

Minutes of Main TALC meeting

24 April 2013

Law Society of Ireland

In attendance

Law Society: Caroline Devlin (Chair), James Somerville, Rachael Hession (Secretary).

Revenue: Anne Dullea, Declan Rigney, Gerry Harrahill, Gerry Smyth.

CCAB – I: Brian Keegan, Enda Faughnan, Liam Lynch, Kim Rowan.

ITI: Mark Barrett, David Fennell, Cora O'Brien, Liam Grimes.

Apologies: Pat Bradley

The Committee expressed its condolences to Pat Bradley on the death of his brother.

Minutes of the meeting of 19th February 2013 and matters arising

The minutes of the meeting of the 19th February 2013 were approved.

It was agreed in order to assist the process of follow up between meetings that where follow up or clarification is agreed between meetings that this would be specifically highlighted in the draft minutes.

The points raised in the CCAB – I letter dated the 18 April, 2013 were then dealt with:

- Revenue confirmed that there was no intention to apply section 11/new section 811B TCA 1997 to the commonly used employee benefit arrangement as it was an anti-avoidance provision. Guidance on the provision will issue shortly;
- Revenue confirmed that in the provisions relating to land developers a PRSI liability is triggered as a consequence of social welfare legislation. Revenue advised that it is an issue that they could raise with the Department of Social Protection as it was beyond the remit of the Main TALC meeting and part of a wider issue. Practitioners stressed the importance of the issue and asked if Revenue had intended to issue guidance on debt forgiveness generally. Revenue confirmed that they issued guidance regarding CAT liability and developers but Practitioners pointed out that guidance was required from an Income Tax perspective as it was causing considerable confusion. Revenue confirmed that this would be considered but advised that there were comprehensive replies to parliamentary questions (PQ's) concerning the issue. Practitioners suggested that a collation of the PQ's dealing with the issue in a similar fashion to the Local Property Tax questions would prove helpful.
- Practitioners raised the issue of the write down of debt giving rise to an income tax liability pursuant to the Personal Insolvency legislation. Revenue noted that the provisions of the legislation will always give rise to a PRSI liability but losses forward could eliminate the tax charge. An individual will have a finite level of funds for payment to creditors who will have to take into account the possibility of a tax charge during the course of the agreement as this affects the level of funds

available to pay a portion of their debts. There then followed a discussion on whether the tax charge crystallises at the exit from the arrangement or if it crystallises at the time of write off i.e. during the arrangement. Revenue's view was that it crystallises just before the arrangement comes to an end. The terms of the insolvency arrangements were such that provision had to be made for any liability arising during the course of the arrangement. Practitioners questioned whether it mattered when it crystallised provided it did not impact on the individual's ability to come out of the arrangement with a clean slate and did not have the effect of pushing one back into insolvency. Practitioners pointed out that a significant liability of this type could affect the ultimate solvency of the individual on exit and absolute clarity on the issue was required. It was agreed that this issue required dialogue between meetings. It was also agreed that this issue be carried forward to the next meeting agenda.

- Revenue confirmed that the amendments to the EIS requiring the tourism sector to produce certification were a policy decision and not open to review.
- Practitioners asked if the CGT "seven year exemption" could be applied to shares held in REIT's. Revenue advised that as the objective of the REIT legislation was to treat the individual as if they had directly invested in property it would appear that the exemption should in principle be available but that as this was a policy issue, a submission on this point would be advisable.
- Revenue confirmed that the retirement age of 66 (as opposed to 68) under the CGT Retirement Relief provision is to encourage earlier disposal of farms/businesses and that there is no inherent link between the state pension age and CGT.

Practitioners sought clarification on the wording of section 18 as set out in the minutes from the February 2013 meeting. Revenue confirmed having looked at it again that they felt the wording was clear.

Directors Fees

This will be considered at Audit TALC with updates to be provided to Main TALC.

Directors place of work

Practitioners explained the issue regarding the Directors place of work, specifically whether expense payments made to cover travel expenses of directors to attend Board meeting were taxable. If so, the net expenses being paid to non- executive directors for attending board meetings would be minimal. Practitioners pointed out that a minimum amount of time is spent in the Boardroom compared with the preparation work for the meeting. Practitioners expressed the view that that it was difficult to see how objective requirements to carry out duties at a particular location could result in little or no payment to a non-executive director. Revenue advised that this is the correct interpretation of the legislation. This will be addressed as part of the TALC Audit agenda.

Change of filing date

The Revenue reported that the Self-Assessment Group met that morning and was discussing various potential filing dates in light of the 2014 Budget being held in October, together with the possibility of split filing and payment dates. At the moment, September appears to be the favoured date. Practitioners asked that any change be communicated and gradual due to the effect it will have on workloads etc and cash flow. Revenue confirmed that it would continue to consult on the matter through Self-Assessment TALC and it was agreed that this item be included in the next meeting Agenda as an update item.

RTS Review

Revenue reported that it had reviewed the report on RTS and noted that the problems are primarily customer service problems. It explained that when RTS was established use of secure email was encouraged as, inter alia, an efficient way of transmitting queries. Revenue reported that a large number of queries were not communicated via the secure email. As Revenue was using the system as the basis to track queries and their progress, incomplete stats on the usage of the system was arising. Revenue is aware that from the practitioners' perspective queries are not being answered promptly in all instances and will address this. However, Revenue was looking at making the use of secure email mandatory because this is the only way to get an accurate measure of how the service is performing. - it is intended to re-launch the system by the end of May.

Revenue also commented that it did not consider the publication of determinations of the RTS as the way forward. Firstly, it involved a lot of work which the Revenue would only take on if it considered that there were precedents of value to publish. The Revenue's view is that it would be more beneficial to find a way of harvesting points and use them to update the manuals. Furthermore, it would maintain a single source of information thus ensuring consistency. Also perhaps the actual basis for decision could be recorded in the relevant manual. Revenue indicated that any decision worthy of being a precedent should have been referred to RLS in any event. Practitioners pointed out that precedents dealing with the appeal process are of more importance.

Practitioners stressed the importance of dealing with the RTS issues as it was causing frustration. Practitioners reported that a ruling on transactions that had occurred were not being given despite a query being raised two weeks in advance of the closing of the transaction and the fact that the tax was not due for another two weeks. Practitioners appreciated the steps being made to improve the situation. Revenue indicated that better publications would minimise the requirement to raise queries. Practitioners noted that it was difficult to get published materials on certain issues such as the trade benefit test and suggested that a proper expression of doubt facility would be most welcome.

Practitioners suggested that Revenue need to convey the benefits and the need to use the secure email when re-launching RTS. They queried how relevant material will be captured for inclusion in manuals and stressed the importance of having a system that produces a prompt reply. Practitioners confirmed that they would assist Revenue in communicating the revamp.

It was agreed that this item would remain on the Main TALC Agenda as an update item.

R & D Consultation process

Revenue circulated an update on the process and confirmed that there was no time line. It was agreed that this item be included in the next meeting's Agenda.

Incorporation of certain professional practices

Practitioners indicated that this referred to a project currently underway in the SW Region. Revenue confirmed that this initiative will be rolled out nationwide but that further work needs to be carried out before that is possible.

AOB

- It was agreed that the concept of the bona fide test in the context of s817 be carried forward to the next meeting;
- Revenue confirmed that they would clarify the position regarding the application of the property relief surcharge where the high earners restriction applies. This is currently being considered;
- Practitioners requested that there be a link up of PAYE Anytime and the issuing of Form 12s to avoid duplication. Revenue reported that the Form 12s were issuing because there was a risk issue as PAYE Anytime did not provide for a return of income but that Form 12s were. Revenue confirmed that the long term objective was to rectify this situation;
- Revenue sought confirmation as to whether the version of the Form 11 on ROS was adequate for all circumstances, and whether the prescribed Form 11 which was utilised at a time when ROS was not able to provide a printed form for signing was still required. Practitioners expressed their concerns with being unable to print the Stamp Duty Return Form in full for signing by clients. It was agreed that these two items would be dealt with by iXBRL TALC. Practitioners said that things had moved on significantly since ROS and e-returns first started and that it was appropriate to review the need for the formal prescription of paper Forms 11 for use by certain practitioners and other parties as it appeared their requirement was no longer relevant.

Closing comments by Chairperson

The Chair will circulate new suggested dates for meetings in light of the change in Budget dates.

Date of Next Meeting:

TBC.