

## Draft Minutes

### TALC Audit Sub-Committee Meeting

Tuesday 29 November 2016 – 10.00am

Revenue Commissioners, Planning Division, Bishops Square, Dublin 2.

#### Attendees:

<b>Practitioners:</b> <i>Gerry Higgins</i>	<i>CCABI (Chairman TALC Audit Sub-committee)</i>
<i>Norah Collender</i>	<i>CCABI</i>
<i>Mary Healy</i>	<i>Irish Tax Institute</i>
<i>Cora O'Brien</i>	<i>Irish Tax Institute</i>
<i>Julie Burke</i>	<i>Irish Tax Institute</i>
<i>Jim Kelly</i>	<i>Irish Tax Institute</i>

#### Revenue:

*Declan Rigney*  
*Paddy Faughnan*  
*Denis Barry*  
*Padraigh Donnelly*  
*Katie Ryan*  
*Enda Murphy (Secretary)*

**Visitors:** **Members of the TALC Direct Taxes/Capital Taxes Sub-Committee**

<b>Apologies:</b> <i>Justin McGettigan</i>	<i>Law Society</i>
<i>Stephen Flynn</i>	<i>Revenue</i>

#### Item 1 – Overview of Opportunity for Disclosures of Foreign Income and Assets to 30 April 2017

Members of the TALC Direct/Capital Taxes Sub-Committee joined the TALC Audit Sub-Committee for the purposes of a single discussion on the proposed measures in Section 56 Finance Bill 2016, having regard to the fact that the topic was relevant to both groups.

Revenue provided an overview of:

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- The type and extent of information being exchanged under Automatic Exchange of Information (AEOI) -  
A handout was circulated to all attendees setting out the information to be exchanged and the timelines for that exchange. Revenue informed members that the type of data being exchanged under the Common Reporting System (CRS) is expected to be high quality. They stated that the definition of both a financial institution and a financial account was very broad and that balances, in addition to payments to accounts, would be reported. More information in relation to the automatic exchange of information can be found on the Revenue website at the following link [AEOI](#).
- The proposed measures in Section 56 of the Finance Bill 2016 -  
The circumstances, under which persons are precluded from obtaining the benefits of a qualifying disclosure after 1 May 2017 if matters in the disclosure relate directly or indirectly to “offshore matters”, were outlined. A link to the disclosure information on the Revenue website may be accessed at the following link [Disclosure Information](#).
- The plan for a compliance programme post 1 May 2017, surrounding information received -  
Revenue pointed out the consequences for persons not coming forward and stated cases would be selected for intervention by applying risk rules and advanced analytics processes to data received.

Practitioners raised concerns about the broad scope of the legislation as drafted and sought clarity on its

practical application.

In the course of discussions that followed, Revenue clarified that the benefits of self-correction, innocent error and technical adjustment continued to be available to taxpayers in relation to defaults, as well as the facility to make an “expression of doubt”.

It was suggested that a distinction be made between corporates and individuals for the purposes of the disclosure regime, in the context of materiality i.e. that a genuine error by a corporate in characterising a single transaction might have significant consequences. Revenue noted that the legislation does not provide for separate treatment for corporates but also pointed out that the concept of technical error remains in cases of genuine technical complexity and also that, where relevant, corporates would continue to be dealt with within the cooperative compliance framework.

Revenue also confirmed that persons who had made disclosures in relation to previous offshore investigations, amnesty years excepted, could make a disclosure under this disclosure regime and could obtain the benefits of reduced penalties where they otherwise fell within the parameters of s.1077E. They also stated that where full and complete disclosures were made and paid, the opportunity to make a disclosure in regard to future onshore matters would be possible.

It became apparent in the course of discussions that there was lack of clarity as to what figure should be used for the purposes of the 15% test to determine whether or not a default was in the “significant consequences” category.

Revenue agreed to revisit this matter and to include clarification in the FAQs available on the Revenue website.

Revenue stated that, subject to the Finance Bill 2016 being passed, a comprehensive awareness campaign in relation to the disclosure regime would be launched.

Practitioners thanked Revenue for the briefing provided.

## **Item 2 – Minutes of meeting of 27 September 2016**

Minutes were agreed.

### ***Matters Arising:***

Actions points from the previous meeting were reviewed.

*R&D Audits:* Revenue advised that the group mentioned at the last meeting was being established. They informed Practitioners that the group would welcome submissions setting out issues that required clarification and asked that these submissions be made to Áine Hollingsworth in Revenue Legislation Services or Enda Murphy, Planning Division.

## **Item 3 – Work Plan 2016**

### ***Code of Practice for Revenue Audit and other Compliance Interventions:***

Revenue stated that, following the passing of the Finance Act 2016, they will consider the amendments to be made to *Code of Practice for Revenue Audit and other Compliance Interventions*. They stated a number of other small amendments had also been signalled.

Arising from concerns expressed by Practitioners at the last meeting of the group, surrounding the issue of penalty Notices of Opinion, Revenue provided statistics in relation to the number of Penalty Determinations made by the Courts following the introduction of legislation in 2008. They stated that information in relation to the number of cases initiated, which did not progress to Court, was not readily available.

Practitioners stated there was anecdotal evidence that an increasing number of penalty Notices of Opinion were being issued by caseworkers across Regions/Divisions and expressed concern surrounding the reasons for the increase.

Revenue stated that Notices of Opinion were issued only where -

- (a) a person does not agree liability to a penalty; or
- (b) a person agrees liability to penalty but fails to pay it.

In each such scenario, a Revenue officer may make an application to a relevant court for that court to determine whether the person is, in fact, liable to a penalty. Revenue outlined that that is the legal process for determining liability to a penalty and that Notices of Opinion were issued as a last, rather than a first, resort.

In view of the concerns expressed, Revenue agreed to consider if further information could be obtained from Regions/Divisions and asked if Practitioners could supply any information which might be of assistance.

*Failure to Cooperate with a Revenue Intervention* – Revenue stated letters had issued in a small number of cases only.

*Section 851A TCA 1997 Referrals* – Revenue stated a small number of Practitioners had been identified for consideration.

### ***National/Regional Projects:***

Revenue informed members that both the Construction Project and the Real-time Taxpayer Driven Intervention Project would continue in 2017.

### ***Shadow Economy-***

Revenue stated there would be an increase in the use of 3<sup>rd</sup> Party Data to identify cases for intervention.

Practitioners asked if they could be informed of significant Regional Projects planned, not just National Projects, in the interests of informing their members and creating awareness.

Revenue pointed out that Regions/Divisions have autonomy to deal with perceived risks in their own area, as they see fit, and there is not always awareness of all projects being carried out. Revenue also stated that there may be instances in which, for operational reasons, details of particular projects could not be advised until after the project had begun.

They stated, however, that the business planning process for 2017 was now almost complete across Regions/Divisions and they may be in a position to give an indication of significant projects planned for 2017, at the February meeting.

### **eAudit**

Revenue stated a 3 year eAudit strategy was currently being developed. They stated research was also being carried out surrounding the timeframe for closing eAudits, stating that it was not in their interest that audits remain open for significant periods of time. They pointed out that audits which remained open for more than one year generally gave rise to significant yield, were more complicated and generally involved the appeals process.

**CAT & Stamp Duty:** Following the last meeting, Revenue circulated a list of compliance issues commonly found in the examination of CAT returns.

### **REAP**

Revenue stated a National Risk Run had taken place in October. They stated no new rules had been added and the run mainly involved tidying up the casebase.

### **Quality Assurance Review of closed Interventions**

Revenue informed Practitioners that, as part of a quality review of closed interventions, a small number of cases had come to light in which penalties had been incorrectly collected. The cases identified involved tax defaults under €6,000 where the underpayment had arisen due to careless behaviour on the taxpayer's part. Revenue stated they will be in correspondence with the relevant taxpayers and penalties will be offset or refunded, as requested.

#### Item 4 – Election of Chairperson 2017

The election of the Chair for 2017 was deferred to the February 2017 meeting at the request of the Law Society representative who could not attend this meeting. The Law Society is due to Chair the group, by rotation, in 2017.

#### Item 5 – AOB

**Proposed dates for meetings 2017** – Dates of meetings scheduled for 2017 were circulated.

**Work Plan 2017** – Members were asked to consider items for inclusion in the Work Plan for the group for 2017, in advance of the next meeting.

Action Points	Responsible	Timescale
<b>Disclosure of Foreign Income and Assets</b> Revenue to clarify the figure to which the 15% test is to be applied in an effort to determine if the default is in the significant consequences category, and amend the FAQs accordingly.	Revenue	As soon as possible
<b>R&amp;D Audits:</b> Group to be formed to discuss and clarify issues arising in R&D audits.  Practitioners to document issues for discussion by the group.	Revenue  Practitioners	As soon as possible  As soon as possible
<b>Code of Practice for Revenue Audit and other Compliance Interventions – Penalty Notices of Opinion</b> Revenue to ascertain if they can provide statistics surrounding the number of Notices of Opinion issued, irrespective of whether or not they progressed to Court.	Revenue	Next meeting of the group
<b>Regional Projects</b> Revenue to ascertain if any significant projects are planned for 2017 across Regions/Divisions.	Revenue	Next meeting of the group
<b>Work Plan 2017</b> Members to consider items for inclusion in the Work Plan for the group for 2017.	All	Next meeting of the group

The next meeting of the TALC Audit Sub-Committee will take place on **Tuesday 7 February 2017** at 10.00am in Bishops Square.

Submitted for approval by Secretary – December 2016

Approved by **TALC Audit Sub-Committee Members** - 7 February 2017.