

Minutes

TALC Audit Sub-Committee Meeting

Tuesday 13 June 2017 – 10.30am

Revenue Commissioners, Planning Division, Bishops Square, Dublin 2.

Attendees:

Practitioners: Tom Martyn	Law Society (Chairman TALC Audit Sub-committee)
Gerry Higgins	CCABI
Norah Collender	CCABI
Aidan Lucey	Irish Tax Institute
Elaine O'Gara	Irish Tax Institute
Mary Healy	Irish Tax Institute

Revenue:

Declan Rigney
Paddy Faughnan
Stephen Flynn
Padraigh Donnelly
Conor Kennedy
Enda Murphy (Secretary)
Katie Ryan
Amy Reville

Apologies: Julie Burke	Irish Tax Institute
Paul Dillon	CCABI
Jim Kelly	Irish Tax Institute
Mary Deeley	Revenue

Item 1 – Minutes of meetings held on 11 April 2017

The minutes of the meeting of 11 April 2017 were agreed.

Matters Arising:

Actions points from that meeting were reviewed.

All action points had been dealt with or progressed.

Penalty Notices of Opinion – numbers issued:

Revenue confirmed that 66 Notices of Opinion issued during the 2016 calendar year. This figure represents less than 1% of audits closed. There were 29 Penalty Determinations published during 2016.

Foreign Income and Asset Disclosure Regime

Revenue stated that to date there had been over 2,500 disclosures received totalling in excess of €75 million.

Audit of R&D claims

Revenue confirmed that an R&D discussion group has been established comprising Revenue representatives and practitioner representative bodies. The work plan for the Group is extensive.

Delays in Closing IVs/Repeat IVs

Practitioners had nothing to report on this item. Revenue gave the results of a review that was undertaken to establish the reasons behind delays. 400 audit cases were selected at random from cases closed during 2015. Of these 400 cases, 65 were open for more than 600 days. The delays in these cases were categorised as follows;

- Agent/taxpayer delay – 33 (Revenue Section 900 powers, assessments, etc. were used in 13 of these)
- Appeals/Mutual Assistance requests – 14
- Revenue delay – 7
- Taxpayer ill health – 7
- Related audits – 4

Revenue has a very robust Quality Assurance process which should contribute to identifying reasons for delays and reducing delays in interventions. Revenue suggested leaving this item on the agenda and the practitioners agreed stating that it is in the interest of all parties to ensure the speedy conclusion of Revenue Interventions.

Item 2 – Work Plan 2017

Foreign Income & Assets Disclosure Regime

Revenue stated that the disclosures received under this Regime would be worked by the Offshore Asset Group (OAG) in IPD. All disclosures will be screened with some selected for further examination/clarification. At this point, it is envisaged that the OAG will carry out the follow up enquiries. Revenue will write to all taxpayers but this may take some time.

Revenue confirmed that the FAQs on the FIAD Regime will be reinstated to the website immediately.

Revenue clarified the position regarding disclosures containing offshore matters that were made after 4 May 2017. A disclosure will not be accepted as qualifying where the behaviour in relation to the offshore matter was deliberate. Disclosures containing offshore matters will be accepted where the behaviour relating to the offshore default is in the category of careless behaviour without significant consequences and full cooperation is received. This is determined by the 15% test i.e. the tax due on the offshore matter as a percentage of the correct tax payable. Where the offshore default is in the category of careless behaviour with significant consequences, the benefits of making a qualifying disclosure will be unavailable.

Revenue confirmed that the existing provisions in the Code of Practice for Revenue Audit and Other Compliance Interventions for technical adjustments or innocent errors remain.

Practitioners asked for clarification from a prosecution perspective. Revenue confirmed that prosecutions are only pursued in cases in which deliberate behaviour exists. The facts and the evidence will determine if a case is put forward for prosecution. Each case is considered on its own merits. Should a person make a disclosure, Revenue will consider all facts of the case, but prosecution cannot be ruled out.

Practitioners stated that some taxpayers would not be willing to come forward if non-prosecution was not assured. Revenue responded by stating that disclosures relating to offshore matters are still encouraged. Revenue will take into account all facts including materiality, the disclosure, payment and co-operation in deciding whether or not to refer a case for prosecution.

Practitioners voiced concerns relating to the complexities in certain offshore tax issues and funds which may result in tax defaults. They also referred to the anxiety that may arise relating to offshore pensions. Revenue stated that the income tax exemption thresholds are high and that the FAQs had been updated to include specific reference to offshore pensions.

Revenue stated that they have no discretion when it comes to publication of cases, as it is mandatory under legislation if the criteria are met. The deadline for making a qualifying disclosure relating to offshore matters was widely publicised. Revenue encourages taxpayers to continue to self-review.

Practitioners highlighted potential issues relating to transfer pricing where as a result of a self-review, or BEPS, a tax default with significant consequences may come to light. Practitioners stated that there should be some scope regarding publication in such cases. Revenue noted this view but re-iterated that it is bound by section 1086, TCA 1997.

Practitioners stated that there are two “types” of offshore matters, and suggested a review of legislation to differentiate. They feel it is unreasonable that an individual with a sole off-shore matter is treated less favourably than an individual with both onshore and offshore matters.

Practitioners stated that “compliance season” and death cases may uncover some offshore issues that were

previously unknown. In addition, issues such as the 8 year deemed disposal of shares rule may result in a significant liability which would not be on a taxpayer's radar. They also stated that the possibility of criminal prosecution may prevent individuals in certain sectors from coming forward to declare any offshore defaults.

Revenue reminded the practitioners that prosecution is only one tool used by Revenue to prevent and correct non-compliance. The Admissions Committee takes a very considered view before referring a case for prosecution to the DPP.

Practitioners stated that if the offshore matter cases are to be dealt with by the Districts, consistency should be ensured.

Practitioners queried whether Revenue would seek to re-open onshore qualifying disclosures should offshore matters come to their attention. Revenue confirmed that that previous disclosures won't be reopened unless a significant offshore matter is uncovered subsequently.

Practitioners asked if taxpayers who had made a disclosure would be receiving a letter from Revenue stating that the intervention had been closed. Revenue confirmed that as with all interventions, a closure letter would issue.

Code of Practice for Revenue Audit and other Compliance Interventions

No issues were identified by Revenue or practitioners.

Referrals under s851A TCA 1997

Revenue confirmed there had been no referrals made under s851A TCA 1997 to date.

Real-time Compliance Interventions

No issues were identified by Revenue or practitioners.

National/ Regional Projects

Shadow Economy

Revenue is committed to identifying those individuals who operate either in whole or in part in the shadow economy. The key focus is on identifying those individuals who do not declare any income, but who, based on a range of data available to Revenue (third party data, reports of suspicious financial transactions from the financial institutions, reports of suspected tax evasion through the Revenue website) are likely to have income from one or more sources.

Revenue also uses all information at its disposal to seek to identify individuals who are tax return compliant but who are suppressing an element of turnover

Construction

The practitioners queried whether the changes relating to Site-Based workers in the Travel and Subsistence manual (Part 05-01-06) arose as a result of the Construction Project. Revenue stated that as part of the update of its website, RLS revised a number of instructions. Revenue confirmed that "Country Money" continues to be an issue.

Practitioners asked if it is Revenue policy to undertake site visits and to reclassify individuals as employees without contacting the principal contractor. Revenue confirmed that it is not Revenue policy. Revenue will invite the Principal Contractor to engage with them. Absence of engagement by the Principal Contractor will not result in an end to Revenue's efforts to ensure correct classification of workers.

eAudit

Revenue confirmed that its primary focus is to strengthen eAudit resources and capabilities in the Districts and Regions. Revenue met with industry members to enable software providers to provide the format required by Revenue and to try and develop a standardised approach.

CAT & Stamp Duty

No updates from Revenue or practitioners.

REAP

No update as there was no REAP run since the last meeting.

Audit of R&D Claims

Update provided earlier in the meeting (above).

Item. 3 AOB**List of Tax Defaulters**

Revenue confirmed that following consultation from both the TALC Audit Sub-committee and Main TALC, that it is now Revenue policy to remove the List of Tax Defaulters from the Revenue website after a period of two years.

Secretary

The Committee noted that the long-serving Secretary, Enda Murphy, would be retiring shortly from the Revenue Commissioners and wanted to place on record their tremendous gratitude for her long, diligent and excellent service over the years.

Action Point	Responsible	Timeframe
Foreign Income and Assets Disclosure Regime FAQs – Re-instatement to the website	Revenue	Immediately
Delays in Closing IVs/ Repeat IVs – Practitioners and Revenue to monitor and provide updates	Revenue & Practitioners	Next meeting

The next meeting of the TALC Audit Sub-Committee is scheduled to take place on **Tuesday 26th September 2017 at 10.00am.**

Submitted for approval by Secretary – 6th July 2017

Approved by **TALC Audit Sub-Committee Members** – 26th September 2017