

## Minutes of TALC Direct and Capital Taxes Sub-Committee Meeting

Thursday 24 February 2022 via Microsoft Teams

2.30pm to 4.00pm

### Minutes

#### Item 1: Minutes from meeting of 8 December 2021

It was noted that the minutes from the meeting of 8 December 2021 be approved.

#### Item 2: Matters arising from meeting of 8 December 2021

- a. **Administrative requirements on Foreign Companies requiring a TRN to identify ‘associated companies registered for tax in Ireland’ when the TRN is solely required for the purposes of filing a stamp duty return.**

This issue was raised by practitioners at previous meetings. Practitioners have been requesting that information sought in respect of associated companies could be restricted to situations where relief from stamp duty was in fact being claimed. The information request was proving burdensome. The issue raised with Revenue concerned the requirement for foreign companies to provide information regarding their associated companies when registering with Revenue solely for the purposes of filing a stamp duty return. When applying for the TRN, these companies are required to list all associated Irish companies.

Revenue noted that it intends to continue collecting this information. Revenue advised that the information is being sought as part of a wider compliance check, not limited to stamp duty; it is part of a general review of associated companies. The information goes to LCD.

It was agreed that this item be removed from the agenda. Practitioners would welcome advance notice where subsequent changes are made in the future.

- b. **Submission to be made by practitioners setting out how issues may arise with regards the definition of a close company and its relevance to charities who have trading subsidiaries without intending to pay dividends – *status update?***

Revenue has not received any submissions on this to date. The item will be kept on the agenda for the next TALC Direct and Capital Taxes Subcommittee meeting. If no submission(s) are received by then, it was agreed that the item will be taken off agenda.

- c. **Section 110 companies – withholding tax deduction – *status update?***

By way of background, Practitioners had raised an issue arising in maintaining tax neutrality for section 110 companies in the context of foreign withholding taxes. A submission made by practitioners noted that if double tax relief isn't available for the withholding taxes suffered, this creates an unusual situation whereby a s110 company that suffers foreign withholding tax must pay Irish tax on the foreign tax amount, therefore displacing the intended tax neutrality

Revenue reiterated their view expressed at prior meetings that this is a legislative matter and is presently being considered by the Department of Finance. Revenue have received

no correspondence to date as to whether this will be included as part of Finance Act 2022. Revenue suggested that if an urgent amendment is needed, this matter should be raised directly by Practitioners with the Department of Finance.

Practitioners raised concerns about the need to resolve this issue as soon as possible given the practical difficulties it is causing in the market place. Practitioners suggested that Revenue communicate with the Department of Finance if it agrees that a legislative change would be welcome, noting that this may help to move the matter along.

Revenue noted it will follow up with the Department of Finance and acknowledged the seriousness of the matter.

d. **Letters of no audit – status update?**

The Chair noted this issue has been on the agenda for a number of meetings.

Revenue acknowledged delays on their end finalising the TDM in relation to Letters of No Audit. On 8 February 2022 a draft was circulated internally within Revenue for feedback. The finalised version was circulated with the relevant subgroup for final review on 16 February. It is hoped that the TDM will be published in advance of the upcoming Main TALC meeting which takes place on 1 March. Revenue are presently working on the issue as it relates to non-residents This will be discussed by the sub-committee in due course,

Practitioners noted that the TDM on Letters of No Audit has been taken down in abeyance and this is causing problems. The practice of removal of TDMs while they are being updated is causing frustrations practically for practitioners and taxpayers and this was discussed later in the meeting.

e. **Deduction in respect of certain expenses of remote working, and whether the legislation should be amended to differentiate between the position for PAYE and self-assessed taxpayers – status update?**

The Chair suggested this matter remain on the agenda for discussion at a later date.

Revenue acknowledge that practitioners are seeking rules differentiating between employees and self-employed. They did note, however, that ultimately this is a matter for the Department of Finance. The Department of Finance has no immediate plans to change the legislation. Revenue noted it may not be an agenda item for this meeting but rather a decision is needed to take the matter directly to the Department of Finance for legislative amendment.

**ACTION:** Practitioners to consider making a submission on the matter to the Department of Finance.

f. **Update on whether guidance in respect of precedent 28 (the basis of taxation on the commutation of a foreign pension which accumulated from contributions out of foreign income) and the timeframes and Revenue departments involved**

This is on the Agenda as Item 7 and will be discussed in due course.

g. **Draft TDM on the classification of foreign entities for Irish tax purposes to be prioritised in Q1 2022 – status update?**

Revenue noted this TDM is a work-in-progress pending the outcome of a recent High Court case. Revenue noted that while they are reviewing the TDM, it is not a high priority item and cited other TDMs are being given priority. The item will remain on the agenda for review at the next meeting.

**h. Extensions to annual payments (4.8)**

Revenue had at a prior meeting concluded that it was not feasible to address the withholding tax requirements for non-patent royalties, given the potential amount of payments. Revenue did however agree to consider specific annual payments in respect of which practitioners sought clarity.

Revenue noted that there is no case to extend section 757 TCA 1997 to non-patent royalties. Their view is that non-patent royalties are not annual payments. Practitioners noted that this view had not been previously communicated. Practitioners noted the way the rules are framed is likely to result in an otherwise avoidable process of withholding and reclaim. Revenue noted that the previous treatment of allowing self-certification was a concession.

**i. Examples to be provided by practitioners of ‘fire and rehire’ concerns and inclusion of commentary and/or examples of situations covered by the ‘change in the functions of employment’ limb referred to by the legislation**

This is on the agenda as Item 7 and will be discussed in due course.

**j. Section 31C SDCA 1999 – ‘control’ and interplay with Section 80 SDCA 1999 – *has Revenue reviewed the position?***

Revenue have reviewed the submission and do not propose updating the TDM, having regard for the current legislation. Instead, Revenue will review on a case-by-case basis.

**k. Sections 31C and 83D SDCA 1999 – TDMs to be updated to provide expanded guidance on the interaction of the two sections regarding possible refunds of stamp duty where immovable property is used for residential development – *status update?***

It was acknowledged by the Chair that this TDM had been updated shortly before this meeting. Practitioners noted there was a typo in the new version. Revenue noted this has already been updated.

**l. ETFs – Is updated ETF guidance available? Did Revenue receive any examples from practitioners of items that they consider have characteristics of an Irish regulated fund?**

Revenue published the updated TDM on 22 February 2022. Revenue noted it has not received any specific examples where a US ETF could be classified as similar to an Irish ETF.

Practitioners requested time to review the updated TDM.

The point will remain on the agenda for further consideration. Revenue noted the matter is also on the agenda for Main TALC.

- m. **PAYE Exclusion Orders – update on the work by the Global Mobility Branch to update the TDM with details of COVID-19 concessions that applied in 2020 – update expected by end of 2021.**

Revenue noted an updated TDM will be issued shortly which should address the point.

### **Item 3: Update from Revenue on various matters**

#### **Submission on Stamp Duty – Associated Companies Relief TDM**

Revenue noted that an updated TDM (and accompanying eBrief) issued today confirming that partnerships can be looked through for the purposes of association, but that the transfer must be between bodies corporate. This also applies to foreign entities.

As the eBrief was released at the same day as this meeting, the point will remain on the agenda. Practitioners noted that there may be issues where transferred property, by its nature, ceases to exist over time and certainty would be welcomed on this point. Given the timing of the eBrief release and this meeting, any concerns in this regard may be raised at the next meeting. However Revenue noted that there was no intention at this time to make any further update to the TDM.

### **Item 4: Retirement relief – business closures due to COVID-19**

Practitioners sought clarification regarding business closures during the public health restrictions and the extent to which Retirement Relief would be available where the business had ceased to trade, in particular, where the time between closure and sale was extended as a result of COVID. Practitioners noted this issue is likely to arise in the near future as public health restrictions come to an end.

Revenue noted this is similar to a previous query on Revised Entrepreneurs Relief. The Retirement Relief guidance already contains guidance where there are delays between closure/cessation and sale. Revenue will be open to considering retirement relief on a case-by-case basis where there are protracted delays between closure/cessation and disposal. Revenue are open to these requests and have been pre-COVID.

Practitioners recommended that if these situations become more and more frequent, guidance could be updated.

Revenue will consider this and noted there have been no queries in the year so far but acknowledged that this may change in the future. Revenue will monitor the scale of requests and this will inform a more robust review of the current guidance.

The Chair recommended that the item should remain on the agenda.

### **Item 5: Update on Leasing Guidance – previously stalled due to potential legislative changes.**

Practitioners noted a subgroup had previously been established to examine the guidance. The work was stalled when the Department of Finance subsequently established a group to consider legislative changes. Given that the Department of Finance group has met in recent months and there are no

legislative changes expected at this time, practitioners were wondering if there is any intention to reinstate the subgroup to update the TDM?

Revenue noted it is actively reviewing this guidance and the work done to date. It is a work-in-progress. It stalled because the legislative changes were being considered. As these never materialised it is now back on the agenda.

Although not discussed at the meeting, by way of background some of the items on the agenda of that group included:

- The treatment of finance leases where the lessor has no entitlement to capital allowances.
- The treatment of leased assets taken off lease and sold by the lessor for consideration in excess of the original cost of the asset.
- Confirming that merely because the finance lease distinction for a lessee is not present under IFRS 16.
- The treatment of non-trading leasing of plant and machinery under Case IV.
- Guidance to confirm the treatment of lease rental payments for the lessee under operating and finance lease arrangements (where lessee not entitled to allowances on the leased asset) and leases accounted for under IFRS 16.
- Guidance on capital allowances and assets leased by a lessor as beneficiary under a 'bare trust' arrangement
- Capital allowances treatment of swapping out of engines owned by a lessor where a plane is leased with two engines on wing and the engines are taken off wing for repair and maintenance and replaced by the lessor with a different engine/s.
- Updates to Revenue guidance on the meaning of trading to reflect leasing (with fact patterns relevant to lessor trades), treasury and cash pooling activities as well as intra group financing.

**Item 6: Queries in respect of Tax and Duty Manual Payments on Termination of an Office or Employment or Removal from an Office or Employment.**

As no submissions have been received in respect of this matter to date, it was agreed that the item will be taken off the agenda for now and put back on the agenda at a later stage if required.

**Item 7: ITI submission in respect of the basis of taxation on the commutation of a foreign pension which accumulated from contributions out of foreign income. Revenue stated it is taking the position that precedent 28 no longer applies and requested detail s where certain divisions have accepted precedent 28 in the past 5 years.**

Feedback had been requested in respect of situations where Precedent 28 had recently been used (in last 5 years). No such details have yet been submitted but item to remain on agenda for next meeting.

**Item 8: Accelerated Capital Allowance**

Practitioners queried whether there is scope to extend the existing allowances in section 286 TCA 1997 for taxis and short-term hire cars to the cost of driver instructors' cars by concession.

Revenue noted that the legislation is prescriptive. As such, any changes would need to be at a legislative level. As such, it is a matter for the Department of Finance and submissions should be made on that basis.

#### **Item 9: Form 8-3-6 section 2 (certification by tax authorities)**

Practitioners raised concerns as there is no guarantee that the foreign tax authority will sign and stamp the Form 8-3-6. The feedback practitioners have received is that the local authorities would issue a tax residency certificate. In light of this, practitioners requested whether Revenue could clarify how practitioners should proceed as the simplified process in the TDM is not always practical.

In addition, practitioners understand that US residency certificates Form 6166 will be accepted in lieu of section 2 of the form. Therefore, practitioners requested whether Revenue would consider residence certificates in lieu of section 2 certification from other jurisdictions?

Revenue asked practitioners to provide a list of jurisdictions that similarly will not stamp the certificate and Revenue will consider this request further.

#### **Item 10 Issues encountered in obtaining Irish tax residence certificates**

Practitioners have noted a number of cases where their clients have been unable to obtain tax residence certificates from Revenue in respect of non-Irish incorporated companies that are managed and controlled in Ireland, especially where that company is incorporated in a non-tax treaty jurisdiction. In some cases, Revenue have entered into correspondence, citing factors such as a non-Irish holding company as evidence that the company is not resident here. Practitioners requested clarity on whether Revenue has changed their policy with regard to issuing such certificates, and the reason(s) why, or, if not whether Revenue could provide clear guidance as to what information is required in order to process the residence certificates.

Revenue noted there has been no change to Revenue's policy. The release of Tax residence certificates is reviewed on a case-by-case basis. Revenue requested specific examples for further consideration.

Practitioners will submit examples and share these with Revenue.

#### **Item 11 Status of Revenue TDMs:**

**Some Revenue TDMs in Part 20 Companies' Chargeable Gains are currently unavailable as they are being updated. These include:**

- **Part 19-16-03 (Disposals of business or farm – on retirement)**
- **Part 20-01-02 (Company Reconstruction and Amalgamation Transfer of Assets (S-615))**
- **Part 20-01-03 (Groups of Companies (section 616 Taxes Consolidation Act 1997))**
- **Part 20-01-07 (Replacement of Business Assets by Members of Group (S-620))**
- **Part 20-01-08 (Depreciatory Transactions in Group (S-621))**

- **Part 20-01-10 (Company Ceasing to be Member of Group (S-623))**
- **Part 20-01-11 (Exemption from Charge under section 623 in the case of Certain Mergers (section 624))**
- **Part 20-01-14 (Exemption from Tax on Gains accruing on Certain Disposals of Shares (S-626B))**

Revenue outlined its process for updating TDMs and the reasoning behind it. Practitioners queried if it were possible to leave the 'old' TDMs on Revenue's website while they were being updated (with an appropriate note saying that the TDM was in review). The practice of removing the TDM from the website, which in many cases, is for a considerable number of weeks causes difficulties for Practitioners given the reliance placed on such TDMs.

Revenue noted that a review of the above listed TDMs should be completed by the end of March. Revenue acknowledged that the number of CGT manuals offline was significant. Revenue noted that keeping older TDMs on the website while updates are being undertaken is a matter which needs to be considered generally.

Revenue proposed issuing a note on the general approach to review of TDMs. Revenue noted there may be reasons why certain TDMs are removed, whether its inaccuracy, age, or other. Revenue acknowledged the importance of TDMs to practitioners and taxpayers.

## **Item 12 AOB**

### ***Negative interest submissions***

Revenue agreed to circulate the submission on negative interest to all bodies if they haven't done so already.

### ***ePSWT and Locums treated as employees***

Difficulties raised previously by Practitioners on the allocation of PSWT withheld in the medical sector where the treating doctor is employed by a practice or is one partner in a partnership that is assessable on the GMS income were noted. By way of background, issues include practice visibility on tax withheld in relation to practice income as the credit is visible on MyAccount to the treating doctor only and inability to claim the PSWT credit against practice income according to the partnership arrangement. Practitioners queried whether Revenue had an update on the matter.

Revenue noted they have met with the HSE who reiterated their stance that the GMS contract sits with the treating doctor, rather than the practice.

Revenue also noted the recent TAC determination (01TACD2022) which demonstrated the GMS contract followed the treating doctor, copper-fastening the HSE's viewpoint.

Revenue stated that they are considering the matter but noted the TAC determination and welcomes views from Practitioners.

It was noted that this matter is currently being discussed at TALC Collections, particularly in terms of operational issues with PSWT.

Revenue are reviewing the legal basis for partnerships to claim PSWT credits in respect of payments to doctors under the GMS.

Practitioners noted in the past GPs/locums who are now employed in GP practices and have GMS lists in their own name would have been treated as self-employed and taxed under Schedule D. However, following a review by Revenue in 2010/11 regarding the classification of locums such GPs are now generally classified as employees. Practitioners noted the concerns arising as a

result of the recent TAC Determination given the change in practice which occurred in 2010/2011 and practitioners confirmed that they would be happy to provide feedback to Revenue directly regarding the practical issues arising for GP practices.

Revenue considered that the legislation is clear however they welcomed practical examples from practitioners. Revenue will continue to consider this matter and noted options may be limited without legislative change. The key issue is the legal basis to assign GMS income.

### ***Spring Finance Bill***

Revenue noted the Spring Finance Bill relates to a number of specific matters. A timetable for publication is not available from the Department of Finance. Revenue is expecting something in the coming weeks.

Revenue confirmed that the Spring Finance Bill will mainly include the legislation necessary to underpin the recent extensions to the Covid-19 support schemes.

Practitioners queried whether the Bill would be an opportunity to make technical changes to other areas, like the s110 issues discussed earlier. Revenue reiterated the drafters of the Spring Finance Bill are working to a tight deadline and the Bill is limited to legislation which needs to be implemented before Finance Act 2022 (No 2).

**Attendees at this meeting:**

<b>Revenue</b>	<b>ITI</b>	<b>CCAB-I</b>	<b>Law Society</b>
Dave Brennan Karen Drake Ashling Gallagher Alan Kelly John Kelly Barbara Ní Neachtain Keith Noonan Declan Rigney Eleanor Smiley Declan Rigney	Emma Arlow Cillein Barry David Fennell Clare McGuinness Stephen Ruane Lorraine Sheegar	Cróna Clohisey Gearóid O'Sullivan (Secretary) Peter Vale (Chair) Enda Faughnan Ken Garvey Cormac Kelleher	Padraic Courtney Caroline Devlin Maura Dineen Aidan Fahy Aileen Keogan David Lawless John Cuddigan