

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

7<sup>th</sup> December 2020

Skype conference call at 2:30pm

### Item 1: Review of minutes from meeting of 3<sup>rd</sup> September 2020:

The minutes were agreed.

### Item 2: Review of minutes from meeting of 29<sup>th</sup> October 2020:

The minutes were agreed.

### Item 3: Matters arising from meeting on 3<sup>rd</sup> September 2020:

Matters arising were as follows:

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

Revenue confirmed a PPSN is required for beneficiaries, even in circumstances where no CAT is due on a current benefit, to enable Revenue to identify each beneficiary and track their benefits for compliance purposes. Revenue noted the new Statutory Instrument that deals with electronic probate regulations has increased Agri-benefits to €12,000. Practitioners raised concerns about the inability to file a SA2 where there is more than one individual without a PPSN. Revenue requested practitioners to provide further information on this point.

Practitioners also raised concerns about the length of time it takes to get a PPSN for a non-resident with the Client Identity Services (CIS) section of the Department of Employment Affairs and Social Protection. Revenue stated that this was not within their remit but asked practitioners to provide more information which Revenue will share with the CAT Customer Service team.

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

Practitioners stated the key issue arose as the place of business registration was removed in the Companies Act and therefore a CRO registration is not required. For example, situations have arisen whereby there is a place of business, but it is not Branch, resulting in no CRO number issued to the business but is considered Irish tax resident. Revenue requested additional information on the matter from practitioners to resolve the issue.

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

Revenue advised that the updated TDM was published last week acknowledging the Tax Appeal Commissioners determination from July 2019 but notwithstanding the determination, Revenue's position of the operation of section 84 exemption is unchanged.

Practitioners noted that a similar update to VAT guidance was requested following a Tax Appeal Commissioners determination dealing with locums. Revenue confirmed they would pass this query to their VAT colleagues.

#### d. Stamp Duty – issues raised regarding Associated Companies Relief:

Revenue confirmed the review of the submission is ongoing as it raises complex issues which need careful consideration.

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

Practitioners had requested that the confirmation in TDM Part 42-03-01 relating specifically to section 617 intragroup transfers should be extended to section 615 in the case of company reconstructions/amalgamations, on the basis that the wording in section 617 and section 615 is substantially similar in treating intragroup transfers made for neither a gain nor a loss. Revenue

confirmed TDM Part 42-03-01 will be updated to provide for this confirmation in respect of section 615 and the updated TDM should be published in early 2021.

- f. Draft TDM on the payment and receipt of interest and royalties without deduction of income tax:**  
Revenue confirmed the TDM has been updated and will be published shortly.
- g. “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 confirmed the review of this is ongoing.
- h. 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 and requested further information from practitioners particularly on the difference between the CFC boxes on the Form CT1 and the guidance note.
- i. Change to the treatment of rent in the R&D TDM:**  
Revenue confirmed that they are currently considering this matter.
- j. Application of section 626B application of section 626B to companies that provide professional services:**  
Revenue confirmed that they have not yet had an opportunity to review the submission received from practitioners and requested practitioners provide any case specific details to assist with the review.
- k. Agricultural relief – Farm consolidations:**  
Revenue confirmed a qualifying exchange of lands of equal value for the purposes of farm consolidation relief will not trigger a clawback under section 89(4) CATCA 2003 provided the replacement land is worth the same or more than the land on which the relief was initially claimed. Where the value of the replacement land is less than the land on which the relief was claimed, then there will be a partial clawback of the relief. Revenue will update the CAT TDM dealing with agricultural relief for this confirmation and provide worked examples.
- l. EIS relief and the Covid-19 crisis:**  
Practitioners had expressed concerns regarding the requirement to increase headcount to be entitled to the second tranche of relief. 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 there will be issues for companies, in particular the requirement to meet the employment criteria. Revenue has agreed to introduce the following for any company that would be about to claim the second tranche of relief in the period 1 March 2020 to 31 March 2021; the company can submit their EIS application in the normal manner and it will be accepted on the assumption that the employment condition will be met, even where the company is not meeting the condition at the time of the submission. Revenue has decided to permit companies an additional 12 months from 31 March 2021 to meet that condition. This will be included in updated guidance with worked examples before the end of the year.

Practitioners queried whether the EIS rules would restrict relief in the case of a company which is an undertaking in difficulty because of Covid-19 and it was not an undertaking in difficulty at 31 December 2019. Revenue confirmed that the rules have not changed regarding EIS and therefore if the company was not an undertaking in difficulty at the date of the share issue there should be no impact. Revenue stated that the Temporary Framework only applies to new schemes.

#### **Item 4: Finance Bill 2020 issues:**

- a. Request for amendment to Section 60 of Finance Bill 2020 – stamp duty provisions:**  
Revenue stated that the legislation was initially designed to convert an electronic transfer of shares to a

conveyance on sale to bring it within the normal stamp duty charge, with all of the exemptions that should apply. Practitioners raised a number of queries in advance of Report Stage of Finance Bill 2020:

Revenue confirmed section 88 SDCA 1999 provides for an exemption for shares that are not registered in the State. Revenue's current view is that all exemptions in the SDCA 1999 should apply to the electronic transfer of the interest in Irish shares in Brussels when it goes live.

Revenue confirmed that the ADR exemption (in section 90 SDCA 1999) will continue to apply and included this in legislation by inserting a specific provision at Report Stage of the Bill.

Revenue confirmed that the principle of the new section 545A TCA 1997 (no disposal on migration) also applies to stamp duty and included this in legislation by inserting a specific provision at Report Stage of the Bill.

Practitioners also noted that there is some uncertainty around the treatment of Dividend Withholding Tax on migration of the shares and requested this matter to be considered further.

**b. Residual issues with Ireland to Ireland transfer pricing carve out:**

Revenue noted a number of submissions were made to the Department of Finance and the Minister for Finance has decided that additional time is needed to fully understand the impact on bona fide domestic transactions. Revenue stated that the proposed changes in Finance Bill 2020 were not a complete rewrite of the transfer pricing rules and noted that the draft guidance issued in August 2020 is aligned with the Finance Bill measures. Revenue will release the updated Transfer Pricing TDM before the end of the year, with limited guidance on section 835E TCA 1997. Revenue also confirmed that the guidance will not be updated in respect of the transfer pricing rules for "old" loans.

**c. Anti-Hybrid situation identified in CCAB-I submission:**

Revenue is considering updating the guidance with a view to legislating for this, if possible, in the future.

**d. Non-payment of interest on overpayments arising from successful appeals:**

No further discussion on this point.

**e. Finance Bill 2020; amendment to Section 541:**

Revenue confirmed the intention of section 22 of Finance Bill 2020, as initiated, was to provide that transfers between accounts of the same person in the same foreign currency would not give rise to a gain or loss where there was no corresponding economic gain or loss. Revenue confirmed that on further review of the provision it was noted that there was an unintended consequence in the provision which provided a step up in the base cost and this was corrected as part of the Committee Stage amendments.

Practitioners queried how transactions will be treated that take place between the date of the financial resolution and when Finance Bill 2020 is enacted. Revenue confirmed that they would consider the "old" section 541 legislation to fall back into place as if the financial resolution never existed until Finance Bill 2020 is enacted and that they would deal with any specific cases on a case by case basis. Revenue reiterated that the original policy intention of the legislation was not to give a step up in base.

**Item 5: Revenue concession on use of January mileage for BIK on company car:**

Practitioners queried the application of Revenue's concession regarding the use of January mileage to extrapolate an estimated figure for annual business mileage to calculate the cash equivalent of a BIK on a company car in 2020. Practitioners asked about Revenue's approach where the January mileage concession may not be appropriate in certain circumstances and how BIK on company cars will be treated for 2021, given different levels of restriction which might be imposed in the New Year.

Revenue confirmed the options available to taxpayers include using the actual mileage for the purposes of calculating the annualised mileage or to use the mileage in January as a reference point. Alternatively, where there is effectively no mileage and procedures have been put in place to demonstrate that, then there is no BIK

for that particular month when considering annualising the mileage for the purposes of the month that the vehicle was made available to the employee.

With regard to 2021 Revenue is reviewing the concession at present given that the COVID-19 restrictions are likely to apply in 2021 and certain measures may be carried over to 2021. Revenue will issue an update on this in the coming week.

**Item 6: Providing vouchers/hampers to staff in lieu of a Christmas party:**

Revenue confirmed the new text was included on the Revenue website last Friday. A BIK will not arise where an employer incurs reasonable costs in hosting a virtual seasonal party for their employees. Reasonable costs include, costs typically incurred in hosting a face-to-face event. This includes the cost of delivering or providing food and drink to employees in advance of or during the event.

Revenue confirmed that the cost of delivering or providing food and drink includes the provision of a hamper where the cost incurred is reasonable and the hamper is provided to employees in advance of or during the virtual event. Vouchers provided to enable employees to purchase food or drink for the event are not included. Such vouchers will be taxable unless they are covered by the small benefit exemption. The event must be open to all employees.

**Item 7: EIS and Covid-19 Temporary Framework (2020/C 91 I/01):**

This was discussed at Item 3.l above.

**Item 8: Clarification on the tax treatment of exchanged/assigned unexercised KEEP share options on future exercise:**

Practitioners sought clarification regarding the tax treatment of exchanged/assigned unexercised Key Employee Engagement Programme (KEEP) share options on future exercise.

Section 128 TCA 1997 provides for effective “roll over relief” on the assignment or release of an original right in exchange for a replacement share option or right and tax will only arise at the point of exercise of the replacement option. The history of the original share option is taken over in respect of a future exercise of the new option. Practitioners queried if this is also the case for section 128F TCA 1997 relating to KEEP and equally when the options are exercised, whether the new company would continue to meet the conditions from the date of exercise.

Revenue stated that based on the information provided it does not consider this to be catered for within the legislation. However, in section 128F (5) TCA 1997, where there is an offer made available in respect of the share capital, for a relevant period of less than 12 months (accelerated vesting and exercise) such share options can be exercised. Accordingly, the legislation provides some relieving measures where the 12-month period has not expired. Revenue requested more information or a live example from practitioners to consider this issue further.

**Item 9: CG50 in the case of company reconstructions/amalgamations:**

This was discussed at Item 3.e above.

**Item 10: Non-Resident groups; Section 617 and related Revenue guidance:**

Revenue highlighted that section 617 Tax & Duty Manual (Part 20-01-04) is currently unavailable as it is being reviewed and updated. The Revenue practice to provide section 617 relief to non-resident groups is being removed as this was legislated for in 2017. Revenue stated the updated TDM will be published in early 2021.

**Item 11: Revenue guidance:**

(i) **Section 110**

Update regarding CLOs 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 confirmed this guidance has been published.

**(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**

Revenue confirmed that a substantial body of work has now been done in respect of the guidance and expects to circulate draft guidance at TALC for feedback in the New Year.

**(v) Trading & intra-group financing**

This guidance is being progressed in tandem with the guidance on leasing.

**(vi) Stocklending and repos transactions**

Revenue asked 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**

As outlined at item 3.1 above, the guidance is finalised and subject to the final approvals and publication process, Revenue aim to have the guidance published before Christmas.

**Item 12: Workplan for 2020**

Agreed to carry any matters not closed out into 2021.

**Item 13: Workplan for 2021**

The following workplan items for 2021 were suggested at the meeting:

- Brexit Omnibus Bill
- Interest Limitation

**Item 14: AOB**

**a. Finance Bill changes to Entrepreneur Relief - section 23 Finance Bill 2020**

Practitioners raised an issue with the Finance Bill changes to Entrepreneur Relief. The term "ordinary share capital" has been replaced with "ordinary shares" for the purposes of section 597AA TCA 1997. Revenue confirmed that there has been no change to how the test is to be applied i.e. if the individual has at least 5% of the ordinary shares held in the qualifying company for any a continuous period of 3 years within the previous 5 year period, then the relief will apply.

Practitioners also queried whether the number of ordinary shares in issue or the nominal value of the shares should be taken into account when applying this test. Revenue stated that based on a recent UK case, it is likely that they would expect the nominal value of the shares to be used.

**Item 15: 2021 Chair**

Law Society to Chair the TALC Direct and Capital Taxes Sub-committee in 2021.

**Item 16: Date of Next Meeting**

The date of the next scheduled meeting is to be decided in 2021.

## **Attendees at the meeting**

### **Revenue**

- Dave Brennan
- Jeanette Doonan
- Áine Hollingsworth
- John Quigley
- Emily Swift
- Michael Buckley
- Liam Smith
- Therese Bourke
- Alan Kelly
- Sharonne O'Reilly
- Alan Carey
- Sinead McNamara

### **ITI**

- Laura Lynch (Chair)
- David Fennell
- Tom Maguire
- Stephen Ruane
- David Moran
- Cillein Barry
- Lorraine Sheegar

### **CCABI**

- Peter Vale
- Enda Faughnan
- Colin Smith
- Ken Garvey
- Cormac Kelleher
- Norah Collender

### **Law Society**

- Caroline Devlin
- Maura Dineen
- John Cuddigan
- Aidan Fahy
- David Lawless
- Padraic Courtney
- Aileen Keogan