

Minutes of TALC Direct / Capital Taxes Sub-Committee Meeting

11 December 2018

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

Item 1

Review of minutes from meeting of 4 October 2018

- Amendments to the wording at item 2 and item 5 were agreed.

Review of minutes from meeting of 23 October 2018

- The minutes were agreed.

Item 2: Matters arising

Matters arising were as follows:

- Revenue confirmed they are looking into the carry forward of CGT losses and noted there is an ongoing appeal relating to the issue. Revenue are seeking legal advice on the matter and working with the relevant district. Revenue will issue guidance in due course. This item will remain on the agenda.
- Section 536 TCA 1997 - at the last meeting clarification was sought on the tax treatment of the portion of insurance proceeds spent on accommodation, i.e., to treat insurance proceeds as covering two different events – the provision of accommodation and the reinstatement of the property. Revenue reviewed the guidance and will not be changing the 5% rule, they would regard it as quite generous.
- Section 135 TCA 1997 - Revenue have not received any examples since the last meeting.
- Section 246 TCA 1997 - Revenue published updated guidance in December.
- It was noted in the last meeting that Revenue were considering the CAT dwelling house relief on foot of a recent High Court case (Deane V Revenue Commissioners) – Revenue are not appealing the decision of the High Court and intend to issue updated guidance. Practitioners requested the guidance deal with the wider issue of how taxpayers can actually avail of the relief since the Finance Act 2017 changes.
- Section 83D SDCA 1999 - under this section, a statutory declaration is required to be signed by the filer, i.e. solicitor. Practitioners asked Revenue if the declaration could be signed by clients and if there could be a facility to upload a declaration signed by clients. Revenue reviewed this and noted the current process is not in line with the self-assessment principal and are looking at changing to a normal/standard declaration. This item will be kept on the agenda.

Item 3 Workplan 2018 and update of guidance notes

- Publication of Companies Act guidance – Revenue are working on this, it will be published in early 2019.
- Section 176 TCA 1997 Trade Benefit Test guidance – Practitioners and Revenue have differing views on this item. Revenue do not intend to update the guidance.
- Section 110 TCA 1997 - guidance has been issued, no more guidance expected to issue.
- Section 247 TCA 1997 – guidance is being developed and is at an advanced stage, it is expected to be circulated to the committee before the end of 2018.

- Past leasing sector guidance – this guidance is a work in progress. Revenue will issue the guidance in draft for items that are contentious. Amendments will be put through a number of tax and duty manuals. Revenue are unsure when the guidance will be updated. This item will be kept on the agenda.
- IFRS 16 guidance – this guidance is a work in progress. RLS have outsourced it and are hoping to have it back soon. Practitioners noted this guidance is urgent as it has an impact from 1 January 2019.
- FRS 101/102 -
 - Notes for Guidance on Section 76A and Section 76B TCA 1997 guidance will be updated soon. It is intended to issue a draft TDM on section 76A to the sub-committee in January for comments.
 - Updated guidance to be published soon which will confirm the position in tax briefing 41.
 - Guidance on the tax treatment of notional interest on financial instruments expected to issue in Q2 2019.
 - Section 291A TCA 1997 – Revenue noted that they 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.
 - PPPs – Revenue flagged that they have started analysis on this as the accounting rules have changed under both IFRS and Irish GAAP and are working on new guidance.
- CFC & Exit Tax guidance notes – Practitioners are working on examples to provide to Revenue. Revenue proposed that these can be discussed at TALC BEPS and that they could potentially set up a subgroup of TALC BEPS to work through the guidance notes. Revenue noted that they want the guidance to be as helpful as possible and are aiming for publication in Q1 2019.

Tracker Mortgage interest repayments

Practitioners asked Revenue for clarification regarding eBrief No. 182/18 and its application for years post 2017.

Revenue confirmed that anyone who made a return does not have to amend it. Practitioners noted that the e.Brief specifically calls out years 2016 & 2017. Revenue noted they will consider issuing another e.Brief to clarify the same treatment for 2018 onward.

Prescription charges

Practitioners received feedback that Revenue are advising that prescription charges paid by medical card holders when they purchase prescription medicines are not qualifying medical expenses because it is a government levy and not a cost of the medicine prescribed by a practitioner. The medicine itself is free under the medical card, but the pharmacy levies a prescription charge of EUR2 per prescription item dispensed. Clarification was sought as to the basis for Revenue's view on this issue.

Revenue's view is that prescription charges are deductible and will review the TDM to make sure Revenue's view is reflected.

Controlled Foreign Companies - Section 835N TCA as inserted by S25 Finance Bill 2018

- (a) Section 835N(1) envisages the controlled foreign company paying foreign tax in respect of both its own profits and the profits of "one or more other companies" - notwithstanding that "amount of foreign tax" means tax paid by a controlled foreign company "in respect of the controlled foreign company's profits".

Practitioners noted that it would appear that the intention of the subsection is to include foreign tax in respect of the profits of the consolidated companies however the section states that any such tax would however have to be tax paid "under the laws of the territory in which the controlled foreign company is resident". Practitioners requested clarification regarding this point.

In addition, it would be helpful if Revenue could clarify whether in the above scenario, must all of the "one or more companies" be controlled foreign companies? – *Revenue confirmed that all of "one of more companies" don't all have to be CFC's, the intention is to cover a 'group remitter' scenario discussed below.*

Revenue clarified that the aim of this section is to cover a scenario where a CFC's tax is paid by another member in a group of companies. The definition of 'amount of foreign tax', is the amount borne by the CFC in respect of the CFC's profits but, under section 835N where that tax is paid by another company in the group on behalf of the CFC, the aggregate tax shall be apportioned between the companies, on a just and reasonable basis, in order to determine the amount referable to CFC..

- (b) The wording of s835N(2) includes "... in determining the foreign chargeable profits of **the** controlled foreign company ...". The corresponding wording s835N(4) is "... in determining the foreign chargeable profits of **a** controlled foreign company ...". The ss(4) reference would seem to refer to any controlled foreign company and not, or not necessarily, the first-mentioned controlled foreign company. Clarification is sought as to what company is being referred to in the third reference to a company in ss4, i.e., "... the corresponding chargeable profits in the State of **the company** for the accounting period."

Revenue explained section 835N and clarified that it aims to ensure, as far as possible, that the amounts of foreign and Irish tax being compared are calculated on the same basis, There is a slight difference in the wording between subsections (2) and (4), however, it is immaterial as the meaning is clear. Use of the phrase "the company" ensures this. .

Film Relief - Section 481 TCA (as amended by Section 24 Finance Bill)

- (a) Section 24 (1)(f)(vi)(III) of Finance Bill 2018 deletes subsection (2C)(d)(iii) which contained provisions regarding a compliance report. However, Section 24 (1)(h)(vii) provides as follows:

"(vii) by substituting the following for paragraph (h):

"(h) specifying the form and content of the compliance report that must be available in accordance with subsection (2C)(d)(iii), the manner in which such report shall be made and verified, and the documents to accompany the report,"

Practitioners would be grateful for Revenue's clarification regarding the reference to subsection (2C)(d)(iii).

Revenue noted that the legislation has changed so they will issue updated guidance once that is enacted.

AOB

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) –

Practitioners noted that when the MLI comes into force the tie breaker in the treaty will no longer be relied upon and therefore automatic dual residence issues will arise. Practitioners asked Revenue for their view and guidance on this. Revenue will revert. Revenue confirmed their website will be updated to notify when the MLI comes into force with each country.

Tax Appeal Commission Case – 20TACD2018

Revenue noted the TAC case; 20TACD2018 relating to reimbursing expenses. Revenue confirmed they have no intention to change the practice of claiming expenses.

Attendees at the meeting

CCAB-I

- Peter Vale (chair)
- Bríd Heffernan

Revenue

- Philip Brennan
- Michael Buckley – CGT Issues
- Caitriona Crowley – FRS 101/102
- Áine Hollingsworth – Section 246 / Leasing (IFRS 16) / Film Relief
- John McGorry – Companies Act 2014
- Alan Carey – Controlled Foreign Companies
- Maresa Hempenstall – Controlled Foreign Companies
- Mary Hughes – Section 247 Manual
- Dave Brennan

Law Society

- Caroline Devlin
- Maura Dineen

ITI

- Clare McGuinness
- David Fennell
- Laura Lynch