

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

17 April 2018

Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 2:00pm

Item 1

Review of minutes from meeting of 30 January 2018

- The Law Society proposed an amendment to the wording under AOB which was agreed.

Item 2: Matters arising

Matters, other than those items which were on the agenda, were as follows:

- General guidance on the Companies Act 2014 is expected to be drafted by June.
- In response to practitioner's request for additional guidance on Finance Act 2017 amendments to section 135 TCA 1997, Revenue's position is that the examples included in TDM, where the amendment would not have application, already reflected bona fide transactions. Practitioners noted that implications for EII scheme investments and the KEEP are not covered in the manual. This matter will be on the agenda for the next committee meeting.
- Revenue Tax and Duty Manual on changes to section 247 and section 249 TCA 1997 is expected to be published shortly. In the meantime practitioners are advised to refer to the Revenue Notes for Guidance.
- Revenue Tax and Duty Manual on section 291A TCA 1997 is outstanding. This matter will be on the agenda for the next committee meeting.
- Guidance on Film Relief and outputs from the work of the Film Relief subgroup is advancing. Guidance is expected to be published.
- Updates to the Form CA25 schedule on the website are incomplete and Revenue are asked to consider amending the footnote wording.

Item 3 Workplan 2018

- The proposed item "Death and CAT and CGT checklist" will pass to the Main TALC committee.
- Revenue confirmed that the TALC BEPS subcommittee is the appropriate TALC subcommittee to deal with Irish and international corporation tax issues – CFC, CbCr, MLI, TP.
- Other workplan items were discussed as part of the agenda.

Item 4 Guidance on section 79 SDCA 1999

- Revenue are reviewing the feedback from practitioners which will be incorporated into a revised manual which is expected to be published by the end of June.

Item 5 Stamp Duty refund scheme – online portal

- The online portal is scheduled to be available on 16 June 2018 as part of the general ROS update release.
- Revenue Tax and Duty Manual will be published by the end of April.
- Revenue thanked practitioners for their input and comments.

Item 6 Agricultural relief in circumstances where land, subject to an unexpired farm lease is transferred via gift or Will

- Practitioners requested clarification on the availability of agricultural relief in circumstances where farm land, subject to an unexpired farm lease is transferred via gift or Will.
- Revenue advised that they are not aware of any cases where relief is not granted in the case outlined by practitioners. Revenue will amend their manual to clarify the position.
- After a brief discussion on CPOs and the availability of agricultural relief it was agreed that this matter will be on the agenda of the next committee meeting.

Item 7 Meaning of relevant business property

- Practitioners requested clarification that Revenue's interpretation of "relevant business property" involving genuine building activities for the purpose of section 93 CATCA 2003 also applied in the context of sections 93 and 102A CATCA 2003.
- Revenue clarified that while a genuine property development company is not considered to be a business dealing in land and buildings and consequently qualifies as relevant business property under section 93, section 102A is a separate and specific clawback provision. A sale of shares in a company which derive some of their value for development land between six and 10 years after the date of the gift or inheritance will give rise to a clawback. Revenue noted that a sale of a house would not give rise to a clawback under section 102A.
- A brief discussion followed on the availability of dwelling house exemption where proceeds, after discharging expenses, are reinvested. It was agreed that this matter will be on the agenda of the next committee meeting.

Item 8 Draft manual on section 110 companies and entitlement to relief

- At this stage Revenue are not in a position to give guidance in relation to the reasonable commercial rate of return. Guidance may be included in the future.
- There will be no grandfathering of previous published guidance (Tax Briefing 2 of 2012)
 - Tax Briefing 2 of 2012 expired on 31 December 2017. Therefore, the current guidance is drafted as applying from 1 January 2018. Revenue are considering the position in respect of events taking place between 1 January 2018 and the date of the published guidance.
 - Aspects of Tax Briefing 2 of 2012 are not being repeated in this guidance. Some aspects are not repeated as there is no uncertainty on which guidance is required and others are not repeated as Revenue's interpretation on the matter has changed.
- There has been no change in Revenue's position on the arm's length principle according to Revenue. The guidance is now simply highlighting what has always been the position. The arm's length rule applies across the Taxes Consolidation Act 1997; it is not specific to section 110 of the legislation.
- Further comments from practitioners on the draft manual should be submitted to Revenue no later than 1 May, any proposed changes to the draft manual should be supported by legislative reference(s).

Item 9 Draft guidance on the KEEP

- The guidance was submitted earlier in the day as part of consolidated guidance on share schemes.
- Practitioner comments on the draft manual were considered by Revenue and in part incorporated in the published manual.
- Specific points made are:
 - Revenue will not provide an opinion on share valuations. In Revenue’s view, the share valuation method as applied for the purpose of the company accounts will be acceptable. It is the value of the shares at the date of grant that is needed. Revenue will not validate a safe harbour approach to valuing shares.
 - In Revenue’s view no further guidance is needed on the definition of SME.
 - In a holding company case, the individual subsidiary must be a qualifying company. The parent/holding company must not hold any other assets, only the shares in the subsidiary should be held by the parent. There was detailed discussion on the meaning of “a company whose business consists wholly of the holding of shares in a qualifying company”. Particularly, the meaning of “business” and whether this would include the other assets such as the holding a bank account relevant to the business of the shareholding in the subsidiary. Revenue will consider this point further and revert.
 - In the case of a share re-organisation, share options can be exercised within 12 months from date of grant. Exchange of shares is not covered.
 - No further guidance on the definition of Financial Services will be included in the manual. If taxpayers and practitioners have queries on the definition, they may direct them to Revenue via the RTS.
 - The interaction with section 128 TCA 1997 is covered in the manual. The difference between a short and long option is not relevant.
 - Practitioners may submit any further comments on the guidance to Revenue.

Item 10 Guidance on the trade benefit test

- Updated guidance from Revenue is due to published shortly.
- Practitioners’ comments and written submissions were considered by Revenue.
 - Revenue have not encountered any cases where consideration is in the form of shares in a subsidiary rather than cash. The updated guidance does not therefore address this issue but if considered necessary, guidance on this point can be considered in the future.
 - The revised guidance notes that, in principle where a buy-back is financed by borrowings, that this in itself will not mean that the Trade Benefit Test is not satisfied but Revenue will consider the impact upon the company’s financial position.
 - Revenue does not envisage including any specific guidance on whether the Trade Benefit Test would be satisfied where there is an exit of an individual resulting from a marital breakdown. Such cases would depend upon particular facts and circumstances. For example, in some cases it may remain possible for shareholders to continue working together despite the fact that their marriage has broken down.
 - The guidance has been updated to include details of supporting information required by Revenue.
 - The revised guidance notes that the holding of a 5% shareholding after the buy-back of shares is considered acceptable in certain circumstances.

Item 11 Revenue's review of accounting matters/FRS102

- Practitioners submitted a list of priority items for Revenue's consideration.
- Revenue is working on Notes for Guidance and a guidance manual for the Finance Act 2017 amendments to section 76A TCA 1997.
- Revenue is currently analysing the impact of the changes to IFRS16 and section 291A TCA 1997 in the context of the changes in accounting treatment.
- Analysis of other matters such as IFRS9 and holiday pay accruals is on hold for the moment.
- There will be a meeting of the FRS102 subgroup on 25 April 2018 to discuss the TALC subgroup paper on IFRS 16.

Item 12 Status of Revenue's review and collation into manuals of past leasing sector rulings

- Revenue are collating past rulings for the leasing sector and a guidance manual will be published.

Item 13 Notification of changes made to the Form CT1

- Revenue undertook to notify taxpayers and practitioners in advance of all changes to the Form CT1 in the relevant manner. A Revenue Tax and Duty Manual on the Form CT1 is expected to be published shortly.

Item 14 EII clarification on how it is possible to disregard an individual's shareholding within the phrasing of Section 492 (8)(a) TCA 1997 where the individual is not "the individual concerned" following the amendment to the section by Finance Act 2017

- Revenue are currently reviewing previous guidance received from the Attorney General. The carve out for connected persons is intentionally very specific. Revenue will consider practitioners' points made and revert.
- Revenue advised that a complete review of the EII scheme will take place in 2018. An external consultant was recently appointed to undertake the review. A public consultation is expected.
- In regard to the Revenue's processing of EII applications; outline approvals are current at December 2017 and SURE applications at October 2017.
- If older queries remain outstanding, practitioners should contact Revenue.

AOB

- Practitioners asked Revenue to consider re-publishing a guide on capital reliefs and disabilities. A guide was available previously but seems to be no longer available from Revenue.
- In response to a query, Revenue confirmed that CAT relief on gifts of inheritances to discharge the medical expenses of incapacitated individuals does not apply in the case of intestacy. The Law Society requested that Revenue include this in their CAT manual.

Attendees at the meeting

Revenue

- Brian Boyle
- Sharonne O'Reilly
- John McGorry
- Dave Brennan
- Alan Kelly
- Caitriona Crowley
- Áine Hollingsworth
- Ashling Gallagher
- Therese Bourke
- Sarah Waters

CCAB-I

- Peter Vale (chair)
- Kimberley Rowan
- Colin Smith

Law Society

- Maura Dineen
- Caroline Devlin
- Aileen Keoghan
- Padraic Courtney

ITI

- Anne Gunnell
- Stephen Ruane
- Tom Maguire
- Sharon Burke
- Laura Lynch
- Helen Byrne

Apologies

- Cormac Kelleher (CCAB-I)
- Andrew Feighery (CCAB-I)