

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

25<sup>th</sup> June 2020

Skype conference call at 2:30pm

### Item 1: Review of minutes from meeting of 13<sup>th</sup> February 2020

- Practitioners proposed an amendment to Item 2.d of Matters Arising which was agreed, in order for the minutes to reflect the discussion on took place and to note that the guidance needs to be updated to reflect the discussion on the analysis between income and capital.

### Item 2: Matters arising:

Matters arising were as follows:

- a. **Revenue procedures for the allocation of tax numbers and payments to stamp duty filings:**  
Revenue advised that 94% of allocations are dealt with within a fortnight and asked that practitioners contact them directly if there are any specific issues encountered going forward.
- b. **Stamp Duty – issues raised regarding Associated Companies Relief:**  
The updated manual has been published. A number of issues were raised by practitioners regarding the revised manual including:
  - Whether the analysis included in the manual regarding book debts and loans that cease to exist when they are 'paid off' was intended to cover inter-company loans written-off
  - Whether the requirement for underlying property to stay within a group for 2 years is satisfied where the property ceases to exist; and
  - The definition of ordinary share capital in the manual and its impact on units in an entity such as a US LLC. Practitioners noted that this was important in light of historic rulings on the issue. The inclusion of such entities would appear to be within the intention of Section 79 as set out in the introduction to the revised manual).Revenue requested a written submission on the matters raised for consideration.
- c. **Potential tax issues arising from the move away from LIBOR/EURIBOR reference rates to new reference rates**  
Revenue are keeping this matter under active consideration and it was agreed to keep this on the agenda for the next meeting.
- d. **Updated TDM 19-02-05 on Capital Losses – expected timeframe:**  
The updated manual was published during the course of the meeting.

### Item 3: Update on subgroup on tax clearances and agent liability issues (letter of no audit)

Revenue confirmed that this subgroup was being dealt with under Main TALC. Revenue are actively considering the issues and will be scheduling a meeting. It was noted that the eCG50 was part of the resolution of the issues under consideration by the subgroup.

Practitioners requested that in respect of estates, that the letters of no audit continue to issue pending a resolution of the issues under consideration. Revenue agreed to send a reminder to the Districts in this regard.

Practitioners noted that the new eCG50 Tax and Duty Manual incorrectly includes goodwill as one of the asset types where the option for shares in an unquoted company is selected. Revenue confirmed that they will review this matter.

### Item 4: Incorporation of TAC determination 32TACD2019 and Revenue guidance on Section 84 CATCA03

Practitioners expressed concern that TAC determination 32TACD2019 was not reflected Revenue guidance on Section 84 CATCA03. Revenue confirmed they do not agree with the decision in TAC determination 32TACD2019 TAC and any future cases of this nature would be appealed by Revenue. Revenue agreed to reflect the TAC determination in the guidance whilst noting that Revenue did not agree with the determination.

Practitioners queried Revenue's position on reflecting TAC determinations in guidance generally and noted that Revenue guidance regarding VAT and locums was recently updated but did not incorporate a TAC determination published prior to that guidance being updated. Revenue stated that TAC decisions are not of precedential value but acknowledged that there was an onus on Revenue to articulate the TAC view on a matter in guidance notwithstanding that Revenue may have a different view. However, this will depend on whether a matter is under appeal.

**Item 5: Requirement for a PPSN when filing for probate when no CAT return required**

Practitioners explained that difficulties were being experienced as a result of the requirement by the Probate Office for a PPSN in circumstances where a CAT return was not required due to the low value involved and thresholds not being breached. Revenue confirmed that the requirement to request the PPSN and thresholds were not linked. Revenue will consider this issue.

**Item 6: Statements made by Revenue officials over the phone to solicitors:**

**a. That the valuation date must be the date of grant of probate where this is not the legislative case:**

Revenue requested details of the specific case(s) so that they could review the matter, determine whether re-training was required and decide if they should re-issue communications on this issue.

Practitioners also noted that the Form IT38 restricted the dates (for example, valuation date/date of death) which could be inserted in certain 'non-standard' cases. Revenue noted that they were aware of some technical issues with the Form IT38 and they are seeking to address these.

**b. That a taxpayer could file once the money is available to pay the tax without making any reference to interest, surcharges or penalties:**

Revenue requested details of the specific case(s) so that they could review the matter.

**Item 7: Issues experienced in crediting payments received despite the fact that payments made for other family members in the estate were received at same time:**

Practitioners expressed concerns regarding discrepancies in the system and enquired whether the system is manually operated as credits appear to issue at different times.

Revenue advised that there may be a difference in timing of the allocation of payments where there were issues with the PPS numbers or other errors in the return filed. The new CAT TAIN should resolve many of these issues.

**Item 8: Section 980 Tax & Duty Manual (Part 42-03-01) & Section 615**

Practitioners requested confirmation that the treatment in Tax and Duty Manual (Part 42-03-01) on section 980 TCA 1997 relating to deemed consideration arising on an intra-group transfer of assets that results in a no gain/no loss position under section 617 TCA 1997 is extended to disposals under section 615 TCA 1997.

Revenue requested that practitioners make a submission in relation to section 615 TCA 1997 for consideration.

**Item 9: Discussion regarding the potential tax issues arising from the transition from Crest to Euroclear**

It was noted that there was a working group of advisors liaising with Revenue on the tax issues (including potential DWT, stamp duty, CAT & CGT issues). Given that the deadline for the transition to Euroclear is March 2021, practitioners noted the importance of clarity on any potential tax issues and that any changes required would need to be addressed in the forthcoming Finance Bill.

A summary list of the potential tax issues was provided to Revenue and Revenue responded to each issue under the various tax heads in early June. This correspondence will be circulated to the TALC group after the meeting. It was noted by practitioners that further clarity was required regarding the issue of beneficial ownership as this would have an impact on the tax position. Revenue will be keeping this matter under consideration.

**Item 10: Discount on market value on the receipt of a benefit where property is held jointly**

Practitioners queried Revenue's position regarding the discount on market value on the receipt of a benefit where property is held jointly (for example, a 10% discount on the market value of a benefit where the property which is the subject of the benefit is jointly held property). Practitioners said that the discount had been queried by Revenue in recent cases.

Revenue noted that this practice is not currently included in any Tax and Duty Manual and Revenue will consider whether the practice can be incorporated into an operational manual.

**Item 11: Revenue's guidance on force majeure residency rules in the context of Covid – 19:**

Practitioners stated the existing guidance was helpful but further explanations regarding the scope of the guidance would be welcome. Practitioners raised a number of scenarios where the guidance is not clear including, the position in relation to individuals who are forced to quarantine for two weeks in a jurisdiction as travel restrictions are eased in the coming months and the position for individuals who have stayed in Ireland or abroad on the basis of public health advice to avoid non-essential travel. Practitioners also requested clarity on the dates for which the guidance will apply.

Revenue stated that it is a matter for the individual to be satisfied that they intended to leave the State but were prevented from doing so. Regarding the 14 day quarantine period preventing someone leaving the State, Revenue would need to know the particular circumstances of the case. In respect of a scenario where an individual entered the State to attend a meeting for one day and was required to quarantine for 14 days, Revenue may query why the meeting could not have been done remotely.

Revenue confirmed that the guidance was issued as a result of the initial COVID-19 restrictions being introduced where someone was prevented from leaving the state. Revenue do not propose to issue further clarifications or to make substantive changes to the published guidance. Where difficulties arise, Revenue are willing to consider the circumstances on a case by case basis and a submission can be made through MyEnquiries. The application of the guidance to individual cases is not a technical interpretative matter but rather a question of whether the concessional treatment should apply based on the published guidance.

**Item 12: PAYE Modernisation & Director's Bonuses:**

Practitioners first raised the issue at TALC Audit last November concerning bonuses accrued in the accounts of a company and paid to proprietary directors within 6 months of the end of the previous financial period of that company giving rise to a number of issues under PAYE modernisation. Prior to PAYE Modernisation, an amended P35 could be filed to include the income and the PAYE paid in the year earned. However, it is not clear how the tax paid in a 2020 Payroll Submission Request (relating to 2019 earnings) can be assigned to 2019 as tax liability per Revenue's self-assessment will differ from the tax correctly due under the earnings basis. It was noted that this issue was a matter of concern and urgency in light of the approaching income tax filing deadline. Practitioners queried whether a legislative amendment would be required to address these issues and if so, how the position for 2019 bonuses could be addressed in the interim to ensure that directors were given credit for 2020 PAYE paid in respect of such bonuses when filing their 2019 tax return.

Revenue stated that they do not believe a legislative amendment is required. Revenue stated that taxpayers should be able estimate the tax due on the bonus, include this in their 2019 return and credit would be given for PAYE paid in 2020. It was noted by practitioners that this is not what is happening in practice. Revenue will review this issue and update guidance as a matter of priority Revenue will consider expanding the information required to be included on the ROS Form 11 to acknowledge the tax paid in 2020.

**Item 13: Process for obtaining Letter of Tax Residence for LCD taxpayers**

Practitioners stated that there are issues being experienced in obtaining a Letter of Tax Residence for LCD taxpayers via ROS and queried whether there has been a change in Revenue practice.

Revenue confirmed that there has been no change in Revenue practice. There had been a misunderstanding by some of the LCD Customer Service team which has now been addressed. If the issue continues Revenue advised practitioners to contact LCD via MyEnquiries with a screenshot of the error from ROS and the issue should be resolved by the LCD Customer Service team.

**Item 14: 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 outlined difficulties being experienced registering companies for tax (corporation tax and VAT) purposes where the company is not Irish incorporated and does not have a CRO number. This issue has been further exacerbated recently as a result of Covid-19 as the CRO requires apostilled/certified copies of company documents in order to complete a registration. Naturally, it is proving difficult for companies to get such documents certified in light of Covid-19 working arrangements.

Revenue confirmed that this query has been sent to Planning Division and will provide an update once they receive a response.

**Item 15: Clarification regarding Revenue guidance in the context of Covid-19 on Scenario 2 in relation to refunds of medical insurance premiums:**

Revenue confirmed (with respect to Scenario 2) where a company pays a medical insurance premium and the medical insurance provider splits the refund between the employer and employee then on the employer side, the deduction taken should reflect the reduced amount.

**Item 16: Draft TDM on the payment and receipt of interest and royalties without deduction of income tax:**

Revenue noted that feedback had been received from practitioners on the draft manual and stated that work on this TDM is currently ongoing. Revenue advised that it is a fundamental requirement that the certificate be stamped by the foreign tax authority and it is not intended to change this requirement.

Practitioners queried whether a pro-rata approach could be adopted where a payment is made to a partnership and only some of the investors satisfied the requirements for self-certification. Revenue stated they would not accept a pro-rata approach as their position is that there is "a payment" of interest.

In respect of the proposed withdrawal of Revenue's confirmation (which provided for interest payments to be paid without the deduction of withholding tax, under section 246(3)(cc), to a qualifying company (as defined by section 110 TCA 1997) even in circumstances where the interest is paid into a bank account, of the qualifying company, outside the State), Revenue stated they are willing to accept a submission from practitioners on the issue and their concern is to ensure that the practice is in line with the legislation.

Revenue advised that they expect that the draft manual will be sent to the Assistant Secretary for approval next week.

**Item 17: Discussion regarding advance opinions from RTS in circumstances where there is a lack of clarity in the legislation and/or Revenue's guidance**

Practitioners raised the issue of difficulties and inconsistencies being experienced in obtaining advance opinions from RTS in circumstances where there is a lack of clarity in the legislation and/or Revenue's guidance. Revenue stated that there are limited circumstances where an advance opinion would be provided. There is a Central Management Team in the Business Division to deal with all RTS queries nationally (except LCD) which co-ordinates the process and they would be surprised if there were inconsistencies in terms of the type of cases where an advance opinion was/was not provided. Revenue are happy to review such instances if details are provided to them.

**Item 18: Discussion regarding the "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)**

Practitioners queried Revenue's position following the outcome of this case. Revenue requested that a note be submitted on the issue for consideration.

## **Item 19: Form CT1: Reporting of transactions with jurisdictions now considered to be non-cooperative for tax purposes**

Following queries raised by practitioners since the last TALC Direct Capital Taxes meeting regarding the reporting on the Form CT1 of transactions with jurisdictions now considered to be non-cooperative for tax purposes, the clarification outlined below was received from Revenue.

### **Background**

*The first EU list of non-cooperative jurisdictions (the list) was adopted on 5 December 2017 at ECOFIN. It has since been updated several times. When adopting the list, all EU Member states agreed to introduce administrative measures relating to jurisdictions that were on the list.*

*As part of Ireland's commitment to the agreed measures Revenue added a section to the annual Corporate Tax return (form CT1) for accounting periods ending in 2019 and onwards. The new section asks companies that entered into transactions, involving Interest, Royalties or Dividends, with persons in certain jurisdictions to disclose the fact that the transaction occurred where, at the time of filing the form CT1, the jurisdiction is on the list.*

### **Q1: What does currently mean?**

*"Currently" means the date the form CT1 for the period during which the transaction occurred is filed, where the form CT1 is filed on or before the due date for filing it. Therefore, if a jurisdiction is on the list of non-cooperative jurisdictions for tax purposes when the form CT1 is filed then, regardless of whether the jurisdiction was on the list at the date of the transaction, the transaction must be noted by ticking the relevant box. If the form CT1 is filed after the due date, it is the due date of the return that is relevant. Therefore, if the jurisdiction was removed from the list after the due date for filing the return but was on the list at the due date then the transaction should be recorded.*

*The [current list of non-cooperative jurisdictions](#) for tax purposes can be found on the Revenue website. Details of jurisdictions that were previously listed can be found on the [European Council website](#).*

### **Q2 What does transaction mean?**

*A transaction is confined to:*

- paying a royalty*
- paying a dividend or making a distribution*
- claiming an interest deduction (including by way of a charge).*

*If the royalty or dividend payment to a person in a listed jurisdiction was made during an accounting period disclosure should be made by ticking the box in the form CT1 for that period. This is provided the jurisdiction is on the list at the date of filing (or the due date, where the return is filed late).*

*If a deduction for interest is claimed then disclosure should be made by ticking the box in the form CT1 for the period.*

- A. An Irish resident company / group becomes held during the year by a parent company "currently" located in an EU blacklisted jurisdiction. This could be either by way of an acquisition or the establishment of a new company. It is envisaged that dividends could be paid in the future to the parent company but none are paid in the year. Should a disclosure be made on the Form CT1?**

*Disclosure is required in the form CT1 for the accounting period during which the dividend is paid provided the jurisdiction where the parent company is located is on the list at the date the return is filed (or the due date for filing the return if the return is filed late).*

- B. A deduction is claimed on an accruals basis during the year for an expense but no payment has been made. Should a disclosure be made on the Form CT1?**

*Yes, if a deduction for interest is claimed during an accounting period for which the form CT1 is being filed then disclosure should be made.*

**Q3 Who is a person in a blacklisted jurisdiction?**

The term person includes a company, firm, trust, foundation, partnership, entity, individual and any other person, association or arrangement, regardless of residence status, operating in any jurisdiction which, on the date of the form CT1 is filed (or the due date for filing the return if the return is filed late), is on the list.

Practitioners requested that the clarification be reflected in the guidance. Practitioners also highlighted that amendments have been made to the CFC boxes in the Form CT1 but that there has been no corresponding update to the guidance.

Revenue confirmed that they are considering including clarifications in the guidance.

**Item 20: Income and gains arising from awards and trusts for incapacitated individuals**

Updated guidance has been published this week.

**Item 21: Revenue guidance:**

- (i) **Section 110**  
A policy decision regarding CLO's is required to be taken before the updated guidance can be issued.
- (ii) **IREF**  
The draft guidance is with the Assistant Secretary for approval.
- (iii) **R&D**  
The draft guidance is with the Assistant Secretary for approval. It will not include examples regarding small and micro companies as the Finance Act 2019 amendments have not yet been commenced.
- (iv) **Leasing**  
The draft guidance is progressing slowly as policy decisions need to be made regarding potential legislative amendments in tandem with the issuing of updated guidance.
- (v) **Trading & intra-group financing**  
This guidance is being progressed in tandem with the guidance on leasing.
- (vi) **Stocklending and repos transactions**  
Revenue are unable to provide a timeline as to the expected publication date.
- (vii) **EII/SURE/SCI**  
Revenue are updating the TDM and it is anticipated that draft guidance will be circulated by the end of July for comments.

**Item 22: Workplan for 2020**

No additional workplan items for 2020 were suggested at the meeting.

**Item 23: AOB**

- Practitioners queried the likely timeline for the publication of legislation on debt warehousing. It was noted that as the Oireachtas does not usually sit in August, it would be anticipated a Bill on debt warehousing may issue in mid-July.
- Practitioners queried whether in light of the UK's confirmation that they would not be requesting an extension to the transition period, whether it was intended to commence the tax provisions in the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 or to enact the new legislation. Revenue confirmed that the matter was under active consideration by the Department of Finance and that it was unclear whether the provisions in the Withdrawal Act will be commenced or if new legislation will be enacted.

- Revenue stated that the Statement of Affairs (Probate) (SA2) is on target for an early September 2020 release date. Revenue are open to liaising with practitioners if they wish to hold a webinar on this topic.

**Item 24: Date of Next Meeting**

- Date of next meeting set for Thursday 3 September 2020 at 14:30

**Attendees at the meeting****ITI**

- Laura Lynch (Chair)
- David Fennell
- Stephen Ruane
- Tom Maguire
- David Moran
- Cillein Barry
- Clare McGuinness
- Lorraine Sheegar

**Revenue**

- Philip Brennan
- Dave Brennan
- Michael Buckley
- Áine Hollingsworth
- Mary Hughes
- Therese Bourke
- Alan Kelly
- Roisin McKeivitt
- Sharonne O'Reilly
- Niamh Behan
- John McGorry
- Caitriona Crowley

**CCABI**

- Colin Smith
- Peter Vale
- Ken Garvey
- Enda Faughnan
- Cormac Kellher
- Norah Collender
- Maud Clear

**Law Society**

- Caroline Devlin
- Maura Dineen
- David Lawless
- Aidan Fahy
- Aileen Keogan
- John Cuddigan