

Summary note of meeting between the Irish Tax Institute and Revenue's Large Cases – High Wealth Individuals Division (LC-HWID)

30 September 2020

Via Skype

Key points from the meeting

1. Current Work Practices due to COVID-19

Practitioners and Revenue discussed the practicalities of remote working due to the COVID-19 pandemic and the impact on tax administration. Revenue clarified that approximately 97% of the Division's staff are working remotely. While remote working presented challenges for Revenue at the outset it is now well established. A process has now been put in place to permit Revenue staff access to the offices for the purposes of retrieving files and printing letters where required. Staff are equipped with Skype for Business. LC-HWID can facilitate physical meetings in their office, if absolutely necessary, subject to social distancing requirements and Government restrictions in place at the time. New interventions and progress on appeals slowed for a time but have now recommenced.

Staff training continues remotely. A remote training programme on anti-avoidance matters is underway. This programme includes information and a Q&A and is not solely for LC-HWID staff. Revenue also continues to provide general Learning and Development sessions, via Skype, for staff training in the current environment.

Practitioners queried Revenue's approach to the application of the "late surcharge" where staff illness in a practice, due to COVID-19, could impact on timely filing of income tax returns. Revenue's general position on the surcharge remains unchanged, however, Revenue will be reasonable where a practice has a specific issue. If such a situation arises, the practice should contact Revenue to explain the difficulty.

2. Update on LC-HWID Structure

LC-HWID has expanded since last year, and there are two new Principal Officers in the Division. The Division consists of three case-working High Wealth Individuals (HWI) Branches, a National Anti-Avoidance Branch, a Pensions Branch and a Divisional Office. Each Branch is led and managed by a Principal Officer and has a team of Assistant Principals. There are approximately 130 staff in total in LC-HWID who are located in Athlone, Dublin, Kilkenny, Limerick and Waterford.

Divisional Office

The Divisional Office deals with service issues and related queries. It also provides support to the Branches in the Division, for example, in preparing and managing the business plans. Revenue continues to prioritise the processing of tax refunds across all divisions, to keep delays to a minimum, given the cash-flow pressures on many businesses from COVID-19. If a refund in the Division is delayed, the taxpayer will be made aware of the reason for the delay i.e. if Revenue is seeking further information.

HWI Branches

The case base of LC-HWID consists of “primary cases” (i.e. individuals with net assets of at least €20 million) and “secondary cases” (i.e. related entities, spouses, non-trading companies, partnerships, rental companies and family members to the extent that they are involved in the family business or party to substantial transactions with HWI individuals).

The case base is not fixed, and individuals may enter or exit over time, as the case base is reviewed annually to identify individuals meeting the entry criteria. New cases are added to the Division’s case base each year as they are identified. A further 200 will be added soon. There are currently approximately 1,000 primary cases and 1,000 secondary cases in the Division.

Revenue use a variety of sources to identify cases meeting the LC-HWID entry criteria, including information from tax returns, such as, large shareholdings or substantial Stamp Duty transactions. Practitioners can contact Revenue to inform them that the individual meets the criteria for the Division.

Children of HWI are not added automatically to the case base. Instead, children involved in the family business or who have received a large gift or inheritance are included in the Division. As is current practice, Revenue will inform the tax agent of an individual’s addition to the LC-HWID case base a few days in advance of communicating with the taxpayer.

The three HWI Branches are divided on a sectoral basis; primarily manufacturing, retail and technology. All three Branches also deal with the property sector and interact and share information.

In response to a question on duplicate requests for information, Revenue clarified that if the information being sought by LC-HWID is already on file with Revenue, even if it is in another division, it can be accessed by Revenue. There is no intention to duplicate requests for information. Revenue staff have access to offices so they can retrieve information that has already been supplied to another division. In such situations, the practitioner should contact Revenue to advise if the information has already been provided.

3. Areas of Focus for the Division

LC-HWID is focused primarily on specific risks which are addressed through targeted interventions. The Division has profiled its case base and identified risks in relation to capital taxes following this comprehensive appraisal.

The risks would include:

- CGT losses
- High value sales with a low CGT paid
- Expenses and losses
- Connected party transactions
- Business relief claims, including the source of funds and how the funds are used

- Filing of a Stamp Duty return but no CGT declared

The Division is currently more focused on risks in relation to specific transactions, rather than project based.

As regards legacy cases at appeal, Revenue is willing to discuss cases to establish if it is possible to resolve cases by agreement. Case progression and early identification of issues that cannot be resolved by agreement are priorities for LC-HWID. Revenue wish to have full information before any assessment may be issued.

LC-HWID is adopting a common approach across its Branches so that queries and intervention letters include the Branch Manager's contact details in the correspondence. The Branch Manager can be contacted if the practitioner is experiencing difficulties or delays in progressing the intervention. Queries and interventions are specific and targeted in scope and Revenue expects a substantive reply to be provided, grounded in documents, within a reasonable timeframe. Revenue is prepared to hold a meeting with the practitioner/taxpayer, if required.

Non-engagement with Revenue will result in the issue of a warning that Revenue may use its powers in cases where they consider it appropriate. As regards cases at appeal, Revenue request that any directions made to the Tax Appeals Commission be copied to Revenue.

Practitioners requested that Revenue consider the importance of timely responses by Revenue to help case progression. They also raised the difficulty in complying with a 21-day timeframe to reply to Revenue. Practitioners acknowledged that Revenue has recognised in their recent letters the potential impact the current COVID-19 pandemic may have on the ability to reply within the timeframe provided in the letter.

Practitioners queried the rationale of sending letters to HWI, seeking details of all assets owned by an individual, when the individual was already regularly reviewed by the Division. Practitioners asked Revenue to consider narrowing the scope of such requests to ensure that queries can be targeted and focused, given the time and cost in responding to letters with such an expansive scope. Revenue clarified that such broadly scoped letters would not be Revenue's intention or standard approach, but an exception to be used in limited circumstances. Practitioners can contact the Branch Manager or the Divisional Office on a case by case basis to discuss concerns about letters received.

Practitioners also highlighted instances of Revenue raising queries in the lead up to the deadline for issuing an assessment, under the "four-year rule". Revenue agreed that early intervention was preferable. Identifying and engaging on risk at an early stage is a priority for LC-HWID. However, where Revenue identify a substantial risk, they must proceed to raise queries with a view to issuing an assessment, if necessary. Revenue has been profiling the large number of new cases added to the LC-HWID case base last year. Revenue expects that the issue of letters/assessments close to the four-year deadline will happen less often in the future. Practitioners are encouraged to engage with Revenue in response to such letters and provide Revenue with the information requested. Where the risk can be eliminated the matter can be dealt with promptly.

MyEnquiries

Practitioners queried the meaning of the “completed” marker in the MyEnquiries tracking system, in the context of a request for an opinion or an aspect query. Revenue advised that the completed marker was devised to provide visibility on the handling of customer service requests (i.e. to denote when a task had been done and to close the individual thread of a query on Revenue’s IC system). This is separate to Revenue’s process for closing interventions or responding to queries requiring a more substantive reply, such as opinions. Practitioners considered that it would be useful to clarify this point in guidance, as taxpayers/agents would think that “completed” meant a matter had been fully dealt with or is closed. The Division is engaging with Accountant General & Strategic Planning Division on this matter.

4. National Anti-Avoidance Branch

Transborder Worker Relief Project

The Transborder Worker Relief Project is a LC-HWID project, operated by the National Anti-Avoidance Branch which commenced last year, with additional cases opened since then. The purpose of the project is to ensure the conditions of the relief are met. Revenue has had some disclosures and is in engagement with some cases on specific technical matters relating to the project. The Branch is engaging with Revenue’s Policy and Legislation Service (RLS) personnel about the meaning of “incidental duties” carried on in the State especially in light of the impact of COVID-19 on travel to/from the State. The National Anti-Avoidance Branch is clear on its stance on the matter but will await a response from RLS before it will engage further with individual cases on the issue. Once the position is confirmed, the Branch will be happy to meet with practitioners dealing with these cases. Practitioners pressed for early resolution of the matter.

Other projects underway include:

- Cases relating to a property investment entity involving foreign currency and a refinement of Hans Droog
- Artificial capital losses challenged under Section 811
- Artificial trading losses
- Share rights involving cash extraction involving 130 cases, with 93 closed to date yielding €37 million
- “Liberty Bell” – the Tax Appeals Commission held in favour of Revenue and a High Court hearing is awaited
- Employment Benefits Trusts using offshore trusts. This project is not limited to LC-HWID.
- Non-domicile project which commenced last year with a letter issue and received a significant number of responses

5. Engaging with the Division

Practitioners outlined the challenges in the current working environment in responding to queries with a 21-day or 30-day timeframe. The standard letters from LC-HWID seeking information acknowledge that difficulties may arise in the timeframe to reply, due to the current circumstances arising from COVID-19. Practitioners are encouraged to contact Revenue to confirm when they will be able to reply. The letters include contact information for the Branch

Manager.

“Force majeure” presence in Ireland

Practitioners queried what opinions had issued in relation to individuals in Ireland longer than anticipated due to COVID-19 and what further guidance could be provided by Revenue. Several queries on this topic have been received by Revenue divisions and by RLS. No definitive responses are currently being issued to requests for such opinions, pending further guidance from RLS. Revenue is keen to ensure a consistent approach is adopted across the divisions. Revenue expects that further guidance on the matter will be published to update the current guidance on the Revenue website.

6. Pensions Branch

The Pensions Branch is currently very busy dealing with applications. The Branch has a greater focus on compliance issues and closing out open cases. The main risk area for focus currently is small self-administered schemes.

Practitioners queried whether there had been a change in Revenue’s approach to treating a tax-free lump sum in commutation of foreign service as a capital sum. Revenue invited feedback on the particular issue in question.