

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Wednesday, 11 September 2024 via MS Teams

2.30pm to 4.30pm

Minutes

Item 1: Minutes from meeting of 12th June 2024

The minutes of the meeting of 12th June 2024 were agreed as final.

Item 2: Matters arising from meeting of 12th June 2024:

- a. **EU Mobility Directive (Directive (EU) 2019/2121) – claim for capital allowances under section 291A TCA 1997:** Practitioners provided a note to Revenue shortly before the meeting setting out one possible approach on how the other provisions of section 291A, other than the 12-month requirement, could apply where a company migrates residence to Ireland. Revenue will consider this note and this item will remain on the agenda for the next meeting.
- b. **RCT and application of reverse charge VAT on certain property-related transactions:** Revenue circulated a response on 3 September to the submissions and representations received at TALC from practitioners regarding the application of RCT and VAT reverse charge. This response is set out in Appendix I.

Practitioners raised follow up queries shortly before the meeting regarding the response from Revenue. Revenue stated that their response sets out Revenue's position but noted the following in relation to the additional queries:

- Revenue noted colleagues at the TALC Indirect Taxes Sub-committee are dealing with VAT queries. However, Revenue confirmed that where there is a single contract comprising of both a site sale and the supply of build services, and the contract is deemed to be in scope for RCT purposes, the VAT reverse charge will apply to the construction services and not the site sale portion of the consideration (in accordance with section 16(3) VATCA 2010 and section 530(1) TCA 1997).
- Practitioners queried whether a defects liability retention provision in a contract would influence the analysis such that this would likely bring it within the RCT net. Practitioners noted that typically, even in contracts for sales of completed units, the contracts may contain provisions whereby any defects that arise in a defects liability period (12 months following practical completion) will be remedied by the developer and the obligation is backed by a retention (typically 1.5% of the price) retained by the purchaser for the 12 months. Revenue noted that whether the contract is within scope of RCT will depend on the facts of each case and the contractual arrangements between the parties and noted a contract for the sale of immovable property only, with no construction element, would be outside the scope of RCT.

- Practitioners queried whether the non-application of RCT would be impacted by a practical completion (PC) inspection process reference in a contract. Practitioners noted that contracts may have a PC inspection process such that the purchaser is given advance notice of the date on which the developer's architect will inspect the development for the purposes of issuing their PC certificate and that the purchaser can attend and, if relevant, object to PC in writing following such inspection. Any disputes in respect of same are referred to an independent architect for determination. Revenue did not envisage a PC inspection having any impact on the non-application of RCT.

Revenue confirmed they would provide a written response to the queries raised and will update the relevant guidance.

- c. **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 noted that this matter is still under review.
- d. **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 confirmed a revision to the guidance is in progress with a view to updating the guidance shortly. Practitioners requested that the draft guidance be circulated to the Committee for feedback prior to publication.

Capital Taxes:

Item 3: CAT Business Relief – minimum ownership period:

Practitioners raised a query regarding the application of the minimum ownership period set out in section 94 CATCA 2003 to a gift made by a corporate of a shareholding in a subsidiary, to another corporate. Practitioners requested clarification that where an individual has continuously beneficially held a shareholding in the 'parent company' for a period of 5 years immediately prior to the date of the gift of shares in a subsidiary company to a new holding company, and the 'parent company' has continuously beneficially held or is deemed to have continuously beneficially held the shares in the subsidiary company for a period of 5 years immediately prior to the date of the gift, the minimum ownership requirements set out in section 94 CATCA would be regarded as being satisfied in the circumstances. Revenue is considering this matter and will aim to circulate a response to practitioners within the next two weeks.

Direct Taxes:

Item 4: TDM review process:

At the June meeting, Revenue outlined plans to upgrade its TDM review process in two stages over the summer months and noted that in the second stage of this process, Revenue plans to allow the current version of the TDM remain on its website while it is being reviewed and/or updated.

Practitioners raised concerns with the current watermark used on TDMs being updated. Practitioners believe the message which Revenue is seeking to convey to the reader is that the TDM is currently under review and therefore may not reflect Revenue's current position. However, the wording of watermark would appear to be contradictory and could be misleading. Practitioners suggested using the following wording: *'Most recent version of this manual. This manual is currently under review and may not reflect Revenue's current position.'*

Revenue confirmed the TDM Review team will seek further feedback from stakeholders and the wording will be reviewed. Revenue pointed out that the characters for the watermark are currently limited.

In addition, practitioners noted that where there are substantive changes to Revenue's guidance, in the absence of a legislative change or court decision, they would expect that the updated guidance would apply from the date of publication of the updated TDM. Revenue noted their disagreement with this view.

Item 5: Mandatory Disclosure Guidance Notes:

Revenue circulated an updated draft Tax and Duty Manual Part 33-03-01 'Mandatory Disclosure Guidance Notes' to practitioners for feedback noting the updates are to reflect the legislation currently drafted. Practitioners raised concerns with the proposed removal of Appendix 1 that outlined examples of what Revenue would consider as the use of statutory exemptions and reliefs for bona fide purposes. Practitioner's also raised queries regarding the potential implications of such an approach in practice. It was noted that the removal of the Appendix would result in the guidance being materially less helpful when considering the application of the legislation.

Revenue requested written feedback from practitioners two weeks in advance of the TALC Direct/Capital Taxes Sub-committee meeting scheduled for 28th November to allow Revenue time to consider practitioners concerns.

Item 6: Tax Treatment of Islamic Financial Transactions:

Revenue has had discussions with a number of advisors in relation to the application of Tax and Duty Manual (TDM) [08A-01-01](#) 'Tax Treatment of Islamic Financial Transactions' and Part 8A TCA 1997 to Islamic Financing transactions. Revenue would like to gain an understanding of how widespread the consideration of the application Part 8A to transactions (or potential transactions) is, given the low number of elections received under section 267U. Revenue noted that it has not received many notifications for these structures and would like to understand if there are any issues with the legislation or with the TDM. Practitioners noted any potential issue with implementing these structures may be broader than the tax element, for example, regulatory or commercial issues.

It was agreed the item should remain on the agenda.

Item 7: TAC Determination 44TACD2024 and the requirement to provide a breakdown of distributions from an ARF into income, gains and capital in order to claim a refund of Irish tax deducted:

A recent TAC determination ([44TACD2024](#)) considered the requirement to provide a breakdown of distributions from an ARF into income, gains and capital in order to claim a refund of Irish tax deducted. Ultimately the TAC held that the information requested was not information that Revenue "may reasonably require" and therefore the Appellant's claim for a refund was valid. Practitioners welcomed a discussion regarding the requirement on the ARF Refund Form to provide a full breakdown of distributions into income, gains and capital in order for a valid claim to be made.

Revenue noted the TAC determination is of no precedential value. Revenue noted the outcome of this TAC case reflects the facts in a particular case and therefore there is no proposal to change Revenue's current position.

Practitioners noted the difficulties being encountered where pension providers are unable to provide the breakdown which Revenue requires. Practitioners also highlighted that the TAC determination found that the information which Revenue require was unreasonable. Revenue requested that the concerns around the information requested on the ARF Refund Form be set out in more detail.

It was agreed this item will remain on the agenda for the November meeting.

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 the next couple of weeks.
- (ii) Draft Tax and Duty Manual 34-00-01 - Provisions relating to residence of individuals:** The updated TDM is being reviewed internally and Revenue will circulate specific updates to practitioners for feedback. Following requests from practitioners, Revenue noted that Revenue’s Personal Division and Revenue Legislation Services (RLS) met to discuss the correct process for claiming Split Year Treatment. Practitioners want to ensure that required notifications are submitted in time, through the appropriate mechanism and correctly recorded on a taxpayer’s record. Revenue agreed to circulate a response to practitioners in the coming weeks and update the relevant TDMs if necessary. Practitioners stressed the need for clarification given the proximity of the Income Tax filing deadline.
- (iii) Guidelines to assist businesses to determine correct employment status classification:** Practitioners queried the timing of guidance on the tax treatment of historic positions where a business carries out a review of their workers and determines they should have been applying payroll historically. Revenue advised this matter will be addressed at the TALC Audit Sub-committee.
- (iv) Tax and Duty Manual Part 16-00-02 ‘Relief in investment in corporate trades:** Revenue circulated the draft updated TDM Part 16-00-02 ‘Relief for investment in corporate trades’, which reflects changes as a result of the revised GBER. Practitioners provided feedback on the draft TDM in advance of the meeting. Revenue noted that the updates to the TDM will only reflect Finance (No.2) Act 2023 amendments and changes to the GBER. Any feedback relating to other recommended changes will be held over until more the substantive review of the TDM is carried out as part of the recommendation from the TALC sub-committee on administrative simplification of business reliefs for SMEs, to split the Part 16 TDM into different TDMs dealing with the reliefs under Part 16 separately. This review is likely to be carried out next year.

Revenue noted the delay in publication of TDM and relevant 2024 Forms was due to a particular issue being considered which related to the Finance (No.2) Act 2023 changes to Part 16 in the context of the SURE relief. This issue is now resolved and the relevant 2024 Forms and TDM will be published as soon as possible. Revenue advised practitioners will be notified if there are any issues in the run up to the filing deadline.

Following the Department of Finance stakeholder event on 20 June, where it was indicated that the Minister is reconsidering the interpretation of follow-on investment in the context of companies within 10 years of incorporation or 7 years from first commercial sale, and whether it is appropriate to provide for relief at the 35% rate rather than the current rate of 20%, practitioners queried if the TDM could be updated to reflect this in light of the difficulties raising finance in the current market. Revenue advised that, while indicated that

the 35% rate may apply, this proposed change is subject to the Finance Bill process so may not be possible to put in guidance until the Finance Bill is passed, however, Revenue will relay the message to the Department of Finance.

(v) Tax and Duty Manual Part 04-06-13 Tax Treatment of Stocklending/Sale and Repurchase

(repo) Transactions: Revenue advised material changes are being reviewed however there have been delays due to the Finance Bill process. Practitioner requested that any material changes be circulated to practitioners for review.

(vi) Retirement Relief Tax and Duty Manuals Part 19-06-03: Practitioners requested whether Revenue plans to include guidance on aggregation for pre- and post-1 January 2025 disposals and provide examples of how the new rules will operate in respect of the updated TDM 19-06-03 'Disposals of business or farm on "retirement" (S.598)'. Revenue noted the Finance (No.2) Act 2023 amendment in respect of aggregation relates to section 599 TCA 1997, whereas [TDM 19-06-03](#) relates to section 598 TCA 1997. Revenue would welcome any further detail on the examples required.

(vii) Leasing guidance: Revenue noted that work on the draft guidance on section 403 and 404 has been paused while legislative matters for the upcoming Finance Bill are being dealt with.

- ***Leasing: maintaining the leased asset (section 299(1) TCA 1997)***

A meeting of the Leasing Working Group took place on 27 June. Following the meeting practitioners submitted feedback to the Department of Finance and Revenue on queries raised at the working group meeting together with observations on the burden of wear and tear analysis in the draft TDM 09-02-01 'Leasing of Machinery and Plant – Scenarios where Section 299(1) Applies'.

Revenue noted the feedback received was in the context of the aircraft leasing sector and requested that consideration be given to how the test in section 299(1) is applied in other sectors, such as farming and manufacturing. It was agreed to keep this on the agenda until the November meeting.

(viii) Draft TDM 04-05-07 – Interest Relief for Qualifying Finance Companies (QFCs): Feedback was provided to Revenue following the last meeting. Revenue invited practitioners to submit more detailed examples and noted the examples in the draft TDM reflect their understanding of how the legislation and matching principles should be applied in practice. Revenue requested that any further feedback be submitted within a fortnight, otherwise this TDM will be published.

Item 6: AOB:

- a. Availability of the Long-term Public Infrastructure Projects (LTPIP) exemption from the Irish interest limitation rules (ILR):** Practitioners noted issues are arising in relation to the interpretation of the application of the LTPIP exemption from the Irish ILR for companies that acquired or developed large scale apartments or houses and welcomed comments from Revenue.

Revenue confirmed Section 835AY TCA 1997 provides the definition of large scale asset for the purposes of applying the long-term public infrastructure project exemption in the interest limitation rules. A large scale asset may include a strategic housing development or a large-scale residential development.

In the case of a strategic housing development, it must:

- meet the definition of a strategic housing development in Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016, i.e., meet the requirements in terms of type and scale of development as set out in that Act, and
- have been approved by either An Bord Pleanála, under [section 9](#) of the Planning and Development (Housing) and Residential Tenancies Act 2016, or a local authority, under [section 170](#) of the [Planning and Development Act 2000](#),

Therefore, if a development meets the first requirement by meeting the requirements of the definition in the Act of 2016, and was approved under the relevant provision of the Act of 2000 (but before the enactment of the Act of 2016) then it will meet the conditions to be a large scale asset.

In the case of a large-scale residential development, it must:

- meet the requirements in terms of type and scale of development as set out in the definition of large-scale residential development the Planning and Development Act 2000, and
- be approved by a planning authority under section 34 or section 170 of the Act of 2000.

Where a development does not meet both conditions it cannot be a large scale asset for the purposes of section 835AY.

Revenue will consider updating the ILR TDM to provide clarity.

- b. Residential Zoned Land Tax (RZLT):** Practitioners noted unintended consequences arising from the RZLT legislation in scenarios where a local authority is required to acquire the site in advance of the construction of units from a developer, the transfer of the site is giving rise to a clawback of the deferral of RZLT. Practitioners requested a meeting of the RZLT Subgroup be convened. Revenue noted the concerns raised relate to policy matters that would need to be

raised with the Department of Finance and the Department of Housing.

- c. **Delays in company strike offs and Letter of No Objection:** Practitioners queried at which TALC Sub-committee this matter could be discussed. Revenue advised the issue has been raised at the TALC Collections Sub-committee and Main TALC and the Collector General is aware of the issue.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Tom James	David Fennell (Chair)	Peter Vale	Aileen Keoghan
Dave Brennan	Laura Lynch	Enda Faughnan	Aidan Fahy
John Kelly	Stephen Ruane	Ken Garvey	David Lawless
Lynda O'Keefe	Cillein Barry	Cormac Kelleher	Maura Dineen
David Macauley	Kim Doyle	Gearóid O'Sullivan	John Cuddigan
Rory Noone	Clare McGuinness		
Aisling Dooley	Lorraine Sheegar		
Karen Drake			
Sinead McNamara			
Ken Fleming			
Catherine Duffy			
Lucy Whelan			
David Hanlon			
Eleanor Smiley			
Aine Hollingsworth			

Appendix I

Revenue Response to TALC Representations Regarding the Application of RCT and the VAT Reverse Charge

03 September 2024

In the notes to the Agenda for the TALC Direct and Capital Taxes Sub-Committee Meeting of 12 June 2024, practitioners raised an issue regarding RCT and the application of the VAT reverse charge on certain property related transactions between Approved Housing Bodies/Local Authorities and property developers. It was noted by practitioners that while AHBs and Local Authorities are principal contractors who are obliged to operate RCT, the property type related transactions that they entered in were in, in the view of practitioners, effectively the purchase of completed properties and therefore RCT should not apply to the payments made to the property developer.

The Law Society made a separate but related submission to Revenue on this issue in July with a spreadsheet which outlined a number of scenarios, which they stated there was conflicting opinions on.

The term “turnkey basis” is used in both submissions and the general meaning of this term is widely understood, however its importance in terms of whether RCT applies is for the most part insignificant. Generally speaking, in any situation, a developer would be expected to deliver a completed property on a turnkey basis to a Local Authority, an AHB or indeed any purchaser. The question of whether a relevant contract exists, within the meaning of the RCT legislation, is determined by the agreements/contracts entered into by the parties.

There can be multiple scenarios and multiple ways a contract(s) can be structured. The key question from an RCT viewpoint is whether the particular contract(s) come within the definition of relevant contract in section 530(1) TCA 1997. General descriptions of scenarios cannot be used in these cases for the purposes of ascertaining the RCT treatment, as it is necessary to examine each contract(s) based on its wording.

In terms of the VAT aspect, the general position is that VAT is charged by the person making the supply. However, where RCT applies, the person receiving the supply (the principal contractor) accounts for the VAT directly to Revenue as if they had made that supply – otherwise known as the VAT Reverse Charge. The VAT treatment is dependent on the RCT treatment. This means that the responsibility for remitting VAT will be determined based on the RCT position of each agreement.

The scenarios submitted by the Law Society have been included in the table below and the Revenue opinion on the applicability of RCT and VAT in so far as possible, based on the general scenario described, has also been included. Our response does not look at whether a transaction is taxable from a VAT perspective, rather who is the accountable person. Furthermore, it is important to note that while the scenarios below represent the position in some of the cases seen by Revenue, there is a cohort of cases which fall outside the scenarios below. Details of these are given in the material below the table.

Scenario	RCT Position	VAT Position	Notes
<p>No. 1 Scenario X Limited contracts with AHB/ local authority to deliver say 40 houses on a turnkey basis - single contract for sale in standard Law Society private treaty format includes usual provisions concerning snagging on completion (as for any private treaty sale) but no other maintenance services provided. There is usually no building agreement. The price paid is a fixed sum payable on the delivery of the houses and there is no apportionment of site and building cost.</p>	<p>Generally speaking, where an AHB/Local Authority enters into a contract for the purchase of completed houses (i.e., where the completed property and the land on which it stands will be conveyed to the AHB/Local Authority and the contract make no references to X Limited developer carrying out construction works on behalf of or at the request of the AHB/Local Authority, then no relevant contract exists and RCT will not apply to the price paid. Work carried on snagging would not come within RCT</p>	<p>The person accountable for the VAT is dependent on the RCT. This means that the responsibility for remitting VAT will be determined based on the RCT position of each agreement.</p> <p>Where there is no relevant contract between X limited and AHB/Local Authority, it is the supplier, X Limited who should account for the VAT in the normal way.</p>	<p>Reference is made in the scenario to a contract for sale in standard Law Society private treaty format. The wording of each contract will need to be examined to determine the correct position in relation to RCT.</p>
<p>No. 2 Scenario X Limited contracts with AHB/ local authority to deliver 40 houses on a turnkey basis - multiple contracts for sale in standard Law Society private treaty format includes usual provisions concerning snagging on completion (as for any private treaty sale) but no other maintenance services provided. This is similar to the case in fact pattern 1 other than the AHB/ local authority is acquiring the houses on an individual basis to ensure they hold title packs to individual houses for any future sales.</p>	<p>Generally speaking, where an AHB/Local Authority enters into a contract for the purchase of completed houses on an individual basis and the contract make no references to X Limited carrying out construction works on behalf of or at the request of the AHB/Local Authority, then no relevant contract exists and RCT will not apply to the price paid. Work carried on snagging would not come within RCT.</p>	<p>As for 1.</p>	<p>Reference is made in the scenario to a contract for sale in standard Law Society private treaty format. The wording of each contract will need to be examined to determine the correct position in relation to RCT.</p>

<p>No. 3 Scenario X Limited contracts with AHB/ local authority to deliver 40 houses on a turnkey basis - multiple contracts for sale in standard Law Society private treaty format includes usual provisions concerning snagging on completion (as for any private treaty sale) but no other maintenance services provided. In this case, the AHB/ local authority requires the site to be transferred upfront as they are buying the property on a stage payment basis. As the property is being developed, additional stage payments will be made. The point to reaffirm here however is that the contract is still for turn-key delivery of completed houses as for 1 and 2</p>	<p>Generally speaking, where an AHB/Local Authority enters into a contract for the purchase of completed houses on an individual basis and the contract make no references to the X Limited carrying out construction works on behalf of or at the request of the AHB/Local Authority, then no relevant contract exists and RCT will not apply to the price paid. Work carried on snagging would not come within RCT. The acquisition of the site upfront and the payment of the purchase price in stages does not alter this position.</p>	<p>The person accountable for the VAT is determined by the RCT. As outlined in this scenario RCT does not apply. The supplier, X Limited will account for the VAT in the normal way. *The initial transfer of the site by X to the AHB/local authority will be subject to VAT for which X will be liable. (Section 94(3) VATCA 2010).</p>	<p>Reference is made in the scenario to a contract for sale in standard Law Society private treaty format. The wording of each contract will need to be examined to determine the correct position in relation to RCT.</p>
<p>No. 4 Scenario Land is acquired by X Limited from local authority/ government body, and planning obtained under which, X Limited must ensure 40 completed units are sold to persons nominated by local authority at affordable price levels and where the local authority will provide loan funding under government home loans (of up to 90%) to the individual buyers, which funding</p>	<p>This type of scenario has not been submitted to Revenue's Legislation Service for an opinion prior to this. The question as to whether a relevant contract exists between the Local Authority/Government Body and X Limited can only be determined following a review of the contracts/agreements that are entered into by the Local Authority/Government Body. If these contracts include provisions relating</p>	<p>The person accountable for the VAT is determined by the RCT. Where there is no relevant contract between the local authority and X limited, VAT is accounted by the supplier, X limited in the normal way. Where there is a relevant contract between local authority/government, VAT is accounted by the purchaser, local</p>	<p>The wording of each contract will need to be examined to determine the correct position in relation to RCT.</p>

<p>will be paid over directly to X Limited by the local authority. The local authority is paying over funds directly to X Limited but under loan agreements with individual buyers.</p>	<p>to X Limited carrying out construction works on behalf of or at the request of the Local Authority/Government Body then RCT may apply.</p>	<p>authority/government on the reverse charge basis. *The initial transfer of land will be subject to the normal VAT on property rules. It will be the supplier, local authority/government who should account for the VAT if applicable. In this instance it is local authority/government who are the suppliers.</p>	
<p>No. 5 Scenario Local authority/ AHB has land which it put out to tender for the provision of building services to construct 40 units. The local authority/ AHB will retain ownership of the units.</p>	<p>RCT will apply to any contract for the construction of the 40 units.</p>	<p>Based on the RCT position, VAT should be accounted for under the reverse charge basis. In this instance it is the purchaser, Local authority/AHB who should account for the VAT.</p>	

As mentioned previously the question as to whether RCT will apply to the contracts entered into by AHBs and Local Authorities will depend on the facts of each case and the contractual arrangements between the parties in each case will need to be examined. The submissions referenced above refer to standard Law Society private treaty contracts and state that these are for the purchase of completed turn-key properties.

However, it should be noted that Revenue is aware of and have received copies of contracts based on the Law Society/CIF template which include paragraphs and conditions which indicate there is a relevant contract in place between the parties. These contracts would include the following paragraphs or similar versions of the paragraphs:

- The “Employer” is desirous of constructing housing units on the site in accordance with the plans (Note: The AHB/Local Authority is defined as the Employer in the contract).
- The Contractor has agreed the carry out the works in accordance with the plans for the contract price. (Note: the Contractor is defined as the construction company)
- The Contractor will for the contract price build and completely finish in a good, substantial and workmanlike manner to the Employer the works on the site in accordance with the Plans.
- The “works” are defined as *“the construction of the units pursuant to the planning permission and specified in the plans together with such ancillary works and services as required for such use and/or enjoyment of the units and as may be necessary to render the units habitable when completed, including such works necessary to ensure all associated*

common areas, roads, footpaths, access routes, infrastructural works and services, benefitting the Site are completed to a standard acceptable for taking charge by the local authority”.

- *“Contract Price” is defined as “the sum of €xxxx being the price of the works and the assurance of the units”.*

The inclusion of the above paragraphs or paragraphs with similar wording would indicate that a relevant contract for construction services exists and that RCT should be applied to the payments stated as the contract price, nevertheless it is still the case that each case needs to be decided on its merits by examining the contracts and agreements that are in place between the parties.