Joint Main TALC / TALC Direct and Capital Taxes Sub-Committee
Finance (No.2) Bill 2023 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 25 October 2023

Finance Bill Section No.	Issue	Issue raised by
Capital Gains Tax Issues:		
Section 44 – Amendment of section 536 'capital sums'	Please clarify the policy rationale for such a change.	**Law Society**
Section 44 – Amendment of section 536 'capital sums'	Section 44 of the Bill provides that the deferment of CGT on the receipt of compensation or insurance money (under section 536 TCA 1997) is denied if the disposal was pursuant to a CPO. We would like to understand the policy rationale for this change.	**ITI**
Section 45 – Amendment of section 599 'revised entrepreneur relief'	The amendment to the definition to holding company in section 597AA will make Revised Entrepreneur Relief more restricted. Practitioners would like to understand the rationale for the change.	**ITI**
Section 45 – Amendment of section 599 'revised entrepreneur relief'	Practitioners are not sure what this amendment will achieve. The issue relating to non-trading subsidiaries preventing a claim for relief may still arise. Is the intention to ensure relief should be available where there is a non-trading subsidiary? What is Revenue's interpretation of "wholly or mainly" in this context?	**CCAB-I**
Section 47 – Amendment of section 599 'disposals within family business or farm'	As regards the proposed lifetime €10m cap – please clarify the policy rationale behind this change. Such a change, if implemented, will result in valuable family businesses no longer being passed on by way of gift, and instead will only be passed on upon death.	**Law Society**
Section 47 – Amendment of section 599 'disposals within family business or farm'	Section 47 of the Bill amends section 599 and increases the upper age limit from 65 years to 69 years. It also applies a new cap of €10 million to claims for retirement relief where the individual disposing of the assets to a child is aged from 55 to 69.	**ITI**

	It would be helpful to understand the policy rationale for the €10 million cap. Our members have expressed 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.	
Section 47 – Amendment of section 599 'disposals within family business or farm'	Section 599 now includes a limitation on relief of €10,000,000. What is the policy rationale for this change? There is a concern among practitioners that this could impede the succession of family businesses.	**CCAB-I**
Section 48 – Amendment of section 604A 'relief for certain disposals of land or buildings'	Please clarify how the proposed change can have retrospective effect? We consider that legislation that is potentially retrospective may raise legal and constitutional issues.	**Law Society**
Section 48 – Amendment of section 604A 'relief for certain disposals of land or buildings'	The proposed amendments in subsection 1 seek to amend the entry criteria to a relief which is no longer capable of being entered into given that the window for entry to the relief closed on 31 December 2014. Usually, entry requirements to a relief are amended on a go-forward basis to provide certainty to taxpayers that where criteria are met then relief will be afforded. In our view it is unusual to make such amendments retrospectively in relation to entry criteria to a relief. Our members have raised concerns that subsection 2 is even more 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). Although the proposed amendments to section 604A may have relatively limited application, an amendment that seeks to have effect in such a retroactive manner to a relief is a very concerning development. If the changes proposed by subsection 1 proceed, in our view, it would be important that such changes do not apply to disposals made prior to 19 October 2023 (i.e. prior to the publication of the Finance Bill date).	**ITI**

Section 48 – Amendment of section 604A 'relief for certain disposals of land or buildings'	Why has the word "acquisition" been substituted for "purchase"? Given the general presumption against retrospective legislation, why has an effective date of 1 January 2018 been applied? What particular nuisance has Revenue identified such that these amendments are required?	**CCAB-I**
Section 88 – 'Residential zoned land tax'	Regarding the variation of maps and extension/removal of lists, can Revenue explain how it foresees this operating in practice? In relation to the phasing of development, can Revenue explain how it foresees this amendment operating in practice?	**CCAB-I**
Not in Bill *As Initiated:* **Angel Investor Relief**	On Budget Day, the Minister announced a new Angel Investor Relief . The measure was not included in the Finance Bill (as initiated) and practitioners would like to understand the reason for the delay.	**ITI**
Stamp Duty Issues:		
Section 71 – Amendment of Chapter 2 of Part 6 'special provisions relating to dematerialised securities'	Includes a new section 78B(4) SDCA. Based on the Explanatory Memo, we understand that this is designed to put Revenue's administrative practice with respect to US listed shares held through DTC on a statutory footing (i.e., transfers of book-entry interests in US listed shares should not be subject to Irish stamp duty). In this context, we have a number of comments / queries in respect of the proposed amendment, as follows: (i) The proposed change is not drafted as a general exemption from Irish stamp duty in respect of transfers of book-entry interests in US listed shares (i.e., as is the case for section 90 SDCA exempting American Depositary Receipts). Instead, the new section 78B(4) SDCA is situated within Chapter 2 of Part 6 SDCA which imposes a *deemed* charge to Irish stamp duty in respect of transfer orders effecting electronic transfers of shares. Consequently, while section 71 of the Finance Bill provides that transfers of US listed shares through DTC will not be caught by the deeming provisions in Chapter 2 of Part 6 SDCA, it does not provide a general exemption from Irish stamp duty in respect of such transfers.	**Law Society**

	Can Revenue provide further detail on why this approach (i.e., as opposed to an extension of section 90 SDCA) was selected? Does Revenue envisage whether there could be any form of other instruments of transfer related to transfers of book-entry interest in shares listed in the US which may fall within the scope of Irish stamp duty? (ii) In addition to confirming that Irish stamp duty should not apply on the transfer of book-entry interests in US listed shares through DTC, to date Revenue generally provided a confirmation that transfers into and out of DTC would not be subject to Irish stamp duty provided that; (a) there was no change in beneficial ownership as a result of the transfer; and (b) the transfer was not in contemplation of sale to a third party. Does Revenue intend to continue to provide the additional confirmation in respect of transfers into and out of DTC after the enactment of section 71 of the Finance Bill? (iii) For transactions that are due to complete next year will Revenue continue to provide the standard confirmation that transfers of book-entry interests in US listed shares through DTC should not be subject to Irish stamp duty where applications are made before the Finance Bill is enacted? In light of the timeline to obtain a confirmation, it would be useful to understand whether Revenue's practice in issuing such confirmations will immediately change on the entry into force of the proposed section 78B(4) SDCA?	
Capital Acquisition Tax Issues:		
Section 77 – Amendment of section 46 'delivery of returns'	interest free loans – it should be clarified that the provision does not apply in respect of intra-group loans (where there is no disposition); as drafted, such loans are likely caught by this draft provision. Also the insertion of the new subsection (4A)(c)(ii) where there is a category of " in trust and have no ascertainable beneficial owners" Why is there a new category of trust where there is already a category of "discretionary trust" which has an established meaning in catca03 (first part of that definition).	**Law Society**

	"disponer who made the disposition under which the shares and entitlements are so held on trust". Why is there a new category of disponer where there is already a category of "settlor" which has an established meaning.	
Section 77 – Amendment of section 46 'delivery of returns'	The Bill amends section 46 CATCA 2033 to introduce a mandatory reporting requirement in relation to interest-free 'specified loans'. Practitioners would like to understand the rationale for introducing this provision.	**ITI**
Income Tax, Corporation Tax Issues:		
Section 12 - 'Taxation of rights to acquire shares or assets'	It should be noted that there is a very short lead-in time for this substantive and material change, which will impose additional obligations on employers, at a time when employers are already grappling with the introduction of EER (enhanced employer reporting) and we would ask that a longer lead-in period is provided for.	**Law Society**
Section 12 - 'Taxation of rights to acquire shares or assets'	Employers will be responsible for accounting for the income tax, USC and employee PRSI as part of the payroll process in respect of gains arising on the exercise, assignment or release of a right to acquire shares (i.e. share options) or other assets from 1 January 2024. Practitioners have expressed concerns regarding the very short lead in time for this new compliance obligation for employers, in particular, given new reporting obligation for employers i.e., the employers Enhanced Reporting Requirements (ERR), which will also apply from 1 January 2024. Practitioners have also raised concerns with how employers will implement this change as the employees will need to be able to fund the tax liability collected through the PAYE system. The application of the provisions where the individual concerned is no longer an employee must be considered. Employers will also 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.	**ITI**
Section 12 - 'Taxation of rights to acquire shares or assets'	The effective date for these changes is 1 January 2024. Given that there has been no prior consultation with stakeholders, the timeline to implementation is too short and does not allow employers consider how to properly implement the appropriate systems in their payroll processes.	**CCAB-I**

	In the context of legislation governing RSUs, there are provisions which enable an employer to sell some portion of the assets (shares) to cover taxes due. There is no similar provision available in the proposed changes to share options. The amendments are necessarily a significantly increased burden and risk on employers. We note this in the context of the above-mentioned complexities. The effective date is a burden and the lack of protection on employers to fund tax arising is concerning. We note for completeness that consultation with stakeholders should be a prerequisite to such significant change in tax administration.	
Section 21 – Amendment of Part 15 'personal allowances and reliefs. etc'	The clawback provisions in section 480C(5) seem stiff. It will catch scenarios where there is a breakdown in relationship between co-owners, where there is a death, and other such events. Is there scope to relax the clawback provisions at least in circumstances which are either unforeseen or unavoidable, e.g. death and divorce? The clawback calculation does not appear to give credit for tax previously paid at the standard rate of tax. Is the intention of the legislation that where a property is co-owned, that relief is available as a proportion of €600? Or, is it the case that I can still claim the full €600 on a co-owned property as long as 20% of the profits to which I am entitled is at least €600? As it is currently drafted, it appears where two landlords own a property equally, with one of them also owning a separate rental residential property in their own right, one landlord will be entitled to a tax credit of €600 in 2023 with the other landlord limited to a tax credit of €300 in 2024. If I have four properties and I am eligible for €600 in Year One and I then sell one of the properties in Year Two, but based on remaining properties, I am still entitled to full relief in Year Two. How does clawback operate, if at all?	**CCAB-I**
Section 31 – Amendment of Part 16 'relief for investments in corporate trades'	Practitioners would welcome clarity in respect of the amendments to the Employment Investment Incentive Scheme (EIIS) in section 31 of the Bill:	**ITI**

	1. Section 494, which deals with eligible shares, is amended to provide that shares, other than where relief for Start-Up Relief for Entrepreneurs (SURE) under section 507 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. However, 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 would welcome confirmation on this point. 2. The definition of 'expansion risk finance investment' in section 493 has been 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 would welcome clarity in guidance on how this new term will be interpreted from an Irish and EU policy perspective. 3. Section 496 has been amended to include reference to the requirement that follow-on risk finance investment in eligible undertakings after either initial or expansion risk finance must be "foreseen" in the business plan is changed to "provided for" in the business plan. Practitioners would welcome clarity in guidance 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. 4. The amendments in section 31 of the Bill will have effect from 1 January 2024. Relief for investment through a fund is given when the investor provides capital to the fund, therefore, practitioners would like to understand which rules apply and what rights can/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. Practitioners would welcome clarity on whether they should apply all the 'old rules' in existence up to 31 December 2023 and continue with the 'old regime' for fund investments relating to 2023 monies, or does the investment criteria change on 1 January?	

	5. Concerns have also been raised about the amendments to section 502 and the impact of an early round of Start-up Capital Incentive (SCI) from friends and family on the percentage relief, given that follow on and expansion relief is only 20%. Practitioners note the revised GBER rules have been implemented quite quickly and would highlight the importance of simplifying domestic EIIS rules.	
Section 31 – Amendment of Part 16 'relief for investments in corporate trades'	The existing section 493 TCA defines "initial risk finance investment". As the definition refers to "the first issue of eligible shares", it appears that relief will be practically impossible to achieve for initial risk finance. This is on the basis that in our view, founder's shares would be a first issue and therefore any subsequent issue would not qualify as initial risk finance. Is this the intention of the legislation? If so, it would seem contrary to the intention of GBER. If the intention was not to have such a narrow definition of "initial risk finance investment", then an amendment, in line with GBER, is required to section 493. The amendments also favour investments via a qualifying fund as opposed to directly in a qualifying company. What is the reason for this? Would the new GBER definition of financial intermediary facilitate the same treatment for both type of funds?	**CCAB-I**
Section 33 – Amendment of Chapter 2 of Part 29 'scientific and certain other research'	Practitioners welcome the amendments to the R&D Tax Credit to increase the credit to 30% and increase the first year payment to €50,000. However, the Bill introduces a new concept of a 'pre-notification requirement', which will apply to companies intending to claim the R&D Tax Credit for the first time. The notification will require a description of the R&D activities carried out by the company. It would be helpful to understand the rationale for the introduction of this new requirement and the level of detail which will be required as part of the notification. The vast majority of taxpayers impacted by the change will be SMEs and our members have raised concerns that rather than encouraging SME's to avail of the R&D Tax Credit, the introduction of a pre-notification requirement could act as a deterrent as it will further add to the administration requirements and costs associated with applying for the R&D Tax Credit.	**ITI**

Section 33 – Amendment of Chapter 2 of Part 29 'scientific and certain other research'	The 'pre-notification' requirement introduced in the Finance Bill is likely to be a further hurdle for small businesses to overcome when considering making a R&D tax credit claim. We strongly suggest that a carve-out is introduced for SMEs, or at the very least small and micro enterprises. The introduction of this measure was not discussed at the TALC R&D subgroup. Practitioners would expect that material changes are communicated to stakeholders in advance. Given that the forum exists for such discussions, we would expect a reasonable level of discussion in advance of these measures becoming law.	CCAB-I
Section 35 – 'Outbound payments defensive measures'	The application of the provisions in sections 817V(5), 817W(4) and 817X(3) is unclear. If an entity or entities restructure pre-existing arrangements in order to fall outside the remit of a new tax charge, the section should not apply as if the restructuring had not been entered into. It should be clarified that these provisions should not apply in that context. Please could it also be considered that indirect.	**Law Society**
Section 35 – 'Outbound payments defensive measures'	1. Practitioners would welcome clarity regarding 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, we would welcome clarity on this point. 2. Practitioners would welcome confirmation that Global Intangible Low-Taxed Income (GILTI) can be regarded as a "foreign company charge" as defined in section 817U1. 3. Practitioners would welcome clarity regarding 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	**ITI**

[1] 'foreign company charge' has the same meaning as it has in Part 35B; i.e., *"foreign company charge" means a charge under the laws of a territory, other than the State, which is similar to the controlled foreign company charge;*

	because, while the dividend is not taxed due to the participation exemption, the Netherlands is not a "nil tax" or "exempt tax" territory, however, we would welcome clarity on this point. 4. 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, we assume 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, however, we would welcome clarity on this point.	
Section 35 – 'Outbound payments defensive measures'	Practitioners would welcome detailed guidance. In particular we note the following: • How will payments to Singapore and Hong Kong be treated? We would expect that a similar approach to ILR and Anit-Hybrids is taken. • Guidance on "definite influence". • Guidance on "corresponding amount". What changes are to be implemented regarding the withholding tax refund mechanism?	**CCAB-I**
Section 37 – 'Taxation of leases'	The amendments to section 76D go further than expected from discussions at the TALC Leasing subgroup. Can you please explain the rationale behind the deviation from accounting treatment of operating and finance lease income? Similarly, the amendments to section 299 go further than expected. Can you please explain the policy intention behind these changes? Can you provide some insight or indeed explain the conditions necessary to qualify for margin taxation treatment including the non-application to non-trading lessors? Will guidance issue clarifying the treatment of gains on the sale of leased assets? Can we expect such disposals to be treated as related to a trade of leasing in some circumstances? Practitioners would expect some level of transitional provisions when introducing such changes. Can you please advise if some transitional provisions may be included at Committee-stage?	**CCAB-I**

	There is a concern that the Irish leasing legislation will become too complex to prospective investors. This needs careful and urgent consideration	
Section 38 – 'Taxation of certain qualifying financing companies'	In relation to the definition of "external loan", it should be clarified that a situation where a lender has a share charge over the shares of the company or a connected company (as part of the financing arrangements) would be disregarded for the purposes of (a). Additionally, we expect that a "qualifying financing company" may be funded in practice either directly by third party lenders or indirectly (i.e. the third party lender lends to an affiliate of the qualifying financing company). This can arise especially in cross jurisdictional situations. Please consider amending the definition of a Qualifying Financing Company accordingly.	**Law Society**
Section 38 – 'Taxation of certain qualifying financing companies'	1. 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. 2. Furthermore, we note that 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, 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. 3. In addition, practitioners have suggested the following amendments to section 76E: ***(i) Proposed amendment to definition of 'qualifying financing company' (QFC) such that the activities restriction is changed from a "no other activities" type restriction to a "wholly or mainly" type restriction.***	**ITI**

	As currently proposed, the QFC can only hold 75% or more direct subsidiaries and can only avail of the provision in relation to lending to such 75% direct subsidiaries. Although the intent of drafting in that manner may have been to ensure the measure is of limited application, the mechanics by which it is limited could have the effect of causing the relief not to be available in respect of lending to direct 75% subsidiaries. For instance, where a QFC has a shareholding of less than 75% in a subsidiary and even where it does not lend to that less than 75% entity, the fact it has a less than 75% direct shareholding in an entity could cause it not to be qualifying for section 76E treatment on lending to a subsidiary that is a 75% direct subsidiary. This flows from the very narrow restriction imposed on the activities of the QFC. It appears to be an unnecessarily narrow restriction. Amending the activities requirement to a 'wholly or mainly' requirement should not cause the relief to be available for wider purposes but should cause it to be more capable of achieving the aim of its enactment. **(ii) Proposed amendment to definition of *'qualifying subsidiary'* such that *"direct ownership of 75 per cent"* requirement is changed to the section 9 "75 per cent subsidiary" definition.** The proposed requirement for 75% direct ownership by a QFC of qualifying subsidiaries appears unnecessarily narrow. We consider that the use of the section 9 TCA 1997 definition of '75 per cent subsidiary' is more suitable for the purpose of the proposed section 76E. This would have two potential effects: (a) afford section 76E treatment to lending by a QFC to a 75% indirect subsidiary in circumstances where there appears to be no policy rationale to limit that treatment only to 75% direct subsidiaries, and (b) permit a financing company to lend to both direct and indirect 75% subsidiaries as part of its activities of lending which is likely to be the situation in the vast majority of cases where the proposed section 76E might be of relevance and application.	

	As currently drafted, even if a potential QFC lent to a 75% indirect subsidiary (without the intent of section 76E applying to that loan) such lending will likely have the effect of disapplying section 76E treatment to any lending to 75% direct subsidiaries and cause section 76E to have no practical application in many, if not most, corporate groups. The combined effects of the suggested amendments to the two definitions would be to afford section 76E treatment for a QFC where its activities wholly or mainly constitute the holding of shares in 75% subsidiaries and in lending to such subsidiaries. We believe that outcome would be within the policy intent of the measure.	
Section 38 – 'Taxation of certain qualifying financing companies'	The definition of "external loan" includes a reference to a 5% ownership threshold. From a commercial perspective this is too low. Our recommendation is that an "external loan" should be one where the party providing the loan does not have control of the company (i.e. less than 50% of the ordinary share capital). The definition of "qualifying financing company" includes a reference to ownership of 75% or more. From a commercial perspective this is too high. Our recommendation is that ownership is reduced to the standard required for consolidation for accounting purposes. The measures apply to Irish and EU subsidiaries only. Has Revenue considered the competitive disadvantage this may create? This will have a significant impact on businesses. Therefore, we would expect such a measure to include a reasonable transitional phase.	**CCAB-I**
Section 42 – Amendment of section 835YA 'non-cooperative jurisdictions'	The amendment should reference the most recent changes of 17 October 2023.	**CCAB-I**
Not in Bill *As Initiated:* Land Leasing Income Tax Relief	On Budget Day, the Minister announced an amendment to the Land Leasing Income Tax Relief. The measure was not included in the Finance Bill (as initiated) and practitioners would like to understand the reason for the delay.	**ITI**