

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday 22nd June 2023 via Microsoft Teams

2.30pm to 3.30pm

Item 1: Minutes from meeting of 27th April 2023

The minutes of the meeting of 27th April 2023 were agreed as final.

Item 2: Matters arising from meeting of 27th April 2023:

- a) **Tax and Duty Manual Part 42-04-35A – Employers Guide to PAYE:** Revenue advised that TDM 42-04-35A – Employers Guide to PAYE has not been updated yet and is scheduled for an update in August/September 2023. Examples relating to “Tips” will be included as part of the scheduled update.

Revenue also advised that the tax treatment of tips has not changed. Revenue guidance has been clear that employers must treat tips (including credit card tips) as pay, and tax them in the normal way. And if employees receive tips directly from customers, they must declare this income on their tax returns. Revenue guidance - [What pay includes?](#) Refers.

- b) **Tax and Duty Manual Review Process:** Revenue advised that since the April meeting of the TALC Direct and Capital Taxes Sub-Committee sub-group on Revenue’s TDM Review Project some progress has been made on the Requirements Analysis Stage of the project to replace the technology that supports the review and publication process for Tax and Duty Manuals (TDMs).

However, due to other priorities, Revenue have not yet reached the stage of formal review of the future approach for the publication of TDMs.

Revenue also advised that further updates will be provided to the members of the TALC Direct and Capital Taxes Sub-Committee on the progress of the TDM Review Project.

- c) **Update from R&D Discussion Group:** In advance of the meeting, Minutes of the R&D Discussion Group meeting of the 8th March 2023 and a draft Specified Return for 2022 R&D were circulated to committee members. In addition, a draft updated Tax and Duty Manual 29-02-03 ‘Research and Development (R&D) Corporation Tax Credit’ was also circulated for comments and observations.

Practitioners queried if a date for the training of ‘R&D Experts’ would be set for September. Revenue advised that they will endeavour to identify a date for the provision of the expert training for the September meeting.

- d) **GBER and EII TDM:** This item was discussed under **Agenda Item 7**

- e) **Tax and Duty Manual on the classification of foreign entities for Irish tax purposes:** This item was discussed under **Agenda Item 6**

Item 3: Agricultural relief and definition of farmer – Section 89 (1) CATCA 2003:

In advance of the meeting a submission was made to Revenue in respect of the interpretation of “substantially and wholly” contained in [Capital Acquisitions Tax Manual Part 11](#) - ‘Agricultural Relief’.

Revenue advised that they are reviewing the submission at the moment and that the issue will be included on the Agenda for the TALC Direct and Capital Taxes Sub-Committee meeting scheduled for the 7th September 2023.

Practitioners also queried if an example of how the farmer test will apply where a farm, that did not comprise of part of the original inheritance, is purchased from monies raised from a disposal of a farm that was subject of Agricultural Relief.

Item 4: Section 79 SDCA 1999:

Practitioners queried if confirmation could be given that a clawback of stamp duty relief on a merger by absorption would not arise where trading assets such as trading stock and plant and equipment are naturally utilised during the course of the trade.

Revenue advised that Paragraph 9.4.2. of [Stamp and Duty Manual - Part 7 Section 79](#) is currently under review and this issue will be given consideration as part of that review. This issue is to be included on the Agenda for the TALC Direct and Capital Taxes Sub-Committee meeting scheduled for the 7th September 2023.

Item 5: CGT Retirement Relief:

Practitioners queried if an individual will be precluded from claiming CGT Retirement Relief in circumstances where the individual personally owns a property that is used for the purposes of the trade carried on by a company that the individual is a shareholder in, and the individual receives rent from that company. In such circumstances, practitioners asked does this arrangement preclude the property owner from claiming CGT Retirement Relief where the property is disposed of.

Revenue queried if the fact that the individual is receiving rent from the property and thus whether the property is a ‘qualifying asset’ for the purposes of section 598(1)(a) TCA 1997 is what is giving rise to query. If this is the case, Revenue advised that the facts and circumstances of each case will have to be examined to determine if the property would be considered to be a ‘qualifying asset’ for the purposes of the relief.

Revenue advised that if the query is in respect of a ‘live’ case that the Revenue Technical Service (RTS) may be used to query the application of Retirement Relief in such circumstances.

Item 6: Tax and Duty Manual on the classification of foreign entities for Irish tax purposes:

Practitioners queried what was the reason behind the withdrawal of Technical Question 10.30 as advised by Revenue at the TALC Direct and Capital Taxes Sub-Committee meeting of the 27 April 2023.

Revenue advised that after the publication of the Tax and Duty Manual on the classification of foreign entities for Irish tax purposes there is no need for Technical Question 10.30 any longer. The facts and circumstances of a foreign entity would have to be examined, in line with the Tax and Duty Manual, to determine the treatment of the foreign entity for Irish tax purposes.

Revenue advised that they are proposing to publish a Tax and Duty Manual on the Taxation of Irish Partnerships which will be circulated to the TALC Direct and Capital Taxes Sub-Committee.

Revenue also advised that it is intended to pick up the Foreign Entities sub-group next year, after the publication of the Taxation of Irish Partnerships TDM, to examine the other issues raised by practitioners.

Item 7: GBER and EII:

Revenue advised that the update to the General Block Exemption Regulation [GBER] is still awaiting formal adoption and publication by European Commission.

Any changes required to the existing guidance on the Employment Investment Incentive [EII], contained in [Tax and Duty Manual Part 16-00-02](#) – ‘Relief for investment in corporate trades’, will depend on the changes that are required under revised GBER. Changes to the guidance will be made as quickly as possible after any changes have been made to the Part 16 legislation.

Practitioners queried applications for EII relief by Qualified Investment Fund (QIFs) and Designated Investment Funds (DIFs). Revenue advised that any issues may be put in writing for consideration.

Item 8: Foreign pension lump sum payments:

Practitioners queried if [Tax and Duty Manual Part 07-01-09A](#) – ‘Taxation of foreign retirement lump sums’ will be updated to reflect Revenue’s response, provided at the TALC Direct and Capital Taxes Sub-Committee meeting of the 27th April 2023, that while section 200A TCA 1997 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.

Practitioners also queried if examples will be included in the updated TDM and whether an example regarding the impact on the aggregation with a previous lump sum would be included.

Revenue advised that the TDM is currently being updated and will be circulated to members of the TALC Direct and Capital Taxes Sub-Committee for observations and comments.

Item 9: Tax treatment of GMS income assigned by employed GPs to GP practices:

Revenue advised that they are not in a position to supply a substantive reply to this issue at the moment as the issues raised are complex. Revenue are actively reviewing the issue and will provide relevant guidance as soon as possible.

Item 10: Split Year Treatment (Section 822 TCA 1997):

Practitioners queried if Split Year Treatment is not claimed in the year of departure or arrival, is it the case that Split Year Treatment cannot be claimed when the individual goes to file their tax return in the following year and whether the usual four-year time limit applies?

Revenue advised that section 822 TCA 1997 is clear and that split year treatment must be claimed by the end of the year in which that the individual arrives in or leaves the State as the case may be. Accordingly, the normal four-year time limit would not apply to a claim for Split Year Treatment under Section 8252 TCA 1997.

Revenue also advised that, post departure from Ireland, an individual may be able to claim a measure of relief under the relevant Double Taxation Agreement between Ireland and the other country.

Item 11: Mobility Directive:

Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 (the Mobility Directive) amends Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions. The Directive amends the existing procedures for cross border mergers and introduces a new harmonised framework across the EU in respect of cross-border conversions and cross-border divisions.

As the Directive has now been transposed into Irish law [[S.I. No. 233 of 2023](#) - 'European Union (Cross Border Conversions, Mergers and Divisions) Regulations 2023'] practitioners queried whether guidance on the Directive will be published by Revenue and whether the guidance would cover the tax treatment of an EU company relocating to Ireland?

Revenue advised that [S.I. No. 233 of 2023](#) amended Section 87B of the Stamp Duties Consolidation Act 1999 in respect of mergers and that CGT guidance had been updated previously to cater for mergers.

Revenue also advised that any legislative changes to cater for the 2023 regulations would be a policy matter for the Department of Finance.

Item 12: AOB:

Update on Leasing Guidance: Revenue advised that submissions were to be made by Friday the 16th June 2023 and they are currently reviewing the submissions made.

Time limits in Prem cases: Practitioners queried whether the normal four-year time limit applies to PAYE Estimates. Revenue advised that the time limits contained in PART 41A TCA 1997 do not apply to PAYE Estimates.

Residential Zoned Land Tax (RZLT): Revenue advised that they had a meeting with members of the Conveyancing Committee of the Law Society on Tuesday the 20th June 2023 to discuss RZLT, in particular any issues the Law Society had encountered or would envisage with the implementation of RZLT.

It was suggested that a Residential Zoned Land Tax (RZLT) TALC sub-group be established to discuss RZLT issues. Under what TALC Sub-Committee the sub-group will be established will be discussed at the Main TALC meeting scheduled for Tuesday the 26th June 2023.

Remote Working Relief: [TDM Part 05-02-13](#) – ‘Remote Working Relief’ [“RWR”] which provides for a deduction of a proportion of utility expenses actually incurred when working remotely (rather than the remote working daily allowance) was recently updated.

Paragraph 4.1 of the updated TDM appears to exclude proprietary directors from RWR. Practitioners requested confirmation that a proprietary director may avail of RWR in respect of income arising from his/her office as a proprietary director. Practitioners queried what was the basis for this exclusion.

Revenue advised that they would look at the issue and revert back to the Sub-Committee.

[Stamp Duty Manual Part 6](#) : – Special provisions relating to uncertificated securities’ Practitioners wanted to draw Revenue’s attention to a footnote issues in the revised TDM. Revenue advised that the TDM will be reviewed for errors.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Jeanette Doonan (Chair)	Lorraine Sheegar	Peter Vale	Rachael Hession
Áine Hollingsworth	Clare McGuinness	Gearóid O'Sullivan	Caroline Devlin
Karen Drake	Kim Doyle	Enda Faughnan	Aidan Fahy
Aisling Dooley	David Fennell	Ken Garvey	David Lawless
John Kelly	Laura Lynch	Cormac Kelleher	John Cuddigan
Barbara Ní Neachtain	Cillein Barry	Colin Smith	
Mairead McGuinness	Paul Wallace		
Jacqueline O'Callaghan			
Dave Brennan (Secretary)			