

## Minutes

### TALC Audit Sub-Committee Meeting

Tuesday 28<sup>th</sup> November 2017 – 10.00am

Revenue Commissioners, Planning Division, Bishop's Square, Dublin 2.

#### Attendees:

<b>Practitioners:</b> <i>Tom Martyn</i>	<i>Law Society (Chairman TALC Audit Sub-Committee)</i>
<i>Ruth Higgins</i>	<i>Law Society</i>
<i>Norah Collender</i>	<i>CCABI</i>
<i>Paul Dillon</i>	<i>CCABI</i>
<i>Gerry Higgins</i>	<i>CCABI</i>
<i>Mary Healy</i>	<i>Irish Tax Institute</i>
<i>Jim Kelly</i>	<i>Irish Tax Institute</i>
<i>Julie Burke</i>	<i>Irish Tax Institute</i>
<i>Colm Browne</i>	<i>Irish Tax Institute</i>
<i>Aidan Lucey</i>	<i>Irish Tax Institute</i>

#### Revenue:

*Declan Rigney*  
*Paddy Faughnan*  
*Stephen Flynn*  
*Padraigh Donnelly*  
*Denis Barry*  
*Mary Deeley*  
*Katie Ryan (Secretary)*  
*Amy Reville*

#### Item 1 – Membership

Kathleen Redmond (Revenue) was welcomed as a member of the Sub-Committee.

#### Item 2 – Minutes of meeting held on 26<sup>th</sup> September 2017

The minutes of the meeting of 26<sup>th</sup> September 2017 were agreed.

#### **Matters Arising:**

Actions points from that meeting were reviewed.

#### *Delays in Closing IVs*

No update from Revenue or Practitioners on this issue.

#### *Revenue Correspondence*

Revenue stated that during the recent Code of Practice District visits, caseworkers were reminded of the importance of issuing acknowledgement letters and closure letters in non-audit intervention cases.

#### *Assessments*

This item is a separate item on the agenda for this meeting.

## **Item 3 – Work Plan 2017**

### ***Foreign Income & Assets Disclosure Regime***

Revenue confirmed that the disclosures received under the FIAD Regime will be worked by the Regions with the exception of complex cases which will be worked by the Offshore Assets Group in IPD. The Regions will receive these cases from IPD before the end of November and will begin working them immediately. IPD will be providing guidance and assistance to the Regions with these cases. IPD received and dealt with a large number of queries in relation to the Disclosure Regime. The ITI stated that IPD had been co-operative and helpful in dealing with certain complex cases for which practitioners had sought guidance.

Practitioners queried the timeline for further correspondence and Revenue stated that whilst working these disclosures will be a priority for 2018, a timeline cannot be provided until the Regions have reviewed their cases in conjunction with their 2018 business plans. Revenue to provide further details on expected timelines in advance of the next meeting of this Sub-Committee in February 2018.

### ***Code of Practice for Revenue Audit and other Compliance Interventions (Code of Practice)***

Practitioners queried if any particular issues with the Code of Practice had come to light as a result of the recent District visits. Revenue confirmed that aside from some minor issues, nothing of note was highlighted.

### ***Real-time Compliance Interventions***

No issues were identified by Revenue or practitioners.

### ***National/ Regional Projects***

#### **Areas of Revenue focus for 2018**

Revenue stated that it is proposing to place focus on the following for 2018:

- The use of Revenue Powers by caseworkers;
- The progression/closure of older cases;
- eCommerce and Online Business;
- Information received under the AEOI (DAC, FATCA etc.);
- The Construction Sector.

Others such as the Shadow Economy, illicit tobacco trading, non-filers etc. will also continue to be areas of attention for Revenue.

The CCABI stated that it has a number of cases opened for a prolonged period of time. The ITI queried if the focus on the use of Revenue Powers would just be in the context of old cases and if there were certain powers that Revenue were focusing on. Revenue stated that it will be informing staff on the use of Powers in the appropriate circumstances. Revenue also confirmed that engagement with a taxpayer is always the first option, and it is only when this fails that Revenue proceeds to invoke its Powers.

The ITI stated that some taxpayers don't follow up with Revenue to expedite cases as they can be intimidated by the Revenue audit process.

### ***eAudit***

The ITI representatives stated that they were of the understanding that the pre-eAudit meeting was a discussion around the IT systems and processes. They stated that at a recent eAudit pre-meeting, Revenue had requested records to include the nominal ledger and the practitioners raised concerns relating to this practice and the impact that it may have on the opportunity to make a Qualifying Disclosure (QD). Could reviewing such records in advance of the audit represent the commencement of the audit? Revenue confirmed that this would not impact the timeframe to make a QD and that an audit does not commence until an examination of the books and records begins.

Practitioners also stated that at a recent pre-eAudit meeting, Revenue had provided an information checklist to the taxpayer/agent and requested that this information be available on the day of the audit. Revenue stated that this practice might occur in larger cases and requesting information such as Group Structure and other details may be necessary in advance. Revenue confirmed that whilst no general instruction had issued in relation to this, such a list could only work to speed up the audit process and be of benefit to both Revenue and the taxpayer. Revenue agreed to look at the pre-audit meeting practices and revert.

#### **CAT & Stamp Duty**

No update from Revenue or Practitioners on this issue.

#### **Audit of R&D Claims**

The R&D Discussion Group updates are now an agenda item on the TALC Direct / Capital Taxes Sub-Committee. This Group has not met since August 2017 so no further update available at this time.

#### **Item 4 “Alternative” Assessments (double assessments)**

Revenue enquired from the practitioner representative bodies as to what, precisely, are the issues giving rise to concern as regards the making by a Revenue officer of alternative assessments (also sometimes known as ‘double assessments’). The bodies informed the Sub-Committee that -

- (a) they have a concern that Revenue officers may be making alternative assessments prior to attempting to negotiate matters with the taxpayer or agent and that the rationale for a Revenue officer making alternative assessments in a particular case may not always be clear;
- (b) there is a potential additional cost involved in appeal cases involving alternative assessments as Counsel for a taxpayer may have to argue matters relating to more than one charging provision; and
- (c) it may be of great benefit to all parties if the Tax Appeals Commission were to have a case management conference (as provided for in the legislation) in all cases involving alternative assessments.

Revenue informed the Sub-Committee that -

- (i) assessment made under various charging provisions (for example, under Schedule D or under Schedule E) are each stand-alone assessments in respect of which the person assessed is given due notice by way of a Notice of Assessment;
- (ii) a Notice of Assessment may contain notice of more than one assessment;
- (iii) there is reference in case law to the making of alternative assessments;
- (iv) the making by a Revenue officer of alternative assessments is a long standing practice that arises where, following discussion with a taxpayer or taxpayer’s agent, there is a difference of opinion as between that taxpayer / agent and a Revenue officer as to the correct charging provision that relates to a particular source of income, profits or gains;
- (v) in instances wherein the time limit for the making of assessments is drawing close, and with a view to protecting the Exchequer, a Revenue officer may make a ‘protective assessment’ (or an alternative assessment) prior to concluding discussions with a taxpayer or his / her agent on a matter;
- (vi) the legislation sets out the criteria for the appealing of assessments to the Tax Appeal Commission;
- (vii) the circumstances, or the types of cases, under which the Tax Appeals Commission will, or should, hold a case management conference (as provided for in the legislation) as regards an appeal is a matter for that Commission which will, when it initiates a case management conference, give due direction to the parties to attend such a conference;

- (viii) the question of Counsel having to argue on more than one issue at an appeal hearing has long been part and parcel of the appeal process;
- (ix) there is a long standing statutory basis under which either the Tax Appeals Commission or the Revenue Commissioners can grant relief from double assessment.

The practitioner bodies requested that any protective assessments issued as a result of the 4 year time limit be as accurate and consistent as possible.

Revenue responded to the effect that they are not aware of any issues relating to time limit for protective assessments. The practitioner bodies agreed to monitor instances in which alternative assessments and / or protective assessments give rise to concerns and to will bring those concerns to the Sub-Committee's attention.

## **Item 5 Items identified by Practitioners**

### **Emoluments**

The CCABI raised the provision included in the Finance Bill which allows for the re-grossing of emoluments paid without PAYE deductions. Practitioners queried how this will impact on audits. The ITI stated that this item was discussed at Main TALC where "Revenue confirmed that the provision only applies in two circumstances; where an employer completely fails to operate PAYE in respect of an employee or where there is active concealment of the payment or nature of the payment in the records of the employer". The measure is aimed at addressing the systemic non-application of PAYE. The practitioners have requested some guidance in writing on this.

It was agreed to put this item on the 2018 workplan for the Sub-Committee.

### **No Loss of Revenue**

The ITI raised concerns that Revenue caseworkers were taking a very literal view of the criteria required to claim the No Loss of Revenue concession as set out in the Code of Practice. This in particular had an impact on certain Not for Profit Organisations who may have inadvertently failed to meet certain obligations. Practitioners felt that the criteria was too rigid and doesn't allow for a pragmatic approach. There was agreement that any specific issues of concern relating to this concession can be raised before this Sub-Committee.

### **Management Buy-outs**

The CCABI raised concerns relating to the new Anti-Avoidance provision included in the Finance Bill and how it appears that bona-fida management buy-outs are not provided for. They felt that discussions in the Dáil do not accurately reflect what is set out in the Bill. This is an item on the agenda for Main TALC next week and was not discussed further at this meeting.

## **Item 6 Items AOB**

### **Return of Trader Details**

Revenue stated that in 2018 it planned to place focus in ensuring that the Return of Trader Details (RTD) is filed. It will be of particular relevance in the context of RCT deduction rates which will be affected by failing to comply with the requirement to deliver this return.

The Practitioners queried the position relating to outstanding RTD from prior years and if these would need to be filed. The ITI stated that guidance should issue and Revenue should emphasise the importance of filing this return and highlight the consequences of partial/non completion. Revenue stated that it is in the early stages of this review and would consider the points raised and issue an eBrief in due course.

## Proposed dates for meetings 2018

Dates of meetings scheduled for 2018 were discussed and will be circulated to the Sub-Committee.

## Work Plan 2018

Members were asked to consider items for inclusion in the Work Plan for the Sub-Committee for 2018, in advance of the next meeting.

## Item 7 – Election of Chairperson 2018

Kathleen Redmond (Revenue) was nominated and elected to Chair meetings of the Sub-Committee for 2018. The Sub-Committee noted that Paddy Faughnan would be retiring shortly from the Revenue Commissioners and wanted to place on record their gratitude for his valuable contribution to the work of the Sub-Committee over the past three years.

Action Point	Responsible	Timeframe
<b><i>Delays in Closing IVs/ Repeat IVs –</i></b> Practitioners and Revenue to monitor and provide updates	Revenue & Practitioners	Next meeting
<b><i>Dates for 2018 meetings to be circulated</i></b>	Revenue	In advance of the next meeting
<b><i>Update on timeline for progress with Disclosures received by Revenue under the FIAD Regime</i></b>	Revenue	In advance of the next meeting
<b><i>Review of eAudit pre-meeting practice</i></b>	Revenue	Next meeting
<b><i>Alternative Assessments</i></b> Practitioner bodies and Revenue to monitor the use of alternative assessments.	Revenue & Practitioners	Next meeting
<b><i>Return of Trader Details</i></b> eBrief on obligation to file RTD to issue	Revenue	When available
<b><i>Items discussed that will be added to 2018 Workplan</i></b>  <ul style="list-style-type: none"><li>- The operation of the Finance Act 2017 re-grossing legislation</li><li>- Monitor issues arising in the application of the No Loss of Revenue concession</li></ul> Sub-Committee members are requested to forward additional items for inclusion on the 2018 Workplan	Revenue & Practitioners	In advance of next meeting

The next meeting of the TALC Audit Sub-Committee is scheduled to take place on **Tuesday 6<sup>th</sup> February at 10.00am.**

Submitted for approval by Secretary – 5<sup>th</sup> January 2018

Approved by **TALC Audit Sub-Committee Members** – 17<sup>th</sup> April 2018