Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday 27th April 2023 via Microsoft Teams

2.30pm to 4.00pm

Minutes

Item 1: Minutes from meeting of 23rd February 2023

The minutes of the meeting of 23rd February 2023 were agreed as final.

Item 2: Matters arising from meeting of 23rd February 2023:

a. **Revenue to report on the technical analysis leading to the withdrawal of Precedent:** Revenue advised that they have received the additional submission, dated the 28th February 2023, and it is currently being examined. Revenue advised that, while it noted the subgroup's position, it will continue to categorise a foreign pension lump sum as income. Revenue will issue a response to the Sub-Committee when their analysis of the submission is completed. Revenue also noted that there had been extensive correspondence with the subgroup on the issue and, at this stage, it was clear that both parties held opposing views which were not subject to change. Practitioners queried if there will be another meeting of the Precedent 28 Sub-Group to discuss the Revenue response. Revenue indicated that they have no objection to holding one final meeting of the Precedent 28 Sub-Group.

   Subsequent to the meeting the Revenue response was circulated to members of the TALC Direct and Capital Taxes Sub-Committee. For completeness the ITI submission of the 28th February 2023 and the Revenue Response is included in Appendix I.

b. **Guidance on "Leasing Ringfences" – Section 403 and Section 404 TCA:** Revenue advised that submissions were to be made to the Department of Finance and that three submissions had been received by the 30th March 2023. Revenue are currently working through these submissions.

c. **Tax and Duty Manual on the classification of foreign entities for Irish tax purposes**: Revenue advised no further comments had been received in respect of the Draft Tax and Duty Manual that was circulated following Foreign Entities Sub-Group meeting of the 7th March 2023. Revenue also advised that Technical Question Number 10.30 of the Dividend Withholding Tax [DWT] Technical Guidance Notes for Paying Companies, Authorised Withholding Agents (AWAs) and Qualifying Intermediaries will be removed upon the publication of the Classification of Foreign Entities TDM. Practitioners queried if it is intended to hold another meeting of the Sub-Group and Revenue advised that a further meeting is not envisaged.

   As regards the withdrawal of Technical Question Number 10.30, practitioners queried why it is being withdrawn. Revenue advised that it is because Revenue does not agree with some of the classifications. As there is currently reliance on Technical Question Number 10.30 practitioners raised concerns regarding the timing of the removal of Technical Question Number 10.30 and Revenue confirmed it would be withdrawn when the TDM issues which is scheduled for 1st June 2023.

Practitioners also queried if another meeting of the subgroup would be scheduled to discuss the other issues practitioners had raised e.g. treatment of Irish Partnerships, Loss Relief etc. Revenue agreed to consider this request and revert to practitioners.

d. **TDM Review Process:** Revenue advised that the meeting scheduled for Q1 2023 had to be cancelled as Revenue are still at the requirements analysis stage for the TDM review project. Over the past couple of months, progress on the project has been slower than expected due to a number of factors, including demands of day-to-day operations and other projects. As a result, Revenue is not yet at the stage of formal review and approval of the detailed scope and future approach for the publication of TDMs. Revenue also advised that they are continuing to consider the points raised in October 2022 as part of their requirements analysis process and are aiming to have a further update on the TDM review project by the end of Q2 2023. This item will stay on the Agenda for the next meeting.
e. **Stamp duty on share buy-backs:** Revenue advised that they had not received any correspondence on this issue and it was agreed that the item will be removed from the Agenda going forward.

Item 3: Vacant Homes Tax: In advance of the meeting a submission was made to Revenue regarding the operation of the Vacant Homes Tax [“VHT”] in relation to showhouses. The submission is attached in Appendix II.

Revenue advised that VHT applies to residential properties that are within the charge to Local Property Tax [“LPT”]. A showhouse will be liable for VHT if it comes within the definition of ‘residential property’ for LPT purposes. A showhouse will not be liable to VHT for a chargeable period in which the showhouse is actively marketed for sale. However, a showhouse that is not available for purchase by a willing purchaser will be within the charge to VHT.

Subsequent to the meeting a detailed Revenue response was circulated to members of the TALC Direct and Capital Taxes Sub-Committee. This is included in Appendix II for completeness.

Item 4: Update from R&D Discussion Group:

Revenue advised that there was a meeting of the R&D Discussion Group on the 8th March 2023 and draft Minutes of this meeting have been circulated to members of the R&D Discussion Group. The Minutes will be made available to the Sub-Committee once they have been approved at the next meeting of the R&D Discussion Group which is scheduled for the 31st May 2023.

Revenue advised that the meeting of the 8th March 2023 had been very positive and that the priority of the R&D Discussion Group is the R&D changes introduced in Finance Act 2022. The R&D TDM is currently being updated and the draft updated TDM will be circulated to the R&D Discussion Group and the Sub-Committee.

Revenue advised that an R&D return for 2022 is currently being developed. The Form CT1 is also being updated and the updated Form CT1 2023 should be included in the June 2023 ROS release.

Item 5: Workplan for 2023:

Practitioners advised that, after further examination, the issue of Corporate Spin-Offs will require a legislative change and accordingly can removed from the Workplan for 2023.

Item 6: AOB:

Tax and Duty Manual 42-04-35A: Practitioners queried that status of the update to Tax and Duty Manual 42-04-35A - 'Employers' Guide to PAYE' which is referenced at 3.7 of the Minutes of the meeting of the 23rd February 2023.

Revenue advised that the updates to the TDM have not yet been made.

TDM 42-04-35A will be included on the Agenda of the next meeting in order to provide feedback on the status of the TDM.

GBER and EII: Practitioners also queried if the revision of the General Block Exemption Regulation (GBER) will have any impact on the Employment Investment Incentive (EII) scheme and whether there were likely to be changes to the EII scheme. If so, would these changes be legislative or interpretative? Revenue indicated the matter was under consideration and it was a bit early to be discussing any potential changes to EII. Revenue indicated that the item will be included under AOB for the next meeting in order for an update to be given to the Sub-Committee.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Jeanette Doonan (Chair) Áine Hollingsworth Aisling Dooley John Kelly Liam Smith Barbara Ní Neachtain Caitriona O'Connor Dave Brennan (Secretary)	David Fennell Laura Lynch Stephen Ruane Clare McGuinness Lorraine Sheegar Cillein Barry Emma Arlow	Peter Vale Gearóid O'Sullivan Enda Faughnan Ken Garvey Cormac Kelleher Colin Smith	Rachael Hession Caroline Devlin Aidan Fahy David Lawless John Cuddigan

Appendix I -

ITI submission to Revenue on the tax treatment of foreign pension lump sums received prior to 1 January 2023

28 February 2023

Introduction

On 27 August 2021, the Institute made a submission to Revenue seeking clarification regarding the basis of taxation on the commutation of a foreign pension which accumulated from contributions out of foreign income.

In response, Revenue set out their view that the receipt of a lump sum from a foreign pension is a taxable source of income which is liable to income tax and universal social charge under Case III of Schedule D. This is on the basis that Revenue's view is that a lump sum is income from a foreign security and possession in accordance with section 18(2) of the Taxes Consolidation Act 1997 (TCA 1997). Revenue's paper is included as an Addendum to the Minutes of the September 2022 meeting of the TALC Direct/Capital Taxes Sub-committee.

Finance Act 2022 introduced legislation that provides that foreign pension lump sums received on or after 1 January 2023 are to be subject to a new taxation regime which will treat them in a manner consistent with Irish lump sums.

In this submission, we have set out the basis for the Institute's view that a lump sum from a foreign pension (arising before 1 January 2023) is a capital payment and thus not a taxable source of income under Case III of Schedule D.

Legislative approach

Section 18(2) TCA 1997 provides that income from foreign securities and possessions charged under Schedule D Case III includes the profits or gains arising from any kind of property, that is, from everything the person possesses that is a source of income, other than a source situated within the State.

It is clear that for section 18(2) to apply there must be a source of income. In determining the definition of income, the following sections are relevant.

Section 2 TCA 1997 states:
"a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed".

Section 3 TCA 1997 provides that 'chargeable tax' means:

"in relation to an individual for a year of assessment, the amount of income tax to which that individual is chargeable for that year of assessment under section 15 in respect of his or her total income for that year…".

Income tax is a tax on income, it is not a tax on capital. If Revenue's interpretation were correct, then a foreign pension lump sum is a source of income and not a source of capital. We would not agree with such an interpretation.

In order for foreign pension lump sums to be taxable under section 18(2), the payments must be regarded as income. However, in our view a foreign pension lump sum is not a payment of income and in fact is capital in nature.

A pension lump sum arises where there is a commutation of future pension rights. We consider that this commutation is capital in nature and thus is not within the remit of section 18(2).

The word 'income' does not have a specific statutory definition within TCA 1997. The House of Lords has held (in the context of there also being no statutory definition of income in the UK tax code) that the word income is to be understood as having the ordinary meaning ascribed to it. In Lord Chetwode v Inland Revenue Comrs, Viscount Dilhorne stated:

"Income is an ordinary word in the English language and, unless the context otherwise requires, it should be given its ordinary natural meaning in a statute".

In Black's Law Dictionary, income is defined as "the money or other form of payment that one receives, usu. periodically, from employment business, investments, royalties, gifts and the like".

It can be seen that 'income' is an umbrella term which encompasses any receipt/payment which is 'income/revenue' in nature (as distinct from 'capital' in nature), and which is from a source. A foreign pension lump sum is not a periodic payment. It is a once off withdrawal of accumulated pension contributions.

It is also important to highlight Revenue's long-standing practice that where an individual moves to Ireland having been non-resident and non-ordinarily resident, funds accumulated from income earned abroad prior to 1 January in the year the individual becomes Irish resident will not be liable to income tax even if remitted after that date. Our view is that a foreign pension is also an accumulation of funds which should be deemed capital if the accumulation occurred whilst the individual was non-resident and non-ordinarily resident.

Historical Position

Prior to the introduction of Section 790AA (dealing with the taxation of pension lump sums in excess of the tax-free amount) into TCA 1997, pension lump sums were not subject to Irish income tax. There was no specific exemption for the lump sum from income tax as it was considered a capital receipt.

There is a capital gains tax (CGT) exemption for pension lump sums (capital payments from superannuation schemes) contained in section 613(3) TCA 1997 which exempts a lump sum from CGT. The fact that the legislature deemed it necessary to provide for a specific statutory exemption from CGT implies that in the absence of such exemption, it would be subject to CGT.

Precedent 28, which was originally published in 1987, confirmed Revenue's view that lump sums in commutation of foreign pensions were not taxable in Ireland should the individual come to reside in the country following their retirement. In effect, the precedent was verifying that the tax treatment of foreign pension lump sums should follow the same treatment as Irish pension lump sums. In our view, Precedent 28 only confirmed what was the correct technical interpretation, i.e., the pension lump sum was a capital receipt and was exempted from CGT by virtue of section 613(3) TCA 1997.

Position post Section 790AA

Section 790AA TCA 1997 was introduced on 7 December 2005 and imposed a maximum limit on the tax-free lump sum payable from a pension plan for the first time. This section only applies to "relevant pension arrangements" which is effectively all Irish Revenue-approved pension arrangements (including PRSAs, RACs and Personal Retirement Bonds) and any foreign pension scheme where the individual has claimed migrant member relief. The new regime only applied to lump sums received on or after 7 December 2005 as pension lump sums received prior to that date were not subject to income tax, as per the historical position.

Section 790AA did not change how the pension lump sum was calculated (i.e., up to 1.5X remuneration or 25% of the fund where relevant) but instead imposed a new taxation regime for amounts above 25% of the Standard Fund Threshold ("SFT"). Under the new regime amounts above 25% of the SFT from relevant pension arrangements were treated as income and taxable under the PAYE system.

Section 790AA was amended with effect from January 2011 which limited tax free amounts to €200,000 and introduced a 20% tax rate on the balance up to the 25% of the SFT. The amount of the lump sum taxable at 20% is not reckoned in computing total income for the purposes of the Taxes Acts.

Conclusion - foreign pension lump sums

Neither section 790AA nor any subsequent amendment to this section treat lump sums from pension arrangements which are not relevant pension arrangements as income and therefore we consider that the historical position prevails in respect of these pension lump sums.

Section 200A has now introduced rules for foreign pension lump sums similar to those introduced in section 790AA. Section 200A applies to foreign pension lump sums received on or after 1 January 2023 and there is no reason to believe that the introduction of section 200A retrospectively applies to lump sums received prior to the introduction of this section. Indeed, such an interpretation would be inconsistent with how the changes were applied with the introduction of section 790AA.

It is our firm view that in cases where foreign pension lump sums were received prior to 1 January 2023 the historical position should apply consistent with Precedent 28.

Revenue Response:

1. Background

On 27 August 2021, the Irish Tax Institute made a submission to Revenue seeking clarification regarding the basis of taxation on the commutation of a foreign pension which accumulated from contributions out of foreign income. A detailed response was provided to the Irish Tax Institute, in which we confirm section 18(2) of the TCA 1997, income from foreign securities and possessions are charged to tax under Case III of Schedule D.

On 28 February 2023, the Irish Tax Institute responded confirming that in their view a pension lump sum arises where there is a commutation of future pension rights and that this commutation is capital in nature and thus is not within the remit of section 18(2).

Below outlines Revenue´s response to the analysis of the interpretation put forward.

2. Section 18

2.1 ITI submission:

Section 18(2) TCA 1997 provides that income from foreign securities and possessions charged under Schedule D Case III includes the profits or gains arising from any kind of property, that is, from everything the person possesses that is a source of income, other than a source situated within the State.

It is clear, that for section 18(2) to apply there must be a source of income. In determining the definition of income, the following sections are relevant.

Section 2 TCA 1997 states:

"a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed".

Section 3 TCA 1997 provides that 'chargeable tax' means: in relation to an individual for a year of assessment, the amount of income tax to which that individual is chargeable for that year of assessment under section 15 in respect of his or her total income for that year…".

Income tax is a tax on income, it is not a tax on capital. If Revenue's interpretation were correct, then a foreign pension lump sum is a source of income and not a source of capital. We would not agree with such an interpretation.

In order for foreign pension lump sums to be taxable under section 18(2), the payments must be regarded as income. However, in our view a foreign pension lump sum is not a payment of income and in fact is capital in nature.
A pension lump sum arises where there is a commutation of future pension rights. We consider that this commutation is capital in nature and thus is not within the remit of section 18(2).

2.2 Revenue response:

Section 18(2) of the TCA 1997 provides that income from foreign securities and possessions are charged to tax under Case III of Schedule D. Between them, headings (e) and (f) of section 18(2) charge to tax all forms of income from foreign sources, notwithstanding that such income is of a type which would, if it arose within the State, be taxable under a different case or Schedule.

The ITI submission states that for section 18(2) to apply, "*there must be a source of income*". This is not explicitly stated in section 18(2), which instead provides that tax shall be charged under Case III of Schedule D on *"income arising from possessions outside the State*" (per paragraph (f), with emphasis added).

As outlined in our November 2022 analysis, this is to be interpreted *"in the widest sense possible as denoting everything that a person has a source of income"* (**Colquhoun v Brooks** 2 TC 490). This includes a foreign pension arrangement from which the foreign lump sum amount is paid.

With respect to the reference to section 2, this section gives the meaning of certain terms and sets out rules for the construction of certain references used in the Tax Acts. The section provides for the construction of the terms "a source of income is within the charge to income tax or corporation tax", "a person being within the charge to tax" and "income being within the charge to tax". Where these terms occur in the Tax Acts they are to be taken as meaning that income tax or corporation tax, as appropriate, is chargeable on the income arising from the source, or is chargeable on the person, or is chargeable on the income. It should be noted that the term "*source of income*" is not actually referenced in section 18(2), which instead uses the term "*possession*".

3. Commutation of pension rights

3.1 ITI submission:

A pension lump sum arises where there is a commutation of future pension rights. We consider that this commutation is capital in nature and thus is not within the remit of section 18(2).

3.2 Revenue response

For pension purposes, a commutation is a replacement of a series of future pension payments by an immediate lump sum. As stated in our November 2022 analysis, the fact that a taxpayer has chosen to commute the pension in place of an immediate lump sum payment does not change the fact that the payment of the lump sum payment is considered to be income of the taxpayer as it still arises from the foreign possession, i.e., the foreign pension arrangement.

4. The word "income"

4.1 ITI submission:

The word 'income' does not have a specific statutory definition within TCA 1997. The House of Lords has held (in the context of there also being no statutory definition of income in the UK tax code) that the word income is to be understood as having the ordinary meaning ascribed to it. In Lord Chetwode v Inland Revenue Comrs, Viscount Dilhorne stated:

"Income is an ordinary word in the English language and, unless the context otherwise requires, it should be given its ordinary natural meaning in a statute".

In Black's Law Dictionary, income is defined as "the money or other form of payment that one receives, usu. periodically, from employment business, investments, royalties, gifts and the like".

It can be seen that 'income', is an umbrella term which encompasses any receipt/payment which is 'income/revenue' in nature (as distinct from 'capital' in nature), and which is from a source. A foreign pension lump sum is not a periodic payment. It is a once off withdrawal of accumulated pension contributions.

4.2 Revenue response:

A pension fund is a plan, fund or scheme that provides retirement income, some of which may be taken as a lump sum payment.

Notwithstanding that a pension lump sum is not a periodic payment, it remains a payment of income from a foreign possession. The use of "usu. periodically" in the quote from Black's Law Dictionary provides that there is no requirement for a payment to be made periodically for it to be considered "income".

For example, a once-off payment may constitute an emolument of employment even it is paid otherwise than by way of remuneration for employment services (Shilton v Wilmhurst [1991] 2 W.L.R 530).

5. Revenue practice - Accumulation of funds prior to becoming Irish Resident

5.1 ITI submission:

It is also important to highlight Revenue's long-standing practice that where an individual moves to Ireland having been non-resident and non-ordinarily resident, funds accumulated from income earned abroad prior to 1 January in the year the individual becomes Irish resident will not be liable to income tax even if remitted after that date. Our view is that a foreign pension is also an accumulation of funds which should be deemed capital if the accumulation occurred whilst the individual was non-resident and non-ordinarily resident.

5.2 Revenue response:

It is Revenue's long-standing practice that where an individual moves to Ireland having been non-resident and non-ordinarily resident, funds accumulated from income earned abroad prior to 1 January in the year the individual becomes Irish resident will not be liable to income tax even if remitted after that date. This practice is concessionary in nature and applies only to income which was paid to a taxpayer from a foreign source (e.g. foreign rental property) prior to becoming resident here.

Revenue do not apply this principle to overseas pensions which are paid to an Irish resident taxpayer, as stated in our earlier correspondence, for the following reasons:

- The practice, which is concessionary in nature, applies only to income which was paid to a taxpayer from a foreign source (e.g. foreign rental property) prior to becoming resident here. This is different to a case where a taxpayer is paid a pension from an overseas pension plan while resident. In such cases, the taxpayer is taking a payment from a "new" source of income (the foreign pension fund), which as it arises from a foreign possession, is chargeable to tax under Case III of Schedule D.

- Section 200 TCA 1997 provides for a tax exemption for certain foreign occupational and social security pensions, in cases where these pensions are disregarded for income tax purposes in the hands of a resident of the country of source. The section was introduced into law in the Finance (Miscellaneous Provisions) Act 1968. The section was introduced to attract US citizens, with non-taxable US pension plans, to come to live in the State.

  The section provides for the exemption of the qualifying pension from Irish tax by deeming it to fall outside the provisions of section 18(2) TCA 1997. This is an implicit acknowledgement that section 18(2) TCA 1997 charges foreign pension payments to tax, notwithstanding that the pension fund may have been in existence prior to an individual coming to the State to take up residence here.

With respect to a foreign pension representing an accumulation of funds prior to becoming resident, this may not be considered to apply to individuals who are members of defined benefit type schemes, which provide pension benefits (lump sums or pensions) which are determined by length of service. In such cases, there is no accumulation of funds prior to becoming resident here.

6. Historical Position

6.1 ITI submission:

Prior to the introduction of Section 790AA (dealing with the taxation of pension lump sums in excess of the tax-free amount) into TCA 1997, pension lump sums were not subject to Irish income tax. There was no specific exemption for the lump sum from income tax as it was considered a capital receipt.

Precedent 28, which was originally published in 1987, confirmed Revenue's view that lump sums in commutation of foreign pensions were not taxable in Ireland should the individual come to reside in the country following their retirement. In effect, the precedent was verifying that the tax treatment of foreign pension lump sums should follow the same treatment as Irish pension lump sums. In our view, Precedent 28 only confirmed what was the correct technical interpretation, i.e., the pension lump sum was a capital receipt and was exempted from CGT by virtue of section 613(3) TCA 1997.

6.2 Revenue response:

Section 790AA TCA 1997 was originally inserted into the TCA by section 14(1)(f) Finance Act 2006. The regime under the 2006 measure (the "original regime"), which applied to retirement lump sums paid from 7 December 2005 to 31 December 2010, provided that the amount by which such a lump sum exceeded 25% of the prevailing standard fund threshold (SFT) was to be treated as emoluments in the hands of the individual in the year of assessment in which it was paid and was subject to tax, under Schedule E, at the individual's marginal rate of tax in that year.

Prior to this amendment there was no absolute monetary cap on the amount of tax-relieved pension savings that can be built up in a pension fund and therefore no absolute cap on the amount that can be taken as a lump sum from a pension, totally tax-free. The Minister stated: "*Tax equity would dictate that there should be a limit on the extent to which the Exchequer should be expected to fund savings towards an individual's retirement through the tax system and, as part of that, towards the provision of a tax-free lump sum".* It was proposed and brought into law, therefore, to apply an absolute cap of €1,250,000 on the tax-free lump sum from a pension taken on, or after, 7 December 2005.

7. Section 613(3)(a) TCA 1997

7.1 ITI submission

There is a capital gains tax (CGT) exemption for pension lump sums (capital payments from superannuation schemes) contained in section 613(3) TCA 1997 which exempts a lump sum from CGT. The fact that the legislature deemed it necessary to provide for a specific statutory exemption from CGT implies that in the absence of such exemption, it would be subject to CGT.

7.2 Revenue response:

Section 613(3)(a) TCA 1997 provides the following:

> *(3) No chargeable gain shall accrue on the disposal of a right to or to any part of—*
>
> *(a) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants,"*

This applies to scenarios where an individual disposes of a right to or any part of an "*allowance, annuity or capital sum"* payable out of a superannuation fund/scheme.

8. **Conclusion - foreign pension lump sums**

8.1 ITI submission:

Neither section 790AA nor any subsequent amendment to this section treat lump sums from pension arrangements which are not relevant pension arrangements as income and therefore we consider that the historical position prevails in respect of these pension lump sums.

Section 200A has now introduced rules for foreign pension lump sums similar to those introduced in section 790AA. Section 200A applies to foreign pension lump sums received on or after 1 January 2023 and there is no reason to believe that the introduction of section 200A retrospectively applies to lump sums received prior to the introduction of this section. Indeed, such an interpretation would be inconsistent with how the changes were applied with the introduction of section 790AA.

It is our firm view that in cases where foreign pension lump sums were received prior to 1 January 2023 the historical position should apply consistent with Precedent 28.

8.2 Revenue response:

In common with most precedents over five years old, the benefits associated with the Precedent 28 are no longer available.

Section 200A Taxes Consolidation Act 1997 (TCA 1997) is a new section inserted into the TCA 1997 by section 19 Finance Act 2022, to align the treatment of domestic and foreign pension lump sum payments. The section provides that lump sum payments from foreign pension arrangements can also benefit from the same tax-free threshold and tax treatment as domestic pension arrangement, given that lump sum payments from these schemes are not covered under existing pension lump sum rules (s.790AA TCA 1997). In the absence of such a provision, the payment of a lump sum from a pension arrangement which is not covered under s.790AA is fully taxable, with no tax-free limits.

However, while section 200A does not apply retrospectively, Revenue is prepared to allow taxpayers to claim the benefit of the section with respect to lump sum payments drawn down from foreign pension arrangements prior to 1 January 2023.

Appendix II – Vacant Homes Tax – Showhouses - Practitioner Query

A point regarding the operation of the newly introduced Vacant Homes Tax ("VHT") looks likely to arise in relation to showhouses, and practitioners seek clarification from Revenue on the matter.

By way of background, S.653AO TCA 1997 provides for VHT applying to Irish residential properties which are occupied for less than 30 days within a 12 month period from 1 November to 31 October annually (the "chargeable period") with the first chargeable period commencing on 1 November 2022, unless an exemption applies.

S.653BC(c) TCA 1997 provides that an exemption from VHT may be claimed where the residential property was being actively marketed for sale in the chargeable period. Other exemptions include where the occupation or sale of the property was prohibited by a Court Order (S.653BC(e) TCA 1997), the property was being actively marketed for rent (S.653BC(d) TCA 1997), and where the chargeable person which occupied the property as their sole or main residence, dies either within the chargeable period, or in the 12 month period beforehand (S.653BC(a) TCA 1997).

There are many taxpayer companies involved in residential property development. A common sales and marketing strategy employed by home builders is to construct a number of show units in each development to demonstrate the layout and finish available in those and other similar units under development and for sale in the development. These show units tend to be fully completed and connected to utilities such that they are subject to Local Property Tax in accordance with Sections 2 and 2A of the Finance (Local Property Tax) Act 2012 and therefore may be in scope of the VHT where they are not occupied for the required 30 days unless otherwise exempt.

Such units are not occupied as residential dwellings until such time that they are ultimately sold. From the period of completion until sold (potentially a number of years), the units in question are used in the active marketing of the development as a whole, including the units themselves. However, the sale of such units would typically not take place until close to the end of each development.

It is the view of practitioners that such dwellings are capable of being considered units which are "actively marketed for sale" for the purposes of the exemption under 653BC(c) in circumstances where the typical guide selling price of units of that type at time of showing is known to the potential purchaser.

Practitioners note that a condition of the exemption is that there are to be no conditions attaching to a sale of a unit that is actively marketed which are designed to impede or disrupt the sale of the property. In this regard, they seek confirmation from Revenue that typical showhouses are not seen to be subject to any such condition by Revenue.

Although a showhouse may not be capable of being bought for a period of time, it is the view of practitioners that this should not be viewed as a "condition" "attaching to the sale" which is designed to impede or disrupt the sale for the purposes of the legislation. Such showhouses will ultimately be sold in the same manner as other units in a development.

It is submitted that the above aspect of the legislation is aimed at and should be interpreted as excluding from the exemption any units with *'conditions'* of sale attaching to that sale which are '*designed'* to cause a sale not to ever take place. In the case of showhouses it is always the intention to cause a sale to take place. Indeed, such units are as actively employed in the marketing of themselves for sale as they are in the marketing of the other units in the development. The length of the period of active marketing of a showhouse prior to ultimate sale should not be viewed as something *'designed'* to impede or disrupt the sale, nor is it a *'condition'* attaching to its ultimate sale.

In all likelihood, a period of being a showhouse will serve to better facilitate its ultimate sale rather than impede it in circumstances where the development will be at near complete stage by that time.

Notwithstanding the above, it is acknowledged that given the length of period of active marketing of these units prior to their sale there is potential for doubt on the subject. However, there would appear to be sufficient scope within the legislation for such units to remain capable of availing of the exemption under S.653BC(c) TCA 1997 during the period of their use as showhouses. It is submitted that to treat such properties as not being within the exemption in question would be contrary to the intention of the legislation and would be an interpretation that does not take into account the purpose and scope of the exemptions to VHT contained within the legislation of general relevance to property development.

Given the potential room for doubt in relation to showhouses, we are seeking the view of Revenue on the issue and what would be the criteria that Revenue would expect to be satisfied for showhouses to be within the exemption in question.

Vacant Homes Tax – Showhouses – Revenue response

VHT – Overview

Vacant Homes Tax applies to residential properties that are within the scope of local property tax (LPT). The definition of 'residential property' for the purposes of LPT includes any **building** which **is in use as, or suitable for use as, a dwelling.**

Therefore, both LPT and VHT apply only to habitable residential properties. LPT and VHT do not apply to unfinished, derelict or uninhabitable properties. VHT operates on a self-assessed basis.

A residential property will be within the scope of VHT if it has been in use as a dwelling for less than 30 days in a chargeable period.

However, certain properties are also outside the scope of VHT. In this regard, the tax does not apply to

- properties that had the benefit of an exemption from local property tax at the end of a chargeable period
- properties that were subject to a *bona fide* tenancy lasting at least 30 days during a chargeable period
- properties sold in a chargeable period for the chargeable period in which they were sold.

Each chargeable period commences on 1 November and ends on 31 October of the following year. The first chargeable period commenced on 1 November 2022. If a property owner determines that their residential property is within the scope of VHT, then that property owner must file a return electronically within 7 days of the end of the relevant chargeable period. Any VHT liability must be discharged on or before the following 1 January.

If a property owner considers that they may be entitled to the benefit of an exemption, then this exemption must be claimed in the completed VHT return.

Exemption for properties actively marketed for sale in the chargeable period

The legislation provides for a number of exemptions from VHT. To be entitled to the benefit of an exemption, the qualifying conditions for that exemption must be satisfied for each chargeable period for which that exemption is claimed.

An exemption must be claimed in the annual VHT return that a chargeable person is obliged to make.

S653BC(c) provides for an exemption from Vacant Property Tax (VHT) where a property was actively marketed for **sale** in the chargeable period and the following conditions were met—

(i) the price sought for the property did not exceed the price which such property would have realised if sold on the open market in such a manner and subject to such conditions as might reasonably be calculated to have obtained for the vendor the best price for the property, and

(ii) there were no conditions attaching to the sale which were designed to impede or disrupt the sale of the property,

Is a showhouse within scope of VHT for a chargeable period?

I note that the query relates to showhouses which are fully completed and connected to utilities. In order to be subject to VHT, a property must be a residential property for the purpose of the legislation on the first day of the chargeable period. VHT does not apply to a property for the chargeable period during which that property is completed and therefore comes within the definition of a residential property for the purposes of LPT for the first time.

Once a property comes within the definition of a residential properties for the purposes of LPT as set out in Sections 2 and 2A of the Finance (Local Property Tax) Act 2012 on the first day of a chargeable period, then this property will be within the scope of VHT if it is not occupied for 30 days in a chargeable period and if not specifically excluded by the legislation.

When will a showhouse be specifically excluded from VHT?

As set out above, certain properties are specifically excluded. These are -

- properties that had the benefit of an exemption from local property tax at the end of a chargeable period

- properties that were subject to a *bona fide* tenancy lasting at least 30 days during a chargeable period

- properties sold in a chargeable period for the chargeable period in which they were sold.

Therefore, if a showhouse is sold within a chargeable period then that property will not be within the scope of VHT for the chargeable period in which it is sold.

Can a showhouse benefit from the Exemption for residential properties actively marketed for sale?

The wording of the exemption makes it clear that the property that must be marketed for sale is the property in respect of which the exemption is claimed. If that property is not on the market and if a sale of that property is not actively pursued, then the exemption will not be available. It does not matter that the property is being used to market other properties.

It is noted that reassurance is sought that showhouses will not be considered to be subject to 'conditions' that are designed to 'impede or disrupt' the sale of that property. The query does not refer to any particular condition and it is not clear what potential conditions the querist has in mind.

However, it is noted that in order for it be necessary to consider if a condition which a vendor is seeking to impose is a condition that is 'designed to impede or disrupt the sale of the property' it is necessary that the property itself actually be available for sale. If a property is not 'capable of being bought' then that property cannot be considered to be 'for sale.'

Example

Construction Company Ltd is developing a scheme of houses. Construction Company Ltd developed a showhouse which it used to market the residential properties it was developing. The showhouse was completed and therefore came with the definition of a residential property for the purposes of LPT and VHT on the 7th January 2023. Sales were agreed for the all of the other residential units by the 1st September 2024. Construction Company Ltd therefore decided to put the showhouse itself on the market in September 2024. A sale of the showhouse completed on the 15th November 2024.

The showhouse was not within the charge to VHT for the chargeable period commencing on the 1st November 2022 and ending on the 31st October 2023 as the showhouse was not a residential property for the purposes of VHT on the 1st November 2022.

Construction Company Ltd it entitled to the benefit of an exemption for the chargeable period commencing on the 1st November 2023 and ending on the 31st October 2024 as the showhouse itself was actively marketed for sale in this chargeable period.

The showhouse is outside the scope of VHT for the chargeable period commencing on the 1st November 2024 and ending on the 31st October 2025 as the showhouse was the subject of a sale in this chargeable period.

However, if the showhouse was not itself actively marketed sale until after the 1st November 2024 then a charge to VHT would have arisen for the chargeable period commencing on the 1st November 2023 and ending on the 31st October 2024 as the qualifying conditions for the exemption for properties actively marketed for sale in a chargeable period would not have been satisfied.

Summary

In summary, a show house will be liable for VHT if it comes within the definition of a residential property at the start of a chargeable period and if it has been occupied as a dwelling for less than 30 days in that chargeable period.

A show house will not be liable for VHT for a chargeable period in which that show house itself is actively marketed for sale. A showhouse will not be considered to be actively marketed for sale if the show house itself is not available to purchase by a willing purchaser.

A show house will not be liable for VHT for a chargeable period in which the show house is sold.

Therefore, in conclusion a show house will be within the charge to VHT once it is completed and comes within the definition of a residential property for the purposes of LPT and VHT for any chargeable period in which the show house itself is not available for sale and not occupied as a dwelling for 30 days or more.