

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

3rd September 2020

Skype conference call at 2:30pm

Item 1: Review of minutes from meeting of 25th June 2020

The minutes were agreed.

Item 2: Matters arising:

Matters arising were as follows:

a. Update to Minutes from meeting of the 13th February 2020:

The minutes were updated to reflect the discussion on distributions from ARFs to non-residents. The minutes were agreed.

b. Potential tax issues arising from the move away from LIBOR/EURIBOR reference rates to new reference rates:

Revenue noted the difficulty in providing guidance on this matter until the new reference rates are known. The changes may have an impact where there are 'grandfathering' arrangements in place, for example, for the purposes of section 247, section 110 and transfer pricing. Revenue advised that Revenue's understanding is that in practice where a new reference rate is being negotiated, it is likely that the lender will also seek to make other changes. As such, whether or not a loan is a "new loan" will be a question of fact that will have to be decided on a case by case basis. Revenue is keeping this matter under active consideration and will keep this on the agenda for the next meeting.

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

Revenue to obtain feedback from the CAT service and share this with practitioners via TALC Direct/Capital Taxes Sub-committee.

d. Potential tax issues arising from the transition from Crest to Euroclear:

Revenue circulated a draft note prior to the meeting which outlined the possible consequential amendments to Irish tax legislation arising from the migration of Irish shares to the new Belgian CSD and post-migration operations. The draft note outlined the future position once the transition from Crest to Euroclear has occurred. Practitioners requested guidance on what will happen on transition. Revenue advised that the legislative basis for the transition period is under consideration and confirmed that guidance will be provided. Revenue also confirmed that amendments will be included in Finance Bill 2020 to address the main issues identified by Revenue and requested practitioners to provide feedback on amendments to be considered for inclusion in Finance Bill 2020.

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

Revenue is keeping this matter under active consideration and will circulate feedback to practitioners via TALC Direct/Capital Taxes Sub-committee as soon as possible.

f. Incorporation of TAC determination 32TACD2019 and Revenue guidance on Section 84 CATCA03:

Revenue confirmed that guidance will be updated to reflect the TAC Determination - 32TACD2019, notwithstanding that Revenue's position will remain, as outlined in the TDM. Revenue do not agree with the TAC Determination - 32TACD2019 and will appeal any similar case that may arise in the future. The updated TDM is expected to be published shortly.

g. Distributions from ARFs to non-residents:

Revenue responded directly to the main 3 questions in ITI submission of 5th August, (could some DTAs be greenlit; what breakdown was required; treatment of foreign equivalent of an ARF paid to an Irish resident owner - although Revenue is not aware of any such equivalent product). Revenue has now circulated, since the meeting, a document formally responding to these and other queries raised in this matter over the past few meetings.

Revenue requested further information from practitioners on what guidance is needed to carry out the breakdown of income and gains and capital, in addition to the submission received from practitioners in August.

Practitioners stated that for the majority of investments, held over a number of years, information may not be available for the level of analysis required by Revenue. Revenue requested a written submission from practitioners / industry on the matters raised for consideration. Revenue's experience is that the information has been produced and refunds (if applicable) processed. The Revenue representatives were not aware of any case where a breakdown of the ARF distribution was unobtainable, nor one where there was any difficulty identifying the taxing rights for the elements of the distribution. Revenue re-iterated that this has been the standard required for almost 3 years and further that no submission has been received from any QFMs/ARF providers in relation to a difficulty with the requirement. However, Revenue will examine any specific cases where difficulty has arisen in relation to breakdown or any of the other matters raised by practitioners

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

Revenue acknowledged receipt of the submission from practitioners in August, in advance of the meeting. Review of the submission is ongoing as it raises complex issues which need careful consideration.

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

Revenue advised that the confirmation in TDM Part 42-03-01 relates specifically to section 617 intragroup transfers. Practitioners requested, as the wording and construct of section 615 is the same as section 617, that Revenue's practice for section 980 relating to section 617, as stated in TDM Part 42-03-01 be similarly applied to section 615. Revenue requested practitioners to update the written submission made in August in advance of the meeting, to include some additional analysis on the legislative position which they will consider further. Revenue confirmed a response will be sent to practitioners in advance of the next TALC Direct /Capital Taxes Sub-committee meeting, upon receipt of an updated submission.

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

Revenue confirmed receipt of submissions from practitioners in August and that the TDM has been updated and will be published shortly.

k. "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 acknowledged receipt of the submission from practitioners in August prior to the meeting, which Revenue is currently reviewing.

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

Revenue confirmed the guidance note has not yet been updated, however, Revenue confirmed that the clarifications requested will be incorporated in the guidance.

Item 3: Section 626B TCA 1997 application to professions:

Clarification was sought regarding the application of section 626B TCA 1997 to professions. Revenue noted the relevance of the definition of 'trade' in section 5 (interpretation of the CGT Act) and section 4 (interpretation of the Corporation Tax Acts). Revenue confirmed that as the definition of 'trade' in the Corporation Tax Acts does not include professions, Revenue cannot extend the application of section 626B to professions by way of administrative practice. Revenue suggested practitioners consider making a submission to the Department of Finance to seek a legislative amendment to address the matter if required.

Item 4: Agricultural Relief – Farm Consolidations:

Practitioners sought confirmation that a clawback of Agricultural Relief would be avoided where the proceeds are reinvested within 1 year on qualifying farm consolidation exchanges i.e. farm consolidation relief. Revenue stated that on initial consideration it appears not to cause a clawback, however, Revenue advised that this

matter is still under active consideration. Revenue requested practitioners to submit additional information and agreed to provide an update at the next TALC Direct/Capital Taxes Sub-committee meeting.

Item 5: Corporation tax accelerated loss relief for companies adversely impacted by the Covid-19 restrictions and the timing of submission of iXBRL accounts:

Practitioners sought confirmation that the iXBRL accounts for the preceding accounting period do not need to be filed at or before the point at which a claim for interim loss relief is submitted and the claim processed. Revenue confirmed that the existing guidance provided on their Covid-19 information and advice webpage in relation to iXBRL filings and refunds applies equally to interim loss relief claims.

Item 6: Change to the treatment of rent in the R&D TDM:

Practitioners expressed their concerns about the change to the treatment of rent in the updated R&D TDM which was issued on 1 July 2020. Practitioners stated that rent is expenditure for the use of a building rather than expenditure on a building and that there is discrimination in the treatment between companies renting buildings for R&D purposes and companies that construct or refurbish a building for use for qualifying R&D. Practitioners queried if the treatment would be retrospective given returns have already been submitted for 2019, which include rent as qualifying R&D expenditure.

Revenue confirmed that the clarification inserted into the updated TDM arose from a technical query submitted to RTS. Revenue's position is that qualifying expenses must be wholly and exclusively incurred in carrying out the R&D activities and rent does not meet this requirement. Revenue noted expenses must be consumed in the process of carrying out the R&D activities and qualifying expenditure must be incurred in the carrying on of R&D which is a specific cost, therefore, rent may be for the purpose of R&D activities but not in the carrying on of R&D activities.

Practitioners stated that rent is an expense consumed for the purpose of carrying out R&D activities and that R&D activities cannot be carried on without a specific room or building rented for those purposes. Practitioners queried that as expenditure on a building or structure is specifically carved out in section 766A TCA 1997 and as section 766 TCA 1997 provides that expenditure on research and development means "*expenditure, other than expenditure on a building or structure...*", "*incurred by the company wholly and exclusively in the carrying on by it of research and development activities ...*", "*being expenditure which is allowable for the purposes of tax in the State as a deduction in computing income from a trade ...*", the legislation does not exclude rent from the qualifying expenditure on R&D activities.

Practitioners requested confirmation from Revenue before the 23 September corporation tax filing deadline as to whether companies filing their 2019 corporation tax returns can include rent as qualifying R&D expenditure, given some 2019 claims have already been submitted to Revenue, which include rent as qualifying R&D expenditure. Revenue agreed to consider the matter further and provide clarification on the timing of application of the change of treatment to practitioners in advance of the corporation tax filing deadline.

Item 7: EIS relief and the Covid-19 crisis:

Practitioners expressed concerns regarding the requirement to increase headcount to be entitled to the second tranche of funds. Practitioners sought practical measures to recognise the difficulties brought about by Covid-19 and a relaxation of this condition for 2020 and 2021, to ensure the investor's entitlement to additional relief is not impacted.

Revenue is aware that some companies will find it difficult to meet the employment criteria given the impact of the Covid-19 pandemic on businesses and is considering the potential impact of this on the available relief. This is an issue that Revenue is actively considering and would welcome feedback from practitioners on what might be considered a reasonable temporary measure to address this difficulty, while adhering to the State aid rules.

Item 8: Undistributed income of services companies:

Practitioners sought confirmation that the updated guidance released in May does not have retrospective application. Revenue confirmed that the updated TDM supplements the view Revenue has always held in

respect of the calculation of professional/non-professional turnover. Where a suite of services is offered, Revenue confirmed that the services as a whole are taken together to determine professional/non-professional turnover.

Practitioners requested additional guidance from Revenue on what 'integral' means, for example, does it relate to an entire practice or a specific customer. Revenue requested practitioners to make a submission which would illustrate the issues arising but confirmed that the text from the older TDM is still relevant and the recent updates to the TDM were made to provide more clarity.

Item 9: Interaction of carry back of losses and R&D credit:

Practitioners sought confirmation that the R&D tax credit could be displaced by the carry back of losses and that businesses could be permitted to use a third of it for cash back, as this would provide much needed cash flow support for SMEs who are in a loss-making situation due to Covid-19.

Revenue noted that by the time the final claim is made by practitioners to carry back any remaining trading loss available in respect of the preceding accounting period, it will be outside the 12-month period in which an R&D claim can be made or amended.

Practitioners noted that a company can make an interim claim now, do nothing further and this would displace the R&D claim i.e. companies can make an interim claim now, make a claim for cash back or carry back claim and be within the 12-month period in which an R&D claim can be made or amended.

Practitioners asked if SMEs could be permitted to access as much cash as possible at this time, by extending the period to claim the R&D tax credit. Revenue confirmed that the period in which an R&D claim must be made cannot be extended past 12 months as that timeline is provided in legislation.

Item 10: Revenue guidance:

- (i) **Section 110**
Update regarding CLO's is a policy decision to be approved by the Minister for Finance and needs to be cleared before this guidance can issue.
- (ii) **IREF**
Revenue has reviewed the comments received from practitioners and confirmed this guidance will be published shortly. A new Form 1 IREF will be available as the current Form 1 does not have a specific box to tick for an IREF to report Case IV liabilities.
- (iii) **R&D**
Guidance published in July did not include a measure which is dependent on a Ministerial Order to commence the provision. There is no indication on timing of the Ministerial Order as this is a matter for the Department of Finance.
- (iv) **Leasing**
The guidance is progressing slowly as policy decisions need to be made regarding legislative amendments in tandem with the issuing of new guidance.
- (v) **Trading & intra-group financing**
This guidance is being progressed in tandem with the guidance on leasing.
- (vi) **Stocklending and repos transactions**
Revenue requested practitioners to provide details on the accounting treatment for pension funds. The guidance will be published shortly after that confirmation is provided.
- (vii) **EII/SURE/SCI**
Revenue received detailed feedback from practitioners during August and is updating the TDM. Practitioners requested that the updated draft guidance be circulated, via TALC Direct/Capital Taxes Sub-committee, before being published.

Item 11: Workplan for 2020

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

Item 12: AOB

No matters discussed.

Item 13: Date of Next Meeting

The date of the next scheduled meeting is Thursday, 3 December 2020 at 14:30. However, a special meeting of TALC Direct/Capital Taxes Sub-committee needs to be convened at the end of October, in tandem with Main TALC, to discuss the provisions of Finance Bill 2020. Revenue will advise on a date for the October meeting, once the timing of the legislative stages of Finance Bill 2020 is known.

Attendees at the meeting**ITI**

- Laura Lynch (Chair)
- David Fennell
- Stephen Ruane
- David Moran
- Cillein Barry
- Anne Gunnell
- Lorraine Sheegar

Revenue

- Dave Brennan
- Michael Buckley
- Áine Hollingsworth
- Alan Kelly
- Sharonne O'Reilly
- John McGorry
- Sarah Cahill
- Sinead McNamara
- Jacqueline O'Callaghan
- John Quigley

CCABI

- Peter Vale
- Derek Henry
- Ken Garvey
- Cormac Kelleher
- Maud Clear
- Norah Collender

Law Society

- Rachael Hession
- Maura Dineen
- John Cuddigan
- Aidan Fahy
- Deirdre Fox
- Padraic Courtney
- Aileen Keogan
- David Lawless