Summary Note of Branch Network Meeting between the Irish Tax Institute and Revenue's Large Cases – High Wealth Individuals Division (LC-HWID)
30 September 2021
Via Microsoft Teams

Key points from the meeting

Practitioners and Revenue acknowledged the useful engagement at the previous meeting in 2020, and practitioners acknowledged the steps the Division took to address issues raised at that meeting.

1. Update on LC-HWID

The structure of LC-HWID remains largely unchanged from the last meeting, and consists of a Divisional Office Branch, three High Wealth Individuals (HWI) Branches, a Pensions Branch and the National Anti-Avoidance Branch which has been expanded into two Branches. There are approximately 130 to 140 staff in the Division, with circa 20 staff in Pensions Branch, a further 20 in the National Anti-Avoidance Branches and the balance primarily working in the HWI Branches.

The Division developed and expanded the anti-avoidance responsibilities in the Division to have two National Anti-Avoidance Branches, with one Branch focused on legacy cases and the second Branch focused on current and future anti-avoidance activities. The National Anti-Avoidance Branches do not have a defined case base, unlike the HWI Branches.

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 have an economic interest in the family business or are party to substantial transactions with HWIs).

The case base is reviewed annually with additional cases added based on information available from tax filings, third party data and a range of other sources. To the extent that there are large trading companies connected with HWIs, these continue to be dealt with by Medium Enterprises Division or Large Corporates Division, as appropriate.

There are now approximately 1,200 primary cases dealt with by the Division and 1,400 secondary cases. Revenue continues to identify secondary cases from their profiling of primary cases and expects the number of cases to increase over time. Approximately 340 further secondary cases have been identified. Where there are secondary cases which have significant economic ties with a primary case, that are identified by practitioners, these can be brought to the Division's attention.

2. Remote Working Arrangements

Some challenges were experienced initially on adapting to remote working, in particular, when on-boarding new Revenue staff. However, remote working is now well established and has been found to work effectively. Revenue is facilitating the use of multiple virtual platforms, for example, Skype, Zoom and Microsoft Teams, to enable staff to work effectively on a remote basis.

Subject to the lifting of public health restrictions proceeding as planned, from 22 October 2021 Revenue will be able to facilitate physical meeting where necessary in their offices or at the client/agent premises.

Similar to other organisations, Revenue has been gathering feedback from staff in relation to their preferences and business needs in examining the future of remote working. From 22 October until March 2022, Revenue will be in a transitional period. After that staff are likely to move to a new hybrid model which it is expected will facilitate Revenue officials working remotely on a number of days each week. The sanctioning of remote working will be subject to the business needs of the Division.

LC-HWID does not anticipate that on-site audits will recommence until after the transitional period ends i.e., after March 2022.

Since the move to remote working due to the pandemic, LC-HWID provides contact details of the caseworker and Principal Officer in-charge on all correspondence issuing from the Division. Practitioners welcomed this approach and its helpfulness when engaging with the Division in a remote environment. Practitioners were supportive of physical meetings, where required, as in-person meetings can aid better understanding of and resolving of disputed issues.

Practitioners noted the challenges that can arise for organisations from remote working, for example, training and monitoring of junior personnel. Due to the nature and size of the Division, Revenue considered that those issues are well addressed within LC-HWID.

3. Process for dealing with technical queries in the Division

Revenue clarified that complex and technical queries in relation to HWIs in the case base are dealt with by the Division and should be submitted directly to the case worker. Revenue's central Revenue Technical Service (RTS) is only for technical queries relating to taxpayers dealt with by the Business, Medium Enterprises and Personal Divisions.

LC-HWID will examine all technical queries submitted in respect of their case base and form a view of the response. If the response is a point of interpretation that may create a precedent, the Division will liaise with Revenue Legislation Services (RLS) before providing a response to ensure consistency of interpretation across all taxpayers and all Revenue Divisions.

Revenue strives to answer technical queries as quickly as possible. However, a response can be delayed in certain complex enquiries and if it is necessary for the Division to engage with RLS on interpretation. If a response has been referred to RLS, the Division can advise the agent of that fact when the agent seeks an update on the status of the query.

4. Recurring Technical Issues

Revenue noted a number of recurring issues they wished to bring to practitioners' attention:

CGT losses forward: As set out in Tax and Duty Manual (TDM) 19.02.05, the year of use of the loss is the relevant point for Revenue, in raising an enquiry and seeking information regarding the loss. Some tax agents consider that it is the year of origin of the loss that is the relevant point and therefore, argue that Revenue is out of time when raising an enquiry. Revenue is very clear on its position that a loss is open for enquiry based on the point of use and even if part of the loss has already been used. Revenue will use its powers under section 900 to seek such information, if necessary.

CAT and "excepted assets": In the case of Business Property Relief claims disagreements can arise on the amount of cash that is treated as an "excepted asset". Revenue noted that the legislation is framed in the context of a historical "look-back" test in determining the amount of cash that is surplus to that required for trading purposes, unlike in the UK which applies a "look-forward" test.

Practitioners queried whether Revenue has considered a recent Tax Appeals Commission Determination on excepted assets. Revenue acknowledged the recent Determination. Revenue wishes to be very clear on their interpretation of the position.

CGT reorganisations under section 584/586 on the tax return: Notwithstanding there may be no disposal in reorganisations availing of these reliefs, Revenue's position is that the consideration must be included on the tax return. Revenue would expect the market value is returned.

Gains on foreign currency balances: Revenue considered that taxpayers may not be fully aware of the need to calculate tax on gains arising on foreign currency balances.

Practitioners noted the burdensome nature of the calculations required (in accordance with the principles in Bentley v Pike) in particular for HWIs who may be constantly moving money in and out of investments, thus requiring continuous calculation of gains and losses on balances. Large transactions may be identified but smaller transactions may be overlooked. HMRC removed a similar rule where it related to individuals.

Practitioners queried whether a more practical approach to calculating the gains/losses could be applied by concession. Revenue noted there are no current concessions and that this matter may be more appropriate for consideration at TALC.

eCG50: Where a clearance certificate is issued based on a draft contract, Revenue expects the final contract to be submitted shortly afterwards.

Practitioners noted that the taxation of foreign pension lump sums remitted to Ireland was another current technical matter and that it was currently under discussion at TALC.

5. Divisional Office update

New cases come to the Divisional Office first prior to being allocated to one of the three HWI Branches. All cases are provided with the contact details for the Principal Officer (PO) in charge of the Divisional Office who can be contacted if a taxpayer is unsure of the details of their nominated case worker.

The Divisional Office also deals with service issues. For example, the Divisional Office monitors all MyEnquiries to ensure they are allocated and dealt with by the relevant casework and also follows-up on any non-filers.

6. **Pensions Branch update**

Assistant Principals John O' Neill and Dara MacDonnacha attended the meeting on behalf of Laurence Murtagh, Principal Officer of Pensions Branch. The work of Pensions Branch involves customer service (including approval of occupational pension schemes) and compliance activities in relation to pension schemes.

All approvals are now sent through MyEnquiries or TLS since the onset of the pandemic. Since this approach has been so successful, Revenue intends to continue to use these channels of communication as their primary channels for pension scheme approvals going forward and to remove hardcopy post communication as far as is possible.

Currently, the main risk area of compliance focus is small self-administered schemes e.g. one-member schemes. The Branch also deals with general and technical pension queries including those from other Revenue Divisions.

Revenue is participating in the pensions reform agenda and an interdepartmental strategy group on pensions. One of the key elements in pension reform is a reduction in the number of pension schemes. This will enable Revenue to spend additional time on queries and compliance activities.

Revenue is expanding its compliance activities in relation to small self-administered schemes. A particular area of focus has been deemed distributions where assets are transferred to a beneficiary of the pension fund or to another connected party.

As part of its regular engagement with the Association of Pension Trustees of Ireland, Revenue has had constructive engagement on appropriate due diligence activities. In the event of a compliance intervention, the trustee must be able to show that there are checks and controls in place to ensure transfers are not made to connected parties. For example, a signed declaration from the member of the pension scheme that the party in receipt of the transfer is not connected is insufficient.

7. **HWI Branches**

The three HWI Branches are divided on a sectoral basis, primarily based on the source of the HWI wealth; manufacturing, retail and technology. All three Branches also deal with the property sector, given the proportion of wealth invested in the property sector. Each Branch interacts and shares information. Revenue agreed to share a breakdown of the sectors and an organisational chart subsequent to the meeting.

Children of HWIs are not automatically added to the Division's case base. Only children of HWIs who have a significant economic interest in the HWI's business affairs are included. If an open intervention is underway on the child's tax affairs in another division it will generally proceed in that division, other than in a small number of cases where Revenue may consider it more appropriate for LC-HWID to handle the case.

Practitioners highlighted the confusion that can arise for a HWI where they provide a significant gift to a child and discover that the child is dealing with queries from another division in Revenue, when LC-HWID is familiar with the HWI's tax affairs. In such circumstances, it would be preferable for LC- HWID to deal with any necessary queries in relation to the child, in light of the division's knowledge of the family's affairs.

Revenue advised that if a significant gift has been made, the practitioner can advise LC-HWID of that fact and request the child's inclusion in the Division's case base and Revenue will consider the request. Entry into the Division's case base is driven by set criteria based on the business and economic interest of the individual. However, Revenue can examine requests for entry.

Particular areas of interest for the Branches for queries and interventions include:

- **Capital Taxes** i.e. CGT, CAT and Stamp Duty
- **Pension** issues and risks
- **Domicile Levy**: A new project is commencing. Cases have been profiled and query letters are expected to issue by the end of 2021 or in Q1, 2022. In cases where matters are particularly complex and the request appears expansive but may be necessary, Revenue intends to telephone the tax agent when the letter is issuing to advise of its issue before it is received. Revenue is also willing to have a meeting in individual cases and engage on the scope and risks covered.
- **Conclusion of interventions**: At the end of a compliance intervention where agreement cannot be reached, the Division intends to provide a "letter of findings". Revenue wants to be very clear on what matters in the intervention have been resolved, what matters remains unresolved and Revenue's position if there is disagreement on the technical tax position. The issue of such a letter is intended to ensure that there is no ambiguity on Revenue's position at the end of the intervention process.
- The Division's focus on **CGT and connected parties** is continuing.

8. National Anti-Avoidance Branches

The Division contains two National Anti-avoidance Branches. Branch 1 focuses on current and potential future avoidance issues and uses data analytics as one of its tools in identifying risks. Topics currently on its agenda include disguised remuneration and loans involving Employee Benefit Trusts.

The Branch also participates in Revenue's National Anti-Avoidance Network (NAAN) which facilitates the sharing of information on risks and experiences across Revenue's divisions.

A project on Transborder Workers Relief commenced last year and 80 cases were opened, the bulk of which are now closed, with only circa 26 remaining open at this point.

Branch 2 is focused on finalising legacy cases i.e. cases arising pre-2018. The Division wishes to conclude cases as soon as possible and is pro-active in preparing for cases proceeding at the Tax Appeals Commission (TAC), attending hearings, case management conferences and adapting to the TAC scheduling of hearings. A number of cases are proceeding in the Courts including that concerning artificial capital losses and share rights issue at the Court of Appeal, and three cases at the High Court.

9. Engaging with the Division in the COVID-19 period

As regards turnaround time in dealing with correspondence from practitioners, Revenue's aim is to expedite matters as quickly as possible and not have long delays in response times. Examples of experiences where considerable delays arose in receiving a response from the Division should be submitted for the Division's attention. In individual cases, practitioners can contact the case worker, the Principal Officer, or Divisional Office if the case worker is unknown, to expedite matters.

Practitioners requested that Revenue bear in mind the busy compliance period over the months ahead when scheduling projects, given the challenges for practices in dealing with new queries in a complete and timely manner at the busiest time of the year.

10. Practical aspects of the updated guidance on Exchange Traded Funds (ETFs) and the implications for the Division's case-base

Practitioners referenced the recently issued Tax and Duty Manual (TDM) on the tax treatment of Exchange Traded Funds (ETF) which altered the simplified approach previously provided in an eBrief in 2015, for example for US ETFs. Practitioners outlined the practical challenges in sifting through lengthy investment reports and complex legislation in relation to offshore funds to determine the exact nature of taxpayers' investments and their treatment for tax purposes.

The withdrawal of the concessionary treatment from January 2022, by the TDM, adds to the complexity and required analysis of investments when Revenue's position on the tax treatment had previously been clear.

In addition, the facility to make a qualifying disclosure in relation to an error in the tax treatment of such investments is very limited as they may constitute "offshore matters" for the purposes of section 1077E TCA 1997.

The changes to the TDM and questions on the rationale for the change have been raised at TALC, however, practitioners wished to make the Division aware of the practicalities and potential implications from the change contained in the TDM.

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The process and timeline for obtaining approval for a charitable foundation was raised. It was acknowledged that approval from the Charities Regulatory Authority was required first, followed by an application to Revenue. It was queried whether the overall process could be quicker, especially in light of the age profile of many individuals establishing such foundations. Revenue agreed to examine the matter.

Subsequent to the meeting, LC-HWID provided the Institute with the following:

- A chart of the main sectors for HWI cases, as allocated to each HWI Branch
- An organisational chart for the senior management team in LC-HWID