

Minutes of Main TALC meeting

19 February 2013

Arthur Cox Solicitors

In attendance

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

Revenue: Anne Dullea, Declan Rigney, Gerry Harrahill, Gerry Smith, Eamonn O'Dea, John Farrell.

CCAB – I: Brian Keegan, Enda Faughnan, Brian Purcell, Norah Collender, Liam Lynch.

Apologies: Kim Rowan.

ITI: Liam Grimes, Cora O'Brien.

Minutes of the meeting of 10th December 2013 and matters arising

The minutes of the meeting of the 10th December 2013 were approved. Revenue advised that a further consultation process in relation to the tax treatment of receiverships is to be undertaken in the context of specific draft legislative proposals to be made available as part of the process.

Finance Bill 2013

- Section 17: Practitioners were concerned that this section appears to apply to all property dealers/developers and would have the effect of debt forgiveness creating a loss that may result in the creation of a charge in certain circumstances e.g. where losses cannot be carried forward when dealing with PRSI, for example. Revenue confirmed that the section was intended to deal with individuals who were not full-time property developers, although the first part of the section applied to all individual property developers and was intended to deal with situations where a tax loss arose but there was no economic loss. Practitioners expressed their concern with the application of this section in a bankruptcy situation as it may prevent the debtor obtaining a 'clean slate' as a debt write off could lead to a consequential liability/tax charge or ultimately a shift back to bankruptcy. The Law Society members agreed to review the interaction of bankruptcy law with this provision.
- Practitioners raised a query regarding the fact that early access to pension-funds was restricted to AVC's. Revenue confirmed that this was not an oversight and that the provision did relate to AVC's only. Practitioners noted that the self-employed were not included in the provisions. It was noted that this was a policy matter.
- Section 15: Revenue confirmed that the sole purpose of the section was to prevent the set off of a rental loss against non-rental income. It will not disturb the existing Revenue practice of allowing a rental loss on one foreign property against rental profit on another.
- Section 11: Practitioners expressed their concern that the tax treatment of loans from employee benefit schemes under this section applied to genuine employment situations. Revenue said that the purpose of the section was

to deal with aggressive avoidance schemes mainly involving loans and which appeared to be based on similar schemes in the UK. It is not intended to apply to existing share schemes involving “clogs” or Restricted Stock Schemes. Revenue agreed to consider particular examples that practitioners might have which illustrate why they have these concerns.

- Revenue confirmed that there was no top slicing relief for any portion of statutory redundancy payments where the total amount was above €200,000.
- Section 25: Practitioners expressed their concern with the complicated measures involved in the taxation of foreign dividends and the credit system, and asked whether it was an interim measure and whether a participation exemption might be introduced. Revenue noted the practitioners concern but explained that the provision was in response to the FII decision. Revenue indicated there were no plans to introduce a participation exemption. Arguably, to do so, CFC legislation would also have to be introduced. Practitioners commented that there are jurisdictions with a participation exemption and no CFC returns. Section 25 would be covered in Revenue’s Notes for Guidance.
- Section 18: Practitioners raised a query regarding the wording of this section and whether a standard rate taxpayer was excluded. Revenue confirmed that the intention was that relief would be given for all qualifying charitable donations where sufficient tax was paid by the donor to cover the reclaim by the charity. Revenue commented that they would look at the wording of the section to ensure that this was clear.
- Section 21: Practitioners expressed concern that the section places onerous certification requirements on the tourism sector only. Revenue indicated that this is a policy matter but would convey practitioners’ concerns.
- Section 23: Practitioners pointed out that it would be difficult to comply with the requirement not to pay to a specified person as the relevant issuing entity may not know who holds the certificate.
- Section 37: Practitioners questioned the rationale behind this section. Revenue explained that, to avoid discriminatory treatment, Finance Act 2012 had made changes with the intention of extending group relief to situations where the parent company was resident in a treaty-partner country. The Finance Bill 2013 amendments were being made to ensure that the intended effect of the FA 2012 is actually achieved.
- Section 39 – REITS: Practitioners sought clarification on the treatment of dividends from REITS to foreign shareholders – would the dividends be treated as income from dividends and not property and if the foreign shareholders would be able to get treaty relief at source. Revenue expressed the view that these dividends should be treated as dividends. Practitioners also raised the point regarding the 7 year CGT exemption application for direct property ownership, and whether this might be extended to ownership through a REIT. Revenue agreed to review this point.
- Section 45: Practitioners noted that the retirement age in this section is 66 years and not 68 years.

- Section 69: Practitioners expressed their concern regarding obtaining VAT information when a company is in financial difficulty, as there can be administrative difficulties in complying with VAT requirements. Revenue confirmed that they will assist where possible with these practical difficulties. This has already been discussed at Indirect Tax TALC.
- Part 4 Stamp Duty: Practitioners commented that the new provisions abolishing sub sale relief in certain circumstances may adversely impact on the property market (as concluded in the Goodbody report commissioned by the previous Government) and questioned the timing of the introduction of such provisions. Practitioners welcomed the abolition of Section 131.
- Section 98: Revenue confirmed that its power to enter property under a court order could be exercised in the context of property tax
- Section 94: Revenue confirmed that this section ensures that the burden of proof is the same for all taxpayers so as to avoid this becoming an issue in the future.
- Revenue confirmed that the Bill will go before the Finance Committee on the 6 March and before the Seanad on the 20/21 March

Local Property Tax

Practitioners sought clarification regarding the triggering of the surcharge under section 8. Revenue confirmed that late submission of a local property tax return can result in an income tax or corporation tax surcharge. Revenue will clarify the issue and the impact of early filing of the income tax return in the Property Tax FAQ's. As regards payment of LPT for 2014, Revenue confirmed the 1 January 2014 date notwithstanding it is a Bank holiday.

Directors Fees

Revenue confirmed their view had not changed. Practitioners suggested organising a sub-group of practitioners to feed in practical proposals to deal with the matter. Revenue said that it would be willing to engage with the group to see if agreement could be reached on how to apply the legislation in a practical way

Personal Insolvency Arrangements

Revenue advised that it is their understanding that it will be the mid-year before the Insolvency service is ready to deal with cases. The Insolvency Unit in the CG's Division will be the central liaison point in Revenue as regards Revenue's decision to opt in or opt out of any proposed arrangements. The Revenue approach to opting in or out in any particular instance will be the subject of broad guidelines by Revenue and can be discussed in the TALC Collection forum.

RTS Review

Revenue gave a brief update on the planned actions on this issue, specifically the publication of 'neutralised' precedents and a more systematic evaluation process to maximise the effectiveness of the revised procedures.

Sub- committee Action Plans and Reports

It was agreed that the work plans of each sub-committee be emailed to Chairperson and Secretary for circulation to all members of Main TALC.

iXBRL

Revenue noted the view of practitioners that there should be some tangible recognition for taxpayers who embrace iXBRL to reflect the benefits of iXBRL for Revenue.

Self Assessment procedures

It was agreed that this item be retained on the agenda and that members be updated on progress/issues from the sub-committee at the next main TALC.

AOB

Recent OECD and EU work in the area of multinational enterprise taxation was noted.

It was agreed that the R&D Consultation process announced by the Minister might usefully be reflected in the agenda of Main TALC.

Practitioners drew attention to a range of concerns in relation to pay and file arrangements and requirements arising from with any proposal to bring forward the budgetary process.

Closing comments by Chairperson

The Chairperson confirmed the dates of the meetings for the year and thanked the Revenue, in particular Gerry Harrahill and Anne Dullea for their very effective chairing and secretarial roles last year.

Date of Next Meeting:

The next meeting will be 24th April, 2013. Venue to be confirmed.