

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

5th December 2019

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

Item 1 Review of minutes from meeting of 19th September 2019

- The minutes were agreed.

Item 2 Matters arising:

Matters arising were as follows:

- CGT Losses -Carry forward of losses – please refer to item 5.
- Past leasing sector guidance – please refer to item 13.
- Approved Retirement Funds [ARF's]- please refer to item 16

Item 3 Review of minutes from Finance Bill meeting of 22nd October 2019:

- The minutes were agreed.

Item 4 Interaction of Retirement Relief and Business Relief for offset purposes:

Where there is a transfer of business property (shares) to a child, the possibility exists that both CGT retirement relief under section 599 TCA 97 and CAT business relief under section 90 CATCA 2003 may be claimed. Had neither relief been available a CGT/CAT offset would have been available under section 104 CATCA 2003.

Revenue confirmed that CGT arising on the purchase is available for offset while CGT arising on the sale is not available for offset.

Item 5 CGT Losses – Carry forward of losses:

Revenue advised that [Tax and Duty Manual 19-02-05](#) has been updated.

The Tax and Duty Manual clarifies that a deduction in respect of an allowable loss can only arise in a chargeable period when there is a chargeable gain against which that loss can be offset. A deduction of an allowable loss must be made in a tax return for the chargeable period in which there is a chargeable gain.

Examples are also included in the Tax and Duty Manual showing how relief for allowable losses is given for CGT purposes.

Item 6 Section 626B TCA 1997 - resident for the purposes of tax in the relevant territory:

One of the conditions contained in Section 626B TCA 1997 requires that the investee company is, by virtue of the law of a relevant territory, resident for the purposes of tax in the relevant territory at the time of the disposal.

Some countries do not have a domestic concept of tax residence and hence some uncertainties can arise in ascertaining whether this particular condition can be satisfied.

Revenue is to consider the position and revert back to the sub-committee with their view on the issue.

Item 7: Nominee return of EIS holdings:

Revenue advised that the Form 21R should be completed by the nominee company in respect of all shares held in respect of EIS investment(s).

Item 8: Finance Bill 2019:

A number of Finance Bill 2019 issues were discussed including

- (a) EIS - Revenue clarified that the amendments, as they apply to designated funds:
The €250,000 limit applies to investments made in 2020.
An investor, who made an investment in 2019, can make an election to claim the relief in the year the shares are issued [2020] and avail of the €250,000 limit. If the investor elects to claim relief in the year the investment is made [2019] the 2019 limit of €150,000 applies
- (b) Transfer Pricing
A discussion regarding the Transfer Pricing rules took place.

Revenue advised that Guidance is currently being prepared and Practitioner feedback on the guidance would be appreciated.

The scope of the exception in the new section 835E TCA97: Revenue clarified that an interest free loan to a holding company to pay a dividend would be excluded from the exception. However, as the Transfer Pricing position of holding companies is a complex issue Revenue invited submissions from practitioners on the issue.

The interaction of Transfer Pricing rules and CGT exemptions:

Revenue confirmed that where the provisions of 626B TCA 1997 apply, there is no chargeable gain so transfer pricing rules do not apply to the seller of shares to an associated enterprise. The acquirer of the shares needs to be able to back up its valuation of the shares and if the acquirer is satisfied that the provisions of 626B TCA 1997 apply the acquirer can avail of the provisions of Section 626B TCA 1997.

Non-application of TP charging provision under sections 835HA(4) and 835HB(6)(b):
Transfer Pricing rules are applied in precedence over any other sections of the Taxes Consolidation Act but would not be intended to result in the disapplication of any anti avoidance rules. The provisions of sections 835HA(4) and 835HB(6)(b) provide that when the Transfer Pricing rules are applied and the result is a better capital allowances position or lower Capital Gains Tax outcome for a taxpayer, then the Transfer Pricing rules do not apply. The Transfer Pricing rules are not intended to create artificial results.

- (c) Amendment to Section 81: The amendment to Section 81 is intended to clarify Revenue's long held view that taxes on income are not deductible when calculating the amount of profit or gains

taxable under Schedule D Case I or II. Revenue advised that they were looking at introducing Guidance on Schedule 24 of the Taxes Consolidation Act 1997 and it may be an item that could be included in the 2020 workplan of the TALC Direct / Capital Taxes Sub-Committee.

(d) Mandatory reporting: Mandatory Reporting will be dealt with by BEPS TALC in the New Year

Item 9: Update on amendments to the CFC disclosures required on Form CT1:

Revenue advised that the January 2020 release of the Form CT1 will include an update that will provide for the making of CFC disclosures.

Item 10: Section 633D TCA 1997:

A Submission was made by practitioners on this matter previously. Revenue advised that 'transfer' has a specific meaning for the purposes of section 633D TCA 1997 and in strictness does not apply to merger by absorption under Irish company law. However, Revenue agreed that the current practice whereby relief is given in respect of cross-border and domestic mergers on a case by case basis will continue to apply.

Item 11: Royalty withholding taxes – administration:

Currently Revenue currently operates a deduct and refund system in respect of outbound royalty payments to non-resident individuals and treaty benefits are applied when the application for a refund is made.

There is currently no Revenue guidance on the imposition of withholding tax on outbound royalty payments to non-resident individuals and consideration will be given to including guidance in the proposed update to [Tax and Duty Manual 08-03-06](#) "Payment and receipt of interest without deduction of income tax" which is scheduled for Q1 of 2020.

Item 12: Tax and Duty Manual 07-01-28 Tax treatment of legal fees:

Revenue advised that Tax and Duty Manual 07-01-28 is currently being updated and a revised version should be published in January 2020. Previous practices contained in TDM 07-01-28 can still be applied until the updated Tax and Duty Manual is published.

It was suggested that the issue should be put on the agenda for the 1st TALC Direct / Capital Taxes Sub-Committee Meeting of 2020.

Item 13: Update on guidance on treatment of lease payments and financing activities:

Revenue advised that a meeting of the Leasing Sub-Committee had been very productive and that it is proposed to have another meeting of the Sub-Committee in Q1 2020 before Guidance is issued.

AOB

➤ **Proposed sub-group on Stocklending and Repo transactions**

Section 33 of Finance Bill 2019 as initiated deals with Stocklending and Repo transaction and clarifies in legislation Revenue's long held practice in respect of Stocklending and Repo transactions contained in Tax and Duty Manual 04-06-13. It is proposed to set up a sub-group of the TALC Direct Taxes Sub-Committee to formalise Revenue Guidance on the legislation. This was agreed and nominations for the sub-group are to be forwarded to Revenue.

A discussion regarding the role of sub-groups took place and items will be delegated to sub-groups on a case by case basis after first being brought to the attention of the TALC Direct / Capital Taxes Sub-Committee with a sub-group reporting back to the TALC Direct / Capital Taxes Sub-Committee on the outcome of their deliberations.

➤ **ARF's and access to Double Taxation Agreement relief**

This issue was previously raised at the TALC Direct / Capital Taxes Sub-Committee Meeting of the 19th September 2019. Revenue advised that guidance on the issue was currently being updated and it is hoped that it will be issued in January 2020.

Attendees at the meeting

CCABI

- Ken Garvey
- Cormac Kelleher
- Paschal Comerford

Revenue

- Philip Brennan
- Sharonne O'Reilly
- Jeanette Doonan
- Mary Hughes
- Alan Carey
- Sinead McNamara
- Caitriona Crowley
- Michael Buckley
- Áine Hollingsworth
- Liam Smith
- Sarah Cahill

Law Society

- Caroline Devlin
- John Cuddigan

ITI

- Clare McGuinness
- David Fennell
- Laura Lynch
- Sharon Burke
- Stephen Ruane
- Tom Maguire