

## **Minutes of Main TALC meeting**

**5 November 2013**

**Law Society of Ireland**

### **In attendance**

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

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

CCAB – I: Brian Keegan, Kimberley Rowan, Brian Purcell, Paul Dillon, Liam Lynch, Julie Herlihy.

ITI: Mary Healy, David Fennell, Liam Grimes.

### **Minutes of the meeting of 17<sup>th</sup> of October 2013**

The minutes of the meeting of the 17<sup>th</sup> of October 2013 were approved and adopted.

### **Matters arising from Minutes**

There were no matters arising from the Minutes.

### **Finance Bill**

#### **• VAT issues**

Practitioners asked if Section 58 is permissible under Article 167/167a of the VAT Directive (2006/112/EC). Revenue advised that member states are obliged to take steps against tax fraud and that it is in this context that the Section 58 anti-avoidance measures are introduced. They recognised that these provisions were originally too broad on taking the cash receipts basis of accounting into consideration. Furthermore, they confirmed that this provision would not impact on the vast majority of taxpayers. Revenue noted practitioners concerns regarding the expectation of receiving payment within six months and advised that where there were legitimate reasons the taxpayer could approach the District to request a non-adjustment as a temporary measure.

Revenue confirmed that the reverse charge provision also applied to intra-community acquisitions. There then followed a lengthy discussion comparing the application of the reverse charge mechanism pursuant to Section 58 to inter-community transactions and Irish supplied transactions. It was explained and illustrated by way of examples that VAT was paid without getting an invoice where there was an inter-community supply whereas no money was exchanged where there was an Irish supply. Practitioners view was that Section 58 impacted on cash flow in an inter community supply. Revenue pointed out that in both cases the taxpayer must account for VAT with an inter-community transaction resulting in a cash flow advantage.

Practitioners asked if the taxpayer is entitled to bad debt relief on the VAT paid where he/she is deemed to be a supplier pursuant to Section 58 on an inter-community supply and the company becomes insolvent. Revenue agreed to consider this.

Revenue advised that the decision to make regulations or prepare/extend guidelines in this regard.

In response to the Practitioners query in relation to VAT on supplies of horses, Revenue confirmed that the rate was 9% and 13.5% re. nomination fees. They confirmed that they would circulate a guide to the changes in this regard.

- **Retirement Relief – leased land**

Practitioners sought confirmation that the relief pursuant to section 599 TCA 1997 still applies to disposal of leased land to a child and that Section 41 of the Bill does not alter this. Revenue confirmed that the definition of qualifying assets in Section 598 (1) (a) (v) was intended to include only qualifying assets under Section 598 and not Section 599. As it was open to interpretation that the qualifying assets would also qualify for relief under Section 598, Section 41, as set out in the explanatory memorandum, ensures that the existing relief applies as originally intended.

- **CGT – amendment to Section 552 TCA 1997**

Practitioners asked that Revenue consider the following in the context of Section 40 of the Bill:

- (a) It appears that the section as currently drafted could apply to the write-off of intercompany debt used to acquire assets, not just third-party debt. In these circumstances, it appears that a write-off of intercompany debt could give rise to a capital gains tax liability even though there has been no benefit to the group as a whole.
- (b) There is no provision in the section to provide that a release of a debt in a year later than an exempt disposal to which it relates, takes on the exempt status of the disposal. It appears therefore that a situation could arise where a taxpayer has a capital loss on the disposal of a chargeable asset, which is not an allowable loss because it is an exempt disposal (e.g. substantial shareholdings relief under section 626B TCA 1997, or the new capital gains tax exemption for property held for 7 years) and a debt release in the following year, which would be subject to capital gains tax under section 40 of the Bill.
- (c) The provision applies to a debt release where the asset has already been disposed of in 2013 or earlier. We believe it would be more equitable to make the provision effective only where the asset funded by the debt is disposed of from 1 January 2014 onwards.
- (d) It appears that the provision would apply in a situation where a portion of a debt, which had been parked for an extended period of time (say, 15 to 20 years) under a debt resolution agreement, is eventually released if the borrower is still unable to pay. Practitioners believe it would be worth considering a cut-off period, after which time the release of the debt would no longer be taxable.
- (e) It would appear difficult to apply the provision in the context of a debt buy-back at a discount. In many cases it can be difficult to determine what, if any, part of the funds raised were applied towards base cost of a chargeable asset.
- (f) The wording of the section is unclear in relation to a debt release arising in the year following the date of disposal but before the filing of the tax return containing the

computation of the gain. Practitioners believe that the taxpayer should have the option to treat the amount of the release in this situation as either a reduction in the base cost of the asset disposed of, or as a chargeable gain for the year of the release.

Revenue advised that the intention of Section 40 was to ensure taxpayers did not receive the benefit of CGT losses where there was no economic loss. They noted that they had not considered the issues raised above. Furthermore, they confirmed that there was no intention to impose a gain where there was an exempt gain or restrict losses. They agreed to consider this provision again.

Practitioners asked Revenue to consider relief for the economic loss arising in a situation where the taxpayer borrows to invest in a chargeable asset by way of shares and the company becomes insolvent. Revenue agreed to consider this and issue a statement of practice in this regard.

In response to (d) above, Revenue indicated that this was a policy issue. Revenue agreed to consider the issue of traceability raised at (e) above. In response to (f) above Revenue confirmed that the base cost could be reduced.

- **Misc**
- Section 5: Practitioners asked if the home renovation incentive applied to EU homes or non Irish contractors. Revenue confirmed that it had been considered but that it only applied to Irish homes and non Irish contractors who registered here. They believed this was not discriminatory.
- Section 3: Practitioners asked what the position is re replacement loans. Revenue confirmed that this section did not allow for replacement loans but that the Department of Finance had submitted a proposal to relax this provision.
- Section 21: Practitioners asked if in the interest of clarity should the reference in the revised paragraph 7B(c) to 'overstated' be amended to 'deliberately overstated'. Revenue confirmed they would obtain clarification on this and an amendment would be made for clarity purposes if required.
- Section 28: Practitioners suggested that Schedule 24 amendments might do with some discussion. They asked what the current state of play re aps pre 1.1.2014 were and how the loss of an entitlement to a reduction under paragraph (7)(3)(c) interact with some of the other paragraphs in Schedule 24 which appear to require a deduction to access carry forward etc. e.g. para 9F. Revenue advised that the intention was that this provision be applied prospectively and they believed the explanatory memorandum clarified the issue. As this was a point of a technical nature the Revenue requested that the practitioner email them and that the response be circulated.
- Section 34 – Practitioners sought clarification of the intent of this group relief amendment. They pointed out that the explanatory memorandum implies that a group will exist where, for example there is a Cayman company owning two Irish companies and the Cayman company is quoted by a US owned company. They asked if this was the intent whether the legislation has achieved this. Revenue explained that the intent of the section was to remove a superfluous statutory reference and did not extend the relief.

- Section 35: Practitioners pointed out that the exit tax amendment does not remove the discrimination that applies to shares held which would have qualified under section 626B and that non-application of section 626B to EU migrations would appear to be discriminatory. Revenue pointed out that this was not a Finance Bill issue. They confirmed they would pass the query on to the relevant dept.
- Section 38: Practitioners asked for clarification re. 'stateless companies' and the reference in the new subsection (5)(b) to 'accordingly'. They expressed the view that this may be confusing. They pointed out that other aspects of this section might need clarifying. Practitioners had particular concerns with the residence notion not being of relevance in the US and number of other countries. They felt that board members may not be required to attend meetings in Ireland as the resident concept is not relevant to them. Revenue agreed to issue a guidance note in this regard.
- Section 66: Practitioners asked for clarification on the wording of the legislation. They pointed out that it was unclear in that it refers to shares "admitted for trading" on the ESM. They asked if this meant the shares have to be bought on the ESM, or is it sufficient that a company has its shares listed on the ESM but the transfer of the shares may be taking place on a different exchange or market, or taking place "off-market". Revenue confirmed that they needed to check this.
- Section 70: Practitioners requested clarification of the intent of the 'self-correction' changes. Revenue confirmed that it was to return the position to that under the Audit Code.
- Section 75: Practitioners requested clarification of statement of affairs change and time frame within which a statement may be requested and whether it was intended that a statement could be required within 2 or 3 days as this is less than 30 days. Revenue confirmed that this had been drafted incorrectly.

Revenue confirmed that the Bill would go to Committee Stage on the 26 /28 November and report stage on the 4/5 December. They confirmed that there was insufficient time to deal with Receiverships in the Bill.

### **Contractors Project**

Revenue confirmed that they would have a comprehensive response by next week.

### **High Level Group on Business Regulation**

Revenue confirmed that the length of time for completing audits was taken on board by the group looking at the Code of Practice. They expect progress on this issue after the Collection sub-committee meeting at the end of the month. It was agreed that this item be moved to the January Agenda.

### **Scheduling of TALC Self Assessment Sub-group meetings**

Practitioners pointed out that the meeting of the Self Assessment sub group fell within the period within which consultation on Pay and File was open for submissions. They wished to collate submissions from their members before engaging with others. They wished to highlight that they were keen to engage with the sub-group as soon as the consultation process closes and would encourage good positive engagement. Revenue suggested holding

informal discussions on a bilateral basis to tease out issues. Revenue confirmed that they too would welcome informal or formal engagement as soon as possible after the closing date.

**AOB**

Revenue asked if the Receivership Consultation Project would merit the formation of a sub group to discuss the issues in particular the lack of clarity surrounding the administration problems. Practitioners recommended forming a practical working group inclusive of stakeholders. Revenue suggested setting out the areas of concern as terms of reference and then drawing in relevant expertise. It was agreed that the terms of reference be compiled before nominating the group.

**Date of Next Meeting:**

It was agreed that the next meeting would be the 4 December at 11am followed by lunch in the Law Society.