Summary Note of Meeting between the Irish Tax Institute and Revenue's Large Corporates Division (LCD)

3 March 2021
Via Skype

Key points from the meeting

1. Overview

Revenue circulated a slide presentation, providing an overview and organisational chart of LCD.[1] Each LCD Branch is responsible for circa 60-65 corporate groups. As part of an ongoing review of the LCD case-base, some cases have been transferred in and out of LCD (i.e. meeting or ceasing the relevant LCD criteria). 83 groups have recently been transferred to LCD from Medium Enterprises Division (MED), with 56 groups transferring from LCD to MED. All remote bookmakers were transferred to MED in early 2021. In order to create stability in the case-base, it is intended that no more substantial changes will be made to the case-base from 1 April 2021 for a period of 3 years.

LCD adjusted quickly to the remote working environment from the outset of the pandemic, assisted by current internal practices and the nature of the LCD case-base. Work has continued, as normal, on interventions, Revenue audits and progressing appeals, with the use of Skype for Business for internal meetings, and access to other virtual platforms, if requested, for external meetings.

Revenue's buildings are also accessible to staff to access files and to conduct meetings, subject to social distancing requirements. Participants in the Cooperative Compliance Framework (CCF) can contact their case manager with queries in the normal manner. Non-CCF cases are dealt with by the Customer Service Branch, with queries and correspondence primarily routed through online channels. Where a hardcopy letter, related to an aspect query, must be sent to the taxpayer, Revenue may also contact by phone or email in advance, to ensure that the correspondence is received by the appropriate person where a business premises may be closed. Attention was drawn to the Tax and Duty Manual published on 29 January 2021 which contains Revenue guidelines for conducting Revenue interventions remotely during COVID-19. Section two of this manual deals with intervention notifications for audit and non-audit interventions.

2. LCD Branches

Each LCD Branch outlined some of their key priorities and areas of focus over the year ahead.

Sectoral Branches

Property, Construction & General Manufacturing Branch

- The COVID-19 support schemes, in particular, the Employment Wage Subsidy Scheme (EWSS) and the Temporary Wage Subsidy Scheme (TWSS).

[1] The current Principal Officer in charge of Financial Services (Banking) will be moving posts at the end of March and a new PO will be appointed.

- 14 new groups have been moved into the Branch. Revenue will be examining and seeking resolution of issues identified in their filing patterns, for example, outstanding tax returns including Forms 46G, DWT returns and Forms CT1.
- Payroll taxes generally

Alcohol, Tobacco & Multiples Branch
- Excise controls
- Sugar Sweetened Drinks Tax (SSDT) enquiries

Natural Resources, Food & Leisure Branch
- The COVID support schemes, including, the TWSS reconciliation exercise
- Payroll taxes and compliance with the PAYE Regulations
- Corporation tax, including R&D tax credit claims

Financial Services (Banking) Branch
- Tax risks in non-CCF cases
- Understanding risk changes as a result of Brexit
- Form CT1 2019 returns and change of items on Balance Sheets without Brexit

Financial Services (Insurance) Branch
- VAT recovery in 2020 and 2021
- PAYE modernisation related queries for the Branch's case-base, including pension payrolls
- Stamp Duty on insurance levies

Information, Communications & Technology (ICTL) Branch 1 and Branch 2
- VAT, payroll tax, and corporation tax with issues raised based on perceived risks
- KDB claims
- Section 247 interest
- Section 291A claims
- VAT and postponed accounting
- Stamp Duty and relief claims on restructuring
- Country by Country Reporting (CBCR)

Motor, Oils & Transport Branch
- Deferment of Mineral Oil Tax.
- Non-cash emoluments to distributers and motor traders

Life Sciences (Biotechnology, Pharmaceutical & Medical Devices) Branch
- Understanding remuneration models and changes in these models
- Section 291A claims
- Capital versus revenue tax treatment

Financial Services (Financing and Investment Funds) Branch
- Trading losses and group relief utilisation
- Verification checks in aircraft leasing
- iXBRL compliance

- IREF service to support compliance i.e. prioritising development of an online IREF return and e-payment

Practitioners queried whether the reports made under DAC6 would inform interventions by LCD going forward. Revenue noted that each Branch conducts a risk assessment of its case-base and has access to all data tools available when conducting their risk assessments.

Non-Sectoral Branches

E-Audit, Customs & PREM Audit Branch
- Wage Subsidy Schemes
- Real-time PAYE audits and interventions
- Increase in Customs audits

As regards the Wage Subsidy Schemes, Revenue clarified that engagement with LCD has generally concerned technical questions and queries surrounding employer eligibility. There has also been engagement with taxpayers that have availed of the TWSS and EWSS but have subsequently voluntarily reversed out completely from the schemes.

Customs audits will increase from 2022 onwards and greater resources will need to be dedicated to this area. The number of Customs declarations have increased exponentially, due to Brexit.

Transfer Pricing Audit Branch 1 and 2
Revenue has been focusing on improving their skills and staffing in the Transfer Pricing (TP) Branches, recruiting a diverse range of professionally qualified staff. There are now two TP Audit Branches, each led by a Principal Officer, with 5 Assistant Principals in each Branch, together with other staff.

Since the Transfer Pricing Audit Branch began in 2015, 18 interventions have been closed, generating circa €90 million in yield (i.e. of tax saved or paid). Audits and interventions are risk driven and both Branches select cases from the LCD and MED case-bases and use all available information in appraising cases; including CBCR, Exchange of Information, DAC6 reports, the OECD Guidelines on Transfer Pricing (now codified in Irish legislation) to identify risks. They also assist other divisions with TP queries.

Revenue noted the Finance Act 2019 legislative provisions which came into effect from 1 January 2020 and the recently published new Tax and Duty Manual (TDM) which informs Revenue's approach to interventions. Revenue expects a significant improvement in the Local and Master files in view of the more prescriptive requirements mandated by the OECD 2017 Guidelines. The removal of the grandfathering provisions and expansion in scope to non-trading transactions brings arrangements and entities previously excluded into scope, for example pre 2010 or non-trading loans, will form part of audits.

TP audits will involve the issue of an Audit Notification to the taxpayer, in the normal manner. The audit will involve, for example, examination of the records; economic analysis; evidence of how the arm's length price was calculated and applied; Functional analysis to understand functions and what relevant teams do. The quality and detail of TP documentation is important. It can take a number of years to finalise TP audits, given their complexity.

The TP Audit Branches have no involvement in Advance Pricing Agreements (APA) and Mutual Agreement Procedures (MAP). These are dealt with by the Competent Authority in the International Tax Division in Revenue Legislation Services. The taxpayer can advise the auditor if they intend to pursue an APA or invoke the dispute resolution mechanism under MAP.

Practitioners noted the abeyance of the "Ireland to Ireland" TP modified rules set out in Finance Act 2020 (now subject to a Commencement Order) which had attempted to put into legislation Revenue's interpretation of the 2019 legislation relating to the same modified rules. Practitioners sought clarity as to how Revenue will be approach "Ireland to Ireland" transactions when undertaking TP audits, given the relevant legislation is subject to Commencement Order and the new TP TDM published does not provide guidance on how Revenue will interpret and apply the modified TP rules.

Revenue noted that cross-border transactions would be of perceived higher risk, that intra-Ireland transactions, when selecting cases for TP audits based on risk. Revenue acknowledged that there is an ongoing consultation process with the Department of Finance regarding the policy for "Ireland to Ireland" transactions. It is hoped that the "Ireland to Ireland" position will soon be resolved and before Revenue will conduct TP audits in relation to 2020 accounting periods. Should it arise on an intervention before then, it will be dealt with in a practical way by Revenue.

TP will remain a very topical policy matter, in light of the commitment in the Corporation Tax Roadmap to extend TP to branches in 2021 and the provision in DAC7 to allow joint audits involving more than one tax authority.

3. LCD's Approach to Revenue Audits and Compliance Interventions

As outlined in a recent TDM, Revenue audits and interventions will be conducted remotely, wherever possible. The normal procedures for conducting such interventions, as outlined in the *Code of Practice for Revenue Audit and Other Compliance Interventions,* continue in a remote setting.

LCD has a comprehensive methodology to conducting and managing audits virtually. For example, at the opening virtual audit meeting, the Revenue auditor can produce a high resolution copy of his/her identification card on screen.

In the conduct of audits/interventions remotely over the last twelve months, Revenue has deployed an audit information project management tool with a view to the efficient progression of audits. This has been accompanied by single issue 'pinpoint' interviews conducted using Skype for Business to discuss and progress open technical matters whilst both Revenue and taxpayers are working out of the office as a result of the Covid-19 restrictions in place.

E-Audit will be the default option for Customs and PREM Audits. Revenue's Customs Risk Intervention Selection Programme (CRISP) is used in the selection of imports and declarants for a post clearance intervention. Revenue provided a slide presentation on their approach to Customs and PREM audits. Revenue expects a doubling of the case-base for selection for Customs intervention.

The PREM Audit Unit in LCD is providing expert consultancy to the other Divisions on the Wage Subsidy Schemes. The TWSS reconciliation process will commence in March and employers will have until June, to review the data to identify gaps or inaccuracies. Guidance will issue shortly on the process. As outlined on the slides, where an employer has paid out more subsidy to an employee than the subsidy amount calculated by Revenue, for example, during the transitional phase, this additional amount must be repaid to Revenue and will be a cost to the employer. The employee will be taxed on the amount received from the employer, which is a separate matter.

E-Audits will also focus on an analysis of PAYE modernisation. Revenue encouraged taxpayers to undertake a full review of their payroll reporting in advance of any scheduled PREM audits.

4. Cooperative Compliance Framework (CCF)

123 corporate groups are participating in the CCF. A group must meet the entry threshold requirements to be eligible to apply for the CCF. In general terms, circa 20% - 25% of the case-base meet these criteria. Revenue acknowledged that the initial meetings with CCF groups may have generated a considerable level of queries, but as Revenue's understanding of the CCF participant has deepened, this should have reduced. Tax technical issues can take time to resolve. However, issues raised at a meeting would be expected to have been fully resolved before the next meeting.

Revenue published a TDM in January to codify the CCF offering. The opportunity to apply to enter the CCF by groups that meet the eligibility criteria remains available. Revenue will be conducting a full in depth analysis of the operation of CCF in 2021 to ensure it is being applied in a consistent manner to all participants. Revenue has sought feedback from participants on their experiences and acknowledged practitioners' suggestion to survey participants and agents on CCF. The Institute also expressed that it could convey members' feedback on the CCF experience in response to the survey questions.

Revenue confirmed that Ireland is a participating jurisdiction in the current iteration of the OECD International Compliance Assurance Programme (ICAP2). ICAP2 is a voluntary risk assessment and assurance programme that facilitates co-operative multilateral engagement between multinational groups, willing to engage actively and transparently with tax administrations, in jurisdictions where they have activities and review high level risk and obtain certainty regarding TP. ICAP2 and DAC7 also envisage joint audits involving more than one jurisdiction.

5. LCD Services and Supports

Renewal of opinions
In the context of the renewals of opinions, practitioners highlighted experiences where similar delays were experienced in the receipt of a response for non-CCF, as for CCF cases. At times, the timeframe to receive a renewal could be lengthy, for example, up to two years. Practitioners also queried the status of the opinion while the reply from LCD to the renewal request was awaited.

Revenue noted that the nature of the opinion may mean that detailed consideration of the matter and engagement with Revenue's Policy and Legislation Service is required. Revenue would expect that the taxpayer would be informed if there is a delay in responding to the request for the renewal.

The Divisional Office of LCD can be contacted for clarity if there is a pronounced delay in receipt of a response from Revenue and the taxpayer has not been informed of the basis for the delay. The taxpayer cannot infer that the absence of a response on the renewal request means that the opinion can continue to be relied upon. Revenue will advise of the status of the opinion in writing in response to the request for its renewal. Revenue is also working to codify generally applicable rulings in the relevant TDM, where appropriate.

6. Customer Service - Tax Refunds and Processing of Requests

The Division closely monitors the turnaround time on tax refunds against the customer service standards, and the standards are generally met. The slide presentation summarises the volume and categories of items processed in 2020. Practitioners acknowledged Revenue's prioritisation of refund processing since the onset of the pandemic to assist businesses.

The Financial Services (Financing and Investment Funds) Branch outlined its activity and approach to expediting VAT refunds and the adoption of a pragmatic approach where no material issues are identified on verifications of refunds. The Branch has also experienced an increase in requests for clearance to effect a Members Voluntary Liquidation and is working to reduce the turnaround time on clearances.

Practitioners noted that certain countries may seek for particular wording to be included in a Certificate of Residence for the purposes of claim under a Double Tax Agreement, and this wording differs from the standard wording included on the Certificate. Revenue advised that practitioners engage with Revenue on a case by case basis in such instances to work to resolve the matter.

7. Agreeing Settlements

Practitioners asked about LCD's willingness to agree negotiated settlements in long-running cases and cases that are in the appeals system. Revenue noted that its approach to agreeing settlements is outlined in the *Code of Practice for Revenue Audits and other Compliance Interventions*. Revenue is willing to engage with taxpayers to establish if potential exists for resolution by negotiation, but this will depend on the tax at risk and the nature of the matter. Revenue will not reach a compromise if they consider that it is not justified based on the legislation. Revenue noted that participants in the CCF can benefit from a reduction in penalties and non-publication where disclosures are made following a self-review.

Practitioners queried whether Revenue conducted a review of the outcome of cases that had proceeded to the Tax Appeals Commission (TAC) to evaluate whether proceeding to appeal was the most efficient way to resolve the cases. This is considered on a case-by-case basis by Revenue. The issue under appeal may be a significant issue, a point of principle for Revenue or on which Revenue has a clear technical position. Revenue may wish to appeal to the Courts in some cases if unsuccessful at the TAC.

Practitioners suggested it would be useful to engage on technical issues at an early stage in the Revenue audit process where disagreements on interpretation arise. Revenue acknowledged that early engagement at the appropriate level may be beneficial. However, where clear differences of opinion on the legislative position occurs, it may not be possible to reach agreement and proceeding to raise an assessment is therefore appropriate.