



Institute Comments on DRAFT Revenue Manual on “Family Wages: Tax deductibility in remunerating family members”

February 2018

We outline below our comments on the draft TDM on “Family wages”. The comments cover operational aspects and the current contents of the draft. This TDM will have a broad and diverse readership, given the subject matter, and it will be important that readers can understand and apply Revenue’s approach to this issue.

Many of the concepts in the “wholly/exclusively” test that developed from case law such as “duality of purpose” and a person’s “subconscious purpose” are subjective in nature and could be interpreted in a number of ways. Readers of the TDM (taxpayers, practitioners, Revenue) need to be able to apply these concepts to real-life situations. As such, the TDM should provide some insight on the types of wage payment practices Revenue has no issue with and the practices Revenue is trying to stop. One way to do this would be through the use of practical examples. As drafted, the TDM includes several examples of circumstances when a deduction for wages was not permitted. It is equally important that there are examples of situations when a deduction is allowed.

[Tax Briefing No.4/2013](#) appears to reflect Revenue’s audit policy/approach to family members as employees, it would be useful to include the policy in the TDM.

Specific comments

- Section 1: It may be correct to say that engaging family members is common in the farming industry. However, including a reference to farming in the first sentence may lead readers to believe that the TDM is focussed on employment in that sector - this may not be Revenue’s intention.
- Section 2.1: It is unclear what level of support a business would be expected to produce to substantiate that remuneration paid to family members is "commensurate with the duties actually undertaken". It would not be feasible for businesses of that scale to undertake benchmarking exercises in respect of such remuneration, neither in terms of the practicalities or costs involved. There is no similar requirement imposed on any business that pays wages to a non-family employee, to establish whether the rate of pay is in line with market rates and/or whether there is any duality of purpose. Nor is there any suggestion that Revenue would seek to disallow a deduction for any portion of a person's wages (in a non-family employment) where the level of wages appears to be in excess of

market rates. There should be clarity in the TDM that no additional requirements are imposed on family businesses over and above non-family businesses. This would be consistent with Revenue's treatment of taxpayers as outlined in the Customer Service Charter and consistent with tax policy measures to encourage business succession.

- Section 2.1 also notes that "where remuneration is paid significantly in excess of market rates this can be indicative of the existence of a non-trade purpose" and that the full amount of the payment is disallowable on the basis that there is duality of purpose. In cases where remuneration is deemed excessive, it would be unreasonable to disallow the entire payment on the assumption that it contains a non-trade element. As you may be aware, a recent Tax Appeals Commission determination (13TACD2016) decided that a portion of the wages paid to a family member should be allowed as a deduction in a case where Revenue contended that the wages were excessive.

As an observation, in a corporate scenario, any perceived "excessive" deduction for wages paid to family members would be taxed at far higher personal tax rates so "tax leakage" would not appear to be an obvious concern.

- Section 2.2: The TDM refers to an "intrinsic private benefit" in paying wages to family members, and implies that no deduction would then be allowed for such payments. Children are often employed in a business from an early age. While the primary purpose of their employment is to carry out duties related to the trade, it also allows the child to develop and maintain an interest in the business and helps to position them to takeover the business at some point in the future. On a literal reading of the Manual, there is a risk that this employment / payment could be interpreted as dual purpose. We would welcome clarification from Revenue that this is not the intention.

We would also suggest that that it would be useful to discuss the content of the TDM and practitioner feedback with RLS before the TDM is published.