

Minutes of Main TALC Meeting

5 December 2017

Law Society of Ireland, Blackhall Place, Arran Quay, Dublin 7 at 3pm

Item 1 – Approval of minutes of meeting held 26 October 2017

- The minutes of the meeting held on 26 October 2017 were approved.

Item 2 – Matters arising – Finance Bill 2017

- In relation to the increase in the stamp duty rate for non-residential property to 6% for conveyances and transfers on or after 11 October 2017, practitioners raised the proposed retention of the 2% rate for conveyances or transfers executed prior to 31 December 2007 with binding contracts in place prior to 10 October 2017. Revenue confirmed that relevant conveyances may be stamped via ROS at the 2% rate but that the Certificates of Stamping will be retained pending the enactment of the Bill. Revenue confirmed that taxpayers meeting the criteria for the transitional measures may pay the 2% rate of stamp duty without incurring interest or penalties.
- Both Revenue and practitioners expressed concern that the introduction of complex amendments at a late stage in the Bill process reduces opportunity for consultation and technical consideration.
- Practitioners suggested that there be early collaboration between Revenue and practitioners in relation to the implementation of Anti-Tax Avoidance Directive (“ATAD”) into Irish law, which will be technical and complex. Revenue agreed.

Item 3 – Finance Bill/Committee Stage Amendments (CCAB-I) Amendments to EII scheme (sections 488 and 492 TCA 1997)

- Practitioners highlighted that Committee Stage Amendments to Finance Bill 2017 (i) broaden the definition of “associate” for the purposes of section 488 TCA and (ii) restrict the availability of the relief in section 492 TCA. The investor pool to raise funds via EII is now restricted. Effectively, the founding member must put all money in at one time. They noted that these changes go beyond what is necessary to satisfy the GBER (General Block Exemption Regulation).
- Revenue stated that the Attorney General made this decision but said to keep a watch for guidance which should deal with all of the issues when the Finance Bill 2017 has been passed. They expect that the Department will set up a discussion group early in the New Year.
- Practitioners raised the turnaround time for processing EII applications and relief claims. Revenue noted that there has been an increase in the number and complexity of EII

applications in recent years and also provided an update on the processing of current applications and claims.

Item 4 – The Committee Stage amendment to Section 135 – timing of comprehensive Revenue guidance and need for input from Direct/Capital Taxes TALC sub-committee (CCAB-I/ITI)

- Practitioners raised the anti-avoidance amendments to Section 135 TCA and the fact that the new drafting does not include a bona fide test. They voiced their concerns that this legislation may unintentionally catch genuine business practices (such as management buyouts) and asked Revenue what practices the new drafting is intended to legislate against. They made the point that section 817 TCA should catch any genuine avoidance such that this drafting should not be required. They also asked for status update on Revenue guidance for Section 135 TCA.
- Revenue stated that they expect the guidance to issue early in the New Year and that they expect that only genuine avoidance will be caught. They explained that they are seeking to catch related party sales involving companies with large cash surpluses which they pass on to the buyer with a distribution of revenue reserves.
- Practitioners stated that a sale to another close company, funded from the resources of the target, is common practice. Lots of sales include an earn-out component as the value of a company is really its trade and working capital resources.
- Revenue said that there would be leeway in relation to modest personal resources or cash generated by the business going forward. They are particularly looking at "cash rich" companies.
- Specific issues or examples that practitioners would like reflected in the guidance could be submitted to Revenue for consideration.

Item 7 – PAYE Modernisation (CCAB-I) (i) General update from Revenue; and (ii) Status of Regulations

- Revenue stated that PAYE Modernisation has been optimised with input from all key stakeholders and this will lead to a streamlined process and ultimately a reduction in administrative burden. Revenue will provide a Public Interface Test (PIT) environment for software providers from March 2018. This PIT environment is dedicated to PAYE modernisation and will support the large volumes of data required.

Revenue intends to engage extensively with employers and other stakeholders to raise further awareness. It already holds monthly meetings with external stakeholders and fortnightly meetings with payroll software developers. Revenue is always open to attending events to speak about PAYE Modernisation and has already attended a large number of events with a range of different groups. It had three agent information sessions in November with extensive engagement and lengthy Q&A sessions. In preparation for PAYE modernisation, an employer PAYE compliance project has already

started to ensure compliance with employer obligations. Employer P2Cs must be up-to-date and there will be a lot of emphasis on this during 2018.

During the year, Revenue also intends to present to employers details of employees it holds on its records and will ask for verification that the details are correct. Revenue has been flagging risky areas e.g. the non-operation of PAYE where no, or incorrect, instructions as to tax and USC deductions are held by the employer. Illness benefit is often taxed incorrectly and new arrangements regarding illness benefit will be published in the next few weeks.

- Practitioners highlighted that the new system will be worrying for small businesses paying staff on a weekly basis who are used to reporting less frequently. It will be an administrative burden for them and they may struggle to comply. Accordingly, there should be a focus on small businesses in the transition across and if there is anything that Revenue can do to reduce the administration for micro employers, it should be done. Revenue is very conscious of ensuring small employers are aware of their obligations and will seek to engage directly with as many as possible.
- Revenue stated that every time an employee is paid, that payroll data should be given to Revenue. This is a key part of PAYE Modernisation. Revenue's compliance checks will look to ensure that employers are operating PAYE correctly and the opportunity will also be taken to explain the new arrangements. Compliance interventions are likely to be in the nature of aspect queries with some potentially escalating to Revenue audit. The difficulty with an employer not operating on the correct instructions from Revenue is that it can lead to underpayments where a person has multiple employments.
- Revenue stated that whilst the PAYE Regulations will change considerably and the process will be completely different, the underlying principles will be the same.

Item 8 – Tax registration difficulties (CCAB-I)

- Practitioners noted that the tax registration process has improved significantly. However, it is still taking six to eight weeks for VAT registration which is causing difficulties.
- Revenue said that they would bring this back for discussion internally. It may be possible to allocate a number provisionally pending Revenue sign off. They also noted that it is important to be very careful with VAT and that more checks and balances are required for VAT than other tax heads.
- It was noted that TALC Collections has engaged with this extensively to develop systems and a new customer engagement strategy to improve service delivery in the repayment space.

Item 9 – Delays in the issuance of Revenue Guidance

- Practitioners stated that it is very helpful to have Revenue guidance on new legislation to understand how Revenue interpret that legislation but that there could be a 15 to 18-month delay before Revenue guidance is published.
- Revenue explained that there is a significant resources issue and that there is intense pressure on specific individuals but took this point on board and said that they would take the comment back to be discussed internally. Practitioners offered assistance, which is appreciated by Revenue. Revenue also asked practitioners to let Revenue know which specific issues they need clarity on.

Item 11 – Transition of PAYE from earnings to receipts basis – appropriate channel for guidance on implications e.g. re mobile assignees (ITI)

- Practitioners said that currently, bonuses which are paid in Ireland but earned overseas are not taxed in Ireland. The status quo has changed in this regard such that it will be necessary to rely on treaty protection.
- Revenue invited practitioner bodies to document concerns with regard to the changed basis of assessment and suggested that a meeting with the relevant Branch to discuss those concerns might be helpful. Any necessary technical clarification can then be published as a Tax and Duty Manual.

Item 12 – Update on outstanding consultations (ITI) e.g. (i) Schedule E travel and subsistence expenses; and (ii) the use of intermediary-type structures & self-employment arrangements

- Both of these consultations are still outstanding which is highly unsatisfactory.
- In respect of item (ii), Revenue advised that this matter was the subject of some discussion during the Debate at the Committee Stage of Finance Bill 2017.

Item 13 – Public consultation on TAC rules and procedures: References to Revenue/Agent interactions (Revenue)

- Revenue stated that as a general principle it would be preferable if statements on Agent/Revenue interactions were raised at TALC or directly with Revenue, as appropriate, rather than through any public consultation or forum.
- It was acknowledged that there is a delay in getting matters resolved through the TAC with appeals taking between 12 and 48 months to reach hearing. Revenue stressed that TAC are separate to and independent from Revenue. They are not represented on TALC.

Item 14 – Letters of tax residency (Revenue)

- Revenue noted that letters of tax residency are now available in pdf format and can be printed out by taxpayers. If taxpayers need an ink signature, they can bring the printed letter to Ballagh House. The text of the letter will confirm that the relevant company is tax resident in Ireland and that the relevant company has filed tax returns in Ireland for specified years. The relevant treaties may also be printed on the letters.
- It was acknowledged that this is a huge improvement and that there have been no recent complaints about the process. Revenue confirmed to practitioners that a "tax agent" can apply. In order to qualify as a "tax agent" it is not necessary that the agent be the person filing tax returns for the taxpayer. Rather, a "tax agent" can be any person with a letter authorising them to act on behalf of the taxpayer. Practitioners asked that the word "advisor" be used in addition to "agent" to accommodate lawyers and to eradicate any view that agent obligations arise in connection with the application for a letter of tax residency.

AOB – Section 291A TCA amendment in the Finance Bill 2017

- The amendment in Finance Bill 2017 to Section 291A TCA applies only to capital expenditure incurred by a company on or after 11 October 2017. If there was an intention to apportion the income, it has not been built into the legislation. Expenditure pre and post 11 October 2017 could be over the limit for offset.

Attendees at the meeting of 5 December 2017

CCAB-I Sharon Burke
 Crona Brady
 Brian Purcell
 Enda Faughan
 Kimberley Rowan

ITI Mary Healy
 Enda Jordan
 Kieran Twomey

Pat Mahon
Clare McGuinness
Tom Maguire

Law Society Pat Bradley – Chair
James Somerville
Caroline Devlin
Patricia McCarvill

Revenue Brian Boyle
Eugene Creighton
Declan Rigney
Sharonne O'Reilly
Gerard Howard

Apologies

CCAB-I Paul Dillon
Norah Collender

Revenue Michael Gladney

ITI Cora O'Brien
Sandra Clarke