Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday 7 September 2023 via Microsoft Teams

14.30 to 15.45

Minutes

Item 1: Minutes from meeting of 22 June 2023

The minutes of the meeting of **22 June** 2023 were agreed as final.

Item 2: Matters arising from meeting of 22 June 2023:

a) **Agricultural relief and definition of farmer – Section 89 (1) CATCA**: Rather than being a Matter arising this item was rolled over from the TALC Direct and Capital Taxes Sub-Committee meeting of the 22nd June 2023.

Practitioners raised a query in relation to a situation where a beneficiary wishes to part work the farm and part lease the farm.

CAT Tax and Duty Manual Part 11 – 'Agricultural Relief" at 11.6.3.2 will accept that "substantially the whole of the property means at least 75% of the property by value".

Could the TDM be updated to reflect that the Revenue interpretation of "substantially the whole" means that at least 75% of the property is leased or that, through a combination of lease and working by the beneficiary in accordance with (i) and (ii), the beneficiary will be treated as having leased the whole or substantially the whole of the agricultural land even though a lesser amount has actually been leased where the other amount (coming to at least 75% of the land combined with the leased land) is farmed by an active farmer or a qualified farmer or is forestry.

Revenue advised that the request is still under consideration.

Agricultural relief and definition of farmer – Section 89 (1) CATCA – Rather than being a Matter arising this item was rolled over from the TALC Direct and Capital Taxes Sub-Committee meeting of the 22nd June 2023.

Practitioners queried where property is reinvested how the farmer test is applied under section 89 (4B) CATCA 2003. Revenue agreed to consider this request and a note was forwarded to Revenue outlining the issue on the 23rd June 2023. The note was attached in Appendix I.

Revenue noted that it is already confirmed in the Agricultural Relief TDM that where agricultural property is reinvested, this will not result in a clawback of relief. (See heading Disposal and reinvestment 11.7.4). Revenue said that in circumstances where agricultural property is reinvested, the use part of the farmer test in subsection (1), which refers to the agricultural property comprised in the gift or inheritance, should be applied for the purposes of subsection (4B) as if the reinvested property were the same as the property comprised in the original gift or inheritance. Revenue also said that the formula under section 89(4)(aa) does not apply to a clawback under section 89(4B). Revenue confirmed that the TDM will be updated to ensure that the foregoing points are reflected in same.

b) **Section 79 SDCA 1999:** Rather than being a Matter arising this item this item was rolled over from the TALC Direct and Capital Taxes Sub-Committee meeting of the 22nd June 2023.

Section 79 provides that the relevant document effecting a domestic merger is within the scope of stamp duty as a conveyance on sale. As such, the transfer of assets arising upon a merger is subject to Irish stamp duty. In most cases associated companies relief is claimed on the merger.

Stamp Duty Manual - Section 79 Associated Companies Relief confirms that a clawback will not be considered to arise in respect of certain assets that by their nature, cease to exist over time.

The current guidance does not adequately address assets which will naturally be used during the course of a trade (e.g. trading stock, plant and equipment) and therefore cannot meet the 2 year holding requirement. Confirmation would be welcomed that a clawback of stamp duty relief on the merger of a trade should not arise where trading assets such as trading stock and plant & equipment are naturally utilised during the course of the trade.

Revenue advised that the request is still under consideration.

c) **Availability of Remote Working Relief [“RWR”] to proprietary directors:** In advance of the meeting a note was circulated by Revenue to the TALC Direct and Capital Taxes Sub-Committee giving the Revenue response to the query raised in respect of a proprietary director’s entitlement to claim remote working relief and remote workers daily allowance.

Practitioners stated that the responses addressed their query. Practitioners also asked if Paragraph 4.1 of the TDM Part 05-02-13 would be updated accordingly.

The Revenue note is attached to these Minutes in Appendix I.

d) **Tax treatment GMS income assigned by employed GPs to GP practices:** In advance of the meeting a note was circulated by Revenue to both Main TALC and the TALC Direct and Capital Taxes Sub-Committee regarding the tax treatment of GMS income of GPs in certain circumstances.

Revenue advised that it is in the process of finalising guidance on this matter and will publish an updated Tax and Duty Manual in the coming weeks. The Tax and Duty Manual will be circulated to the TALC Direct and Capital Taxes Sub-Committee in advance of publication.

There then followed a detailed discussion on the tax treatment of GMS Income that is paid to a GP who holds a GMS contract in circumstances where the individual GP works in a practice as either a partner or an employee.

Practitioners requested that Revenue set out the basis for the position being adopted in respect of GMS payments and partnerships, as outlined in Revenue's note which was circulated on 27 July. It was confirmed that this position is based on the fact that the GMS contract is entered into between the HSE and the individual GP. Revenue agreed to forward a note on this matter.

The note circulated by Revenue to both Main TALC and the TALC Direct and Capital Taxes Sub-Committee is attached to these Minutes in Appendix II

e) The impact of the new GBER rules on the Employment Investment Incentive Scheme:
Revenue advised that

- Revised GBER was published officially on 1 July with 6-month implementation period.
- Any required changes will therefore be made in Finance Act 2023.
- The following statement from the Department of Finance was provided as follows:,
- GBER requirements are still being examined and all potential changes are still open for consideration.
- While everything is still being considered, the revised GBER distinguishes between direct and indirect investment, with the general direction of travel at this point being that investment funds, DIFs and QIFs, are financial intermediaries and investments through them are indirect.
- Indirect investments attract a 30% rate of relief and eligible shares in respect of indirect investments may be redeemable preference shares.
- As mentioned, all matters are still open and under examination in respect of any potential changes.

Practitioners queried whether it would be possible to have a meeting with Revenue and the Department of Finance to discuss the implications of the revised GBER regulations. Revenue advised that they would bring up the suggestion with the Department of Finance.

Capital Taxes:

Item 3: Degrouping under section 623 and previous mergers: Practitioners queried whether, in a situation where a domestic merger by absorption occurs between two Irish companies in a group, there will be a transfer of assets that meets the requirements of section 617 TCA 1997 with the transferor disappearing, with all rights and responsibilities being assumed by the transferee. In addition, practitioners queried whether if at some future point, there is a disposal of the Irish subgroup containing the transferee would a degrouping charge under section 623 apply and would welcome Revenue clarity on the scenario as presented.

Practitioner understanding is that since the definition of a CGT group has expanded over the years to now include many non-resident companies, this is more likely to occur via an upstream disposal of an intermediate non-resident parent than might have been the case previously. For example, if there had been a merger within the ABC subgroup owned by a Dutch BV, there appears to be degrouping if the Dutch BV sells the ABC subgroup, being an exit from the Irish CGT group headed by the BV.

Revenue advised that, in response to the initial query, that the transfer would fall under the provisions of Section 617 TCA 1997 and on a subsequent degrouping, as outlined in the scenario put forward by practitioners, the provisions of section 623 TCA 1997 would apply. Any decision with regards the disapplying of section 623 TCA 1997 in this scenario would be a policy matter for the Department of Finance.

With regards cross border mergers or upstream mergers, in order to progress this issue further Revenue asked if it would be possible for practitioners to forward a detailed example with their views on the example.

Direct Taxes:

Item 4: Employment Investment Incentive Scheme – Firm in difficulty calculations: Practitioners queried if Revenue could provide clarity on whether capital raised on foot of a convertible loan note (CLN), and capital raised under a SAFE note, are to be included as "own funds" and/or "share capital shown as a financial liability" and/or "other reserves" in applying the EIIS GBER undertaking in difficulty calculation to an enterprise?

Revenue's template for calculating same is set out in Tax and Duty Manual 16-00-02 'Relief for investment in corporate trades'

Under GBER, an undertaking is considered to be in difficulty if, in the case of a limited liability company, more than half of its subscribed share capital (including share premium) has disappeared as a result of accumulated losses. This is the case when the deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company emphasis added) leads to a negative cumulative amount that exceeds half of the subscribed share capital.

Revenue advised that the undertaking in difficulty calculation would have to be looked at on a case-by-case basis to arrive at the correct treatment of the notes used to raise the capital and case specific queries should be submitted through the Revenue Technical Service.

Practitioners queried if would be possible to send in redacted agreements in order to assist Revenue in determining if the notes are to be included as “own funds” and/or “share capital shown as a financial liability” and/or “other reserves” in applying the EIIS GBER undertaking in difficulty calculation. Revenue advised due to the complexity of the agreements that each calculation would have to be looked at on a case-by-case basis.

Revenue queried if it would be possible to submit a live case via RTS in order for Revenue to review and provide an answer.

Item 5: Draft Tax and Duty Manual 26-00-02 – ‘Taxation of Life Assurance Companies - Old Basis Business and New Basis Business Regimes’

A Draft TDM 26-00-02 was circulated by Revenue to practitioners on the 29th August 2023. Revenue would welcome any comments or feedback on the Draft TDM by the 22nd September 2023.

Item 6: Share Options subsequently redeemed by the Company: Practitioners queried if their understanding in the following scenario is correct.

- An employee has a share option with an exercise price of €20
- The option is subsequently exercised when the share price is €50
- The €30 is subject to income tax at the time of exercise

If the shares are then redeemed shortly thereafter by the company when the share price is still €50 – the €30 is subject to income tax again as a distribution (assuming none of the CGT conditions are met).

There are of course two separate events but in substance the same €30 is taxed twice, which doesn't seem equitable, and there is nothing in any of the other sections (131-139) that would prevent the €30 being treated as a distribution.

Revenue advised that the practitioner understanding is correct. In the above scenario there are two separate and distinct transactions. On the exercise of the share options the legislation regarding share options is applicable. When the shares are subsequently redeemed the legislation regarding distributions apply.

The is no share option concession contained in sections 131 to 139 TCA 1997. The extent of the relief that is intended for share options and whether it should be extended to redemption of the shares by a company would be a policy matter for the Department of Finance.

Practitioners queried if Revenue would raise the issue with the Department of Finance. Revenue advised that they would and also asked practitioners to raise the issue themselves with the Department of Finance.

Item 7: Special Assignee Relief Programme (SARP): A recent TAC determination (98TACD2023) regarding to the Form SARP1A considered the meaning of employer certification in section 825C TCA 1997. Practitioners queried if Revenue intend to amend guidance on the SARP to reflect the determination?

Revenue advised that they will be updating their SARP Tax and Duty Manual in accordance with the determination and this update is expected to issue in September 2023.

Revenue also advised that a new online portal for the employer certification and end-of-year return is being developed. Further details will be provided in due course.

Item 8: AOB:

EIIS / RICT Filing Issue – Practitioners raised an issue regarding companies that attempted to file the RICT return by end April this year but the form was not updated to reflect the relaxing of the 30% rule. Some practitioners were uneasy filing an incorrect form and delayed pending getting clarification on how to complete the form and now seem to be out of time.

Is there any way this can be brought up to date so as to enable companies and investors receive the relief for amounts invested in 2022?

Revenue advised that it is aware that notwithstanding the updating of the RICT return following the relaxing of the 30% rule, an issue in this regard continues to present. It was explained that in the short term, where a company or agent experiencing difficulties contacts Revenue they are advised as to how to proceed to complete the form. Revenue confirmed that the issue with the form was being addressed. Any company or agent who has been impacted by this issue and did not file the RICT return ahead of the deadline on 30 April was advised to let Revenue know via MyEnquiries/ROS.

In order to ensure that the RICT return filing errors are dealt with promptly Revenue provided practitioners with an e-mail address to be used by companies/agents who had experienced difficulties filing the RICT return ahead of the 30 April deadline as a result of errors arising in respect of the 30% spend fields following the meeting.

Practitioners queried what are the implications for a company that has missed the 30th April deadline. Will this mean that the entirety of that round of EII funding would excluded?

Revenue advised that they are looking at the issue and where the deadline was missed as a result of the technical issues raised then companies will be facilitated to file beyond the deadline.

Leasing Sub-Group Meeting – Revenue advised that the Department of Finance have organised another meeting of their leasing group next week [Wednesday the 13th September 2023]. Revenue asked that the practitioner bodies double check that the members that they have put forward to the Leasing Sub-Group represent all lessors and not just big ticket lessors. Revenue requested that if additional members need to be added to the Leasing Sub-Group to ensure full representation of the wider industry that they be advised ASAP.

Residential Zoned Land Tax (RZLT): Revenue advised that the initial meeting of TALC Direct and Capital Taxes Sub-Committee RZLT Sub-Group Meeting took place on the 27 July 2023 and a further meeting of the Sub-Group took place on the 5th September 2023.

The agreed Minutes of TALC Direct and Capital Taxes Sub-Committee RZLT Sub-Group Meeting of the 27 July 2023 were circulated to the TALC Direct and Capital Taxes Sub-Committee in advance of this meeting.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Jeanette Doonan (Chair) Karen Drake Aisling Dooley John Kelly Barbara Ní Neachtain Eleanor Smiley Norma Lane Dave Brennan (Secretary)	Lorraine Sheegar Clare McGuinness Kim Doyle David Fennell Laura Lynch Cillien Barry Stephen Ruane	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

Revenue reply to query in regard to proprietary directors entitlement to claim remote working relief and remote workers daily allowance.

Legislation

Section 114A TCA 1997 in subsection (1) provides a definition of remote worker as follows;

> *"remote worker" means a person who is the holder of an office or employment of profit and who performs the duties of his or her office or employment—*
>
> *(a) by working from his or her residential premises on a full-time or part-time basis, or*
>
> *(b) by working some of his or her normal working time from his or her residential premises, with the remainder of that normal working time being spent in his or her normal place of employment or in some other place;*

Subsection (2) provides that;

> *"where in any year of assessment a remote worker, having made a claim in that behalf, proves that he or she has incurred and defrayed relevant expenses out of the emoluments of the office or employment of profit, he or she shall be entitled to claim a deduction (in this section referred to as "remote working relief") from the emoluments to be assessed in respect of the specified amount determined in accordance with subsection (4)".*

Therefore, where a director (including a proprietary director) has incurred and defrayed relevant expenses 'out of the emoluments' of the office or employment of profit, he or she shall be entitled to claim a deduction ('remote working relief') from the emoluments, that are subject to tax under the PAYE system. The relevant expenses must be **'out of'** the relevant emoluments.

Guidance

Paragraph 4.1 of the TDM Part 05-02-13 states that RWR will generally apply to employees and directors rather than chargeable persons (i.e. self-employed taxpayers, proprietary directors or taxpayers in receipt of income not subject to deduction under the PAYE system such as rental income).

Paragraph 4.1 is confirming that directors (including proprietary directors) who have incurred and defrayed relevant expenses 'out of the emoluments' of the office or employment of profit, may claim a deduction ('remote working relief') from these emoluments, which are subject to tax under the PAYE system. Proprietary directors who are not in receipt of emoluments from their office or employment may not claim RWR. The conditions in paragraph 4 apply to proprietary directors in the same manner as they do to any other person claiming remote worker relief.

The remote working daily allowance applies in the case of proprietary directors, where the relevant conditions are satisfied.

The conditions in paragraph 5 of the TDM 05-02-13 apply to proprietary directors in the same manner as they do to any other person claiming the remote working daily allowance.

This includes the requirement that there is an agreement in place between the employer (the legal entity) and employee (director) under which the employee works from home; that the employee performs substantive duties of his/her employment at home; and performs his/her duties for substantial periods at home.

We trust this provides the clarification required.

Appendix II

Revenue Note circulated to TALC Direct and Capital Taxes Sub-Committee 28 July 2023

GPs with GMS income

At the most recent meetings of Main TALC and TALC Direct practitioners emphasised the need for clarity in relation the GP/GMS income matter in advance of the upcoming tax filing season. Revenue is in the process of developing guidance on this matter and will publish an updated TDM in the coming weeks. In advance of that, and taking on board the calls for certainty as soon as possible, this note provides a brief outline of the position that will be set out in the TDM. Further detail will be provided in the TDM.

As has been acknowledged at both TALC fora, the PSWT credits issue is part of a wider issue arising from contractual arrangements involving GPs. As a matter of law, payments made to a GP under a GMS contract belong to the GP who has entered into that contract with the HSE. This is evident from the terms of a GMS contract and this interpretation was confirmed in a TAC determination in 2022 (01TACD2022). This position does not change because the payments are mandated to be paid to another person, such as a medical practice. There is no legal basis for Revenue to treat income belonging to an individual GP to be income of another person/ medical practice for tax purposes. Therefore, a GP who holds a GMS contract—

1) is a chargeable person as regards income arising under the contract and should report that income under the self-assessment system, and

2) is the specified person for the purposes of PSWT and, therefore, is the person who may, where the relevant criteria are met, claim a credit for PSWT deducted on a GMS payment. A credit may not be claimed by any other person, including a medical practice.

Revenue understands that practices have developed whereby a GP may have mandated that GMS payments are paid to a medical practice in circumstances where—

a) the GP is employed by the medical practice concerned and receives a salary from that practice, which is payable subject to PAYE, or

b) the GP is a partner in the medical practice concerned and receives a share of the partnership profits.

Revenue expects that, in relation to bona fide arrangements referred to in a) or b) above, for the tax year 2024 onwards, a GP who holds a GMS contract will, where they are not already doing so, account for tax payable in respect of their GMS income under the self-assessment system (i.e. the correct treatment outlined at 1) and 2) above is applied). This expectation, as regards the application of 1) and 2) above in relation to income arising from a GMS contract for the tax year 2024 onwards, does not apply in respect of arrangements that are not bona fide or which have been entered into for the purpose of securing a tax advantage. In respect of such arrangements, the treatment referred to at 1) and 2) above will be applied for all tax years.

For the avoidance of doubt, in circumstances where a GP, who holds a GMS contract, has incorporated his or her medical practice, the treatment referred to at 1) and 2) above will be applied in respect of his or her GMS income for all tax years.