

## **Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting**

**30 January 2018**

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

### **Item 1**

#### **Review of minutes from meeting of 27 September 2017**

- The minutes were approved.

#### **Review of minutes from meeting of 25 October 2017**

- Revenue proposed an amendment to the wording of item 14, page 9.

### **Item 2: Matters arising**

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

#### **27 September 2017**

- Item 3 – Revenue Opinions and Confirmations – general update and leasing activities - Revenue expect to have guidance published in due course.
- Item 9 - Capital Gains Tax - Revenue Guidelines on tax consequences of receivership and mortgagee in possession (MIP) – Revenue confirmed that the guidance is updated to refer to the €1 million limit on the sale of houses. The updated guidance is published.
- Item 10 - Revenue confirmed that a staff instruction which confirms that scanned copies of the CG50 application and the contract documents were sufficient to process the CG50 application was circulated to Revenue staff.
- Item 14 – a new EII's Revenue manual was published at the end of 2017.

#### **25 October 2017**

- Sections 73 and 74 Finance Bill 2017 (as initiated) - Companies Act / merger and division amendment to Section 616 TCA – published guidance from Revenue is outstanding. Guidance on this matter will be included as part of the Revenue manual on the Companies Act amendments.
- Section 12 (pre-letting expenditure) – Revenue manual drafted. Will be published shortly.

### **Item 3 Workplan 2018**

Proposed items are:

- Publication of Companies Act guidance
- FRS 101/102 – legislative proposals identified and guidance developed
- Section 176 TCA 1997 Trade Benefit Test guidance
- Section 110 TCA 1997 guidance
- Section 247 TCA 1997 guidance
- Death and CAT and CGT checklist

The committee also discussed the appropriate TALC subcommittee to deal with Irish and international corporation tax issues – CFC, CbCr, MLI, TP. Revenue will confirm.

#### **Item 4 Form CA25**

- Revenue acknowledged that the schedule needed to be clarified. An additional footnote has been added to the table and this is published on the Revenue website.

#### **Item 5 Availability of CAT returns online**

- The previous publication of the CAT return online was not part of the automated process and this resulted in delays last year. The CAT return online is now part of the Revenue Online Service (ROS) development cycles and therefore the return will be available online from 1 September each year. This was welcomed by practitioners.

#### **Item 6 Section 176 Trade Benefit Test – recent determination from the Tax Appeals Commission.**

- Revenue agreed that it is timely to look at updating their guidance.
- The Tax Appeals Commission (TAC) determination is at odds with Revenue's long standing view and published guidance. The position is under review by Revenue.
- Revenue expects to provide new guidance next month.
- Practitioners were invited to submit examples of issues experienced and input into drafting of the guidance.

#### **Item 7 Tax Residence Certificates**

- The delay in the issuing of certificates will be brought to the Main TALC committee for further discussion.

#### **Item 8 Finance Act 2017 amendments to section 135 TCA 1997 and related Revenue guidance**

- Revenue considers that the examples included in the manual adequately illustrate the tax treatment of all relevant scenarios. Examples submitted by practitioners were included in the manual where relevant, certain examples were not included as Revenue considered that they were duplicates and/or their relevance was questionable.
- The focus is on the business circumstances and it would be helpful if the guidance included examples relevant to the business aspect of transactions according to practitioners.
- There is uncertainty for EII's investments and the guidance does not address these concerns. Revenue was asked to consider these concerns and include guidance as appropriate.
- The implications for the KEEP were also discussed and Revenue will consider including guidance in the manual as appropriate.
- A bona fide example is required, Revenue was asked to include such example(s). However, Revenue stated that the examples included in TDM, where the amendment would not have application, already reflected bona fide transactions.
- Overall Revenue was asked to consider the scope and application of the legislation.

**Item 9 Guidance on the KEEP**

- Revenue is liaising with the Department of Finance. Draft guidance is expected to be available in a couple of weeks.
- Practitioners will be given the opportunity to comment on the draft guidance.

**Item 10 Update on draft Revenue guidance on the changes to section 247/249 following Finance Act 2017**

- The Revenue Notes for Guidance were updated at the end of last year.
- Further Revenue guidance is expected by way of a Tax and Duty manual. In the meantime, practitioners and taxpayers should refer to the Notes for Guidance.

**Item 11 Update on draft Revenue guidance on “Eligible expenditure for the film tax credit.”**

- The working group will be convened to consider updated guidance. A copy of the updated guidance will be circulated to this working group in advance of a meeting.

**Item 12 Amendments to the pensions manual (Chapter 23.16) – eBrief 121/17**

- There has been no change in Revenue’s position on ARFs. The amendment was to clarify the cessation of a practice that had previously applied regarding refunds of tax deducted on ARFs. This practice had no legal basis, was not published and was inconsistently applied across the Revenue Districts.
- The amendments to the pensions manual clarifies that this practice is no longer available.

**Item 13 Update on administrative guidance on the Companies Act mergers/divisions provisions**

- Revenue advised that a transfer is deemed to take place immediately before dissolution and therefore CGT group relief can apply.
- Practitioners queried if the tax position is neutral where the overall substance of commercial arrangements has not changed although one entity no longer exists. Revenue responded that it is no possible to say that such a situation will be neutral all taxes in all circumstances.
- In relation to section 79 and section 80 of the SDCA 1999, Revenue is planning to update its manual to provide greater detail on the application of the sections in order to eliminate or at least minimise circumstances in which practitioners will need to seek an advance opinion, Practitioners were invited to submit relevant examples to Revenue for possible inclusion in the manual.

**Item 14 Section 291A Finance Act 2017 amendments**

- Revenue informed the Committee that a new Tax and Duty Manual will be published on this area. The particular point on apportioning income relating to IP acquired pre 11 October 2017 and post 11 October 2017 in order to calculate relief available will be covered.

- The guidance will outline Revenue's suggested approach that income should be apportioned on a 'just and reasonable basis', similar to the apportionment of income to the "relevant trade".
- FAQs and a table will be included in the manual.

#### **Item 15 Section 110 guidance**

- Guidance from Revenue is outstanding.
- The guidance will include the FA 2017 changes and updates to old guidance.

#### **Item 16 FRS 101/102**

- Practitioners' comments on the Revenue's working list of items were not received by Revenue. Such comments will be re-submitted to Revenue.
- The working group will be convened to examine the issues.

#### **AOB**

##### **Refund of 4 percent Stamp Duty**

- Revenue informed the committee that an IT system is under development to process refund applications. This system is expected to be available from June.
- Practitioners' do not currently have examples of applications for refunds. Pricing decisions and raising finance is the principal issue at the moment according to practitioners.

##### **Revenue guidance on tax treatment of professional subscriptions**

Two practitioner bodies raised concerns about what they perceived to be an unwelcome change in Revenue's interpretation of the legislation. Concerns raised included:

- The impact for certain law professionals maintaining their Law Society membership and membership of another professional body to satisfy their professional development requirements.
- The rationale for Revenue's approach given the importance of professional standards in tax work
- The significant differences between the new guidance and eBrief No.19/2011 i.e. the absence of examples which featured in previous Revenue guidance and the detail of practical tests.
- Revenue outlined the background to the current legislation specifically the abolition of general relief on professional fees and the ending of s.118(5E) TCA 1997 in Finance Act 2011. In Revenue's view, the updated guidance is neither a change in their position nor a change in their interpretation of the legislation. The guidance is only in response to clarification sought on matters that arose in practice and during Revenue audits. The guidance is their interpretation of the legislation and the application of the "wholly, exclusively and necessarily" test which is now the only basis for relief on such subscriptions.

#### Attendees at the meeting

##### **Revenue**

- Brian Boyle
- Sharonne O'Reilly

- John Mc Gorry
- Clare Lucey
- Paul Walsh
- Therese Bourke
- Mary Hughes
- Dave Brennan
- Lyndsay Smyth
- Alan Kelly
- Michael Buckley
- Caitriona Crowley

#### **CCAB-I**

- Peter Vale (chair)
- Cormac Kelleher
- Kimberley Rowan
- Andrew Feighery
- Colin Smith

#### **Law Society**

- Caroline Devlin
- Aileen Keoghan

#### **ITI**

- Mary Healy
- Fiona Carney (for Stephen Ruane)
- Tom Maguire
- Dave Moran
- Helen Byrne
- Sharon Burke