

## **Summary Note of Branch Network Meeting between the Irish Tax Institute and Revenue's Medium Enterprises Division (MED)**

**15 March 2022**

**Via Microsoft Teams**

### **Key Points from the Meeting**

#### **1. Overview of MED**

There have been a number of new appointments at Principal Officer (PO) level in the Division since the last meeting in March 2021. Carol Durac has joined MED as the PO in charge of Revenue Technical Service (RTS), replacing Brendan Kelly. Olivia Phelan has been appointed PO in charge of the Manufacturing Branch, following the retirement of Ciaran Toohey.

At the end of February, there were 425 full time staff equivalents in MED. This compares to 460 staff prior to the pandemic. Work is underway in MED and within Revenue more generally, to reshape the workforce given retirements and the competitive labour market. It is expected that the final footprint of MED staff will be 492 full time staff equivalents, with a focus on recruiting higher grades, where possible.

MED's case base has increased from 40,000 to 74,000 cases over the last year. The increase in cases is primarily driven by an increase in online non-resident cases since 2020, following Brexit.

There has been strong economic growth in the MED case base despite the pandemic. Revenue receipts overall increased by 20% in 2021, with receipts from MED cases increasing by 18%. MED collected €22.2 billion in tax in 2021, an increase of €4 billion on the prior year, with 88% of tax collected derived from businesses with annual turnover of less than €50 million.

Notwithstanding that 6,000 MED taxpayers were eligible for the Debt Warehousing Scheme, equating to approximately €8 billion in tax liabilities available for warehousing, only €1 billion is warehoused, with most businesses continuing to pay their tax liabilities as they fall due.

#### **2. MED Sectoral Branches**

MED has a complex and diverse case base and has sought to further realign its case base over the last year. The entry threshold for MED has increased to €8.8 million in annual turnover for companies (and includes the proprietary directors of such companies and connected parties). The transition of some cases between Revenue's divisions is still underway.

Each Assistant Principal (AP) led team is made up of Higher Executive Officers or Administrative Officers, Executive Officers and in some cases Clerical Officers. The case base for most MED sectoral branches increased over the last year. The fastest growing case base is the area of non-resident online businesses, which have increased from 11,000 in 2020 to 36,000 in 2022.

Revenue agreed to provide a detailed [organisational chart](#) following the meeting.

#### **Priority Areas of Focus in Compliance**

MED has transitioned to examining risk and compliance with reference to groups. This allows MED to examine the nature and magnitude of a group's activities before opening interventions.

When examining a group, each company and director in the group will be profiled, although this does not mean that interventions will be opened on each party profiled.

MED will also start multi-year sectoral profiling to identify areas of emerging risks. A sample of current areas of emerging risk is below:

- Cryptocurrency risks e.g. relating to service providers established in Ireland. Work on this area will also involve Revenue's Business and Personal Divisions.
- Film entities and sporting bodies
- Incorporated medical practices, out-of-hours and nursing home service providers
- Motor dealers, transport, couriers and security companies
- VAT fraud in wholesale, in particular in the Fast Moving Consumer Goods (FMCG) sector
- Increasing capabilities in mineral oil and closing out current interventions and opening new interventions
- Retail, pharma, clothing and footwear to identify anomalies on VAT rates
- Construction as an ongoing area of focus
- Applying the learnings from the COVID-19 Support Schemes about a business's attitude to risk. Revenue may instigate more frequent reviews of businesses where Revenue has challenged a business's eligibility for the supports. Practitioners queried this in the context of the EWSS.

### **Employment Wage Subsidy Scheme (EWSS)**

Revenue provided an update on the EWSS, which included responses to queries raised by practitioners in advance of the meeting on compliance activity, appeals etc. Practitioners also raised the challenges for practitioners when positions were taken in real-time on an employer's eligibility for the scheme, but rules and guidance subsequently changed, presenting a difficulty in determining the basis of assessment when engaging with Revenue. Revenue clarified that while the eligibility rules changed as the scheme was extended, rules and guidelines did not change retrospectively.

Revenue has conducted in excess of 4,000 eligibility checks and recouped €21 million in subsidies. The EWSS is being wound down and Revenue is currently considering how it can gain overall assurance regarding the approximately €7 billion expended on the EWSS. Revenue will advise the Institute of its plans at the beginning of April.

PRSI of over €1 billion was also credited before the reinstatement of the full rate of Employer PRSI on 1 March 2022. Currently, 22,500 employers are availing of the EWSS, with the majority of eligible employers now in receipt of the flat-rate of €100 per eligible employee. Businesses primarily in the hospitality sector are eligible for the EWSS-PHR (Public Health Restrictions) and the deferred exit from the scheme that was announced in December. Revenue contacted employers outside of the hospitality and entertainment sectors who were claiming the EWSS-PHR to confirm whether the claim was appropriate. The majority of employers were claiming the EWSS-PHR in line with the eligibility criteria, however, some employers who were indirectly impacted by the December restrictions had claimed the EWSS-PHR. Revenue has advised them that this is incorrect and required their exit from these claims.

Compliance Checks are risk-based, and predominantly carried out in real-time. Approximately 862 interventions are currently open. Appeals have been lodged in less than 10 cases (this figure includes linked cases). The appeals involve matters such as employee eligibility and the use of projections by employers.

Assessments will issue in cases of non-engagement. Revenue has also observed requests by advisers/taxpayers for additional time to submit the material used to conduct their eligibility reviews, which suggests to Revenue that required monthly eligibility reviews were not conducted in some cases.

Revenue expressed surprise that questions are arising at this point regarding the EWSS Guidelines. The Guidelines have not materially changed except to reflect changes introduced by legislation, for example, to the eligibility period, to extend the scheme and enhance it and provide flexibility to enable certain businesses to re-enter the EWSS in December. Revenue noted that the Guidelines were updated as soon as possible and not otherwise altered, but rather added to, for example, to include anti-abuse provisions. Revenue reacted quickly to update guidance and systems and address queries as they arose, and these were dealt with through various fora.

Practitioners acknowledged that the EWSS was a huge undertaking and the pressures on Revenue to implement the scheme, which has by and large worked well. The Guidelines provided additional clarity for businesses. However, businesses would have made decisions regarding their eligibility under pressure in a short period of time and in the absence of the additional information provided. This may have led to some misunderstandings of the scheme's rules and practitioners requested that Revenue consider this context when dealing with individual cases.

Revenue's Compliance Checks indicate that the vast majority of claimants were eligible. Revenue is dealing with a handful of cases which appear to involve a misunderstanding of the rules and in a small number of cases, abuse of the scheme.

Revenue is considering a final assurance programme on the EWSS for employers who have not been subject to Compliance Checks by Revenue. Revenue is also examining employers who would have received the EWSS for July and August 2021, when they were ineligible, because the date when subsidy payments were stopped for non-filing of the initial Eligibility Review Form was deferred to 1 September 2021.

### **Work Arrangements**

Revenue has reviewed the experiences of the last 18 months, including the experience of remote working. The majority of Revenue staff are in favour of a blended working arrangement, and this will be a feature of work practices in Revenue going forward. The policy governing blended working is being developed.

Revenue will return to its normal core compliance activity, which will include outdoor activities and visits to businesses. The return to the office is being phased-in, starting with staff performing critical roles that require office attendance. In addition, there is a significant number of new and inexperienced staff who need to be integrated into Revenue's operations, to help build their capabilities through interactions with more senior colleagues.

Revenue will still engage in remote interventions which have worked well. On occasion and where necessary, Revenue will make on-site visits.

The vast majority of Revenue staff have phones and can make and receive calls. Phones can be sourced by staff if necessary.

## **MyEnquiries**

MED is conducting an analysis of MyEnquiries responses to identify the cases which take more than 30 days to close and identify the reasons for the time taken to close. The Service for Compliance Branch received 15,000 queries in 2021. 84% of these were closed within the Customer Service Standard of 20 working days. This can be further broken down to 52% (8,000) closed within 2-5 days; 14% (2,000) within 6-10 days and 18% (2,800) within 11-20 days. A further 8% (1,200) were closed within 21-30 days.

However some queries are taking longer than 30 days, with 6% (amounting to 970 queries) taking 31-60 days and 0.8% (132 queries) taking from 61-90 days. Revenue is analysing the data using IDEA software, starting with the queries that are outstanding the longest, to determine the reason for these delays and whether the query is a single query, or consists of individual queries and whether failure to provide complete information may be a factor.

Practitioners noted that some queries can be subject to lengthy delays in circumstances where it is difficult to understand the reason for the delay (i.e. where the query/request is quite straightforward). For example, a request for a change in accounting period was delayed, resulting in the inability to file a Form 46G, which caused a delay in the issue of a sizeable VAT refund. Revenue requested that practitioners provide specifics to enable MED verify that it is the Division concerned and to ascertain what factors contribute to delays in closing enquiries.

The facility to contact the “exceptional contact” is useful, however, practitioners considered it preferable to have greater consistency in the timeframe for replies. Practitioners noted the engagement at TALC on MyEnquiries and the welcome ongoing monitoring of service delivery time. At times where there is engagement on queries, it would be helpful if Revenue staff could make outbound calls to expedite the matter. For example, practitioners may provide their phone numbers to resolve long-running queries but do not receive a call from Revenue.

Revenue acknowledged practitioners’ concerns and would examine the underlying issues. MED is monitoring and analysing delayed responses in 2022 and Revenue will meet with the Institute again after the end of June to discuss the findings of MED’s analysis. Case specific feedback of the difficulties outlined from practitioners would be helpful in identifying the cause of any delay and what measures may need to be taken by either Revenue or practitioners to prevent any repeat.

It is essential that complete information is provided by the practitioner submitting the query and that the reply should deal with the matter. However, if issues are arising regarding training etc Revenue can look at this from the output of the feedback and internal exercises. Revenue also clarified that instances of lengthy response times could be brought to the attention of the PO of the Branch, rather than the exceptional contact.

### **3. Compliance Activities and Approach to Interventions including the New Compliance Intervention Framework**

#### **Engagement in Advance of Issuing Notices of Assessment**

Practitioners queried instances where there was an absence of engagement in response to an Expression of Doubt before the issue of assessment. They also queried Revenue’s practice generally on providing a basis for an assessment issuing in respect of an intervention.

Revenue clarified that generally there is some engagement in advance of issuing an assessment. However, there may be reason for exception in some cases. Revenue welcomed case examples of the issues raised so that they could be examined.

Revenue agreed that the basis of an assessment should be clear. Revenue does not raise assessments without due consideration and there should be no vagueness as to the basis and reason for the assessment.

### **Application of the New Compliance Intervention Framework (the Framework) by MED**

Practitioners queried the volume and type of activity that they could expect from MED under the new Framework, whether notifications would be paper-based or electronic, Revenue staff training and whether a bedding-in period would apply following the Framework's introduction on 1 May 2022.

As outlined, Revenue is considering further assurance checks on the EWSS.

MED expects to conduct more Level 1 Profile Interviews to better understand business models and interactions with associated companies. MED will also conduct some Level 2 Interventions (and Level 3 Interventions for serious tax risks).

At present, MED is undertaking an intensive training programme on the Framework and the new Code, and managers will be mentoring more junior staff. Currently, a significant number of pre-30 April 2022 interventions remain open which also need to be addressed.

In response to queries, Revenue confirmed that compliance notifications at each level in the Framework would be paper-based, with notifications to issue to the taxpayer and the tax agent on record. Practitioners welcomed the use of paper-based notifications in light of the issues that can arise where Revenue initiated queries are issued via MyEnquiries. Electronic queries may be misdirected or overlooked and not actioned quickly.

### **Update on MED Role in relation to R&D Tax Credit and KDB Claims**

Revenue outlined its approach in relation to checks on R&D tax credit claims. All compliance checks are risk based. The main focus is on the Accounting Test but also on whether the activity is qualifying R&D and specialist experts are engaged by Revenue for R&D Audits.

Regarding the Accounting Test, issues identified by Revenue include companies claiming EU funding but failing to deduct this funding in computing their R&D tax credit claim; including overheads as part of the R&D tax credit claim when the expense is not wholly and exclusively incurred in the carrying on of the R&D activity and R&D tax credit records and reports not being prepared contemporaneously.

KDB claims can be complex and reviews consider matters, such as, whether the activity qualified for the R&D tax credit, income attribution and how costs are allocated.

Practitioners queried the classification level at which the queries on R&D tax credit claims would be instigated under the new Framework and discussed the distinction between standard questionnaire-type requests for information in response to the submission of a R&D tax credit claim, which practitioners would assume would be classified as Level 1, as distinct from

interventions where Revenue has examined a specific claim and identified a risk which may be Level 2.

As presented, Revenue considered that a standard questionnaire type request would be classified as Level 1. However, Revenue is making greater use of data analytics in examining R&D tax credit claims, the outcome of which may determine the level at which a query is instigated or the type of intervention to be used. Revenue is also liaising with the Compliance Policy and Evaluation Branch on the appropriate use of the different intervention levels.

#### **4. Debt Warehousing Scheme Update**

6,000 MED cases were approved for the Debt Warehousing Scheme. However, MED cases only represent approximately 34% of the warehoused debt, amounting to €1 billion of the overall debt. Many businesses did not avail of the warehousing arrangement but continued to pay their taxes, with 87% of businesses having paid their tax liabilities on time or within a month of the due date.

The Debt Warehousing Scheme was extended in December for businesses meeting certain criteria. The bulk of those businesses in MED that avail of debt warehousing are in the accommodation and food services sectors.

#### **5. Engaging with MED and Service-related Matters**

Practitioners noted delays in the issue of PAYE Exclusion Orders and queried why this could arise. MED does not have responsibility for these cases, but the Division could raise the matter at a Divisional Officers Meeting to establish if this was a common experience.

Practitioners queried MED's approach to companies filing corporation tax returns, where a company's year-end fluctuates by a few days from year to year, as it is a common practice in certain sectors. In such circumstances, Large Corporates Division (LCD) accept a single tax return for the company's accounting period, however, MED insist on two returns (i.e. a return for the 12 -month period and the second return covering the additional days). Such an approach results in additional administration. Revenue agreed to clarify the position internally given the additional administration involved.

#### **Revenue Technical Service (RTS)**

Revenue provided an overview of the role of RTS and recent activity. RTS cannot provide "letters of comfort" and the query must be complex in nature and not addressed in guidance. The doubt on the application of the legislation/guidance must be outlined in the application to RTS. The opinions provided by RTS are not binding, and so they are not appealable and have a maximum life of 5 years.

There are twelve dedicated staff in the RTS Branch, including an administration team consisting of one manager and four staff (some positions are currently vacant and in process of being filled). The Branch examines the queries and allocates the query to a subject matter expert. Some queries may be referred to Revenue Legislation Services (RLS), where required. RTS also use the queries submitted to identify and make suggestions to improve Revenue's Tax and Duty Manuals (TDMs).

During 2021, RTS received approximately 500 queries and provided 240 opinions.

Approximately, 230 requests were rejected. The reasons for the high rejection rate include; the RTS1A is not completed properly, the doubt in question is not specified, the submitter does not provide their own analysis of the technical issue, information referred to in the query, such as, contracts are not provided. Addressing issues with the quality of the information provided in the submission allows for the query raised to be addressed.

A priority for RTS is to provide a correct opinion. This means that queries can take longer than the Customer Service Standard (of 20/25 working days) and a significant number of queries are not responded to within that timeframe. The submitter will be advised if the query cannot be responded to within the 20-day timeframe. Revenue also noted the importance of selecting the correct MyEnquiries pathway to submit queries, as misdirected queries will be delayed. The Institute noted the recent recorded presentation provided by Jody McDonnell in RTS and appreciated Revenue's participation to assist those using the service.

Practitioners queried circumstances that arise when RTS considers the query not to be suitable or sufficiently technical for RTS, but the practitioner is advised by the Revenue District/Branch that it cannot be answered by the Division (and must be submitted to RTS). Revenue advised that this should be uncommon but is willing to examine examples of this issue. From a RTS perspective, if the matter is clear in guidance, then it is not a matter for RTS. But if there is a doubt on the position and that doubt is specified, it can be considered by RTS.

### **Agreeing Settlements**

There are a number of long-running and older cases dealt with by MED, some are at appeal stage, and some precede the creation of the new Revenue Divisions. Revenue re-engaged with legacy cases at the end of Q4 of 2021 and will take a pragmatic approach to engaging to reach a settlement, without compromising Revenue's position. The reduced rate of interest of 3% introduced for a limited period for non-Covid liabilities (due by 30 September 2020), assisted engagement in some older cases.

Practitioners noted that grey areas can often arise in determining the correct tax treatment or tax due and queried Revenue's approach to cases where the correct answer may not be clear. Revenue considered that it cannot settle cases that are not amenable to settlement. Cases that have progressed to a tax appeal are at appeal for a reason and Revenue will be clear on its position. Cases with precedential value may need to proceed through the appeals process. However, Revenue is pro-active in engaging on non-appeal legacy cases.

The Institute noted the positive outcome from the reduction in the interest rate to 3% and that a reduction in the interest rate, more generally, is a matter the Institute continues to pursue in its representations to the Department of Finance.

## **6. Brexit-related matters**

Revenue provided an overview of activity in relation to Brexit. There has been a dramatic increase in customs declarations from approximately 1.5 million to 27 million declarations in 2021. There has also been significant growth in e-commerce registered traders, increasing from less than 10,000 pre-Brexit to in excess of 40,000 in 2021 and this number is continuing to increase.

MED is examining the motor sector and relief from customs duty in relation to imports of second-hand cars. Revenue seeks the documentation outlining eligibility which cannot be

provided by businesses in a significant number of cases, and this is causing concern for Revenue, given the number of cases involved.

To qualify for the zero rate of customs duty, Preferential Origin or the Returned Good Relief must apply, be correctly claimed and demonstrated. The project is ongoing. Currently, it is focused on the motor trade but may be expanded to other areas. Revenue noted the importance for businesses to understand what is included on their customs declarations.

Revenue has also identified issues with the reporting of postponed accounting, for example, where the fields on the VAT return are left blank or incorrectly completed and where the filer is not fully exempt from VAT. Revenue referred to the detailed guidance provided in the TDM covering this matter and intends to carry out desk-based interventions in some cases. Revenue noted the importance of the interaction between the tax agent/customs agent and taxpayer to facilitate compliance.

The Institute raised the inability of tax agents to access certain customs information, via ROS, to complete the VAT return, which has been raised at TALC. Access to certain reports would help ensure the VAT returns can be completed correctly. Revenue agreed at TALC to consider the concerns raised by practitioners further. Revenue agreed to examine the request.

The Institute and Revenue will liaise on the follow up points on the issues raised at the meeting.