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

28 March 2023

Irish Tax Institute Offices, Grand Canal Harbour, Longboat Quay, Dublin 2 and Online

1. Overview of LCD

Details of the senior management team of LCD and their responsibilities are outlined in the organisation chart, available here. There have been some retirements and promotions since the last Branch Network meeting in March 2022.

LCD staff are based in Dublin, Cork, Galway, Limerick and Sligo. There is considerable flexibility regarding access by staff to blended working arrangements. Revenue considers that offering flexibility is a useful tool in recruitment and retention of skilled personnel. LCD have found that familiarising new recruits with the Division's operations can be managed in a blended working environment.

LCD's priorities each year are decided by each branch within the division. A number of the branches work together on common projects. For example, the Financial Services Insurance and the Financing and Investment Funds Branches work together on projects, while the two ICT Branches work closely with the Life Sciences Branch on certain projects, as outlined further below.

2. LCD Branches - Priority Areas of Focus

E-Audit, Customs & PREM Audit Branch

Following the retirement of Allen Finnegan, Vincent Walsh is now the Principal Officer (PO) in charge of E-Audit, Customs Audits and Controls, in addition to PREM, AEOI, FATCA and CRS. To date, Revenue has used IDEA software to conduct electronic audits. However, this software has reached the end of its supported life and Revenue will be going to tender in Quarter 3, 2023 for new software for electronic audits.

The Branch also shares knowledge within LCD and is engaging with Revenue Legislation Services (RLS) VAT personnel on preparations for VAT Modernisation. It also engages on Customs issues including GP origin errors, the new AIS, and anti-dumping customs controls.

PREM Audits are generally conducted as Level 2 Interventions under the Compliance Intervention Framework (the Framework) and are conducted in real-time i.e., on current year payroll submissions. However, Revenue may also examine the prior year. LCD also conducts PMod data quality exercises and related customer contacts. These are conducted as Level 1 Interventions and commonly relate to errors identified in payroll submissions.

The Branch also carries out non-filer campaigns and runs quality assurance checks on data received under AEOI and FATCA.

Revenue noted that Customs is a very significant issue for LCD. Approximately, 10% of LCD staff work in Customs. Revenue also engages with the Customs Consultative Committee.

In the area of Customs, the European Commission examine the quality of outward going returns and the use of inwardly received information. The Commission is also proactive in respect of its oversight of information exchange under the Common Reporting Standard (CRS). It recently conducted its first ever full review of the operation of CRS by Ireland, focusing on LCD. Ireland received a satisfactory rating from the Commission for its administration by Revenue of CRS.

Alcohol, Tobacco and Multiples Branch

Excise duty is a core area of focus for the Branch. Review of VAT and payroll taxes are also key priorities. Considerable work is undertaken in risk-assessing cases in advance of initiating any intervention, whether at Level 1 or Level 2 under the Framework. If a group/company participates in the Cooperative Compliance Framework (CCF), interventions will be classified as Level 1 Interventions. However, both CCF and non-CCF cases are risk-assessed in the same manner. Interventions are conducted both remotely and on-site.

Modernisation of the collection of excise duty, including updating of IT systems is an area Revenue plan to progress given the significant quantum of tax generated by excise duty.

Motor, Oil & Transport Branch

This Branch works closely with the Alcohol, Tobacco and Multiples Branch. Interventions can focus on all tax heads, however, interventions are predominantly instigated in relation to corporation tax (CT), VAT and PREM. In the context of CT, Revenue may focus on capital allowances and many of the companies in the Branch's case-base have a global footprint, involving complex capital allowance calculations. The Branch is also examining classification of income i.e., as Schedule D Case I or Case V. Different remuneration models used in the sectors is an area of focus in the context of PREM. In addition, the Branch examines alternative fuels and Mineral Oil Tax (MOT) and tracing fuel through the supply chain.

ICT Branches 1 & 2

The two Branches work closely together and would have common areas of focus in interventions, for example, reviewing Section 291A claims.

A primary area of focus for ICT Branch 2 is conducting checks in relation to Intellectual Property (IP) onshored in 2019 and 2020, to establish whether the taxpayer is compliant with the legislative requirements and to check the valuations used. This exercise applies to both CCF and non-CCF cases.

The Branch is also examining the use of contractors in the sector, with activity mainly focused on understanding the employment models used and examining self-reviews. Information received about the models and their prevalence in the sector is shared with RLS. The VAT One Stop Shop is also an area of focus, primarily examining systems and controls. These interventions are classified as Level 1 Interventions for CCF participants, with interventions primarily conducted as Level 2 for non-CCF cases.

ICT Branch 1 is conducting a review of the application of the anti-hybrid legislation, requesting the taxpayer to outline the methodology used. The Branch also examines the VAT One Stop Shop, including having regard to gaming developers. The Branch also tests elements of a group/company's Tax Control Framework to consider what has been reviewed. VAT and PREM audit programmes continue as normal.

Similar to ICT Branch 2, section 291A is a focus for ICT Branch 1. The Branch is examining adherence to the legislative requirements, for example, on the funding of IP as the legislation prohibits some forms of funding. Section 291A is an important relief and Revenue needs to understand the instruments used in IP transactions and how they are applied. Revenue confirmed that each case is different in determining an appropriate valuation for section 291A. Revenue expects that an independent valuation report is available, and the related-party test is considered.

Other issues for the Branch include understanding remuneration models and the use of contractors to help inform RLS and the Department of Finance in relation to policy decisions.

The Branch is conducting some preliminary checks on the application of the reverse hybrid legislation which is quite complex to ensure it is working as intended.

The Life Sciences Branch is engaging with the ICT Branches on the risk project conducted in relation to the anti-hybrid legislation. Activity conducted by the Life Sciences Branch in relation to this legislation will begin in the next few months. The project has started for CCF participants in the ICT Branches.

In response to queries on DAC6, Revenue noted that the European Commission may conduct peer reviews of DAC. Revenue is conducting some work in respect of DAC6 reports. The division will be selective in its approach and involve a small number of cases.

Financing and Investment Funds Branch

This Branch is based in Galway. It is focused on investment funds, fund administrators and non-resident financial services entities that meet the LCD threshold. In respect of Section 110 entities, it examines CT and VAT risks. Interventions are generally instigated at Level 2 in the Framework. The Branch will also support the Department of Finance in its scheduled review of Section 110 companies and IREFs, where appropriate.

The Branch is reviewing compliance in relation to the aircraft leasing sector, examining matters such as SARP (i.e., ensuring the conditions for the relief are met), share-based remuneration, withholding tax receipts and returns.

CT and PREM are areas of focus in reviewing investment managers, given the large number of employees in the sector and its profitability.

Natural Resources, Food and Leisure Branch

This Branch has a diverse case-base including businesses in the food, energy, media, betting and hotel accommodation sectors. This covers a broad range of taxes and there is also a large excise duty function. The Branch leads the implementation of the Temporary Business Energy Support Scheme (TBESS) within LCD, dealing with questions from employers within the division's case-base and monitoring compliance with EU State aid requirements.

A large number of groups in the Branch participate in the CCF, which utilises significant resources in the Branch. New entrants to the Branch are made aware of the CCF should they wish to join. The Branch conducts considerable profiling of cases and will frequently request supporting tax computations as part of its engagement with its case-base.

Property, Construction and General Manufacturing Branch

Much of the compliance work of the Branch is conducted on-site given the nature of the sector. The Branch's scope in relation to manufacturing is general manufacturing not within the remit of the Life Sciences Branch. The Branch has the lowest uptake of the CCF within LCD, however, there have been a lot of changes to the case-base. There has been some additional tentative interest from groups in joining the CCF since Revenue's most recent communication about the CCF. Revenue noted the value to participants in joining the CCF, in particular, given that for non-CCF cases an intervention which begins at Level 1 can proceed to a Level 2 Intervention quite quickly.

CT remains an area of focus, in particular, losses and capital allowances, together with RCT and related VAT issues. Areas of focus also include supply chains and controls in relation to public capital projects, contract for/of employment and country money.

The Residential Zoned Land Tax (RZLT) and the Defective Concrete Products Levy will be led nationally by Medium Enterprises Division (MED). However, the Branch will have some involvement regarding its implementation within the LCD case-base.

Separately, it was noted that losses and capital allowances has been an area of focus for the Comptroller and Auditor General (C&AG), who has conducted an initial analysis of losses, group relief and capital allowances claims and examined cases within LCD due to the quantum involved, with the exercise focused on reconciliation and auditing of Revenue's systems. It is not yet clear whether the work will be extended and addressed as a chapter in the C&AG's Annual Report.

Financial Services (Banking) Branch

The Branch covers large international banks, Irish banks, and credit institutions. A large proportion of these businesses are CCF participants. However, the case-base also includes regulated entities that are not suitable for CCF due to their small size.

Areas of focus for the Branch include redundancies, losses, sales of loans. The Branch has considerable knowledge about cases that are within CCF and as a result, there is greater emphasis in interventions on non-CCF cases. The process for collecting stamp duty on cards and cheques is being modernised and the Branch is providing input on this development.

The Branch has been examining the tax treatment of the redress scheme in respect of tracker mortgages following the Financial Services and Pensions Ombudsman decision. The focus is primarily on responding to clarifications sought by banks on the tax treatment of the compensation should the banks pay the customer's related tax liability on this income and a methodology for calculating same.

Financial Services (Insurance) Branch

Revenue pointed to a recent IT development to extend the facility to pay and file stamp duty levies on ROS. The health insurance levy falls due for payment in May and is mostly paid/returned online.

Other areas of focus on levies include the new motor insurance levy, and the application of IFRS 17 which applies to accounting for insurance contracts. Discussions have been held with Insurance Ireland to ascertain the impact, if any, on the CT liability. Section 21B remains a focus. In addition, the Branch is involved in cross-branch projects reviewing pension payrolls, having risk-profiled cases in advance of an intervention.

An IT development has been made to ensure stamp duty attributable to the Insurance Compensation Fund is correctly attributed to the Central Bank rather than to the Exchequer, to avoid recurrence of a programming error that arose previously when allocating payments.

Life Sciences Branch

This Branch is engaging with the ICT Branches on a risk project conducted in relation to the anti-hybrid legislation. As outlined above, activity conducted by the Life Sciences Branch in relation to this legislation will begin in the next few months.

Remuneration models remain of interest given the variety of models in operation in the sector. The Branch also examines royalty flows in respect of IP. The Branch has more in-depth knowledge of CCF cases, with more profiling conducted of non-CCF cases. Review of Section 291A is an area of importance, with the Branch examining compliance with the legislative requirement and IP valuations.

Revenue reminded that if a corporate division is spun out into a separate company with new ownership and a new group structure, then a new CCF application is required because the ownership and management and control of the company has changed.

Additional areas of focus include PREM and VAT, including the VAT 56B process. Revenue emphasised the importance of ensuring VAT 56B applications are completed correctly as this is critical to the processing of these applications. For example, inclusion of an incorrect name on an application can result in a delay in issuing the authorisation and there is a large volume of applications on hand in the lead up to each 31 October.

Divisional Office and Customer Service Branch

Customer service is centralised in LCD and this Branch deals with refunds for VAT and CT, the assignee programme, and letters of residence. Queries in respect of CCF cases are expedited more quickly than non-CCF cases because CCF participants have a dedicated case manager. However, all queries should be dealt with within Revenue's Customer Service Standard of 20 or 25 working days. 97% of queries are answered within this service standard.

The process for issuing refunds for CCF cases has been streamlined requiring less supporting information. 95% of CCF refunds are dealt with within less than 20 days. 77% of non-CCF refunds are processed within this period.

Practitioners queried whether the 20-day service standard starts from when the backup information is provided or when the original refund application is made. Revenue clarified that if all the information required is provided at the outset, the 20-day timeframe starts from the original submission. In contrast, if information is supplied subsequently this introduces a time delay and the 20 days starts from when the required information is supplied. Revenue agreed it may be useful to voluntarily supply the computation upfront to help expedite a refund in circumstances where a computation is typically required.

Practitioners noted issues raised at the previous meeting about the use of MyEnquiries and instances where Revenue-initiated queries were overlooked. Practitioners noted a preference for Revenue to send emails using the Transport Layer Security (TLS) protocol in place with some firms, which allows for direct communication through a secure communication channel.

Practitioners referenced the engagement with Revenue at TALC on ways to address some of the limitations of MyEnquiries. For example, issues where the recipient of a Revenue-initiated query is absent or the correct contact point in a firm is unknown to Revenue. An IT development to provide a central email address in MyEnquiries that could be accessed by a number of practice staff is under consideration at TALC.

Revenue confirmed that its staff are aware of TLS for email communication, and commonly use this channel. It may be the case that new staff are unaware of this functionality. Revenue monitors unopened items to identify where another contact point in a firm may need to be identified.

3. LCD Approach to Compliance Interventions

Practitioners noted the ongoing emphasis on conducting interventions remotely and queried the factors influencing LCD's decision to conduct an intervention remotely or on-site. Revenue noted the decision is influenced by a number of factors, e.g. the nature of the business, the issue in question - if highly technical it might lend itself to a desk-based intervention or Risk Review and auditors' preferences. Typically, some branches will want to go on-site due to the nature of the sector and the footprint of the business.

Practitioners highlighted feedback from members that it can be more efficient in progressing audits if Revenue is on-site to conduct the opening meeting, gather relevant information and make enquiries etc. before returning to the office. This can reduce incremental requests for information and help progress an audit. In contrast, using a remote-only approach can appear to slow down the audit process and its conclusion. Revenue agreed that it can be more efficient to go out on-site, depending on the nature of the audit and the business and face-to-face engagement allows for focused engagement. The branches are actively going on-site in their audit activities.

Practitioners queried the issue of Notices of Assessment very close to the point at which the 'four-year rule' would prohibit their issue and raised practitioners' preferences for early engagement to avoid this occurring. Revenue advised that the issue of an assessment may be necessary in some instances. However, Revenue engages in advance of issuing an assessment, where possible, but the matter may need to proceed to appeal depending on the nature of the issue.

Revenue's approach to cases that are likely to proceed to appeal has changed given the manner in which the Tax Appeals Commission now operates, including the short timeframe before a hearing may be scheduled. Revenue wants to be very clear on its position on a case at appeal and provides information on the basis for the assessment. Revenue agreed that its findings should be shared with the taxpayer. Ideally, Revenue auditors should set out their findings and seek agreement. However, if agreement cannot be reached, the case may need to proceed to appeal.

Practitioners queried scope to reduce the number cases proceeding to appeal where the taxpayer is ultimately successful, for example, whether a case could be reviewed by another PO in the division in advance of proceeding to assessment. Revenue advised that POs are always involved in the review and preparation of a letter of findings by their staff and it would not seem appropriate to have another PO intervene, nor would the division have the resources for such an approach. Depending on the quantum of tax in the assessment, it would be reviewed at Assistant Secretary level. Revenue reviews cases very carefully and consults with RLS where necessary.

Transfer Pricing Audit Branches' Activities

Practitioners queried the basis for continuing to exclude Transfer Pricing (TP) audits from the Level 1 treatment afforded to CCF participants. It was understood that TP audits were initially excluded from the CCF because both the CCF and transfer pricing were new developments. At the time, Revenue was learning about the administration of these developments and TP audits provided assurance that there was proper scrutiny of cases.

Revenue advised that it has always reserved the right to conduct a TP audit of a CCF case. However, TP issues can be raised at the Annual Risk Review (ARR) meeting in CCF cases and the matter will be dealt with at Level 1, if the taxpayers cooperates. Therefore, if a CCF participant engages and cooperates on a TP issue raised at an ARR it would not be escalated to a Level 2 audit, unless Revenue does not get full cooperation or Revenue is misled.

Practitioners noted that it was not generally clear to corporates or practitioners that TP issues could be raised at the ARR, as it was believed TP was generally excluded from the CCF. Revenue's clarification that TP is not excluded from discussion at the ARR and the CCF was welcomed. Revenue agreed to provide some clarification in the CCF Tax and Duty Manual, to provide certainty on this issue.

As outlined previously, the two TP Audit Branches carry on the same type of work at the same scale i.e., the branches do not specialise in particular sectors. The branches conduct TP Audits in the MED and LCD case-bases but also engage on technical queries in relation to TP, for example, to assist MED. There are approximately 14 staff in total between the two branches.

In response to practitioner queries, the branches confirmed that they are fully independent of the Competent Authority team in Revenue i.e. they do not have information on the cases involved in MAP and do not provide support for APAs, which is within the remit of International Division. Should the Competent Authority request information from the TP Branches, this must also be provided to the Competent Authority in the other jurisdiction.

Compliance Intervention Framework and Mix of Interventions Used

As regards the mix of interventions used by LCD, the branches outlined their approaches and the distinction between CCF and non-CCF cases above. Another factor influencing the division's approach is the experience of officers, for example, new recruits would not conduct Level 2 Interventions before they are proficient in doing so.

Revenue noted that legislation to provide for joint audits was partly transposed in Finance Act 2022, with a provision for joint enquiries, with joint audits to follow in a Finance Act in 2023.

In relation to questions on the division's use of DAC6 information received from another tax authority, Revenue noted that much of the information they received is already known to them through CCF or other sources.

4. Cooperative Compliance Framework (CCF)

120 corporate groups participate in the CCF which represents 27% of all of the groups that are eligible for CCF by turnover. This is also 46% of the top 100 groups and 21% of the next 100. A breakdown of participation in the CCF is included with the organisation chart Revenue supplied. Revenue considers the decision on whether or not to apply to join the CCF is likely to be influenced by the Framework and the branches are increasingly receiving queries about joining CCF from current and new entrants to LCD.

An advantage of participating in the CCF is that within CCF, compliance interventions are initiated at Level 1. For non-CCF participants, if a Level 2 Intervention is initiated, there is only one opportunity to make a correct and complete prompted qualifying disclosure in relation to that tax head/period, and avail of the protections it provides from publication and increased penalties.

Practitioners queried whether Revenue intended to explore risk-rating of large business taxpayers similar to HMRC. Revenue considers adopting a formal risk-rate for each group would require an extensive review of cases to identify a base-line which would be quite complex and resource intensive. Branches conduct considerable risk assessment and profiling of cases which result in a similar identification of a group's risk. A recommendation of the revised CCF is that those with lower risk should have less frequent ARRs, for example, a meeting every 18 months rather than annually.

5. Obtaining, Renewing and Exchange of Opinions

Practitioners queried whether there can be a greater scope for the provision of Revenue opinions which appears to have stalled following a European focus on this area in recent years, in cases which have subsequently been lost by the Commission. Businesses have commented to practitioners about a greater ability to obtain opinions in other jurisdictions.

Revenue considers that any matters relating to Revenue policy on the provision of confirmations and opinions is a matter for TALC, for example. Given the scale of change in the international tax framework, demand for opinions may increase, resulting in more requests to Revenue. Revenue has endeavoured to improve Revenue guidance to provide more certainty to business.

Practitioners queried the time frames to receive responses on technical matters and opinions. LCD noted that if the matter is highly technical or precedential or a matter of Revenue policy, it may need to be reviewed by RLS. The work of RLS in respect of opinions is not limited to consideration of matters referred to it by LCD but also referrals by other divisions. Participation in CCF does not provide a channel to escalate a matter that has been referred to RLS, but the case manager can follow up the matter with RLS and keep the practitioner/taxpayer informed on progress.

Practitioners queried whether there are matters referred to RLS from other divisions that may be unsuitable or unnecessarily escalated. Revenue advised that RLS guidance on its consideration of queries is clear and RLS do not accept queries that are considered not appropriate to RLS, regardless of the division from which the query emanates.

6. Pillar Two: Update on Implementation and Related IT Developments

The implementation of Pillar Two requires significant investment in IT systems by Revenue. MNEs may be filing in Ireland where the ultimate parent is located. Revenue will be gathering and sharing large amounts of data that could be open to misinterpretation which could lead to disputes and questions on how dispute resolution is escalated.