

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

20 June 2018

Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 2:00pm

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Item 1

Review of minutes from meeting of 17 April 2018

- The Revenue proposed an amendment to the wording at item 7 which was agreed.

Item 2: Matters arising

Matters, other than those items which were on the agenda, were as follows:

- Section 79 / 80 SDCA 1999 – Revenue aim to publish a revised manual by the end of July. Revenue is currently updating agricultural relief manuals.
- Update to Revenue manual for agricultural relief example and consideration of interaction of agricultural relief with CPO relief – Revenue confirmed that land subject to a lease to an active farmer for the remaining six years per the example will not be subject to a clawback. With regard to a CPO, a clawback may arise per the circumstances outlined.
- Revenue will issue an updated CAT manual to include recent clarifications which will be notified by an eBrief.
- Dwelling house exemption and treatment of portion of proceeds used to pay stamp duty, legal fees, etc. and not reinvested – Revenue’s view is that the necessary costs of purchases taken out of the consideration forms part of the “reinvestment. The same view is not applied to the treatment of costs of sale; such costs must be funded by the taxpayer and not out of the consideration.
- eBrief No. 48 of 2018 – Revenue manual Part 22 will be updated to include clarification regarding the operation of the exemption relating to the qualifying of expenses of incapacitated individuals and intestacy cases.
- KEEP guidance – Revenue clarified that the requirement under s128 (4) that the business of a holding company must consist “wholly of the holding of shares in a qualifying company” may still be met where such a holding company holds a bank account used solely for purposes required by holding those shares (e.g. distribution of dividends) The guidance will be updated to reflect this clarification.
- Companies Act guidance is current being reviewed by Revenue and will be circulated to the subgroup for final comments before publication.
- Guidance on section 291A TCA 1997 has been published. There are currently no plans to make amendments to the guidance. If practitioners have comments on the guidance they should submit them directly to Revenue.
- Past leasing sector and relative treasury activity rulings have been collated into a manual which is expected to be published in the coming weeks. There is no significant change.
- Finance Act 2017 amendments to EII scheme - Revenue will consider specific active cases concerning connected parties. The EII review is expected to be completed at the end of June. The backlog in processing EII applications is reducing. Less than one percent of applications submitted to Revenue are completed correctly, the required details are not provided to Revenue, which is contributing to the delays.

Film Relief guidance is nearly complete, examples and issues from interested parties is reflected in the guidance. The Department of Finance is carrying out a full cost-benefit analysis of the relief which is part of the three yearly cycle.

Item 3 Workplan 2018

- FRS 101/102 guidance – the subgroup met in the April, the two main issues are; section 291A TCA 1997 and the adoption of a new leasing accounting standard. Other minor matters are under consideration. No specific update from Revenue. The work of the subgroup is ongoing. Any updates will be reported to the committee.
- Section 247 TCA 1997 – guidance is being developed and it will be circulated in advance to the committee for consideration.

Item 4 Agricultural relief and forestry

- Revenue's view is that normal forestry activity would include the period of time between harvesting and replanting as put forward by practitioners; the period of time must be reasonable and normal forestry practice. A clawback would not arise in the circumstances outlined.

Item 5 Revenue guidance on Section 135 TCA 1997

- Practitioners asked Revenue to explain why the guidance published does not include all examples submitted to them and the absence of examples on the interaction with the KEEP and EII scheme. Revenue responded that all relevant examples were included in the guidance; some of the examples submitted by practitioners were either irrelevant or duplicated. Revenue's view is that the broad principles are reflected in the guidance and there is no requirement for additional examples. There is no reference in the guidance to the EII scheme but the EII guidance includes reference to section 135 TCA 1997. In relation to the KEEP, Revenue said that there is no intention to keep the KEEP outside the scope of the provisions of section 135 TCA 1997. Revenue said that they will review queries as they arise and will consider updating their guidance if additional examples are needed.

Item 6 Trade Benefit Test and Revenue update manual

- As per the notes to the agenda, Revenue was asked why their recently published manual does not include reference to the TAC Case 22/2017 and include examples where the disposing shareholder remains involved in the company after the share disposal. According to Revenue the TAC decision was based on particular facts and not widely applicable. The guidance is Revenue's view and there is no intention on Revenue's part to amend the guidance.
- Practitioners stressed that the Revenue's view is at odds with the TAC decision and the manual should make reference to the TAC decision.
- The matter will remain on the agenda.

Item 7 DAC 6 and Revenue guidance

- Guidance was recently published from Revenue.
- The committee discussed some practical implications of the Directive:
 - Transactions first implemented from 25 June must be reported in August 2020 but there is uncertainty around many aspects of the Directive and the information required to be reported.
 - The DAC 6 requirements are wider than domestic legislation and without further guidance the volume of information to be collected and reported is exceptionally wide.

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- Some Member States don't have a domestic mandatory disclosure reporting regime. Potentially there could be different scopes for the same transactions under DAC 6 across Member States.
- Domestic legislation is unlikely before end of 2019. Without the underlying legislation Revenue cannot provide more guidance.
- It may be the end of 2019 before consensus is reached by Member States on the scope and application of DAC 6.
- DAC 6 will be kept on the agenda.

Item 8 Status of the eBrief 43/12 Interest payments and section 246(3)(h)(I) TCA 1997 which is more than 5 years old and reliance on same

- Revenue advised that there has been no change to the technical position and the eBrief guidance is incorporated in a draft manual currently with Revenue for approval.

Item 9 Revenue manual change history function

- Practitioners noted the volume of updates to Manuals and eBriefs that have issued recently, and that often details of the changes and updates were not highlighted a practice which was previously agreed at TALC.
- Revenue said that it is their policy that reasonable descriptions of the changes are identified in a covering eBrief.
- Track changes function is difficult to practically implement, often there are significant changes including complete re-writes to improve readability and clarity.
- Revenue will review their internal practices to ensure that clear descriptions of the changes are provided in the covering eBrief.
- Revenue told the committee of their two year update cycle for manuals and the two monthly window for manual owners to publish the updated manual.
- Practitioners requested that where a manual is removed from the Revenue website due to internal updates be replaced with a note explaining why the manual is currently unavailable as it is under review/consideration. Often practitioners are unsure if the manual is unavailable because it is no longer relevant and therefore the content cannot be relied upon.

AOB

- Revenue will amend their SARP manual to clarify the application of the 30 day deadline which will be enforced in all cases. Revenue will accept notification with incomplete information and allow taxpayers to supply the information after the 30 day deadline where there are bona fide reasons for failure to submit this information within the notification. Revenue will also take a practical approach to cases on hand that are currently in excess of the 30 day threshold due to bona fide difficulties in gathering supporting information – such cases should be submitted without delay.
- Revenue confirmed that the IREF return should be available online by the end of the week; the filing deadline is 31 July. If there is no taxable event then no return is due. It is not possible to submit an expression of doubt.

Attendees at the meeting

CCAB-I

- Peter Vale (chair)
- Kimberley Rowan
- Andrew Feighery
- Cormac Kelleher
- Colin Smith

Revenue

- Brian Boyle
- Sharonne O'Reilly
- John McGorry
- Dave Brennan
- Alan Kelly
- Áine Hollingsworth
- Paul Walsh

Law Society

- Maura Dineen
- Caroline Devlin
- Aileen Keoghan
- Padraic Courtney

ITI

- Anne Gunnell
- Sharon Burke
- Helen Byrne
- David Moran
- Martin Gaffney
- Fiona Carney