

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

29 February 2016

Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 11:30am

Item 1 – The role of the Direct / Capital Taxes subcommittee and the objectives of the subcommittee for 2016

- It was agreed that we would deal with Capital Taxes first before moving onto Direct Taxes *[for the purposes of the minutes, the item order is consistent with the pre-meeting agenda]*

Item 2 – Meeting dates for 2016

- It was agreed that each of the bodies would forward their meeting availability to Revenue.

Item 2(b) not on the agenda - Approval of minutes

- The minutes of the TALC Capital Taxes Sub-Committee meeting of 1 December 2015 were approved.
- It was noted that no minutes had been circulated from the previous TALC Direct Taxes Sub-Committee meeting of 2 November 2015. It was agreed that these minutes would be circulated by Revenue and would be revisited at the next meeting.

Item 3 – Unascertainable consideration & stamp duty filings

- Revenue advised that it has updated its manual to reflect the differences between the terms unascertainable and unascertained consideration for stamp duty purposes and an operational instruction will be issuing shortly. This will contain details of penalty mitigation where filings are made within 90 days. It was noted that this wording has been agreed with the Law Society.

Item 4 – ROS DTA calculations and other ROS issues

- Revenue was asked for an update on the ROS system-bug which was impacting DTA credit calculations. Revenue advised that it had logged this as an issue requiring a fix but it could not provide an update as to when the issue will be resolved. As this bug can result in taxpayers underpaying or overpaying, practitioners urged that it be dealt with as a matter of priority.
- A number of other ROS issues were identified which will require fixes;
 - Agricultural Relief (the farmer test)
 - Exchange Traded Funds
 - Agent Link Notification for CAT
- Revenue agreed to review all of these issues

Item 5 – Receipts / Statement of Account

- Practitioners explained that when CAT returns are filed, the ROS acknowledgement does not include the PPS Number meaning that the returns are not case-specific.
- Revenue agreed to look at this issue.

Item 6 – S615 TCA 1997: Implications of Finance Act 2015 change

- Revenue provided an update on the intended scope of the 'bona fide' clause inserted into S615 TCA 1997 by Finance Act 2015. Revenue noted that the Finance Act hasn't changed the application of S615 as S811 would have caught arrangements entered into for the purposes of avoiding capital gains tax. It was further explained that Revenue had a particular issue with arrangements where debt is used to dilute the value of a company (as per the example included in eBrief 82/2015).
- Revenue confirmed to Practitioners that the relief under S615 would still apply where the bona fide test is met.

Item 7 – Standard Capital Superannuation Benefit: Clarification on Finance Act 2014 change

- Practitioners requested clarification on the Finance Act 2014 change which makes reference to 'taxable emoluments'. It was explained that a note had been submitted to Revenue on this matter previously but that it would be re-submitted.
- Revenue advised that guidance would be issued on this matter shortly and that it would confirm that 'taxable emoluments' should not exclude tax exempt remuneration.

Item 8 – S806/807: Implications of Finance Act 2015 change

- Practitioners raised concerns that the Finance Act 2015 change which removed the exclusion for non-domiciled individuals could have widespread implications which, based on previous explanations provided by Revenue, was not the intention.
- Revenue explained that the change was aimed at individuals who were trying to avoid Irish tax and it would not impact longstanding investment structures that were put in place before a non-domiciled individual came to Ireland.

Item 9 – S247 TCA 1997: e-Brief dealing with multiple holding company structures

- Practitioners asked when Revenue expected to publish guidance on S247 TCA 1997 and multiple holding companies.
- Revenue explained that the provisions of S247 were being looked at in general so they could not confirm when the eBrief would be issued.

- It was agreed that this matter would be revisited at the next meeting.

Item 10 – S825C: SARP

- Revenue was asked to consider whether an individual would be able to avail of SARP where they were assigned from a foreign branch of an Irish company. It was explained that the foreign branch would not be a “relevant employer” by virtue of the fact that it would not meet the residence test. Practitioners expressed a concern that this could be contrary to EU freedom of establishment principles.
- Revenue agreed to consider the matter.

Item 11 – S597AA TCA 1997: Entrepreneur Relief

- Two queries were raised in relation to the application of Entrepreneur Relief;
 1. Currently, relief is restricted where an individual holds their interest via a holding company. Revenue was asked to consider whether it would be possible to have some form of concession where a holding company disposes of a qualifying interest, with the relief applying on the ultimate disposal / liquidation of the holding company.
 2. Whether the relief would be available in situations where the underlying shares were redeemed?
- It was agreed that notes would be provided to Revenue on both of these matters for further consideration.

Item 12 – S125 TCA 1997: Relief for AVC's on income arising from a permanent health benefit scheme

- Revenue was asked to consider whether relief for Additional Voluntary Contributions was allowed against income arising from a permanent health benefit scheme. It was explained that the income received from such schemes was treated as taxable employment income under S125 TCA 1997 but that no tax relief was available for the AVC's.
- It was agreed that a note would be provided to Revenue on this matter for further consideration.

Item 13 – Intra group transfers and FRS 102

- Revenue was asked to provide its view on the tax treatment applicable to intra-group transfers of property and subject to fair value adjustments in accordance with IFRS or FRS 102/new Irish GAAP. Revenue was provided a detailed position paper on this.
- It was explained that the matter had been raised with Revenue Legislation Services but they

said that they could not clarify the position as it was not a taxpayer-specific issue. It was felt that this issue could impact a number of property companies as it was the first year in which this accounting standard was being adopted.

- Revenue agreed to consider how this matter will be resolved.

Item 14 – Close company surcharge and foreign gains

- Revenue was asked if it had considered whether foreign exchange gains which are taxable under Case IV of S79C TCA 1997 fall within the scope of “investment income” for the purposes of S434 TCA 1997. It was noted that this matter had been raised at a previous TALC Direct Taxes Sub-Committee meeting and Revenue was provided with a technical analysis of the issue at the time.
- Revenue confirmed that a draft response had been prepared on this matter and that it would be issued shortly.

Item 15 – e-Conveyancing

- Revenue advised that a cross-departmental steering group has been set-up to deal with the development of e-conveyancing on which Revenue will be represented. It was agreed that the TALC Direct / Capital Taxes Sub-Committee meeting would be used as a forum for keeping people updated on the progress of the steering group.

Item 16 – Sub-groups updates:

International Assignee Issues

- It was explained that the Working Group met on 24 February and that Revenue and Practitioners couldn't reach agreement on the scope of Article 15 of the OECD's model tax convention. The matter is now being considered by both sides to determine the way forward. If there are no other matters to be discussed in the working group, consideration would be given to dissolving the group.

Companies Act 2014:

- A Working Group is being established between Revenue and practitioners in order to assess the impact of the Companies Act 2014 on tax law and identify any necessary legislative amendments that may be required. The first meeting of the working group is scheduled for 6 April 2016.

AOB

Capital Taxes

- In dealing with estates of non-residents, there is a requirement to obtain a PPS Number for the deceased from the Department of Social Protection. It was noted that there are delays of up to 2 months in the issuance of PPS Numbers which is holding up the necessary filings with the Probate Office. Revenue has agreed to raise this issue at their forthcoming meeting with the Department of Social Protection.

Direct Taxes

- Revenue was asked whether there was an update from the Department of Social Protection on the PRSI exemption for income arising under S87B TCA 1997. Revenue advised that it did not have an update but would follow up with the DSP liaison.
- Revenue was asked whether it had considered the implications of IFRS 9 for the banking industry, in particular whether a tax deduction would be available for provisions. It was agreed that a note would be provided to Revenue outlining the issue.

Action Points	Responsible	Timescale
1. All parties to confirm their meeting availability for the April meeting	Revenue, CCAB-I, Law Society, ITI	ASAP
2. Circulate minutes from the TALC Direct Taxes Sub-Committee meeting of 2 November 2015	Revenue	In advance of next meeting
3. Revenue to review ROS systems issues (item 4)	Revenue	In advance of next meeting
4. Revenue to review ROS acknowledgement on CAT returns (item 5)	Revenue	In advance of next meeting
5. Note on SCSB / taxable emoluments to be provided to Revenue (item 7)	ITI	In advance of next meeting
6. Revenue to review access to SARP regime based on facts outlined in item 10	Revenue	In advance of next meeting
7. Notes to be provided to Revenue in respect of queries raised on Entrepreneur Relief (item 11)	ITI	In advance of next meeting
8. Note to be provided to Revenue in respect of query raised on tax relief for AVCs (item 12)	ITI	In advance of next meeting
9. Revenue to liaise with Department of Social Protection in relation to the issuance of PPS Numbers (AOB)	Revenue	In advance of next meeting
10. Revenue to follow up with Department of Social Protection	Revenue	In advance of

in relation to the PRSI exemption for income arising under S87B TCA 1997 (AOB)		next meeting
11. Note to be provided to Revenue in respect of query raised on IFRS 9 conversion (AOB)	ITI	In advance of next meeting

Attendees at the meeting of 29 February 2016

Revenue

- Brian Boyle
- Paul Walsh
- Michael Buckley
- Alan Kelly
- Dave Brennan
- Frank Gallagher

CCAB-I

- Liam Kenny
- Kim Rowan
- Mark Doyle
- Andrew Feighery
- Peter Vale

Law Society

- Maura Dineen
- Aileen Keogan
- Padraic Courtney

ITI

- David Fennell (Chair)
- Sharon Burke
- Stephen Ruane
- Tom Maguire
- Aidan Lucey