

Minutes of Main TALC Meeting

26 October 2017

Law Society of Ireland, Blackhall Place, Arran Quay, Dublin 7 at 9:15am

Item 1 – Approval of minutes of meeting held 14 June 2017

- The minutes of the meeting held on 14 June 2017 were approved.

Item 2 – Presentation by Leeann O’Kelly from the Customer Engagement Strategy Team on “Agent Access to Jobs & Pensions”

- Revenue made a presentation illustrating the new service that allows agents to register a new job or private pension on behalf of their client through ROS. A Tax Credit Certificate ("TCC") will issue to the relevant taxpayer and their employer within two working days of registering the job or pension. The TCC should be available in "MyDocuments" which agents can access through the PAYE Services and/or Job and Pensions cards in their Client Services screen. This new service should ensure that employers can deduct the correct amount of tax for each taxpayer's employment and private pension.
- Revenue confirmed that this new service would effectively replace the paper Form 12A. If tax practitioners wish to register a job or pension on behalf of their clients, they will need to complete an agent link notification in line with current practice. To complete the registration, it will also be necessary to have a PPSN and some basic personal information for the taxpayer. Employers should continue to use the Form P46 if they have not received a P2C before the first payment of wages/salary is made to the new employee. Eventually, the TCC will be replaced with a Revenue Payroll Notification ("RPN") under PAYE Modernisation.

Item 3 – Qualifying Disclosures relating to Offshore Matters

- Practitioners asked Revenue for a progress update on the qualifying disclosures relating to offshore matters which were submitted to Revenue in advance of the deadline in May. Revenue said that it is taking longer than anticipated for the Offshore Assets Group to respond to the qualifying disclosures and that the priority at the moment is to send acknowledgements to everyone. Revenue expect that every person who made a disclosure in advance of the deadline should have received an acknowledgement by the end of next month. It will take a period of time to work through all of the issues raised in the disclosures.
- Practitioners stated that it would be useful to have a timeline to feed back to clients who made disclosures. These clients are anxious to have matters confirmed as quickly as possible so that there is certainty that no further penalties will apply. Practitioners said that certain persons could be liable to tax purely because they were unaware of their tax obligations. Revenue said that the legislation was not intended to catch the "accidental defaulter". The materiality thresholds have been set to exclude these persons. Practitioners made the point that any non-Irish assets and income are excluded from the thresholds.

Item 4 – “Disappearance” of the guidance note in relation to non-resident beneficiaries and personal representatives and the protection of the resident personal representatives and solicitors respectively.

- Revenue confirmed that the approach to the design of the new website broadly replicates the old site, in presenting high-level taxpayer orientated information in webtext and more detailed, practitioner orientated information in the Tax and Duty Manuals (TDMs). In line with previous discussions none of the technical material has been removed from the site. The material under discussion had been published as webtext and was, therefore, removed. Revenue advised that, following discussion at TALC Technical, the relevant TDM was being updated to address some issues of concern to practitioners that had been included in the webtext. Revenue also invited practitioners to identify any other items that they consider important that were previously displayed only in webtext and these can be incorporated into the relevant manuals if still valid.

Item 5 – Revenue update on the MLI and the options that Ireland has chosen

- Revenue informed Practitioners that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) will come into force once five countries have ratified it. So far Austria and the Isle of Man have ratified the MLI and it has been reported that Poland will ratify shortly. Given the current rate of progress Revenue anticipates that the MLI will be in force by the end of the year.
- For Ireland, ratification is a two-step process. Section 72 of the Finance Bill 2017 is the first step in the legislative procedure required to give effect in Irish law to the MLI. The amendments to Section 826 of the Taxes Consolidation Act, 1997 (“TCA”) will allow for an Order to be made which will give legal effect to the MLI. Once an order is made, it is intended that an amendment will be made to include this Order in Schedule 24A TCA which will be the final step in the ratification procedure. The Order will likely be made in the early part of 2018. Revenue suggested that the best way to engage with practitioners on the various issues is through the BEPS TALC sub-group and it was agreed to schedule a meeting as soon as possible.

Item 6 – Revenue update on the status of any derogations from the implementations of the various strands of ATAD into Irish law.

- Article 4 of ATAD sets out interest limitation rules and provides for rules which will restrict the amount of interest that companies can claim as a tax deductible expense. Ireland has informed the European Commission that, as our existing interest limitation rules are at least equally effective to the rules contained in the Directive, we will be availing of the derogation provided in the Directive and are therefore not required to implement these rules until 1 January 2024. A submission to that effect was sent by the Department of Finance to the Commission at the end of June 2017 and there is no further update at this time. Revenue will share updates received regarding timing with TALC.

- There is a consultation up to 31 January on a number of matters addressed in the Coffey Report, including a review of Schedule 24 TCA. Revenue noted that the legislation in this regard is complex and would welcome input from practitioners.

Item 7 – Finance Bill 2017 – Increased rate of Stamp Duty for non-residential property

- Practitioners raised the issue of the immediate rise in Stamp Duty on non-residential property from 2% to 6% with immediate effect from the date of the budget. Practitioners expected that transitional measures would apply but no such measures were included in the Budget Day resolution.
- Transitional measures are provided for in Finance Bill 2017, applying the 2% rate in circumstances where the parties to a transaction had entered into a binding contract prior to Budget Day and execute the conveyance on or before 31 December.
- A difficulty arises in that Stamp Duty is payable at the 6% rate from Budget Day but the transitional measures will not become law until the Bill is enacted in late December.
- Revenue indicated that taxpayers meeting the criteria for the transitional measures will have the option of either paying at the 6% rate and seeking a refund following enactment of the Bill, or paying at the 2% rate in which case Revenue will withhold the stamping certificate until enactment. Revenue confirmed that taxpayers opting for this latter approach would not be subject to interest or penalties as a consequence of paying at the 2% rate.

– Finance Bill 2017 – Amendments to section 79 and 80 of the Stamp Duties Consolidation Act, 1999 (“SDCA”)

- Practitioners noted that the proposed new wording for section 79 SDCA (contained in section 59 of the Finance Bill 2017) is more restrictive and difficult for companies engaging in group reorganisations to comply with than had previously been the case. Practitioners confirmed that they would prefer to revert back to the old system by deleting this new wording, rather than have the wording enacted in its current form.
- In relation to foreign mergers, the dissolution provision in section 79(7A)(b) covers only mergers by absorption and not mergers by acquisition, mergers by formation of a new company, mergers by public companies, foreign law mergers, cross-border mergers and SE mergers. The Practitioners asked for an administrative practice setting out some guidance for taxpayers and considered that the legislation does not currently go as far as the administrative practice and they appealed to Revenue for some flexibility in this regard. Revenue advised that revised guidance on the topic will be developed following enactment of the Finance Bill.
- Practitioners noted that the definition of merger refers to the Companies Act provisions which cover private companies but not public companies. This favours smaller businesses

and penalises larger operations with public limited companies in their group structure. Revenue stated that a Committee Stage amendment is to be proposed on this point.

– Sections 22 and 24 of the Finance Bill 2017

- Practitioners stated that the proposal to limit the exclusion from section 29 TCA and section 980 TCA for listed “shares” to “shares” which are “actively and substantially traded on [a] stock exchange” is problematic for securitisations of debt secured on Irish land and for covered bonds and public debt of Irish banks. Practitioners stressed that this change will have a genuine commercial impact and that the problem is not limited to qualifying companies for the purposes of section 110 TCA or entities which are property holding structures. Revenue agreed to examine whether there was scope to further develop this legislation.

– Sections 17 of the Finance Bill 2017

- Practitioners noted that the effect of the proposed changes to section 110 TCA (in section 17 of the Finance Bill 2017) is to bring “shares that derive their value from, or the greater part of their value from, directly or indirectly, land in the State,” into the definition of “specified mortgages”. This goes further than last year’s change. The newly proposed wording affects interest paid on or after 19 October 2017. This means that interest accrued but unpaid (including interest not affected by the Finance Act 2016 changes) is caught and may affect accounts which have been signed off for the past two to three years.

– Schedule 1 – PAYE Modernisation

- Schedule 1 to the Finance Bill 2017 provides for the change of the basis of taxation under which most PAYE taxpayers will be liable to pay income tax, from an earnings basis to a receipts basis. Practitioners expressed concern in relation to the example of bonuses paid in respect of a period where an individual lived and worked in another jurisdiction and taxable in that jurisdiction but where the payment is received when that individual is Irish tax resident. Revenue confirmed that it would address any anomalies that may arise in a practical manner to ensure that no double taxation arises.
- Schedule 1 to the Finance Bill 2017 also provides for a new provision for the recoupment, on a grossed-up basis, of income tax where PAYE is not operated by an employer. This provision is to come into effect from 1 January 2018. Revenue confirmed that the provision only applies in two circumstances; where an employer completely fails to operate PAYE in respect of an employee or where there is active concealment of the payment or nature of the payment in the records of the employer. The measure is aimed at addressing the systemic non-application of PAYE.

– Section 13 of the Finance Bill 2017

- Section 13 of the Finance Bill 2017 amends sections 579 and 579A TCA which relate to gains made to non-resident trusts and section 590 TCA which relates to gains made by controlled family companies. It provides that the sections concerned will not apply where it is shown to the satisfaction of Revenue that, at the time when the capital gains tax charge arises, genuine economic activities are carried on by the settlement or company in a relevant Member State within the meaning of section 806(11) TCA. The amendment also provides that section 806(4) and (5) TCA, which deal with the power of an Irish-resident individual to enjoy the income of a non-resident and non-domiciled persons and the receipt of a capital sum respectively, will not apply where the individual concerned shows that genuine economic activities are carried on by the non-resident person in a relevant Member State.
- Practitioners said that the proposed amendment is helpful for EU Member States but that this easing of the conditions does not apply to the rest of the world. As such, section 806 TCA, is now unfairly difficult for non EU Member States.
- Practitioners asked if Revenue has any intention of issuing guidance on section 806 TCA. Revenue confirmed that they will be issuing updated Notes for Guidance on the Section.

AOB

- Revenue confirmed that there will be a Pay and File extension for electronic filers from midnight on 14 November to midnight on 16 November to assist practitioners that suffered downtime as a consequence of recent storms. Where practitioners were impacted to a level where they still cannot meet the new timeline they should contact the relevant Revenue District to discuss the situation and agree mutually acceptable solutions.
- There will be an eBrief in the next few weeks in relation to the taxation of illness benefit. It will be treated in the same way as maternity benefit for the purposes of TCCs.
- Revenue will start to more actively replace "W" PPS numbers. The process of replacing these numbers already arises in situations of bereavement, separation or divorce. New PPS numbers, or reactivated non "W" PPS numbers, will now issue to these persons and the TCC that goes to their employers will reference the updating of the new PPSN.
- There are some new features to the Form 11. Certain data will be pre-populated etc. Practitioners suggested that advance notice of any new requirements would be useful.
- Revenue noted that it intends to develop revised guidance in relation to employers' obligations to operate PAYE in respect foreign assignees. This will be a priority item after the Report and Seanad stages of Finance Bill 2017.

Attendees at the meeting of 26 October 2017

CCAB-I Sharon Burke
 Crona Brady
 Brian Purcell

Enda Faughan
Paul Dillon
Kimberley Rowan

ITI Mary Healy
Enda Jordan
Cora O'Brien
Sandra Clarke
Kieran Twomey
Laura Lynch
Pat Mahon

Law Society Pat Bradley – Chair
James Somerville
Caroline Devlin
Patricia McCarvill

Revenue Brian Boyle
Eugene Creighton
Michael Gladney
Declan Rigney
Sharonne O'Reilly
Anne O'Driscoll
Leeann O'Kelly
Alan Carey

Apologies

CCAB-I Julie Herlihy
Norah Collender

Commented [OS1]: These are not regular Revenue representatives to TALC – they have attended on occasion for specific items. Apologies not appropriate.