

## Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday, 1 May 2025 via MS Teams

14.30 to 16.00

### Minutes

#### Item 1: Minutes from meeting of 27 February 2025

The minutes of the meeting of 27 February 2025 will be finalised by way of email.

#### Item 2: Matters arising from meeting of 27 February 2025:

- a. **Automatic Enrolment Retirement – Interaction of income tax and capital acquisitions tax:** In advance of the February meeting, practitioners provided a written note querying the correct tax treatment of certain payments in the event of death of a participant from an auto enrolment saving scheme under the Automatic Enrolment Retirement Savings System Act 2024. Section 787AI of the Taxes Consolidation Act 1997 (as amended) provides that payments from the auto enrolment retirement savings system are subject to income tax under Schedule E and such treatment is applicable to payments from the participant's account "including the personal representatives of a deceased individual". At the meeting, the Revenue confirmed that such payments are subject to tax under Schedule E and the normal capital acquisitions tax rules are applicable. Revenue noted that the Department of Finance has been made aware of the issue.
- b. **Filing requirements for regulated and unregulated investment limited Partnerships:** In advance of the February meeting, practitioners requested clarification on filing requirements of regulated and unregulated investment limited partnerships. Revenue outlined that regulated and unregulated investment limited partnerships under the Investment Limited Partnerships Act 1994 are required, by legislation, to file a Form ILP1 and the Form 1(Firms). Revenue noted they are still reviewing the submission made by practitioners after the last meeting and how certain partnerships should complete the Form 1(Firms) and invited submissions on proposals to address the filing issues identified to date. This item to remain on the agenda.
- c. **Partnerships and association for the purposes of certain ATAD measures:** Revenue confirmed a new Tax and Duty Manual ("TDM") on the tax treatment of partnerships is being drafted and will be available shortly. This item to remain on the agenda.
- d. **UK Limited Liability Partnership and meaning of partnership for purposes of the TCA:** At the February meeting, the Revenue had invited practitioners to provide feedback on the correct classification of UK limited liability partnerships. Chairperson noted that practitioners are still considering this issue. This item to remain on the agenda.

- e. Income tax relief on medical insurance premiums where a blended rate:** In advance of the February meeting, practitioners provided a written note on the application of section 470 TCA 1997 where the insurance premium covers both eligible and non-eligible health expenses. Revenue outlined they are considering the issue raised by practitioners and aim to provide an updated before the next meeting on 26 June 2025.

**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:** At the February meeting, for a number of reasons including due to a risk of a taxpayer claiming relief in multiple jurisdictions, Revenue outlined they could not provide confirmation sought by practitioners that capital allowances under section 291A TCA should be available where a company incurs capital expenditure on the acquisition of specified intangible assets and subsequently migrates tax residence to Ireland. At the meeting, practitioners queried whether Revenue's concerns would be alleviated where the taxpayer on migration of tax residence suffered a charge to exit tax or the migration of tax residence resulted in an increase in the amount of a top-up tax charge under Pillar Two. In such circumstances, Revenue outlined capital allowances would not be available unless all requirements of section 291A TCA are satisfied by the taxpayer and noted legislative amendment would be regarded for capital allowances to be available. Revenue agreed to review any further technical analysis from practitioners. This item to remain on the agenda.
- b. CT1 form – Transfer Pricing documentation requirements for an Irish Branch:** Revenue noted their review of this issue is at an advanced stage and Revenue agreed to provide an update in advance of the next meeting scheduled for 26 June 2025. This item to remain on the agenda.
- c. Mandatory Disclosure Guidance Notes:** Revenue outlined that work is continuing on examples of 'routine' tax advice availing of tax reliefs in the manner intended by the Oireachtas. Such examples are to be included in Appendix One of the draft TDM Part 22-02-1 'Mandatory Disclosure Guidance Notes' circulated in advance of the September meeting. Revenue requested practitioners to update examples previously provided to demonstrate how tax advice relates to a taxpayer availing of tax reliefs in the manner intended by the Oireachtas as opposed to the legislation itself following the premise that the 'spirit of the law' is applicable to the requirement to disclose. Law Society outlined that they are of the view that all examples already furnished are sufficiently detailed to deal with the use of discretionary trusts on a routine basis to allow the use of reliefs and exemptions in the manner permitted by relevant legislation itself. Revenue to complete work on the draft TDM Part 22-02-01. Item to remain on the agenda.

At the February meeting, practitioners had queried whether possible for the filing of details to Revenue of a Will trust under the Statement of Affairs filing ("SA2") probate procedure to satisfy the need for information for Revenue around this to allow the Will trusts to continue to be excluded from the legislative requirements under the Mandatory Disclosure rules. Following a review, Revenue noted the SA2 probate procedure does not satisfy the reporting requirement under the Mandatory Disclosure rules. Law Society expressed disappointment that this more practical solution to Revenue using the information on discretionary trusts already to hand would not be availed of so that additional work is placed on advisers that appears unnecessary and burdensome.

Revenue also confirmed that the draft changes to the guidelines will be updated further to require practitioners to file under Mandatory Disclosure where advice is given to a taxpayer to make a Will trust, instead of when the Will is actually signed, never mind their acceptance that such a Will may never take effect. Law Society expressed disappointment on this and referred to the concerns and impracticalities of this as already set out in their previous submissions.

- d. 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:** At previous meetings, practitioners requested clarification of the application of guidance on the ARF Refund Form in circumstances where the income earned in a previous year is paid out in the current year. Revenue noted their review of the issue is ongoing. Item to remain on the agenda.
- e. Employer contributions to PRSAs and PEPPs:** At previous meetings, practitioners had requested clarification and submitted examples in respect of determining the amount of employer deductions where the employer company has a non-calendar year end. Revenue outlined work on updating Chapter 24 of the Pensions Manual is ongoing and the updated Manual should provide most of the clarification requested by practitioners. The updated version of Chapter 24, with worked examples, was subsequently published in May.
- f. TDM Part 02-02-07 'Deposit Interest – Whether a Trading Receipt':** Practitioners provided additional feedback on the tax treatment set out in TDM Part 02-02-07 relating to investments made by taxpayers to meet regulatory capital requirements. A review of the additional feedback is currently ongoing by Revenue and Revenue are discussing same with the Central Bank. Following such review and consultation with the Central Bank, the Revenue plan to update TDM Part 02-02-07. Item to remain on the agenda.
- g. Leasing guidance:** Following discussions at previous meeting in respect of establishing a uniformed approach on how the burden of wear and tear is applied by taxpayers across different industries, practitioners provided additional feedback in advance of this meeting. Revenue noted their review of additional feedback provided by practitioners is ongoing and may seek further feedback / clarifications from practitioners in due course. Item to remain on the agenda.

- h. Interaction of Knowledge Development Box and Pillar Two:** At prior meetings, practitioners raised concerns related to the interaction of the KDB and Pillar Two (in particular whether a taxpayer can elect out the KDB). Revenue confirmed an election into KDB is a legislative requirement therefore any change would require a legislative change and welcomed submissions to the R&D Discussion Group. Item to remain on the agenda.
- i. Treatment of dividends on certain preference shares:** Following discussions at prior meetings on whether it is reasonable to regard a certain share on the Euronext Growth list as equivalent to a stock exchange for the purposes of section 138 TCA 1997, Revenue requested and received additional information from the Irish Stock Exchange. Revenue is currently in the process of reviewing such information. Item to remain on the agenda.
- j. Residence certificate for corporates:** Practitioners highlighted an issue whereby certain countries requested the address of a taxpayer to be included on a certificate of residence. It was agreed this is not a widespread issue. Revenue outlined it is possible for taxpayers to make a request to Revenue to manually update the certificate of residence to include the taxpayer's address where necessary.

#### **Capital Taxes:**

**No items raised**

#### **Direct Taxes:**

##### **Item 4: Updates to Revenue Manual Parts 05-01-26 and 42-04-56**

Practitioners queried the rationale for recent updates to TDMs on the Taxation of Payments Made to Home Tutors by the Department of Education and the Tax Treatment of Remuneration of Members of State & State Sponsored Committees, Boards, Commissions & other Bodies to remove references to any specific PRSI class and to confirm that the Department of Social Protection has responsibility for determining the relevant PRSI class applicable. Revenue outlined the TDMs were updated to remove references to any specific PRSI class as such guidance is a matter for the Department of Social Protection. Revenue confirmed that there has been no change in the applicable PRSI rate for payments to individuals in their capacity as members of State Bodies. Practitioners noted that there is no reference in any DSP guidance to the application of PRSI Class K (such as SW19 document) for payments to individuals in their capacity as members of State Bodies, Revenue agreed to raise this matter with colleagues in DSP.

**Item 5: Revenue Guidance:**

- (i) Draft Tax and Duty Manual 26-00-02 – ‘Taxation of Life Assurance Companies - Old Basis Business and New Basis Business:** Revenue confirmed the process of updating this TDM is close to completion. This item to remain on the agenda.
- (ii) Tax and Duty Manual Part 04-06-13 Tax Treatment of Stocklending/Sale and Repurchase (repo) Transactions:** Revenue confirmed their review of this TDM has been paused pending finalisation of work on a new TDM dealing with the taxation of dividend arbitrage transactions. This item to remain on the agenda.
- (iii) TDM Part 02-02-07 ‘Deposit Interest – Whether a Trading Receipt’:** Discussed at item 3(f) above.
- (iv) New TDM on taxation of partnerships:** Discussed at item 2(c) above.

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

The Law Society provided an update from the RZLT subgroup and noted a very productive meeting of the RZLT subgroup was held in March 2025. Minutes of the previous meeting in January 2025 were circulated to members of this Sub-Committee in advance of this meeting.

Key items raised at the meeting in March 2025 included the obtaining of further legal advice by Revenue in respect of a request from the Law Society to update Revenue guidance regarding statutory charges under section 653Q TCA 1997. A number of other administrative items were also raised at the meeting. The Law Society confirmed minutes of the March 2025 meeting will be provided to this Sub-Committee once agreed and finalised at the next meeting of the RZLT Subgroup.

**Item 7: Update from the Research and Development Subgroup**

Revenue provided an update from the March 2025 meeting of the Research and Development Subgroup. Draft minutes of the meeting in March 2025 were circulated to members of this Sub-Committee in advance of this meeting.

**Item 8: AOB:**

- a. Tax clearance for Irish Real Estate Funds:** At the meeting, practitioners raised concerns relating to delays in tax clearance certificates for Irish Real Estate Funds. In response, Revenue provided the following the statement:

**Reasons for delays in granting advance clearances/ refunds**

*Revenue appreciates the structures and entities involved can be complex, in some cases numerous layers in the ownership structure that can span several tax jurisdictions. Delays generally arise where insufficient information is provided to support the claims/refunds particularly in relation to the “Personal Portfolio IREF” and “equivalence” status.*

#### **PPIREF Status**

*In some instances, documentary evidence is not being provided to support assertions that an IREF would not be considered to be a PPIREF of the indirect investor concerned. It would be helpful to reduce unnecessary delays if the following documentation was provided (i) subscription agreements, (ii) founding documents, (iii) fund documentation, (iv) other relevant contractual arrangements or agreements, (v) minutes of board meetings and (vi) minutes of investment committee meetings. Delays also arise where the documentation is not translated into English or where it is redacted.*

#### **Equivalence Treatment**

*The Tax and Duty Manual titled “Irish Real Estate Fund (IREF) Guidance Note Part 27-01b-02, provides guidance on general criteria which should be considered in order to establish if equivalent treatment applies. Each criterion should be addressed in any submission together with supporting documentation for which equivalence is being claimed. Similar to establishing PPIREF status, it would reduce delays if supporting documentation is translated and not redacted.*

Practitioners agreed to review the response. Item to remain on the agenda.

- b. Application of time limits for tax appeals in respect of tax assessments issued in December:** Practitioners raised a practical issue concerning application of statutory time limits where a tax assessment is raised in December. It was agreed such item is to be raised at the next meeting of the TALC Audit Sub-Committee.
- c. Digitisation of discretionary tax return process:** Practitioners queried whether there are any plans to enable e-filing for discretionary tax returns. Revenue noted that this is under consideration but when, or if, it will be introduced is dependent on the availability of resources and other competing priorities. Revenue said the matter will be considered further.
- d. Grant recognition in R&D tax claims:** Practitioners provided a note seeking clarity on the recognition of grants in an R&D tax credit claim where there is uncertainty as to when the grant is to be received or the amount to be received. Practitioners requested clarification if the grants receipt basis of accounting for grants for the purpose of the R&D tax credit may be accepted. Revenue agreed to review the note and provide feedback via the Research and Development Subgroup.

**Attendees at this meeting:**

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

**Apologies:** [ Cillein Barry ]