Main TALC & TALC Direct/Capital Subcommittee Joint Session
Finance Bill 2022
27 October 2022
2.30pm to 4.30pm
Minutes

Stamp Duty

Section 59

Section 59 inserts sections 83DA & 83DB SDCA 1999 These sections are subject to a commencement order.

Section 83DB provides for a partial repayment of stamp duty charged on the acquisition of a residential property at the higher rate of 10% under section 31E SDCA 1999, where certain conditions are met following the acquisition. Practitioners asked whether it was the case that where there is a further sale of a property in respect of which a partial repayment of stamp duty was made under section 83DB, the person acquiring it could claim a further repayment of stamp duty on the basis that the qualifying conditions were met in respect of the first acquisition. Revenue explained that if a further sale takes place and stamp duty is charged on that acquisition at the higher rate of 10% under section 31E SDCA 1999, the person acquiring it would have to meet the qualifying conditions for repayment under section 83DB themselves. Revenue noted that this treatment is consistent with the existing 31E-related repayment schemes provided for by sections 83E and 83F.

Section 60

Section 60 amends Chapters 1 and 2 Part 6 SDCA 1999 to clarify the stamp duty treatment on securities transferred by means of electronic systems.

Practitioners asked whether the amendments would, unintentionally, extend the scope of Part 6, in particular by taking out the references to dematerialised securities in Chapter 2.

Revenue noted that Part 6 comprises two chapters. Currently, the application of the provisions of both Chapters 1 and 2 could potentially lead to a double charge to stamp duty. To address this, the amendment deletes most of the provisions in Chapter 1. As the provisions of Chapter 1 ensure that stamp duty is charged on the transfer of securities regardless of the form in which the securities are held (i.e. in certificated or dematerialised form), Chapter 2, which currently applies to transfers in respect of dematerialised securities only, is being amended to provide that it will also apply to transfers in respect of certificated securities.

Revenue noted that the amendments are not intended to have an impact on any administrative practices that are currently applied by Revenue in relation to share transfers. Any change to those practices will be flagged to practitioners well in advance.

Capital Acquisitions Tax: Part 5 – Sections 64-67

Incorrect birth registration

Section 65 makes several amendments to sections 2 & Schedule 2 CATCA 2003. The Birth Information and Tracing Act 2022 amended the Succession Act 1965 to make provision for persons who have been

the subject of incorrect birth registrations. The amendments provide that any existing rights or obligations that apply in the Succession Act based on a person's relationship to his or her birth parents, siblings or extended family will also apply in respect of the corresponding relationships that person has with his or her "social family". Section 65 makes provision for these relationships to be carried into CATCA 2003. Where a person is related to another person by virtue of the new provisions, the legislation provides that the person is to elect whether or not that relationship is to apply for the purposes of computing CAT due on any gifts or inheritances taken from the other person.

Practitioners queried how an election for a relationship to apply would affect the availability of the Group thresholds. They gave an example of a scenario where an inheritance of say €100,000 was received from a social parent and the taxpayer elected to include that under their Group A threshold, and then say under a s.117 Succession Act claim, a taxpayer inherited a further €200,000 from their birth parent, does that mean that the taxpayer lost the balance of the threshold in respect of the second inheritance? Revenue confirmed that this would not be the case. Firstly, because an election will only affect the CAT treatment of gifts or inheritances taken from the same person. Secondly, because an election can only be made in respect of "social family" relationships - any existing legal relationships that apply between a person and their birth family will remain the same. Therefore, in the scenario described by practitioners, the taxpayer would aggregate both inheritances under Group A, thereby utilising €300,000 of the Group A threshold.

Revenue acknowledged these provisions are complicated and guidance will be issued to explain how they are to be applied in practice.

Obligation for banks to provide information

Section 66 amends section 48A CATCA 2003.

The section introduces a statutory obligation for banks to provide information in relation to a deceased person's accounts to the person applying for probate in relation to the deceased's estate or to an agent acting on their behalf. The change is being made to ensure that banks are not precluded by the GDPR from providing such information. Practitioners welcomed this amendment.

Miscellaneous

Vacant Homes Tax

Section 84 introduces a new part 22B TCA 1997 to give effect to the vacant homes tax ("VHT").

Practitioners noted that the chargeable period runs from 1 November to 31 October the following year. The legislation, as drafted, requires that a return is submitted by 7 November following the end of the chargeable period, i.e., 7 days from the end of the chargeable period. Practitioners asked why such a short timeframe has been allowed for filing returns under this section.

Revenue expressed the view that the filing requirements should be straightforward as information required to confirm the occupation of a property should be readily available. It should be known to property owners whether or not their properties are vacant or occupied. As such the timeframe should not present any issues. Revenue acknowledged without the system up and running, specific insights into how the system will actually work is not possible at this time, but the expectation is that it should be a simple process.

Practitioners asked if all residential property owners have to file. Revenue acknowledged that any property owner could be required to file. Revenue explained that only property owners coming within the charge to VHT for a chargeable period would need to file a VHT return for that period. This

included situations where a property was vacant during a chargeable period but an exemption from the charge is being claimed, such that there is no liability to VHT. Revenue noted that the legislation also made provision for Revenue to require any property owner to file a return. In a scenario where Revenue notifies a property owner that they may be required to file, a different filing deadline may apply. The LPT and VHT systems will ultimately be closely linked.

Practitioners noted clarification in guidance regarding the application of the penalties outlined in section 635BM TCA 1997, which section allows Revenue request information from certain persons to identify potentially vacant homes, would be welcomed given media commentary suggesting the €100 daily penalty applied to homeowners. Practitioners also acknowledged comparable powers of enforcement already exist under the LPT legislation and queried which powers take precedence. Revenue noted that the wording of section 653BM is closely based on an equivalent provision in the LPT legislation. However, section 653BM would be relied upon if the purpose of an information sharing request is to determine whether a property was vacant.

Revenue noted that the legislation makes provision for record-keeping requirements for property owners and information-sharing provisions for Revenue. Revenue will issue guidance to explain the operation of these provisions.

Residential Zoned Land Tax ("RZLT")

Section 85 makes several amendments to part 22A & section 917D TCA 1997.

Practitioners referenced section 653S TCA 1997 and noted penalties could apply where some property owners do not register even though the property itself may not be taxable. Practitioners suggested that it would be more appropriate for the penalty to apply only where the property itself is taxable. Given the RZLT is new and not commonly understood outside of the property development industry, practitioners noted the possibility of a penalty of €3,000 for an inadvertent failure to register seems unfair.

Revenue noted it was a policy decision to include a registration requirement for residential homes where the garden exceeds 1 acre. This is to ensure the information is available to allow Revenue to monitor the volume of properties which fall into this category, in particular in areas with extreme housing need.

Revenue did not perceive any inequity in this requirement. Revenue is of the view that the requirement to register must be subject to a penalty in the event of non-registration. If there are no penalties, the risk of non-compliance rises.

Revenue plans on communicating any registration requirement clearly and so inadvertent/unfair penalties should not arise.

Section 653AH is to be amended by the insertion of a new subsection (7A) to provide that in the event of a development not being fully completed prior to expiry of planning permission the site owner must amend all RZLT returns in which a deferral under the section was claimed, and interest at 8% would apply to the amount of deferred RZLT now payable. Where RZLT deferred under this section becomes payable, it is due and payable from the liability date relating to the return in which the deferral was claimed. Practitioners noted that the 8% interest rate seems punitive in circumstances where a builder is aiming to satisfy the conditions but for some reason cannot meet the deadline. Revenue noted it must be seen in the context of the possible abatement of tax under section 653AH TCA 1997, which, if 85% or more or the residential development in question is completed within the lifetime of the

planning permissions, could have the effect of no tax liability arising. If this is the case the full amount of deferred RZLT may be abated and so should not be subject to interest charges.

Section 653AHA would provide relief where the development of sites (or part thereof) is precluded under the terms of certain leases. The relief provided for in this section will only be available where, inter alia, the lease was entered into prior to 1 January 2022. Practitioners queried whether the relief should also apply for leases agreed in the time from 1 January 2022 to the date of the publication of Finance Bill. Revenue noted the 1 January 2022 is the date Part 22A came into effect and, by restricting the application of the proposed exemption to leases entered into prior to this date, ensures no one who had entered into such leases prior to that date is disadvantaged by reason of the introduction of RZLT; any person who entered into such a lease after that date is assumed to have done so in the context of RZLT being a potential factor.

Rents paid to non-residents

Section 81 of the Bill makes changes to the provision of the TCA dealing with taxation of rental income received by a non-Irish resident person in respect of property located in the State.

Practitioners queried if there is an indication when the section would be commenced and whether this will be subject to the development of new forms/reporting systems on ROS? Practitioners noted that the existing process applicable to tenants withholding and remitting tax on rental payments to non-resident landlords (Form R185) could be easily adapted to be used by collection agents.

Revenue noted that the IT infrastructure should be in place by March 2023 (and commencement order will follow). Revenue will provide more information as the IT develops and stated that the new process should be more efficient and user friendly than the current process.

Practitioners observed that as currently drafted, the section 81(1B)(b) appears to impose a withholding tax obligation on all payments by tenants to agents whereas practitioners understood that the intention was to relieve the reporting and payment obligations of collection agents. Practitioners noted this may be an unintended consequence and that clarification may be required so that only payments from agents to non-resident landlords attract a withholding tax obligation in the specific circumstances provided for in section 81(1B) of the Bill.

Revenue noted it would review the legislation to consider the potential issue identified and confirmed that the aim of the legislation was to provide that the agent deducts tax on payments to non-resident landlords.

DAC 7/OECD Model Rules on Platform Operators

Section 71 repeals the existing section 891I TCA 1997 and reinstates an amended section 891I TCA 1997. Section 72 inserts a new section 891J TCA 1997 into Part 38 TCA 1997 which transposes the OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy and the Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods (collectively "the Model Rules"). The Model Rules are similar to DAC7.

Practitioners noted that sections 71(16)(a) & 72(16)(a) appear similar. However, section 71(16)(a) refers to "subject to paragraph (b)" and section 72(16)(a) refers to "subject to paragraph (c)". Practitioners queried whether this was intentional. Revenue will review these technical amendments.

Temporary Business Energy Support Scheme

Sections 87-90 contain the rules for the operation of the Temporary Business Energy Support Scheme ("TBESS").

Practitioners queried the reference in section 88(26) to certain modifications. Revenue noted that the TBESS legislation is drafted in accordance with the Temporary Crisis Framework ("TCF") which is expected to be extended. There is a facility for a further extension. Revenue will look at the modification as it is intended to cover this expected extension.

Practitioners noted that the guidance was difficult to follow and queried whether it is possible for the process/guidance notes to be simplified. It would be helpful if the fundamental rules for determining qualification for the payment were easier to follow.

Revenue noted that the guidance issued in advance of the meeting and Revenue was conscious of getting some guidance out to enable some discussion on the process. Presently, the guidance is 'version 1' with many changes expected as the rules develop. Revenue was simply keen to issue some guidance. Revenue noted that the system is still under development. Examples using sample bills, screenshots, etc. should be included in due course. The present focus is just an overview. Revenue acknowledged that the bolded sections are key.

Revenue advised that the TBESS portal, once developed, should do the calculations, with taxpayers and their agents simply required to compile the information required for input. The reason for complexity is to ensure that the system compares 'like-with-like'. This is to take account of the practical difficulty comparing billing periods as businesses can be on different payment schedules, for example. Revenue believes the system should become user-friendly over time.

Practitioners welcomed the publication of the guidance and the proposed addition of screenshots and sample bills. Practitioners queried if Revenue would be undertaking a communications campaign and what this would entail.

Revenue confirmed they will be running a communications campaign once the IT infrastructure is at a final stage. The key message Revenue would like to communicate to taxpayers at present is the requirement for tax clearance to qualify for TBESS. As many claimants intending to avail of the support may not previously have required tax clearance, Revenue advises such businesses should begin the process now to ensure they are up to date with their tax obligations to apply for tax clearance. Revenue will be including a specific button for the TBESS in the next week or so on the electronic tax clearance system to enable businesses to apply for tax clearance to ensure their eligibility for the scheme. It should also be noted that, where a TBESS claimant has any outstanding tax liabilities, these will be automatically offset against the TBESS payment.

Practitioners asked if there would be a facility outside ROS for taxpayers/agents to determine if they qualify for TBESS. Revenue confirmed the system would be in ROS.

Practitioners requested clarity regarding the cap, whether one aggregates electricity and gas and if the TBESS limits are aggregate or per trade. Revenue noted it is the aggregate per trade, the €30,000 cap is available for electricity and gas and it will be applicable to both where a business has multiple locations.

Practitioners suggested that subsection (7) be amended by changing 'or' to 'and'. Revenue will review this subsection.

Practitioners requested clarification on the operation of the apportionment clause in section 88(8), particularly for unit properties where energy costs are recharged by the owner or a management company etc to third party tenants. While many shopping centres may have separate MPRNs for individual units, in a centre which was not purpose built, a landlord may be the party paying the bills on behalf of all the tenants and the energy costs are then apportioned to the tenants in accordance with the rental agreement. Revenue noted that section 88(8) was not intended to cover such a situation but was intended for scenarios where there are multiple trades on the same connection which are a qualifying business of a person. The relief is available based on the electricity/gas bills a business has with an energy supplier.

Practitioners queried if the €10,000 cap prejudices companies that have several trades within a single corporate structure as opposed to separating the trades across several entities. Revenue noted while the legislation provides a €10,000 cap per trade, the €30,000 could apply where a business operates across a number of locations.

Mutual Agreement Procedures (MAP) Claims

Section 79 amends section 959AA(2A) TCA 1997 and provides that a Revenue officer may make or amend an assessment to give effect to a MAP notwithstanding any time limits in the TCA 1997 on taxpayers making claims for loss relief, group relief or similar reliefs thereby allowing such reliefs in MAP cases outside of those time limits.

Practitioners requested clarification regarding the operation of the section in practice, for example, whether claims/surrenders communicated to Revenue in 2023 in respect of 2016/2017 when giving effect to a MAP would be permitted. Revenue considered it would apply in those circumstances and agreed to provide clarity on the timing of the application of the section.

Direct Taxes

Returns by Employers on Reportable Benefits

Section 8 inserts section 897C TCA 1997. The new section provides for the automatic reporting to Revenue by employers in respect of three specific measures (“reportable benefits”) which are made without the deduction of tax being the remote working daily allowance of €3.20, the payment of travel and subsistence expenses, and the small benefit exemption.

Practitioners noted that they would have welcomed a consultation in advance of legislation being drafted/published. They also noted the requirements are broad and very onerous and would welcome an explanation of the rationale for their introduction.

Practitioners raised concerns regarding the additional administrative burden on employers with the new reporting obligations, particularly if they are on a monthly basis, noting the very matters which must be reported under the proposals were introduced to reduce the administrative burdens on employers. The view is that the requirement will place an unequal burden on small employers. Practitioners welcomed the fact that the provisions will only be commenced subject to stakeholder engagement and requested clarification regarding what is envisaged in terms of stakeholder engagement.

Revenue noted that the context of this requirement is against the backdrop of the introduction of PMOD in recent years. Revenue has reviewed the reporting of these benefits and others which are not subject to PAYE and has observed a gap in the information available. There is a requirement to understand what benefits are provided to employees. Many benefits have accompanying conditions

which must be fully met to enable the provision without deduction of tax. Against this, there is a cost to the Exchequer in terms of this preferential treatment.

The new provisions are an add-on to existing reporting processes and requirements in relation to the provision of taxable benefits. The consultation process will deal with implementation and inform how this reporting requirement can be implemented successfully. It is anticipated that reporting will commence in January 2024 with the consultation on implementation lasting circa 12 months. The three benefits chosen were identified as those which would best enable Revenue review overall compliance with the administrative procedures.

Practitioners explained that travel and subsistence are not reportable and do not go through payroll. Additionally, claims are often made on behalf of several employees at once by an individual responsible employee. Employers' payment systems are not adapted to the type of reporting proposed under the new rules. Practitioners noted that linking the reporting to payroll is inappropriate as such payments do not normally go through payroll.

Revenue acknowledged significant thought has been put into determining the extent of obligations under the proposed system, but stakeholder engagement would inform the process. Revenue noted that if a payment is made to employees each month, then there could be a real-time reporting aspect for any benefits provided. Practitioners noted that what is being provided to the employee may not be a benefit, but a reimbursement. Revenue acknowledged that the legislation notes payments, not only benefits and the three measures are referred to in the new section as 'reportable benefits'.

Practitioners asked if a consultation was considered in advance of legislation. Revenue noted the view was that the most appropriate approach would be to include in Finance Bill as a sign that the reporting process will be going ahead. Revenue's intention is for the consultation process to inform the implementation process ultimately. The commencement order provides this flexibility.

Practitioners raised concerns that the administrative burden associated with the current measure is disproportionate. The benefits are not currently reportable because by their nature they are small and so any risk of loss of revenue is low. The potential return to the Exchequer of this measure is disproportionate. Practitioners noted that the reporting requirement is arguably against the spirit of self-assessment, given most businesses are compliant and retain books and records which are available to Revenue upon request. Revenue noted that from a PAYE-risk perspective, it is imperative that the correct procedures are in place to ensure benefits/payments are in fact non-taxable. Revenue also noted they do not have visibility of the application of the small benefit rules across different companies, hence why this reporting mechanism is now being tabled for introduction.

Practitioners also noted that global numbers are provided via Accounts Extracts/iXBRL reporting requirements. Revenue noted there is a gap in this information as not all employers are required to report and the information is limited from Revenue's perspective.

Amendments to granting of vouchers

Practitioners raised concerns that the legislation appears to specify that the first two benefits in the year will be exempt and any other benefits will be taxable. This would give rise to an issue where very small benefits (for example, an easter egg) is provided earlier in the year. Practitioners queried if this was the policy intention.

Revenue noted the intention is to incentivise employers to provide a benefit which is not salary. The policy was to extend the benefit to two a year as for many employers, providing one benefit of €1,000 could give rise a cash-flow issue. It is not intended that the employer will choose the benefits the relief

will apply to where there are more than two benefits provided to the employee in the year. If two benefits are provided in the year, an employer cannot provide a third tax-free benefit.

Revenue noted the section is seeking to capture voucher type benefits, not asset-type benefits otherwise subject to tax. Practitioners agreed to submit additional details regarding asset-type benefits provided to employees to Revenue for consideration.

Rental Credit

Section 12 inserts section 473B TCA 1997 to give effect to the new €500 income tax credit in respect of rental payments.

Practitioners noted a concern on the availability of the rent credit available to parents supporting their children.

First, it appears the legislation suggests that the accommodation for students must be their "principle private residence". Students often spend time between their family home and university accommodation.

Secondly, it appears a parent is only entitled to a rent credit if a student is renting an RTB registered accommodation. As such, accommodation that is RTB exempt won't qualify for the rent credit where the rent is paid by a parent on behalf of their student child.

Revenue noted that the legislation only applies to rent paid while students are required to avail of accommodation, i.e., it would be considered a student's PPR during term time. Revenue believes the legislation is effective. Revenue noted that a property must be a registerable property in order to avail of the credit, and this is in line with policy objectives.

Practitioners noted there is an inconsistency. Revenue noted there is a difference between parents paying on behalf of students and individuals paying for accommodation as part of work. Revenue noted the drafting of the legislation has taken account of policy decisions taken at Department of Finance level.

Practitioners requested that clarification regarding the availability of the credit for PhD students be provided in guidance. Revenue confirmed that the definition of an approved course refers to an undergraduate or postgraduate course only, and does not refer to a PHD course. Therefore, the credit will not be available where a parent is paying rent in respect of a property used by their child to facilitate the child's attendance on a PHD course. The credit will however be available (subject to the general conditions of the relief being met) where the claimant is the PHD student themselves i.e. where the student is paying his or her rent themselves. Revenue also confirmed that this clarification will be set out in guidance when it is published.

Special Assignee Relief Programme (SARP)

Section 14 amends section 825C TCA 1997.

Section 14 places certain of Revenue's administrative requirements relating to SARP on a legislative footing. This includes the requirement for the employer to confirm that a PPSN has been issued to the employee, when submitting the SARP1A certification to Revenue within 90 days of the employee's arrival in the State. The ITI has engaged extensively with Revenue's Personal Division on the ongoing difficulties experienced in obtaining a PPSN in time to include on the SARP1A. Receipt of a PPSN can be delayed for several reasons. For example, work pressures experienced by the Department of Social Protection (DSP) can impact the processing of applications and delays in the employee applying for a PPSN because of all the logistics involved in moving to another country.

While the employer can engage with the employee about applying early for a PPSN and on pursuing the PPSN if delayed, the timeframe for receipt of the PPSN is outside of the control of the employer submitting the SARP1A (and often outside of the control of the employee). Yet the legislation, as amended, would appear to seek to deny SARP relief for the full 5-year period if the PPSN is not obtained and supplied to Revenue within 90 days of the employee's arrival.

Practitioners requested clarification as to the policy intention of this amendment to the legislation.

Practitioners noted that PPS numbers may not always be available when providing the Form SARP1A. Practitioners noted the DSP control this process and the 90-day window is a practical issue. The rules increase the chances of otherwise eligible claimants being unable to claim SARP.

The policy objective of SARP is to reduce costs. Revenue believes it is not unreasonable for assignees to apply for and receive a PPSN. The DSP has informed Revenue that PPS applications generally take two weeks to process, once the paperwork submitted is in order. Revenue needs a method of ensuring that claims are valid, as often PPSNs were provided many months after relief has initially been provided. Revenue is of the view that the requirement must be put on a legislative footing.

Practitioners noted there was no issue regarding the requirement to obtain the PPSN but the concern is that the timing of the receipt of the PPSN is beyond the control of the taxpayer and that there have been many incidents of delays in PPSNs issuing to taxpayers.

Revenue cannot certify entitlement to SARP until it receives a PPSN. Revenue believes a PPSN can be applied for in advance of arriving in Ireland. It believes it could be applied for in conjunction with other permits required in advance of an assignee's arrival into Ireland.

Practitioners accepted it is not onerous to apply for a PPSN, but also noted in some instances, physical presentation at a DSP office can be required. Revenue noted in their preliminary conversations with the DSP, the DSP is prepared to stand over the 2-week timeframe. They have gone on parliamentary record to state this.

Practitioners reiterated several instances where PPSNs have taken a long time to issue in practice over the years. Practitioners requested that consideration be given to including a provision to cover circumstances where an application for a PPSN has been commenced. Practitioners noted there would be no loss of revenue in such a scenario, as the assignee will be on the 'emergency tax' basis until the PPSN is provided.

Practitioners sought assurance that Revenue will continue to adopt the approach in the SARP Manual which provides that delays in receipt of a PPSN will not lead to an individual being ineligible for SARP. Paragraph 5.1 of the Manual provides that, "Where the conditions of the SARP are met, the absence or the delay in processing of a PPSN will not, in itself impact on whether an employee is eligible for relief. Approval for SARP will not issue, however, until the PPSN is provided to Revenue".

Revenue noted the manual was drafted when the legislation did not require a PPSN. If the amendment passes into legislation, then this section of the manual will need to be reconsidered in light of the statutory requirement to provide a PPSN in conjunction with the initial application.

Revenue noted that a PPSN is a prerequisite for many schemes. While a PPSN has not been a mandatory requirement in order to apply for SARP up to now, it is a critical requirement which is now being legislated for. It will also enable Revenue to record claims electronically. A general conversation is due at Main TALC shortly on delays experienced by practitioners obtaining PPS Numbers from DSP.

Foreign pension lump sums

Section 15 introduces section 200A TCA 1997 on the treatment of lump sums drawn down from foreign pension arrangements.

Practitioners noted that the taxation of foreign pension lump sums has been the subject of discussion at this Sub-committee where practitioners had requested that Revenue provide the technical basis for treating such lump sums as income from a foreign possession. In light of this, the timing of the proposed amendment has given rise to concern. Practitioners would also have concerns regarding the potential for double taxation issues.

Practitioners requested clarification regarding the tax treatment for payments on or before 31 December 2022, given the legislation is effective 1 January 2023. Practitioners noted that clarity would be welcomed as the legislation doesn't address treatment in prior years and tax returns have been filed with expressions of doubt.

Revenue confirmed that a note of the Precedent 28 Sub-group meeting which took place on 28 July would be provided to the sub-committee shortly. Revenue noted that their position is that foreign pensions are income, and the lump sum is part of the assessable income. Revenue will examine legacy cases on a case-by-case basis. This can be discussed further at the relevant sub-group. Revenue committed to a meeting in the next 3-4 weeks.

Practitioners welcomed the confirmation of the technical basis in due course. Practitioners raised concerns that provision does not appear to have been made for the standard rate tax charged on a lump sum taken from a foreign pension arrangement to be offset against a chargeable excess tax liability in the same way that a standard rate tax taken from an Irish pension lump sum can under Section 787RA TCA. Practitioners noted that there may be a scenario where a foreign fund and Irish fund combine such that the total fund is in excess of the SFT.

Practitioners also noted there is some complexity around the operation of double taxation relief. Pension products are not always comparable so double taxation must be carefully considered and relevant treaty provisions must be analysed. Practitioners noted that it would be important that guidance is issued to provide clarity.

Research and Development Tax Credit

Section 23 amends sections 766, 766A, & 766B TCA 1997.

While recognising that the changes to the R&D Tax Credit are necessary to align with new international definitions of a refundable tax credit, concerns have been raised regarding the potential cashflow implications arising as a result of moving away from the current system of offsetting the R&D Tax Credit against corporation tax liabilities.

The amendments provide that no credit will be due to a company unless a 'valid claim' is made by a company, which is defined as all information furnished by the company which Revenue may reasonably require to enable them to determine if the R&D credit is due to a company. Practitioners would welcome discussion regarding this requirement as it will be important that it does not impact on either the timing of the payments or the level of information required to support an R&D claim.

Practitioners queried the practical implications of the new definition of a "valid claim" and what is meant by the phrase "which the Revenue Commissioners may reasonably require".

Revenue noted that the concept of a "valid claim" is included in section 865 TCA 1997. While it is included in the new provisions as a condition of payment, it doesn't change the rules, it impacts timing.

Practitioners queried if every time a claim is made, it will be subject to some level of review. Revenue noted there is no change to what is already provided in section 865. The requirement has always existed.

Practitioners expressed concern in relation to cash-flow. Presently, an R&D tax credit will automatically offset against a CT liability arising. If a payment is required, the new wording suggests there may be a timing difference in practice. It was queried whether the credit will be applied once the return is submitted, or if further engagement with Revenue will be required.

Revenue noted if a case is selected for a Compliance Intervention, information can be requested. The new rules must take account of ongoing investigations also. While it may appear slightly different, no change is intended to the processing of payments. The change in relation to offset is a policy change around how the R&D credit operates, in line with international developments. The R&D tax credit is now a payment rather than a credit. Practitioners noted the timing difference may not have been fully appreciated when these changes were initially considered.

Practitioners raised a concern regarding the wording of the provision regarding the second instalment and whether it reflected the policy intention. Revenue will consider this.

Practitioners asked how section 766(c)(h)(ii) TCA 1997 will operate in practiceand who will make the decision on the offset. Revenue confirmed it is the taxpayer who makes the decision whether they receive the offset or payment but that regulations set out the order of priority for the offset. The system will follow this order of priority. Practitioners asked if the choice was binary. Revenue confirmed subsection (7) allows for an apportionment of the payment between cash and offset. Revenue noted the operation of this will be brought to committee.

Practitioners asked if the 'old rules' could continue to apply to businesses not in-scope of Pillar Two. Revenue noted this has not been considered and is a policy decision.

Relief for Investments in Corporate Trades

Section 27 makes three amendments to Part 16 TCA 1997 in respect of the Employment Investment Incentive Scheme ("EIIS"), Stat-Up Relief for Entrepreneurs ("SURE") and Start-up Capital Incentive ("SCI"):

- Section 500 TCA 1997 is amended to provide for an exception to the connected persons provisions for certain partnerships.
- The criteria for the statement of qualification under section 508A TCA 1997 are amended.
- Section 508U now provides that, where the legislation requires, the full amount of EIIS relief claimed by an individual investor may be recovered from the company in which the investment has been made for investments made on or after 1 January 2023.

Practitioners would like to understand the context for the proposed change to section 508U TCA 1997.

Section 508U TCA 1997 was drafted to provide relief in two tranches. Revenue noted that the section was not amended for FA 2019 changes which allow tax relief in a single tranche. Accordingly, companies do not issue a Statement of Qualification for second stage relief. The amendment provides for a clawback of the full amount of tax relief claimed on the investment and not 30/40ths. A clawback of tax relief to be imposed on the company for shares issued in the period ended 31 December 2022 will be calculated on the basis of the existing provisions of Section 508U.

Practitioners noted it seems unusual that the cut-off dates for applying the 1.2 or 1.6 multiplier are 31 December 2022/1 January 2023. Practitioners queried if the intention is to avoid the section having

retrospective effect given that underlying investment documentation is likely to have referred the prevailing legislation. Revenue confirmed this was the intention.

Practitioners also queried if there would be changes to enhance/relax the scheme's connected persons rules given the difficulty these are causing in practice. Revenue noted no further changes are planned at this time.

Transfer Pricing

Section 28 amends section 835D TCA 1997.

Practitioners would welcome any clarification as to whether changes to the SME exemption from transfer pricing rules is still being considered and, if so, to what extent?

Revenue noted that this question related to a future policy decision and therefore would be for the Department of Finance to answer. However, Revenue is not aware of any immediate plan for a ministerial order to commence the section which extends the transfer pricing rules to SME's. The Department of Finance has indicated plenty of advance notice would be given in the event of such a move.

Foreign currency – computation of income and chargeable gains

Section 31 amends section 79 TCA 1997.

The following note was provided by the Irish Tax Institute in advance of the meeting:

(i) "*Practical issues arise from current proposed approach linking "sole purpose of the account" with amounts lodged/disbursed needing to be "taken into account".*

As currently drafted, section 79 treatment of an account is determined by the sole purpose of the account rather than the purpose of the lodgements/withdrawals to/from the account itself. Whilst acknowledging the need to have clear boundaries as to the transactions that are to be capable of qualifying for section 79 treatment, the proposed approach gives rise to a number of issues that are set out below. In our view, a change in approach that is more aligned with the long established and well understood principle of assessing transactions on a "purposes of a trade" basis would be more appropriate and allow the measure to be operable.

The purpose of holding a bank account is a question of fact. As currently drafted, by focusing on the purpose of the account and that purpose needing to be one which is linked to the computation of profits for tax purposes, practical issues will arise. The reality is that no bank account is opened by a company for the purpose of lodging/withdrawing amounts that are taken into account in a tax computation. Instead, such accounts are opened primarily for the purposes of the trade. It is requested that the current approach be reconsidered and linked to the purpose of the lodgement itself as is currently the approach in other trade related provisions.

If the requirement remains for the sole purpose of the account to be for the lodgement/disbursement of amounts that are taken into account in computing profits/losses of a trade then the following issues will likely arise for most taxpayers:

- Inability of a taxpayers to genuinely satisfy themselves that a bank account which has been setup and used day-to-day for trade purposes can factually satisfy the "sole purpose" test as drafted in circumstances where tax computational issues were not likely to have been a purpose or of relevance to them in opening the account.

- Even if a taxpayer satisfied themselves that the account was set up for that purpose, issues will likely arise if amounts are lodged to the account that are not taken into account in a tax computation (e.g. interest or capital grants from State bodies). Such amounts might not be taken into account in the computation of profits of a trade and given that the test is a sole purpose test, questions could be raised as to whether the test remains satisfied on an ongoing basis notwithstanding that the account remains used for trade purposes.
- Similarly, the purchase of plant or machinery or other capital assets for use in the trade are clearly withdrawals/disbursements for a trade purpose but as proposed such a bona fide use of the account could cause section 79 treatment to be excluded in its entirety for other trade transactions as the amounts in respect of the capital disbursements may not be taken into account in the computation of profits of the trade.

The above issues need not arise if the provision were redrafted, potentially along the following lines:

> *(ii) that part of a debt owed by a bank which is represented by a sum standing to the credit of the company in an account in the bank where that part represents currency acquired by the company for the purposes of a trade carried on by it,*
>
> *(iii) money held by the company for the purposes of a trade carried on by it, or*
>
> *(iv) money payable by the company for the purposes of a trade carried on by it;*

If the intention of the change is to put beyond doubt that gains/losses arising on foreign currency transactions wholly and exclusively connected with the carrying on of a trade are to be within Case I then, it is the view of practitionersthat the measure as drafted falls short of this.

The above suggested amendment aligns with the "purpose" approach already taken to "money held" and "money payable" within section 79. It also broadly aligns with the approach taken to debts in section 541 and to the approach taken in the computation of trading profits/losses more generally in the Tax Acts. Whatever approach is ultimately taken, it is hoped that the measure can be amended from that which is currently proposed to make it fit for purpose and to address the practical day-to-day issues that will arise if it is to remain as drafted.

(ii) Definition of "trade receivable"

The proposed legislation defines "trade receivable" as *"an amount recorded in the company's balance sheet as owed to that company in respect of goods or services sold by that company for the purposes of a trade carried on by it".*

Given the manner in which the definition is drafted, confirmation would be welcomed in guidance that amounts owed in relation to the provision of certain other goods or services are covered (e.g., amounts lent in the ordinary course of a trade). Alternatively, the legislation could be amended by substituting "sold or provided" for "sold".

The following is a note of the discussion which took place at the meeting:

Practitioners are of the view that the language noting a bank account is used for the "sole purpose" is problematic.

Revenue noted the purpose of the amendment is narrower than practitioners understand. It is drafted to apply to the current account only; this is the account which the legislation seeks to define. A current

account is not typically used to make payments in-scope of this section. Other bank accounts will be subject to CGT as before. The provision aims to ensure there is no build-up of cash in a current account.

Practitioners noted issues with this approach as the current account can be used for other purposes. Revenue disagreed in that the provision is aimed at current accounts which should not be used, in its view, for large capital purposes. Practitioners gave the examples of small donations and other such payments to non-qualifying bodies. The scope of the amendment makes it difficult to get the benefit of section 79.

Revenue is of the view that minor, ancillary payments should not impact availability of the benefits of the section. The language "sole purpose" was included to ensure it refers to the current account.

Revenue noted it is a relief, so if you want to avail of it, you may need to set up additional accounts. Practitioners noted a lot of domestic entities would not be sophisticated in terms of multiple accounts and treasury activities.

Practitioners queried the position for historic cases. Revenue noted that historically these accounts would have been acceptable, but investment accounts would not be acceptable.

Practitioners also noted concerns that the definition of "trade receivable" could be narrow in practice. There are activities which may not fall within this. Revenue noted it relates to the balance sheet definition of "trade receivable" for a "trading" entity.

Revenue will be publishing guidance on the amendments in due course, following enactment.

Interest Limitation Rules

Section 32 introduces technical amendments to Part 35D TCA 1997 necessary under the Anti-Tax Avoidance Directives.

The following note was provided by the Irish Tax Institute in advance of the meeting:

The definition of "large scale asset" in section 835AY TCA 1997 contains the following:

> *(f) a strategic housing development, within the meaning of* ***Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016*** *approved by—*
>
> *(I) An Bord Pleanála, under section 9 of that Act, or*
>
> *(II) A local authority, under section 170 of the Planning and Development Act 2000,*

Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016 was repealed on 17 December 2021 by the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021. As such, it appears that the definition of a "strategic housing development" no longer exists in Irish legislation.

The Finance Bill appears to update section 835AY to address this. However, we would like to understand how this applies to the intervening period for Large-scale Residential Developments granted planning permission under the existing legislation which references strategic housing developments only, given that the Finance Bill amendments apply for 1 January 2023 onwards.

The issue could potentially be addressed by an amendment to the definition of "strategic housing development" in section 835AY. The definition should match that which was previously included

in Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016. The legislative amendments could be as follows:

At section 32(2)(a)(iii) Finance Bill 2022, by inserting the following:

(I) in paragraph (f), by deleting ", within the meaning of Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016"

and replacing it with the following:

(f)a strategic housing development approved by—

(i) An Bord Pleanála, under section 9 of that Act, or

(ii) a local authority, under section 170 of the Planning and Development Act 2000,]

At section 32(2)(a)(iv) Finance Bill 2022 by inserting the following definition:

"strategic housing development" means [the same wording from Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016]

The following is a note of the discussion which took place at the meeting:

Practitioners sought clarification, with the exception of the legacy debt and materiality changes, as to the rationale behind the various changes made to the ILR rules by section 32? Revenue's view is that ILR is complicated. The amendments aim to clarify the treatment of certain areas, to provide certainty. The amendments aim to remove doubt.

Practitioners queried in terms of 'section 247' interest, how does this get treated and do the amendments change the treatment of such interest? Revenue's view is nothing changed, rather clarified. There is no change in the principle of the legislation.

Practitioners noted the issue of large-scale assets, as set out in the note above. Revenue noted that this will be addressed in guidance.

Capital sums for the sale of patent rights

Section 22 amends section 757 TCA 1997.

Practitioners asked about the requirement to prove "entitlement to register". The legislation seems to apply to situations where a person was entitled to register but did not. There is a concern that proving entitlement to register may be a difficult hurdle for some otherwise eligible businesses to overcome.

Revenue would need to look at this in practice. The point has not been considered, so Revenue would need to review what is being done in other jurisdictions. Revenue's understanding is that section 757 TCA 1997 is not widely utilised.

Practitioners queried if this would impact transfers between Irish entities and their foreign branches. Revenue noted the amendment reaffirms the operation of the provision, so there should be no change in how the section has operated to date.

Closing comments

KEEP Scheme

Practitioners queried the rationale for non-publishment of the Budget Day announcements.

Revenue noted the Minister flagged this in his speech. In his memo which issued upon publishing the Bill, the Minister acknowledged that he was committed to this. It will form part of committee stage discussions.

Miscellaneous technical queries in relation to Employers' PRSA contributions

In the interest of time, practitioners confirmed they would submit additional information to Revenue regarding technical queries in relation to Employers' PRSA contributions. A copy of the queries which were submitted to Revenue following the meeting are included in the Appendix to these Minutes.

Attendees at this meeting

Revenue	ITI	CCAB-I	Law Society
Declan Rigney Joe Howley Brian Boyle Eugene Creighton Geraldine McEvoy Jeanette Doonan Áine Hollingsworth Therese Burke Jacqueline O'Callaghan John Kelly Liam Smith Eleanor Smiley Keith Noonan Alan Carey Norma Lane Denise Cunniffe Dave Brennan	David Fennell Stephen Ruane Cillein Barry Laura Lynch Pat Mahon Tom Maguire David Moran Brendan Murphy Emma Arlow Margaret Lynch Anne Gunnell Clare McGuinness Lorraine Sheegar Apologies: Mary Healy Kieran Twomey Mark Barrett	Gearóid O'Sullivan Gráinne McDermott Peter Vale Enda Faughnan Colin Smith Cormac Kelleher Ken Garvey Brian Purcell	Rachel Hession Padraic Courtney Aidan Fahy David Lawless John Cuddigan Caroline Devlin James Somerville

APPENDIX I

Practitioner queries in relation to Employers' PRSA contributions

1. Clarification would be welcomed as to whether the removal of the current BIK charge on employer contributions has unintentionally classified an employer funded PRSA as an unapproved retirement benefit scheme, as a result of which a BIK charge would arise under Section 777(1) TCA? Given the policy intention is to remove the charge to BIK on employer contributions to PRSAs, it is assumed that this is not the intention.

2. If an employer is only funding for an employee or director through a PRSA, clarification would be welcomed as to whether that employee/director is then deemed to be in non-pensionable employment and entitled to tax relief in respect of premia paid under a Section 785 policy?