

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday, 27 February 2025 via MS Teams

14.30 to 16.00

Item 2: Matters arising from meeting of 28 November 2024:

- a. **Employer contributions to PRSAs and PEPPs:** In advance of the meeting practitioners submitted examples to Revenue where clarification is required regarding the impact of the Finance Act 2024 changes where the employer has a non-calendar year end. Revenue is reviewing the examples. Revenue outlined that a revised Tax and Duty Manual ("TDM") to be published as soon as possible (and before the end of March) which should address this issue. Revenue noted that the TDM would just be issued and that this would not be a consultation matter but that they will address any follow up queries.
- b. **TDM Part 02-02-07 'Deposit Interest – Whether a Trading Receipt':** Revenue had sought feedback from practitioners at the November meeting in respect of the following extract of the TDM: *"To take account of a company's need for flexibility in circumstances of fluctuating regulatory capital requirements, the Revenue Commissioners will allow up to 120% of the regulatory capital requirement to be invested and for the deposit interest to be assessed as Case I."* **Revenue agreed to a request from practitioners for an additional week to provide feedback as requested at the November meeting. This item to remain on the agenda.**
- c. **Leasing guidance:** At the November meeting, Revenue had requested practitioners to submit examples on how the burden of wear and tear analysis is applied by taxpayers and received examples in respect of the approach by taxpayers operating in the aircraft leasing industry. At the meeting, Revenue reiterated their request for examples from taxpayers operating in other industries, in particular the manufacturing and farming industries, and noted concerns on application of legislation where cost of maintenance falls on the lessee under a separate contract. **Practitioners agreed to consider this issue further. This item will remain on the agenda.**
- d. **Interaction of Knowledge Development Box and Pillar Two:** Revenue noted any changes to the Knowledge Development Box is a policy matter. **Practitioners agreed to provide a note setting out the issue in detail. This item will remain on the agenda.**
- e. **Treatment of dividends on certain preference shares:** Revenue is reviewing a note prepared by practitioners concerning whether it is reasonable to regard Euronext Growth list as equivalent to a stock exchange for the purposes of section 138 TCA 1997. Revenue also noted a potential wider review of section 138 TCA 1997 may be undertaken by Revenue. This item to remain on the agenda.
- f. **Residence certificate for corporates:** Revenue noted the relevant personnel were not in attendance at the November meeting and the current meeting. **Practitioners agreed to provide a note setting out the query in detail. This was provided to Revenue following the meeting. This item to remain on the agenda.**

Item 3: Items that are to remain on the agenda:

- a. EU Mobility Directive (Directive (EU) 2019/2121) – claim for capital allowances under section 291A TCA 1997:** Following a review of the note provided by practitioners in advance of the November meeting, Revenue outlined they cannot provide the confirmation sought by practitioners and noted legislative amendment would be required for the proposed approach. In response to the note from practitioners, Revenue briefly outlined their view being (i) there is no basis in legislation for Revenue to allow claims under section 291A TCA 1997 where subsection 10 of that provision is not complied with by the taxpayer, (ii) their concern previously raised regarding the risk of taxpayers claiming relief in multiple jurisdictions is not fully eliminated by application of section 287 TCA 1997; and (iii) denying capital allowance claims in such circumstances should not amount to a breach of the freedom of establishment under EU law. **Practitioners agreed to provide additional technical analysis. This item to remain on the agenda.**

Revenue further noted there were no plans to issue general guidance on the EU Mobility Directive. This item is to remain on the agenda.

- b. CT1 form – Transfer pricing documentation requirements for an Irish Branch:** Revenue noted their review of this issue is still in progress and Revenue agreed to provide an update in advance of the next meeting scheduled for 1st May 2025. This item to remain on the agenda.
- c. CAT Business Relief – minimum ownership period:** Practitioners noted they were satisfied with the response provided by Revenue at the November meeting.
- d. Mandatory Disclosure Guidance Notes:** At the November meeting, Revenue and practitioners agreed to work together to draft examples concerning Appendix One of the draft TDM Part 22-0201 'Mandatory Disclosure Guidance Notes' circulated in advance of the September meeting. Revenue reviewed two notes provided by practitioners in advance of the meeting (see Appendix One). Revenue reiterated mandatory disclosure regime concerns 'implementable' transactions and requested more detailed examples concerning the meaning of 'day to day tax advice' and that the examples require context. It was noted that one of Revenue's proposed examples related to a recent Tax Appeal Commission determination which is expected to be published shortly.

Practitioners also highlighted that the notification of the existence of a Will trust to Revenue under the Statement of Affairs filing (the "SA2") should provide Revenue with the same information as requested under the Mandatory Disclosure rules. Practitioners queried whether possible for the filing of the Will trust under the SA2 probate procedure to satisfy the legislative requirements under the Mandatory Disclosure rules. Revenue agreed to review and consider amending their internal processes to review SA2 filings in this regard.

This item to remain on the agenda.

e. TAC Determination 44TACD2024 and the requirement to provide a breakdown of distributions from an ARF into income, gains and capital in order to claim a refund of Irish tax deducted: Practitioners reiterated concerns previously raised whereby a taxpayer is seeking relief under a double taxation treaty and noted there is only limited guidance available on the ARF refund form. Practitioners submitted a note to Revenue in advance of the meeting seeking clarification regarding the following statement on the ARF Refund Form: *“Case law has established that, where a payment is made from a mixed fund, income and gains of the year are treated as being paid out first, and any amount paid out in excess of that year’s income and gains is treated as a return of capital.”* Practitioners requested clarification regarding the application of this guidance in circumstances where income earned in a previous year is paid out in the current year. Revenue agreed to review issue in further detail. This item to remain on the agenda.

Capital Taxes:

No items raised

Direct Taxes:

Item 4(a): Automatic Enrolment Retirement – Interaction of income tax and capital acquisitions tax

Practitioners raised a query regarding the correct tax treatment of payments in the event of the death of a participant from an auto enrolment savings scheme under the Automatic Enrolment Retirement Savings System Act 2024. Practitioners sought clarification to confirm that (i) such payments are subject to income tax, USC and PRSI and (ii) such payments are not within the charge to capital acquisitions tax.

Revenue agreed to review this issue. This item to remain on the agenda.

Item 4(b): Filing requirements for regulated and unregulated investment limited Partnerships:

Practitioners sought the following clarifications from Revenue on filing obligations of certain investment limited partnerships:

- (i) Clarification as to whether a regulated investment limited partnership established under the Investment Limited Partnerships Act 1994 (“the 1994 ILP”) is only required to a Form ILP1 and, if there is also a requirement for a 1994 ILP to file a Form 1, requested Revenue to provide clarity on how the activities of a 1994 ILP should be returned on a Form 1; and
- (ii) Requested Revenue to advise what information Revenue expects an unregulated investment limited partnership established under Limited Partnerships Act 1907 (“the 1907 LP”) to provide on an annual return and how this information can be captured on a Form 1 (if at all).

Revenue confirmed a 1994 ILP is required to file the Form ILP1 and the Form 1(Firms). **Revenue requested additional information and examples from practitioners in respect of the activities of a 1994 ILP and why this is posing difficulties in completing the Form 1(Firms). This item to remain on the agenda.**

Revenue, in respect of an ILP, outlined that the annual return for an ILP and Form 1 (Firms) contain different information requirements, such forms serve different purposes and there is no significant overlap between the forms. Revenue agreed to consider amalgamating the forms but noted the forms go in to different systems and therefore not sure whether this would be possible. This item to remain on the agenda.

Item 4(c): Partnerships and association for the purposes of certain ATAD measures

Practitioners raised an issue concerning the different tax treatment of associated enterprise tests to partnerships in (i) guidance on the Outbound Payments Defensive Measures and (ii) guidance relating to the Anti-Hybrid Mismatch Rules and the Interest Limitation Rule.

At the meeting, Revenue outlined they are in the process of drafting a TDM on partnerships to ensure a consistent approach to the taxation of partnerships. The TDM will cover (i) what is a partnership for Irish tax purposes and the general tax implications of a partnership and (ii) application of a number of specific provisions to partnerships (which should address the issue raised by practitioners). Revenue to share a copy of the draft TDM with committee members in advance of the next meeting on 1st May 2025. This item to remain on the agenda.

Item 5: Revenue Guidance:

- a. **Draft Tax and Duty Manual 26-00-02 – ‘Taxation of Life Assurance Companies - Old Basis Business and New Basis Business:** Revenue confirmed the review of this TDM is still in progress and plan to circulate to committee members in advance of publication. This item to remain on the agenda.
- b. **Tax and Duty Manual Part 04-06-13 Tax Treatment of Stocklending/Sale and Repurchase (repo) Transactions:** Revenue confirmed the review of this TDM is still in progress and will be circulated to practitioners for feedback together with a new TDM dealing with the taxation of dividend arbitrage transactions, including the dividend stripping and bond washing rules. The new TDM on the taxation of dividend arbitrage transactions has been delayed to take into account responses relating to the public consultation on the tax treatment of interest in Ireland published by the Department of Finance. This item to remain on the agenda.
- c. **TDM Part 02-02-07 ‘Deposit Interest – Whether a Trading Receipt’:** Discussed at item 2(b) above.

Item 6: Update from Residential Zoned Land Tax (RZLT) Subgroup

Revenue provided an update from the RZLT subgroup and noted a very productive meeting of the RZLT subgroup was held in January 2025.

Revenue provided an outline of the main issues discussed at the January meeting, including an issue raised by practitioners representing the Law Society concerning the lack of a clearance system / mechanism on which practitioners could rely on the sale or transfer of a relevant site. At this meeting, practitioners noted that the Law Society raised the issue concerning the lack of a clearance system with the Department of Housing, Local Government and Heritage. Revenue welcomed the Law Society raising the issue with the relevant department, noting the Revenue position reflects the current legislation, a view which practitioners did not share, and that any proposed amendments to the legislation is a matter of policy for consideration by the relevant departments.

Revenue confirmed minutes of the January 2025 meeting will be provided to this Sub-Committee once agreed and finalised at the next meeting of the subgroup. It was noted that the Law Society will be in the Chair of the RZLT Subgroup in 2025.

Item 7: Workplan for 2025

All members of the TALC Direct and Capital Taxes Sub-Committee agreed that the items under Revenue Guidance will likely form the bulk of the workplan for the year ahead. All agreed to keep the workplan open and consider items as they arise.

Item 8: AOB:

a. UK Limited Liability Partnership and meaning of partnership for purposes of the TCA:

Revenue outlined a recent Investigations and Prosecutions case whereby both Revenue and the taxpayer came to the view that a UK LLP was not a partnership for the purposes of the TCA. Revenue noted that the fact that the UK LLP was a body corporate was very important but that a UK LLP could be both opaque and transparent for different purposes. Revenue noted they are aware that there may be a number of structures where a UK LLP is treated as if it was a partnership for Irish tax purposes. Having considered the implications of a UK LLP not being treated as a partnership (including for example the application of the offshore fund rules and the anti-hybrid rules), and the complexity involved in classifying foreign entities, **Revenue invited practitioners to make submissions on the correct classification of UK LLPs to ensure that all arguments are considered before a definitive position is taken.**

Revenue and practitioners agreed to work together on this matter as part of the draft TDM on partnerships (see item 7 above). This item is to remain on the agenda.

b. Income tax relief on medical insurance premiums where a blended rate: Practitioners raised a query on application of section 470 TCA 1997, which provides for income tax relief on medical insurance premiums, where the insurance covers both eligible and non-eligible health expenses. In such circumstance, TDM Part 15-01-14 provides a rate less than the standard rate (referred to as the 'blended rate') should apply. Practitioners queried the rationale for applying a blended rate to the relievable amount under section 470 TCA 1997 rather than agreeing a percentage of the relievable amount (to reflect the cover in respect of eligible health expenses) which would qualify for relief at the standard rate of income tax.

Revenue confirmed they are reviewing this issue and will revert to practitioners once they have considered the issue in more detail. This item to remain on the agenda.

- c. Tax Clearance for IREFs:** In the context of Irish Real Estate Funds (IREFs), practitioners reported there have been significant time delays for taxpayers obtaining withholding tax clearances under Section 739QA and obtaining refunds where withholding tax has been deducted.

CCAB-I confirmed they would seek to raise this issue at the next meeting of Main TALC (as AOB).

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Tom James	David Fennell	Enda Faughnan	Maura Dineen (Chair)
John Kelly	Stephen Ruane	Ken Garvey	Aileen Keogan
David Macauley	Cillein Barry	Noreen Lehane	Aidan Fahy
Rory Noone	Tom Maguire	Mairead Hennessy	Caroline Devlin
Karen Drake	Clare McGuinness		David Lawless
Sinead McNamara	Lorraine Sheegar		John Cuddigan
Catherine Duffy	Laura Lynch		
Lucy Whelan			
Eleanor Smiley			
Aine Hollingsworth			
John Quigley			
Jacqueline O'Callaghan			
Caroline Kennedy			
Liam Smith			
Maria Hewson			
Mary Treacy			
Dorothea Turley			
Alan Carey			
John McGorry			
Laura Mellon			

Apologies: [Gearóid O'Sullivan]