

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

**6 October 2016**

**Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 14:30pm**

### **Item 1: Review of minutes from Direct / Capital Taxes Sub-Committee meeting of 28 June 2016**

- Revenue proposed minor amendments to Item 6 (CAT Dwelling House exemption) and Item 15 (Tax Clearance on the sale of property to a public body) of the draft minutes. It was agreed that the revised minutes would be approved at the next meeting.
- As regards the discussion on the Dwelling House exemption at the last meeting, Revenue clarified that the Department of Finance is monitoring this relief but is not undertaking a formal review.

### **Item 2: Update on Letters of no audit for CGT purposes for non-resident vendors**

- Revenue was asked to provide an update on its discussions with the Law Society on the procedure for obtaining a letter of no audit for non-resident vendors.
- Revenue advised that it had sent a draft to the Law Society for comment but that it had received no feedback to date.
- It was agreed that the existing practice would continue to apply in the interim. As this practice was no longer available on the Revenue website, it was suggested that the ITI would publish it in TaxFax. Revenue said that it would liaise with Planning Division on this suggestion.

### **Item 3: Update on Revised Entrepreneur Relief Guidelines**

- Practitioners raised a number of queries on the Revised Entrepreneur Relief Guidelines that were recently issued by Revenue. Concerns were raised that taxpayers would not be able to avail of the relief in a number of common scenarios, e.g.;
  - Where there is a dormant or property company in the group
  - Where one group company does not meet the 51% subsidiary test
  - Where a small part of a property has been leased

Revenue invited practitioners to make a further submission outlining their concerns.

### **Item 4: Update on Section 79C technical queries**

- As the Revenue personnel dealing with these queries were not available to attend the meeting, Revenue agreed to revert with responses after the meeting.

### **Item 5: Discussion of technical CAT issues**

- It was agreed by all parties that this was the correct forum to discuss CAT technical issues. Revenue noted that it would bring the appropriate CAT personnel to the sub-committee meetings to the extent that CAT items were included on the pre-meeting agenda.
- Practitioners separately highlighted an issue with Corrective Affidavits whereby these were not being accepted by the Probate Office unless they were pre-approved by Revenue.

**Item 6: CAT audit issues**

- Revenue was asked for an update on issues arising during CAT audits.
- It was noted that a list of 13 CAT audit issues had been identified by Revenue at a recent meeting of the TALC Audit sub-committee. Revenue agreed to circulate a copy of this list to the TALC Direct / Capital Taxes sub-committee.

**Item 7: Update on S247 manuals**

- Revenue provided practitioners with a hard-copy of its draft guidance on charges on income. There was a detailed discussion on Section 4 of the guidance which deals with the application of Section 247 relief in cases where there are multiple holding companies.
- Practitioners expressed some initial concerns on the new guidance, particularly on the proposed grandfathering provisions.
- Revenue asked practitioners to revert with comments on the draft Guidance within two weeks.

**Item 8: Update on Revenue technical guidance**

- Following discussions at previously meetings, the ITI highlighted some specific areas on which further guidance from Revenue would be useful. Some of the areas identified included;
  - Share buybacks: Further examples of when Revenue will accept that a buyback is wholly or mainly for the benefit of the trade, e.g. how would a marital break-up be viewed in this context.
  - Close company surcharge provisions: It was felt that an updated list of “professions” for the purposes of the service company surcharge would be helpful.
  - Section 615: Examples of situations encountered which have not met the bona fide test
  - Mandatory disclosure: Examples of matters which not being disclosed to Revenue

**Item 9: Update on FRS 102 sub-committee**

- Revenue was asked for an update on the establishment of its FRS 102 sub-committee.
- Revenue noted that it was still in the process of putting together the sub-committee.

**Item 10: Update on Companies Act 2014 sub-committee**

- Revenue was asked for an update on the progress of the Companies Act sub-committee.
- Revenue advised that it had received legal advice on certain issues and the sub-committee would be updated on this at the next meeting.

**Item 11: Update on release of IT55**

- It was noted that the updated IT55, dealing with the EII regime, has been published by Revenue.

**Item 12: Update on process for RTS interaction with taxpayers**

- Revenue advised that RTS case workers now have the freedom to meet with taxpayers to discuss certain complex cases. This process is now live although no case-specific meetings have taken place as yet.
- Revenue also updated practitioners on its recent eBriefs which confirmed that any opinions granted by Revenue would only last for a maximum period of five years. Revenue said that the eBrief should serve as a notification to taxpayers and that taxpayers with existing opinions would not be contacted separately. Where the five-year period has now expired for taxpayers, Revenue said that it would try to process renewal requests as quickly as possible.

**Item 13: Update on S626B query re; shareholdings of investor company**

- Revenue was asked to confirm that S626B(1)(b)(ii) operates to attribute not only the ownership/entitlement rights of a group member to the disponer, but also the period of ownership/entitlement.
- Revenue said that it would, in principle, agree with this interpretation. However, if it related to a specific case, Revenue would need to consider the relevant facts.

**Item 14: Interest / Fee Payable on Certain Bank Deposits**

- Revenue was asked to consider whether a person who is charged “negative interest” on a deposit account is subject to the withholding tax provisions of Section 246 TCA 1997.
- Revenue said that it would need to look at the underlying contract to see how this charge was described, e.g. was it referred to as interest. Practitioners explained that this is often deducted by way of a fee.

**Item 15: Withholding Tax on Royalty Payments**

- Revenue was asked whether recent eBrief 79/2016 would have implications on the administrative practice whereby taxpayers could apply to Revenue for permission to pay royalties to a non-resident company without deducting withholding tax, in circumstances where the payment does not give rise to a charge to Irish income tax.
- Revenue said that where the taxpayer meets certain conditions this administrative practice will apply automatically. A new eBrief would issue shortly confirming the position.

**Item 16: Servers – Permanent Establishment implications**

- Revenue was asked to confirm practitioners’ understanding that the presence of a server in Ireland does not create a Permanent Establishment in the State.
- Revenue advised that it would have to consider the facts in each case but that, in doing so, would follow the OECD guidance set out in paragraphs 42.1 to 42.10. It was suggested that practitioners should refer to this guidance and see whether further clarity is required.

**Item 17 – Form 11FCRO v TR2**

- Revenue was asked to what extent (if any) a Form TR2 would suffice instead of Form 11FCRO given the overlap on the forms.
- Revenue advised that taxpayers would have to file both Forms.

- Separately, it was noted that a Form TR2 could not be filed electronically where a company had a non-resident Director. Revenue said that it will be issuing a fix to address this issue.

#### **Item 18 – Debt Write-Off**

- Revenue was asked to confirm that, where there is a debt release in one tax year and a second release in a subsequent year, the provisions of S552 (1B)(d) do not apply to the second release.
- Revenue said that, in principle, it does not agree with this interpretation but it would consider it further.

#### **AOB**

- Revenue was asked whether or not interest payments to Gibraltar are outside the scope of Irish withholding tax by virtue of the interest and royalties directive. Revenue agreed to consider this point.
- Revenue was asked whether there were plans to carry out a review of the taxation of trusts as this was flagged as part of Budget 2016. Revenue said it was not aware of any review in this area. It was agreed that this forum would be appropriate to discuss technical issues relating to the taxation of trusts.

#### Attendees at the meeting of 6 October 2016

##### **Revenue**

- Brian Boyle
- Gerry Howard
- Michael Buckley
- Jeanette Doonan
- Dave Brennan

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

- Crona Brady
- Andrew Feighery
- Peter Vale

##### **Law Society**

- Maura Dineen
- Caroline Devlin
- Aileen Keogan
- Padraic Courtney

##### **ITI**

- David Fennell (Chair)
- Sharon Burke
- Stephen Ruane
- Niamh Mullaney
- Beryl Power
- Finola O'Hanlon
- Aidan Lucey