

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

13th February 2020

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

Item 1: Review of minutes from meeting of 5th December 2019

- Practitioners proposed an amendment to Item 10 and Item 8 which were agreed.

Item 2: Matters arising:

Matters arising were as follows:

- a. Section 626B TCA 1997 – resident for the purposes of tax in the relevant territory:**
Revenue advised that all of the conditions set out in the section have to be satisfied for the relief to apply. A legislative change would be required for any change in approach.
- b. Updates to the ROS Form CT1 regarding CFC disclosures & section 291A:**
Revenue confirmed a fix for the section 291A issue was carried out last month and the updated Form CT1 is due to go live in the coming days. No update was provided on the CFC disclosure issue and it was agreed that this issue should be raised at the next meeting of TALC Collections.
- c. Royalty withholding tax and interest withholding tax in treaty situations:**
Revenue are currently revising the Tax and Duty Manual 08-03-06 “Payment and receipt of interest without deduction of income tax” and they will be considering the practical issues around the royalty withholding tax and interest withholding tax on payments to non-resident individuals in treaty situations as part of that review. In the meantime, the current ‘deduct and refund’ system for royalty payments to non-residents will continue to apply.
- d. Distributions from ARFs to non-residents:**
Concern was expressed by practitioners at a TALC Direct & Capital Taxes meeting in September 2019 that there was uncertainty within the industry regarding the basis on which Ireland has taxing rights over ARF’s where a person is not resident in Ireland. Practitioners raised the issue of treaty relief being denied. Revenue advised that an internal brief was sent to Revenue employees in December confirming that treaty relief should apply. There was a discussion regarding the requirement to segregate distributions between income and capital and also the basis for PAYE applying in circumstances where there was no underlying income tax charge where a person is resident in another country. Revenue advised that guidance on the issue was currently being updated and would be published shortly.

Item 3: TDM 19-02-05 on Capital Losses:

Revenue advised that Tax and Duty Manual 19-02-05 will be updated to confirm that there is no obligation to claim the capital loss in the year in which the loss arises.

Item 4: CG50’s and gifts:

Clarification was sought regarding the application of section 980 and the requirement for a CG50 where there is a gift, the value of which exceeds €500,000 with no consideration passing between the parties, both of whom are Irish resident.

Revenue advised that section 980 contemplates actual consideration only and a CG50 would not be required in a gift scenario. Revenue are satisfied that the Form 11 requires disclosure of all gifts and/or inheritances received. The Tax and Duty Manual on section 980 will be updated to reflect the position for gifts.

Item 5: Revised entrepreneur relief and the CPO of farmland:

Practitioners queried whether revised entrepreneur relief is available to farmers on the CPO of farmland (for example for the purposes of road widening or greenways). The question was whether the land being sold would be regarded as “development land” as defined as this would impact on the availability of entrepreneurs’ relief.

Revenue confirmed that if the land has been used for farming purposes (assuming that the land which is compulsorily acquired is agricultural land), such land is not deemed to be development land. Therefore, it would qualify for the revised CGT entrepreneur relief provided the other conditions specified in section 597AA TCA 1997 are satisfied.

Item 6: Revenue procedures for the allocation of tax numbers and payments to stamp duty filings:

Practitioners explained that difficulties were being experienced in obtaining tax numbers and the allocation of payments to stamp duty filings for business customers. The issues include delays and inconsistencies in the processing of applications.

Revenue will consider the issue and the matter will remain on the agenda for the next meeting.

Item 7: Stamp Duty - RTS submissions seeking confirmation of no clawback on a liquidation:

Practitioners expressed concerns regarding submissions to RTS seeking confirmation that there will be no clawback on a liquidation where the transferred shares ceases to exist.

Revenue confirmed that there will be no clawback of stamp duty on liquidation where shares cease to exist if the underlying property remains part of the group for a period of 2 years. Revenue are considering the position where there were inter-company loans within a group which cease to exist. Practitioners expressed concern that this was a potential issue and it was agreed that matter would be discussed at the next meeting.

Item 8: Software issues with KEEP reporting form:

An issue arose where Revenue’s system incorrectly interpreted data provided in the Form KEEP1 excel template when submitted to Revenue. The grant dates were entered by the employer correctly in “Irish format” (i.e. date, month, year) and displaying correctly prior to submission however it appears that Revenue’s software reversed the date and month order within the cells to “US format” when printed by Revenue officials (to month, date, year).

Revenue confirmed that they have examined the issue and it does not appear to be a widespread issue. Revenue will keep the matter under review.

Item 9: Sections 110 and 411 - Hong Kong

Confirmation was sought from Revenue that the position applied for Hong Kong in respect section 246(3)(h)(I) TCA 1997 and section 198(1)(c)(ii)(I) TCA 1997 would also be applied for the purposes of section 110 (4A)(b)(I). Revenue stated the example included in the Tax and Duty Manual 08-03-06 “Payment and receipt of interest without deduction of income tax” regarding Hong Kong referred to relief applying in a very specific set of circumstances. In those specific circumstances, a similar approach would be adopted by Revenue for the purposes of section 110(4A)(b)(I).

Confirmation was also sought from Revenue that an entity meeting the definition of a "resident of Hong Kong" for the purposes of the Ireland-Hong Kong double tax treaty could be regarded as resident in Hong Kong by virtue of the law of Hong Kong and would therefore satisfy the requirements of section 411 TCA 1997. Revenue were unable to provide the confirmation sought.

Item 10: Discussion regarding the potential tax issues arising from the move away from LIBOR/EURIBOR reference rates to new reference rates:

Practitioners queried the potential tax issues arising as a result of the impending changes to EURIBOR and LIBOR. Such changes may have an impact where there are ‘grandfathering’ arrangements in place for example for the purposes of section 247, section 110 and transfer pricing. Revenue are keeping this matter under active consideration.

Item 11: Revenue guidance:

(i) Section 110

Guidance to take into account changes introduced by Finance Act 2019 is being updated as a matter of priority.

(ii) IREF

This guidance is a work in progress. Revenue expect to be in a position to circulate a draft of the guidance before the next TALC meeting. Revenue are circulating a spreadsheet with draft calculations and have requested feedback on this before they finalise the draft guidance.

(iii) R&D

Finance Act 2019 amendments are subject to State Aid approval. The guidance will not be updated until approval is received.

(iv) Leasing

A sub-committee meeting has been scheduled for next week to discuss the draft guidance and feedback provided by practitioners.

(v) Trading & intra-group financing

This guidance is being progressed in tandem with the guidance on leasing.

(vi) Stocklending and repos transactions

Revenue are awaiting input from the Central Bank before draft guidance can be progressed.

(vii) EII/SURE/SCI

Revenue are reviewing the submission received from practitioners.

(viii) Finance Act 2019 issues (transfer pricing, anti-hybrids and DAC6)

In respect of transfer pricing, Revenue are looking at progressing guidance on section 835E in priority. Revenue intend to circulate the draft extract soon. They will continue to work on the rest of the guidance thereafter.

A separate group has been established to discuss the guidance on DAC6. Hallmark A is giving rise to the most uncertainty.

The first section of the draft guidance on hybrid mismatches has been circulated for comments.

Item 12: Availability of Destination Table for Tax Briefings and eBriefs:

Practitioners queried why the destination tables for tax was removed from the Revenue website and whether it was intended to restore it as it is a useful tool for practitioners particularly in the context of appeal cases when trying to determine Revenue practice at a point in time. Revenue were unable confirm whether it was intended to restore the Destination Tables on the website at the meeting but confirmed the position by email following the meeting. The email correspondence is reproduced below for completeness:

The destination tables for Tax Briefings, Statements of Practice and eBriefs were removed from the website at the end of July 2019.

The decision to remove them was approved by the Information and Knowledge Management Project Board, who have oversight of the website.

It is not intended to restore them.

The following points informed the decision to remove the destination tables:

- While additional content had been added to the destination tables annually (as it reached its five year limit), existing content had not been reviewed. It was therefore likely that some information included in the tables was now irrelevant or linked to an incorrect destination.
- A significant overhead would be required to commit to maintaining the three destination tables on an ongoing basis.

- Based on analysis of data from Google Analytics, there had been negligible activity on the destination tables webpages and associated tables for the 12 months to end June 2019.
- The destination tables had been provided as an aid to users in the move to the new website. As the new website had been live for over a year, the view was that they had fulfilled their purpose and could be removed.
- Changes to TDMs (including the incorporation of Tax Briefings, Statements of Practice and eBriefs) are notified to practitioners via eBrief.
- Content is only moved to the historical section once it is more than five years old.

The issue of restoring the destination tables for Tax Briefings, Statements of Practice and eBriefs would be outside the remit of the Direct and Capital Taxes Sub-Committee and may be a matter best pursued via Main TALC.

Item 13: Workplan for 2020

No additional workplan items for 2020 were suggested at the meeting.

AOB

- Date of next meeting set for Wednesday 22 April 2020 at 14:30

Attendees at the meeting

ITI

- Laura Lynch (Chair)
- David Fennell
- Sharon Burke
- Stephen Ruane
- Tom Maguire
- David Moran
- Clare McGuinness
- Lorraine Sheegar

Revenue

- Michael Buckley
- Aisling Gallagher
- Áine Hollingsworth
- Mary Hughes
- Philip Brennan
- Dave Brennan

CCABI

- Colin Smith
- Peter Vale
- Ken Garvey
- Kim Rowan

Law Society

- Caroline Devlin
- Maura Dineen
- David Lawless
- Aidan Fahy