Preliminary Comments on DRAFT Chapters 1 and 2 of the Code of Practice for Revenue Compliance Interventions

Discussion Draft

We appreciated the opportunity to discuss and raise queries on draft chapters 1 and 2 of the *Code of Practice for Revenue Compliance Interventions (the amended Code)* at the special TALC Compliance Interventions sub-committee meeting on 18 June. We found this helpful in gaining a better understanding of Revenue's intentions and rationale for the proposed amendments, so we could make more informed preliminary comments on the contents of the draft chapters. We outline some key points, comments and additional queries on the draft, having reflected on Revenue's clarifications. We can revisit the points at the next meeting, when you have had an opportunity to consider the issues raised during the meeting and subsequently.

While we can provide some preliminary comments and observations on the draft chapters as they become available, we will need to review the updated draft amended Code document "in the round" to properly comment on its possible implications for interventions, fair treatment of taxpayers and to ensure that the important cross-references embedded in the Code remain in place.

We have grouped our main points on the draft chapters under two headings:

- Communications with taxpayers (and agents) during the different stages of the compliance intervention process.
- The provisions in the Code that recognise genuine errors occur or differences in views can arise. We include in the appendix some illustrative real-life examples where matters are subjective, yet it is difficult to get Revenue to agree that a penalty should not be applied.

Regarding the instigation of Level 3 investigations for certain "Tax Avoidance Reviews", as outlined at the meeting we have serious concerns about the conflation of tax avoidance and tax evasion that the text and approach suggests. They are two very distinct concepts. If Revenue wish to adopt a different approach to challenging perceived avoidance, in our view a change to legislation would be required i.e. it is not a matter that can be dealt with in the manner proposed in the amended Code.

Communications with taxpayers (and agents) during the different stages of the compliance intervention process

1. **Direct communication with the taxpayer**
   As outlined, direct communication with a taxpayer by Revenue in respect of a compliance intervention is essential. Paragraph 1.2.2.1 suggests that communication on Level 1 interventions could be by way of a press release or media coverage on a particular topic, but taxpayers may not see this communication or appreciate that it is directed at their situation.

Based on the discussion, we understand that what you may intend to convey here is that Revenue may not start all interventions at Level 1 i.e. the Levels are not an escalating step plan and interventions could start at a higher level depending on the perceived tax risk and the availability of published guidance by Revenue on the tax treatment. We suggest it may be useful to review the wording of the paragraph to clarify Revenue's intention.

2. **Notification by hard copy letter**
We welcome the confirmation that interventions will be notified via a hard copy letter to the taxpayer and the agent on record. Given the serious consequences and risks for taxpayers if, for example, a Risk Review or Audit Notification is overlooked communication via MyEnquiries or the ROS inbox would be insufficient.

3. **Categorisation/Level marked on the notification**
We note that the categorisation will be clearly marked on the notification i.e. Level 1, 2 or 3. This should also provide assurance to a taxpayer/agent that routine correspondence they receive from Revenue on day to day matters are not within the framework (as they will not be marked in the required manner).

4. **An explanation if a Level 1 intervention is escalated, following receipt of a disclosure**
Paragraph 1.3.5 in the draft, includes an example of the escalation of an intervention from Level 1 to Level 2 where Revenue "is not satisfied" that an unprompted qualifying disclosure is a valid qualifying disclosure (and a Level 2 notification is issued). In such a situation, it would be important for Revenue to provide feedback on the initial disclosure and the reason why Revenue is not satisfied. A taxpayer may not otherwise understand the disclosure's shortcomings and will only have 21 days to make prompted qualifying disclosure.

5. **Scope of Risk Reviews**
A Risk Review is defined as "a focused intervention to examine a risk or a small number of risks". A Risk Review notification triggers a taxpayer's final chance to make a prompted disclosure in respect of the tax heads within scope of said notification. As such, this implies that a taxpayer would be expected to carry out a self-review of the entire tax head within 21 days to determine whether there are any underpayments which required disclosure. Clarity on Revenue's expectations of taxpayers that also bears in mind the intended purpose of a Risk Review would be welcome.

6. **Clarity on the specific risks in the Risk Review notification**
Revenue's confirmation that the instigation of Risk Reviews will not replicate the broad use of Aspect Queries and that their use will be monitored is welcome. It will be important that all Risk Review notifications clearly state the tax head(s) and period(s) within scope of the Risk Review so that taxpayers are fully aware of the tax heads and periods which must be considered in the context of a prompted qualifying disclosure. It would be helpful if the letters could be as specific as possible, for example, on the nature of the issue which triggered the intervention, to aide a response. A focused approach would assist taxpayers in dealing with matters in a timely manner.

7. **Communication after the issue of a Risk Review notification**
Normally, there is some communication between Revenue and the agent/taxpayer between the issue of an audit notification and the start of an audit. As a Risk Review is unlikely to involve Revenue's arrival on-site or opening of the books and records, what communication will issue from Revenue on expiry of the 21-day notification so the taxpayer knows the intervention is beginning? Presumably, a Risk Review will never be a fully self-contained

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exercise with Revenue reviewing the records Revenue already holds on file. Perhaps the process will become clearer once we see the template letters and we can then discuss the process further.

8. Timeframe for responding to Revenue

Currently, the 21-day audit notification period is quite short. A week may have elapsed by the time the client and agent receive the notification and can meet and start to consider the issue at hand. We think as part of the Code update it would be useful to re-examine the suitability of a 21-day timeframe (for a Risk Review and Audit notification) and consider an extension to at least 28 days.

If a key objective for Revenue in the new framework is to accelerate progress on interventions and the receipt of disclosures, it would be beneficial to ensure that timeframes do not hinder this objective. In addition, the more serious consequences of not making a valid, timely and complete qualifying disclosure merit the provision of sufficient time to properly review the risks Revenue has identified. While taxpayers/agents can obtain an extra 60-days to prepare a disclosure, provided they inform Revenue within 14 days, this notification presupposes that a qualifying disclosure will be made - which may or may not be the case. In some instances, an explanation of the issue raised may allay Revenue concerns that tax is underpaid.

9. Understanding the Risk Review process

A taxpayer may have appraised the risk identified in a Risk Review notification and is satisfied that there has been no underpayment. We would welcome clarity as regards the level of detail/assurance they would be expected to provide to Revenue to substantiate that there has been no underpayment. In addition:

- Where Revenue ask further queries arising from a taxpayer's response to a Risk Review, will those queries be addressed through the continuation of that intervention or will they be escalated to an audit?
- What instances/triggers points would arise where a Risk Review may be escalated to an audit?
- How is the Risk Review distinguished from an audit; for example, could a Risk Review involve an on-site visit from Revenue?
- Where a taxpayer makes a disclosure on additional areas which were not the subject of the Risk Review, what impact will this have on the process?

Perhaps we can discuss the matters above at our next meeting.

10. Timelines for progressing interventions and tracking progress

All interventions involve costs and time for taxpayers, so it is important that matters progress efficiently and that taxpayers are aware of the status of their intervention. We would like to see some online facility where taxpayers can keep track of the status of their intervention. Where an intervention spans a number of tax heads, it would be helpful to see a status update for each tax head.

In the interim, we understand from engaging with Large Corporates Division (LCD) through our Branch Network that Revenue has an audit information project management tool, which tracks progress on audits, what information had been requested and provided, is still outstanding and the output of this can be shared with the taxpayer/agent. We think such an approach would be helpful in ensuring all sides are clear on what has been requested and

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supplied and what is outstanding. This is particularly important given the increased emphasis on "full cooperation" in the amended Code (in paragraph 2.17).

11. **Notification regarding absence of "full cooperation"**
    The process for issuing a letter than warns mitigation for cooperation may be withdrawn would be worth discussing. It is important that it is operated in a fair manner and only in instances where there are no legitimate reasons for difficulties in complying with Revenue's requests. Delays can arise on both sides in dealing with interventions for a variety of reasons and due to factors outside of a taxpayer's control, for example, difficulties accessing information.

12. **Communication on closing interventions**
    Closure Notice
    Revenue has acknowledged that taxpayers should receive closure notices in all cases when the intervention is concluded, so that a taxpayer can be certain where they stand. However, this has not always happened in practice. Perhaps this closure notification could be built-in as a component of the IT developments underway to facilitate the new framework?

    Letter of Findings
    Where an intervention concludes and is accompanied by the issue of an Amended Assessment, we believe a letter of findings should be issued by Revenue which would detail the basis of the assessment and the components of the assessment, as this will be important to a taxpayer's decision to try to reach agreement or lodge an appeal with the Tax Appeals Commission.

The provisions in the Code that recognise genuine errors occur or difference in views can arise

Our reading of the draft amendments to the language in the Code on innocent error, technical adjustment and no loss of revenue suggested a hardening of Revenue's approach to these provisions. We understand from the discussion that it was not the intention to further restrict these provisions, but rather to simplify the language and minimise duplication in the amended Code. However, those who use the Code every day as their "rule book" for interventions may infer a change in Revenue's compliance policy where that is not intended. Therefore, we would welcome review of the some of the language and have some comments below.

1. **Assumptions regarding penalties:** In paragraph 1.2 of the amended Code (Supporting Compliance), Revenue notes that even the most compliant taxpayers can make mistakes and references that the options to self-correct and make unprompted disclosures "*are available to ensure that interest and/or penalties are kept to a minimum.*" Paragraph 2 (Regularising tax defaults) also refers to taxpayers who avail of these opportunities will experience *"the minimum level of penalty."* There is an implication in the text that penalties will always apply, even if they are minimal. Recognition in the Code that taxpayers will, inevitably, make errors and that penalties may not always apply is important. We think a reference to "*penalties are kept to a minimum, if penalties apply at all."* for example, in paragraph 1.2, would be more appropriate.
2. **Correcting an innocent error (2.3):** We think the reference in the current Code that the materiality of the error being corrected by a company is considered in the context of the overall tax payments made by the group of companies (of which the company is a member) is helpful in outlining how the test is applied in such circumstances. We think it would be useful to reinstate this reference in the text.
3. **Technical adjustments (2.4):** The Code acknowledges that adjustments arising from differences in the interpretation or application of the legislation (as defined) should not

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result in a penalty. However, in practice taxpayers can find Revenue reluctant to accept that a technical adjustment applies in genuine cases where interpretations can differ and where matters are subjective. We outline in the appendix some examples to illustrate where a subjective view is taken by the Inspector and agent and a compromise is ultimately reached.

4. **No loss of Revenue (NLOR) (2.5)**: Following on from the discussion on an appropriate word to convey the policy intent Revenue detailed i.e. that NLOR is not available where the taxpayer has stepped outside of their VAT obligations to a considerable degree, we think that the term “egregious failure” more closely reflects what Revenue wishes to convey than “significant failure” and suggest that it be adopted in the text.
5. **Interaction of self-correction and NLOR provisions (2.6):** The self-correction mechanism incentivises taxpayers to regularly review their tax returns and regularise any underpayments without the imposition of a penalty. This may include instances where a taxpayer regularises a NLOR position within the self-correction window. Section 2.6 of the Code provides that NLOR claims will be subject to a penalty, with the exception of those categorised as innocent error or technical adjustment. It is our understanding that no penalty should apply in cases where NLOR positions are regularised within the self-correction window. We would welcome specific reference to this in the Code.

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Appendix - Examples regarding technical adjustment[1]

Example 1 CAT Cash as Excepted Asset

Shares in Alpha Ltd are transferred from mother to child. The shares are worth €10m.

The Balance Sheet of the company at date of transfer shows total assets of €15m including cash of €5m.

The client is of the view that the €5m is required for current and future commitments. The inspector argues that only €2m is required for the trade.

Calculations simplified

If inspector is correct		€3m@33% =	€990,000
	Less	€.3m @ 33%	€ 99,000
		Liability=	€891,000

Eventually a settlement is made and it is agreed that €4m is needed for the trade.

Additional tax €1m @ 33% = €330,000

Less €.1m @ 33% € 33,000 Additional Tax = €297,000

- No voluntary disclosure was made.
- No guidance as to the acceptable level of cash needed for a business – it depends on the facts in each trade.
- UK has regard to future commitments.
- Irish tax legislation is silent on this point.

Question what penalties are to apply?

Example 2 CAT Share Value

Same case but no issue with the mix of assets included.

Agent values shares at €15m – Backed by Valuers report.

Inspector engages Valuer who values shares at €17m.

Additional Tax €200k @ 33% = €66,000 (full Business Property Relief (BPR)).

What penalties are to apply?

Example 3 R&D

R&D Tax Credit claimed of €1 million.

Taxpayer believes that its activities meet all criteria to be considered R&D activities. Revenue argues that the R&D does not meet the scientific/technological uncertainty test.

Eventually a compromise agreement is reached with the Inspector on a 50:50 split. Additional liability of €500K

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[1] The examples are provided for illustrative and discussion purposes only.

What penalties are to apply?

Example 4 Transfer Pricing

Company X is engaged by a related-party as a contract manufacturer, remunerated at cost plus 7%.

On foot of an audit, Revenue argues that a mark-up of 10% is more appropriate.

Company X does not agree with Revenue's position but, in the interest of bringing the audit to a close, agrees to settle based on a mark-up of 8%. This results in additional tax of €4m.

What penalties are to apply?

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