

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

4 October 2018

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

Message from Brian Boyle

“I would like to thank all the members of the sub-committee for the great co-operation that was the hallmark of the work of this group over the last few years and to wish to you every success in the future”

On behalf of practitioners, Peter Vale thanked Brian for his considerable input over the years.

Item 1

Review of minutes from meeting of 20 June 2018

- The Revenue proposed an amendment to the wording at item 2 which was agreed.

Item 2: Matters arising

Matters arising were as follows:

- Revenue confirmed that the SARP manual is amended to clarify the application of the 30 day deadline.
- Revenue confirmed that the IREF return is now available.
- Section 79 – Revenue aim to publish a revised manual to include material on agricultural relief and other matters by the middle of November.
- An updated CAT manual and a manual regarding the operation of the exemption relating to the qualifying of expenses of incapacitated individuals and intestacy cases was published on 3 September.
- Past leasing sector and relative treasury activity rulings are being collated for publication with some changes that may be contentious, Revenue will issue guidance in draft for review on areas that are contentious.
- Film Relief guidance update is in progress, Revenue are unsure when it will be published.

Item 3 Workplan 2018

- Publication of Companies Act guidance is expected by the end of November.
- FRS 101/102 – legislative proposals identified and guidance developed.
- Section 176 TCA 1997 Trade Benefit Test guidance – see item 9.
- Section 101 TCA 1997 - guidance has been issued.
- Section 247 TCA 1997 – guidance is being developed and will issue in due course.

Item 4 CGT losses carried forward

Practitioners raised the denial of CGT loss relief in circumstances where the losses are not included in the Form 11 outside of a four year time limit. The denial of loss relief impacts normal/standard disposals and the fact that something is not on the return should not make a difference in utilising ones losses. It was noted by practitioners that there is no specific provision in tax legislation requiring a claim for CGT losses. Practitioners note that a fundamental question is if the four year rule for claiming reliefs and refunds applies to the year the loss is incurred or the year the loss is used?

This item will remain on the agenda and Revenue will consider it.

Item 5 Section 536 TCA 1997

The example provided in the notes to the agenda was discussed.

- Clarification is sought on the tax treatment of the portion of insurance proceeds spent on accommodation, i.e., to treat the insurance proceeds as covering two different events – the provision of accommodation and the reinstatement of the property.
- Practitioners raised the point that there has been a rise in rental costs over the last number of years and the 5% rule is not a realistic measure to have and asked could Revenue include accommodation as an allowable item.
- Revenue indicated that the matter would be considered in light of comments made by tax practitioners.

Item 6 Revenue Manual Part 27-02-01 Taxation of Income and Gains from certain offshore states

This manual was updated in May 2018, and as part of that update a new paragraph was included to Section 6, under “Key issues to look out for...”. This new paragraph deals with UK Individual Savings Accounts (ISAs). Previous Revenue guidance in 2004 indicated that these were essentially look through for Irish tax purposes.

- Clarification is sought in relation to the underlying analysis on this approach to ISA, e.g. if an individual holds BT shares through a UK ISA, should this be treated as an investment trust and if so, on what basis?
- Practitioners noted that an ISA is essentially a wrapper for UK tax purposes only. It can never be an offshore fund itself, as it lacks the requirement for collective investment and therefore, the only logical approach is to look through it to understand the underlying investment. What is Revenue’s rationale for their move away from this approach?
- Revenue said that while the 2014 guidance was valid at the time, the structure of ISA’s has moved on since then. Each ISA must be considered on a case by case basis to establish if it is an offshore fund or not.

Item 7 Entrepreneur relief

- Practitioners noted it is not clear if entrepreneur relief is available on a liquidation of holding companies. The Revenue TDM on entrepreneur relief only refers to situations where the liquidated company is carrying on a qualifying business at the date the liquidator is appointed. Practitioners are looking for guidance on what is the application of the legislation in the circumstances outlined in the notes to the agenda.
- Revenue stated that this issue would be best dealt with by a submission to the Department of Finance looking for legislative change.

Item 8 Section 135 TCA 1997

Practitioners asked Revenue if it received additional examples from taxpayers since the last meeting. Practitioners reiterated that the guidance published does not include all examples submitted by them and the absence of examples on the interaction with the KEEP and EII scheme is causing difficulties. Revenue's view is that the broad principles are reflected in the guidance and there is no requirement for additional examples. There is no reference in the guidance to the EII scheme but the EII guidance includes reference to section 135 TCA 1997, and it confirms that section 135 applies to the repurchase of EII shares.

- In Revenue's view KEEP is not outside the scope of the provisions of section 135 TCA 1997.
- Revenue said that if an area is not covered in the KEEP manual it is dealt with in the EII manual.
- This item will remain on the agenda in case more examples are received by Revenue.

Item 9 Trade Benefit Test and Revenue update manual

- Practitioners feel strongly that the TDM on the trade benefit test should be updated to include or make reference to the findings under TAC Case 22/2017 as otherwise the TDM is misleading.
- Revenue noted that in their view the TAC case applied to the particular circumstances in that case and there are no plans to include the TAC case in the guidance. The views in the guidance regarding the specified period that a Director may remain with the company post buy-back and the level of the small shareholding that can be retained reflect Revenue's position.

Item 10 DAC 6 and Revenue guidance

- Revenue stated that there is no update at the moment and it will be next year before it is considered.
 - DAC 6 will be kept on the agenda.

Item 11 Section 126(2)(B)

Practitioners asked Revenue for clarification of the tax position following a ruling by the High Court which determined that a qualified adult for the purposes of the old age contributory pension is beneficially entitled to the amount of the increase of the pension payment. Revenue clarified an additional employee tax credit or increased standard rate band is not due in these cases in accordance with section 126 (2B) TCA 1997.

Item 12 IFRS 16, Leases and section 291A TCA 1997

Practitioners asked for an update regarding the tax implications of the adoption of IFRS 16 for accounting periods from 1 January 2019 onwards as well as some follow up on matters relating to section 291A. This is by way of feedback by the FRS 102 working sub group and related submissions by practitioners over the summer.

- Revenue stated that as a result of the anti-hybrid and interest limitation rules they did not want to amend the lease legislation now and again when the new anti-hybrid rules come into effect.
- Revenue said to track and treat the leases as a finance lease, if the accounting is akin to a finance lease, in order to get the right deduction overall.
- Practitioners noted that an alphatax/ROS solution will be needed.

In relation to S291A milestone payment issue, Revenue said they have followed up with the Department of Finance on this.

Item 13 Section 246 TCA 1997, Payment and receipt of interest without deduction of income tax

This manual was updated in August 2018

New paragraph inserted into manual:

If withholding tax is withheld in error, or if a refund is available under a double tax treaty, then a claim for the repayment of the withholding tax deducted can be submitted via the Form IC6 which is available at www.revenue.ie.

- Where the withholding tax exemption under s246 is not available, Form IC6 is the form used to get Revenue clearance so that interest may be paid gross. Practitioners queried if there has been a change in this practice since the amendment of the manual? It was the experience of practitioners that advance clearance was no longer forthcoming. Revenue stated that there were issues found upon a review of a sample of advance clearance claims. It is intended to publish updated guidance and examples covering this area. This item will remain on the agenda

AOB

- Revenue is considering the operation of CAT dwelling house relief on foot of a recent High Court case (Deane V Revenue Commissioners).
- Online filing of IT38 Forms: Practitioners provided examples of IT38 Form error messages in respect of returns of estates. Revenue said they will flag this issue to TALC Collection.
- Section 83D Stamp Duties Consolidation Act 1999: Practitioners noted that under the section, a statutory declaration is required to be signed by the filer, ie solicitor. The declaration includes property details that would need to be verified by client/engineer and therefore it is not possible for a solicitor to be absolutely certain of the information. Practitioners asked Revenue if the declaration could be signed by clients and if there could be a facility to upload a declaration signed by clients. Revenue will review this item and revert.

Attendees at the meeting

CCAB-I

- Peter Vale (chair)
- Norah Collender
- Bríd Heffernan
- Cormac Kelleher (apologies)
- Colin Smith (apologies)

Revenue

- Michael Buckley
- Philip Brennan
- John McGorry
- Dave Brennan
- Clare Lucey
- Áine Hollingsworth

Law Society

- Maura Dineen
- Caroline Devlin

ITI

- Clare McGuinness
- Sharon Burke
- David Fennell
- Stephen Ruane