Joint Main TALC / TALC Direct and Capital Taxes Sub-Committee
Finance Bill 2024 Meeting

Combined list of issues raised by ITI, Law Society and CCAB-I for discussion at the joint Main TALC / TALC Direct Capital Taxes Sub-Committee meeting on 22nd October 2024

Finance Bill 2024 Section No.	Issue	Issue raised by
Capital Gains Tax Issues:		
Section 55 - Amendment to section 599 TCA 1997 'Disposals within family of business or farm'	The amendment relates to the CGT liability arising in respect of an individual aged 55 and over when transferring qualifying assets to a child where the value of such assets exceeds the €10 million lifetime limit. The CGT liability arising in such circumstances may be deferred by the individual making the transfer. Where the child to whom the qualifying assets are transferred disposes of the assets within 12 years of the transfer, the CGT liability deferred will crystalise. The liability will then be assessed and charged on the child. Where the child retains ownership of the qualifying assets for 12 years, the CGT liability deferred may be abated in full. In our view the requirement to retain the assets for a 12-year period is extremely onerous and does not take into account the fact that businesses and the assets they hold will inevitably evolve over such an extended. *Separate claim required for abatement of deferred tax* Subsection (4A)(e) provides that a child will only be entitled to an abatement of the deferred CGT if they make a claim in their tax return for the period in which the 12-year retention period expires. Paragraph (c) suggests that in the absence of such a claim, the deferred CGT would become due and payable once the retention period expires and we would be grateful for confirmation that this is the intention. In our view, this requirement is unduly burdensome and should be removed. It creates a risk that the child may be denied this valuable relief, to which they are otherwise fully entitled, due to an administrative oversight. This risk is amplified by the very significant passage of time between the events. To the extent that Revenue wish to ensure taxpayer compliance with the retention period requirement, this can be achieved through the existing system of taxpayer self-assessment, supported by Revenue compliance interventions as needed.	ITI

	Subsequent inter-generational transfers in retention period Subsection (4A)(d) provides that a disposal by a child of assets comprised in a relevant disposal during the retention period will result in the amounts previously deferred becoming due and payable. Is it the policy intention that the clawback would apply where that child disposes of the assets to their own children in circumstances where that second disposal would be relieved under section 599? In our view an exception to the clawback should apply in those circumstances in keeping with the intent of the relief to facilitate the inter-generational transfer of business/farming assets within a family. *Clawback of deferred amounts* As presently drafted, the length of the retention period will double where business assets worth over €10 million are transferred to a child. Given the very long retention period of 12 years, we believe the level of clawback should be tapered where the event occurs more than 6 years after the disposal giving rise to the relief (a similar approach is adopted in the section 477C(17) for the Help to Buy Scheme). Where a clawback arises as the assets are disposed of within the 12-year retention period, is the clawback confined to the gain arising on the value of the assets transferred which exceeded €10 million? In our view, where the assets have been retained for a 6-year period, if would be appropriate for any clawback to apply only to the value of assets exceeding €10 million. *CAT/CGT offset* Section 104 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003) makes provision for the offset of CGT paid on a disposal against a CAT liability arising on the same event. Is it intended to amend CATCA 2003 to take into account the amendments to section 599? We believe that the CAT refund provisions should be amended to ensure the fair operation of the CAT/CGT credit offset provisions in circumstances where there is a clawback of the deferred CGT outside the normal time limit for making tax refund claims.	
Section 55 - Amendment to section 599 TCA 1997 'Disposals within family	While CCAB-I welcomes the deferral of CGT the requirement for the child to make a further claim 12 years after the date of the relevant disposal seems contrary to aim for simplification of administrative requirements.	**CCAB-I**

of business or farm’	We would highlight the following with respect to the proposed amendments to s599 retirement relief included in section 55 of the Finance Bill: The provision as presently drafted suggests that a child will only be entitled to an abatement of the deferred CGT if they make a claim in their tax return for the period in which the 12-year retention period expires and that in the absence of such a claim, the deferred CGT becomes due and payable. This requirement risks a child being denied relief, to which they are otherwise fully entitled, due to administrative oversight. This requirement should be removed. The 12-year holding period is very long, and it will be important that this extended holding period does not impede the orderly development of family businesses. We believe a gradual tapering of the clawback in circumstances where a disposal occurs after 6 years would be appropriate in achieving this aim. Again, given the length of the 12-year retention period, the CAT refund provisions should be amended to permit claim of the CAT/CGT offset credit in circumstances where there is a clawback of the deferred capital gains tax outside the normal time limit for making CAT refund claims. To support the section’s policy intent of facilitating the inter-generational transfer of business and farming assets, an exception to the clawback should apply where a child disposes of the business / farming assets to their own children in circumstances where that second disposal would also be relieved under s599.	
Stamp Duty Issues:		
No issues raised		
Capital Acquisition Tax Issues:		
Section 98 – Amendment to section 46 CATCA 2003 ‘Delivery of Returns’	Section 98 of the Bill amends the reporting requirement for gifts in respect of certain interest-free loans between close family members contained in section 46(4A) CATCA 2003. Subsection (4A) requires a beneficiary to deliver a CAT return in respect of these loans where the total amount outstanding on the loans exceeds €335,000 in the reporting period. Section 99 of the Bill amends Part 1 of Schedule 2 of CATCA 2003 to increase the CAT Group Thresholds, with the Group A Threshold increasing from €335,000 to €400,000. As the loan amount in section 46(4A) was linked to the CAT Group A Threshold, practitioners would welcome clarification regarding whether it is intended to update section 46(4A) to refer to the new higher threshold amount of €400,000 from 1 January 2025 onwards?	**ITI**

Section 98 – Amendment to section 46 CATCA 2003 'Delivery of Returns'	CCAB-I is concerned that there will be further, and excessive, administrative burdens on taxpayers and their agents if the limit on the balance outstanding on the specified loans is not increased in line with the increase in the Group A threshold to €400,000.	**CCAB-I**
Section 100 – 'Further provisions relating to agricultural property'	CCAB-I is concerned about the impact of the new requirement for the disponer to meet the 'active farmer' test for six years prior to the disposition. Such a requirement will prevent a beneficiary that would otherwise qualify for agricultural relief from qualifying for the relief in circumstances where disponer dies within 6 years of having acquired the property themselves.	**CCAB-I**
Section 100 – 'Further provisions relating to agricultural property'	Introduction of a new section 89A to CATCA03 1. Date of application of the conditions S89A(2)(b) states that APR will arise only if for a period of not less than 6 years ending immediately prior to the date of the gift or inheritance, the disponer was beneficially entitled in possession to the agricultural property concerned and one of the conditions specified in subsection (5) was satisfied. A difficultly arises because of the requirement for the disponer to qualify in this manner in certain circumstances at the date of the inheritance. It would be more appropriate for the condition relating to the inheritance to apply as at the date of death of the disponer, not the date of the inheritance. Example 1 A farmer farms agricultural property his whole life and wishes to provide for his wife on his death but she is not interested or has not the physical capacity to take on the farm herself. She has the right to a legal right share over the estate however. The farmer, earmarking the land for his child who is a farmer in their own right, provides for his wife to receive a life interest in the land and for the land to then pass to the child on the death of their mother. The child assists the mother in farming the land for her during her life tenancy. In this case, the child will not qualify for APR as the disponer was not in possession of the land at the date of the inheritance (the date of death of the mother) and the conditions of subsection (5) regarding him being an active farmer, though applicable at the date of the farmer's death, were not applicable at the date of the death of the widow. Example 2 Same facts as above but instead of a life interest, to account for the widow's mental incapacity and need for control over the land to	**Law Society**

	care for her, a discretionary trust is set up for the land to pass into for the benefit of the widow. The relevant date of inheritance for any benefits from that trust are the date of appointment, so the qualifications will not arise. Solution Change the legislation to provide section 2(b) to say "for the period of not less than 6 years ending immediately prior to the date of the *gift or, in the case of an inheritance, the date of death of the disponer- …*" 2. Conditions applicable despite incapacity of farmer The legislation does not account for circumstances where a disponer must leave the farm to go to a nursing home or otherwise loses capacity to farm the land. If no EPA is in place, a Court order would be required to have a DMR (Decision Making Representative) appointed for the farmer simply to grant a qualifying lease for the relevant period. This is harsh and unwieldy. The issue had previously been considered in relation to the qualifications for Section 86 Dwelling house exemption where at section 86(3) there is a let out for these circumstances. Solution Extend the deeming provision in relation to the conditions for section 89A(5) to apply where the disponer is deemed to fulfil the conditions for a period during which he or she ceases to farm the land in consequence of his or her mental or physical infirmity.	
Income Tax, Corporation Tax Issues:		
Section 8 – Amendment to section 112B TCA 1997 'Granting of vouchers'	Section 8 of the Bill increases the annual limit for the Small Benefit Exemption from €1,000 to €1,500 and the number of non-cash benefits that an employer can give their employees from two to five benefits per year. The Bill also provides for a sunset clause such that the Small Benefit Exemption will cease for the 2030 tax year and subsequent years. We would be grateful for clarification regarding the policy rationale behind the insertion of a sunset clause into section 112B.	**ITI**
Section 8 – Amendment to section 112B TCA	CCAB-I is concerned that the proposed amendment introduces a sunset clause to the exemption where none previously existed and welcome Revenue's insight on the matter	**CCAB-I**

1997 'Granting of vouchers'		
Section 12 – Employer contributions to PRSAs and PEPPs	Section 12 of the Bill amends section 118(5) to specify 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. Finance Act 2022 amended section 118 to exempt employer contributions to a director's or employee's PRSA or PEPP from BIK. The abolition of BIK on employer contributions was intended to level the playing field with occupational pension schemes. It meant that PRSAs were a more viable alternative to one-member pension schemes, which had become unsustainable for many due to the increased compliance requirements imposed by the European Union (Occupational Pension Schemes) Regulations 2021. Practitioners would like to understand the policy rationale for the amendment to section 118(5). If it is the case that there were concerns regarding the level of employer contributions made to PRSAs in certain cases, in our view there are existing provisions in the tax code, such as Section 81 TCA 1997 and the provisions dealing with salary sacrifice arrangement, to address those concerns. We believe that this amendment will add further complication to the pensions landscape and does not align with the objective of simplification of pensions. It is inconsistent with the rules which apply for occupational pension schemes as it applies BIK to PRSA/PEPP contributions in excess of an employee's salary as opposed to allowing a spread over a number of years, similar to the position which exists for employer contributions to an occupational pension. In addition, employer contributions to an occupational scheme do not have a salary cap. The amendment which has been made is very restricting. Often owner/directors will take a small salary from their business as available cash is reinvested in the business. They may make irregular pension contributions where there is available cash flow in the business. As they approach retirement, they are more likely to make larger contributions towards their pension as they plan for their retirement. The	**ITI**

	ability for such individuals to make such contributions in later years has now been severely restricted meaning that in many cases PRSAs will no longer be feasible.	
Section 13 – Pensions (standard fund threshold)	Section 13 of the Bill provides for a number of changes to the operation of the Standard Fund Threshold (SFT), including a phased increase to the level of the SFT to €2.8 million by 2029 and then the higher of €2.8 million or an amount adjusted in line with the Earnings, Hours and Employment Costs Survey from 2030 onwards. Practitioners noted that as presently drafted, the interaction between the SFT increases and Paragraph 4 and 5 of Schedule 23B could result in inequitable and distortive outcomes for individuals that have benefit crystallisation events (BCEs) before these increases take effect. As the increases proposed in section 13 incorporate a catch-up element reflecting a multi-year period of non-indexation of the SFT, the application of the indexation mechanism provided for in Paragraph 5 of Schedule 23B risks prior BCEs being indexed far above the actual rate of inflation over the period between those prior events and the current BCE. Such a result would not have been envisaged when this mechanism was originally drafted, where the SFT was only indexed in line with inflation at that time. *Example:* *Jane retires a pension scheme of €1m in 2024 and another pension of €1.8m in 2029. As a result of the operation of the formula in Paragraph 5(2) of Schedule 23B, in determining the balance of the SFT available to be used in 2029, Jane will be deemed to have already used €1.4m of her available SFT (i.e., €2.8m/€2m (current cap in 2029/previous cap at point of previous BCE) = 1.4 x €1m = €1.4m). This means that the SFT balance available to be used in 2029 is €1.4m resulting in a chargeable excess of €400,000.* We do not believe that this outcome is intended. To address this position, Paragraph 5 could be amended to provide that any prior BCE events will be indexed to take account of the intervening increase in average wages, in a similar manner to the way in which the SFT will be inflated after 2030, under the provisions of Section 13 Finance Bill 2024.	**ITI**
Section 13 – Pensions (standard fund	Individuals with benefit crystallisation events (BCEs) occurring before the SFT increases proposed in the Finance Bill take effect could be denied much of the benefit of these increases	**CCAB-I**

threshold)	due to an unfair and artificial inflation of the value of their previous BCEs under existing SFT provisions. Because Section 13 incorporates SFT increases intended to act as a catch-up for an extended period of non-indexation of the threshold, the application of the indexation mechanism provided for in Paragraph 5 of Schedule 23B risks prior BCEs being indexed far above the actual rate of inflation over the period between those prior events and the current BCE. For example, the value of a BCE received in December 2025 will be indexed using a factor of 1.1 for the purposes of determining the amount of the SFT left for a BCE occurring in January 2026, despite these events only occurring a month or mere days apart. Such a result is plainly unfair and would not have been envisaged when this mechanism was originally drafted, where the SFT was only indexed in line with inflation at that time. To address this issue Paragraph 5 should be amended to provide that any prior BCE events will be indexed to take account of the intervening increase in average wages, in a similar manner to the way in which the SFT will be inflated after 2030.	
Section 23 – Amendment of section 822 TCA1997 'Split year residence'	Section 23 of the Bill amends section 822 TCA 1997 in relation to Split Year Residence. The Finance Bill amendment applies to individuals arriving or departing in 2025 and appears to Remove the requirement to supply an 'in-year' notification to avail of Split Year Residence, under section 822 TCA 1997. We understand that the amendment is to apply for the year of assessment 2026 and subsequent years and to first apply to cases where an individual arrives in or departs from the State on or after 1 January 2025. We would be grateful for confirmation of our understanding of the position. For example, where an individual departs from the State in 2025 and is non-resident in 2026, SYR will apply for 2025. The claim will simply be made through the filing of a tax return for the year of arrival/departure submitted after the year end. We note that while the Form 12 includes a field to include a Split Year Residence claim, a similar field is absent from the Form 11 and this omission should be addressed. Considering an 'in-year' notification will not be necessary going forward, we would like to clarify whether Revenue could adopt a pragmatic approach to relief claims where Revenue identify individual cases relating to earlier tax years where an	**ITI**

	in-year notification has not been made, due to an oversight by the taxpayer.	
Section 26 - Amendment of section 990 TCA 1997 – 'assessment of tax due'	The amendment provides that the four-year time limit shall commence at the end of the year following the year of assessment in which the employer return for an income tax month is made. This change to Section 990 would appear to treat the December payroll differently to that for January to November. It is unclear whether this is an unintended consequence. We note that this only becomes an issue in 2031.	**ITI**
Section 36 – Amendment of section 480 TCA 1997 'Residential premises rental income'	We note that the amendments deal with issue raised previously on the clawback of the relief. The amendment addresses the issue in cases of death. An issue remains with transfers between spouses and so the provision needs to be updated further so such transfers do not result in a withdrawal of relief. The policy rationale is clear that tax law does not generally seek to prejudice transfers between spouses.	**CCAB-I**
Section 37 – Amendment of Part 16 TCA 1997 'Relief for investment in corporate trades'	Practitioners would like to understand whether it is intended to amend the EII provisions to reflect the range of simplification measures which were discussed at the TALC Sub-Committee on Simplification of Business Reliefs for SMEs.	**ITI**