



**Private and confidential**

Mr Paschal Donohoe, TD  
Minister for Finance  
Department of Finance  
Kildare Street  
Dublin 2

16 November 2018

**Re: Non-resident vendor/letter of no audit and solicitors' secondary liability**

Dear Minister,

I am writing on behalf of the solicitors' profession to bring to your attention an ongoing difficulty for the profession and their clients when dealing with disposals of property for non-resident vendors.

Non-residents own a considerable amount of property in Ireland. When a property is sold, the solicitor is contractually bound to pass the proceeds to the party entitled without delay. A transaction involving the sale of a property owned by a non-resident will only come to the attention of Revenue when the consideration is in excess of €1m (See TCA 1997 section 980). A significant number of transactions which are below this amount take place every year.

Solicitors rarely act as tax agents and generally have no information on the tax affairs of a client.

Section 1034 of the Taxes Consolidation Act 1997, as you are aware, deals with 'agency.' According to one interpretation, a solicitor acting for a non-resident vendor could be regarded as an 'agent' in this context and thus be chargeable for unpaid capital gains tax of that non-resident vendor, however arising. The Law Society has always rejected this interpretation believing that, although a solicitor may be an agent for a specific purpose, namely the sale, he/she is not an agent in any general sense sufficient to create a liability under section 1034.

However, despite the views of the Society, Revenue have never been prepared to confirm that solicitors in the normal course cannot have a liability under this section.

Even the risk that Revenue might attempt to hold a solicitor as being liable for the unpaid tax of a client could not be accepted. Accordingly, several decades ago, due to the potential exposure for a solicitor in respect of tax an agreement was reached between Revenue and the Law Society whereby, if Revenue did not propose to audit the case, a letter of confirmation would be issued to the solicitor prior to the release of sale proceeds. This practice is being followed by the profession and has been since the agreement was reached.

It now appears that this practice no longer suits Revenue and applications for letters of no audit are only issued after unreasonably long periods. This is causing grave difficulties for our members and their clients as they are faced with a serious problem. On the one hand, they face the risk of an exposure to a serious tax liability which they cannot resolve without Revenue assistance and, on the other hand, they have to abide by their legislative obligations under the Solicitors Accounts Regulations 2014 in relation to the holding of client monies.

The Law Society, through TALC representatives, has raised these difficulties for more than a year without success and the issue has now escalated. I understand that a subgroup was established between Revenue and the representative bodies that met in July to discuss, amongst other topics, the position of solicitors acting for non-resident vendors. Law Society representatives made suggestions to improve the procedure at this meeting, which Revenue undertook to review. No feedback has been received since the meeting took place and no further meeting of the subgroup has been scheduled by Revenue.

Meanwhile, members of the solicitors' profession are growing increasingly frustrated with the delays encountered and the Law Society is receiving numerous queries on a weekly basis on the issue. The Society understands that requests for letters of no audit submitted by members can be left for many months without a response.

The Law Society requests a speedy resolution of this matter and our representatives are available to meet with Revenue at the earliest opportunity, whether through the subgroup or otherwise. However, in the meantime the Law Society calls upon Revenue to reduce their response time for requests for clearance to a maximum period of one month.

Yours sincerely,



**Ken Murphy,  
Director General**

cc. Michael Gladney, Revenue Commissioner, Castle View, 52/57 South Great George's Street, Dublin 2