

Minutes of TALC Sub-committee on Collection Issue.

Date: 28th November 2019.

Conference Room 1, Ground Floor, Blocks 8-10, Dublin Castle, Dublin 2.

Item 1: Minutes of meeting held 19 June 2019.

The minutes were approved.

Item 2: Matters arising

SNL-Statement of Net Liabilities- Bi-Lateral meeting between Revenue and Practitioners to take place to discuss what is required here and to look at the messaging in ROS around insufficient Prelim Tax payment and the impact of same.

Final Demand & Direct Line - Revenue confirmed that the Direct Line on the Final Demand is that of the relevant Debt Management Unit. Revenue is exploring possibility of copying agents on 'Request for Payment' letters (Demand) or Final Demands.

VAT Refund TDM including the wording of the 'Refund Disallowed Letter' is currently under review. Revenue will revert to Practitioners with update.

Practitioners enquired if Revenue could prioritise certain output to the agent. Revenue advised that 'priority notification' to the agent, for example an eTC decision is still under discussion.

ACTION POINT:

Revenue is to continue to explore copying agents on the 'Request for Payment' letter (Demand) or Final Demand.

Revenue to follow up on current position with TDM on VAT Refund including wording on 'Disallowed Letter',

Item 3: Taxation of Non-Resident Landlords and related matters.

If an individual is not resident in Ireland but rents out an Irish property, one of two scenarios will arise:

- the tenant pays rent directly to the non-Irish resident landlord (including to a bank account in the landlord's name); or
- an Irish resident individual, company or other entity (sometimes called a "collection agent") collects the rent on the landlord's behalf.

If the rent is paid directly by a tenant to a non-resident landlord, the obligations of tenants and landlords are as follows:

- The tenant is obliged to withhold 20% of the rent and remit it to Revenue, by virtue of Sections 238(2) and 1041 Taxes Consolidation Act 1997 (TCA). The tenant can remit the tax to Revenue with a tax return. If the tenant fails to remit the tax, Revenue can recover the tax from the tenant by adjustment of tax credits. The tenant gives a landlord a certificate of the tax deducted on Form R185 (Certificate of Tax Deducted).
- The landlord is required to file an Irish tax return. The landlord can set the tax deducted by the tenant and remitted to Revenue against her/his tax liability. The landlord can claim relief for allowable expenses in arriving at the rental profit and may also be entitled to personal tax credits.

If the rent is paid to a collection agent, rather than directly to the landlord, the obligations of the tenant, the non-resident landlord and the collection agent are as follows:

- The tenant is not entitled to or obliged to withhold any of the rent.
- The non-resident landlord is assessable and chargeable to tax in the name of the collection agent, under Section 1034 TCA.
- The collection agent is a “chargeable person” for tax purposes, which means the collection agent is required to submit a tax return and calculate and pay the tax due on the non-resident landlord’s rental income.
- The collection agent is not entitled to deduct 20% tax from the rent; however, under Section 1046 TCA, the collection agent may retain a portion of the rents which is sufficient to pay the tax liability on the rental profits from the property or properties in question. (This could be more than the 20% of the gross rent which a tenant would be required to deduct, if the rent was paid directly to the non-resident landlord). This amount should be paid to Revenue when the collection agent files the tax return.
- As in cases where the non-resident landlord files her/his own return, allowable expenses may be claimed in arriving at the rental profit, and any personal tax credits to which the landlord is entitled may be claimed also.

The issue is dealt with in Revenue’s Tax and Duty Manual 45-01-04. While the manual was updated last year, there has been no recent change in legislation or policy in this area. The only new guidance provided in the updated manual was to confirm that parties other than tenants (such as local authorities or housing bodies) who pay rent directly to non-resident landlords must also deduct income tax at 20% from the rent payment and remit it to Revenue.

There appears to be confusion among estate agents, property management companies and auctioneers about the nature and extent of their obligations in respect of non-Irish resident clients. Some “collection agents” may have been deducting 20% tax from rents and submitting a form R185, but this was never the correct procedure. As outlined above, the obligation on “collection agents” in Section 1034 TCA applies to any of the persons or entities listed in the section (a “*trustee, guardian, committee ... factor, agent, receiver, branch or manager*”) who are acting on behalf of a non-resident person. This would include most entities or individuals acting on behalf of non-resident landlords, including estate agents or auctioneers. If a collection agent fails to undertake its tax responsibilities, it will be liable to usual Revenue sanctions for failure to pay and file.

Replies to the specific queries raised by the agents’ representatives on the TALC Collection subcommittee are set out in bold below:

1. A non- resident client owns multiple properties managed by more than one agent (in different parts of the country for example), are both agents to act as collection agents and file tax returns on behalf of the taxpayer? Who has to take responsibility for the filing?

Each agent will be responsible to file the return and pay the liability by the appropriate deadline in respect of rent collected from the property or properties that they manage on behalf of a non-Irish resident client. If a collection agent becomes aware that another party is managing a separate property for a non-Irish resident client, they can contact the Revenue office dealing with the case, who will investigate the matter.

2. Collecting agents become chargeable persons in respect of the non-resident landlords' property?
 - a. Preliminary tax obligations;
 - b. Implications for tax clearance should full information not be returned by the collecting agent.

Collection agents are chargeable persons in respect of the non-Irish resident landlord's property. The landlord is assessable and chargeable to income tax in the name of the Irish agent (Section 1034 TCA 1997). The agent should be set up under a new tax reference number. While the assessment is in the name of the Irish agent, the tax to be charged is the amount which would be charged if the non-resident landlord was assessed in his or her own right. Accordingly, as well as assessing only the profit rent, relief should be given for any personal tax credits to which the non-resident landlord is entitled. Tax and Duty Manual 45-01-01 refers.

Also, an agent as defined in Section 1034 TCA falls within the definition of "chargeable person" in Section 959A(1) TCA.

The collections agent's obligations in respect of preliminary tax and implications for tax clearance are as follows:

- a. As normal, preliminary tax payment must be made before 31 October in the tax year or later if filing through ROS; any balance of tax must be paid on the filing date for the following year, together with the preliminary tax payment for that year.
- b. If the collection agent fails to comply with those obligations, it will have an impact on their ability to obtain tax clearance.

Section 1095 (3) TCA provides that where an applicant for a tax clearance certificate is "in compliance with the obligations imposed on the person by the Acts in relation to – (a) the payment or remittance of any taxes, interests or penalties required to be paid or remitted under the Acts, and (b) the delivery of any returns to be made under the Acts" then the Collector General's Division will provide such a tax clearance certificate confirming such compliance. Section 1095 (3A) TCA provides that the Collector General's Division may rescind a tax clearance certificate issued where compliance with the obligations of subsection (3) are no longer being met.

Section 1034 TCA provides that a non-resident landlord is chargeable to income tax in the name of an Irish agent who is collecting that rent on the landlord's behalf.

Section 1046 (1) TCA provides that a person “in whose name a non-resident person is chargeable shall be liable for all matters required to be done under the Income Tax Acts for the purpose of assessment and payment of Income Tax”.

There are clear obligations placed on collection agents acting on behalf of a non-resident landlord under the Tax Acts which should be complied with along with all other obligations in the context of payment and assessment. It follows, therefore, that should Revenue become aware that such obligations are not being met that this would have implications for the compliance status of the collection agent and could result in the refusal of a tax clearance certificate or in an existing tax clearance certificate being rescinded.

3. Agent collects rents for multiple landlords, has to file Form 11s in respect of each one and obtain multiple tax reference numbers

Yes, the agent must make a return and pay the tax in respect of each property and each non-resident landlord.

4. Instead why can't the collecting agent remit the tax on behalf of the non-resident landlord, possibly using the R185 form?

The legislation provides that this procedure (which is set out in Sections 1041 and 238 TCA) applies where the tenant (or another party such as a local authority) pays the rent directly to the non-resident landlord. The alternative procedure outlined in section 1034 applies to collection agents. Under Section 1046(2) TCA, a collection agent may retain as much of the rent as is required to pay the non-Irish resident landlord's tax liability.

As part of its strategy to support voluntary compliance, Revenue is reviewing the obligations of non-resident landlords and their agents and tenants. However, the current position is as outlined above and any change in the legislation is a matter for the Minister for Finance.

Item 4: eCG 50 overview.

Revenue delivered a presentation on the eCG 50 process. Revenue outlined the key features of the new system:

- The eCG50 system is currently scheduled to be available in the first half of 2020.
- Where a vendor needs a CG50A to provide to a purchaser, the vendor logs into ROS/MyAccount and selects 'Capital Gains Clearance' facility, enters the required details and uploads the required documentation.
- Where Purchaser receives CG50A she/he pays full consideration. If no CG50A is received she/he withholds 15% and completes a CG50B Form, logs into ROS/MyAccount and selects the 'Capital Gains Clearance' facility.
- Solicitors will be able to act on behalf of clients. The client will need to enter the solicitor's TRN into ROS/MyAccount which will create a temporary link between solicitor and client. This will allow the solicitor to make an application on behalf of the client.
- Applications made by solicitors are visible to the vendor on the application.
- When making an eCG50A application, all vendors will need a PPSN/TRN.
- When filling out an eCG50B Form, all purchasers will need a PPSN/TRN.

- In order to access eCG50 applications or to allow a solicitor to act on a taxpayer's behalf, access to ROS/MyAccount is required.

Revenue responded to queries raised by the practitioners:

- The vendor is required to upload a full contract as part of the relevant documentation.
- In eCG50A, all vendors are automatically notified but not the purchaser.
- Paying the 15%? - A purchaser can log into ROS/MyAccount and make a payment under Capital Gains Tax (CGT) but would need to be registered for CGT to make the payment.
- How does Revenue connect vendor and purchaser? – The Purchaser will provide details about the vendor on the eCG50 application form.
- Normally solicitors carry out transactions on behalf of vendors, but an agent can log in and do the same.

- **ACTION POINT:**
- **eCG 50 slides to be circulated to attendees**

ePSWT

Revenue provided an update in response to queries arising.

Report completed outlining ePSWT requirements, but this requires approval before any development commences. There is a possibility of some development in 2020 but go-live date would be at least 2021/22. This development would involve the creation of an e-system for the process. In future proofing any development, Revenue would need to consider options for the rate including keeping the current rate (20%) and a possible variable rate based on compliance such as the eRCT system.

Practitioners enquired about applying 0% withholding rate. Revenue advised that this was a possible option to drive compliance.

Practitioners enquired as to why Revenue would use variable rates. Revenue advised that in time variable rates may become more of a feature in order to match with the taxpayer's compliance position.

Item 5: Debt Management Services (DMS) Update/Interest Charging

Revenue provided an update on charging Interest.

Bulk output of Interest Warning letters (9,000 approx.) issued w/c 25 November to higher payers with late payments in 2019.

Interest will be charged on a systematic basis from January 2020.

There has been a significant take-up of the variable Direct Debit option (approx. 70%) for PREM. Revenue is going to mailshot Fixed Direct Debit customers and advise of the Variable DD option.

Assessments have a 30-day appeal period and within 7 days of the expiration of the appeal period, Revenue will issue a 'Request for Payment' Letter (Demand).

Item 6 PAYE Modernisation.

Revenue provided an update:

- 5m payroll submissions out of 178K employers

- 🇮🇪 2.8m employments reported
- 🇮🇪 €80bn Gross Pay Reported
- 🇮🇪 17m Payslips Received

Earlier in 2019, Revenue made available to Employees and Pensioners the facility to view all their payslips reported by all their employers on MyAccount. There is a facility available since June for unemployment repayments/claims online. Revenue has now launched the Financial Statement, pay and tax summary. A Customer can go online and create their own financial statement, the document is downloadable if required by a financial institution. Revenue will provide you with a password. This is required to open the document.

In January 2020, Revenue will make available Employment Detail summary to employees for 2019. This document will replace the Form P60. On 15th January, Revenue will make available the preliminary End -of-Year statement for PAYE Customers. It will be based on income details reported by all employers during the year. If they have additional income to declare or additional credits to claim they will need to complete a Form 12. On 9th December, Revenue will have generated the new Tax Credit Certs for 2020 and they will be visible in MyAccount. Once the Form 12 is filed, a final end of year statement issues and any overpayments is refunded.

Proprietary Directors

There is no change to the basis of assessment for emoluments paid to Proprietary Directors. Under the PAYE system, employers are obliged to operate PAYE on the director's emoluments at the time of payment. With effect from 1 January 2019, all employers were obliged to report on or before the making of a payment of emoluments. For proprietary directors, the Form 11 for 2019 will be prepopulated with details from the 2018 P35.

Item 7: ROS issues – Pay & File.

Revenue provided an update on the ROS downtime and the issue around P&F date.

Revenue apologised for the ROS problems encountered by Practitioners and their clients on P&F day. ROS is a very large and complex system. ROS suffered 2 separate outages on the 12th & 13th November which coincided with the Pay & File deadline. The issue on the 12th was caused by a database server crash. Revenue's technical team identified and resolved the database server issue. On P&F day itself, ROS did not go down, returns were still getting through but at a slower pace. On 13th November Revenue issued a press release advising that in light of the difficulties experienced with ROS, a surcharge will not apply to any 2018 income-tax self-assessed returns filed online that week until midnight on Sunday 17th November. A full review followed on the technical failures that happened, on how best to run the communications piece out to the users of ROS and the practitioners, to keep them informed and the lesson learned by Revenue as a result of this issue.

Practitioners advised that the lack of communication or no communication on the website was a major problem for them and their clients and stated Revenue ought to have issued an e-brief or placed a pop-up messages on website. Overall, it was felt, that communication from Revenue was poor and practitioners stated Revenue need to be timely/immediate even allowing for the fact that the matter was being dealt with as a priority and that it was an evolving issue.

Revenue responded to the queries raised by the practitioners and will review its communications. In response it noted the following

- it was not a capacity issue that contributed to the ROS outage
- it had no impact on the filing of other returns.
- Pay & File date for 2020 is 12 November.

ITEM 8 General (CCAB-I & ITI)

Revenue Phone lines:

Practitioners enquired of Revenue as to the cause of the down time on Phonelines for 2 hours on 28th October 2019.

Revenue advised that this related to 29th October, when there was an issue with phone system's database. To remedy the situation, it was necessary to bring the service down for a period and restore it from a backup facility. This lengthened the time the phones were down.

2018 Form 11 Income Tax return – domicile/nationality.

Form 11 2019 will be available from 1st January 2020. Pre-filled 3rd party data will not be there until June 2020.

Practitioner queried why nationality information was being requested. Revenue advised that a number of issues arose, and unnecessary contacts had arisen previously when the information was not mandated, and compliance queries were raised.

MyEnquiries/CES

Revenue provide an update on the subgroup that met on 26th November. The purpose of the group is to seek ways to speed up replies via MyEnquiries. The group had identified where system developments could be provided which would reduce the need for contact. Online functionality for non-corporate change of address and for CT1 offsets is to be delivered at end of March 2020. Other issues dealt with included contacts around RTS and additional clarification in updated Manuals. Replies issued in MyEnquiries for queries received in My enquiries has improved and there is a quality assurance review process on responses.

Interaction of PSWT with the DMS

Practitioners enquired of delays in the offsetting, demands issuing, client always in a refund situation, small amount of CT to be paid, can a marker be put on cases where they are always in a credit situation. Revenue advised that it is exploring this concept.

84% are processed by Business Division within the customer standards time. Dr/Cr system operates in real time if the claim is available.

Practitioners enquired whether all PSWT cases are now dealt with in Cork?

Revenue advised that this is not the case, you continue to send it to the same place as before. The website is unclear and will need to be updated to reflect the position.

Revenue advised that the REV APP will also take PSWT, the original must be sent in the post. All PSWT Certs must be signed off by Divisional Managers.

ACTION POINT:

Revenue to examine the website around the information on PSWT

Item 9 Revenue Compliance Project

Revenue provided an update on a project involving CG's and Revenue's Business Division aimed at reducing the amount of Tax Debt available for collection and influencing future taxpayer behaviour in relation to filing and paying in a timely manner. The project involves:

- examining a number of taxpayers with poor filing/payment history
- making telephone calls initially to ascertain reason for late filing of returns
- obtaining a commitment that next VAT period is paid on time
- offering Phased Payment arrangements where appropriate
- where Revenue does not succeed in making contact by phone, the taxpayer is written to
- where there is continued non-engagement after a period, the case is further reviewed, and a visit is scheduled.

Item 10 Chair for 2020

The Law Society will take over the role of Chair for 2020.

Meetings for 2020 were scheduled for 5th March 25th June and 17th November.

Attendees at the meeting:

CCAB-I	Revenue
Ms Kimberley Rowan	Mr Leonard Burke (Chairman)
Mr Gerry Higgins	Mr Pat O'Shea
	Mr Joseph Howley
Irish Tax Institute	Ms Maura Conneely
Ms Sandra Clarke	Mr Brian Farrell
Ms Mary Healy	Mr Gearoid Murphy
Mr Paul Wallace	Mr Liam Smith
	Ms Cathy Shivnan
	Ms Lucy Mulqueen