

Minutes of Main TALC meeting

13th February 2012

Dublin Castle

IN ATTENDANCE

Revenue: Gerry Harrahill - Chairman
Eugene Creighton
Eamonn O'Dea
Enda Kelly
Joe Lynch
Séamas Ó Cathasaigh
Anne Dullea
Peter Redmond

Law Society: Caroline Devlin
Pat Bradley
Tom Martyn

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

CCAB – I: Brian Purcell
Enda Faughnan
Brian Keegan
Liam Lynch
Kimberley Rowan

Apologies: None

Opening Remarks

The Chairman opened the meeting by thanking CCAB-I for the excellent chairing & secretariat of Main TLAC in 2011. He referred to the importance of the forum in increasing the understanding and appreciation of respective concerns on tax administration matters and in improving the administrability of the tax system and in minimising the costs of compliance for business. The effective operation of Main TALC and its subcommittees would maximise the investment by all parties to the TALC process.

He introduced Anne Dullea as secretary to TALC for 2012 and as Revenue TALC liason and co-ordinator. He thanked Peter Redmond for his contribution over the last 4 years.

Minutes of the meeting of Friday 9th December 2011

These were approved.

Issues arising as follows:

- Review of RTS – on agenda for meeting and included in the Work Plan for 2012
 - E-brief on Attachment of Wages issued on 28th December 2011 – eBrief 86/11
 - Tax Treatment of Receivers – It is unlikely that any legislative amendments or guidance will issue in 2012. Revenue have engaged with the Department of Finance on a number of issues. It is expected that the Department of Finance will undertake a review of the issues which will include consulting interested parties such as NAMA and other banks. Matter of a formal external consultation process is unclear.
 - PAYE Mandates – draft mandates will be finalised and published on Revenue website shortly.
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Finance Bill 2012

The following sections were discussed:

1. Section 8 – Relief for Key Employees engaged in research and development activities

Revenue to clarify whether carrying forward unused R&D relief from an earlier year will continue to qualify for relief where employer has ceased R&D operations having regard to the definition of qualifying employer. Clawback provisions in relation to who pays and ensuring there is no double clawback also to be clarified. Revenue confirmed that relief is only available in years when the entity is profitable.

2. Section 12 – Deduction for income earned in certain foreign states

Practitioners expressed views as follows:

- The need to spend 10 consecutive full days in the relevant Countries was seen as restrictive.
- The list of Countries should be broadened.
- It is unclear how use of the relief was to be monitored.

Revenue advised

- The 10 day rule is a relaxation from 14 days included in the old Foreign Earnings Deduction provisions.
- The Countries included would be monitored and reviewed over time but for now the list of Countries will be as published in the Bill.

- Relevant data on the use of the relief will be gathered as part of the CT1/Form 11 filing process.

3. Section 14 – Special Assignee Relief Programme

Practitioners raised a number of concerns including:

- Anyone who is in Ireland prior to 2012 cannot claim under these provisions.
- The relief does not extend to newly recruited employees.
- These provisions appear to offer less tax relief than previously.
- Benefits including bonuses and benefits are excluded.
- Lack of grandfathering provisions for those under the “old” SARP regime.

Revenue advised that the first three concerns were policy issues and confirmed that the exclusion of bonuses and benefits from the €75,000 threshold amount to access the relief was policy. It is to be noted that bonus, benefits, etc are not excluded from the relief itself. The lack of grandfathering was unintentional and will be looked at.

4. Section 15 – Changes relating to tax relief for lessors, carried forward losses and balancing charges

Practitioners queried whether this extends to USC.

Revenue agreed to clarify the position.

5. Section 25 – Income tax relief for investment in corporate trades – employment and investment incentive and seed capital scheme

Practitioners questioned why this remains a specified relief especially considering that the amount which can be invested exceeds the specified relief threshold.

Revenue confirmed that this will remain as a ‘Specified Relief’ for the purposes of the high earners restriction.

6. Section 26 – Amendment of Part 29 (patents, scientific and certain other research, know-how and certain training) of Principal Act.

Practitioners noted that where an R&D tax credit claim ultimately proves to be only partially successful, it appears that Section 26, as drafted, could give rise to a clawback of the full amount of the claim, rather than the portion ultimately denied. Practitioners considered that only the amount denied should be clawed back under Case IV.

7. Section 27 – Life assurance policies and investment funds: rates

Practitioners drew attention to the potential rate differential for corporate investors depending on the mode of charge – direct assessment of company or exit charge.

Revenue acknowledged this and advised that it is under consideration.

8. Section 43 – Emissions allowances

Practitioners raised the issue of the appropriate treatment of sales, prior to the date of commencement of the new provisions of allowances acquired for free.

Revenue confirmed that this section was introduced taking account of the significant downturn in certain sectors in the economy which resulted in excess emission allowances in certain entities being disposed of by one entity and purchased by another. Without prejudice to the appropriate treatment for earlier periods, it applies from the Finance Bill date without being retrospective and provides clarity on the tax treatment from that date. Practitioners concerns around the rate of charge – 12.5% or 25% - can be put in writing to Revenue.

9. Section 46 – Amendment of section 411 (surrender of relief between members of groups and consortia) of Principal Act

Practitioners queried whether it was intentional to include only losses in this amendment as group relief goes beyond losses.

Revenue agreed to review this – it appeared to arise as a result of a drafting error.

10. Section 48 – Amendment of Schedule 24 (relief from income tax and corporation tax by means of credit in respect of foreign tax) to Principal Act

Practitioners drew attention to the fact that any excess of foreign tax over Irish tax cannot be pooled or carried forward. Revenue confirmed that this is the position under law. Any change would involve significant cost.

11. Section 49 – Amendment of section 77 (miscellaneous special rules for computation of income) of Principal Act

Revenue confirmed this applies to foreign tax that is not relieved under a DTA.

12. Section 52 – Amendment of section 21B (tax treatment of certain dividends) of Principal Act

Practitioners queried whether it was known yet what Countries would be covered. Their view is that at the moment, not a lot of Countries have signed

up to the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters

Revenue acknowledge that this does not extend the coverage of the 12.5% rate greatly at the moment but expected it to become more beneficial as more countries (which need not be European) sign up to the Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

13. Section 57 – Amendment of section 598 (disposal of business or farm on “retirement”) of Principal Act, & Section 58 – Amendment of section 599 (disposals within family of business or farm) of Principal Act.

Practitioners questioned if there was an intention to abolish this relief in 2014 and whether the exclusion from relief in 2012 for those aged 66 or over is intentional.

Revenue advised there is no intention to abolish by 2014. The apparent exclusion from relief in 2012 for those aged 66 or over is unintentional and will be reviewed. Practitioner proposals around children’s age rather than parent’s age as a qualifying criteria is a policy issue.

14. Section 62 – Relief for certain disposals of land or buildings

Practitioners raised the following concerns:

- The definition of ‘an EEA State’ in section 747B(1) does not include Ireland so the relief will not extend to land or buildings in Ireland.
- Disposal of shares in Companies whose value is derived from the holding of land or buildings is not included
- The absence of a clear basis for the requirement that property be held for at least seven years.

Revenue advised the exclusion of Ireland from the relief is unintentional and will be revisited. The possibility of including shares of companies deriving their value from land and buildings will be conveyed to the Department of Finance.

15. Section 97 – Amendment of provisions relating to discretionary trusts

Practitioners suggested that the time line to quantify the amount in a discretionary trust is too short at 4 months.

Revenue asked that a submission be made in writing which will be considered.

16. Section 107 – Returns of payment transactions by payment settlers

Revenue confirmed that there would be consultation with industry around how best to obtain the information.

17. Section 111 – Security for certain taxes

Practitioners queried how widespread the application of this provision will be and how the 30 day time to allow an appeal tied in with the requirement to cease trading upon receipt of the request for payment of the bond.

Revenue advised this will work similarly to how the VAT Bond works. Revenue confirmed that guidance will issue in due course. It is aimed mainly at ‘phoenix’ type operations and linked cases with significant tax debts. Where an appeal is lodged then the restriction on engaging in a business does not apply pending the outcome of the appeal.

18. Section 112 – Order to produce documents or provide information

Practitioners expressed concern that this may be applicable to relatively minor tax offences included under S 1078 TCA 1997.

Revenue confirmed this is only to apply to serious offences, which carry a jail term not exceeding 5 years.

19. Section 116 – Amendment of section 884 (returns of profits) of Principal Act.

Practitioners cautioned against enacting legislation that may pre-empt the results of the current consultation process.

20. Schedule 3 – Modernisation of Stamping of Instruments: Introduction of Self-Assessment and Consequential Changes, etc.

Practitioners voiced concerns around the proposal that instruments will be assumed to be properly stamped if they are stamped on the e-stamping system. However, there are a number of instances where instruments will be exempt so will not be presented for e-stamping. It was suggested that perhaps a means of certification of proper stamping might be introduced as an alternative.

Revenue advised that consideration will be given to how certainty might be provided on transfers that are exempt from Stamp Duty.

21. Schedule 4 – Modernisation of Direct Taxes Assessing Rules Including Rules for Self Assessment

Practitioners expressed concerns around the proposed change to the expression of doubt (EOD) provisions, especially in a situation where Revenue guidelines have not been updated or the taxpayer disagrees with the Revenue view on the legislation. The interplay of the EOD with the new self-assessment facility, to be developed for ROS, was also queried by practitioners. It was agreed that the concerns expressed, and any other issues that may emerge in relation to the new rules, should be explored through either the TALC Technical sub-committee or a specially formed subgroup of Main TALC. If needed, legislative amendments can be considered in context of the Finance Bill 2013.

Work Plan 2012

The 2012 work plan was agreed as follows:

- RTS Review
- Administrative Burden
- Self Assessment – Stamp Duty/IT/CT/CGT
- iXBRL
- Mandatory e filing (Phase 4 & Phase 5)
- Revenue internal review procedures
- Developments in relation to CCCTB
- Sub Committee Action Plans & Progress

Each sub-committee will be requested to submit their 2012 work plan to Main TALC prior to the next meeting of Main TALC.

RTS Review – update on progress

Revenue indicated that results of review based on case analysis/sampling would be available for discussion at end April.

Revenue Internal Review Procedures – update on progress

There have been some amendments since the last Main TALC meeting which will be finalised shortly within Revenue. An update will be provided at the next meeting.

Proposed Schedule of Meetings 2012

The following schedule of meetings for the remainder of 2012 was agreed, subject to business needs.

- Wednesday 25th April at 14.30
 - Wednesday 20th June at 14.30
 - Wednesday 19th September at 14.30
 - Monday 10th December at 11.00
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AOB

Congratulations were extended to Niall Cody on his appointment as Revenue Commissioner.

Practitioners noted the significant impending retirements from Revenue and in that context particularly those who had played a significant part in the TALC process over

the years. Practitioners extended their good wishes to those retiring and thanked them for their contribution to TALC.
