

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

24th June 2021

Skype conference call at 2:30 p.m.

### Item 1: Review of minutes from meeting of 15<sup>th</sup> April 2021.

The minutes were agreed.

### Item 2: Matters arising from meeting on 15<sup>th</sup> April 2021.

Matters arising were as follows:

- a. **Section 980 – Updating of TDM; and update on the software functionality enhancement planned for June.**

Revenue noted that the functionality to allow practitioners with a TAIN to register resident or non-resident individuals solely for CGT has gone live.

Revenue noted that there has been a delay in the proposed development to allow a soft copy of a CG50 to be dropped into the inbox of the customer and the agent, and is expected to go live on 26 July. Revenue confirmed that the TDM will be updated when that service goes live.

- b. **Form CT1: Reporting of transactions with jurisdictions now considered to be non-cooperative for tax purposes. Update on a timeline for when the ROS help button would be further updated.**

Practitioners requested an update on a timeline for when the ROS help button would be further updated. Revenue stated that while the help button would be updated, this could not be retrospectively included on the CT1 for 2020, and it was intended to be included on the CT1 for 2021.

- c. **Letters of no-audit (LONA) – Status following discussion at Main TALC meeting.**

Revenue noted that a sub-group has been formed to discuss this situation, and two meetings have been held to date. Revenue stated that the TDM should be published over the coming weeks. Practitioners confirmed that issue is progressing, and that Revenue are considering concerns raised by them.

- d. **Update from Revenue on matters where submissions have been made.** - Addressed as part of agenda item 3.

- e. **DWT Declarations query and uncertainty in respect of Euroclear - Status following Revenue review?**

Revenue noted that they had provided feedback on the DWT Declaration query, and confirmed that the list of authorised withholding tax agents updated on 15 June includes Euroclear.

Separately, practitioners noted that a submission had been made to the Department of Finance in respect of an unrelated point relating to the Euroclear / CREST migration.

- f. **Update from Revenue on Revenue Guidance.** - Addressed as part of agenda item 10.

**g. CAT returns & PPS Numbers.**

First, practitioners noted that, while the requirement for each person taking an inheritance to provide a PPS number was a statutory requirement, this requirement is as per a regulation made by Revenue, SI 341/20 signed by the Revenue Chairman, rather than a Department of Finance or *Oireachtas* measure. PPS numbers are required in the case of inheritance where the amount of the benefit being taken is significantly lower than the amount that triggers the obligation to file a return where it is clear no taxes will arise as the prior and current benefits are clearly well under the 80% of the relevant group threshold. Practitioners expressed their concern that this is a significant administrative burden on estates to get PPSNs for such beneficiaries. Practitioners gave the example of a foreign child of the surviving parent's (also foreign) estate receiving a benefit of the element of the estate that is Irish situate which amounts to €20,000 where they have received no prior aggregable benefits and the group threshold is €335,000. They will not receive any future benefits within that threshold as both parents have died. A PPSN must be obtained for that child despite the clear evidence no return is ever required. The administrative burden on this is significant. Revenue and practitioners agreed to discuss the issue further.

Second, practitioners noted that the practical solution of giving an undertaking for one missing PPSN to allow the application for probate to progress is welcome, however in estates where one PPSN is not available, typically that is because of there being a foreign element where many other beneficiaries in the same estate also have no PPSNs. The facility for the undertaking should be available for all beneficiaries, there does not seem any logic as to why one can be dealt with by the undertaking and not more than one. Revenue and practitioners agreed to discuss the issue further.

**h. Stamp Duty – Associated Companies Relief TDM. Status? – has Revenue received the further information from practitioners?**

Revenue noted that no further information has been received, and practitioners confirmed that a submission was being finalised.

**i. “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) Status? – any further developments on this?**

Revenue noted that an update has been circulated to practitioners. The practitioners who had made the relevant submission noted that their view remained unchanged, and that practitioners and Revenue's views do not align. It was agreed that this item can be removed from the agenda.

**j. Sections 31C and 31D SDCA 1999 related queries. Status? – has Revenue received the further information from practitioners in relation to the interplay with section 80 SDCA 1999?**

Revenue noted that no submissions have been received.

**k. Stamp duty returns / stamp cert query. Status? – has Revenue had an opportunity to consider this further?**

Revenue stated that the development required in order to issue a stamp duty certificate after hours on the 'same day' is expensive and burdensome, and isn't considered necessary. Practitioners noted that a workaround is available.

**l. DAC 6 – any new or follow-on points arising?**

Revenue noted that they will keep all points previously made under review. On the basis that the points raised were not urgent, they will be considered when the DAC6 guidance is next being reviewed.

m. **Negative interest on deposit bank accounts. Status? – has Revenue had an opportunity to consider this further?**

Revenue stated that an individual would be subject to DIRT on interest, and as there was no relief available for an equivalent loss, no relief would be available. Revenue further noted that a company is taxable on deposit interest under Schedule D, Case III, and that there is no Case III loss relief, so the question of loss relief for negative interest is irrelevant for individuals and companies.

Practitioners queried the position in respect of trading and VAT on negative interest, and Revenue requested that a submission be made on the points in order to consider them further.

n. **Fees to corporate service providers and NED services. Status? – has Revenue received the further information from practitioners?**

Revenue noted that the issue seemed to be VAT related, which may be more appropriate for another sub-committee. Practitioners confirmed that it had been a combined VAT / PAYE issue, but a submission would not be forthcoming. Accordingly, this item can be removed from the agenda.

o. **Anything else**

There was nothing further from the previous meeting.

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

**3.1 The draft TDM on the treatment of certain gains and losses on Foreign Currencies for corporation tax purposes.**

Revenue will circulate the revised draft TDM in the next few weeks. Revenue noted that practitioners had submitted comments and that Revenue would be responding to the comments received. Revenue confirmed their view that the TDM followed the legislation, and that legislative amendment may be required to deal with practitioners' concerns in certain areas.

**3.2 The draft TDM on the classification of foreign entities for Irish tax purposes.**

Revenue noted that this was being worked on and would be circulated in draft in due course.

**3.3 The TDM on the payment and receipt of interest and royalties without deduction of income tax, regarding annual payments and difficulties experienced getting the US tax authorities to stamp the self-certification form.**

Revenue confirmed that the TDM is being updated, and new forms and an updated TDM will be published. Practitioners raised concerns in respect of getting forms stamped in the US, and Revenue noted that a Form 6166 should be acceptable in order to avail of DTA relief.

Practitioners queried whether Revenue had considered further whether the treatment that applies to royalties also applies to annual payments, with the same withholding tax requirements. Revenue noted that this will still be considered and an update will be provided.

**3.4 The Employee Share Award (ESA) return.**

Revenue noted that the new form, which was updated following practitioners' feedback, has been issued and that they are open to further comments and feedback. In relation to the due date for ESA return filings of 31 August 2021, practitioners noted that this is a busy time of year and requested that Revenue take a pragmatic approach in this regard. Revenue confirmed that they will take a pragmatic approach to the deadline.

**3.5 The processing of EIIIS applications for investments made in 2017 and 2018. Practitioners have reported significant delays with the processing of applications. Can Revenue share any information on the delays.**

Revenue confirmed that the delay related to the issuing of certificates, rather than processing the applications. As the certificates are issued manually, the delay was as a result of COVID-19. Revenue noted that of the applications waiting for approval they would all be progressed in the next two weeks with contact being made with taxpayers if necessary, and any applications being received thereafter (being EII1A's) are being dealt with straight away.

**Item 4: CAT and Form SA2 related queries.**

(1) In response to queries set out in the agenda and notes for the meeting, Revenue noted that the information requested under the SA2 in relation to prior benefits for all group thresholds is sought from a compliance perspective due to the cumulative nature of CAT.

Practitioners expressed concern with this on the basis that the questions raised in the SA2 are different from the position in the CA24, whereas it was understood that the SA2 would be a straightforward replication of the Inland Revenue Affidavit. Practitioners further highlighted the administrative burden of asking questions of all group thresholds where only one group threshold is relevant for the purpose of collecting tax and noted that there was no statutory basis for the request. The cumulative nature of CAT is only relevant within each group threshold. It was stated that the request goes beyond what is reasonable where it is clear no taxes will arise as the benefits from other group thresholds do not aggregate. It is also a concern in terms of privacy rights where the information to be provided to Revenue by a beneficiary via the executor is excessive to the needs of the executor. Practitioners gave the example of a nephew receiving a benefit of a cash legacy of €20,000 from his aunt (mother's sister) where he has received no prior aggregable benefits from Group threshold B and would previously have informed the executor (typically a cousin) of that position. Now the nephew must advise his cousin of the benefit the nephew received from his own father despite the fact it is irrelevant to the estate of his aunt and so the cousin now has personal information that they would not otherwise have had. This is causing concern among families. Revenue stated that the requirement would only be removed if the legislation was changed, however practitioners pointed out that this requirement is as per a regulation made by Revenue, SI 341/20 signed by the Revenue Chairman, rather than a Department of Finance or *Oireachtas* measure.

Revenue and practitioners agreed to discuss the issue further, as practitioners has asked that this matter be treated as a significant concern for them.

Practitioners also queried whether the wording of The Capital Acquisitions Tax (Electronic Probate) Regulations 2020, Schedule 4 part 10 requiring "the value of prior aggregable benefits received by each beneficiary within each group threshold" is correct, as it seems contradictory.

Revenue confirmed that they would update guidance to clarify the point.

(2) Practitioners also raised the point that an SA2 cannot be completed in cases where the deceased held a joint account with PTSB, as it is now their stated policy not to provide information in relation to a joint bank account without the consent of the other joint holder until a grant issues due to GDPR.

Revenue confirmed that they will consult with their GDPR and legal teams to ascertain whether they can assist practitioners in this regard.

(3) In response to a query set out in the agenda and notes for the meeting, Revenue confirmed that following the repeal of section 45(7) CATCA in 2010, their interpretation of the legislation at the time was not to treat the payment of inheritance tax from a life interest trust capital to fund the life tenant's inheritance tax as a taxable distribution in itself. It was confirmed that Revenue would consider the point in detail and update the CAT TDM to confirm the current position.

**Item 5: Sections 31E SDCA 1999 related queries.**

Revenue noted that the Finance (Covid-19 and Miscellaneous Provisions) Bill 2021 has been introduced in the *Oireachtas*, with certain changes made to section 31E as it was drafted in the financial resolution, and that it is expected that the Bill will be enacted by the *Oireachtas* before the summer break.

Revenue acknowledged that several queries had been circulated by practitioners, as set out in the agenda and notes to the meeting in relation to the recently introduced section 31E SDCA. Revenue noted that the section was an emergency measure and requested that all issues experienced by practitioners, in particular where unintended consequences were envisaged, are addressed to Revenue and the Department of Finance.

In general, Revenue requested further details from practitioners in respect of the queries raised, noting that it is expected that the Department of Finance will introduce certain amendments. It was confirmed that there will be a system update to provide for the mechanics of stamping up the previous 9 properties.

Practitioners also sought clarification regarding the application of section 31E SDCA to residential units which form part of the property of nursing homes / hotels. Revenue requested that practical examples be submitted for their consideration and suggested that practitioners may also wish to make a submission to the Department of Finance.

**Item 6: Tax and Duty Manuals TDM Part 27-01a-02 – “Investment Undertakings”, TDM Part 27-01a-03 – “ETFs and ETCs” and TDM Part 27-02-01 – “Offshore funds”.**

Revenue noted that an in depth review of TDM Part 27-01A-03 – “Exchange Traded Funds (ETFs)” which includes Exchange Traded Commodities (ETCs) has been completed, and that they were seeking feedback and comments on the draft manuals which had been circulated in advance of the meeting.

From 1 January 2014, the TDM had provided a blanket confirmation in respect of the tax treatment of ETFs domiciled in the USA, EEA and other OECD countries, and ETC investments. Having reviewed changes in the ETF and ETC markets since 2014, including in light of the UK leaving the EU, Revenue proposes to withdraw these confirmations on the basis that it is no longer possible or appropriate to adopt a general tax treatment for a subset of exchange traded products.

Revenue stated that they proposed to bring guidance on the tax treatment of EEA, US and other OECD member state domiciled ETFs in line with that of the Offshore Fund Legislation, and confirm that ETCs can vary and may be debt instruments. It was confirmed that the onus is on the investor / intermediary (where appropriate) to ensure that the correct tax treatment is applied.

Practitioners queried how the updates would affect taxpayers filing returns for 2020 or 2021, and Revenue stated that the previous guidance wasn't intended to cover any products introduced to the market since 2014. Practitioners noted the difficulties which may exist in determining the status of a fund and requested that a pragmatic approach be taken by Revenue. Practitioners also queried whether it would be possible for Revenue to provide further guidance on whether there is an ETF, or what a reasonable approach may be in a given situation. Revenue noted that there are decision trees and guidance in the offshore fund TDM on this point.

Revenue noted that the draft manuals had been provided to TALC in advance of the meeting in order to discuss any comments or observations further at the TALC meeting. Revenue noted that no comments had been received in advance of the TALC meeting. Revenue agreed to a timeline of 1 week from the date of the TALC meeting (ie closing date 1 July 2021) to receive submissions with regard to the relevant manuals.

**Item 7: Tax treatment of company ceasing to be a Section 110 company and continuing in business.**

Practitioners noted that while it is possible for a Section 110 company to withdraw its original qualifying company notification and continue in business as a non-Section 110 company, it is not clear from legislation how the final tax return as a Section 110 company should be prepared, ie, whether it should be treated as the cessation of an accounting period, and whether the Section 110 company should mark-to-market its investments at the date of withdrawal and whether it is then taxed on any income received after that and any realised capital gains above the value of the investments at the date of the Section 110 withdrawal.

Revenue stated that this issue has not come up to date, as companies have usually completed an accounting period as a Section 110 company and then began the next accounting period as a non-Section 110 company.

Revenue noted that the tax treatment of assets held by a Section 110 company after withdrawal would depend on the facts and circumstances, and would need to be reviewed on a case-by-case basis and as such Revenue would not be in a position to provide general guidance. Practitioners stated that this would be a common query due to the introduction of ATAD, and agreed to make a submission to Revenue on the point.

Revenue noted that the revised manual had been provided to TALC in advance of the meeting in order to discuss any comments or observations further at the TALC meeting. Revenue noted the receipt of a submission from IDSA, but noted that no comments had been received from the TALC members. Revenue requested any further submissions to be received by Revenue 1 week from the date of the TALC meeting (ie. closing date 1 July 2021) in order to finalise and publish the TDM.

#### **Item 8: Entrepreneur relief on liquidations.**

Revenue noted that practitioners had raised the issue of entrepreneur relief applying on the liquidation of a company, provided the company was carrying on a qualifying business up to the time the liquidator was appointed.

Practitioners stated that the commercial reality is that liquidators tend to be appointed when a trade is wound down (particularly in the case of a members' voluntary liquidation), and the condition within the TDM was not provided for in law. One example given by practitioners was a foreign language school catering to overseas students, which could not fulfil the requirement to be trading at the date the liquidator is appointed because it was precluded by COVID-19 related public health restrictions.

Practitioners requested an update to the TDM to reflect the commercial reality that liquidators tend to be appointed when a trade is wound down and that relief will not be denied in these instances. Revenue noted that several COVID-19-related submissions have been made by practitioners, but requested non-COVID-19-related examples also.

#### **Item 9: Employment Investment Incentive Scheme (EIS).**

Practitioners noted that anti-dilution clauses are a typical commercial condition included in a company's constitution to prevent loss of value, and requested clarification on whether the existence of such a clause would render a shareholder a 'connected person' under section 500 TCA 1997. Practitioners noted that a narrow interpretation of section 500 TCA, and in particular the condition of a shareholder being "entitled to acquire" a shareholding in future, could potentially deem them to be connected.

Practitioners also queried Revenue's position on whether an exit preference renders shares ineligible shares for EIS purposes, noting that the legislation and Revenue guidance do not address whether a 'liquidation preference' should be afforded the same treatment as preferential rights to dividends and rights on winding up.

Revenue requested further detail and an example of the exit preference issue, and noted that they would consider both issues in detail.

#### **Item 10: Update from Revenue on Revenue Guidance on:**

##### **10.1. Section 110**

Revenue confirmed that the TDM will be published without the guidance on CLOs. Practitioners queried whether the CLO guidance would be published once available, and Revenue confirmed that it would remain on the list of priorities.

#### **10.2. R&D**

Revenue confirmed that no submissions or responses had been received, and it was agreed that this item could be removed from the agenda.

#### **10.3. Leasing**

Revenue noted that the Department of Finance have put together a working group on leasing, and Revenue have been working on updating guidance including the leasing TDM. Revenue are collating information from the relevant working groups and will review and update the guidance where applicable, and the guidance, when ready, will be shared with TALC. This continues to be a work in progress given the complex nature of the industry.

#### **10.4. Stock-lending and repos transactions**

Revenue noted that the TDM had been updated following input received, and had been re-circulated for final review. Practitioners stated that they would make a submission over the coming days, and Revenue requested that any submission should address the guidance only, rather than the legislation.

Revenue noted that the revised manual had been provided to TALC in advance of the meeting in order to discuss any comments or observations further at the TALC meeting. Revenue noted that no comments had been received in advance of the TALC meeting. Revenue agreed to a timeline of 1 week from the date of the TALC meeting (ie. closing date 1 July 2021) to receive submissions.

#### **Item 11: AOB.**

Practitioners noted that the TDM on PAYE Exclusion Orders has been unavailable since May 2020, and requested an update from Revenue on when the updated guidance would be published. Revenue confirmed that the updated TDM should be published the following week.

Revenue requested practitioners to make submissions further in advance of future meetings, in order to allow Revenue to fully consider any issues and to maximise discussion.

#### **Item 12: Next meeting - Thursday, 2 September at 2.30 pm.**

**Attendees at this meeting:**

<b>Revenue</b>	<b>ITI</b>	<b>CCAB-I</b>	<b>Law Society</b>
Niamh Behan Mark Bradshaw Dave Brennan Alan Carey Karen Drake Aine Hollingsworth Alan Kelly Norma Lane John McGorry Jeanne McKeon Sinead McNamara Robert Murphy Keith Noonan Sharonne O'Reilly Declan Rigney Yvonne Ruane	Cillein Barry David Fennell Laura Lynch Tom Maguire Clare McGuinness David Moran Stephen Ruane Lorraine Sheegar	Maud Clear Enda Faughnan Ken Garvey Peter Vale	Padraic Courtney John Cuddigan Caroline Devlin Maura Dineen Aidan Fahy (Chair) Aileen Keogan David Lawless Chloe Power (Secretary)