



**Topics Discussion Draft – TALC Compliance Interventions Sub-committee
Meeting on 23 June 2020**

Section A. COVID-19 related changes to audits and interventions

Given the potential impact of COVID-19 on Revenue audits and interventions, we have outlined below some issues we think merit discussion at the TALC Compliance Interventions meeting and may potentially require updates to the Audit Code.

We understand that Revenue visits to business premises are not currently taking place and that this practice may continue in the short-term, at least, while social distancing and other restrictions remain. While the situation is still evolving, we would welcome feedback on Revenue’s planned approach to conducting audits and compliance interventions.

For example:

- What new approaches is Revenue considering and when will these start?
- How will changes in approach be communicated to taxpayers and practitioners, so that they can be clear on what to expect in a Revenue intervention?
- It may be more difficult for taxpayers and practitioners to respond quickly to Revenue requests as business reopen, try to rebuild and catch up with their tax return obligations. Can this be factored into Revenue’s approach, through reasonable timeframes to reply and focused queries?

If it is intended to make greater use of “desk audits” and aspect queries in place of the traditional audits carried out at business premises, we have identified below some questions and issues that we believe merit discussion. Updates to the Code or an addendum for COVID-19 related practices may be required to provide clarity on new practices and protocols.

1. Location of the audit

The Code indicates in paragraph 4.1 that Revenue will “normally visit the business premises”. If Revenue’s intention in the short-term is to conduct audits only by way of desk audits without visits to business premises, it would be useful to reflect this in the Code or addendum to the Code for the relevant period this restriction applies.

This would help taxpayers to be clear on what to expect from the audit. In addition, some businesses may refuse entry to visitors on health and safety grounds and would not wish this to be interpreted as an unwillingness to cooperate with Revenue. Therefore, clarity on the position would be very useful.

Does Revenue envisage circumstances where they must go on site, depending on the nature of the audit or perhaps more so in the case of investigations? If so, what protocol may apply?

2. Commencement of the audit

The opening meeting before the audit commences is a vital part of the audit process. It provides a taxpayer with the opportunity to make a Qualifying Disclosure (and explain the basis for same to Revenue), raise any particular points with Revenue and helps the Revenue auditor gain an understanding of the business, before the examination of the books and records begins. If it is the case that audits on the business premises will not happen in the short-term, we would suggest:

- The opening meeting should be replaced by a virtual meeting between the auditor and the taxpayer/agent.
- Clarity will be needed on the process by which Revenue receives and when they open the books and records. Some books and records may be available in electronic format but not all. In addition, the sequence and timing in holding the virtual meeting and supplying the records to Revenue, will need to be considered. For example:
 - Will the taxpayer be provided with a specific timeframe to supply books and records after the virtual meeting?
 - Can the taxpayer be provided with clarity on the specific information Revenue require to ensure information supplied is as required and complete, but not excessive?
 - Can the taxpayer supply Revenue with copies of the books and records, rather than the originals (if these documents are not available electronically)?
 - Taxpayers may be concerned about sending sensitive and valuable business information through the post. Where copies of physical documents must be provided could they be delivered to the local Revenue office to be forwarded to the auditor, via Revenue's internal post?

3. E-Audits

The e-Audit pre-meeting is an essential part of the e-audit process enabling Revenue and the taxpayer/practitioner to understand the electronic systems in use, and the records available and required. Frequently, Revenue also take a sample of data at this opening meeting, to ensure it can be analysed and this does not represent the beginning of the audit.

- We think the e-audit pre-meeting is of great value and should continue, even if it must take place virtually. In the current climate, the meeting could also be used to agree the logistics and parameters of the desk-based e-audit.
- If it is the case that the taxpayer must provide sample data to Revenue, at what point should this be provided and how will the taxpayer receive clarity that this is not the commencement of the audit?
- As noted earlier above, the records Revenue seek may not all be available in electronic format. Agreement would be needed on the timing and supply of the physical records.

4. Preparing Qualifying Disclosures

In the current circumstances, it could be difficult for a practitioner to access all the information they need to prepare a Qualifying Disclosure in some cases, due to businesses closures, staff working remotely without access to the required records, and restrictions on visitors to businesses premises. Where a Qualifying Disclosure is made in good faith and substantially

correct and complete it should be accepted as a valid Qualifying Disclosure, even if minor omissions are identified during the course of the audit or examination of the disclosure. In cases where full information cannot be accessed, practitioners could bring this to Revenue's attention as this could impact both the ability to make a disclosure and also the information Revenue will be able to review as part of the audit.

Hopefully, restrictions will be fully lifted in the months ahead and a resurgence of the virus will not result in further difficulties later in the year.

5. Payment issues

Cash-flow difficulties are likely to impact on a taxpayer's ability to maintain a previously agreed Phased Payment Arrangement to pay a tax settlement. We understand from Main TALC discussions that this will not automatically invalidate a Qualifying Disclosure, as the taxpayer can reengage with Revenue and seek to agree new payment terms.

In some cases, it may not be possible to pay the settlement, or pay it in full, regardless of the term of the arrangement. Therefore, inability to pay may become a factor that needs to be considered in more cases.

6. The use of aspect queries rather than audits

Revenue may favour the use of aspect queries where audits with visits to businesses are not possible. Taxpayers can often be unclear about the nature of an aspect query intervention. In particular, where detailed information is sought and it seems more akin to a Revenue audit.

Originally, and as outlined in the Audit Code, the aspect query was intended to be a short-targeted intervention focused on a particular risk. As we have outlined below, we think it would be helpful to discuss the scope of aspect queries as part of a review of the Audit Code.

In addition, particularly if Revenue intends to make greater use of aspect queries, it would be useful to address some of the inconsistencies in the timeframes to respond to queries.

7. Confirmation that letters are received

While many business premises remain closed, audit notifications or aspect queries may not be received if sent to the business address in the normal manner. Therefore, it would be important to send the letter via ROS also (and copying the agent).

Section B. Review of the Audit Code

There are a few key areas of the Code that we believe merit discussion and update, as part of Revenue's general review of the Code:

1. The definition of an "aspect query" and of "profile interviews"

The scope of aspect queries (and profile interviews) in practice has evolved over the last number of years. For example, some aspect queries may be short, targeted interventions focused on a particular risk¹. However, other queries can be more detailed and lengthier and similar to an audit. As a result, the definition of these interventions in the Code is not fully aligned with their application in practice. We think it would be useful to explore this topic in the review of the

¹ Paragraph 2.3.2 Code of Practice for Revenue Audit and other Compliance Interventions

Code, as it is important that taxpayers can be clear on the nature and scope of each type of compliance intervention.

2. The practical application of the “innocent error” and “no loss of revenue” provisions

The “innocent error” provision is an important acknowledgement that a penalty should not apply where a default was not deliberate or attributable to the failure of the taxpayer to take reasonable care. Similarly, “no loss of revenue” recognises that an oversight can arise that does not impact on the Exchequer. Feedback on practitioners’ experiences indicates that it is proving challenging to obtain agreement from Revenue on the application of these provisions. It would be useful to establish in what proportion of interventions Revenue accept that these provisions apply.

3. Technical adjustment

The Code acknowledges that adjustments arising from differences in the interpretation or application of the legislation (as defined) should not result in a penalty. However, in practice taxpayers can find Revenue reluctant to accept a technical adjustment applies in genuine cases where interpretation can differ.

For example:

- In R&D audits, when considering the question of whether the development satisfies the “science test”.
- In Transfer Pricing interventions, there can often be differences in the arm’s length price determined by taxpayers and Revenue, together with the underlying methodology for calculating same. Determining an arm’s length transfer price involves a significant amount of subjectivity and is based on the application of various conditions relating to the parties involved. This is evidenced by the lengthy duration of transfer pricing audits.
- In the valuation of shares for CAT, situations can arise where differences occur between the valuation determined by the taxpayer and his/her advisers/valuers and the valuation determined by a Revenue valuer.
- The mix of qualifying and excepted assets in share transfers for Business Property Relief and Retirement Relief. This mainly concerns the level of cash retained in the company at date of transfer.

4. Timeframes

The taxpayer has 14 days from the receipt of the notification of the audit to tell Revenue of their intention to make a prompted qualifying disclosure, and avail of the extra 60 days to prepare that disclosure. By the time the taxpayer receives the letter and discusses it with their agent, a week may have elapsed. Therefore, the taxpayer and practitioner can find it difficult to determine in the time allowed whether a disclosure is required. This can result in requests for time to prepare a disclosure when a disclosure may not ultimately be submitted. We think more time to consider whether a disclosure is necessary would be beneficial in minimising requests for additional time, when no disclosure may ultimately be forthcoming.

Member feedback indicates that the 21-day period of notification of an audit is generally a very short time to prepare for an audit, to review any issues with the client and prepare a Qualifying Disclosure to present on the day, if necessary. We also know from Revenue that

requests to reschedule audits are quite common. A longer audit notification period would provide the taxpayer/practitioner with additional time in order to be better prepared for the audit and could reduce the amount of rescheduling of opening meetings.

5. Improving transparency and reducing audit duration

We provided feedback previously on ways to develop more transparency and “milestones” in the audit process, perhaps this feedback could be considered in the context of any future changes to the Code.

6. Compliance checks in relation to the Temporary Wage Subsidy Scheme

While the wage subsidy itself is not a tax, Revenue is administering the scheme and the associated recoupment of overpayments and charging of any penalties. Therefore, presumably Revenue’s approach to compliance checks and related activity will need to be documented in the Code. Given the speed at which the scheme evolved, employers will have made some mistakes despite their best efforts to comply with the requirements. Revenue’s stated intention is to adopt a fair, reasonable and pragmatic approach to the scheme’s operation. This will be important and Revenue’s approach to compliance will merit discussion, especially as the focus moves to the “reconciliation phase” and beyond.