

This technical query paper was submitted to Revenue via the TALC Direct/Capital Taxes sub-committee following a discussion on the matter at the September 2021 TALC Direct/Capital Taxes sub-committee meeting. This technical query paper was subsequently discussed at the April 2022 TALC Direct/Capital Taxes sub-committee meeting and the discussion is reflected in the Minutes. Revenue's response to this technical query paper is attached at Appendix II.



**ITI Submission to Revenue seeking further clarification  
in relation to issues that may arise with regards the  
definition of a Close Company and its relevance to Charities**

**13 April 2022**

At the September 2021 TALC Direct/Capital Taxes Sub-Committee meeting, practitioners queried whether Revenue could confirm that a registered charitable company, which is a Company Limited by Guarantee ("CLG"), is not a close company, on the basis that it has no shareholders, and only has a board of directors who cannot profit from their role (and indeed are not permitted to be paid for their responsibilities), and its members also are not permitted to profit in any manner whatsoever from their role as members of the a CLG.

The note provided to Revenue in advance of the September 2021 TALC Direct/Capital Taxes Sub-Committee meeting is included in Appendix I for ease of reference.

At the meeting, Revenue confirmed that an issue could arise, and noted that it would be useful for practitioners to provide examples demonstrating the practical impact. Revenue noted consideration would be given to this issue if examples were provided.

In respect of Revenue's request for an example demonstrating the practical impact of this, we have outlined the following example for Revenue's consideration:

*Many national sports organisations currently take the legal form of a CLG and claim the Games and Sports Bodies Exemption under section 235 TCA 1997 in relation to income that has been or will be applied for the sole purpose of promoting their objectives - e.g. athletic or amateur games or sports.*

*However, such sports organisations may also carry out non-games / non-sports activities, for example the rental of property. These profit generating activities are, for ease of administration and to remove any risk of tainting the Games and Sports Bodies Exemption under s.235 TCA 1997 in the CLG, organised and carried out in separate 100% subsidiaries of the CLG. The subsidiaries would tax this income at the appropriate rates and would submit tax returns / tax payments in the normal manner. On the basis that the CLG parent entity is not owned by anyone in particular and is a national sporting body, the subsidiaries would not be regarded as 'closely held'. We believe that this is the correct interpretation but we would be grateful for Revenue's confirmation in relation to same.*

*We would also note that many charitable bodies would be structured in a similar manner.*

## Appendix I

### Note provided to Revenue with the Agenda for the TALC Direct/Capital Taxes Sub-Committee meeting held on 2 September 2021

#### Note 4 – The definition of a close company and its relevance to charities.

A CLG (company limited by guarantee) is a company that does not have a share capital and the constitution of which provides that the liability of its members is limited to such amount as the members may, in the constitution, respectively undertake to contribute to the assets of the CLG in the event of it being wound up. A CLG may have as few as a single member and no maximum number of members, but the constitution of the CLG must specify the number of member(s) with which it is to be registered. A CLG also requires at least two directors.

The key distinguishing feature of a CLG is the absence of a share capital so that their members are not shareholders and do not have a distinct economic interest in their capital. However the definition of participator includes any person who possesses or is entitled to acquire share capital or voting rights in the company.

Thus a CLG could fall into the definition of a close company because its members do have voting rights albeit not share capital, and not rights that they can exercise in any way to profit themselves in the usual way.

While this may have limited impact on the CLG itself, it would if it had organised its profit generation activities into a subsidiary company, (which it may do for good corporate governance reasons) which would render the subsidiary company a close company.

This result seems would appear unintended, and it is noted that in the UK, the position is different.

QUERY: Can Revenue confirm that a registered charitable company which is a company limited by guarantee is not a close company, on the basis that it has no shareholders, and only has a board of directors who cannot profit from their role (and indeed are not permitted to be paid for their responsibilities), and its members also are not permitted to profit in any manner whatsoever from their role as members of the CLG?

## Appendix II

### Response received from Revenue

26 April 2022

#### **Revenue Response to ITI Submission: The definition of a close company and its relevance to charities**

Section 430 Taxes Consolidation Act 1997 (TCA) provides for the meaning of close company. With certain exceptions, a close company is a company that is controlled by five or fewer participators or by participators who are directors. The meaning of “participator” is provided by section 433 TCA. Section 433(1) provides:

*(1) For the purposes of this Part, “participator”, in relation to any company, means a person having a share or interest in the capital or income of the company and, without prejudice to the generality of the preceding words, includes—*

*(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,.....*

As the ITI submission notes, the definition of participator in section 433(1)(a) includes any person who possesses or is entitled to acquire share capital or voting rights in the company. A company limited by guarantee (CLG) could therefore fall within the definition of a close company where its members have voting rights, even though the CLG has no share capital and in circumstances where the members do not have share capital in the company and cannot use their voting rights to profit themselves.

It is not the intention of the close company legislation that it would apply to bona fide charitable companies. Revenue can therefore confirm that the close company legislation will not apply in circumstances where, for corporate governance reasons, a CLG which is a registered charitable company organises its profit generation activities into a subsidiary company.