

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

21 February 2019

Office of the Revenue Commissioners, Dublin Castle, Dublin 2 at 2:30pm

Item 1

Review of minutes from meeting of 11 December 2018

- The minutes were agreed

Item 2: Matters arising

Matters arising were as follows:

- Publication of Companies Act guidance - Revenue confirmed that the guidance note is expected to be ready shortly and will be circulated to members of the TALC Direct / Capital Taxes Sub-Committee for observations and comments.
- Past leasing sector guidance – please refer to item 10.
- Tracker Mortgage interest repayments – Revenue previously confirmed that anyone who has made returns for 2016 and 2017 does not have to amend them. Revenue noted that they are considering issuing an e-Brief close to the pay and file return filing date to clarify that the same treatment will apply for 2018 and subsequent years.
- Section 83D SDCA 1999 - Revenue have previously advised that a statutory declaration is no longer required for the purposes of Section 83D TCA 1997 and that a standard declaration is sufficient. Revenue advised that it may take some time to replace the statutory declaration on the e-Stamping system as an IT (Information Technology) development is necessary. This item will be kept on the agenda until the declaration has been replaced.
- IFRS 16 guidance – please refer to item 5.
- Section 291A TCA 1997: Revenue have previously advised that have not been made aware of any claims being affected by the issue where amortisation is reflected in the accounts before a deduction is incurred (milestone issue) but will continue to keep it under review. Revenue requested that practitioners provide them with an actual live case to enable them work through the issues.
- FRS 101/102:
 - Notes for Guidance on Section 76A and Section 76B TCA 1997: Revenue advised that Notes for Guidance on both Section 76A and Section 76B have been published and that a draft Tax and Duty Manual on section 76A will be circulated shortly for comments
 - Revenue advised that updated guidance on the tax treatment of Provisions and Accruals has been published which confirms the position as set out in Tax Briefing 41.
 - Tax Treatment of notional interest on financial instruments and a review of PPPs in light of changes to accounting standards: Revenue advised that they are working through the issues and will keep the committee informed.
- Prescription Charges: Revenue advised that a Tax and Duty Manual will issue confirming that the prescription charges of €2 levied by a pharmacy on each prescription presented by a medical card holder would be qualifying medical expense.
- CGT Losses: Revenue confirmed they are still considering the carry forward of CGT losses and that they will issue guidance in due course. This item will remain on the agenda.

Item 3 Application of €70,000 limit to Young Farmers Relief:

Revenue confirmed that it is their view that the quantum of relief relevant for the purposes of calculating the €70,000 lifetime ceiling is based on the 1% rate (i.e., the rate which would have been payable had consanguinity relief applied) rather than the 6% stamp duty which would have applied if consanguinity relief were not available.

Revenue advised that the relevant Tax and Duty Manual will be updated to give absolute certainty on this issue.

Item 4 IFRS and lease accounting:

Revenue advised that Tax and Duty Manual 04-06-04 has been updated to set out the tax treatment of lessors, who apply international accounting standards, when accounting for operating leases changes from 1 January 2019 under IFRS 16. Feedback has been supplied to Revenue on the updated Tax and Duty Manual which is being considered by Revenue. This item will be kept on the Agenda while the feedback is being considered.

Item 5 Section 82 TCA 1997 – Pre-Trading Expenditure:

Practitioners noted that the Notes for Guidance on Section 82 TCA 97 on the Revenue website contain the following statement:

"Where a company, other than the company who incurred the pre-trading expenditure, commences the trade, Revenue is prepared to treat such pre-trading expenditure as having been incurred by the company that commenced the trade. Such treatment is permitted where relief would be allowed under the provisions of section 400, if the transfer had taken place after the commencement of the trade."

Revenue advised that Tax and Duty Manual 04.06.08, which sets out guidance on the operation of section 82 TCA 1997, would be updated to reflect the guidance set out in the Notes for Guidance as regards pre-trading expenditure incurred by another company.

Item 6 Section 76A(5) TCA 1997 – Correction of Accounting errors:

In circumstances where an accounting error is not material, the general position under current Irish GAAP and IFRS is that the error is accounted for in the period in which it is identified (i.e., the correction is included in the profit and loss account for that period).

Notwithstanding that the error is corrected in the accounting period in which it is identified, the provisions of section 76A(5)(h) require that the error be corrected for tax purposes in the period to which the error relates. This involves adjusting the taxable profits for the current period to remove the correction and reopening the return and self-assessment for the period to which the error relates. This could place a significant administration burden on companies in circumstances involving very minor amounts.

Practitioners requested that consideration be given to placing a de minimis limit on the level of the (cumulative) non-material errors corrected in the current accounting period which require retrospective adjustment. The taxation of / deduction for such small errors would instead be dealt with in the accounting period in which the error is corrected (i.e. following the accounts). This limit could be incorporated in the Notes for Guidance on Section 76A.

Revenue advised that the legislation does not contain a de minimis limit and advised that they would like to understand the prevalence of this issue to understand to what extent non-material errors and amendment of returns under section 76A(5)(h) arise before they can give any consideration on the issue.

As this issue is to do with amendment of returns it might be more appropriate to the TALC Audit Sub-Committee.

Item 7 Brexit Omnibus Bill considerations:

Revenue advised that the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019 is to be published on the 22nd February 2019.

Practitioners had provided a memo on the Brexit Omnibus Bill in advance of the meeting. Revenue had not been able to review all the items in the memo. Revenue indicate that they will review the items identified to determine if it is necessary to make any amendments to the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019 at Committee Stage.

Item 8 Revenue Tax and Duty Manuals 08-02-01 and 08-02-1a:

Comprehensive practitioner feedback was provided on the draft Tax and Duty Manual 08-02-01 – Charges on income for corporation tax purposes and draft Tax and Duty Manual 08-02-01A – Rules relating to recovery of capital and replacement loans in advance of the meeting.

Revenue went through, item by item, the feedback received and indicated whether the draft Tax and Duty Manuals would be amended to reflect the feedback that was received.

Item 9 Revenue Tax and Duty Manuals 16-00-02 and 16-00-03:

Revenue was unable to provide feedback on Tax and Duty Manual 16-00-02 – Relief for investment in corporate trades as it applies to companies or Tax and Duty Manual 16-00-03 – Relief for investment in corporate trades as it applies to investors.

Revenue intend to hold a conference call with interested parties to discuss the above Tax and Duty Manuals.

Item 10: Past leasing sector guidance:

Revenue confirmed that this guidance is a work in progress and that it is expected that any guidance will be contained in several Tax and Duty Manuals. This item will be kept on the Agenda and draft guidance will be circulated to members of the TALC Direct / Capital Taxes Sub-Committee in advance of publication.

Item 11: Workplan for 2019:

No workplan items for 2019 were suggested at the meeting.

AOB

Tax Treatment of Legal Fees:

Practitioners noted that there appears to be a disparity between Tax and Duty Manual 07-01-28 on the tax treatment of legal fees and article contained in Tax Briefing 51 issued on January 2003.

Tax Briefing 51 provides that legal fees paid by an employer regarding the termination of any employee's employment can be paid without the operation of payroll taxes where certain conditions are satisfied. Tax and Duty Manual 07-01-28 is silent on the position of legal fees on a termination and does not deal with any sort of termination situation.

This has created uncertainty and it is a real issue among practitioners. We would be grateful for confirmation that the principles contained in the Briefing continue to apply and would request that Revenue update the Manual to deal with termination situations

Revenue view is that article in Tax Briefing 51 falls within the spirit of Tax and Duty Manual 07-01-28. termination.

Public Consultation – Irelands Transfer Pricing Rules:

Revenue advised that information on Public Consultation on Irelands Transfer Pricing Rules was recently published on the Department of Finance website and encouraged practitioners to make submissions on the issue.

Link follows: <https://www.finance.gov.ie/updates/public-consultation-irelands-transfer-pricing-rules/>

Dissemination of Information:

Practitioners noted that information on the proposed Exit Tax for Controlled Foreign Companies that was included in Finance Bill 2018 was not circulated to all interested parties at the same time and requested that in future information should be disseminated to interested parties at the same time.

Revenue agreed with this suggestion.

Attendees

CCAB-I

- Peter Vale (chair)
- Bríd Heffernan

Revenue

- Philip Brennan
- Caitriona Crowley
- Jeanette Doonan
- Jimmy Owens
- Eleanor Smiley
- Ashling Gallagher
- Dave Brennan

Law Society

- Caroline Devlin
- Maura Dineen
- John Cuddigan
- Padraic Courtney

ITI

- Clare McGuinness
- David Fennell
- Laura Lynch
- David Moran
- Lorraine Mulligan
- Laura Armstrong