

The CAT Users Group - A CAT Liaison group for Practical Issues in ROS

By Aileen Keogan and Tom Martyn



The Revenue online system (ROS) for filing and paying gift and inheritance tax (CAT) has significantly improved and simplified the administration of this tax.

Representatives of the Law Society, Irish Tax Institute and the Consultative Committee of Accountancy Bodies Ireland have recently met with representatives of the Revenue Commissioners to form a 'User Group' for the sole purpose of identifying and seeking to resolve practical operational issues that have arisen in CAT when ROS is used. It is hoped that meetings will be held regularly so that relevant concerns and suggestions can be discussed to allow for improvement of the service for all.

We hope that practitioners who come across difficulties in the practical operation of ROS and CAT arise that cannot be resolved at regional level will contact the User Group so that the issues are centralised for resolution. Revenue at regional level have agreed to also raise such issues with the Revenue representatives for this User Group. Details of the contact for the User Group for solicitors are set out at the end of this article.

CAT regional offices can be found online at www.revenue.ie/en/contact/index and are as follows:

Dublin Region	Aras Bhughha, 9/15 Upper O'Connell St., Dublin 1 Email catdr@revenue.ie
East & Southeast Region	Block F, Athy Business Campus, Castlecomer Road, Athy, Co. Kildare Email catESEregion@revenue.ie
Southwest Region	Office of the Revenue Commissioners, CAT Unit, Revenue House, Assumption Road, Blackpool, Cork Email swrcatqueries@revenue.ie
Borders Midland West Region	Each relevant District

Certain key points should first be noted

- Individual practitioner or taxpayer issues shall not be discussed by the User Group. Rather issues of practical operational significance will be considered and hopefully resolved.
- Forms will be updated by Revenue unilaterally from time to time. Practitioners should regularly update the forms from the ROS system. There is usually a prompt to do this when preparing a return offline for uploading later.
- The ROS system should not be relied on to calculate tax. Practitioners should do their own calculation of tax independently of the ROS calculation.
- Where a practical issue arises it should be raised first at the regional level as the issue may have already been raised previously at the CAT User level and resolved and communicated to the Regions. If the issue cannot be resolved satisfactorily at the Region, it should be notified to the practitioner's representative of the CAT Users Group.
- Certain issues are already recognised by Revenue as causing difficulty and Revenue are, subject to resources been available, seeking to resolve such issues. Budgetary constraints will sometimes limit the ability to resolve issues and in some cases an issue that requires a technical fix may take some time to resolve depending on the priority that Revenue must apply for technical support across all the tax heads.

The CAT User Group has agreed the following clarifications to date:

Expression of Doubt / Additional Notes

ROS does not always provide an exact solution for the particular CAT event.

Up until recently, certain officials in Revenue had suggested the use of the "expression of doubt" box when making a return in circumstances where the ROS system did not allow a fit to the circumstances. This was not Revenue policy and this was not without its difficulties as an "expression of doubt" has a particular significance in that it is intended to reflect just that – doubt and the amendments in recent Finance Acts has limited the availability of this option. In any event in many cases it is not that there is any doubt; the practitioner knows precisely what the tax treatment should be; but the ROS system does not allow for this treatment.

To deal with these circumstances, it is agreed that the "Additional Notes" box in the CAT return on ROS should be used. This box should be completed instead of ticking the "Expression of Doubt" box. This will allow the practitioner to set out in summary form what was intended to be returned as against what ROS allows to be returned. If it is necessary to give more details than the number of characters in the box permits or if information or a query is raised by the practitioner requiring a response, reference should be made in the box to a separate letter. This letter, setting out the issue in further detail, should then be sent to the appropriate regional office with a hard copy of the ROS return as filed containing the additional notes.

Threshold Figures

Where a return in respect of a previous taxable period is made where a different threshold figure applies, ROS does not recognise the different threshold and will only allow a current threshold figure in certain circumstances. This will result in an incorrect calculation of tax due.

It is expected that a future technical "fix" will deal with this anomaly. In the meantime practitioners should pay the correct amount of tax due and include a short note in the "Additional Notes" box to explain the difference.

It is of course essential in all cases that practitioners should do their own calculations of tax due and not rely on the ROS system to calculate liabilities. The ROS system may or may not be correct depending on circumstances.

Amending Returns

There are times where an additional return has to be made to Revenue in a relevant return period. This is typically in the administration of an estate where additional assets have been discovered. In those cases, the ROS system will only recognise the latest return. It will not recognise an earlier return.

Where an initial return has been filed and a further return is required, the practitioner should include all the assets in the later return once again but only pay CAT for the additional items now included in the return. This will show a difference between the tax as calculated in the system and the correct tax due. Again, the user should pay the correct amount of tax due and include a short note in the “Additional Notes” box to explain the difference.

Multiple Returns

ROS will only process three dispositions received by a beneficiary in a returnable period from different disponers. Where a fourth or further disposition is received by a beneficiary from various disponers within that period it is recommended that the practitioner place two dispositions that arise from within the same Group Threshold together in one return and include a short note in the “Additional Notes” box to explain why this has been done.

A similar issue arises where there are more than three dispositions from the one disponer. In this case the number of benefits taken should be treated as one benefit taken and the “Additional Notes” box used to account for various valuation dates or other distinctions between the benefits taken.

Receipts, Proof of Payment of Tax, Demands and Repayments

The ROS system does not provide a receipt to prove that tax has been paid. Revenue has confirmed that the practice of issuing receipts discontinued in July 2012 and will not be revised. The acknowledgement given online for the IT38 payment instruction had indicated a receipt would issue once payment was received by the Collector General which has caused confusion. That sentence on the acknowledgement has now been removed by Revenue.

Revenue has been made aware that the non issue of a receipt is a significant concern for practitioners in seeking to prove to a client that payment has been made. While Revenue accepts this is an issue, no immediate resolution is available. For the moment practitioners will need to link from their online Statement of Account the notice number that has issued in relation to the return filed against the

PPSN of the client beneficiary, the acknowledgement of payment and the payment deducted from the designated bank account in proving to their client that the payment has been made. We have requested that the Statement of Account which lists the identification numbers for returns and payments filed that also appears in the inbox of the filer after filing should also include the relevant PPSN of the beneficiary for whom the return or payment is made as currently the relevant client PPSN is left blank in those lists. This matter remains outstanding and is on the ROS System Maintenance List. This will facilitate identification of the payment made.

ROS for CAT has a significant limitation in relation to the timing of returns and payments crossing over a tax year. Where a return is filed and the tax is not paid in that year, but is paid in a later year, ROS will generate a demand for the earlier year as if no payment was received, the payment not being reflected simultaneously on the system. For the moment Revenue seeks to adjust this manually to avoid the issuance of the demand but this might not always be spotted. Unfortunately, the resources are not in place to arrange for a review of the ROS program to prevent this from happening. It is important that practitioners highlight this issue to their clients where it may arise.

Farmer Test – Trees and Underwood (Timber)

The ROS system currently requires the farmer test (the percentage test where the beneficiary’s total assets must comprise more than 80% in agricultural assets) to be fulfilled in order to obtain agricultural relief under section 89 CATCA03 in the case of any agricultural property. However where trees or underwood (timber) are the subject matter of the benefit the farmer test does not in fact apply (see section 89(6) CATCA03. In such cases practitioners will need to insert figures in the return to enable the farmer test to be met so that trees and underwood can qualify for agricultural relief and the “Additional Notes” box should be used to explain what has occurred. It is hoped that this will be dealt with in future technical upgrades of ROS.

Double Taxation

There are limitations to the claim for double taxation relief under the ROS system. Where there are either more than 10 residuary beneficiaries or more than 20 legatees the system will not facilitate a claim. It will continue to be necessary to make a manual adjustment to the return to allow for double taxation, possibly merging legatees together where there are common details to facilitate the return and then using the “Additional Notes” box to explain what has occurred.

Concern has also been expressed to Revenue that the legislation allowing for double taxation relief assumes that the beneficiary is aware of the amount of tax payable by other beneficiaries. While this information would have been available for personal representatives filing the beneficiary's return on a secondary accountability basis, now the relief is dependant on a beneficiary having access to private information of another beneficiary to enable a full relief claim to be made.

Allocation of assets

The allocation of assets box in the ROS return does not facilitate the different types of assets being taken by a beneficiary and so it is not entirely clear what asset should be selected when there is a mixture of asset types in the benefit taken, e.g. in the case of a residue or intestacy. This matter is on the ROS System Maintenance List.

Exemptions and Reliefs – location on ROS

All available exemptions and reliefs are offered on the ROS system but may be difficult to locate depending on selections made. We have therefore requested a 'site map' for the IT38 on ROS which is under consideration.

For instance Section 75 CATCA03 provides an exemption for certain securities taken but where "Stocks/Shares" is selected on the allocation list of assets, the exemption is not offered. It is only offered when "Other Personalty" is chosen.

PPS Numbers for Non-Residents

An issue that arises across all tax heads is the need to provide a PPS number for returns. This is a particular issue for non resident taxpayers and will remain so. It is necessary to apply to the Department of Social Protection for such a number and this should be done in good time to avoid a delay in making a return.

TAIN Numbers for Solicitors

In seeking confirmation that tax has been paid, it can be done for a return made by a practitioner using the TAIN system. It is a problem in that solicitors do not have TAIN numbers as they are not agents of their clients. Therefore the client receives the notices from the Revenue and not the solicitor.

This is a recognised issue and Revenue are looking at ways of permitting solicitors to access such information in respect of clients without the need to be treated as an agent of the client concerned. Suggestion has been made to allow solicitors "filer"

status similar to the e-Stamping. In the meantime solicitors should get formal confirmation from their client to permit the solicitor liaise with the Revenue in relation to the CAT return following the manner in which an agent link notification form is signed by a client where agents are first appointed.

Payment by Electronic Funds Transfer

Ordinarily tax returned under ROS is paid out of a nominated account. Where client accounts are not available to practitioners certain accounts have to be nominated to allow the tax to be deducted. Representations have been made with a view to allow payments to be made by RDI as well as by Electronic Funds Transfer.

Surcharges

Where a surcharge and/or interest payment is required to be made for CAT, this cannot be paid on ROS. Instead these payments should be sent by cheque to the region. The facility to pay interest and or surcharge for CAT via ROS will be included in future technical upgrades of ROS.

Instalments

It has always been the case that CAT can be paid in instalments if the taxpayer so wishes and prior to FA 2010 this was done over 5 equal annual instalments. Since then the timing of payments is done by agreement with Revenue.

Where the life tenant pays a tax liability in full and then dies within five years, a refund of what would have been "unpaid instalments" if the instalments were paid over 5 years should be forthcoming. However since FA 2010 how much is refundable is not clear as no agreement was required for upfront payments as there were no instalments paid. At the moment the refund is being agreed on a case by case basis in each tax region. Similarly, if tax is paid in full over two years by agreement with Revenue then if the life tenant dies in the third year arguably there are no instalments to be refunded.

We have sought that these arrangements could be placed on a statutory basis; for example 60 equal payments over a five year period so that if the life tenant dies during the five year period, the number of "unpaid instalments" to be refunded could be readily calculated.

We have also sought that the instalments could be paid by direct debit or standing order.

Accountability for non residents

We have expressed ongoing concern that the letter of comfort available to solicitors to allow them to release funds to non resident beneficiaries does not have any statutory basis and we are seeking for legislation to give proper comfort in such instances.

Concern has also been expressed in relation to the non resident accountability provisions for solicitors where trusts are involved and there is an immediate interest in possession. It is not clear whether the accountability could potentially continue beyond the interest in possession period if the letter of comfort is not given by Revenue to release the solicitor from all accountability at the start of the interest in possession period. Submissions have been made in relation to this.

Practitioners who identify issues relating to the operation of ROS for CAT should please pass on the details to the Probate, Administration and Trusts Committee, Law Society.

Email p.courtney@lawsociety.ie for referral on to the CAT Users group for discussion.

Aileen Keogan is the principal of Aileen Keogan Solicitor & Tax Consultant www.aileenkeogan.ie a solicitor, AITI Chartered Tax Adviser (CTA) and a STEP member. She is co-author of The Law and Taxation of Trusts, Keogan Wylie and Mee, Tottels 2007 and edits The Law of Capital Acquisitions Tax, Irish Tax Institute, annual publication.

Tom Martyn is the Managing Partner of McDermott Creed and Martyn solicitors and Chairman of the Probate Administration and Trusts Committee.

This article is also being published in the Irish Tax Review (Irish Tax Institute).