionals. An appeal is made for a contemporary evaluation, moving

beyond historical considerations, and acknowledging the pivotal role of counsellors and psychotherapists in mental health care.

In conclusion, the principle of equal treatment demands a reassessment of VAT exemptions to align with the evolving nature of mental health professions and recognize the essential contributions of all practitioners, including counsellors and psychotherapists.

## **6. Unfair Competition**

The current treatment of VAT, where psychotherapists and counsellors are subjected to VAT while psychologists are not, creates an atmosphere of unfair competition, affecting both the supply side and consumer choice. This disparity not only contradicts principles of fair competition but also hampers the ability of individuals to make informed choices about their mental health care.

The imposition of VAT on counselling and psychotherapy services for qualified, IACP registered, and accredited practitioners is unjust. The absence of VAT exemption creates an unnecessary barrier for individuals seeking mental health care, hindering their access to essential services. Such a hindrance stands in direct contradiction to the legislative principles promoting parity of esteem between physical and mental health.

The imposition of VAT on psychotherapists and counsellors but not on Psychologists creates an unjust competitive environment and compromises consumer choice. VAT exemption for mental health services, provided by qualified and accredited professionals, is not only long overdue but also aligns with the legislative principles of parity of esteem and the broader societal imperative of facilitating unhindered access to professional mental health support.

## **7. Registration test**

We find it concerning and unfair that counsellors and psychotherapists are disadvantaged financially during the long process of establishing a statutory register by CORU. It may seem that the Government derives direct financial benefit from the delay in establishing a statutory register by a state agency. This situation raises questions about its alignment with principles of fairness in Public Law.

This lack of fair treatment manifests as a closed-door policy, devoid of a comprehensive analysis of the VAT position. The requirement for registration on a non-existent statutory register, a process projected to take an estimated additional three to five years to materialise, raises questions about the fairness and logic of such a policy choice.

To address this, we propose the establishment of a pre-state-registration position. In this proposed arrangement, all qualified and accredited members of the IACP and comparable bodies would be granted VAT exempt status until the statutory register is established, mirroring the treatment afforded to Psychologists.

Drawing from general knowledge about statutory registers in other professions, a common practice involves initial leeway in terms of entry, with subsequent entries becoming more challenging once the state register is fully operational.

This parallels existing frameworks, such as the provisional registration for Adult Education teachers, allowing them a grace period of three years to undertake approved courses for maintaining registration.

The Minister's policy rationale for registration, as articulated in the Dáil debate on October 12, 2021 (refer to Appendix 3), emphasises the importance of minimum qualifications, exclusive use of protected titles, and a system of sanctions for professional misconduct or poor performance. It is crucial to note that IACP Members already possess full qualifications and diligently adhere to ethical standards, annual CPD, and strict supervision requirements.

In light of these considerations, the call for a pre-registration VAT exempt status for qualified and ethically compliant IACP Members seeks to rectify the inequities arising from the delay in establishing the statutory register. This proposal aligns with established practices and ensures that fair treatment prevails in the interim period.

## **8. Anomalies**

The clarity and predictability of tax laws are imperative for effective governance. An apparent anomaly in Ireland's tax legislation pertains to the divergent VAT treatment of Psychologists and Counsellors / Psychotherapists, presenting inconsistencies that warrant attention.

Currently, while medical and related services provided by psychiatrists and psychologists have VAT exemption, medical services offered by counsellors and psychotherapists are subject to a reduced VAT rate of 13.5%. Intriguingly, if a counsellor / psychotherapist holds qualifications as a psychologist, the service becomes eligible for exemption. This distinction based on professional qualifications rather than the inherent nature of services appears counterintuitive.

The application of VAT treatment should ideally align with the functional characteristics of the services provided.



Another noteworthy anomaly lies in the recognition of counsellors and psychotherapists by the HSE/Department of Health for medical treatment, with remuneration sourced from public funds. Paradoxically, despite this acknowledgment by state funded body, Revenue refuses to extend VAT exempt status to counsellors and psychotherapists. This incongruity raises questions about the consistency and coherence of the regulatory framework.

In addressing these anomalies, a call for a more function-oriented approach to VAT treatment is essential. The application of tax should be based on the inherent nature of services provided. Furthermore, aligning the recognition of counsellors and psychotherapists by public health authorities with VAT treatment would contribute to a more coherent and equitable regulatory landscape.

Ultimately, in the pursuit of a transparent and fair tax system, it is imperative to address these inconsistencies and ensure that VAT treatment aligns logically with the functional characteristics of the services provided by mental health professionals.

## **Conclusion**

In conclusion, our primary appeal centres on securing VAT exempt status for our valued members—Counsellors and Psychotherapists. This pivotal exemption addresses a spectrum of pressing challenges currently confronting these professionals.

Firstly, the burdens imposed by the low turnover threshold for VAT registration create significant challenges for small businesses. Many practitioners find themselves compelled to limit their services to avoid crossing this threshold, subsequently restricting access to mental health support within certain financial brackets for the public.

The associated compliance costs with VAT filing requirements add another layer of complexity. The inability of clients to reclaim VAT on psychotherapy fees, combined with minimal deductions for practice expenses, hampers the expansion of affordable mental health services, contradicting broader government efforts to enhance mental health care provision.

Moreover, the indirect impact on consumers, counselling and psychotherapy clients, due to VAT costs, acts as a significant barrier—especially during times of heightened need for mental health support, such as the ongoing challenges posed by the Covid-19 pandemic.

The existing VAT treatment introduces unfair competition, particularly concerning the historical VAT exemption available to Psychologists (who are also not fully state regulated) in contrast to the treatment of Psychotherapists and Counsellors. This disparity not only

impacts service provision but also contradicts legislation aiming for parity of esteem between physical and mental health.

Additionally, the delay in establishing a statutory register further compounds the issue, resulting in an unfair disadvantage for our members as their VAT status hinges on the implementation of this registration system, a process that may extend over several years.

We draw attention to recent positive developments, such as the Canadian announcement regarding Tax Exemption for Psychotherapy and Counselling Services from 2024. This move, as acknowledged by the Canadian Counselling and Psychotherapy Association (CCPA), marks a crucial step towards achieving mental health parity.

We also applaud the outcome of the Tax appeal case 32TACD2022, affirming psychotherapy and counselling services delivered by an IACP Member as professional medical care and thus VAT exempt (not subject to the 13.5% rate).

Granting VAT exempt status to Counsellors and Psychotherapists in Ireland, particularly those registered as IACP Members, stands as an effective solution to all the challenges outlined. This action ensures fair treatment, alleviates financial burdens, and enhances access to mental health support for the public.

We eagerly anticipate engaging in discussions with Revenue, offering detailed submissions to resolve these urgent matters facing our members in the counselling and psychotherapy profession.

Should you require any further information, please do not hesitate to contact us via email at [chair@iacp.ie](mailto:chair@iacp.ie) and [ceo@iacp.ie](mailto:ceo@iacp.ie).

Yours sincerely,



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**IACP Cathaoirleach**



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