

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

Wednesday, 12 June 2024

Hybrid meeting - New Stamping Building, Dublin Castle & MS Teams

2.30pm to 4.30pm

### Minutes

#### Item 1: Minutes from meeting of 25<sup>th</sup> April 2024

The minutes of the meeting of 25<sup>th</sup> April 2024 were agreed as final.

#### Item 2: Matters arising from meeting of 25<sup>th</sup> April 2024:

- a. **Clawback of stamp duty relief on merger of a trade – Section 79 SDCA 1999:** Following a request from practitioners for clarity in guidance on the operation of stamp duty relief in section 79 Stamp Duties Consolidation Act (SDCA) 1999, Revenue updated the Tax and Duty Manual (TDM) 'Part 7: Section 79 - Associated Companies Relief' to clarify the treatment that may apply in the case of a merger of a trade where relief is claimed in respect of assets that are naturally utilised during the course of the trade (e.g., trading stock, plant and equipment) and cannot therefore meet the two-year holding requirement and confirmation that Revenue would not seek a clawback of the exemption in these scenarios. All agreed to remove this item from the agenda going forward.
- b. **EU Mobility Directive (Directive (EU) 2019/2121) – claim for capital allowances under section 291A TCA 1997:** Practitioners agreed to provide a note to Revenue in advance of the September meeting on how they would envisage the other provisions of section 291A, other than the 12-month requirement, applying where a company migrates residence to Ireland. This item will remain on the agenda for the next meeting.
- c. **Capital Allowances for intangible assets:** Practitioners agreed to provide a note to Revenue in advance of the September meeting relating to a discussion previously held at TALC on deferred consideration for Revenue to consider reflecting this in the relevant TDM. This item will remain on the agenda for the next meeting.
- d. **RCT and application of reverse charge VAT on certain property-related transactions:** Practitioners provided a note to Revenue shortly before the meeting setting out further details where approved housing bodies or local authorities are entering into contacts to purchase turn-key properties off plan and are receiving conflicting views from Revenue in respect of RCT. Revenue noted there was not sufficient time to review the note in advance of the meeting and will endeavour to review and revert in advance of the September meeting. This item will remain on the agenda for the next meeting.

**e. CT1 form - Transfer Pricing documentation requirements for an Irish Branch:** The Form CT1 requests the taxpayer to confirm whether the company is required to prepare a Local File or Master File and practitioners noted confusion where the taxpayer is a branch. Revenue is considering whether an update to the Form CT1 to request whether the company is required to file a Local File or Master File under section 835G TCA 1997 would provide the clarity needed. Revenue may provide a note to practitioners for review before any change is made to the Form CT1.

### **Capital Taxes:**

#### **Item 3: New Reporting Requirements under section 46 CATCA 2003:**

Practitioners raised queries regarding the Finance (No.2) Act 2023 amendment to section 46 CATCA to introduce a reporting requirement “*where a person is deemed under section 40(2) to have taken a gift in respect of the use or enjoyment of a specified loan*”. This new reporting requirement came into effect from 1 January 2024. Under section 40(4) CATCA 2003 this gift is deemed to have been taken at 31 December, or earlier in the period if the free use or enjoyment of the loan ceases before this time. Section 46(2A) CATCA 2003 provides that where the valuation date occurs in the period 1 September to 31 December in any year a return must be delivered on or before 31 October the following year. Practitioners noted uncertainty regarding the first filing date for this new provision.

In relation to pre-existing loans in place at 31 December 2023, Revenue confirmed there may be a requirement to file a CAT return Form IT38 by 31 October 2024, if the loan comes within the scope of the new provisions. The due date for filing is dictated by reference to the valuation date, therefore, where a deemed gift arises under section 40(2), it is treated as being taken on the last day of the relevant period i.e. 31 December or, if earlier, on the date the use, occupation or enjoyment ceases. Therefore, any specified loan repaid in the period up to 31 August 2024 must be reported on the IT38 filed by 31 October 2024.

To clarify, for gifts deemed to be received on or prior to 31 December 2023 in respect of the free use or enjoyment of a loan, a reporting obligation should not arise under the Finance (No.2) Act 2023 amendment to section 46 CATCA 2003. Revenue confirmed if the specified loan is repaid today (i.e. after 1 January 2024), as it is repaid within the period commencing 1 January 2024 and ending on 31 August 2024, it must be reported in the IT38 to be filed by 31 October 2024. . For gifts deemed to be received in the period 1 September 2024 to 31 August 2025 under section 40(2) CATCA 2003, a disclosure may be required in the Form IT38 due to be filed in October 2025 where the other conditions of section 46(4A) CATCA 2003 are met.

Practitioners noted the Form IT38 allows for reporting of loans prior to 2024, and queried if this is intentional. Revenue agreed to review the earlier versions of the Forms IT38.

Practitioners asked if Revenue could update its guidance to clarify that specified loans repaid before 31 August 2024 may need to be reported by 31 October 2024. Practitioners also asked if clarity could be provided in guidance for specified loans in place at 31 December 2023 that are not

repaid, to confirm these will be reportable in the October 2025 return. Revenue agreed to consider updating the guidance.

#### **Direct Taxes:**

##### **Item 4: EU Mobility Directive (Directive (EU) 2019/2121):**

Further to the recent discussions in relation to cross-border conversions which are now facilitated under the European Union (Cross Border Conversions, Mergers and Divisions) Regulations 2023, practitioners requested clarity in relation to the status of a converted company under the Irish tax legislation in light of a difference in legal wording between the Regulations and the tax legislation relating to incorporation. Revenue confirmed it would provide those confirmations and noted that a converted company is regarded as incorporated in Ireland and vice versa.

##### **Item 5: Family Partnerships:**

Practitioners queried where a passive family partnership is established and registered for income tax, and the family partnership is not in receipt of any income or gains and does not expect to be for the foreseeable future, why the partner is automatically registered for income tax by Revenue's systems which requires a Form 11 to be filed. Practitioners noted some cases where Revenue is not cancelling the income tax registration for some partners when requested, even though the partner are not in receipt of any income or gains (besides PAYE income) and are not deemed a chargeable person under section 959A TCA 1997.

Revenue confirmed similar queries have not been received to date and noted it was unclear what practitioners mean by the term "passive family partnership", as usually a partnership is set up to generate income. Revenue noted it is familiar with passive partners. Revenue suggested the specific query to be sent via the Revenue Technical Service (RTS) for further review.

##### **Item 6: Dividends paid by an Irish company to a partnership where the partners are resident in the UK:**

Practitioners requested whether Revenue intends to update guidance to confirm the availability for an Irish company to make dividends on a gross basis, where the dividend is paid to a partnership where the partners are neither resident nor ordinarily resident in the State but are resident for the purposes of tax in a relevant territory and where the conditions are similar to those for interest payments, as set out in TDM Part 08-03-06 'Payment and receipt of interest and royalties without deduction of income tax'. Revenue noted it has begun to consider this matter and will provide a response before the September meeting.

**Item 7: R&D Discussion Group update:**

A meeting of the R&D Discussion Group was held at the end of May. Revenue confirmed the discussion at the meeting centred on the proposed independent expert training event. There had been an intention to hold an event, proposed to be developed with practitioners from the R&D Discussion Group. Revenue sought legal advice and due to concerns around independence it was decided the event will not go ahead. Revenue noted that concerns were raised around the perceived lack of independence of the experts and the fact that a pre-meeting between the expert and Revenue takes place. Revenue took on board comments and concerns from practitioners and confirmed that where there is a pre-meeting arranged (as there will not be a meeting arranged in all cases), the claimant company can now choose to be represented or be present at that meeting. Revenue will update the TDM Part 29-02-05 'Research and Development (R&D) Corporation Tax Credit: Appointment of expert to assist in audits' and also invited feedback from the group.

Once the minutes of the meeting of the R&D Discussion Group are agreed, they will be circulated to the Sub-committee.

**Item 8: Revenue Guidance:**

**(i) Draft Tax and Duty Manual 26-00-02 – 'Taxation of Life Assurance Companies - Old Basis Business and New Basis Business:** Revenue expects to circulate the updated TDM in advance of the next TALC Direct and Capital Taxes Sub-Committee meeting.

**(ii) Draft Tax and Duty Manual 34-00-01 - Provisions relating to residence of individuals:** Revenue expects to publish the updated TDM in advance of the next TALC Direct and Capital Taxes Sub-Committee meeting. Revenue plans to introduce guidance regarding how someone can satisfy the intention test to claim Split Year Treatment and will circulate this aspect of the draft TDM for feedback in due course.

**(iii) Guidelines to assist businesses to determine correct employment status classification:**

Practitioners welcomed the publication of the TDM Part 05-01-30 'Revenue Guidelines for Determining Employment Status for Taxation purposes', which aims to assist businesses and practitioners to determine the correct employment status classification when applying the five-step framework in the Supreme Court judgment relating to the employment status of "Domino's Pizza" delivery drivers in the [Revenue Commissioners v. Karshan \(Midlands\) Ltd. t/a Domino's Pizza](#) case.

In response to practitioner queries, Revenue confirmed that where there are determinations regarding a worker's status from the Scope Section of the Department of Social Protection (DSP), these cannot be relied upon for tax purposes. If there are doubt regarding the PRSI position following the judgement in in the Revenue Commissioners v. Karshan (Midlands) Ltd. t/a Domino's Pizza, then the business will need to go back to the Scope Section. Revenue's guidelines deal only with the taxation issues.

Revenue also confirmed that where an employer carries out a review and there is doubt whether a worker is an employee or self-employed, Revenue will not provide a ruling as it falls under self-assessment. An employer can raise a query through RTS in the normal manner where there is sufficient doubt on a legislative issue. As part of this process, Revenue will monitor issues, or trends arising and update the TDM where appropriate.

Finally, Revenue confirmed that if a business carries out a review of their workers and determine they should have been applying payroll historically, then they should commence operating payroll immediately. Guidance on the historic position will issue shortly.

**(iv) Leasing guidance:**

- Section 403 and 404 Ringfence Guidance: Revenue noted that draft guidance on section 403 and 404 ringfences will be circulated in the next couple of weeks.
- Section 299 Leases: Draft guidance on section 299 leases was circulated in advance of the meeting for review. Revenue thanked practitioners for the feedback provided to date. Revenue discussed the feedback received and noted that a number of issues have been brought to the attention of the Department of Finance for consideration for legislative change as part of the normal Finance Bill process.

Revenue also invited more detailed submissions in respect of the following:

- Revenue's analysis with regard to when section 299 applies as it appeared that differing conclusions were being reached on this point by industry. It was noted that any further submission made should have regard to the analysis in Appendix 1 (in addition to any other legislation or case law considered relevant).
- The difficulties arising with applying the section 299(5)(f) in practice, particularly as similar tests existing in the TCA already and if there are specific jurisdictions or arrangements which are causing a difficulty in this regard.

Revenue also confirmed that section 299 would affect all in-scope leases and not just new lease business entered into on or after 1 January 2024.

**Interest guidance:** Draft guidance on section 76E TCA 1997 Qualified Financing Companies was circulated in advance of the meeting for review. Revenue thanked practitioners for the feedback provided to date.

Revenue invited further feedback from practitioners on the following points:

- The specific difficulties relating to relating to winding up structures identified from the examples in section 2.2.4 of the draft TDM.
- As relevant loans are simple loan structures why clarification would be needed that more debt instruments other than loans (such as quoted bonds) do not qualify as relevant loans for section 76E.

Revenue also confirmed that Examples in the draft TDM reflected their understanding of how the legislation and matching principles should be applied in practice and invited more detailed submissions in respect of any pinch points identified by practitioners.

*\*Note: Given the above detailed feedback provided at the meeting, Revenue agreed to circulate the request for feedback to practitioners in writing following the meeting.*

- (v) Tax and Duty Manual Part 16-00-02:** Revenue confirmed the expected circulation of the draft updated TDM Part 16-00-02 'Relief for investment in corporate trades' is still delayed as a particular matter is under consideration. Practitioners welcomed the clarity provided by Revenue on 30 May relating to initial risk finance investment as set out in the note in Appendix I. Any further issues in the interim should be sent to [Elladmin@revenue.ie](mailto:Elladmin@revenue.ie). Revenue intends to circulate the updated draft TDM to the TALC sub-committee for comment as soon as this is possible.

Revenue noted the Department of Finance is holding a stakeholder event on 20 June to discuss the updated GBER. Revenue also confirmed the Department of Finance has indicated that the Minister is reconsidering the interpretation of follow-on investment in the context of companies within 10 years of incorporation and whether it is appropriate to provide for relief at the 35% rate rather than the current rate of 20%.

- (vi) Tax and Duty Manual Part 04-06-13 Tax Treatment of Stocklending/Sale and Repurchase (repo) Transactions:** Practitioners noted TDM Part 04-06-13 'Tax Treatment of Stocklending/Sale and Repurchase (repo) Transactions' is not currently available on Revenue's website as it is subject to ordinary periodic review. The leasing guidance is taking priority given the Finance (No. 2) Act 2023 changes.

- (vii) Retirement Relief Tax and Duty Manuals Part 19-06-03 and Part 19-06-03b:** Both TDMs are still offline and are being updated as there were a number of changes in Finance (No.2) Act 2023. Revenue confirmed the update is substantially complete. Revenue noted in the course of the TALC Subgroup on Simplification of Business Supports, feedback was raised on administrative issues, therefore, Revenue intends to extend the review period to consider any relevant outcomes from that TALC Subgroup. Revenue intends to republish the TDMs once the outcomes of the Subgroup are known, which is expected to be towards the end of June.

**Item 6: AOB:**

- a. Section 200A TCA 1997 – Lump sums from foreign pension arrangements:** Practitioners noted there is some confusion regarding the position of US Individual Retirement Arrangements (IRAs) and whether it qualifies under section 200A TCA 1997. Revenue is not aware of any issues and noted whether an arrangement qualifies under section 200A is based on the facts and circumstances of the case. Revenue noted if there are concerns on a specific case it can be submitted through RTS.
- b. TDM review process:** Revenue outlined plans to upgrade its TDM review process in two stages over the summer months. The first stage will see up to four previous versions of the TDMs

become available on the Revenue website, bearing a watermark to convey that the version of the TDM is out of date, a more recent version of the TDM is available and therefore, the guidance cannot be relied upon. Going forward as TDMs are updated, Revenue will refresh the website to ensure the four most recent previous versions of the TDMs are available.

In the second stage, Revenue plans to update its review processes to allow the current version of the TDM remain on its website while it is being reviewed and/or updated. In these circumstances, the TDM will bear a watermark to convey that the TDM is out of date and therefore, the guidance cannot be relied upon.

Practitioners welcomed this upgrade to Revenue's TDM review process.

**Attendees at this meeting:**

<b>Revenue</b>	<b>ITI</b>	<b>CCAB-I</b>	<b>Law Society</b>
Tom James	Laura Lynch (Chair)	Peter Vale	Aileen Keoghan
Dave Brennan	David Fennell	Enda Faughnan	Caroline Devlin
John Kelly	Stephen Ruane	Ken Garvey	Aidan Fahy
Lynda O'Keefe	Tom Maguire	Gearóid O'Sullivan	David Lawless
Anne Dullea	Clare McGuinness		Maura Dineen
Liam Smith	Lorraine Sheegar		John Cuddigan
John Quigley			
Anita Cassidy			
David Macauley			
John McGorry			
Rory Noone			
Aisling Dooley			
Karen Drake			
Michael Loftus			

## Appendix I

### Revenue note regarding updating Tax and Duty Manual Part 16-00-02 'Relief for Investment in Corporate Trades' and initial risk finance investment

30 May 2024

In the course of the last meeting of the TALC Direct and Capital Taxes Sub-Committee and subsequently, queries were raised regarding the updating of TDM Part 16-00-02 "Relief for Investment in Corporate Trades" and initial risk finance investment.

We wish to advise that the matter which delayed publication of the update of TDM Part 16-00-02 "Relief for investment in corporate trades" is still under consideration and it remains the intention to circulate a draft of the updated TDM prior to publication as soon as we are in a position to do so. We note that a version of the TDM was recently published on [www.revenue.ie](http://www.revenue.ie) stating that it was last reviewed in May 2024. This was an error that arose whereby the retention of the TDM last reviewed in April 2023 was extended which resulted in an incorrect date on the first page. This has been rectified and we confirm that no changes have been made to the TDM. We regret any confusion caused.

In relation to the queries raised on initial risk finance, and in light of the delay in publication of the TDM, please note the following clarification.

We wish to confirm that it remains possible to raise initial risk finance investment in tranches as has always been the case. The position is unchanged from that as set out in the TDM which states "*Many companies who seek to raise EII, SCI or SURE supported funding, do so in tranches. That is, they embark on a fundraising round over a number of months. Shares are usually issued at the end of the fundraising round, but there may be occasions where the shares are issued as the amounts are invested. The initial risk finance investment will be the initial round of fund raising, whether the shares are issued at the end, or throughout that fundraising round. It should be noted that the shares should be fully paid up at all times throughout the relevant period.*" The initial risk finance investment requirements must be set out in the business plan in line with the legislative requirements in that regard and as specified in the TDM. Where a business plan identifies a need for State aid in the form of initial risk finance and those funds are subsequently raised in tranches, each tranche will form part of the initial risk finance investment and will not constitute follow-on investment until the initial risk finance investment as provided for in the business plan has been raised.

Where an investment is raised in tranches, it should be noted that the rate of relief that may be availed of on investment could differ over the course of an extended period i.e. a company may be part of a RICT group that is not operating in any market at the time of one tranche of investment and it may be a company that is part of a RICT group operating in a market at the date of a later investment tranche. The rate of relief to apply to the investment will depend on whether the company is part of a RICT group that is not operating in any market or part of a RICT group that is operating for less than 10 years post incorporation or less than 7 years following its first commercial sale at the time the eligible shares are issued in line with section 496(5) TCA.



For shares issued on or after 1 January 2024, the amount of a qualifying investment that may qualify for relief is as follows:

- In the case of initial risk finance investment in a RICT group which has not been operating in any market, pursuant to section 496(5), 125% of the investment may qualify for relief giving rise to a rate of relief of up to 50%.
- In the case of initial risk finance investment in a RICT group which has been operating in any market for less than 10 years post incorporation or less than 7 years following its first commercial sale, pursuant to section 496(5), 87.5% of the investment may qualify for relief giving rise to a rate of relief of up to 35%.
- In the case of expansion risk finance investment pursuant to section 496(6), 50% of the investment may qualify for relief giving rise to a rate of relief of up to 20%.
- In the case of follow-on risk finance investment pursuant to section 496(7), 50% of the investment may qualify for relief giving rise to a rate of relief of up to 20%.
- In the case of investments made indirectly via a qualifying investment fund, 75% of the investment may qualify for relief giving rise to a rate of relief of up to 30%.

Accordingly, in the case of a company that is raising its initial risk finance investment in tranches throughout 2024 where it is part of a RICT group that makes its first commercial sale on 1 June 2024 for example, the rate of relief will be up to 50% where the eligible shares are issued prior to 1 June 2024 and it will be up to 35% where the eligible shares are issued on or after 1 June 2024.