

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday, 28 November 2024 via MS Teams

2.30pm to 4.30pm

Item 1: Minutes from meeting of 11th September 2024

The minutes of the meeting of 11th September 2024 were agreed as final.

Item 2: Minutes of Joint Main TALC and TALC Direct/Capital Taxes Sub-committee Finance Bill 2024 meeting of 22nd October 2024

The minutes of the meeting of 22nd October 2024 were agreed as final.

Item 3: Matters arising from meeting of 11th September 2024:

- a. **EU Mobility Directive (Directive (EU) 2019/2121) – claim for capital allowances under section 291A TCA 1997:** Revenue is reviewing a note provided by practitioners and noted the issue had broader application than the Mobility Directive and can arise where a company migrates residence. This item will remain on the agenda for the next meeting.
- b. **CT1 form - Transfer Pricing documentation requirements for an Irish Branch:** Revenue noted that this matter is still under review. The issue will be discussed at the Sub-Committee once the request being made is clarified. This item will remain on the agenda for the next meeting.
- c. **CAT Business Relief – minimum ownership period:** At the September meeting, practitioners requested clarity 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. Revenue circulated a written response on 16 October, included as Appendix I, noting Revenue's interpretation of section 94 is as set out in the Tax and Duty Manual (TDM) for Business Relief - CAT Manual Part 12. This item will remain on the agenda for the next meeting to allow practitioners time to consider Revenue's response.
- d. **TDM review process:** Practitioners has raised concerns with a watermark used on Tax and Duty Manuals (TDMs) being updated (as part of Revenue's new process to allow the TDM remain on Revenue's website while it is being reviewed and/or updated). Revenue confirmed the TDM review team agreed to include a new watermark on TDMs being updated from 28 November to state: *"This manual is currently subject to review and may not reflect the up-to-date position"*. This new watermark will apply retrospectively to TDMs. Older versions of TDMs will include a watermark that states the version of the TDM does not reflect the up-to-

date position.

- e. Mandatory Disclosure Guidance Notes:** Revenue circulated an updated draft TDM Part 33-03-01 'Mandatory Disclosure Guidance Notes' to practitioners for feedback in advance of the September meeting noting the updates are to reflect the legislation. Practitioners raised concerns with the proposed removal of paragraph 1.1 and Appendix 1. Practitioners made submissions to Revenue in advance of the November meeting to set out their concerns.

Revenue thanked practitioners for providing the feedback. In relation to the question raised regarding the timing of when a Will trust is considered implemented to satisfy the legislative requirements for disclosure, Revenue confirmed that the mandatory disclosure scheme does not focus on the implementation of a scheme, instead the focus is on when advice is provided. Revenue noted it would be happy to receive further feedback from practitioners.

Practitioners requested that a discretionary trust established for bona fide purposes that are not distinctly financial should be expressly excluded from the mandatory disclosure scheme. Practitioners noted that where there is a gift, then there is no financial benefit to the disponent and in a family context, frequently there will be no commercial purpose. Revenue noted that there has been no change to the legislation and the draft TDM was highlighting that there was a separate TDM which considered the main purpose test. Revenue confirmed further examples can be included in the TDM and reiterated it is the giving of advice on a scheme that is implementable which is relevant, once it fails the Main Benefit Test.

In respect of paragraph 1.1, practitioners noted it includes an important clarification regarding the legislative intention of the rules and should be retained. Practitioners recalled the detailed discussions which took place at TALC on the introduction of the mandatory disclosure regime regarding the principle that forms part of Paragraph 1 in the TDM. Revenue agreed the principle reflected in paragraph 1.1 may be correct and suggested the focus should be on recalibrating the examples in Appendix 1 to reflect the intention of the rules as set out in paragraph 1.1. Practitioners and Revenue agreed to work together to draft examples to be included in the recalibrated Appendix 1. This item will remain on the agenda for the next meeting. Revenue offered to present at industry events on the topic, if practitioners felt that it might bring greater clarity to the issue.

- f. 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:** Revenue reiterated that there is no proposal to change Revenue's current guidance based on the TAC Determination. Revenue noted that they were not aware that this is a widespread issue. Practitioners agreed to monitor feedback of difficulties being encountered by pension providers 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. This item will remain on the agenda for the next meeting.

Item 4: Matters arising from joint Finance Bill 2024 meeting of 22nd October 2024:

- a. Section 12 – Employer contributions to PRSAs and PEPPs:** Section 12 provides that the exemption of the BIK charge from expenses incurred in the making of any contribution to a Personal Retirement Savings Account (PRSA) and Pan- European Pension Product (PEPP) will only apply to contributions up to an ‘employer limit’ which is equal to 100% of an employee’s salary in the year of assessment. Practitioners queried how the provision should apply in real-time, where for example the PRSA contribution is made at an earlier stage in the year and it exceeds the emoluments at that point it may or may not exceed the employer limit which has yet to be ascertained. Revenue noted in many cases the annual salary is likely to be known but agreed to review this issue.

Practitioners also raised concerns where employer companies may have non-calendar year ends and queried how best to determine the correct employer deduction. Revenue noted this is a practical issue and if examples are submitted, they can be considered for the guidance. Revenue also noted the fundamental principle remains where the contribution is above the employee limit then Benefit-in-Kind (BIK) applies.

- b. Section 9 – Benefits in kind: general charging provision:** Section 9 amends section 118 TCA 1997 to provide an employee with an exemption from BIK on expenditure incurred by an employer in connection with the provision of a facility for the charging of an electric vehicle at the home of a director or an employee. In addition, the section includes an exemption from BIK where a facility for the electric charging of vehicles is provided on a business premises where all employees and directors can avail of the facility.

At the joint Finance Bill 2024 meeting in October, Revenue confirmed the policy intention is for the employer to retain ownership of the charger. Practitioners queried the position where the employee/director sells their residence. At the joint Finance Bill meeting, Revenue also clarified the provision of electricity to charge the electric vehicle at the residence of the employee/director is not included in the BIK exemption as the legislation relates to the charging facility only. Practitioners queried this interpretation given similar wording is used in subsection (5H) (a) and (b).

Revenue provided the below written responses to the two queries following the October meeting, which are also included as an Appendix to the Minutes of the October meeting.

- Electric chargers are not permanently fixed to a house; they may be removed in the event the employee/director sells their residence. The policy intention is that the exemption as provided for in section 118(5H)(b) only applies where ownership of the charging facility is retained by the employer. Where an employee/director sells their residence and relocates the electric charging facility to his or her new main residence a BIK will not arise on the basis that ownership is retained by the employer.
- Section 118(5H)(a) TCA 1997 applies where the electric charging facility is located at the employer’s business premises, and as such the electricity used to charge the

electric vehicle is charged to and paid for by the employer.

S.118(5H)(b) applies where a charging facility is provided at the employee/directors home, and as such the employee/director incurs the cost of the electricity used to charge their car. Section 118(5H)(b) does not provide for a specific BIK exemption in regard to the electricity used to charge the electric vehicle.

Practitioners also queried whether the BIK exemption covers scenarios where the employer reimburses the employee incurring home electricity costs. Revenue confirmed Paragraph 6 of the Tax and Duty Manual (TDM) Part 05-01-01b 'Chapter 2 - Employer-provided vehicle' states, *"In principle, where an employer is providing a car to their employee and the employee is incurring home electricity costs, provided it can be shown that the employer is only reimbursing for the running costs of that employer vehicle, it would be reasonable for this reimbursement to be paid free of tax. This would be conditional on the employer retaining sufficient supporting documents to verify the amount of the reimbursed cost."*

Practitioners noted it would be helpful to include cross references to the relevant TDM(s) when preparing the guidance on the Finance Act 2024 amendment.

Capital Taxes:

No items raised

Direct Taxes:

Item 5: Identifying a pension paid out of public funds for the purposes of Double Tax Agreements:

The OECD Model Double Tax Treaty distinguishes between and provides a different tax treatment for pensions paid out of public funds and other pensions and this approach is generally followed in Ireland's treaties. Practitioners noted in some cases it may not be clear whether a pension is being paid out of public funds and requested whether a list could be provided to assist practitioners identify these pensions. Revenue confirmed there is no plan to publish a list and Revenue is not aware of issues being encountered.

Item 6: Subsistence expenses for temporary assignees:

Practitioners queried whether TDM Part 05-01-06 'Tax treatment of the reimbursement of expenses of travel and subsistence to office holders and employees' could be amended to provide more clarity on the options for the reimbursement of expenses related to meals. Revenue noted there are no plans to expand on the guidance in the TDM related to this administrative regime.

Item 7: Change in PRSI rate from 1 October:

The employee and employer PRSI contribution rates changed on 1 October 2024 and practitioners queried whether the Department of Social Protection blended/ proportionate rate of 4.025% which applies to 'self-employed annual income' for 2024 could be applied to the benefits being reported under a PAYE Settlement Agreement (PSA) where the date the benefit was received is not available.

Revenue confirmed the blended/ proportionate rate of 4.025% is for self-employed income only and does not apply to PAYE income. Revenue stated section 13(10) of the Social Welfare Consolidation Act 2005 specifies the rate that should be used and noted this rate will increase year or year in line with other PRSI increases.

Item 8: Digital Services Tax Act (DSTA) in Canada – deduction for DST incurred W&E for purposes of trade:

Practitioners requested whether TDM Part 04-06-03 'Section 81: Deduction for Digital Services Taxes' could be updated to include the Canadian Digital Services Tax (DST) as practitioners understand that it should be deductible where incurred wholly and exclusively for the purposes of a trade. Revenue confirmed the TDM will be updated to include the Canadian DST and noted that depending on developments in this area the TDM may be more regularly reviewed to ascertain whether new DSTs need to be included in the TDM.

Item 9: Revenue Guidance:

(i) Draft Tax and Duty Manual 26-00-02 – 'Taxation of Life Assurance Companies - Old Basis Business and New Basis Business: Revenue confirmed the review of this TDM is still in progress.

(ii) Draft Tax and Duty Manual 34-00-01 - Provisions relating to residence of individuals: Revenue circulated a draft TDM to practitioners requesting feedback by 16 December. Revenue plans to publish this TDM in January. A separate TDM on Split Year Treatment (SYT) will be developed to reflect Finance Act 2024 amendments.

(iii) Tax and Duty Manual Part 04-06-13 Tax Treatment of Stocklending/Sale and Repurchase (repo) Transactions: Revenue confirmed the review of this TDM is still in progress and will be circulated to practitioners for feedback together with a new TDM dealing with the taxation of dividend arbitrage transactions, including the dividend stripping and bond washing rules.

(iv) Retirement Relief Tax and Duty Manuals Part 19-06-03 & Part 19-06-03b: Revenue will update both TDMs to reflect the Finance Act 2024 amendments and confirmed examples on aggregation for pre- and post-1 January 2025 disposals will be included in TDM Part 19-06-03b.

(v) Leasing guidance: Revenue noted TDMs will be updated to reflect Finance Act 2024 amendments. The TDM Part 02-02-07 'Deposit Interest – Whether a Trading Receipt' will be updated to align with the leasing TDMs. Revenue also requested feedback on deposit interest Tier 1 Capital. The TDM currently states, *"To take account of a company's need for flexibility in circumstances of fluctuating regulatory capital requirements, the Revenue Commissioners will allow up to 120% of the regulatory capital requirement to be invested and for the deposit interest to be assessed as Case 1."* Revenue are seeking feedback as to whether it is reasonable to remove this 120% buffer as Revenue believes this is no longer necessary.

Revenue confirmed the draft TDM 09-02-01 'Leasing of Machinery and Plant – Scenarios where Section 299(1) Applies' has been updated to reflect the Finance Act 2024 amendments and will be published. The published version will not include material on the burden of wear and tear analysis, at this point. Revenue requested that practitioners submit further details on how that test is applied by taxpayers other than aircraft leasing industry as material provided to date has only been in the context of that one industry. The material provided also suggests that different approaches are currently being taken to the test, even within that one industry. The material submitted to date and the further material will be discussed at the next meeting.

Item 6: AOB:

- a. Investment Limited Partnership (ILP) filings:** following queries from practitioners, Revenue confirmed ILPs are required to file both a Form ILP1 and Form 1 (Firms). CCAB-I indicated that it would make a submission to Revenue detailing why an ILP is not required to file a Form 1 (Firms)
- b. Interaction of Knowledge Development Box (KDB) and Pillar Two:** Practitioners noted the benefit of the KDB has been impacted by the implementation of the Pillar Two rules and requested whether a company can 'elect out' of the KDB if it is no longer beneficial. Revenue noted the relevant personnel were not at the meeting and requested a note setting out the issue.
- c. Treatment of dividends on certain preference shares:** Practitioners queried whether it is reasonable to regard Euronext Growth list as equivalent to a stock exchange for the purposes of section 138 TCA 1997. Revenue requested a note setting out the request.
- d. Residence certificate for corporates (in LCD):** Practitioners queried why a taxpayer's address does not appear on the residence certificate. Revenue requested a note setting out the request.

e. Share Valuations: Revenue confirmed Chapter 9 of the Shares Scheme Manual dealing with the Key Employee Engagement Programme (KEEP) is currently being reviewed based on the recommendation from the [Report of the TALC Sub-committee on Administrative Simplification of Business Reliefs for SMEs](#) for Revenue to review its published guidance in relation to the valuation of unquoted shares to ensure clarity for all stakeholders. Revenue noted there will only be minor updates to Chapter 9 of the Shares Scheme Manual. Revenue are also considering section 548 which deals with the valuation of assets.

Practitioners noted their understanding that the recommendation for Revenue to review its published guidance in relation to the valuation of unquoted shares is much broader than just the KEEP and that this recommendation would be discussed at a meeting of Main TALC next week, together with the other recommendations in the report.

f. Residential Zoned Land Tax (RZLT) Subgroup: Practitioners noted a very productive meeting of the RZLT Subgroup was held earlier in the week and requested it become a standing item on the agenda going forward. Revenue agreed with this suggestion noting that once the subgroup has reached its conclusions on matters a report will be provided to this TALC Sub-committee. Revenue also noted the Minutes from the subgroup meeting will be sent to this TALC Sub-committee in due course. Revenue highlighted there is a significant operational element to the subgroup that may not be common to other subgroups at this TALC Sub-committee.

g. Chair: The Law Society will be in the Chair of the TALC Direct/Capital Taxes Sub-committee in 2025.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Tom James	David Fennell (Chair)	Enda Faughnan	Aileen Keoghan
Dave Brennan	Stephen Ruane	Ken Garvey	Caroline Devlin
John Kelly	Cillein Barry	Gearóid O'Sullivan	David Lawless
David Macauley	Tom Maguire		John Cuddigan
Rory Noone	Clare McGuinness		
Karen Drake	Lorraine Sheegar		
Sinead McNamara			
Catherine Duffy			
Lucy Whelan			
Eleanor Smiley			
Aine Hollingsworth			
John Quigley			
Jacqueline O'Callaghan			
Caroline Kennedy			
Liam Smith			
Deirdre Fahy			

Maria Hewson Mary Treacy Dorothea Turley Alan Carey John McGorry Laura Mellon			
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Apologies: Maura Dineen, Aidan Fahy (Law Society), Laura Lynch (ITI)

Appendix I

Revenue Response to TALC Representations Regarding Queries on CAT Business Relief – minimum ownership period

16 October 2024

CAT Business Relief – minimum ownership period

Clarification is sought in relation to the following scenario:

“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.”

Section 94 of the Capital Acquisitions Tax Consolidation Act (CATCA) 2003, entitled “Minimum period of ownership” prescribes a minimum holding period in relation to the property comprised in a gift or inheritance before the gift or inheritance occurs.

The section reads as follows:

In relation to a gift or an inheritance, property shall not be relevant business property unless it was comprised in the disposition continuously -

(a) in the case of an inheritance, which is taken on the date of death of the disponent, for a period of 2 years immediately prior to the date of the inheritance, or

(b) in any other case, for a period of 5 years immediately prior to the date of the gift or inheritance,

and any period immediately before the date of the disposition during which the property was continuously in the beneficial ownership of the disponent, or of the spouse or civil partner of the disponent, is deemed, for the purposes of this Chapter, to be a period or part of a period immediately before the date of the gift or inheritance during which it was continuously comprised in the disposition.

Revenue’s interpretation of section 94 is set out in the [Tax and Duty Manual \(TDM\) for Business Relief](#), as follows:

To safeguard against businesses or shares or securities being acquired merely for the purposes of getting business relief, relevant business property will not qualify for the relief unless it was comprised in the disposition for a minimum period prior to the date of the gift or inheritance i.e. relevant business property must have been owned either by:

- *the disponent¹ alone, or by the disponent and his or her spouse; or*
- *by the trustees (in the case of settlements) alone, or by the trustees, the disponent and/or the disponent's spouse,*

for a continuous period of:

- *2 years immediately prior to the date of inheritance in the case of an inheritance taken on the death of the disponent, or*
- *5 years in all other cases (section 94).*

*The 2 year or 5 year rule is referred to as the **minimum ownership period**.*

The minimum ownership period is relaxed for:

- *replacement property, and for*
- *successive benefits.*

The above-mentioned guidance sets out Revenue's current view of the circumstances in which the minimum ownership requirements set out in section 94 will be satisfied. Revenue does not agree that the requirements are satisfied in any other circumstances, including where an individual has continuously beneficially held a shareholding in a 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 use of the phrase "comprised in the disposition" in section 94 is intended to facilitate a period where business property is held in a trust, such that there is a gap in time between when the disponent settles the business property on a trust (thus parting ways with his or her ownership of the business property) and when a gift or inheritance of the business property takes place. To facilitate such situations, the legislation is drafted in such a way that a period during which business property is held in a trust is taken into account when determining whether the minimum ownership requirements are satisfied. An example to explain the operation of the provision is set out below.

Example

- On 1 September 2010, Person A acquires shares in a trading company.
- On 1 September 2017 (date of disposition), Person A settles the shares on a trust which are to be held by the trustees for the benefit of Person B until the death of Person A, at which time Person B is to become entitled to the shares.
- On 1 June 2018 (date of inheritance), Person A dies and Person B becomes entitled to the shares.

¹ Where the disponent became entitled to the relevant business property on a death s/he is deemed to have owned it from the date of death (section 130).

The minimum ownership requirement is satisfied in the example because the shares were comprised in the disposition for a period of 9 months prior to the date of inheritance (1 September 2017 to 1 June 2018) and the deeming provision *“and any period immediately before the date of the disposition during which the property was continuously in the beneficial ownership of the disponent, or of the spouse or civil partner of the disponent, is deemed, for the purposes of this Chapter, to be a period or part of a period immediately before the date of the gift or inheritance during which it was continuously comprised in the disposition”* extends that period for a further 7 years to when Person A owned the shares (2010 to 2017).

If the deeming provision were not included in section 94, the minimum ownership requirement would not be satisfied in this example. This is because the shares would have been comprised in the disposition for only 9 months – the period prior to this when Person A held the shares would not be taken into account.

To conclude, Revenue cannot provide the clarification sought in relation to the minimum ownership requirements in section 94 CATCA 2003. Revenue’s interpretation of section 94 is as set out in the [Tax and Duty Manual \(TDM\) for Business Relief](#).