

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday 29 February 2024 via Microsoft Teams

14.30 to 16.00

Item 1: Minutes from meeting of 30 November 2023

The minutes of the meeting of 30 November 2023 were agreed as final.

Item 2: Matters arising from meeting of 30 November 2023:

- a. **Agricultural relief and definition of farmer – Section 89 (1) CATCA 2003:** Revenue circulated a written response, outlined below, to practitioners' query relating to a situation where a beneficiary wishes to part work and part lease the farm and claim agricultural relief under section 89 Capital Acquisitions Taxes Consolidation Act (CATCA) 2003.

Practitioners requested whether the CAT Tax and Duty Manual Part 11 'Agricultural Relief' could be updated to reflect that the Revenue interpretation of "substantially the whole" of the agricultural property leased means that at least 75% of the property is leased or that, through a combination of lease and working by the beneficiary in accordance with sub paragraphs (i) and (ii) in the definition of farmer in section 89(1) CATCA 2003, the beneficiary will be treated as having leased the whole or substantially the whole of the agricultural land even though a lesser amount has actually been leased where the other amount (coming to at least 75% of the land combined with the leased land) is farmed by an active farmer or a qualified farmer or is forestry.

Revenue confirmed that the matter has been raised with the Department of Finance it is as a matter of policy whether an amendment to the legislation will be considered. All agreed to remove this item from the agenda going forward.

Revenue response:

As practitioners have noted, section 89 CATCA 2003 requires that where a person claiming agricultural relief leases the agricultural property to an active farmer, he or she must lease the whole or substantially the whole of the agricultural property to the active farmer. The TDM confirms that Revenue will accept substantially the whole as meaning at least 75% of the property. However, section 89 does not currently provide for a situation where a beneficiary part farms and part leases the lands (subject to a specific exception that applies in relation to land leased for solar panels). Accordingly, we cannot update the TDM as requested. However, we wish to state that we intend to raise this matter with Department of Finance officials.

- b. Clawback of stamp duty relief on merger of a trade – Section 79 SDCA 1999:** Practitioners had previously requested clarity in guidance on the operation of stamp duty relief in section 79 Stamp Duties Consolidation Act (SDCA) 1999, where assets which will naturally be used during the course of a trade (e.g. trading stock, plant and equipment) cannot therefore meet the two year holding requirement. Revenue has considered the matter but requires internal approval to make a change to the guidance. Revenue hopes to provide an update in advance of the next TALC Direct and Capital Taxes Sub-Committee meeting.
- c. Form CT1 – Panel 15.1 – Dividend Withholding Tax:** Practitioners had requested whether the additional information required to be returned in Panel 15.1 of the Form CT1 for accounting periods ending in 2021 would only be required to be completed where the distribution is paid to a connected person within the meaning of section 10 Taxes Consolidation Act (TCA) 1997. Revenue is continuing to consider this query and hopes to provide an update in advance of the next TALC Direct and Capital Taxes Sub-Committee meeting.
- d. Section 891H – long accounting period:** Revenue circulated a response, outlined below, to a query raised by practitioners in respect of Country-by-Country reporting and long accounting periods. All agreed to remove this item from the agenda going forward.

Revenue response:

In terms of the general query, Revenue can confirm that where the accounting period of an MNE Group is greater than 12 months the threshold of €750 million should be prorated, as is the case with short accounting periods. Revenue will update the Tax and Duty Manual in due course to reflect this.

In relation to the examples, these would appear to be taxpayer specific queries. In this regard, Revenue do not believe it would be appropriate to address these via TALC Direct and Capital Taxes Sub-Committee. If an opinion / confirmation is being sought in respect of a specific taxpayer / case Revenue would request that these are submitted to Revenue in accordance with the procedures for such requests. Revenue would also request that additional information be included than which was provided. In relation to the second example, this would include:

- *date the UPE was incorporated;*
- *when the acquisition of the subsidiaries took place;*
- *what the results of the UPE were prior to the 17 month accounting period (if applicable);*
- *whether the subsidiaries were a group or part of an MNE group previously, what the subsidiaries profits were, what the group profits were or whether any such group was an excluded MNE group;*
- *what analysis has been undertaken by the taxpayer / practitioners in respect of the issue e.g. whether any consideration has been given to the OECD's guidance.*

Capital Taxes:

Item 3: Section 31C SDCA 1999: Shares deriving value from immovable property situated in State:

Practitioners requested clarity on whether the *de minimis* provision, which exempts shares of less than €1,000 from stamp duty, applies in respect of shares within the charge to section 31C SDCA 1999 (which applies a rate of 7.5% stamp duty on the transfer of shares). Practitioners queried if the *de minimis* administrative practice could apply in such scenarios.

Revenue noted the *de minimis* provision which exempts shares of less than €1,000 from stamp duty is not an administrative practice and is set out in paragraph 1 of Schedule 1 SDCA 1999. If the shares are chargeable under section 31C, the shares are chargeable to stamp duty at 7.5% as set out in paragraph 4 of Schedule 1 SDCA 1999. The *de minimis* provision does not apply as the transfer is not a conveyance or transfer of on sale of any stocks or marketable securities under paragraph 1, Schedule 1 SDCA 1999.

Revenue clarified that a stamp duty filing is required for shares within the charge to section 31C, even where there is no tax payable as the shares are within the charge to stamp duty under that head of charge.

Item 4: Tax treatment of demergers:

Practitioners requested Revenue's view whether demerger transactions involving the transfer of an existing holding company to the shareholders of the existing listed group can be regarded as capital events (rather than income tax events). Practitioners set out one scenario which could involve a distribution by the existing listed group of a division which itself becomes a new quoted group. Typically, shares in an existing holding company would be transferred to shareholders of the existing listed group. The question then arises as to whether this constitutes an income distribution or a capital distribution.

Given that the shares in the existing listed group and the new quoted group are held on capital account, practitioners stated the receipt of the shares in the new quoted group would appear to be a capital receipt. Practitioners highlighted this technical position would be consistent with that which applied to the ICI/ Zeneca demerger in 1993 (per Revenue Tax Briefing Issue 17 No 1, 1995), where a similar distribution to shareholders was held to be capital not income. Practitioners confirmed the scenario outlined is indicative of the types of transactions recently seen in practice.

Revenue welcomed feedback from practitioners on the types of transactions currently being seen in practice but noted this is not reflected the queries being referred through the Revenue Technical Service (RTS) for opinions. Revenue further noted that the treatment agreed in the ICI/ Zeneca demerger was over 30 years old and was agreed in the context of detailed engagement between Revenue and the companies in question at that time. While there may be commonality between the facts of that case and a case practitioners may have now, the agreement reached with Revenue in the ICI/ Zeneca demerger was related to the specific facts of that case and cannot be relied on in other cases/circumstances.

Revenue stated it was not appropriate to give a blanket confirmation of tax treatment to apply, given the general nature of the information provided. If there are specific cases practitioners are encountering, Revenue advised these details should be sent to the specific case manager, if in Large Corporates Division (LCD), or through RTS. Noting there is a significant body of jurisprudence on what is considered income or capital, Revenue noted the conclusion will come down to the facts and circumstances of each case. The tax impact for a particular taxpayer would interact with their specific tax status and this may be different or unknown to other parties, therefore a blanket confirmation cannot be provided.

Direct Taxes:

Item 5: EU Mobility Directive (Directive (EU) 2019/2121):

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 Mobility 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.

The Mobility Directive was transposed into Irish law in 2023 [S.I. No. 233 of 2023 - 'European Union (Cross Border Conversions, Mergers and Divisions) Regulations 2023']. Following a request for clarity from practitioners, Revenue advised that any legislative changes to cater for the 2023 regulations would be a policy matter for the Department of Finance.

Practitioners also requested confirmation that a converted company can make a claim for capital allowances under section 291A TCA 1997, provided all other conditions are satisfied, upon its conversion into Ireland. Revenue raised some questions with practitioners regarding the basis on which such companies would be claiming the IP allowances and whether the claim would be for the total amount or amortised or part amortised amount before migrating to Ireland. Revenue agreed to direct further questions to practitioners for consideration in advance of the next TALC Direct and Capital Taxes Sub-Committee meeting.

Item 6: Special Assignee Relief Programme (SARP) calculation in tax equalisation cases classification:

Practitioners sent a detailed note to Revenue in advance of the meeting noting recent changes to Revenue's Tax and Duty Manual (TDM) on SARP in December 2023, which inserted a new subparagraph 7.1 on the calculation of SARP in tax equalisation cases. Practitioners understand the update has been made in the context of a Tax Appeals Commission (TAC) Determination (143TACD2023).

Practitioners raised concerns that the position set out by Revenue in the updated TDM represents a departure from previous established practice in respect of tax equalised individuals since the inception of SARP and from the fundamental principle of calculating a gross-up for tax purposes under Re-Grossed Pay less PAYE/USC/PRSI deducted should equal Net Pay. Practitioners requested Revenue's view on this.

Revenue noted previous established practice on calculating SARP relief in tax equalisation cases was unclear and understands that different views may have been taken. Revenue noted that SARP is a relief on income and considers the position set out in guidance to be correct. Revenue agreed to respond to the detailed note in writing within the next couple of weeks.

Item 7: Capital allowances for intangible assets - Tax and Duty Manual Part 09-02-05:

Practitioners outlined that TDM Part 09-02-05 'Capital allowances for intangible assets' is made up of a number of frequently asked questions, however, a question on the time limit for making claims is omitted i.e. claims must be made within 12 months from the end of the accounting period in which the capital expenditure giving rise to the claim is incurred. Revenue agreed to consider including a question specifically on time limits when the TDM is next reviewed.

Practitioners also noted that a discussion on deferred consideration had taken place at a previous TALC meeting and requested the TDM be updated to reflect this. Practitioners agreed to send a note to Revenue on this matter.

Item 8: Mutual Agreement Procedure (MAP) process for dual resident companies:

Practitioners requested Revenue provide up-to-date data on Mutual Agreement Procedure (MAP) statistics for dual resident companies. Revenue provided the following update:

The OECD published statistics on 2022 Mutual Agreement Procedure (MAP) in November 2023. A link to the OECD 2022 statistics follows: <https://www.oecd.org/tax/oecd-releases-information-and-statistics-on-mutual-agreement-procedures.htm>

In the OECD Mutual Agreement Procedure statistics for 2022, Ireland was acknowledged for having the second shortest time to close non-transfer pricing MAPs with Ireland closing them within an average of 7.6 months.

Not surprisingly, given the complexity, transfer pricing cases take longer to resolve than non-transfer pricing cases with the average closing time of 24.6 months. As this is an average some cases would have closed within 24 month average with others extending beyond the 24 month average.

Item 9: Guidance for social media influencers and content creators:

Practitioners queried whether Revenue will develop guidance on the taxation of income for social media influencers and content creators, following the issue of letters by Revenue to 142 social media influencers last year to remind them of their tax obligations and to highlight that income, gifts, free goods and services, virtual currency or token payments should be properly accounted for. Practitioners understand that Revenue subsequently wrote to a number of these content creators, as part of a Level 2 Compliance Intervention in relation to the non-declaration of income.

Revenue confirmed guidance is being developed and will be published in Quarter 2 2024. Revenue noted social media influencers and content creators will still fall under the general headings of trading or non-trading (Case IV) so should not be treated different to other businesses i.e., consideration must be given to the badges of trade. Revenue noted in some scenarios there is an element of gift tax and the TDM will provide general guidance. The TDM will be updated on an ongoing basis as more information becomes available.

Item 10: Revenue Guidance:

(i) Draft Tax and Duty Manual 26-00-02 – ‘Taxation of Life Assurance Companies - Old Basis Business and New Basis Business: Revenue is still receiving feedback from the Life Assurance Industry and plans to update and circulate the 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 noted the update to this TDM is ongoing and forms part of the general TDM refresh process. There is no timeline for publication of the updated TDM currently. If practitioners identify any issues with the current TDM, feedback can be provided to Revenue.

(iii) Guidelines to assist businesses to determine correct employment status classification: At the November meeting, practitioners queried if Revenue guidance would be prepared 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.

Revenue confirmed work on detailed guidance is nearing completion and agreed to share the draft TDM with members of the TALC Direct and Capital Taxes Sub-Committee for feedback before finalisation. Revenue noted the Supreme Court judgment has restated the “*mutuality of obligation*” i.e., the Supreme Court rejected the contention that “*mutuality of obligation*” was a prerequisite for concluding that a person is rightly categorised as an employee, as distinct from a self-employed person. The Supreme Court also outlined a five-step framework to help determine whether a contract is one “of service” or “for service”.

Revenue carefully considered the Supreme Court decision while drafting the TDM which will outline Revenue's view of how the Karshan case should be interpreted. The TDM will use the terms 'business' and 'worker' and Revenue noted the nature of arrangements will be important. While Revenue has tried to be as prescriptive as possible but notes that each decision will reflect the specific facts and circumstances of each case. Revenue also pointed out that the Karshan case relates to employment classification for tax purposes, it does not infer employee rights as that is a matter for Workplace Relations Commission. Revenue noted that Mr. Justice Brian Murray was very clear in his judgment on this point.

(iv) Leasing guidance: Revenue noted TDM Part 04-06-04 'Leasing of Machinery or Plant – General Principles of Taxation' was published at the end of January and is effective from 1 January 2024.

In respect of upcoming draft guidance Revenue intends to circulate to practitioners for feedback, Revenue confirmed the following:

- a. Revenue intends to circulate draft guidance on section 299 scenarios where the lessee bears burden of wear and tear in March.
- b. Revenue intends to circulate draft guidance on section 403 and 404 ringfences, scheduled in April.
- c. Revenue noted it is provisionally considering publishing a TDM in April on Qualified Financing Companies and asked practitioners to provide feedback by 22 March.

Revenue noted that currently there is a separate Leasing subgroup run by the Department of Finance. Some points on guidance were submitted to this subgroup, however, in the main policy matters will be discussed by the subgroup and Revenue confirmed that administration matters should be raised at TALC.

Item 11: Workplan:

All members of the TALC Direct and Capital Taxes Sub-Committee agreed that the items under Revenue Guidance will likely form the bulk of the workplan for the year ahead. All agreed to keep the workplan open and consider items as they arise.

Item 12: AOB:

- a. **Update to Revenue TDM - Part 7: Section 80 - Reconstructions or amalgamations of companies:** Practitioners requested to discuss the altered wording in paragraph 1.1 of the recently updated Stamp Duty Manual Part 7 'Section 80 - Reconstructions or amalgamations of companies', which was updated on 12 February 2024.

Practitioners highlighted that prior to the update, the TDM confirmed Revenue would accept that the transfer of a 100% shareholding in a company, which itself carried on a business, would constitute the transfer of an undertaking.

Revenue confirmed the purpose of updating the TDM was to make it more comprehensive. Revenue noted the first comprehensive TDM on section 80 was introduced last year and this update was intended to be a more helpful version.

***Note:** Subsequent to the meeting, the TDM was updated on 6 March to replace the text in paragraph 1.1 with the following:

“Revenue accepts that the transfer of a 100% shareholding of a company carrying on a business in its own right constitutes the transfer of an undertaking.”

- b. Tax and Duty Manual Part 16-00-02:** Revenue advised that an updated Tax and Duty Manual Part 16-00-02 ‘Relief in investment in corporate trades’ will be circulated in draft in 3 weeks. Revenue requested feedback from practitioners within 2 weeks once circulated with the intention that the TDM will be published before the next meeting.
- c. Tax and Duty Manual - Chapter 3 - Unapproved Share Options:** Practitioners requested an update to the expected publication date for the updated TDM ‘Chapter 3 of the Shares Schemes Manual’, in light of changes introduced in Finance (No.2) Act 2023 to the collection of tax due on employee share option gains from 1 January 2024. Revenue noted that publication is imminent with the updated TDM to be published in the next week or so.
- d. Tax and Duty Manual Part 05-01-06:** Practitioners requested if Revenue could confirm whether TDM Part 05-01-06 ‘Tax Treatment of the Reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees’ will be updated to reflect enhanced employer reporting (ERR). Revenue advised that it will not be possible to update every TDM to reflect ERR. However, TDM Part 05-01-06 is scheduled to be updated in 2-3 weeks and will reflect ERR.
- e. RCT and application of reverse charge on property-related transactions:** Practitioners raised an item that is scheduled to be discussed at an upcoming TALC Indirect Taxes Sub-Committee meeting in relation to Relevant Contracts Tax (RCT) and the application of VAT reverse charge on property-related transactions.

The issue relates mainly to approved housing bodies and local authorities purchasing completed houses from developers. Practitioners noted that opinions from Revenue Districts have advised on the application of RCT. While an approved housing body or local authority is the principal for RCT, practitioners understand that RCT should not apply for completed units purchased from builders. Practitioners queried if there is any proposed guidance for approved housing bodies and local authorities. Revenue asked practitioners to make a submission on the matter for further consideration.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Tom James	David Fennell (Chair)	Enda Faughnan	Caroline Devlin
Dave Brennan	Stephen Ruane	Cormac Kelleher	Aidan Fahy
Karen Drake	Cillein Barry	Peter Vale	David Lawless
John Kelly	Kim Doyle	Ken Garvey	Aileen Keogan
Barbara Ní Neachtain	Lorraine Sheegar	Gearóid O'Sullivan	John Cuddigan
Eleanor Smiley	Clare McGuinness		
Áine Hollingsworth			
Therese Bourke			
Jacqueline O'Callaghan			
John Quigley			
Tanya Grausam			
Anita Cassidy			
David Hanlon			
Catherine Duffy			
Keith Noonan			
Aisling Dooley			