

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

10 May 2017

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

Item 1: Review of minutes from meeting of 3 March 2017

- The minutes were approved.

Item 2: Matters arising

- It was noted that there was a matter arising from the 3 March 2017 minutes in relation to the fact that ROS does not have a box to 'tick' where Section 84 CATCA is claimed in respect of medical or other expenses. It was agreed that this was a matter which is more appropriately dealt with by TALC Collections Sub-Committee and the body in the chair for the TALC Collections Sub-Committee this year agreed to take that forward on that Sub-Committee.

Item 3: Capital Gains Tax – Letters of no audit in the case of non-resident vendors

- It was noted that since the previous meeting of the TALC Direct / Capital Taxes Sub-Committee, Revenue and the Law Society had met to discuss the draft new procedures recirculated at the previous meeting. It was noted that the draft procedures circulated would cause significant difficulties to the Law Society.
- The Law Society indicated that, to its knowledge, the current practice had been agreed at a TALC meeting as a practical solution to deal with secondary liabilities for solicitors in the case of non-resident clients. It further indicated that the current practice document is being followed by practitioners across the country and has been throughout the years since it was published. The Law Society explained that if solicitors were unable to release sale proceeds for significant periods of time without the implication that they could become liable for the CGT/IT/CT liabilities of their clients, solicitors could be in breach of the Solicitors Accounts Regulations which would have serious implications for solicitors acting for non-resident vendors.
- It was agreed that the matter be referred to the main TALC meeting as a solution was required urgently.

Item 4: Capital Gains Tax – Letters of no audit in the case of deceased/estate cases

- Practitioners noted that there are considerable delays in districts issuing letters of no audit for deceased and estate cases which prevents distribution in the case of non-resident residuary beneficiaries.
- It was agreed that this matter be referred to the main TALC meeting to be considered along with the issue of letters of no audit in the case of non-resident vendors.

Item 5: Capital Gains Tax – CG50 documentation

- Revenue confirmed that its website will be updated to confirm that scanned copies of the CG50 application and accompanying documentation are acceptable and that originals do not need to be submitted.

Item 6: Capital Gains Tax – Section 175 share buybacks by Irish plcs

- It was noted by practitioners that the Revenue Tax & Duty Manual [06-09-02] covers a range of scenarios when the CGT treatment in Section 175 won't apply but very few scenarios on when the treatment will apply.
- Revenue indicated that it had not planned to update the Manual however it was pointed out that if a taxpayer has a query in relation to the applicability of this section, it should raise this with its Revenue case manager. Revenue noted that it was not aware of any particular areas of difficulty in relation to this section.

Item 7: Capital Gains Tax – Section 176 trade benefit test

- Practitioners queried whether Revenue had any plans to update Tax Briefing Issue 25 issued in February 1997. Revenue indicated that it did not as it reviewed the Briefing recently and determined that its contents were still relevant. Revenue stated that if there were specific observations or amendments being sought by practitioners these should be provided to Revenue for its consideration.
- Practitioners indicated that certain districts were applying this section and the Briefing in inconsistent ways, with some taking a hard-line approach particularly in situations where the matters are the subject of litigation with a shareholder. Revenue indicated that it was not aware of the specific issues where it was not applied in such circumstances and that these matters will always be looked at in light of all the facts and circumstances in each particular case. Revenue confirmed that Revenue's directions internally had not changed in this area. It was noted that the Briefing contains examples of situations where the test may be met and it was never intended to set out a comprehensive list of examples where the Trade Benefit Test could be met. It was noted that if practitioners are seeing inconsistencies across districts, that these matters should be raised through RLS. Revenue indicated that an RTS meeting was due to take place in a number of weeks and that it would use the opportunity to identify if there were common scenarios that could be added to the manual.
- It was agreed that this matter should be kept on the agenda for the next meeting.

Item 8: Capital Acquisitions Tax – Benefits passing to a charity / trust and evidence of improvidence

- Revenue confirmed that formal guidance would be issued on the type of evidence of improvidence required. It confirmed that the key focus of this guidance would be on evidence of incapacity. It was noted that the guidance would provide that evidence other than medical evidence may be sufficient and that the matters set out in the guidance would not be an exhaustive list as the adequacy of the evidence would be considered on a case-by-case basis.
- It was agreed that Revenue would circulate a draft of the guidance to the committee members for comment within a number of weeks. It was further agreed that the guidance would be published in advance of the next meeting.

Item 9: Discretionary Trust Tax – Trusts with Irish investments

- Revenue confirmed that the charge to annual discretionary trust tax can be levied against non-Irish trusts that invest in Irish property on the proportion of the assets of the trust which are Irish situate property, even where none of the disponent, the beneficiaries or the trustees have been resident, ordinarily resident or domiciled in Ireland, where the other conditions for the annual discretionary trust tax arising are met.
- Practitioners queried whether Revenue also interpret the initial discretionary trust tax charge as capable of arising in those circumstances. Revenue indicated that it would review this.

- It was agreed that this item would remain on the agenda for the next meeting.

Item 10: Stamp Duty – Section 80 relief

- Revenue clarified that both LTDs and DACs can avail of relief under Section 80 SDCA, in particular as acquiring company under Section 80(2)(b).
- Revenue indicated that while the section might be updated in the future, this was not required for the relief to apply to both LTDs and DACs as acquiring companies as this is possible under the current legislation.

Item 11: Stamp Duty – Relief on Irish mergers under Section 87B

- Revenue noted that the TALC Companies Act group is meeting next week at which this matter will be discussed.
- It was agreed that this item would remain as a rolling agenda item to monitor progress on the matter.

Item 12: Stamp Duty – “Wait and see” approach and earn-outs

- It was noted that stamping on market value is correct for unascertainable consideration.
- Revenue confirmed that where an earn-out results in the consideration paid being unascertainable, as opposed to unascertained, the market value approach should be used. Where consideration is ascertainable but just not ascertained on closing, the wait and see approach can be used.

Item 13: Corporation Tax - Guidance Notes on Section 110 / IREF changes in Finance Act 2016

- Revenue advised that guidance will be published chapter by chapter. Revenue confirmed that the first chapter on PPIREFs has been circulated to industry groups and it is awaiting comments before publishing this chapter.
- Revenue indicated that it could not provide information on expected timelines for publishing other chapters.
- Revenue confirmed that there would likely be legislative amendments on the new provisions to cover various issues.

Item 14: Corporation Tax - Certificates of tax residence

- It was agreed that it would be more appropriate for this matter to be addressed at the main TALC meeting next month.

Item 15: Corporation Tax - Interest paid to treaty countries that do not have a domestic concept of tax residence (e.g. Hong Kong)

- Revenue confirmed its position that Hong Kong does not meet the legislative test under Section 246(3)(h)(l) TCA.

Item 16: Corporation Tax - Income from overseas branch and Form CT1

- Revenue confirmed that, in general, foreign branch income should be included under Case 1 on the Form CT1, provided it is trading.

Item 17: Section 626B disclosure in Form CT1

- Practitioners raised the point that the 2016 version of Form CT1 requires companies to disclose the amount of any gain arising on the disposal of defined substantial shareholdings and that this can be costly and time consuming to calculate. Practitioners queried the reason for this and whether or not the accounting measure of the gain could be submitted as an estimate of the exempt gain.
- It was agreed that this matter would be dealt with at the next meeting and so should remain on the agenda.
- Practitioners also raised an issue with the ROS system on this matter as it will only permit a maximum figure of €9,999,999.99 on the Form CT1. It was agreed that this was a matter for TALC Collections Sub-Committee and should be included on the agenda for the next meeting of that sub-committee.

Item 18: Corporation Tax – Section 452 elections

- Practitioners queried if a notification must be made in writing to inform Revenue that the taxpayer is making an election under Section 452 in addition to ticking the box available for this on the Form CT1 or whether ticking the box is sufficient.
- Revenue indicated that it would provide an answer to this question at the next meeting and so it was agreed that the matter would remain on the agenda.

Item 19: Income Tax – New civil service mileage and subsistence rates

- It was raised by practitioners that advance notice of the changes to these rates would have been preferable, given the time it takes to update systems.
- Revenue advised that it has no role in the setting of the rates and had published updated material on being informed by the relevant Department. Revenue also noted that the rates are maxima for tax free reimbursement and there is no obligation on employers to adopt any increase immediately or at all.

Item 20: Revenue Opinions and Confirmations

- It was noted that practitioners are compiling a list of general opinions to be examined and, if appropriate, refreshed. Practitioners indicated that this process was still ongoing and that a list would be provided to Revenue once completed.

AOB

- **Film Relief – Update on eligible expenditure for the purposes of Section 481 TCA**
- Revenue informed practitioners that it is coming across a number of problems in relation to claims for the film corporation tax credit, with certificates revoked in certain cases. It noted in particular that there are issues in relation to:
 - (a) **timing**: Revenue reminded practitioners that a film certificate can only be applied for if the

film is "to be produced" so the application must be made before the film is completed and that the compliance report must be submitted within four months of delivery and acceptance of the film as a qualifying film; and

- (b) eligible expenditure: Revenue informed practitioners that eligible expenditure is that which is wholly incurred in production and necessary to produce the film from development stage to post-production. A number of payments were mentioned as not falling within this category, including certain travel and subsistence payments, wrap parties and trips to film festivals. It was also noted that audits are being undertaken and in particular vouched expenses are being reviewed.
- **Public Private Partnerships (PPPs) – Revenue Manual and new accounting standards**
- Revenue confirmed that the joint Revenue, Department of Finance and Department of Public Expenditure and Reform guidance which issued in 2003 on the Corporation Tax Treatment of PPPs has been taken down from its website as it is being reviewed and updated.
- Revenue informed practitioners that the 2003 guidance is still in force and is available on the Department of Public Expenditure and Reform's website.
- Revenue indicated that the new accounting standard for PPPs would be considered in the review of the guidance. It was noted that it may be appropriate for the FRS 102 Sub-Committee to deal with this matter so that practitioners could assist Revenue in understanding the impact of the updated accounting standard. It was agreed that this matter should be referred to that sub-committee and that the sub-committee would report back to the committee once the matter was addressed by that sub-committee.
- **Qualifying disclosures relating to “offshore matters”**
- Revenue indicated that the Minister for Finance was due to provide details of the amounts disclosed in the Dáil shortly.
- Revenue confirmed that a high volume of disclosures were received, that these were being processed centrally by the Investigations and Prosecutions Division and that each person who submitted a disclosure would receive an acknowledgement shortly but that the steps for review of the disclosures and the timing for that process were not yet known.
- **Partnership returns and Brexit**
- Practitioners queried whether it would be permissible for professional service firms seeking to set up Irish operations in light of Brexit to, where a permanent establishment is triggered, submit one partnership return (Form 1) as opposed to all UK partners needing to submit individual returns (Form 11). Practitioners noted that a similar approach was adopted in other jurisdictions.
- Revenue indicated that it was not possible to respond to this matter at this meeting given it suggested a substantial change in policy and may need legislative change. It was agreed this matter would be put on the agenda for the next meeting of the committee.
- **Knowledge Development Box – Revenue Guidance and legislative amendment**
- Practitioners queried if the legislative amendment which is contemplated in the Knowledge Development Box guidance in relation to losses would likely be implemented soon.
- Revenue confirmed that it was proposed that this would happen this year in the next Finance Act.
- **R&D Credit Discussion Group**
- Revenue informed practitioners that the inaugural meeting of the R&D Credit Discussion Group had taken place and that the group would be setting a work plan for the year. Revenue confirmed it would report back to the committee on the work of this group.
- **Committee Agenda Items**
- Revenue reminded practitioners that the purpose of the Committee is to address matters of general concern and that case specific issues should not be put on the Agenda.

Attendees at the meeting of 10 May 2017

Revenue

- Brian Boyle
- Michael Buckley
- Sharonne O'Reilly
- Dave Brennan
- Alan Kelly
- Áine Hollingsworth
- John McGorry
- Fay Kearney

CCAB-I

- Cróna Brady
- Peter Vale
- Andrew Feighery
- Liam Kenny
-

Law Society

- Caroline Devlin (Chair)
- Maura Dineen
- Aileen Keogan
- Padraic Courtney
- Gavin McGuire
- Elaine Mooney

ITI

- David Fennell
- Beryl Power
- Patrick Buttimer
- Stephen Ruane
- Sharon Burke
- Mary Healy

Apologies: Tom Maguire (ITI); Finola O'Hanlon (ITI).