Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

25 October 2017

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

The purpose of this meeting was to discuss the measures announced in the Finance Bill 2017. Revenue noted at the outset of the meeting that the deadline for submission of Committee Stage amendments had passed. Revenue informed practitioners that certain of the comments received from practitioners in advance of the meeting had been adopted into Department of Finance proposed Committee Stage amendments but that other proposed amendments raised in comments submitted in advance or at the meeting itself were unlikely to be able to be reflected in any draft of the Finance Bill 2017.

Capital Taxes

CAT – Part 5

Sections 29 and 64 – Retirement Relief from CGT / Agricultural Relief from CAT re solar panels

- Practitioners queried whether the change to allow the use of land for the installation of solar panel purposes for retirement relief from CGT (under Section 598 TCA) and agricultural relief from CAT (under Section 89 CATCA) should have been extended to business relief from CAT as well, indicating that it was causing uncertainty and inconsistency between the reliefs.
- Revenue informed practitioners that the use of solar panels on land would not be incorporated into business relief from CAT and confirmed that this was a policy decision.

Section 73 and Schedule 2, Paragraph 4 – Proposed amendments to Part 10 of CATCA in Sections 101 and 104

- Practitioners noted that the amendments to the business property relief and CAT clawback provisions to incorporate the Companies Act 2014 references seem to operate on transfers of shares between companies as a result of a merger or a division but do not accurately capture the position on recipients of shares where the shares are received as a gift or inheritance but become different shares as a result of a merger or division of the company. A relief from CGT operates in that way and it is practitioners understanding that the same type of relief is intended to apply to CAT on shares.
- Revenue indicated that it would review the provisions with this in mind as the purpose of the provisions is to avoid a clawback of the relief in circumstances where there shouldn't be one.

Stamp Duties – Part 4

Section 55 – Proposed amendment to Schedule 1 SDCA to capture change in stamp duty rates and practical issues relating to same

- Practitioners noted that the legislation as drafted captures all property other than residential real estate and stocks and marketable securities, and insurance, rather than merely commercial real estate as indicated on budget day, and that this could impact business transfers. Revenue noted that this was a policy decision.
- Practitioners raised problems caused by the lack of transitional measures in the Financial Resolutions passed on budget day and Revenue's communicated position that the new 6% rate should be paid by all taxpayers, even those that expect to be in a position to avail of the transitional measures as published in Section 55 of the Finance Bill, with those who are entitled to a refund of 4% applying for same after the enactment of the Finance Act if the transitional measures were adopted. Practitioners noted that for deals that had already been financed it would be very difficult for purchasers to obtain additional funding to cover the 4% stamp duty payment in the interim period before a refund could be sought. Practitioners also raised the fact that for transactions

which are funded by banks, the title and mortgage usually needs to be registered within a very short period of time post-signing and that the transfer must be stamped before this can occur, therefore completion of deals was being significantly delayed and possibly frustrated entirely by these measures.

- Revenue confirmed that the 6% rate is the current legal requirement for all conveyances or transfers of relevant property after 10 October 2017 as this was passed by a Financial Resolution on budget day but that the transitional measures cannot be applied until they are passed into law. Revenue indicated, in response to a suggestion that a Financial Resolution be passed to adopt the transitional measures now, that possible solutions were being discussed with the Attorney General but that it was Revenue's understanding that Financial Resolutions could not be adopted post-budget day.
- A suggestion was raised by practitioners that the payment date could be extended such that the deadline would be the end of the second week of January, given as an example, for relevant conveyances or transfers. This might deal with some of the issues raised by the lack of funds to pay the 4% difference and would assuage concerns around interest and penalties arising. Revenue noted that that would be a practical solution to some of the problems being caused for practitioners and that it would take this away to consider this possible solution further.
- Practitioners also raised the fact that the form of certificate which needed to be incorporated into instruments of conveyance or transfer for which the transitional measures (if enacted) would be availed of had not yet been published. Revenue informed practitioners that this would be published on the Revenue website as soon as possible.

Sections 59 and 60 – Proposed amendments to stamp duty reliefs under Sections 79 and 80 SDCA

- Practitioners welcomed the statutory enactment of the disapplication of the clawback of relief under Section 79 SDCA in cases of liquidation but queried why conditions for applying relief in those circumstances had been significantly increased compared to the long-standing Revenue practice in this area. Practitioners raised examples of the types of situations that would not be included by the wording proposed in Section 59(a), including situations where the transferee is the company that is liquidated or struck-off post-transfer instead of the transferor, where one of the companies is voluntary struck off as opposed to liquidated, where neither the transferee or transferor ceases to exist but the assets are realised within the 2 year period and the proceeds remain within the 90% group (such as with trade debtors), or where a public company is the transferee due to the proposed requirement that the beneficial ownership of the share capital of the transferee must remain unchanged for a 2 year period post-transfer. Practitioners queried in particular the purpose of the requirement that the beneficial ownership of the ordinary share capital of the transferee cannot change, in particular where the beneficial ownership of the transferee may not be a necessary element for Section 79 relief to apply or where the 90% group relationship is maintained despite such a change in beneficial ownership. Practitioners indicated that one way of amending the group relief provisions may be to adopt similar legislation to the UK provisions in this area as this would simplify the section and wouldn't raise any of the problems which practitioners had just highlighted.
- Revenue informed practitioners that it did not think those measures could be amended at this stage but that any applications made to Revenue for rulings on the application of Section 79 SDCA relief in specific circumstances would continue to be reviewed by Revenue on a case-by-case basis.
- Practitioners raised issues with the incorporation of Irish merger provisions into both Section 79 and 80. Practitioners queried why only mergers by way of absorption had been included in the proposed new Section 79(7A)(b) SDCA and noted that it would be more appropriate for all types of mergers, including mergers by acquisition and formation of a new company, mergers involving a public company, cross-border mergers, SE mergers, foreign law mergers and divisions, to be included as activities which would not break the group relationship for Section 79 SDCA purposes where the group relationship was maintained as all of these were possibilities and there was no justification provided for limiting this to only mergers by absorption. Practitioners made the same comments with respect to the definition of 'merger' and 'successor company' and 'transferor

company' in the proposed amendments to Section 80 SDCA and also queried the failure to reference division transactions which could be eligible for relief under Section 80 as a reconstruction. Revenue informed practitioners that it was reviewing these provisions with those comments in mind and hoped to propose Committee Stage amendments to address these points.

- Practitioners also queried the exclusion under the proposed new Section 80(2)(b) SDCA of private companies limited by shares from ‘a company to be registered' under the proposed new Section 80(2)(a)(ii) SDCA, in particular as it had been confirmed at previous TALC meetings that LTDs could avail of Section 80 SDCA relief. Revenue confirmed that it was its legal advice that a private company limited by shares could not be registered for a particular purpose and so only DACs can come within the requirements for Section 80 SDCA where it is claiming to be a 'company to be registered…with a view to the acquisition of' the undertaking of a target company or not less than 90% of the issued share capital of a target company; however Revenue confirmed that private companies limited by shares could still avail of Section 80 relief where the nominal share capital of such a company is increased for a particular purpose after it is incorporated and that Revenue guidance would be published to clarify this point.
- Practitioners noted the proposed inclusion of new subsections (11) in Sections 79 and 80 SDCA which confirm that mergers by way of the summary approval procedure or by a High Court order under the Companies Act 2014 will be regarded as a conveyance on sale. It was raised that it appears as if those charging provisions apply only in respect of transactions which may be relieved under Sections 79 and 80 SDCA, given the location of the provisions, and it was stated that if this was not intended it may be more appropriate to include a stand-alone charging provision to cover these matters.

Section 73 and Schedule 2, Paragraph 3 – Companies Act updates relevant to stamp duty

- Practitioners noted that an amendment to update references for the Companies Act 2014 had been missed in Section 87B SDCA, where the old public limited company merger regulations from 1987 were still referenced even though these regulations had been repealed, and informed Revenue that this should be updated to Chapter 16 of Part 17 of the Companies Act 2014. Revenue indicated that it would review this.

CGT – Part 1, Chapter 4 and Chapter 6

Section 13 – Proposed amendment to Section 579A TCA

- Practitioners noted that the amendment to Section 579A TCA removed a possible exception for all settlements and reduced this to only those carrying on genuine economic activities in a relevant Member State, meaning that this would bring primarily non-EU beneficiaries into the charge to tax. Practitioners also noted that this amendment could cause problems for settlements as trusts often have no activity or involve investments in an underlying company and it was not clear whether genuine economic activities of an underlying company could be attributable to a settlement.
- Practitioners queried whether an approach could be adopted such that Section 579A TCA would not apply in the case of either the existing Section 579A(9A) test applying or the proposed new subsection (9A) test applying, which is the approach adopted in the UK.
- Revenue indicated that ‘genuine economic activities' is an EU concept and so no guidance will be published on the meaning of this phrase. Revenue noted practitioner comments on the proposed amendment to Section 579A.

Sections 22 and 24 – Proposed amendments to Sections 29 and 980 TCA

- Practitioners raised a number of issues with respect to the proposed incorporation of an 'actively and substantially traded' test for listed shares and debt to be outside of the scope of Irish CGT for non-resident/ordinarily resident holders and outside the scope of Section 980 TCA (where such shares or debts derive their value from Irish land).

- It was noted that it is Revenue's published view that debts secured on Irish land can be debts which derive their value from Irish land. Practitioners made representations to Revenue about the ways that the proposed new test would be very problematic for Section 110 companies and securitisations of debt secured on Irish land (e.g. Irish CMBS/RMBS transactions and Irish CLOs), for institutions issuing covered bonds, for issuing and trading of public debt of Irish banks and for trading in Irish REITs. These would previously have fallen outside the scope of Sections 29 and 980 TCA as these would be listed but trading in them is often infrequent, as is the case in general for debt and property assets which are often seen as long-term investments by investors.
- Practitioners noted serious concerns they have with respect to the operation of clearing systems for listed debt as it will no longer be possible to clear the debt as a purchaser would only be paying 85% of the purchase price into the clearing system and so the trade will fail, resulting in an inability to trade any such bonds on public bond markets. It was noted that most clearing systems do not admit to trading any debt that is subject to withholding.
- Practitioners further noted that bond trading may be 'off exchange', even where they are quoted on a stock exchange, as they are often traded on a private basis through brokers, dealers and custodians. This is generally the case for bonds issued in securitisation transactions by Irish banks. Practitioners noted that this means that these bonds may never be capable of satisfying the proposed 'actively and substantially traded' requirement.
- In addition, practitioners queried what standard of trading would be required to meet the 'actively and substantially traded' test and noted the damaging effect the introduction of this unknown and vague standard could have on the ability of Irish institutions falling within the previously mentioned categories to raise funding in international markets, in particular where clarity is only provided in guidance which can be withdrawn by Revenue.
- Revenue requested that practitioners submit examples of market issues raised by the proposed amendments. Revenue indicated that guidance on the meaning of the test had not been developed yet but that the test under the US-Ireland DTA is a sensible starting point for the meaning of the test and that detailed guidance would be prepared.

Sections 73 and 74 - No Companies Act / merger and division amendment to Section 616 TCA

- Practitioners noted that no amendment was made to Section 616(4) TCA to confirm the application of group relief no gain / no loss treatment to transfers between companies that immediately prior to a merger or division transaction were members of a CGT tax group. Revenue informed practitioners that the legal advice it had obtained indicates that the transfer of assets in the course of a merger or division transactions happens immediately before the merger or division and so no legislative amendment is required. Revenue confirmed that it was its intention to publish this position in an e-Brief.

Section 26 – Proposed amendment to Section 617

- Practitioners welcomed the statutory confirmation of the administrative practice with respect to the application of Section 617 in the case of transfers between companies in DTA countries. Practitioners queried whether the Revenue practice with respect to transfer of single assets, as opposed to trades, would continue to apply.
- Revenue informed practitioners that the administrative practice with respect to DTA countries has only ever applied to the transfer of trades and not to transfers of single assets. It was confirmed that this would continue to be the case.

Sections 73 and 74 - No Companies Act / merger and division amendment to Sections 598 and 599 TCA

- Practitioners noted their disappointment that the opportunity was not taken in the Finance Bill to update the provisions relating to the continuation of CGT relief for shares in a family company which has been subject to a merger or division during the ownership period required to be eligible for the relief, such that the new shares would be treated as the same asset as the old shares.

Practitioners noted that published guidance would be welcome on this point to confirm the administrative practice currently being followed by Revenue in applying CGT retirement relief in such circumstances.

Direct Taxes

Corporation Tax – Part 1, Chapter 5

Section 17 – Proposed amendments to Section 110 TCA

- Revenue confirmed that the reference to 'shares that derive their value from, or the greater part of their value from, directly or indirectly, land in the State' refers to equity only and is not to be interpreted as 'shares' in the same manner as for some sections in the Capital Gains Tax Acts.
- Practitioners queried the start date for the revised measures being interest paid on or after 19 October and whether it was intended that this would capture interest accrued but unpaid before that date, including interest which would not have been caught by the Finance Act 2016 changes to Section 110. Revenue confirmed that accrued but unpaid is caught and that this was a Ministerial decision.
- Practitioners also queried the application of the measures where there is a holding company structure whereby one Section 110 company is the holding company of another Section 110 company and the subsidiary pays a dividend up to the holding company as under the proposed amendments this dividend would be taxed twice. Revenue confirmed that the provisions apply to holding company structures where the various shares derive their value from land in the State. Practitioners highlighted that this was different to ordinary holding companies and would amount to double taxation.
- Practitioners queried the application of the rules in circumstances where a Section 110 holding company with shares in a property investment company operates a mark to market basis meaning there are upward only revaluations going forward. Revenue indicated that it was not intended that there would be steps taken in the legislation to address this as making a 2003 GAAP election is possible under the legislation and would dispense with the issue.
- Practitioners queried whether there was an intention to carve out listed shares, such as for REITs. Revenue confirmed that there was specific relief in the case of REITs in the Finance Act 2016 changes but that it would review the sections to confirm if the relief was properly carried through.

Section 19 - Proposed amendments to Section 76A TCA with respect to accounting standards

- There was a detailed discussion on various aspects of the proposed legislation. The following points were covered:
  - The provisions in Section 19 of the Bill are welcomed by practitioners.
  - In respect of the proposed Section 76A(4), it was noted that new standards can be imposed in other manners than those set out in the draft legislation, including where there is a revision of a standard instead of the wholesale adoption of a new standard or where the standard is the same but additional elements are introduced. Revenue noted that this was useful to consider and that it would address that.
  - Practitioners queried why a past adjustment to reserves for an error which is not material would require the opening and correction of past period tax returns where a material or fundamental error is to be immediately corrected and suggested that taxpayers should be given the option to elect how to reflect immaterial errors. Practitioners also noted that it seemed as if the statutory time limits were disapplied for the reopening of tax returns. Revenue confirmed that it was not intended that the statutory time limits would not apply in these circumstances and that it was reviewing the comments on this section in general, including in relation to the imposition of interest and penalties where tax returns are required to be amended.

- Practitioners sought clarity on the meaning of 'relevant period'. Revenue noted that this was being reviewed along with the reference to a 'period of account' in subsections 3(c) and 5(c).
- Practitioners noted that not all early adopters of new standards in 2017 would appear to be able to avail of the provisions as the proposed legislation refers to accounting periods ending on or after the passing of the Bill and suggested that this line be deleted to allow for timely elections to be made by companies who wish to avail of the proposed provisions. Revenue noted this point and indicated that it would be considered.

- Revenue noted its general position that a prior year adjustment is taxable or deductible.

Section 20 – Proposed amendments to Section 247 TCA with respect to charges on income for corporation tax purposes

- There was a detailed discussion the proposed changes to Section 247 TCA and consequential proposed changes to Section 249 TCA. Practitioners comments and Revenue's responses to same were as follows:
    - Practitioners welcomed the legislative provisions with respect to the ability to dissolve intermediary companies in a structure without impacting on the ability to claim relief under Section 247 but queried the incorporation of a 'bond fide / non-tax avoidance' test in proposed Section 247(2B), particular in M&A transactions where a purchaser will struggle to meet a subjective test with respect to the vendor's intention on set up of a structure. It was noted that this issue is accentuated by the recovery of capital provisions. Revenue responded that it has sought to address the recovery of capital issue in Section 249 to allow for streamlining of structures and that the amendments to Section 247 confirm that an intermediate holding company can be eliminated but this company cannot be the 'connected company' using the funds on which a claim for Section 247 relief is based because the requirements of Section 247(3) must continue to be met in respect of that 'connected company'. Revenue also confirmed that the 'bona fide' test is a purchaser test post-acquisition when the purchaser is in control of the structure.
    - Practitioners queried the inclusion of 'holding and acquiring' in the proposed Section 247(2)(b)(iv) as this would prevent a company which is an indirect intermediate holding company from using the funds to repay other borrowings such as bank debt and that this is inconsistent with other provisions of the section which allow for simply 'holding' as a purpose. The same comment was made in respect of other proposed amendments or introductions. Revenue confirmed that this was intentional as the relief was put in place with the intention of on-lending borrowed money only to fund acquisitions and it is not intended to apply to money on-lent as working capital.
    - Practitioners queried the fact that relief under Section 247 for intermediate holding companies is restricted to those which ultimately own trading companies but not rental companies. Revenue confirmed that this is the intended position.
    - Practitioners queried why the dissolution provisions in the proposed Section 249(2)(ac)(iii)(IV) have not been extended to Section 247 companies and companies concerned and why the re-investment provisions available to companies concerned and proposed to be available to intermediate holding companies are not also available to Section 247 companies. Revenue indicated that this was a policy matter.
    - Practitioners noted that the proposed new Section 249(2)(ac)(v) refers to 'an amount of capital deemed to have been recovered by the investing company under this paragraph' and queried whether this should refer to 'this paragraph and paragraph (aa)'. Revenue confirmed that this was not the case as the recovery of capital would come from the bottom up and that it would be conceptually impossible to have a deemed recovery of capital in respect of (aa) before (ac).
    - Practitioners queried whether the reference to 'reasonable period of time previously' can only apply on a go-forward basis from 19 October 2017. Revenue confirmed that this is the case and that 'reasonable period of time' would not be defined as this is a fact-based

test. Revenue also confirmed that the new provisions would not apply to refinanced loans but to post-19 October loans only.

- Revenue noted that comprehensive guidance on Sections 247 and 249 TCA, including on any changes made by the Finance Act, will be published.

Section 21 – Amendment of Section 291A TCA on capital allowances

- Revenue indicated that the 80% restriction applying to capital expenditure incurred on or post-11 October 2017 is to be applied on a factual basis with individual assets identified on acquisition and managed from an accounting basis separately to those acquired pre-11 October 2016. Revenue indicated that it did not intend to impose the method by which companies track this and this would be a matter for the companies themselves to attend to.

Income Tax – Part 1, Chapter 3 and Chapter 4

Section 7 – Provisions on BIK relief relating to electric vehicles –

- Revenue confirmed that the use of the word ‘provided’ in the Bill is to be given the same interpretation as 'made available' in Sections 121 and 121A TCA.

Section 8 – Provisions on taxation of medical insurance for employees of authorised insurers and tied health insurance agents

- Revenue confirmed that where an employer provides insurance for employees under the proposed Section 112AA TCA, any payment arising from a claim under such policy will not give rise to a separate charge to tax under Schedule E for that employee.

Section 10 – KEEP Scheme

- Practitioners welcomed the introduction of the scheme. There was a detailed discussion of the largely practical issues raised by the legislation. The main points were as follows:
  - Practitioners queried the exclusion of EEA incorporated but Irish tax resident companies from the scheme. It was also suggested that the exception for companies quoted on the ESM should extend to equivalent stock exchanges targeted at small companies in tax treaty countries. Revenue confirmed that amendments in this regard had been proposed.
  - Practitioners raised issues around the practicalities of valuation of shares and in particular queried when share options are to be valued to determine if they are qualifying share options. Revenue confirmed that it was intended that share options and thresholds in respect of same be determined at the date of grant and that this would be confirmed in Revenue guidance. Revenue noted that the company must be a qualifying company and the employee must be a qualifying employee throughout the relevant period but share options continue to be valued at date of grant of each option. Revenue also confirmed that if valuation limits are breached then the options do not fall within the Scheme and there is no ability to merely tax the excess in those circumstances.
  - Practitioners indicated that the restriction that the total market value of all share options granted to an individual cannot exceed 50% of the annual emoluments of the individual in a given year was very restrictive in the context of technology start-ups for which market practice has moved towards offering high equity rewards and significantly lower salaries in order to attract the required personnel. It was noted by practitioners that the other monetary limits should be sufficient to ensure the scheme was not availed of by companies with a significant market value. Revenue confirmed that it has communicated concerns in this regard to the Department of Finance as this was a policy decision. Practitioners noted that this was an issue of particular concern and would limit the effectiveness of the scheme considerably.

- Practitioners queried the restrictions around connected parties and the requirement that these be maintained over the relevant period, noting many instances can result in parties becoming connected post-grant. Revenue noted that the intention of the legislation is not to allow for tax exemptions for succession of family owned companies and the connected party limits were included deliberately. Practitioners noted that this position as unsatisfactory.
- Practitioners noted that it would be welcome if Revenue could confirm in guidance that the buy back of shares acquired under KEEP could meet the conditions for the benefit of trade test under Section 176 TCA, given there is a bona fide test in the KEEP provisions, It was noted that this would be necessary to ensure sufficient liquidity in the shares for employees. Practitioners also raised consequential amendments required to Sections 177 and 178 TCA, in particular to allow KEEP shares to be bought back in tranches. Revenue noted it would consider these comments.
- Practitioners raised a number of comments around the drafting of the provisions in relation to acquiring shares in holding companies because the definition of holding company is far too restrictive and doesn't reflect commercial realities, including that a holding company may also operate a trade and will have a bank account. Practitioners noted that this was an issue of immediate concern as it would prevent companies granting options in shares in holding company which would mean the KEEP scheme would not become properly effective until amendments were made. Revenue noted that the definition was not the same as the holding company definition used elsewhere, including in respect of Entrepreneur's Relief under Section 597AA, and that it would review this but it was unlikely to be reflected in amendments to this Finance Bill.
- Practitioners queried the need for an individual to be an employee of and carrying out duties for a single company as in reality employees are often employed by one group company but their services are made available to other group companies. Revenue noted that this comment was taken and should be reflected in proposed amendments to this Finance Bill.
- Practitioners also queried the requirement that the shares be newly issued when a grant is exercised as this is often not how such a scheme would work in practice with many companies setting aside a set amount of shares at the establishment of a scheme, often at the insistence of the other investors, or recycling shares when employees leave. Revenue indicated it would consider this comment.

- Revenue informed practitioners that it is intended that Revenue guidance would be developed around all of these issues and that it would liaise with practitioners through the TALC forums on the development of this guidance.

Section 12 – Provisions on pre-letting expenditure in respect of vacant premises

- Practitioners noted that the proposed section did not provide for any temporary vacant periods between lettings within the 4 year period, as clawback would arise where the premises 'ceases to be a rented residential premises'. Revenue informed practitioners that it is intended that temporary periods of vacancy, such as cleaning between tenants, would not trigger the clawback and that this would be addressed in Revenue guidance.
- Practitioners sought clarity in respect of the clawback in circumstances where the claimant sells the property within the 4 year period. Revenue confirmed that a change of ownership in the 4 year period will trigger a clawback.
- Practitioners noted that the measures appear to require that a clawback adjustment is made to the measure of taxable rental income in the year in which the income arose, with the necessity to reopen tax returns, rather than addressing in the year the clawback trigger event arose. Revenue indicated that this was not intended and a suggested amendment to the Bill was intended in this regard.

Section 14 – Proposed amendments to Part 26 of TCA on life assurance companies

- Following a recent Appeal Commissioners finding that where foreign tax is suffered by a life company in respect of its policy holder business there is nothing to prevent relief for that foreign tax being claimed by the life company against the Irish tax arising on the shareholder business.
  The purpose of the of the amendment to Part 26 is to provide that a life company cannot claim double tax relief in respect of foreign tax arising in respect of income which is part of the policy holder business. That is, if the life company is not chargeable to Irish tax in respect of the income, then it cannot claim double tax relief in respect of that income.

Section 16 – Proposed amendments to provisions on IREFs

- Practitioners noted that Section 16 relieves a double IREF charge where one fund invests in another fund in the same umbrella structure and queried why this was not extended to subfunds of the same fund which are not in the same umbrella structure. Revenue confirmed that this is already possible.
- Practitioners queried why the pre-clearance procedures relate only to situations where the 'taxable event' is on redemption of units or on a fresh issue. Revenue confirmed that this was not the intention and that drafting would be reviewed to confirm same.

Miscellaneous – Part 6

Section 69 and Schedule 1, Paragraph 4 – PAYE modernisation

- Revenue clarified that there is no change in the return and payments dates applicable under Section 983 TCA, highlighting that the amended wording was to capture a recent decision which confirmed that the last day of the month must be counted where "from the last day" is used in the text of legislation, rather than where "from" is used. Revenue informed practitioners that it would be reviewing time periods across the tax legislation to pick this point up.
- Practitioners queried how preferential loan arrangements are to work in the context of PAYE modernisation as a BIK. Revenue noted that there has been continued engagement with employers throughout this process with respect to the practical changes required to internal processes for a range of benefits and that this work is ongoing.
- Revenue confirmed that returns which will be sent to employers by Revenue as part of the new integrated payroll mechanism will be deemed to be the filing of the return where this return is correct and if incorrect then an amended return must be filed within the same statutory time periods as currently apply.
- It was noted that PAYE modernisation would be discussed further at the Main TALC forum.

Section 73 and Schedule 2, Paragraph 3 – Companies Act updates

- Practitioners welcomed the changes to pick up on a number of compliance and procedural issues identified by practitioners previously as arising from a merger or division transactions; however it was noted that there were some outstanding points which had not yet been dealt with, including confirmation that the standard time period of a tax accounting period applies in the case of companies to a merger or division given the obligations of the transferee company are assumed by the successor company after the merger or division transaction, confirmation that Revenue would not seek audited financial statements for the transferor company in a dissolution period where none is prepared as a true and complete tax return is still required, and various other practical and procedural issues with respect to taxation of employees, VAT payments and repayments and RCT obligations which have been raised by practitioners since the introduction of the Companies Act 2014.
- Practitioners raised queries in relation to Revenue's position with respect to the making of joint elections in the case of companies which are parties to a merger or division and sought clarity on this, noting previous representations on the matter. It was confirmed by Revenue that this is not dealt with in Section 73 and Schedule 2 or in Section 74 as these provisions are intended to capture obligations and refunds of tax only and elections are considered to be rights. Revenue noted that it was the current intention that this would be dealt with in guidance and on a case-by-

case basis but that legislation may be introduced in areas where the issue is seen as arising most regularly. Practitioners noted that group relief would be an area where this arose regularly.

- Revenue indicated as a general point that any Companies Act 2014 updates that had not been updated in Finance Bill 2017 would be addressed in Revenue guidance and it is intended that these would be tidied up by subsequent legislation as appropriate.

Section 74 – Practical matters relating to mergers, divisions and transfers of assets

- Practitioners queried why the draft Section 638A TCA covers mergers and dissolutions between private companies limited by shares and DACs but not mergers involving public companies. Practitioners also raised the fact that cross-border mergers are already dealt with in Part 21, TCA, and so should be excluded from Section 638A to avoid duplication. Revenue informed practitioners that it was reviewing the drafting of this provision in this regard.

<u>Attendees at the meeting of 25 October 2017</u>

Revenue

- Sharonne O'Reilly
- Alan Kelly
- Michael Buckley
- Caitriona Crowley
- Jeanette Doonan
- Therese Bourke
- Sinéad Reynolds
- Áine Hollingsworth
- Frank Gallagher
- Lyndsay Smyth
- Brian Boyle
- Dave Brennan
- Mary Hughes
- John McGorry

CCAB-I

- Kimberley Rowan
- Peter Vale
- Andrew Feighery

Law Society

- Caroline Devlin (Chair)
- Maura Dineen
- Gavin McGuire
- Elaine Mooney

ITI

- Helen Byrne
- Dave Moran
- Laura Lynett
- Sharon Burke
- Stephen Ruane
- Tom Maguire
- Laura Harney
- Anne Gunnell