

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

**27 September 2017**

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

### **Item 1: Review of minutes from meeting of 20 June 2017**

- The minutes were approved.

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

- It was agreed that there were no matters arising from the last meeting which were not captured elsewhere in the agenda for the meeting.

### **Item 3: Revenue Opinions and Confirmations – General update and leasing activities**

- It was noted that practitioners had submitted pre-2012 general opinions to Revenue, in particular in relation to leasing activities, earlier in the year and practitioners wished to enquire as to the process that would be followed with respect to the review of these general opinions.
- Revenue noted receipt of the opinions and informed practitioners that no decisions had been made on these opinions yet. Revenue indicated that it would revert to the Sub-Committee on these opinions if it had any queries on them or if the contents of the opinions are to be altered in some way but that otherwise the opinions would be published in a Tax and Duty Manual.

### **Item 4: Revenue website**

- Practitioners noted that since the last Sub-Committee meeting at which this topic was discussed that many practitioners were still reporting difficulties with finding information on the updated Revenue website and that practitioners were finding that many of the links in documents, in particular in eBriefs and Tax and Duty Manuals, seem to be broken or redirecting to non-relevant information. Practitioners raised concerns about information on which practitioners used to rely which was on the previous version of the Revenue website which can no longer be found, such as the CAT Finance Act 2010 FAQs and an appendix containing examples on the application of business relief.
- Revenue reminded practitioners that all pre-2012 eBriefs and Tax Briefings are contained in the "Historic materials" section of the Revenue website and are no longer capable of being relied upon. Revenue also reminded practitioners that the "Historic materials" section contains destination tables which set out the sections of the manuals which contain Revenue's current position on the areas addressed in historic Tax Briefings, eBriefs and Statements of Practice. Practitioners noted that they would make sure that members were reminded of this.
- Practitioners raised concerns that there was no destination table with respect to other information which had been removed from the Revenue website which was not contained in eBriefs, Tax Briefings or Statements of Practice. Revenue indicated that it had been trying to move towards a position where all practitioner-relevant information is contained in the Tax and Duty Manuals and legislative Guidance Notes only and is not contained in webtext, which is directed towards taxpayers. Revenue noted that this has been part of the communication strategy for many years but that there were instances where some practitioner-directed information had been uploaded to the Revenue website in manners other than through Manuals and Guidance Notes. Revenue requested that practitioners contact the relevant Revenue contact if they come across information which they rely upon, understand to be current practice and cannot otherwise find in a location on the Revenue website. Revenue confirmed that the

relevant Revenue contact would then address this matter, either by confirming that the position or practice can no longer be relied upon or by updating the Tax and Duty Manual. Practitioners agreed that they would do this with respect to the CAT Finance Act 2010 FAQs in relation to the liabilities of personal representatives and solicitors acting for non-residents.

- Revenue requested that practitioners continue to feed in information about broken links to Revenue via the webpage itself as these were being corrected in real-time.
- Practitioners queried whether there had been any progress on the idea of developing a sitemap for the website to explain the location of the various resources on the website under each tax head, which had been discussed at the previous Sub-Committee meeting. Revenue indicated that it had spoken to the website designers in relation to this and it was not something that they currently planned to do, noting that the search function on the website had been improved to assist taxpayers and practitioners to locate information more quickly and reliably. Practitioners noted that the search function did not appear to be functioning well to locate specific information and that Google searches no longer picked up the Revenue website. Revenue indicated that searches being made and the results being generated are reviewed in real-time and keywords are being assigned so as to better link up searches made and the Revenue material being looked for.
- Practitioners queried the fact that recent eBriefs in which updated Manuals were announced were not identifying the changes that were made to the Manuals. Revenue indicated that this was an error and Revenue policy was to indicate the changes and the reasons for the changes in the eBrief publishing a manual.
- Practitioners also raised concerns about the fact that changes were made to the Corporation Tax returns for 2016 which were not notified to practitioners which meant that the first time practitioners became aware of the changes was when they went to file returns on behalf of clients. Revenue indicated that it was not aware that this had happened and would raise this internally.

#### **Item 5: RTS delays / service**

- Practitioners informed Revenue that they are encountering delays with turnaround times on queries submitted through RTS, noting that they were aware of instances where responses were not received three or four months later. Practitioners noted that they had been made aware of reviews of RTS which were taking place earlier in the year and queried if any improvements were being worked on.
- Revenue indicated that it was aware of delays in some cases but that generally it was accepted between practitioners and Revenue that the service had improved and that providing direct access to experts was a beneficial development. Revenue advised that in cases where there are long delays practitioners or the taxpayer should go back to the person dealing with the matter in the district office and ask them to follow up with the RTS service and Revenue if required. Revenue noted that in particularly complex cases decisions can take some time to issue but that practitioners and taxpayers should be notified in those cases that the matter may take additional time to deal with.
- Revenue informed practitioners that it is monitoring the type of queries it is receiving through RTS and will use this information to focus the development of Tax and Duty Manuals in those areas.

#### **Item 6: Capital Acquisitions Tax – Benefits passing to a charity / trust and evidence of improvidence**

- It was noted that Revenue had circulated a further draft Tax and Duty Manual on evidence of improvidence that might satisfy the discretionary tax exemption under Section 17 CATCA for comment in advance of the meeting. Revenue informed practitioners that it had revised the draft following comments it received from practitioners on the original draft.

- Practitioners informed Revenue that the revised draft of the Tax and Duty Manual on evidence of improvidence was very welcome. Practitioners noted that there was still one reference to medical evidence and engagement with decision-making representatives under the Assisted Decision Making (Capacity) Act 2015 which suggested improvidence was being equated with medical or legal incapacity, for which there is a separate exemption under Section 17 CATCA.
- Revenue indicated that it was seeking to take a balanced approach and this was listed as just one example of evidence that could be sufficient to prove the exemption with many other varied examples mentioned. It noted that medical evidence was always going to be a type of evidence that could be relied on and that the medical evidence could come from a range of practitioner types, such as general practitioners, psychologists and counsellors, and could speak to a variety of mental issues which would not necessarily speak to mental incapacity but could provide evidence to support a claim of improvidence, such as speaking to a pattern of behaviour.
- It was agreed that practitioners would submit further comments on this one area of the draft Tax and Duty Manual by Friday, 6 October 2017, and that the Manual would be published after that.

#### **Item 7: Capital Acquisitions Tax - Agricultural relief concession**

- Practitioners queried whether Revenue would allow Section 89 CATCA agricultural relief to apply in circumstances where a beneficiary farms part of their land and leases the remainder of the land at the same time, subject to all of the other criteria being met.
- Revenue stated that the relief cannot apply in these circumstances as the legislation is clear that it can only apply in either the case of the land being farmed or leased but not both at the same time.

#### **Item 8: Capital Gains Tax – Section 176 trade benefit test**

- At the previous meeting, practitioners had expressed a view that there was a lack of consistency across districts on what matters would meet the trade benefit test. Revenue had outlined a number of common principals for the test and where issues were being seen in practice in taxpayers being unable to meet the test. Revenue requested that practitioners provide feedback on how they were seeing these principals applied in practice. Practitioners informed Revenue that they had no update on this area.
- Revenue noted that it is reviewing the queries it receives through RTS, a substantial portion of which relate to the trade benefit test, and reiterated that it is looking at the common queries with a view to producing a Manual on these queries. It was noted that practitioners would have the opportunity to feed into this process.

#### **Item 9: Capital Gains Tax - Revenue Guidelines on tax consequences of receivership and mortgagee in possession (MIP) – Clarification re CG50A position as stated in Guidelines**

- Practitioners queried whether the section of Tax and Duty Manual - Part 04-00-01 on Revenue Guidelines on tax consequences of receivership and mortgagee in possession (MIP), which was updated in June 2017 (as set out in eBrief No. 69/17), which relates to Capital Gains Tax Clearance Certificates (CG50As) should also refer to circumstances where a house is sold and indicate that the monetary limit for this type of sale is €1,000,000 as this section of the published Manual only refers to a consideration limit of €500,000.
- Revenue confirmed that it should refer to the €1,000,000 limit on the sale of houses and that the Manual was being updated to be republished.

**Item 10: Capital Gains Tax - G50 documentation – Published Revenue position**

- Practitioners informed Revenue that they have experienced Revenue officials insisting on hard copy CG50 application forms and supporting contracts despite the Revenue confirmation at the meeting of the Sub-Committee on 3 March 2017 that only a scanned copy of the application and contracts were required to process the CG50 application. Practitioners queried whether Revenue have any plans to issue an internal practice note setting out the agreed position with respect to scanned copies of these documents.
- 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 in the process of being drafted and would be circulated to staff once approved.

**Item 11: Stamp Duty - Relief on Irish mergers**

- Revenue confirmed its position with respect to stamp duty relief on Irish mergers at a previous Sub-Committee meeting, indicating that Section 87B SDCA cannot apply but that Sections 79 and 80 SDCA should instead be relied upon where the conditions of these reliefs are met. Practitioners sought an update with respect to the status of the position, including whether or not published guidance is expected to issue.
- Revenue confirmed that it was intended that Sections 79 and 80 SDCA would be amended in the Finance Act to reflect their application to Irish mergers and that if this was accepted, revised Manuals would issue once the legislation was enacted. It was confirmed that, in the case of merger by absorption, the proposal is that the relief can apply where the assets are maintained within the group for two years following the merger. Practitioners noted that clarity on this area would be welcome.

**Item 12: Film Tax Credit – Eligible Expenditure**

- Revenue informed the meeting that the proposed Revenue and practitioner industry meeting to discuss the draft of an updated Tax and Duty Manual dealing with “Eligible expenditure for the film tax credit [Part 15 Chapter 2]” had taken place, along with other meetings with the Screen Printers of Ireland and Animation Ireland on this area. Revenue confirmed that a revised draft of the Manual was progressing and that a draft would be circulated to the people who had attended the practitioner meeting for comment. It was confirmed that the revised Manual would not contain a list of eligible expenditure categories which practitioners welcomed.

**Item 13: TALC FRS 101/102 working group: General update and PPP**

- Practitioners sought an update with respect to this working group.
- Revenue indicated that a new official had taken over responsibility for this area and that a list had been compiled of all of the items to be covered by the working group, based on previous meetings and submissions, which would be circulated shortly to practitioners for feedback as to the priority of the items to be covered as all items would be covered, item by item.
- Practitioners noted that an item of great priority was the new revenue recognition standard, which will impact the profit and loss account of companies as opposed to the retained earnings figured. It was explained that this impacts provisioning which large multi-national corporations are required to announce on a quarterly basis and that this would be taking place within the first accounting period. It was noted that this is particularly affecting companies involved in software services but would also impact banks and financial institutions.
- Revenue indicated that this issue was on the list and would be noted as a priority item. Revenue informed the meeting that the internal Revenue working group on this area would be meeting this week. Revenue further informed the group that it was expected that the Revenue

and practitioner working group would likely meet for the first time next year and that the issues list and priority feedback would determine what was dealt with first.

**Item 14: EIS and the General Block Exemption Regulation (GBER) – Proposed Tax and Duty Manual**

- In advance of the Sub-Committee meeting Revenue had provided a draft “Employment and Investment Incentive and the General Block Exemption Regulation (GBER) – Proposed Tax and Duty Manual 16-00-02” to practitioners for comments and observations.
- Practitioners noted that there were largely two issues from their perspective with the EIS and the draft Manual.
- Firstly, practitioners noted that there is a difference of interpretation with respect to Section 494(4A) TCA and the inclusion of paragraph 14(c) of Article 21 of GBER in that Revenue contend that Article 21 as a whole must be considered in any assessment of an EIS application whereas only paragraphs 6 and 7 of Article 21 of GBER are referred to within Section 494(4A).
- Secondly, practitioners raised issues with the delays in the application process. Practitioners noted that some delays are caused by the difference in interpretation between Revenue and practitioners with respect to a number of issues, including equating "first commercial sale" with "commencement of trade" and confusing the concept of "linked enterprise" with "undertaking" under general competition law in circumstances where the GBER is not intended to capture sole trader type entities. Practitioners noted that it is becoming increasingly difficult to advise clients on this area given these differences in interpretation.
- In response to the first issue raised, Revenue informed practitioners that the EIS and GBER is a state aid and so the national measures must strictly comply with the Regulation. Revenue explained that in this way it must take all of Article 21 into account in assessing applications for EIS, despite the fact that each paragraph of Article 21 is not referred to in Section 494(4A) itself, and so the paragraph 14 definition of business plan must be applied.
- In response to the second issue raised, Revenue acknowledged that delays were being caused by confusion with respect to interpretation of the application of the EIS and informed practitioners that the intention behind the draft Manual is to clarify these matters so as to reduce the delays going forward. With respect to the “linked enterprise” concept incorporating “undertakings”, Revenue indicated that the CJEU jurisprudence indicates that the application of the scheme must come within the spirit as well as the letter of "linked enterprise" and the adoption of "undertakings" within that concept is an attempt to capture the spirit element. With respect to delays in general, Revenue noted that it has received many more applications this year than last year and that many of the applications are raising more complex issues than before; however Revenue noted that many of the delays also related to receipt of incomplete applications. It was noted that it is estimated that it will take at least five months to clear the current applications in the system as things stand.
- Revenue informed practitioners that it was working on a revised draft Manual that it may seek further comments on if it thought necessary or, if not, the revised Manual would be published.
- Revenue confirmed that taxpayers cannot claim the relief on their tax returns if an application has been submitted but a certificate from Revenue has not issued, even if they make an expression of doubt, as the relief cannot be claimed until a certificate has issued.

**AOB**

**BEPS Multilateral Instrument - Update**

- Practitioners queried whether there was any update on the status of the BEPS Multi-Lateral Instrument and Ireland’s adoption of it, in particular in relation to the indication in June that it was intended that Ireland would opt in to the residence tie-breaker element. Practitioners queried whether it was possible to provide any insight into the procedure of how it was envisaged that this would work.

- Revenue indicated that the responsible officials were not present to provide a response on these queries.
- It was agreed that this matter was more properly dealt with by the Main TALC and would be placed on the agenda for the next full meeting of Main TALC.

#### **R&D Credit Discussion Group - update**

- Revenue indicated that draft guidance with respect to the food and beverage industry have been drafted following a meeting with the food and beverage industry on the R&D Credit. Revenue informed the meeting that specific examples which it was proposed would be incorporated into the Manual were being reviewed by the industry-specific discussion group and that the members were due to revert to Revenue shortly. Revenue confirmed that the guidance would be published after that and then a meeting of a new industry group would be arranged.
- It was agreed that this matter would be a rolling agenda item for the Sub-Committee to keep practitioners up to date on developments in this area.

#### Attendees at the meeting of 27 September 2017

##### **Revenue**

- Brian Boyle
- Michael Buckley
- Alan Kelly
- Áine Hollingsworth
- Jean Kennedy
- Eamon Hoey
- John McGorry
- Dave Brennan
- Caitriona Crowley

##### **CCAB-I**

- Kimberley Rowan
- Michael McGivern
- Andrew Feighery

##### **Law Society**

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

##### **ITI**

- Stephen Ruane
- Dave Moran
- Laura Lynch
- Anne Gunnell
- Helen Byrne
- Sharon Burke