

TALC Direct and Capital Taxes Sub-Committee Meeting (by Teams)

Thursday 28 April 2022

2.30 pm – 4:30 pm

Minutes

Item 1: Minutes of meeting of 24 February 2022

The minutes from the meeting of 24 February 2022 were approved.

Item 2 – Matters arising from meeting of 24 February 2022

a) ITI submission in respect of the basis of taxation on the commutation of a foreign pension which accumulated from contributions out of foreign income.

There was a detailed discussion on the status of Precedent 28.

Revenue noted that Precedent 28 no longer applies and it had not been brought to its attention when, in 2017, the process to renew opinions that were over 5 years old was publicised. Revenue, however, also confirmed that the wider issue is being considered. Revenue also noted their view that, based on the information provided by practitioners to date, it appeared that Precedent 28 is not widely followed.

While practitioners noted these remarks, practitioners reiterated that Precedent 28 is being followed by certain taxpayers. Practitioners also noted that as the practice set out in Precedent 28 is embedded and as the technical position had not changed, guidance should not be necessary for practitioners to continue to apply.

Revenue concluded that it would re-engage this discussion in due course and clarify the circumstances leading to the withdrawal of Precedent 28. Practitioners welcomed this, while also noting that there had been no communication when Revenue removed the precedent.

ACTION: Revenue to report on the technical analysis leading to the withdrawal of Precedent 28.

b) Issues that may arise with regards the definition of a close company and its relevance to charities which have trading subsidiaries without intending to pay dividends. ITI made a submission to Revenue in advance of this meeting (circulated with meeting pack).

Revenue confirmed in their response that it was not the intention of the close company provisions to capture charities, and that a charity which organised its affairs so that some profit generation activities took place in a subsidiary, would not be regarded a close company.

c) Issues identified with Form 8-3-6 section 2 (certification by tax authorities). Following the request as to whether Revenue would consider residence certificates in lieu of section 2

certification from other jurisdictions, Revenue had requested if practitioners could provide a list of jurisdictions that similarly will not stamp the Form 8-3-6.

Revenue noted that a list of jurisdictions has not yet been received from practitioners. Revenue are aware of the issue with the US certification.

It was agreed that the item would be taken off the agenda until such time as the requisite information was available.

d) Update on issues encountered in obtaining Irish tax residence certificates – Revenue have confirmed there has been no change to Revenue’s policy and on 19 April 2022 practitioners provided examples of where this issue arose.

Revenue noted it has not had sufficient time to consider the examples provided. Revenue did note that each officer makes their own inquiries. However, there have been no changes to the criteria applied in determining the release of tax residency certificates.

Practitioners noted that there seems to be unnecessary emphasis on place of incorporation and location of the parent company (where applicable). Practitioners would be interested in feedback from Revenue on these factors and the general approach to tax residence clearance requests, which is causing some frustration for practitioners and taxpayers. There seems to be some confusion in the factors that apply, resulting in delay and frustration for practitioners requesting tax residency certificates.

It was agreed the item would be carried forward for discussion at the next meeting.

e) Leasing Guidance- Revenue noted at the last meeting that it is actively reviewing this guidance and the work done to date. This work has stalled because the legislative changes were being considered by the Department of Finance.

Revenue noted there was a meeting taking place on Friday, 29 April between Revenue and the Department of Finance.

f) ePSWT and Locum GPs treated as employees

Arising from a recent TAC determination (01TACD2022), queries have been raised regarding the tax treatment of GPs/locums who are employed in GP practices and have GMS lists in their own name. Previously, such GPs would have been treated as self-employed and taxed under Schedule D. However, following a review by Revenue in and around 2010/2011, such GPs are now generally treated as employees. Practitioners expressed concern regarding the potential practical implications for GP practices and the uptake of GMS contracts and confirmed that they would be making a submission on the issue.

This matter has been discussed at TALC Collections in the context of operational issues arising following the move to ePSWT.

Revenue noted this issue is being actively considered and will provide an update at a later meeting.

g) Retirement relief – business closures due to COVID-19 – any further queries on this received by Revenue?

At a previous meeting, clarification was sought regarding business closures during the public health restrictions and the extent to which Retirement Relief would be available where the business had ceased to trade, in particular, where the time between closure and sale was extended as a result of COVID. Revenue noted that they had not received any queries on this to date and would continue to monitor the need to update guidance. It was agreed that the item would remain on the agenda for the next meeting of the sub-committee.

h) S110 – withholding tax deduction. Revenue stated at last meeting that they would follow up with the Department of Finance in terms of a potential legislative change.

As this is a legislative issue for the Department of Finance of consider, it was agreed that this item could be taken off the agenda.

i) Deduction in respect of certain expenses of remote working, and whether the legislation should be amended to differentiate between the position for PAYE and self-assessed taxpayers.

It was agreed that if no further information was received by the next meeting, the item could be taken off the agenda.

j) Draft TDM on the classification of foreign entities for Irish tax purposes.

Revenue noted that a draft has been prepared and will be circulated in the coming weeks. It was agreed that the guidance would be considered at the next meeting.

Item 3: Revenue’s TDM review process note – further observations

The Chair began the discussion noting that the two key asks are:

- TDMs remain available even while undergoing periodic review
- A database of historic TDMs is maintained.

Revenue noted that the possibility of maintaining historic TDMs on the website would need to be discussed with the Communications Team.

Revenue noted that the current review process is closely managed with checkpoints throughout the process. There was a concern expressed by Revenue that maintaining TDMs online that were in the process of being updated presented a potential risk for Revenue, taxpayers/agents who may end up relying on out of date information, notwithstanding that in some cases it might only be a relatively small part of the TDM that was being updated.

It was noted by practitioners that TDMs in the process of being updated could be watermarked and suitably caveated as a way of managing concerns. The benefits of maintaining TDMs available

online was stressed by practitioners, noting the importance of the content therein. Older manuals which contained details of historic practices were also of great value in the context of investigations into matters arising in earlier years.

Revenue noted that an internal consultation was imminent into the whole area of TDM updates/reviews. Revenue expressed an openness to improving the current process, subject to the outcome of their internal review. The Chair requested that TALC representatives be consulted in respect of any new proposals from Revenue coming out of that internal review.

It was agreed a sub-committee should not be necessary to undertake this review.

ACTION: Revenue to consult on the TDM review process.

Item 4: Queries in relation to the Exchange Traded Funds (ETFs) Tax and Duty Manual

Practitioners noted it would be helpful to expand on the guidance regarding equivalent and non-equivalent offshore funds. It would also be helpful for taxpayers if more guidance was given on the characteristics of these “offshore funds” that make them equivalent to an Irish fund.

Revenue noted that this item had been on the agenda for several meetings. The complexity of the matter has been discussed at length. To that end, Revenue noted it would welcome specific examples from taxpayers to assist in updating guidance accordingly. Revenue have yet to receive such examples but are more than happy to review.

Practitioners requested clearer direction as to what the relevant criteria are to determine what makes a foreign fund equivalent to an Irish fund, rather than the need to liaise through RTS. Practitioners again noted that when this legislation was formed, there was a set of criteria which informed the drafting of that legislation. Revenue noted that when the legislation was drafted in the 1990s, the criteria relevant then may not be relevant now, given the evolution of the fund industry.

Revenue noted that this issue is not unique to ETF’s and the same test must be applied to all offshore funds. As practitioners have been advising on offshore funds more widely practitioners are best placed to provide such examples. Revenue have reiterated their request, (initially made at the September 2021 TALC meeting) for examples where, following review Revenue can assess if there are generic factors that could be considered to determine the tax treatment, that could form part of the general guidance available.

ACTION: Practitioners to provide the criteria to consider in determining if an offshore fund is equivalent to an Irish fund.

Item 5: Volume of Tax Appeals Commission determinations

Revenue noted that it has in place a review process through which TAC determinations are considered in light of existing guidance contained in the TDMs.

Given the nature of appeals, and the fact that some determinations may be appealed further, Revenue could not give clear timelines for the review of cases considered by the TAC. Further, Revenue noted that some issues would not result in an update as the decision may be case-specific.

Item 6: Updated Tax and Duty Manual 04-09-01 - "Section 110: entitlement to treatment"

The change made to the TDM arose from discussions, in the context of ILR, regarding whether a section 110 company could form a group.

Revenue noted that while the update made to the TDM was minor, Revenue took the opportunity to send the TDM to representatives for comments.

Practitioners noted that until now, a section 110 company could make a section 452 election. The 'double-trade' test changes this position. Practitioners also noted that up to now it was not necessary to consider the trading nature of a section 110 company. Practitioners wondered if Revenue has any views as to how a determination on the trading nature of the section 110 entity was going to be made, given there is little precedent.

Revenue noted that the usual criteria (i.e., Badges of Trade) to determine trade status apply. Practitioners wondered if the withholding tax issue noted earlier would be impacted by the fact a company is trading or not in the absence of section 110. This could have an impact on Schedule 24. Revenue was not aware of the impact on Schedule 24.

ACTION: Revenue to consider the impact of the guidance on Schedule 24.

Item 7: AOB

There were no other items of business discussed.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Dave Brennan	David Fennell	Peter Vale (Chair)	Padraic Courtney
Karen Drake	Clare McGuinness	Cróna Clohisey	Caroline Devlin
Ashling Gallagher	Stephen Ruane	Gearóid O'Sullivan	Maura Dineen
Declan Rigney	Lorraine Sheegar	(Secretary)	Aidan Fahy
Aine Hollingsworth	Laura Lynch	Enda Faughnan	Aileen Keogan
Mary Breen	David Moran	Ken Garvey	David Lawless
Maria Doyle	Tom Maguire	Cormac Kelleher	John Cuddigan
Norma Lane		Colin Smith	
Jacqueline O'Callaghan			