

**Joint Main TALC / TALC Direct and Capital Taxes Sub-Committee
Finance Bill 2022 Meeting**

Combined list of queries raised in advance of the meeting

Finance Bill section no.	Query	Query raised by
Stamp Duty Issues:		
Section 57: Stamp duty on certain acquisitions of residential property	Section 57 amends section 31E SDCA 1999 The CCAB-I wishes to discuss potential issues with section 31E(7) SDCA 1999	CCAB-I
Section 60: Securities transferred by means of electronic systems	Section 60 deletes section 68-73 & 76-78 SDCA 1999 and inserts several provisions The CCAB-I would welcome a discussion to consider unintended consequences of the new provisions.	CCAB-I
Income Tax, Corporation Tax and Capital Gains Tax Issues:		
Section 8: Reportable benefits by employers	Section 8 provides for a new employer reporting requirement for 'reportable benefits'. Reportable benefits include benefits covered by the small benefits exemption, the remote daily working allowance and travel and subsistence payments. Concerns have been raised regarding the additional administration burden for employers associated with the proposed new reporting requirements. We note that it is intended that there will be a stakeholder engagement process and would like to understand the form that this process will take.	ITI
Section 8: Reportable benefits by employers	This is a potentially very onerous and very broad requirement for employers. It would be useful to discuss this, the (potential) practical implications thereof, and the rationale for this provision.	Law Society
Section 8: Reportable benefits by employers	Section 8 which inserts section 897C TCA 1997 The CCAB-I would like to understand how the Irish approach relates to what other jurisdictions are considering/implementing in this space. The CCAB-I would welcome a review of the implementation process with an initial consultation process, followed by legislation.	CCAB-I
Section 12: Rent Tax Credit	Queries have been raised regarding the availability of the rent tax credit for PhD students/researchers. It would be helpful if this could be clarified in guidance.	ITI
Section 12: Rent Tax Credit	Section 12 inserts section 473B TCA 1997 The CCAB-I considers the requirement in section 12 requiring RTB registration for RTB-exempt lettings is inconsistent. The CCAB-I would also welcome a discussion on the overall burden on taxpayers to comply with what should be a relatively straightforward credit to claim. We also consider that the definition of Principal Private Residence may need to be amended given that in the case of a student, their student accommodation may not be their sole residence.	CCAB-I
Section 14:	Section 14 places certain of Revenue's administrative requirements relating to SARP on a legislative footing. This includes the	ITI

<p>Special Assignee Relief Programme</p>	<p>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 Institute has engaged extensively with Revenue's Personal Division on the ongoing difficulties experienced in obtaining a PPSN in time to include on the SARP 1A. 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.</p> <p>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.</p> <p>We would like to clarify the policy intention of this amendment to the legislation. We would also seek assurance that Revenue will continue to adopt the approach in the <u>SARP Manual</u> 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, <i>"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"</i>.</p>	
<p>Section 14: Special Assignee Relief Programme</p>	<p>Section 14 amends section 823A TCA 1997 CCAB-I is concerned that delays for non-residents requesting PPS numbers could impact the uptake of SARP.</p>	<p>CCAB-I</p>
<p>Key Employee Engagement Programme – Not in Finance Bill 2022 as initiated</p>	<p>Can Revenue please explain why the KEEP scheme amendments have been held back, given the Budget Day announcements and consultation earlier this year?</p>	<p>CCAB-I</p>
<p>Section 15: Lump sums from foreign pensions</p>	<p>The taxation of foreign pension lump sums has been the subject of discussion at the TALC Direct Capital Taxes 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. We would also have concerns regarding the potential for double taxation issues.</p>	<p>ITI</p>
<p>Section 15: Lump sums from foreign pensions</p>	<p>Section 15 inserts section 200A TCA 1997 We would like to discuss the range of foreign lump sums within scope of the new provisions. Presumably, foreign pension lump sums received while an individual is not within the charge to Irish taxation should not be taken into account?</p>	<p>CCAB-I</p>
<p>Section 22: Amendment of section 757 of Principal Act</p>	<p>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 difficult hurdle for some otherwise eligible businesses to overcome. The CCAB-I would welcome a discussion of the amendment.</p>	<p>CCAB-I</p>

<p>Section 23: Amendments to the R&D Tax Credit</p>	<p>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.</p> <p>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. We 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.</p>	<p>ITI</p>
<p>Section 23 and 24 in relation to R&D tax credit claims</p>	<p>The new definition of a "valid claim". It would be useful to discuss the (potential) practical implications of this definition, and what is meant by the phrase "which the Revenue Commissioners may reasonably require".</p>	<p>Law Society</p>
<p>Section 23: Amendments to the R&D Tax Credit</p>	<p>Section 23 amends sections 766, 766A, & 766B TCA 1997 The CCAB-I welcomes the update to the rules to bring the R&D tax credit closer into alignment with OECD Pillar Two requirements. We would welcome if consideration could be given to retaining the 'old' rules for companies unaffected by the OECD Pillar Two rules.</p>	<p>CCAB-I</p>
<p>Section 27(c): Relief for investment in corporate trades</p>	<p>We would like to understand the context for the proposed change to section 508U TCA 1997.</p> <p>It seems unusual that the cut-off dates for applying the 1.2 or 1.6 multiplier are 31 December 2022/1 January 2023. Is the intention to avoid the section having retrospective effect given that underlying investment documentation is likely to have referred the prevailing legislation?</p>	<p>ITI</p>
<p>Section 28: Amendment of Section 835D</p>	<p>Section 28 amends section 835D TCA 1997 The CCAB-I 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?</p>	<p>CCAB-I</p>
<p>Section 31: Amendment of section 79 TCA 1997</p>	<p>(i) <i>Practical issues arise from current proposed approach linking "sole purpose of the account" with amounts lodged/dispensed needing to be "taken into account".</i></p> <p>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.</p> <p>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</p>	<p>ITI</p>

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 withdrawal/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, in our view, the measure as drafted falls short of this.

	<p>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.</p> <p>(ii) Definition of “trade receivable”</p> <p>The proposed legislation defines "trade receivable" as <i>"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"</i>.</p> <p>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"</p>	
<p>Section 31: Amendment of section 79 TCA 1997</p>	<ol style="list-style-type: none"> 1. Paragraph (ii) in the revised definition of "relevant monetary item" is overly narrow in its scope in that it provides that the "<u>sole</u>" purpose of the account must be the <i>"lodgement and disbursement of amounts that are taken into account in computing profits or losses of a trade carried on by that company"</i>. As a result, to the extent a bank account is used for any non-Case I purpose (eg, cash used for purchase of fixed assets, cash used to pay a dividend) it would not come within the scope of a relevant monetary item in paragraph (ii). We recommend replacing the reference to "sole purpose" with "main purpose" of the account to address this point. 2. Further paragraph (ii) simply refers to a debt owed by a "bank". Many MNEs deposit their cash with "in-house banks", rather than using external banks. In these circumstances the debt may be owed by an affiliated treasury company that is not a "bank". We recommend that a bank is defined for the purpose of this section as including regulated banks as well as treasury companies that carry out cash pooling activities. 3. Currently section 79(3)(a) TCA contains a specific carve out from CGT where a gain or loss arises to a company in respect of (ii) "money held by the company for the purposes of a trade carried on by it". In order to clarify that the same position applies to other "relevant monetary items" included in the updated definition in section 31 of the Finance Bill (which should be the case in any event due to the application of section 551 TCA), we recommend section 79(3)(a) TCA is updated to replace the reference to "money held" in paragraph (ii) with a reference to "relevant monetary items" as defined for the purpose of this section. 	<p>Law Society</p>
<p>Section 31:</p>	<p>Section 31 amends section 79 TCA 1997 The CCAB-I would welcome a discussion of these updates. We would welcome a discussion on certain definitions which may prove</p>	<p>CCAB-I</p>

<p>Amendment of section 79 TCA 1997</p>	<p>problematic for taxpayers in practice, e.g., the use of the phrase “sole purpose”, where “main purpose” could be more appropriate. Also, the definition of trade receivables is unduly narrow.</p>	
<p>Section 32: Interest limitation rule</p>	<p>The definition of "large scale asset" in section 835AY TCA 1997 contains the following:</p> <p><i>(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></p> <p><i>(I) An Bord Pleanála, under section 9 of that Act, or</i></p> <p><i>(II) A local authority, under section 170 of the Planning and Development Act 2000,</i></p> <p>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.</p> <p>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.</p> <p>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:</p> <p>At section 32(2)(a)(iii) Finance Bill 2022, by inserting the following:</p> <p>(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"</p> <p>and replacing it with the following:</p> <p>(f)a strategic housing development approved by—</p> <p>(i) An Bord Pleanála, under section 9 of that Act, or</p> <p>(ii) a local authority, under section 170 of the Planning and Development Act 2000,]</p> <p>At section 32(2)(a)(iv) Finance Bill 2022 by inserting the following definition:</p> <p>"strategic housing development" means [the same wording from Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016]</p>	<p>ITI</p>

Section 32: Interest limitation rule	Section 32 amends Part 35D TCA 1997 With the exception of the legacy debt and materiality changes, could Revenue explain the rationale behind the various changes made to the ILR rules by section 32?	CCAB-I
Section 81: Rents payable to non- residents	<p>(i) We welcome the provision in section 81 to relieve a “collection agent” from being the assessable person for the Irish rental income of a non-resident landlord, provided they withhold and remit tax to Revenue and provide certain information on payments to Revenue. We note the section is subject to a commencement order. Could Revenue outline when the section is expected to be commenced and whether this is subject to the design of a new form, ROS developments etc?</p> <p>It would appear to the ITI that the process applicable to tenants withholding and remitting tax on rental payments to non-resident landlords (the R185) could be easily adapted to be used by collection agents. For reference, this process involves the tenant completing a <u>R185</u> (Certificate of Income Tax Deducted) to record the tax withheld and remitted to Revenue, providing the original form to the landlord and a copy to the Collector-General’s Division with payment of tax withheld.</p> <p>(ii) Section 81(1B)(b) of the Bill provides that "<i>section 238 shall apply in relation to a payment referred to in subsection (1) due to a non-resident person which is made to the trustee, guardian, committee, attorney, factor, agent, receiver, branch or manager of that non-resident person, as it applies to other payments, being annual payments charged with tax under Schedule D and not payable out of profits or gains brought into charge to tax.</i>"</p> <p>As currently drafted, the proposed legislation appears to impose a withholding tax obligation on all payments by tenants to agents. This would have the effect of eliminating the cash flow savings associated with appointing an agent in Ireland. We do not believe that this was the intention and believe clarification is 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.</p>	ITI
Section 81: Rents payable to non- residents	Section 81 amends section 1041 TCA 1997 The CCAB-I would welcome further discussion as the compliance requirements regarding collection agents are impractical	CCAB-I
Section 84: Vacant Homes Tax	Section 84 introduces a new Part 22B TCA 1997 to legislate for a Vacant Homes Tax (VHT). Under the new section 635BM, Revenue may serve a notice in writing on a person requesting them to provide information regarding a residential property to Revenue. Where a person fails to provide the information requested within the time limit specified in the notice, then the person shall be liable to pay a daily penalty of €100 for each day the failure continues after the time limit specified in the notice. <p>We would like to understand the circumstances where Revenue would envisage this section applying in practice.</p>	ITI

<p>Section 84: Vacant Homes Tax</p>	<p>Section 84 inserts Part 22B TCA 1997 Given this is a new provision, the CCAB-I would welcome clarification as to the operation of the rules, including what will be expected from a record-keeping perspective for taxpayers. CCAB-I is concerned that the filing period being 7 days from the end of the chargeable period may be too onerous.</p>	<p>CCAB-I</p>
<p>Sections 87-90: Temporary Business Energy Support Scheme (TBESS)</p>	<p>The legislative provisions underpinning the TBESS are very complex and consequently guidance on the operation of the provisions, including practical examples, will be very important. When do Revenue envisage that they will publish guidance on the TBESS? Will Revenue be undertaking a communications campaign regarding the TBESS?</p>	<p>ITI</p>
<p>Sections 87-90: Temporary Business Energy Support Scheme (TBESS)</p>	<p>As this is new legislation, the CCAB-I would welcome a full discussion of the provisions. We would also like 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.</p>	<p>CCAB-I</p>