

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

3 March 2017

Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 2:30pm

Item 1: Review of minutes from meeting of 29 November 2016

- The minutes were approved.

Item 2: CAT – benefits passing to a charity/trust

- A discussion took place on a previous request from Institute of Tax as to the evidence which Revenue would require to show “improvidence” for the purposes of Section 17 CATCA.
- Practitioners noted that a strict requirement of evidence from a doctor confirming “improvidence” is in many cases not possible to provide and indeed not appropriate in light of it not necessarily being a medical condition and the difficulty around doctor / patient confidentiality.
- Revenue indicated that, as advised at the previous meeting and in line with other tax reliefs relating to either physical or mental incapacity, it would generally expect medical evidence of the incapacity. Law Society advised that, as this related to matters concerning a beneficiary’s state of mind and wellbeing and manner of living, it was inappropriate to have a formal list of what conditions would qualify and what would not, particularly where the beneficiary may not have a medical condition in the first instance, yet be improvident. The matter is best dealt with on a case by case basis with evidence by way of affidavit from the settlor, from family members or others associated with the beneficiary also being considered. Revenue noted that, as with any tax relief, solid evidence is needed to support the granting of the relief.
- Separately it was noted that ROS does not have a box to ‘tick’ where Section 84 CATCA is claimed in respect of medical or other expenses. It was noted that should it be necessary to formally file for such an exemption (which the querist would review) this should be referred to the TALC Collections Committee.

Item 3: Capital Gains Tax

- **Letters of no audit**
- A draft of proposed instructions to Revenue Staff was circulated.
- It was noted by a representative of the Law Society that the purpose of these letters of no audit is to enable the solicitor to release funds and not to absolve the taxpayer of liability; it does not mean the taxpayer cannot be audited.
- It was further noted that the draft instructions did not alleviate solicitors’ concerns and it was decided that this matter would be discussed further at a meeting between Revenue and the Law Society.
- **CG50 thresholds**
- In response to a question on this point, Revenue confirmed it is its clear position that the threshold is the VAT-inclusive amount.
- **CG50 documentation**
- Revenue confirmed that it will only require a scanned copy of the CG50 application in order to process the application. Revenue is to consider issuing an internal practice note or eBrief in order to ensure consistency across Revenue districts. The Law Society will also reflect this in its guidance notes.

Item 4: Stamp Duty

- **Section 80 SDCA Relief and LTDs**
- Revenue confirmed that LTDs are not excluded *per se* from this relief. Revenue are to further consider the position.
- **Stamp duty relief on Irish mergers under Section 87B**
- Revenue indicated that it would be reconvening the TALC Companies Act group to discuss the impact in the near future.

Item 5: Corporation Tax – Update on Section 79C technical queries

- Revenue advised that a decision has been taken that the issues cannot be resolved through guidance alone so the legislation will be amended. This is now with the Department of Finance.

Item 6: Corporation Tax – Section 291A allowances / 12 month claim period

- Revenue confirmed it is its view that, as with R&D claims, a claim under Section 291A TCA cannot be made after the 12 month period has elapsed. This is a legislative matter rather than a point of practice.
- Practitioners noted that accounting policy often provides that a claim is not made in year 1. Revenue advised that in such a case a notice of intention to claim Section 291A TCA should be made within the 12 month period.

Item 7: Guidance Notes on Section 110 / IREF changes in Finance Act 2016

- Revenue advised that it is continuing to work on guidance and is reviewing submissions made by a number of bodies.
- Revenue noted that it expects that the turnaround time on Section 110 notifications will be slower than before as Revenue now have a larger amount of information to check.
- Revenue confirmed that it is currently working with applicants where there are errors in a Section 110 notification rather than rejecting the notification.
- Revenue confirmed that where a Section 110 company made a notification since 1 January using the old form notification, it will have to re-submit its notification using the new form.
- It was noted that this item should remain on the agenda for the next meeting.

Item 8: Section 247 multiple holding companies

- There is no published practice on this. Legislative change is sought.
- Revenue confirmed that they will, subject to guidance issued provide opinions on this matter, however they are not requiring companies to obtain such an opinion.

Item 9: Certificates of Tax Residence

- It was noted that this item was also discussed at the main TALC meeting.
- Practitioners noted that some jurisdictions always require specific language, e.g. Spain, and requested whether Revenue could take a country-by-country approach or engage with the relevant tax authorities on this point.

- Revenue requested examples of jurisdictions which require this specific language be provided to it.

Item 10: Financial Transactions – Code of Practice for the Governance of State Bodies – Revenue Approval

- Revenue is of the view that there should be no need for it to provide an opinion as to whether a State Body is entering into an ‘unacceptable tax avoidance transaction’ as the Code prohibits such transactions.
- Practitioners noted that there may be cases of genuine doubt in this regard. Revenue pointed practitioners to the Tax Avoidance area of the Revenue website and confirmed that State Bodies have the same access to RTS opinions as any other entity.

Item 11: Revenue Opinions

- The question was asked as to how Revenue intend to deal with confirmations which have previously been provided on a sector specific basis (e.g. stamp duty in aircraft leasing), rather than to taxpayers. Revenue confirmed that such opinions are within the five year time limit.
- Such matters will be, in future addressed through Tax and Duty Manuals and Revenue invited practitioners to identify areas where there are gaps in manuals that need to be addressed. Revenue confirmed that guidance over 5 years old, will remain on its website but marked as obsolete if no longer applicable.
- Revenue was asked whether it will provide reasons as to why its guidance has changed. While Manuals will not always document the basis for a change such matters may be addressed to the relevant technical forum.
- Revenue provided responses to the following scenarios which were set out in the agenda:
- The first query related to opinions and confirmations which were issued before 1 January 2012 (e.g. on 1 January 2011). It is assumed for this purpose that there has not been any material change to the facts and circumstances on which the opinion / confirmation is based. Revenue confirmed:
 - If a taxpayer makes an application for renewal or extension by 30 June 2017, and that opinion / confirmation is then withdrawn or amended by written notice, the withdrawal or amendment applies to transactions and chargeable periods to the extent that they are subsequent to the written notice only.
 - If the taxpayer does not make an application for its renewal or extension, the opinion / confirmation cannot be relied on as respects any transaction, or the whole or part of any period, after 1 January 2017. A taxpayer to whom an opinion / confirmation was issued before 1 January 2012 may usually rely on the opinion / confirmation in respect of any bona fide transaction, or any chargeable period or part of a chargeable period up 1 January 2017 where the following conditions are met:
 - there has been no material change in the facts and circumstances on which the opinion was based;
 - there has been no change in the relevant law or practice;
 - there was disclosure of all relevant information at the time the opinion was requested;
 - the transaction as implemented did not diverge or deviate from that outlined in the information provided in relation to the request for the opinion; and

- there is no anti-avoidance motivation.
- The second query related to cases, particularly in the case of very old opinions / confirmations, where the taxpayer cannot locate the written communication which originated from Revenue. Revenue indicated that it was expected this would arise only in very exceptional cases. Where such a case does arise, the office which issued the opinion may be in a position to assist if the taxpayer can provide sufficient detail. Any such request should be done well in advance of the 30 June deadline because that deadline, and all of the requirements set out in guidance, must be met in all cases if a taxpayer wishes to continue to rely on an opinion / confirmation after 1 January 2017.
- The third query related to opinions / confirmations which deal exclusively with a single past transaction in circumstances where there is some tax effect going forward (e.g. tax relief continues to be claimed or the particular transaction has other tax implications going forward). Revenue noted that cases will be dealt with on a case-by-case basis. Specific types of transactions were raised with Revenue to confirm whether the opinions / confirmations will require any renewal or extension, being transactions where the opinion / confirmation is received on:
 - the qualification of expenditure for capital allowances purposes where capital allowances continue to be claimed on the expenditure. Revenue confirmed that these types of opinions are in scope;
 - the qualification of an acquisition for relief under Section 247 TCA (e.g. opinion on the meaning of 'to defray money' or the qualification of a multiple holding company structure) where interest relief continues to be claimed. Revenue confirmed that these types of opinions are in scope;
 - the application of Section 617 TCA or Section 615 TCA to an asset transfer where the transferee steps into the shoes of the transferor for the purposes of any future disposal (as regards the base cost of the asset acquired). Revenue confirmed that these opinions are not in scope because the impact of the opinion / confirmation more than five years after its issue is more secondary in nature;
 - the qualification of an expense deduction which gave rise to a tax-adjusted loss where the loss continues to be carried forward. Revenue confirmed that these opinions are not in scope.
- The fourth query related to certain transactions / reliefs for which the governing legislation or published administrative practice requires Revenue clearance or approval be given in advance of the transaction taking place for a particular tax relief or tax treatment to apply to the transaction. A list of transactions / reliefs is included on pages 7 and 8 of Revenue Tax and Duty Manual 37.00.40 (LCD: Opinions / Confirmations on Tax/Duty Consequences of a Proposed Course of Action). They include matters such as relief for investment in renewable energy, the employment and investment incentive scheme and the application of capital gains tax deferral for certain intra-group transfers in the case of a non-EU resident group. Revenue confirmed that these clearances or approvals are generally not in scope. However, this would not extend to all opinions / confirmations in relation to the application of DWT. Revenue stated there could be cases where it is necessary to seek a renewal / extension of a confirmation *if* it endures beyond five years, e.g. in the case of DWT and the treatment of an LLC.
- If it is the case that a renewal or extension is required, it was indicated that there would be a further specific query in relation to an item which was recently removed from this list. It was previously possible to seek advance clearance to pay royalties to a non-resident company without deducting withholding tax in circumstances where the payment does not give rise to a charge to Irish income tax. Statement of Practice CT 01/10 was updated last October for payments from that date to replace the requirement to seek advance clearance from Revenue for the application of the administrative practice with a requirement to make a notification to Revenue. The notification must be made in respect of each accounting period during which relevant royalties are paid and the administrative practice is applied. In light of the fact that the

requirement to seek advance notification has been removed, it was queried whether or not existing clearances require any renewal or extension. Revenue confirmed that it was not necessary to seek a renewal / extension of opinions obtained in relation to Statement of Practice CT 01/10. Where a taxpayer previously had obtained clearance pursuant to Statement of Practice CT 01/10 (before it was amended), the taxpayer will still need to make notifications for each accounting period in which the administrative practice is applied (pursuant to the terms of the update Statement of Practice). It is intended that ROS will include a box which can be ticked on a CT1 where required from 2018.

- The fifth query related to cases where a company has received an opinion / confirmation in relation to an item in a trade and the trade subsequently transferred to another company under a trade transfer or reconstruction. It was asked whether the transferee is required to seek a new ruling or whether the transferee can seek to refresh the opinion / confirmation of the transferor. Revenue indicated that this will need to be determined on a case-by-case basis. Where a taxpayer requests renewal or extension of an opinion, their local tax office may determine that it is a new opinion. It was noted that the content of a renewal or extension application should be the same as that of a new opinion / confirmation application because the RTS Guidelines [now contained in TDM 37.00.00a] and TDM 37.00.40 apply equally to both.
- The final query was whether the requirements of the new eBrief cover all tax heads. Revenue confirmed that it does.
- Revenue also noted that trading status opinions will need to be renewed, although it was also noted that after 5 years there should not be any question over whether a taxpayer is trading.

AOB

- Offshore Matters – Revenue confirmed that in the case of failure to disclose the opening of an offshore account (Section 895(6) TCA) unless that account relates to or gives rise to undisclosed income or gains falling into the “significant consequences” category, the individual holding the account will not be automatically precluded from making a future qualifying disclosure by virtue of the changes to s.1077E in FA 2016. Revenue noted that it will update its FAQs on the disclosure regime to that effect.
- The 10% penalty included in Revenue’s offshore matters disclosure template relates to the Section 1077E TCA "deliberate behaviour" penalty only.
- Revenue reminded the meeting of the TALC sub-committee guidelines agreed in 2010, specifically that a draft agenda is to issue three weeks in advance of the meeting with one week for suggested amendments. Revenue pointed out that as the Committee is technical in nature, advance notice of agenda items is necessary to ensure that appropriate research can be conducted in advance.

Attendees at the meeting of 3 March 2017

Revenue

- Brian Boyle
- Michael Buckley
- Áine Hollingsworth
- Sharonne O’Reilly
- Jean Kennedy
- David Brennan
- Mary Hughes
- Jeanette Doonan

CCAB-I

- Cróna Brady
- Peter Vale
- Andrew Feighery

Law Society

- Caroline Devlin (Chair)
- Maura Dineen
- Aileen Keogan
- Padraic Courtney

ITI

- David Fennell
- Cora O'Brien
- Finola O'Hanlon
- Aidan Lucey
- Fiona Carney
- Beryl Power
- Patrick Buttimer
- Sharon Burke