



**ITI submission to Revenue on the
draft TDM on Taxation of Partnerships**

which was circulated to the TALC Direct/Capital Taxes Sub-committee on 5 June 2025

General Comments	<p>While the document states that the TDM it is to be read in conjunction with Part 43 TCA 1997, we note that it has wider significance.</p> <p>Revenue's covering note refers to areas where the TALC Direct/Capital Taxes Sub-committee have requested partnership specific guidance and includes 'tax treaty protections'. Presumably this aspect could address the residence status (if any) of partnerships. This issue arose in a foreign context in the cases of <i>Padmore v IRC</i> and to a degree in the decision in <i>Revenue v Susquehanna</i>.</p>
Paragraph 2.1 – Introduction	<p>Some of the case law referred to in the TDM could be perceived as inconsistent with the comments in the TDM without further elaboration. For example, while a partnership may be considered an unincorporated body of persons and thus a 'person' under general principles/ the Interpretation Act, a body of persons as defined in TCA 1997 may not include a partnership.</p> <p>Footnote No. 1 on page 4 of the TDM refers to the Supreme Court case of <i>Revenue Commissioners v O'Reilly & McGilligan</i> [1984] ILRM 406. Our understanding is that the O'Reilly case considered the meaning of 'body of persons' as used in tax legislation and not what is meant by a 'person'.</p> <p>Perhaps it would be helpful to distinguish the two contexts for the use of 'body of persons'?</p> <p>On page 4, in considering the elements of the definition of a partnership, the TDM states one element is "(iv) <i>There must be a "business", which is defined in section 45 of the 1890 Act as "every trade, occupation or profession". It can be an ongoing</i></p>

	<p><i>venture, a single venture or a series of unrelated ventures. It does not include the passive ownership of property.”</i></p> <p>We note that the definition of business in section 45 of the Partnership Act 1890 states “<i>The expression “business” <u>includes</u> every trade, occupation, or profession</i>” Contrary to the normal use of ‘includes’, is it Revenue’s view that a non-trading partnership cannot exist?</p> <p>If non-trading income can be earned by partnerships, the TDM does not address how it is treated.</p> <p>On page 5, it is stated “<i>Taking all of the above, in an Irish context, in broad terms, apart from those bodies that are registered/formed with a separate legal personality, all other persons carrying on a business in common with a view to a profit are generally considered a partnership.</i>” We would be concerned regarding the inclusion of such a broad statement. For example, separate legal personality may not necessarily be key (for instance, in the case of Scottish partnerships etc). It would be preferable to avoid vague generalities and to ensure that the guidance is clear.</p>
<p>Paragraph Nos. 2.5 and 2.6</p>	<p>Paragraph Nos. 2.5 and 2.6 provide guidance on the nature of a partnership interest and include a statement that the partner has a beneficial interest in the underlying partnership assets. It would be helpful if this point could be made clearer.</p> <p>The document omits (so far) discussion of many of the wider implications of beneficial ownership for CT and CGT (for example, for groups, section 9 TCA 1997 and subsidiaries, section 626B TCA 1997 etc).</p> <p>Paragraph 2.5 states that “<i>Any property acquired or held by a partnership is held by the partners as tenants in common</i>”. We would note that reference to tenants in common did cause some unexpected interpretative issues at the time of preparation of guidance on the outbound payments defensive measures.</p> <p>Paragraph 2.6 discusses the nature of partnership interests and the concept of it being a contingent interest in a future monetary amount. The TDM then provides an example on page 11 of beneficial ownership in the entirety of assets. Should the example be more closely aligned to the preceding discussions which refer to contingent nature of the interest, i.e., to receive money after the disposal of the net assets?</p>