Minutes of Joint Meeting of Main TALC and the TALC Direct and Capital Taxes Sub-Committee

25 October 2023

Microsoft Teams conference call at 14.30

The purpose of the meeting was to discuss the measures announced in Finance (No.2) Bill 2023 (*As initiated)* on which queries had been raised in advance of the meeting.

Capital Taxes

Capital Gains Tax – Part 1, Chapter 6

Section 44 – Amendment of section 536 of Principal Act (capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases)
Section 44 amends section 536 of the TCA 1997. The purpose of the amendment is to confirm that the deferment opportunity provided for in section 536 of the TCA 1997 does not apply in the case of a disposal or deemed disposal to an authority which possesses compulsory purchase powers.

Practitioners queried what was the policy rationale for this change.

Revenue advised that Section 605 TCA 1997 provides for roll-over relief in respect of certain types of assets which have been disposed to an authority possessing compulsory purchase powers. Following the enactment of Finance Act 2003, relief under section 605 only applies to disposals made before 4 December 2002; disposals after this date cannot avail of roll-over relief under this section.

A policy decision was taken to amend section 536 so as to specifically provide that disposals to an authority possessing compulsory purchase powers are not within the scope of this relief. This is in line with the policy position to withdraw roll-over relief, including that provided for under section 605 TCA 1997, from 4 December 2002 onwards.

Section 45 – Amendment of section 597AA of Principal Act (revised entrepreneur relief)
Section 45 amends section 597AA of the TCA 1997 by inserting a new definition of 'holding company'.

Practitioners queried what was the policy intention of the introduction of the new definition and queried what is Revenues interpretation of the term 'wholly or mainly' in the context of the holding company.

Revenue advised that the amendment to the definition of "holding company" for the purposes of Revised Entrepreneur Relief is proposed to clarify the circumstances in which an individual may avail of the relief when disposing of shares in a holding company of a qualifying group.

While the policy intent underpinning this definition and the interpretation of same by Revenue in administering the relief have remained unchanged since the introduction of the relief in Finance Act 2015, it has been noted that conflicting interpretations have emerged in commentary in recent times, which prompted a review of the definition.

The policy objective of Revised Entrepreneur Relief is to support and encourage entrepreneurial activity, and to support the reinvestment of proceeds from successful businesses to new business ventures. While it is acknowledged that corporate groups are a common structure adopted by those undertaking entrepreneurial activities, the policy, which rewards the individual shareholder for undertaking such activities, requires that there be a significant level of control maintained by the individual over the activities undertaken through the group structure.

As such, and in light of the confusion which has arisen in commentary in recent times regarding the meaning of the definition of holding company, it is proposed to amend the definition to clarify that all subsidiaries of the holding company must be 51% subsidiaries to avail of the relief.

Practitioners noted that an individual needs to satisfy a 5% shareholding requirement for Entrepreneur Relief and queried the policy rationale to change the definition of a holding company. Revenue confirmed that the policy rationale was that as set out above, which was provided by the Department of Finance.

Section 47 – Amendment of section 599 of Principal Act (disposals within family business or farm)

Section 47 amends section 599 TCA 1997 by increasing the age at which the current threshold of €3 million applies from 66 to 70 and also introduces a limit of €10 million on the value of qualifying assets in respect of which relief is available.

Practitioners queried what was the policy rationale for this change and raised concerns that the cap does not recognise the illiquidity of small companies and consequently the measure is likely to disincentivise the lifetime transfer of family businesses. Practitioners highlighted that this change may mean businesses will not transfer from one generation to the next until death, at which point the viability of the business may have been hampered.

Revenue advised that the Commission on Taxation and Welfare recommended the introduction of a cap for all disposals to children that qualify for Retirement Relief, noting that from a fiscal sustainability and equity perspective, the Commission is not in favour of unlimited tax expenditures. On the basis of the data available the vast majority of disposals to children will remain eligible for retirement relief as provided for in section 599 TCA 1997. Revenue also noted the effective date of this amendment is 1 January 2025 which provides for a transition period.

Finally, practitioners noted the amended legislation considers the market value of the qualifying assets as opposed to the market value of the assets on which the relief is being claimed. Revenue noted that the proposed amendment mirrors the existing wording within section 599, however, requested further feedback from practitioners for consideration.

Section 48 – Amendment of section 604A of Principal Act (relief for certain disposals of land or buildings)
Section 48 amends section 604A TCA 1997 to clarify that relief is only available on property that was purchased for full market value or purchased from a relative for a least 75% of market value.

Practitioners queried how the proposed change can have retrospective effect and raised concerns that subsection 2 is problematic from a policy perspective as not only is it retrospective but it also seeks to be retroactive as it gives the amendments effect in relation to disposals that have already happened (i.e., disposals that occurred since 1 January 2018).

Revenue advised that the proposed amendments to section 604A TCA 1997 do not represent a change to the qualifying conditions for the relief. They instead affirm the policy intent underpinning the relief, which has been clear since the introduction of the relief in Finance Act 2012.

This policy intent has been consistently reflected in the Revenue guidance issued in respect of the relief, and on the occasions where clarity has been sought in respect of the qualifying conditions for the relief, the requirement that the property be purchased for actual consideration has been consistently confirmed.

As such, the amendment confirms the basis on which the relief has consistently been administered and so the application of the amendment to all disposals in respect of which relief under section 604A is available is appropriate.

Practitioners queried whether Revenue will be undertaking a compliance project. Revenue noted the existing administration has been in line with the policy intent so it is unlikely there is a need for such a programme.

Practitioners noted such a retrospective measure has never been included in a Finance Bill before. Revenue do not view the amendment as a change in the application of the legislation but noted the differing views and agreed to raise the matter with the Department of Finance for consideration.

Section 88 – Residential zoned land tax
Section 88 makes a number of changes to Part 22A of the TCA 1997 which provides for Residential Zoned Land Tax [RZLT].

Practitioners queried how Revenue sees variation of maps and extension or removal of lists operating in practice? Practitioners also queried how, in relation to the phasing of a development, Revenue foresees this amendment operating in practice?

Revenue advised that it is intended to publish comprehensive guidance on the updates being made to RZLT.

The mapping process will mirror the initial mapping process which took place 2022/23. Local authorities are expected to publish initial maps for 2025 on or before the 1st February 2024. The deadline for landowners to make a submission to their local authority regarding inclusion / exclusion of their land(s) from these maps will be 1 April 2024. The local authority will issue written determinations in respect of these submissions by 1 July 2024. A landowner that is dissatisfied with the decision of a local authority can appeal the decision by the 1 August 2024. Landowners also have an opportunity to seek a change in the zoning of land included on the 1 February 2024 map – these requests must be made to the relevant local authority by 31 May 2024.

The final updated map for 2025 will be published by local authorities by 31 January 2025.

With regards the phasing of development, Revenue advised that the proposed change in the current Bill to the relevant criteria for the tax means that if the development or local area plan for the relevant local authority identifies land which is the subject of written and mapped objectives for phased development, such that it is unlikely that permission may be granted to develop such land, such land will fall outside the scope of the tax until it available for development. At that point, subject to the land in question meeting all elements of the relevant criteria, it will fall within the scope of the tax and be included on maps prepared and published by local authorities for the purpose of RZLT.

Not in Finance (No.2) Bill 2023 *As initiated*

Angel Investor Relief:
On Budget Day, the Minister announced a new Angel Investor Relief. Practitioners queried why the measure was not included in the Finance (No.2) Bill 2023 *As initiated.*

Revenue advised that that measure was not included Finance (No.2) Bill 2023 *As initiated* due to time constraints and that the measure will be introduced in Committee Stage.

Stamp Duties – Part 4

Section 70 – Further levy on certain financial institutions
Section 70 introduces a new section 126AB in the SDCA 1999 to provide for the introduction of a revised form of bank levy.

Practitioners queried whether the definition of "assessable amount" in the new section 126AB should refer to relevant deposits held with a bank, rather than deposits held by a bank.

Revenue said that they would refer the question to the Department of Finance.

Section 71 – Amendment of chapter 2 of Part 6 of Principal Act (special provisions relating to dematerialised securities)
Section 71 amends Chapter 2 of Part 6 of the SDCA 1999 to provide for a stamp duty exemption on certain transfers of Irish shares in the US or Canada. The amendment will put a Revenue administrative practice on a statutory footing.

Practitioners queried why the proposed change was not drafted as a general exemption from Irish stamp duty in respect of transfers of book-entry interests in US listed shares as is the case for the section 90 SDCA 1999 exemption for American Depositary Receipts.

Revenue noted that the exemption would apply to a transfer of shares where the shares are listed on a recognised stock exchange located in the US or Canada and the trade is settled through a securities settlement system located in the US or Canada. This is aligned with the Revenue administrative practice that is currently applied in relation to the application of the section 90 SDCA 1999 exemption for transfers of American Depository Receipts to such transactions.

Revenue confirmed that the exemption is provided for in the form of an exclusion from the charge to stamp duty that would otherwise arise by virtue of section 78B SDCA 1999. The provision as drafted achieves the policy intent, which is to ensure that such transactions are not liable to stamp duty.

Practitioners also queried if Revenue would continue to provide confirmation, where certain conditions are met, that transfers in and out of Depository Trust Company would be subject to Irish Stamp Duty after the enactment of section 71 of Finance (No.2) Bill 2023.

Revenue said that following the enactment of the Bill they would no longer be issuing confirmations in respect of transfers in and out of the Depository Trust Company unless there is a specific doubt as to the stamp duty treatment of the transactions. Revenue also advised that it was intended that the administrative practice in relation to the application of the section 90 SDCA 1999 exemption for transfers of American Depository Receipts to certain share transfers would continue to be applied until the enactment of the Bill.

Capital Acquisitions Tax – Part 5

Section 77 – Amendment of section 46 of Principal Act (delivery of returns)
Section 77 amends section 46 of CATCA 2003 to provide for the mandatory reporting in CAT returns of gifts in relation to interest-free loans received from close relatives, where the outstanding balance on all such loans exceeds €335,000 at any one time during the year.

Practitioners queried the rationale for introducing this provision.

Revenue advised that the information obtained should assist Revenue in assessing whether the value of the interest-free element of gifts in relation to interest-free loans has been self-assessed correctly for CAT purposes.

Practitioners queried if the provision would apply to intra-group loans.

Revenue confirmed that this would be possible, as the legislation provides for certain companies to be 'looked through' to their beneficials owners to determine whether a gift in relation to an interest-free loan has been received from a close relative. Revenue confirmed examples will be provided in the guidance and noted the starting position is section 40 CATCA 2003.

In response to a query from practitioners as to the frequency of the reporting requirement, Revenue noted the section could potentially impose an annual reporting obligation.

Practitioners requested confirmation that preferential loans that deem interest for income tax purposes would not come within this section. Revenue agreed to consider this question further but understand such loans would not be within the charge to income tax and CAT.

Direct Taxes

Income Tax – Part 1, Chapter 3

Section 12 – Taxation of rights to acquire shares or other assets

Section 12 provides that the taxation of a gain that is realised from the exercise, assignment or release of a right to acquire shares, which is currently taxed under the self-assessment system, will be moved to the Pay As You Earn [PAYE] system in respect of gains realised after the 1st January 2024.

Practitioners expressed their concerns regarding at the very short lead in time for this new obligation being imposed on employers given the new reporting obligation for employers, Enhanced Reporting Requirements (ERR), will come into force from the 1st January 2024 and queried if there could be a deferral for this new obligation for employers. Practitioners also raised concerns with how employers will implement this change as employers will need to be able to fund the tax liability collected through the PAYE system and queried if a current Revenue practice in respect of Restricted Stock Units (RSU's) which allows deferral of up to 60 days on the collection, by the employer, of tax, PRSI and USC if an employee wishes to dispose of some / all of their shares to fund the tax, USC and PRSI due will apply to share options.

Revenue advised that they had undertaken a thorough review of share options and a number of discrepancies had been found and legislation was required to address these discrepancies. Revenue advised that they are of the view that the proposed legislation does not unduly impact employers that are operating share schemes. Revenue also advised that the 60 day deferral period that applies to RSU's will not apply to share options. In this regard, practitioners expressed the view that there are not fixed patterns of share option exercises which they believe are frequently done on an ad-hoc basis and can depend on liquidity events. Revenue advised that the data it holds suggests that for about half of employers there are only 2 events a year.

Practitioners raised concerns with the current wording in section 985A(4B) TCA 1997, which was introduced in Finance Act 2012 following the introduction of PAYE on share awards. Practitioners expressed the view that the wording of the legislation is not sufficiently broad to capture section 128 TCA 1997 rights insofar as it is limited to instances where the *"employer pays emoluments....in the form of shares..."*. This is because, section 128 liabilities are triggered by the employee exercising **a right** to acquire shares. Practitioners recommended that section 985A (4B) should also be amended to give a statutory entitlement to employers to sell shares to cover all situations where a section 128 gain arises and is required to be subject to PAYE. Revenue understands that employers can operate through the PAYE mechanism and sell to cover. Revenue confirmed the issue of an employee disposing of shares to meet their tax, PRSI and USC liabilities will be reviewed and may be covered in guidance.

Practitioners also noted that employers will need to consider the additional complications in the case of mobile employees and that the gains on exercising share options may be taxable in multiple jurisdictions. Revenue do not consider there is an issue regarding assignees that cannot be managed and will address this in guidance.

It was noted that the relevant PRSI amendment will be contained in the Social Welfare (Miscellaneous Provisions) Bill 2023.

Section 21 – Amendment of Part 15 of Principal Act (personal allowances and reliefs, etc)
Section 21 introduces a new section 480C into the TCA 1997 and introduces income tax relief for individual landlords of residential property.

Practitioners expressed the opinion that clawback provisions contained in the new section 480C(5) seem harsh and may catch scenarios where there is a breakdown in relationship between co-owners, where there is a death, and other such events. Revenue confirmed the issue regarding co-owners on death has been raised with the Department of Finance.

Practitioners expressed concern that the clawback calculation does not appear to give credit for tax previously paid at the standard rate of tax. Revenue confirmed intention is not for double taxation but would review the wording of the clawback section.

Practitioners queried, in a scenario where two landlords own a property equally, with one of them also owning a separate rental residential property in their own right, will one landlord will be entitled to a tax credit of €600 in 2023 with the other landlord limited to a tax credit of €300. Practitioners also queried how the clawback provisions will apply in practice.

Revenue advised that the new credit applies to the landlord and not the residential property or properties that are being let and reflect the policy objective of the Department of Finance. In the scenario set out, the landlord that co owns one residential property will receive a credit of up to €300 while the landlord that has other residential properties and also co owns one property will receive a credit of up to €600.

Any relief granted will be clawed back if, within 4 years of the start of the first year in which the relief was claimed, any of the qualifying premises are disposed of or are otherwise removed from the property market. For example, if a landlord has three let residential properties in 2024 and this number is reduced to two in 2025 then the relief granted in 2024 will be clawed back and no relief will be available for 2025 or subsequent years.

Income Tax, Corporation Tax and Capital Gains Tax – Part 1, Chapter 4

Section 31 – Amendment of Part 16 of Principal Act (relief for investments in corporate trades)
Section 31 amends Part 16 of the TCA to reflect the revision of the General Block Exemption Regulation [GBER] rules.

Section 31 also provides for amendments to provide the minimum holding period required to obtain relief under the EII will be four years for all investments made from 1 January 2024. In addition, the limit on the amount an investor can claim relief on for such investments will be increased to €500,000 a year.

With regards the Section 494, which is being amended to provide that shares, other than where relief for Start-Up Relief for Entrepreneurs (SURE) is claimed, may be redeemable. The provision for preferential rights has been deleted from that section as the revised GBER requires that eligible risk finance investments must be full risk ordinary shares. Practitioners noted it would appear from the amendment to section 495 that there is an exception for shares issued to the managers of a Qualifying Investment Fund and practitioners queried if this is correct.

Revenue confirmed that this is the case.

In section 493, the definition of ‘expansion risk finance investment’ is being amended to refer to funding a ‘new economic activity’ instead of ‘to fund entering a new product on the market or entering a new geographic market’. Practitioners queried if guidance would be published on how this new term will be interpreted from an Irish and EU policy perspective.

Revenue advised that a query has been submitted to the Commission with regard to how new economic activity should be interpreted. The interpretation will be included in updated guidance in due course. The only guidance from the Commission to date is that the change in terminology is intended to be less technical.

Section 496 is being amended to provide that follow-on risk finance investment in eligible undertakings after either initial or expansion risk finance must be “provided for” in the business plan rather than ”foreseen” in the business plan. Practitioners queried if guidance will be published on how this new term will be interpreted from an Irish and EU policy perspective and the distinction between “provided for” and “foreseen” for follow on business plans.

Revenue advised that it is not envisaged that any changes or further additions to the requirements in relation to business plans as set out in the TDM will be required – the change in terminology is seen as a clarification within GBER and a confirmation of the position as Revenue has interpreted it to date.

The section 31 amendments will have effect from 1 January 2024. Relief for investment through a fund is given when the investor provides capital to the fund. Practitioners queried which rules apply and what rights can or must attach to shares issued to a fund after 1 January 2024 but in respect of which relief is being given in 2023 for monies received from investors in 2023.

Revenue advised that the relief is changing after the 1st January 2024 and the relief is that which arises when the fund makes an investment in a qualifying company. Accordingly, the new rules will apply to investments made after the 1st January 2024 and the old rules will no longer apply. Revenue has no discretion to amend this.

Practitioners raised concerns regarding the proposed amendments to section 502 and the impact that this may have on EII relief following an early round of Start-up Capital Incentive (SCI) from friends and family given that follow on and expansion relief is only 20%.

Revenue advised that where the above has occurred i.e. the initial risk finance investment was raised under SCI, it is a consequence of the required amendments that any rounds of follow on investment or expansion risk finance investment attract the 20% rate of relief and any change would be a policy issue for the Department of Finance.

Practitioners raised concerns regarding the existing section 493 TCA definition of “initial risk finance investment”, in particular that as the definition refers to “the first issue of eligible shares”, it appears that 35% relief will be practically impossible to achieve for initial risk finance. This is on the basis that in strictness, founder’s shares /employee shares/ seed rounds would be a first issue and any subsequent issue would not qualify as initial risk finance. Practitioners queried if this is the intention of the legislation and if so, it would seem contrary to the intention of GBER and an amendment is required to section 493.

Revenue advised that there is no change to the definition of initial risk finance investment in this year’s Finance Bill and in that regard the scheme will continue to operate as it has done to date.

If there are any concerns in a specific case as to whether initial risk finance has been raised, a query can be submitted via the Revenue Technical Service.

The employment investment incentive relates to the raising of risk finance investment and the definitions of eligible shares and initial risk finance investment are to be read in the context of raising of risk finance investment.

Revenue noted the majority of the Finance Bill amendments were to transpose the revised GBER. The distinction between investment in a Designated Investment Fund and a Qualifying Investment Fund stems from the investments being direct or indirect investments and certain consequences flow from that under the revised GBER. In respect of a nominee structures, Revenue noted that it would be necessary to consider the structure in place to determine if it is a Designated Investment Fund.

Revenue noted that the Minister for Finance, when announcing the section 31 changes to EII, stated that there would be a further review of EII in early 2024 to focus on the further simplification of the EII scheme, taking into account EU State Aid rules in the form of the EU General Block Exemption Regulation.

Section 33 – Amendment of Chapter 2 of Part 29 of Principal Act (scientific and certain other research)
Section 33 makes a number of changes to the Research and Development [R&D] tax credit regime.

Practitioners welcomed the increase of the R&D credit from 25% to 30% and the increase in the first-year payment threshold to €50,000.

Practitioners queried what was the rationale for the introduction of the 'pre-notification requirement', which will apply to companies intending to claim the R&D Tax Credit for the first time, or companies that have not made a claim for the R&D tax credit in the previous three years. Practitioners also expressed concerns that the introduction of a pre-notification requirement could act as a deterrent rather than encouraging SME's to avail of the R&D Tax Credit and that it will further add to the administration requirements and costs associated with applying for the R&D Tax Credit.

Practitioners noted this is an increase in complexity to filing a claim for R&D tax credit and that the pre-notification requirement would seem counter-intuitive to the policy of ensuring that reliefs for SME's are more accessible. Revenue advised that the introduction of the pre-filing notification is not intended to be an onerous process or increase administration such that it would be a deterrent for a company to make an R&D tax credit claim. A company will be required to submit a pre-filing notification that it is making a R&D claim for the first time a claim is made or for a first claim in three years. Revenue expects this to facilitate resource allocation for R&D claims. Revenue noted the pre-notification requirement is also seen as a safeguarding measure for claimants and Revenue and will help to ensure claimants have proper documentation in place (in line with existing requirements in the legislation to have proper documentation in place).

Practitioners also queried why the introduction of this measure was not flagged to the TALC R&D subgroup in advance. Revenue advised that as the TALC R&D subgroup is a discussion group to raise R&D issues and not a policy forum it would not have been appropriate to flag Finance (No.2) Bill 2023 R&D changes in advance.

Section 35 – Outbound payments and defensive measures
Section 35 introduces new sections 817U, 817V, 817W, 817X, 817Y and 817Z into the TCA 1997 to apply new measures to outbound interest, royalties and dividends made to countries that appear on the EU list of non-cooperative jurisdictions.

Practitioners raised a number of issues and queried if Revenue would be preparing detailed guidance on the following in particular

> How will payments to Singapore and Hong Kong be treated? Would a similar approach to ILR and Anti-Hybrids be taken,
>
> Guidance on "definite influence" and "corresponding amount".

Revenue advised that detailed guidance would be provided with relevant examples provided. Revenue confirmed that territories with territorial and remittance-based regime would not be considered as zero tax territories solely on the basis of applying such regimes.

Practitioners queried the scope of the anti-avoidance provisions in section 817V(5), section 817W(4) and 817X(3). As the proposed measures are intended to disincentivise outbound payments to specified territories, presumably it is not the intention that the anti-avoidance provisions would apply where a group rearranges its affairs to ensure that payments of interest, royalties or distributions are not made to specified territories, however, practitioners would welcome clarity on this point.

Revenue advised that these are 3 targeted anti-avoidance rules and these apply where an arrangement or part of an arrangement is entered into where the main purpose is the avoidance of the application of the defensive measures to a payment that is directly or indirectly made to an associated entity in a specified territory. The anti-avoidance measure will not apply where the payment is no longer made directly or indirectly to an associated entity in a specified territory. Revenue advised that guidance would be provided with relevant examples.

Practitioners queried if Global Intangible Low-Taxed Income (GILTI) can be regarded as a "foreign company charge" as defined in section 817U(1).

Revenue confirmed that GILTI would be considered to be a "foreign company charge" for these purposes.

Practitioners queried the interaction of the participation exemption and the outbound payments provisions. For example, practitioners understand that a dividend paid to a jurisdiction, such as the Netherlands, should not be within the scope of the outbound payments provisions because, while the dividend is not taxed due to the participation exemption, the Netherlands is not a "nil tax" or "exempt tax" territory.

Revenue confirmed that a territory that applies a participation exemption but generally subjects entities to tax at a rate of greater than zero per cent on income, profits and gains would not be considered to be a zero-tax territory. Therefore, a jurisdiction such as the Netherlands which applies a participation exemption but generally subjects entities to tax at a rate of greater than zero percent on income, profits and gains, is not within scope as it is not a zero tax or no tax territory.

Practitioners would welcome clarity regarding the provision on making a distribution in section 817X(1)(c). If a dividend is paid by an Irish company, from profits which have been sourced from profits earned by subsidiaries and which have suffered foreign tax at a rate greater than nil in the subsidiaries, this should mean that the dividend paid by the Irish company is paid out of income, profits or gains which have been chargeable indirectly to foreign tax.

Revenue confirmed that in this fact pattern the dividend would be considered to paid out of income, profits or gains which have been chargeable indirectly to foreign tax.

Practitioners queried whether section 817V(7) could apply to a payment through multiple layers of entities located in specified territories. Revenue confirmed that this was not provided for in the legislation.

Practitioners queried whether section 817U(6) could apply to a payment through multiple layers of transparent entities. Revenue confirmed that this was provided for in the legislation where the necessary requirements were met.

Practitioners queried the reference in section 817W(1)(b) to a relevant payment of a royalty being an annual payment and queried if this is deductible under section 81. Revenue confirmed that a relevant payment of a royalty to which the defensive measures apply is considered to be an annual payment for the purposes of section 238(2) TCA 1997 only and not for any other purpose.

Practitioners also queried how the WHT amendments for interest would interact with preliminary tax obligations on a real time basis given that cognisance would need to be taken of payments of 'corresponding amounts' under s.817V(7). Revenue advised that this likely would be subject to self-assessment at the time of payment but the matter would be addressed in guidance.

Corporation Tax – Part 1 Chapter 5

Section 37 – Taxation of Leases
Section 37 provides for a number of amendments to section 76D, 299 and 403 of the TCA 1997 in relation to the taxation of leases.

Practitioners raised a number of concerns regarding the amendments to section 76D and queried the rationale behind the amendments to section 76D which go further than expected from discussions at the TALC Leasing subgroup.

Revenue advised that the amends made to section 76D are not a material change and do not deviate materially from the accounting treatment. The amendments to section 76D will broadly align with the general computational rules currently applicable to all operating leases under FRS 102, as well as the computational rules for operating lessors under IFRS.

Practitioners raised a number of concerns regarding the amendments to section 299 and queried the policy intention behind the amendments to section 299 as they also go further than expected.

Revenue advised that in certain scenarios a lease can bear the economic hallmarks of a financing transaction. The amendments to section 299 will allow leases that bear such hallmarks to be taxed as if they were financing transactions, subject to certain avoidance criteria being met. Where a lessor is taxed under section 299 rules, they will be taxed on the effective annual financing profit arising from the lease rather than their rental profit .

Practitioners queried if the changes being introduced by section 37 would be subject to transitional provisions and if so if the transitional measures will be included at Committee-stage?

Revenue advised that it is not intended to introduce transitional measures at Committee Stage.

Practitioners queried whether guidance will issue clarifying the treatment of gains on the sale of leased assets and whether such disposals to be treated as related to a trade of leasing in some circumstances?

Revenue advised that detailed guidance will be prepared and examples included as necessary.

Practitioners queried the treatment of Case IV lessors. This will be followed up with Revenue directly.

Section 38 – Taxation of certain qualifying finance companies
Section 38 introduces a new section 76E into the TCA. The new section 76E provides for interest deductibility for qualifying finance company once certain criteria is met.

The definition of “qualifying financing company” includes a reference to ownership of 75% or more. Practitioners queried why the percentage was set at 75%.

Revenue advised that the new section 76E was introduced to address a specific pinch point for a specific cohort of capital market transactions that was identified as part review of interest deductibility. The legislation may be changed later to cater for non 75% companies.

Practitioners queried why the new measures apply to Irish and EU subsidiaries only. Has Revenue considered the competitive disadvantage this may create.

Revenue advised that it was a policy decision not to include treaty countries in the new section 76E and requested further written submissions on specific structures that may be impacted for consideration with the Department of Finance.

Practitioners queried why the new section 76E TCA 1997 is restricted to third-party debt and no deduction applies for interest paid on foot of related party debt. Where a group is owned by a bank, a group company is most unlikely to borrow from a third party and therefore would not be able to benefit from the interest deduction under section 76E. The rationale for excluding such related party debt is unclear given debt capacity rules must be satisfied and transfer pricing rules will apply to any interest payments.

Revenue advised that the Minister for Finance has committed to engaging with stakeholders regarding the possible simplification of the current interest deductibility provisions set out in the TCA and that issue would be considered as part of the wider review of interest deductibility.

Practitioners noted there is no carve-out from the definition of ‘external loan’ to address the common scenario where a third-party lender will take a charge over the shares of the borrowing company. In those circumstances, as currently drafted, practitioners noted it would appear that it may not be possible to satisfy the definition of ‘external loan’ as the third-party lender could have the ability to control the borrowing company in a default scenario. Revenue noted the meaning of control in section 432 is a longstanding provision and this is not a new issue but that this is being reviewed internally. Revenue requested practitioners to review the point to see whether this has been considered before in the context of section 432. Revenue noted that the guidance on QFC’s will not cover this point, however, Revenue confirmed that the new section is not designed to deny relief in the scenario outlined by practitioners.

Practitioners proposed an amendment to definition of 'qualifying subsidiary' such that the "direct ownership of 75 per cent" requirement is changed to the section 9 "75 per cent subsidiary" definition". Revenue noted there was no time to consider this before Committee Stage and requested further submissions on this point to discuss this matter with the Department of Finance.

Section 42 – Amendment of Section 835YA of Principal Act (non-cooperative jurisdictions)
Section 42 amends section 835YA to take account of changes made in the EU list of non-cooperative jurisdictions.

Practitioners queried if the amendment should reference the most recent list of the 17th October 2023.

Revenue advised that Finance (No.2) Bill 2023 *As initiated* was prepared in advance of the publication of the new list on the 17th October 2023 and that a reference to the list that was published on the 17th October 2023 will be introduced at Report Stage.*

*Subsequently done

Not in Finance (No.2) Bill 2023 *As initiated*

Land Leasing Income Tax Relief:
On Budget Day, the Minister announced an amendment to the Land Leasing Income Tax Relief. Practitioners queried why the measure was not included in the Finance (No.2) Bill 2023 *As initiated.*

Revenue advised that that measure was not included Finance (No.2) Bill 2023 *As initiated* due to time constraints and that the measure will be introduced in Committee Stage.

Section 25 - Amendment of section 1041 of Principal Act (rents payable to non-residents)
Practitioners queried whether the reference in the updated subsection (1B)(b)(ii) to a payment made "to" should be to a payment made "by". Revenue will consider.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Tom James (Chair) Jeanette Doonan Therese Bourke Brian Boyle Mary Breen Dave Brennan (Secretary) Alan Carey Karen Drake Aine Hollingsworth Sinead McNamara Keith Noonan Jacqueline O'Callaghan John Quigley Eleanor Smiley Liam Smith Barbara Ní Neachtain Mairéad McGuinness	David Fennell Anne Gunnell Laura Lynch Cillein Barry Tom Maguire Pat Mahon Fiona Carney Brendan Murphy Clare McGuinness Stephen Ruane Margaret Lynch Lorraine Sheegar	Maud Clear Norah Collender Paul Dillon Enda Faughnan Ken Garvey Brian Purcell Peter Vale	Caroline Devlin Aidan Fahy Carl Grenville Aileen Keogan David Lawless James Somerville