

Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

18th February 2021

Skype conference call at 2:30pm

Item 1: Review of minutes from meeting of 7th December 2020:

The minutes were agreed.

Item 2: Matters arising from meeting on 7th December 2020:

Matters arising were as follows:

a. Requirement for a PPSN when filing for probate when no CAT return required:

Practitioners expressed their concerns about the obligation to apply for PPSNs for non-resident beneficiaries in order to file a SA2 where no CAT is due on a current benefit, and there is no risk that the individual will be liable for CAT in the future. For example, where a non-resident beneficiary receives a benefit that falls within their Group A threshold and will have no additional Group A benefits. Practitioners queried whether the €12,000 benefit threshold could be updated / amended, to distinguish between the beneficiaries' relationships to the deceased person.

Revenue confirmed that the requirement for a PPSN is to enable Revenue to identify each beneficiary and to track their benefits for compliance purposes. Revenue noted that the €12,000 limit is a statutory limit, and there is no proposal to amend this.

b. Difficulties experienced in the registration of companies which are foreign incorporated and do not have a branch for Irish company law purposes for taxes:

Practitioners stated that a CRO number is required to register a company, even where the company is foreign incorporated and does not have a branch. Revenue had requested, but not yet received, additional information on the matter from practitioners in order to resolve the issue.

c. Stamp Duty – issues raised regarding Associated Companies Relief:

This was discussed as part of agenda item 3.

d. Section 980 Tax & Duty Manual (Part 42-03-01) & Section 615:

Revenue confirmed that TDM Part 42-03-01 has been updated to include (i) clarification on the interaction of s615 and s980; (ii) instructions on the eCG50 process and changes to the timing for paper based applications; and (iii) additional guidance for applications in specific circumstances; and will be published over the coming days.

Practitioners queried whether the eCG50 process could be streamlined where multiple sellers are involved. Revenue agreed to consider this further.

e. Draft TDM on the payment and receipt of interest and royalties without deduction of income tax:

This was discussed as part of agenda item 3.

f. “Subject to tax” provision in paragraph 9I, Schedule 24 (notional foreign tax credits) in light of the decisions of the Court of Justice of the European Union in the UK cases of Six Continents and FII GLO (C 35/11 & Case C-446/04):

This was discussed as part of agenda item 3.

g. Form CT1: Reporting of transactions with jurisdictions now considered to be non-cooperative for tax purposes:

Revenue confirmed that further information from practitioners had not yet been received on this item.

h. Change to the treatment of rent in the R&D TDM:

This was discussed as part of agenda item 3.

i. Application of section 626B application of section 626B to companies that provide professional services:

This was discussed as part of agenda item 3.

j. EIS relief and the Covid-19 crisis:

Revenue confirmed that TDM 16-00-02 had been updated to permit companies an additional 12 months from 31 March 2021 to meet the employment criteria. Revenue also confirmed the guidance is currently being updated to include a temporary measure in relation to SURE.

k. Finance Act 2020 related issues – in particular section 62 (migration of shares to EU central securities depository):

Revenue stated that this section would be enacted in March, and that the Department of Finance have invited submissions. Practitioners confirmed that they will make a written submission on this.

l. Clarification on the tax treatment of exchanged/assigned unexercised KEEP share options on future exercise:

Revenue noted that they had not yet received any case examples, but were open to receipt of them.

m. Other matters arising from previous meetings:

Practitioners requested to keep 'letters of no audit' on the agenda.

Item 3: Update from Revenue on matters where submissions have been made:

a. Stamp Duty – issues raised regarding Associated Companies Relief:

Revenue noted that a manual is currently being developed to address the classification of foreign entities for Irish tax purposes. Following receipt of the submission from practitioners in August 2020, Revenue confirmed that this manual will address certain items raised in that submission, and clarify the treatment of certain foreign entities in Ireland for the purposes of section 79 SDCA.

Revenue noted that the draft manual should be circulated in the next month, and published within six weeks, following which the Stamp Duty manual on Associated Companies Relief would be updated.

b. Draft TDM on the payment and receipt of interest and royalties without deduction of income tax:

Revenue noted that they expected the manual would be published by month end, and that the version to be published was substantially unchanged from the version reviewed by practitioners.

c. "Subject to tax" provision in paragraph 9I, Schedule 24 (notional foreign tax credits) in light of the decisions of the Court of Justice of the European Union in the UK cases of Six Continents and FII GLO (C 35/11 & Case C-446/04):

Revenue confirmed that a response had been issued to practitioners on the submission made in August 2020. Practitioners expressed their concerns that the response received was not meaningful, and lacked detail on the case law which was set out in the submission. Revenue stated that all issues were considered, but the submission would be reviewed again to ascertain whether further detail could be provided.

d. Change to the treatment of rent in the R&D TDM :

Revenue confirmed that a response was currently being compiled and would be circulated to the R&D Discussion Group shortly. Practitioners queried whether the response would be addressed to this sub-committee. It was noted that as the confirmation sought was raised in a previous meeting of this sub-committee, this topic would remain on the agenda.

e. Application of section 626B to companies that provide professional services:

Revenue noted that they had requested case-specific details in order to consider the submission made by practitioners. Revenue stated that as currently drafted, the submission is too wide-reaching and should be made via RTS. Practitioners raised concerns about case-specific issues being brought to TALC.

Revenue stated that it would be inappropriate to respond to the submission without knowledge of the potential issues and wide-ranging ramifications. If general guidance was given, it could be applied in unsuitable situations, so it would be preferable to have specific facts.

Practitioners were advised that if items are unresolved after 3 meetings at this forum, an item may be referred to Main TALC for discussion / resolution.

Item 4: Confirmation of the tax treatment of the Restart Grant:

Practitioners sought clarification on the tax treatment of the Restart Grant.

Revenue's guidance on the operation of the Employment Wage Subsidy Scheme (EWSS) stated that for the purpose of EWSS, the Restart Grant is capital and is therefore not included in the definition of turnover for the purposes of assessing employer eligibility for EWSS. Revenue stated that outside of EWSS, the tax treatment would depend on whether the Restart Grant was expended on items of a revenue or capital nature.

Practitioners queried whether the Revenue website would be updated to reflect this, and it was confirmed that this was subject to a parliamentary question (PQ) and was available in the public domain.

Item 5: Negative interest on deposit bank accounts:

Practitioners sought clarification regarding the tax treatment of negative interest on deposit bank accounts.

Section 383 TCA 1997 provides that relief for losses on Case IV activity can be claimed against other Case IV income for the same year and carried forward against Case IV income in future years. A "positive" interest payment is taxable as profits or gains under Schedule D, Case IV. Practitioners queried whether a payment of negative interest therefore represents a Case IV loss, on the basis that there is effectively a loss to the deposit holder.

Revenue stated that, in the context of section 246 TCA 1997, banks had charged a fee rather than negative interest. If negative interest payments were introduced, Revenue would need to consider the timing of the payment and the form of the 'interest'.

Practitioners queried whether a negative interest payment could qualify as a Schedule D, Case I deduction as a bank charge fee. Revenue confirmed that if the negative interest was charged as a bank charge, it would be deductible. Revenue stated that if negative interest is introduced, this item can be revisited.

Item 6: Stamp Duty refund scheme:

Practitioners raised concerns about the '75% tests' under the stamp duty refund scheme provided for in section 83D SDCA 1999.

On completion of a multi-unit development, or a phase in such a development, at least one of the following '75% tests' must be satisfied:

- at least 75% of the total surface area of the land must be occupied by dwelling units (footprint test), or
- the gross floor space of the dwelling units must account for at least 75% of the total surface area of the land (gross floor space test).

In assessing the 75% test, Revenue Guidance states that "*curtilage can be taken into account for the footprint '75% test' but not for the gross floor space '75% test'.*" The Revenue Guidance also states: "*However, Revenue accepts that it should also apply to apartment blocks, albeit appropriately adapted.*"

Practitioners gave an example of a development which comprises of 100% residential property, but does not meet the footprint 75% test. The gross floor space 75% test could be met, but only if curtilage was included. Practitioners sought confirmation on whether this would be accepted by Revenue.

Revenue stated that the footprint test is envisaged as applying to houses and their gardens, as gardens are considered 'curtilage'. Practitioners noted that planning permission required increasing amounts of green or common areas / spaces, as a matter of policy. Revenue stated that from a legal perspective, 'curtilage' has a specific meaning and usually includes a garden for a house. On the sale of a single apartment in a development, the common area / space would not be included. Revenue suggested that practitioners make a submission to the Department of Finance on the point.

Practitioners also queried whether the extension to completion deadlines could be extended further, given the additional COVID-19 measures. Revenue stated that this was question for the Department of Finance, rather than Revenue.

Item 7: Draft Tax and Duty Manual “The treatment of certain gains and losses on Foreign Currencies for corporation tax purposes”:

Revenue noted that they were seeking feedback and comments on the draft manual which had been circulated in advance of the meeting. Revenue stated that their view is that foreign currency accounts are not a contract and cannot be hedged, but are open to comments.

Practitioners stated that to construe section 79 TCA 1997 as only encompassing ‘foreign currency’ rather than money in a foreign bank account, would be too narrow an interpretation. Revenue commented that it would not be appropriate to enlarge the meaning, as such a decision would be a policy matter. Revenue requested more information from practitioners to consider this issue further.

Practitioners stated that Revenue had treated trade debtors as a relevant monetary item by way of practice. Revenue requested more details on this practice. Practitioners noted that a narrow definition would make deductions under section 81 TCA 1997 rare.

Item 8: New share schemes return:

Revenue advised that they are developing a new share schemes return to cater for the reporting requirements of section 897B TCA 1997, as amended by Finance Act 2020. This new return will also facilitate the reporting requirements under sections 128C, 128D and 128E. Consideration will be given to the possible use of this information and information from other share returns to assist taxpayers, for example to pre-populate returns etc. Also, the suite of information on Revenue’s website regarding share schemes is under review to see if it can be further enhanced and Revenue would welcome any feedback from practitioners in this regard.

Revenue advised they have a working draft of the new return and would appreciate key stakeholder engagement and requested that practitioners engage with Revenue on this. The filing mechanism will be the same as that for some of the other share schemes, for example, the RSS1 form, i.e., an Excel file that is completed offline and uses the Share Scheme Reporting portal in ROS for uploading this return. The development schedule is very tight but the intended release date for the 2020 return is mid-June 2021.

Practitioners queried whether the 31 March 2021 filing deadline for other share related returns would be extended this year. Revenue stated that extensions are not envisaged at this time.

Item 9: DWT Declarations:

Practitioners sought confirmation from Revenue in respect of the acceptability of scanned copy DWT declarations, in light of issues arising due to Brexit and / or COVID-19. On a strict basis, the payor is required to have an original signed declaration when making a payment to avail of a DWT exemption. Practitioners are experiencing issues with receiving the original forms, and queried whether Revenue guidance could be issued to confirm that scanned / emailed copies would be acceptable for 2021. Revenue noted that this query has been passed to their DWT colleagues.

In reply to a separate, but similar query, Revenue noted that the TDM on DIRT has been updated to confirm that scanned copies of certain documents are sufficient.

Item 10: CAT returns issue relating to non-resident beneficiaries:

Practitioners raised an issue with filing CAT returns on behalf of non-resident beneficiaries. For non-resident beneficiaries and disponers, practitioners generally apply for a PPSN. When a new PPSN is issued, it is generally not registered for any tax head. Practitioners noted that in order to register the newly-issued PPSN for CAT, a request must be lodged via ROS, but the request could not be submitted without the PPSN first being registered for a tax head.

Revenue noted that this was Revenue practice, but a practical solution is for the practitioner to submit the request using their own tax number, with the newly-issued PPSN(s) in the body of the query.

Practitioners queried whether a newly issued PPSN could be activated on issuance, to avoid an additional application. Revenue stated that this was not possible. A similar process is also required in cases where a child is the beneficiary of a gift or inheritance as children are not generally registered for a tax head. Revenue will consider whether the MyEnquiries CAT dropdown menu could be updated to create an appropriate option.

Item 11: Revenue guidance:

(i) Section 110

The section on CLO guidance has not been approved by the Minister. Practitioners expressed an urgency for this guidance to be issued in advance of the 2020 audit deadlines, and requested that the guidance be issued without the CLO guidance.

(ii) R&D

The Department of Finance are working on the Ministerial Order to commence the relevant provision, following which guidance will be provided thereon.

(iii) Leasing

Revenue confirmed that the guidance is progressing, and that the leasing sub-group may be reconvened.

(iv) Trading & intra-group financing

Revenue confirmed that this guidance has been published.

(v) Stocklending and repos transactions

Revenue noted that the requested details on the accounting treatment for pension funds are outstanding.

(vi) EII/SURE/SCI

Revenue confirmed this guidance has been published. It was noted that temporary measures were required for SURE. A brief explanation of these measures was given and it was noted that the TDM would be further updated to reflect these temporary measures.

Item 12: Workplan for 2021

The following workplan items for 2021 were suggested at the previous meeting:

- Brexit Omnibus Bill
- Interest Limitation

The tax aspects of "Making Remote Work: National Remote Work Strategy", the Government's Remote Working Strategy were also mentioned for discussion.

It was noted that ultimately, the workplan for this sub-committee is, and will continue to be "ad-hoc" and "roving" in nature, and will deal with matters as they arise in practice. It was noted that interest limitation matters will be addressed at the TALC BEPS sub-committee. It was noted that aspects of the above items may be more so policy related, and accordingly may not be appropriate for this sub-committee.

Item 13: AOB**a. Main TALC meetings**

It is envisaged that, for certain technical discussions, the Main TALC group may join this sub-committee for a meeting; and that it was envisaged that this would happen in the context of the Finance Bill discussions.

b. Minutes

The importance of the minutes of TALC committees to practitioners were highlighted. It was noted that Main TALC will lead a process to ensure the approval and circulation of all minutes as early as feasible, to ensure that they are in the public domain as soon as practicable.

c. Unresolved items

It was noted that there is a facility whereby any unresolved items at a TALC sub-committee may be elevated to Main TALC if needed; and that this facility would be availed of, if appropriate.

Item 14: Date of Next Meeting:

The date of the next scheduled meeting is Thursday, 15 April 2021 at 2:30 pm.

Attendees at this meeting:

Revenue	ITI	CCAB-I	Law Society
Niamh Behan Therese Bourke Dave Brennan Michael Buckley Alan Carey Jeanette Doonan Maria Doyle Alan Kelly John McGorry Sinead McNamara Robert Murphy Jacqueline O'Callaghan Lynda O'Keeffe Emily Swift	David Fennell Anne Gunnell Laura Lynch Tom Maguire David Moran Stephen Ruane Maurice Scullion Lorraine Sheegar	Norah Collender Enda Faughnan Ken Garvey Cormac Kelleher Peter Vale	Padraic Courtney John Cuddigan Caroline Devlin Maura Dineen Aidan Fahy (Chair) Aileen Keogan David Lawless Chloe Power