

Draft Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

4 May 2016

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

Item 1 – Review of minutes from Direct Taxes Sub-Committee meeting of 2 November 2015

- The minutes of this meeting were approved.
- It was agreed that further consideration would be given to publishing these minutes.

Item 2 – Review of minutes from Direct / Capital Taxes Sub-Committee meeting of 29 February 2016

- The minutes of this meeting were approved.
- It was noted that these minutes would be published.

Item 3 – ROS technical issues

- Revenue was asked for an update on the various ROS technical issues discussed at the previous meeting.
- Revenue suggested that these issues should be dealt with at the TALC Collections Sub-Committee going forward.
- Practitioners agreed with this approach but requested that updates be reported back at the TALC Direct / Capital Taxes Sub-Committee meetings.

Item 4 – Issuance of PPSN from Department of Social Protection

- Revenue noted that it had conveyed practitioners' concerns as regards the delays on the issuances of PPS numbers to the Department of Social Protection ("DSP").
- Revenue advised that DSP had tightened the rules on the issue of PPS numbers and this was the reason for the delay.
- Practitioners were advised to engage directly with DSP on this matter.

Item 5 – S597AA Entrepreneur Relief

a. access to relief on disposals by holding companies

- Revenue advised that the proposal to extend the relief to holding companies was ultimately a policy decision and practitioners would have to take this up with the Department of Finance.

b. application to share redemption or repurchases

- Revenue advised that Entrepreneur Relief could apply to share redemptions or repurchases in principle, but only to the extent that the other conditions attaching to the relief are satisfied.

c. guidelines

- Revenue advised that it would be issuing practical guidelines on the relief.
- It was agreed that these would be issued in draft to the TALC Direct / Capital

Taxes Sub-Committee by the end of June.

Item 6 – CG50s for branches of EU companies

- Revenue was asked to consider whether an Irish resident branch should be able to obtain a CG50 automatically (as is the case with an Irish resident company).
- Revenue advised that as a disposal by an Irish branch is a disposal by a non-resident company, the branch would have no automatic entitlement to a CG50. Revenue noted that there was no indication from the EU that this treatment was in contravention of EU law.

Item 7 – e-Brief on CGT position following abolition of Milk Quotas

- Revenue was asked whether it would issue an eBrief outlining the CGT position for farmers arising from the abolition of milk quotas.
- Revenue advised that the tax treatment was based on general CGT principles but agreed that it would issue an eBrief for taxpayers.

Item 8 – S79C and the definition of relevant holding company

- Revenue was asked to consider whether, for the purposes of S79C, a relevant holding company can be said to exist by reference to part (b) of the definition of 'relevant holding company' where the company transacts only in its functional currency.
- It was also noted by another practitioner that this query had been raised separately with Revenue.
- Revenue said that it would review the technical note provided in respect of this matter and issue a response.

Item 9 – eBrief 43/16 – Sale of Loans

- Revenue was asked to confirm its view on whether the sale of a loan secured on land in the State is a disposal for CGT purposes to which s980 applies.
- Revenue believes that such a disposal would fall within the ambit of s980, and consequently CGT, and said it is the intention to bring non-resident financial institutions within the charge to Irish CGT.
- Practitioners noted that they did not agree with Revenue's interpretation on this matter.

Item 10 – Letters of no audit for CGT purposes for non- resident vendors

- Revenue was asked to consider whether it would update the procedure for obtaining a letter of no audit for solicitors as the current process has become difficult and time consuming.
- Practitioners had proposed a process whereby they would provide Revenue with all the necessary details of a disposal and, if Revenue had raised no issues within a 2 week period from the date of receipt of that detail, the solicitor would be absolved from any potential liabilities.
- Revenue advised that guidelines are currently being finalised for districts outlining Revenue's procedures. It was noted that Planning Division had considered practitioners' proposals but would not agree to the 2 week turnaround. Instead, it suggested a 2 month period.
- Practitioners noted that a period of 2 months would be unworkable.
- It was agreed that Revenue would engage with practitioners on this matter with a view to

agreeing a mutually acceptable position.

- A progress update will be provided at the next meeting of the TALC Direct / Capital Taxes Sub-Committee.

Item 11 – SCSB - clarification on wording of eBrief 26/16

- Revenue was asked to clarify the implications of eBrief 26/16, in particular the following wording; *“the income to be included in the SCSB computation is based on an individual’s income assessable under schedule E for the relevant period”*.
- Practitioners noted that Revenue had previously indicated that ‘taxable emoluments’ should not exclude tax exempt remuneration but explained that the word ‘assessable’ in the eBrief was causing confusion.
- Revenue reaffirmed that ‘taxable emoluments’ should not exclude tax exempt remuneration and it was specifically stated that it would include bus passes, the cycle to work scheme etc.

Item 12 – S825C - SARP

- Revenue was asked to consider whether an individual would be able to avail of SARP where they were assigned from a foreign branch of an Irish company. It was explained that the foreign branch would not be a “relevant employer” by virtue of the fact that it would not meet the residence test.
- Revenue advised that, in its view, an individual assigned from a foreign branch of an Irish company would not be able to avail of SARP. It was explained that it was Department of Finance policy that SARP could not apply to an Irish company.

Item 13 – S125 - relief for AVC’s on income arising from a health benefit scheme

- Revenue was asked to consider whether relief for Additional Voluntary Contributions was allowed against income arising from a permanent health benefit scheme. It was explained that the income received from such schemes was treated as taxable employment income under S125 TCA 1997 but that no tax relief was available for the AVC’s.
- Revenue noted that it was still considering this matter and would revert with a response within 3 weeks of the meeting.

Item 14 – S87B - PRSI exemption

- Revenue was asked whether there was an update from the Department of Social Protection (“DSP”) on the promised PRSI exemption for income arising under S87B. Practitioners noted that this matter had been ongoing for over 2 years.
- Revenue said that it understands that DSP are working on a resolution to this matter and that there was no indication that the proposal was being reconsidered. Practitioners provided Revenue with the name of the DSP lead on this matter and Revenue agreed to follow up.
- It was also noted that any change to the PRSI treatment would need to be built into a future ROS release.

Item 15 – S247 - Revenue review

- Revenue was asked to provide an update on the review of the S247 manuals.
- Revenue noted that the review was still ongoing and that updated manuals would be issued before the end of September.
- Practitioners requested that significant changes being made to the manuals should, where possible, first be discussed by the TALC Direct / Capital Taxes Sub-Committee. Revenue agreed with this approach.

Item 16 – S79C – Foreign Currency

- Revenue was asked if it had considered whether foreign exchange gains which are taxable under Case IV of S79C fall within the scope of “investment income” for the purposes of S434.
- Revenue stated that, in its view, such gains would fall within the scope of investment income.
- It was also noted by Revenue that there are other provisions in the Taxes Act which deem certain items to be Case IV income. The clawback of the R&D Credit under S766 was given as one example.
- Consensus could not be reached on this point and it was agreed that practitioners would take their own view on the matter.

Item 17 – Update on Sub-Committees

Companies Act 2014:

- It was explained that the first meeting of the Companies Act 2014 Sub-Committee was positive and another meeting will be scheduled.
- It was noted that Revenue are taking a legal advice on some items.
- Revenue has asked Department of Finance to keep space in the Finance Bill 2016 plan for any legislative changes agreed by the Sub-Committee.

International Assignee Issues

- It was explained that there had been no progress since the Working Group last met on 24 February. Revenue and Practitioners couldn't reach agreement on the scope of Article 15 of the OECD's model tax convention and that this was now more of a policy discussion.

Item 18 – S410 – Group payments

- Revenue was asked for its views on the group relief payment provisions set out in section 410(5) and its application to yearly interest paid by a company. In particular, Revenue was asked whether subsection 5 could be interpreted as meaning that any interest payments which are deductible (and not charges on income) would not qualify for group payments relief.
- Revenue said that this was not its interpretation of subsection 5.

Item 19 – eBrief 36/16 - Payment of Interest without Deduction of Tax

- Practitioners explained that the requirements in eBrief 36/16 which required SME's to apply to Revenue to make certain interest payments gross would place an additional administrative

burden on SMEs.

- Revenue said that it had considered alternative approaches but this was the most effective option. Revenue noted that it would not have been possible for the new lender (SPV) to apply to Revenue for clearance as Revenue would not have been able to verify the S110 status of the SPV.
- Revenue also mentioned that it had come across limited cases where the SPV did not satisfy the provisions of S110.

Item 20 – Employment and Investment Incentive

- Practitioners noted that at a previous meeting of TALC Direct / Capital Taxes Sub-Committee Meeting in November 2015, Revenue indicated that the funds raised under the EII could only be used for revenue expenditure. Revenue was asked to clarify its view on the matter.
- Revenue confirmed that funds raised under the EII could be used for both revenue and capital expenditure.
- Revenue also advised that it would issue an updated version of IT55.

Item 21 – FRS 102 issues

- Revenue was asked to provide its view on a number of FRS 102 issues (as per note 19 of the meeting pack)
- Revenue noted that it had not yet considered the queries raised. Revenue also advised that it was seeking to source specialist input in relation to FRS 102 matters but could not provide a timeframe for this.
- Practitioners noted that an FRS 102 Sub-Committee had previously been in place and that it might be a good idea to re-establish this. It was agreed that no action would be taken on this for now but consideration would be given to it in the future.

Item 22 – RCT

- Revenue was asked to clarify the penalty regime under the eRCT system where Principal Contractors make payments without a Deduction Authorisation.
- Revenue advised that this matter was being dealt with by the TALC Audit Sub-Committee.

Item 23 – Revenue Guidance

- It was noted that some ITI members had provided feedback on the need for further technical guidance from Revenue on certain areas.
- It was agreed that TALC Direct / Capital Taxes Sub-Committee Meeting would be used as a forum for identifying and discussing these areas. A list of priority areas would be identified in advance of the next meeting.

AOB

Capital Taxes

Inland Revenue Affidavit Form CA24

- Practitioners noted that they were experiencing difficulties in accessing the Inland Revenue Affidavit Form CA24.
- Revenue agreed to look into this.

Sale of property

- Revenue was asked to clarify whether a tax clearance certificate was required on the disposal of property to a public body.
- Department of Finance Circular 43/2006 requires a Vendor and the Vendor's Solicitor to have a tax clearance certificate on the awarding of public sector contracts. It was noted that a public body acquiring property from an individual had recently requested a tax clearance certificate from the vendor and the vendor's solicitor.
- Revenue agreed to look into the matter.

CGT Clearance Certificate – S615

- Practitioners noted that Revenue guidance on the requirement for a CGT Clearance Certificate on inter-group transfers only referred to transfers under S617 and queried whether this extended to S615 transfers.
- Revenue advised that the guidance was issued specifically in response to a S617 transfer and that the S615 position would have to be considered separately.

CGT Clearance Certificate Threshold

- Practitioners discussed whether there was a requirement for a CGT Clearance Certificate in cases where the sales proceeds were less than the €500,000, albeit that the value of the asset being disposed of was greater than this threshold.
- Practitioners agreed to consider this matter further with a view to raising it at the next meeting.

CAT Administrative Matters

- It was agreed that administrative matters relating to Capital Acquisitions Tax should continue to be raised at the TALC Direct / Capital Taxes Sub-Committee meetings.
- It was widely noted that the decision to merge TALC Direct Taxes and TALC Capital Taxes had been successful to date but that the position would be reviewed at the end of the year.

Direct Taxes

- The terms of reference of the TALC Direct / Capital Taxes Sub-Committee was discussed. It was requested that the Companies Act 2014 and International Assignee working groups be referred to as 'temporary working groups'.
- It was agreed that the next meeting of the TALC Direct / Capital Taxes Sub-Committee would be provisionally scheduled for the end of June or early July.

Action Points	Responsible	Timescale
1. Revenue to provide draft guidelines on Revised Entrepreneur Relief for review	Revenue	Before the end of June 2016
2. Revenue to issue an eBrief outlining the CGT position for farmers arising from the abolition of milk quotas.	Revenue	ASAP
3. Revenue to issue response on S79C and the definition of relevant holding company	Revenue	ASAP

4. Revenue to issue response on the relief for AVC's on income arising from a health benefit scheme	Revenue	ASAP
5. Revenue to engage with the Law Society on Letters of no Audit	Revenue	In advance of next meeting

Attendees at the meeting of 4 May 2016

Revenue

- Brian Boyle
- Michael Buckley
- Alan Kelly
- Dave Brennan
- Sinead Reynolds
- Aine Hollingsworth
- Fay Kearney
- John McGorry
- Mick Croke

CCAB-I

- Liam Kenny
- Kim Rowan
- Crona Brady
- Mark Doyle
- Andrew Feighery
- Peter Vale

Law Society

- Maura Dineen
- Caroline Devlin

ITI

- David Fennell (Chair)
- Sharon Burke
- Stephen Ruane
- Tom Maguire
- Beryl Power
- Aidan Lucey