Minutes of Main TALC meeting

28 June 2022 at 12:30pm

Meeting held in the Irish Tax Institute, South Block, Longboat Quay, Grand Canal Harbour, Dublin 2

The Chairperson welcomed committee members to the first in-person Main TALC meeting since February 2020. The Chairperson also welcomed new committee members, Gráinne McDermott for CCAB-I and Laura Lynch for ITI and noted apologies from committee members, Joe Howley, Rachael Hession, Tom Maguire, and Bríd Heffernan (joining the committee during Cróna Clohisey's absence).

Item 1 Action points arising from the approved minutes of the Main TALC meeting held on 1 March 2022:

In accordance with the TALC Operational Guidelines, the minutes of the 1 March meeting were approved by the committee in advance of this meeting and published on the Revenue website. Revenue addressed the Action Points arising from the meeting:

i. **Update on the status of the draft Tax and Duty Manual (TDM) on the tax treatment of foreign currency gains and losses**
The issues raised by practitioners have been brought to the attention of the Department of Finance for consideration in the context of this year's Budget and Finance Bill. Detailed discussions on the draft TDM took place at the recent TALC Direct/Capital Taxes Sub-Committee meeting and the draft TDM will remain within the remit of that sub-committee regarding further updates and discussions. The draft TDM will not be published until the issues discussed have been addressed.

ii. **Referral of matter raised on ATAD III to TALC BEPS Sub-committee**
The matter was referred to the TALC BEPS Implementation Sub-committee, as agreed. A meeting of the sub-committee was held on 9 March and attended by Revenue's International Tax Division personnel who provided a detailed update on ATAD III. An update from the sub-committee was included in the Briefing Pack provided to Main TALC.

Item 2 Simplification Measures Discussion

At the last meeting, it was agreed that each body would identify a simplification measure within the Terms of Reference of TALC i.e., to review and make recommendations to achieve more efficient and more effective administration, to put forward for discussion at the June meeting.

A discussion was held on the simplification measures proposed with a view to the committee further exploring matters in advance of the September meeting, to identify an appropriate and achievable measure for the committee to progress. Issues for practitioners and Revenue to consider were identified during the discussion and the committee will revisit the discussion at the next meeting.

Action Point: The committee will revisit the matter in the September meeting, following consideration of the issues discussed.

Item 3 Revenue’s further plans for digitalisation as outlined in the submission to the Commission on Taxation and Welfare

Practitioners noted Revenue’s recent submission to the Commission on Taxation and Welfare (CoTW) which outlined plans for further modernisation and digitalisation of tax administration, with a particular emphasis on Capital Taxes/CAT modernisation and on the integration of VAT reporting into businesses processes (VAT modernisation). Practitioners sought further details on Revenue’s plans including the timescale for implementation and consultation with stakeholders.

i. **Capital Taxes/CAT Modernisation**
The submission to the CoTW provides an overview of Revenue’s vision of CAT modernisation, which envisages that a new online eCapital Taxes Portal could be used to report the ‘full suite’ of capital taxes on the taxable event i.e., to file the return, pay tax and update all relevant Government systems, including taxation systems (CAT, CGT, Stamp Duty, Local Property Tax) and other Government agency systems (e.g., the Property Registration Authority records).

Revenue noted that the vision outlined in the submission aligns with the OECD’s Tax Administration 3.0, which seeks the movement of tax administration towards a model of ‘natural taxation’, which integrates tax into business process and taxpayers’ life events. There are no imminent changes to modernise CAT/Capital taxes in the manner detailed in the paper. The submission to the CoTW outlines Revenue’s vision for the medium to longer term. The development envisaged would require significant funding of IT resources, as such, the timing of the development is subject to priorities identified by Government and the related commitment of resources. Modernisation would also require legislative change, internal and external change management and would be preceded by a consultation process with stakeholders.

ii. **VAT modernisation**
The European Commission is undertaking a study of VAT digital reporting requirements (DRR) and is expected to announce EU-wide legislative proposals by the end of 2022, which would require unanimous approval of Member States before taking effect. Practitioners requested an update from Revenue on plans for VAT modernisation through integration of reporting with the business processes, as outlined in Revenue’s submission to the CoTW.

There are no imminent plans to integrate VAT reporting into business systems. However, Revenue is keen to progress VAT modernisation and review potential changes. While some EU jurisdictions have moved ahead with implementing their own DRR, Ireland will await the policy direction from the European Commission in the interests of applying a consistent approach. An EU proposal for a Directive is expected in the third quarter of 2022.

Revenue noted that significant resources, particularly IT resources, will need to be dedicated to the changes arising from the implementation of the OECD/G20 Two Pillar Solution. Information exchanges and disputes between tax administration will need to be supported by sophisticated IT. Revenue is currently exploring technologies and developments in other countries that could help inform IT developments. The level of development needed for the implementation of Pillar One and Pillar Two will place very significant demands on the resources currently available for IT developments over the next two to three years. This may impact on the timeframe for other developments, for example, CAT modernisation.

Item 4 **Administrative matters relating to the operation of the KEEP and the R&D Tax Credit**

Practitioners referenced the recent Department of Finance reviews of the Key Employee Engagement Programme (KEEP) and the Research and Development (R&D) Tax Credit, and some of the recurring administrative issues on the operation of these reliefs which have been raised with the Department in response to the public consultations.

i. **KEEP – Share Valuations**

Practitioners noted the practical issue for SMEs implementing the KEEP in obtaining as much certainty as possible that the valuation conditions have been met. Practitioners consider comprehensive guidance on share valuations is required to support companies to adopt the KEEP and increase its uptake by SMEs. This could be achieved by developing templates or safe harbour approaches for valuing shares. Practitioners would welcome a discussion with Revenue regarding providing greater guidance on share valuation for KEEP.

Revenue acknowledged that share valuation has been a long-standing issue raised by practitioners. There has been extensive engagement at TALC on the matter and Revenue has been clear on its position. There are methods that can be used to determine the valuation in private companies. The KEEP is being reviewed as part of the Department of Finance consultation process. Therefore, Revenue does not envisage any parallel engagement through TALC on the administrative issues raised. However, in conjunction with the Department of Finance, Revenue will reflect on issues raised by stakeholders in response to the KEEP consultation.

ii. **R&D Tax Credit**

Practitioners noted that many administrative issues raised in response to the Department's consultation on the R&D Tax Credit have been on the agenda of the R&D Discussion Group for some time. For example, developing sector specific guidance for certain business sectors (e.g., food & beverage, etc), considering a pathway from IDA/Enterprise Ireland grant claims to R&D Tax Credit claims and developing Independent Expert Training for Revenue's R&D Technical Experts.

Practitioners noted the infrequency of meetings of the R&D Discussion Group, which last met in January and two provisionally scheduled meetings in the interim were cancelled by Revenue. Practitioners acknowledged the demands on Revenue personnel involved in the Group, in drafting legislation in relation to the extension of the COVID Support Schemes and related activities and noted that a meeting of the Group had now been scheduled for 10 August. Practitioners requested that the R&D Discussion Group be formally made a sub-group of the TALC Direct/Capital Taxes Sub-committee for reporting purposes to ensure updates on important matters relevant to TALC are provided and can be discussed by the sub-committee, as appropriate.

Revenue noted practitioners' acknowledgement of the demands on the Revenue personnel and reaffirmed Revenue's commitment to the R&D Discussion Group. Revenue agreed that briefings from the Group would be beneficial to TALC and that issues discussed by the Group that are also relevant to the TALC Direct/Capital Taxes Sub-committee could be discussed at the sub-committee, where appropriate.

It was acknowledged that the inclusion of non-TALC members on a sub-group should not be an impediment to the sub-group reporting into TALC, as demonstrated by sub-groups of the TALC BEPS Implementation Sub-committee. Revenue agreed to consider practitioners' request.

Action Point: Revenue to consider a reporting mechanism to allow updates from the R&D Discussion Group to be provided to TALC Direct/Capital Taxes Sub-committee.

Item 5 Reporting of sub-committees to Main TALC

The committee was sent a Briefing Pack in advance of the meeting, which provided updates on the activities of the TALC sub-committees, with issues to be raised by exception. The Chairperson advised that following the circulation of the Briefing Pack to committee members, a call of the Main TALC LONA Sub-group had taken place in advance of the planned circulation of a draft TDM on clearance procedures for solicitors in relation to CGT on disposals by non-resident vendors.

No issues were raised from the sub-committees at the meeting.

The Chairperson reminded attendees of the three-week timeframe to circulate draft minutes from sub-committee meetings, as outlined in the TALC Operational Guidelines, to expedite agreement of the minutes between meetings.

Item 6 AOB

i. MyEnquiries service levels

CCAB-I raised a query in relation to the methodology used for Revenue statistics in relation to traffic on MyEnquiries, as detailed at a recent meeting of the TALC Collections Sub-group on MyEnquiries. It was agreed that Revenue and CCAB-I would engage bilaterally outside of the TALC forum on the issues raised. Following these discussions, the matter could be revisited at TALC, if necessary.

Action Point: Revenue and CCAB-I to engage directly on the issues raised.

ii. Statutory Interest on Underpayments of Corporation Tax (CT) by Large Companies

Revenue referenced recent discussions with some advisers and taxpayers on the application of statutory interest to underpayments of preliminary tax identified in tax settlements for large companies. As a result, Revenue wishes to be clear on its position.

If a company's corporation tax liability increases following an audit/intervention this may mean that the company has not met its preliminary tax requirements. In such circumstances, the taxpayer/adviser must review the preliminary tax originally paid and pay any interest due with reference to the preliminary tax rules.

Revenue wishes to notify taxpayers and tax advisers that Revenue will be pursuing interest in cases where it is identified that the preliminary tax requirements have not been met. In cases where there is an increase in the final corporation tax liability identified via a risk assessment, disclosure or settlement for large corporates, LCD will review whether the original preliminary tax rules were met, and interest will apply accordingly.

Revenue agreed to provide a note and example to illustrate the position. These are available in the Appendix I below.

Attendance

ITI	Revenue	CCAB-I	Law Society
Kieran Twomey (Chairperson) Mary Healy (Secretary) Mark Barrett Pat Mahon David Fennell (remote attendance) Laura Lynch (remote attendance) Anne Gunnell Lorraine Sheegar	Brian Boyle Eugene Creighton Declan Rigney Geraldine Hegarty (remote attendance) Geraldine McEvoy	Peter Vale Brian Purcell Paul Dillon (remote attendance) Enda Faughnan (remote attendance) Gráinne McDermott Gearóid O' Sullivan (remote attendance) Alan Bromell (remote attendance)	Caroline Devlin Sonya Manzor (remote attendance) James Somerville (remote attendance) Aidan Fahy (remote attendance)

Apologies

Joe Howley, Revenue
Rachael Hession, Law Society
Bríd Heffernan, CCAB-I
Tom Maguire, ITI

Appendix I
Revenue Note: Statutory Interest on Underpayments of Corporation Tax (CT) by Large Companies

The liability to statutory interest is outlined in **section 1080 TCA 1997**. **Section 1080(2)(a)(ii) TCA 1997** requires that *"any tax due and payable by a chargeable person for a chargeable period shall carry interest **from the date when the tax becomes due and payable** until payment."*

Section 959AN(1)TCA 1997 states that *"Every person who is a chargeable person as respects any chargeable period is liable to pay to the Collector-General in accordance with this Chapter the amount of that person's preliminary tax appropriate to that chargeable period".*

Preliminary Tax (PT) is due at different times depending on whether a company is regarded as a large company or small company.

This note is concerned with large companies only.

A large company must pay PT in two instalments (per **section 959AS TCA 1997**). The first instalment is due on the earlier of:

a) The last day within 6 months of the start of the accounting period, or
b) The 21st day, or 23rd day for electronic payments, of the month in which the day at a) above falls.

The amount due is either:

• 50% of the corporation tax ("CT") liability for the previous accounting period, or
• 45% of the CT liability for the current accounting period.

The second instalment is due on the earlier of:

a) 31 days before the end of the accounting period or
b) The 21st (23rd for electronic payments) of the month in which the day at a) falls.

The amount due for the second instalment is the balance that will bring the PT up to 90% of the final tax due for the current accounting period.

However, **section 959AS(4) TCA 1997** stipulates that *"Subject to subsections (6) and (7) and section 959AT, the tax payable by a chargeable person for a relevant accounting period* ***shall be deemed to have been due and payable in accordance with subsection (5)*** *where –*

(a) the chargeable person has defaulted in the payment of the initial instalment **or** final instalment of preliminary tax for the accounting period,

(b) the initial payment of preliminary tax paid by a chargeable person for the accounting period is less than, or less than the lower of-
(i) 45 per cent of the tax payable by the chargeable person for the accounting period, and
(ii) 50 per cent of the sum of the corresponding corporation tax for the preceding accounting period and the corresponding income tax for the accounting period,

(c)…

(d) The aggregate of the initial instalment and the final instalment of preliminary tax paid by the chargeable person for the accounting period **is less than 90 per cent of the tax payable** by the chargeable person for the accounting period, **or**

(e) The initial instalment **or** the final instalment of preliminary tax payable by the chargeable person for the accounting period was not paid by the date on which it was due and payable.

Furthermore, **section 959AS(5) TCA 1997** requires that:

"(a) Tax due and payable in accordance with this subsection by a chargeable person for a relevant accounting period is due and ***payable in 2 instalments****, the first of which is referred to in this subsection as the 'initial relevant instalment' and the second of which is referred to in this subsection as the 'final relevant instalment'.*

(b) ***The amount of the initial relevant instalment is 45 per cent of the tax payable*** *by the chargeable person for the accounting period and the initial relevant instalment is due and payable not later than the day on which the initial instalment of preliminary tax is due and payable in accordance with subsection (2).*

(c) ***The amount of the final relevant instalment is an amount equal to the excess of the tax payable by the chargeable person for the accounting period over the amount of the initial relevant instalment*** *and the final relevant instalment is due and payable not later than the day on which the final instalment of preliminary tax is due and payable in accordance with subsection (2)."*

The only way to calculate statutory interest in the case of an underpayment of CT, and to determine the due date for CT underpayments, is to take the above statutory rules relating to the payment of PT into account by ascertaining whether a taxpayer has satisfied its PT obligations.

The approach which should be adopted when calculating interest in CT cases is as follows:

- **Step 1** - what is the underpayment.
- **Step 2** – what is the due date, which requires a determination of whether PT obligations were met.
- **Step 3** – when was the underpayment paid.
- **Step 4** – calculate interest using the statutory rate.

In addition to applying the above rules in agreeing additional liabilities arising from compliance IVs and Disclosures by taxpayers, Revenue caseworkers have pursued, are pursuing and will, in future, pursue interest on PT underpayments in cases which have been identified as a result of risk assessment processes and appraisals without a prior compliance IV being initiated.

Example

An indicative example of how to apply the above rules in calculating statutory interest in the context of a taxpayer not meeting its PT obligations is set out below.

Appendix I - Example of Revenue review of interest calculations for additional corporation tax identified under a qualifying disclosure in respect of a company's year ended 31 December 2020

Example of Revenue review of interest calculations for additional corporation tax identified under a qualifying disclosure in respect of a company's year ended 31 December 2020

*Note in example, company is one with a relevant accounting period, i.e. corporation tax liability for corresponding accounting period (FY2019) exceeds€200,000

Step 1: identify final amended corporation tax liability for the period

Amended FY2020 tax liability	€
FY2020 tax liability	14,000,000
Additional tax liability identified by taxpayer and accepted by Revenue	700,000
Amended FY2020 tax liability	14,700,000

Step 2: review whether preliminary tax obligations for accounting period have been met in order to establish relevant due dates for payment of tax for that period

FY2020 - PT1 obligations

FY2020 - initial instalment of preliminary tax		
45% of amended current accounting period tax liability, i.e. FY2020 (€14,700,000)	6,615,000	
or		
50% of prior accounting period tax liability (FY2019 CT liability was €12,600,000)	6,300,000	
Paid	5,900,000	
PT1 obligations met?	No → company has not met its preliminary tax oblgiations in accordance with section 959AS(4)(b) TCA 1997	Revised payment schedule applies (45% due 23 June 2020/Balance due 23 November 2020) in accordance with section 959AS (5) TCA 1997

Step 3: where PT obligations have not been met, calculate interest in accordance with above accelerated payment schedule as prescribed by section 959AS(5) TCA 1997

45% due 23 June 2020	**6,615,000**
Balance due 23 November 2020	**8,085,000**
Final liability deemed to by payable in fulll by PT2 deadline	**14,700,000**

Liability Due	Due date	Tax Paid	Date Paid	Cumulative paid	Outstanding	Interest periods	Interest due
6,615,000	23.06.2020	5,900,000	23.06.2020	5,900,000	715,000	23.06.2020 to 22.11.2020	23,957
14,700,000	23.11.2020	6,700,000	23.11.2020	12,600,000	2,100,000	23.11.2020 to 22.09.2021	139,810
14,700,000	23.11.2020	1,400,000	23.09.2021	14,000,000	700,000	23.09.2021 to 29.06.2022	42,924
14,700,000	23.11.2020	700,000	30.06.2022	14,700,000	0	N/A	0
Total tax paid		**14,700,000**				**Total interest due**	**206,691**