

Minutes of Main TALC Meeting

1 March 2017

Law Society of Ireland, Blackhall Place, Arran Quay, Dublin 7 at 12pm

Introduction

- Pat Bradley, as the new Chair of the Main TALC Committee for 2017, opened the meeting. He thanked Revenue for chairing and hosting the meetings last year and particularly thanked Ceire Moynihan, who is no longer involved with the Main TALC Committee.

Item 1 – Approval of minutes of meeting held 13 December 2016

- The minutes were approved with one amendment to item 7. Revenue confirmed that while it is necessary to have a tax control framework in place in order to enter the Cooperative Compliance Framework the requirement is for the taxpayer to confirm [that a tax control framework will be put in place] and Revenue will accept this confirmation as sufficient. Examination of the control framework may be examined at a later stage.

Item 3 – The process for renewal of tax opinions/confirmations

- eBrief No. 08/17 states that all Revenue opinions/confirmations are subject to a maximum validity of 5 years. Any taxpayer or tax practitioner who wishes to continue to rely on an opinion issued before 1 January 2012 for any transaction, after 1 January 2017, must lodge a full application for the renewal or extension of the opinion/confirmation with the Revenue District dealing with the taxpayer's affairs.
- Practitioners asked if there is a mechanism to appeal a decision by Revenue under the renewal process. Revenue confirmed that it is not an appealable matter to the Tax Appeals Commission (“**TAC**”) but there is scope to take the matter to a manager in Revenue in the usual way if a taxpayer or practitioner considers that they have been unfairly treated.
- Practitioners raised the matter of industry wide opinions, giving the example of the Revenue opinion that shares in an aircraft owning company are exempt from stamp duty. Revenue confirmed that any such opinions are also subject to the 5 year rule and that the Revenue position on interpretive matters will be set out the relevant Tax and Duty Manuals available on the Revenue website. Practitioners can submit requests directly to Revenue Legislation Services (“**RLS**”) for new manuals. It was mentioned that aircraft leasing companies in particular are dealt with in Large Cases Division (“**LCD**”) so any request in relation to a manual for aircraft companies can be submitted to LCD.
- Practitioners asked if old non case specific rulings could be shared under the OECD/EU framework. Any opinions/confirmations that are not tax payer specific are not within this framework and are, therefore, not exchangeable.
- Practitioners raised the issue that some eBriefs have disappeared from the Revenue website without replacements e.g. the Stock Lending Statement of Practice from October

2012. Revenue confirmed there is a two year renewal process and that any manuals that are currently missing are missing on a temporary basis only.

Item 4 – The processes within Revenue for dealing with an increase in information exchange in 2017

- Practitioners asked how Revenue intends to digest the information gathered under FATCA and CRS and what systems, methods and vehicles Revenue are putting in place to deal with the information.
- Revenue have processes in place to check the quality of the data. The information will be fed into risk systems such as REAP and CRE. The fact that the income may have been taxed in another jurisdiction, and indeed may have been returned in Ireland, adds a certain amount of complexity to the process but Revenue will be able to identify cases that need attention. The likelihood is that data analysis will happen centrally in the first instance with some follow up work at local District level also.
- Practitioners asked if Revenue has considered the rights of tax payers in the exchange of information process e.g. the right to fair process. Revenue assured practitioners that they are very conscious of taxpayer confidentiality and that they will be very careful about the use to which the information is put. Data protection arrangements in Revenue will ensure that they are using the information properly under the relevant Directives and under FATCA. Before initiating an intervention, Revenue will seek to ensure that an explanation is required around the data that has been provided under the exchange of information procedures. Revenue will engage further with TALC Audit on the subject.

Item 5 – Revenue process of issuing of tax residence certs

- Tax residence certificates are now issued electronically rather than in paper form. Practitioners suggested that Revenue issue a formal notification of the change that can be forwarded to agents in other countries. They also suggested exceptional treatment for certain jurisdictions which are unwilling to accept electronic signatures.
- Revenue stated that they had received 20 queries only on this matter, 3 of which were problems. A formal Revenue notification will issue shortly. Revenue indicated that they plan to further improve the electronic system for tax residence certificates in the future.
- Practitioners mentioned that certain countries, including Spain, want to see reference to the Irish Spanish double tax treaty in the tax residence certificate. Revenue indicated that they are prepared to deal with specific difficulties concerning certificates of residence on a case by case basis with a view to resolving any actual problems agents/taxpayers may be having with foreign jurisdictions.

Item 6 – Cooperative compliance – update

- Revenue has been sending out letters throughout January and February, giving up to the

end of March as a response time. So far there have been different levels of response from formal applications to enquiries for meetings. Revenue will begin consulting with the major accountancy and law firms next week.

- Revenue is asking taxpayers for a commitment that they will consult Revenue in advance of transactions. Practitioners raised the concern that it may not be possible for certain taxpayers to discuss transactions with Revenue in advance due to legal and regulatory requirements and market sensitivities.
- Revenue stated that the requirement is that the taxpayers discuss their plans with Revenue at a high level and that materiality is a factor. Revenue is interested in major reorganisations and assured practitioners that they are not asking taxpayers to break any laws or act in an improper or unethical manner. Practitioners suggested that taxpayers might sign up subject to regulatory constrictions.
- Practitioners asked why 15% is the chosen cut-off point and enquired whether this percentage was chosen to link in with audit settlements. Revenue clarified that this is in fact that case and that the application form states "15% or more" which corresponds to the penalty level applicable to a **no disclosure** default, namely, where there is "**no qualifying disclosure and careless behaviour without significant consequences and full cooperation**". This attracts a penalty of 15% and this is the benchmark applied for entry to CCF. If anyone incurs a penalty in this category or a category that gives rise to a greater penalty then they will not qualify to join the CCF subject to the overriding materiality clause.

Item 7 – PAYE modernisation – update on consultation and next steps

- Revenue confirmed that they intend to produce a report by the end of March on the public consultation process. Practical workshops and face to face discussions with payroll providers, professional bodies and other stakeholders have been very beneficial and provided very informative insights into day to day issues involving payroll. Further exchanges are planned with other interested parties. Revenue has also previously engaged with HMRC about the PAYE realtime system in the UK. The next step is to work through the detail of the likely processes and to consider some key decision points. The likely schema for payroll software under the new system will be required around mid-year.
- PAYE modernisation will be added to the agenda for Collection TALC and Revenue will continue to engage with businesses and TALC as the detailed arrangements are being worked out.
- Practitioners asked whether, in light of cost concerns for small businesses, Revenue had considered a cut-off point for the new electronic regime, below which, businesses would not have to invest and engage in the new system. Revenue is fully conscious of the cost concerns but they see a key benefit of the new system as providing a complete picture of pay and tax to each employee. Revenue gave an example of a jointly assessed couple with joint tax credits – one person being in employment in a large organisation and the other being in employment in a small organisation. In order for the new system to operate effectively for all employees and ensure that they only pay the right amount at the right time,

it will be necessary for all employers to engage with the new system.

Item 8 – Update on other consultations (e.g. travel and subsistence expenses, intermediaries)

- In relation to Employment Structures, there was a joint working group between the Department of Social Protection and the Department of Finance. A draft report is in preparation and when finalised will be subject to the approval of the Ministers for Finance and Social Protection.
- Practitioners noted that the delay in publishing the results of the consultations in relation to travel and subsistence is causing issues. It is not clear what qualifies for tax relief and what does not. This is a very serious issue affecting all sectors. Revenue advised that concerns in relation to the matter is best directed to the Department of Finance. Following recent personnel changes the correct contact in relation to this matter is now Anna Donegan.
- There was also a consultation on share remuneration in the SME sector. This was mentioned in Minister Noonan’s budget speech but nothing has been published yet.

Item 9 – Update on RTS – Revenue’s new RTS validation strategy

- Practitioners asked whether Revenue’s RTS experts are willing to meet with taxpayers and whether there is a process in place for following up afterwards.
- Revenue stated that they are moving away from the traditional “black box” model of RTS. i.e. where RTS did not engage directly with taxpayers/agents other than through the relevant District. The new practice is that RTS will engage directly with taxpayers/agents where this is considered the best way to expedite queries e.g. where more information is needed to understand the facts and circumstances of a particular case. Revenue also noted strengthened internal oversight of RTS cases, and that its response times are generally good. There is no specific validation strategy but often Revenue pick up matters 1 to 2 years later to see whether the taxpayer carried out their action plan as described and, if not, whether there are any tax consequences.
- Practitioners asked whether it is necessary to approach Revenue with minor changes to a step plan which do not affect the tax analysis. Revenue confirmed that there is no requirement to re-approach Revenue unless the changes potentially change the tax analysis.

Item 10 – Revenue customer service

- Practitioners stated that there is both positive and negative feedback in relation to MyEnquiries. On a day to day basis it is hard to pin down the Revenue person dealing with the query. It can be difficult to get responses which is costly and time consuming for the tax payer.
- Revenue acknowledged that response times are not fully in line with their published

standard and this was especially so during peak times. They will provide details of how the use of MyEnquiries can be optimised by practitioners and taxpayers alike e.g. what details to include in subject line. They are also working towards achieving better turnaround times and higher standards of response.

- Some enhancements will take effect at the start of April to make it easier to engage with the service. Revenue will publish some communications in relation to the enhancements shortly. Revenue agreed to provide details of where problems with the operations of MyEnquiries can be reported.
- Revenue asked for a list of actual cases that they can work through to find the problems. Practitioners stated that members are not willing to provide their PPSNs for this purpose. Instead practitioners will provide a list of the types of queries that are causing problems, specific Districts and Regions, timelines, chronologies of queries and reminders etc.

Item 11 – Process for communicating TALC agreements

- Important discussions take place at TALC and its subgroups on an ongoing basis across a wide range of tax issues and the value of the positions adopted and the interpretations agreed is of high value to both Revenue and the various practitioner bodies in the administration of the tax system. The TALC members expressed some concern that the outcome of the various discussions does not always reach the wider communities that are represented at the forum.
- Practitioners suggested that TALC meet with a communications expert to find a way to communicate the content of the meetings more widely. It was also suggested that a TALC quarterly summary be published on the Revenue website. It was noted that email alerts for Revenue eBriefs are an excellent way to communicate with the tax community. It was also noted that the Main TALC members need feedback from the other TALC groups.
- The members agreed a communications expert might attend the next TALC meeting if such an arrangement can be put in place within that timeframe. In the meantime each group should nominate a person to sit on the communications TALC subcommittee and email the name of that person to the TALC secretary.

Item 12 – Disclosure regime and update on Code of Practice

- The Code of Practice for Revenue Audit (the “**Code**”) has been updated to reflect Finance Act 2016 and from 1 May 2017, the benefits of a qualifying disclosure will be denied to taxpayers with tax liabilities in respect of offshore income, gains or assets. Revenue has written to 200,000 income tax payers so far to publicise the Code, highlighting the benefits of making a qualifying disclosure.
- Practitioners informed Revenue that taxpayers were alarmed to receive these letters. Revenue stated that there was a press release about the letters on the homepage of the Revenue website. However, it was not mentioned on the Revenue news page. Some agents received an email in relation to the letters and others did not. There will also be a publicity

campaign in the next few weeks about it.

- Practitioners also noted that the deadline is quite short. Revenue explained that many Dail Deputies favoured an even tighter deadline and the debate reflected significant concerns regarding tax compliance.
- Practitioners suggested using the word “foreign” rather than “offshore” as many people think of tax havens as “offshore” but do not consider other EU countries to be “offshore”.
- Practitioners also stated that multi-nationals can make genuine mistakes in FX calculations for example. There should be some mechanism to address these matters in a practical way.

Item 13 – Section 80 relief – application to LTD

- This matter relates to an anomaly caused by the new Companies Act, 2014 whereby newly formed LTDs do not fall squarely within the conditions for reconstruction and amalgamation relief under section 80 of the Stamp Duties Consolidation Act, 1999. The matter will be dealt with on Friday at the Direct/Capital Technical TALC subcommittee. On a wider front it was noted the work of the sub-committee dealing with tax legislative changes needed to reflect the Companies Act 2015 had been delayed whilst Revenue awaited legal advice which has now been obtained. The sub-committee is due to meet in the near future.

Item 14 – Status of unpublished practice opinions/letters

- This item has been discussed above.

Item 15 – An organisational chart for each of the Revenue regions and LCD

- An organisational chart for Revenue can be accessed at whodoeswhat.gov.ie where the functions and roles down to principal officer level are shown.

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- Practitioners raised the NPPR case and asked what the process is for making a claim. Some taxpayers have amended their 2013 tax returns to claim refunds. Revenue confirmed that they are working on a simple solution to allow taxpayers and agents to make a protective claim for relief, possibly through MyEnquiries. Any refund claims will be held pending the outcome of the appeal of the NPPR case before the Court of Appeal.
- The next Main TALC meeting is scheduled for Tuesday 4 April at 12pm.

Attendees at the meeting of 1 March 2016

CCAB-I

Sharon Burke

Enda Faughnan

Julie Herlihy

Crona Brady

Paul Dillon

Norah Collender

ITI Mary Healy

David Fennell

Pat Mahon

Tom Maguire

Sandra Clarke

Cora O'Brien

Law Society Pat Bradley – Chair

James Somerville

Caroline Devlin

Patricia McCarvill

Revenue Eugene Creighton

Brian Boyle

Michael Gladney

Declan Rigney

Sharonne O'Reilly

Apologies

CCAB-I Brian Purcell

ITI Kieran Twomey