Summary Note of the Annual Branch Network Meeting between the Irish Tax Institute and Revenue's Large Cases – High Wealth Individuals Division (LC-HWID)

30 November 2023

Revenue offices, Castle View, South Gt. Georges Street, Dublin 2

1. Update on LC-HWID

The structure of LC-HWID remains largely unchanged since the Annual Branch Network Meeting in October 2022. It consists of a Divisional Office Branch, three High Wealth Individuals (HWI) Branches, a Pensions Branch and two National Anti-Avoidance Branches.

There are approx. 125 staff in LC-HWID and only one change at Assistant Principal (AP) level since the last meeting. Over 60 staff are divided between the three HWI Branches. The Divisional Office Branch deals with customer service queries which are directed to the relevant case manager in the three HWI Branches. It also acts as a contact point for new HWI taxpayers coming into the Division before they have been allocated a case manager. Contact information for the Principal Officer (PO) of the Divisional Office is included in the letters issued to the HWI taxpayers who are new to the division.

LC-HWID remains compliance focused and initiates interventions on risks as they are identified. All primary cases are profiled for risks. Reviews are generally transaction focused considering all taxes, including pensions.

LC-HWID does not provide opinions, but the Division will engage with a taxpayer pre-transaction on the computed tax liability where the transaction is significant, and the taxpayer has sought Revenue's view. With reasonable planning and advance notice, Revenue can engage with practitioners in advance of a transaction taking place. LC-HWID is also very interested in having in-person meetings to progress interventions where both Revenue and practitioners consider that a meeting would be beneficial to progress the case.

2. Pensions Branch Update

The PO of Pensions Branch manages two AP-led teams, with one team focused on customer service and the other team focused on compliance. The bulk of the work of the Pensions Branch over the last year was focused on the withdrawal of one-member schemes, reviewing applications in respect of group schemes and approving Master Trusts and new products developed by life offices which have increased as a result of the transposition of IORP II and approving new products developed by life offices.

The Pensions Branch requests firms/ life offices to seek approval well in advance of going to market with a new product. In relation to Master Trusts, a participation agreement is required to be signed by every employer participating in the Master Trust and, therefore, Pensions Branch require a quarterly spreadsheet for each Master Trust with a list of the employers that have signed the agreement. For 2023 only, the Pensions Branch will consider an employer is participating in a Master Trust for the full year if they have signed the participation agreement by 31 December 2023.

Pensions Branch noted substantial work will be carried out by the compliance team going forward with a focus on connected party transactions. Work will continue on the ongoing ARF compliance project, particularly where there is property in an Approved Retirement Fund (ARF). Revenue will also examine ARFs where the owners is recently deceased to ensure the correct treatment has been applied. Revenue is also examining AEOI data. In 2024, the Pensions Branch will also focus on pension overseas transfers, including examination of the bona fides of such transfers and exempt unit trusts.

3. HWI Branches

There are now approximately 1,700 primary cases (including 145 cases in the Divisional Office awaiting allocation to a HWI Branch) and 2,500 secondary cases in the LC-HWID case-base. Individual case managers cover sectors and compliance risks, such as valuations, losses, aggressive tax planning and pensions.

If HWI Branch identifies issues that are dealt with by the National Anti-Avoidance Branches or the Pensions Branch, the case remains in the HWI Branch with support from the other branches.

<u>Areas and years of focus for queries and interventions</u>

Connected party transactions are a significant risk factor in the HWI Branches, and therefore, an important area for self-review for HWIs. Losses carried forward generally trigger a Level 1 intervention to verify the correct quantum and origin of the loss and there have been cases where losses forward have been restricted or a liability incurred. Practitioners noted queries being raised by Revenue whenever there is a loss in the tax return.

Revenue advised that there has been no change in policy in HWI Branch in relation to losses carried forward and the year of utilisation of the loss triggers the four-year rule. Cases where losses should have been used in prior years have been identified and the relevant losses restricted.

The Domicile Levy continues to be an ongoing focus for the HWI Branches and residence and assets moving onshore or offshore. Revenue noted cases where practitioners engage annually to ascertain what supporting documentation Revenue need to confirm that there is no issue with the return when filed.

Practitioners queried the years currently under review by the HWI Branches. Revenue confirmed that the primary focus for interventions is the last two years of returns i.e. in 2023, the focus has been on the 2020 and 2021 tax years. There are a few 2018 cases being worked, with some more assessments to issue before the end of the year.

Revenue noted the speed at which the Tax Appeals Commission is now progressing cases and so, Revenue is readying itself for appeal at the same time when the assessment is raised.

Practitioners queried what documentation the HWI Branches requires to support historic losses. Revenue confirmed the documentation needs to be sufficient and stand up to scrutiny, for example, contracts should be available. Revenue noted losses related to enhancement expenditure can be more difficult to support and barter situations can be difficult to prove between two parties.

Practitioners' feedback on compliance interventions

Practitioners noted that there is a perception that the number of interventions opened in 2023 is higher than in previous years. Revenue confirmed the following interventions approx. were initiated by year, based on the HWI case-base:

- 150 interventions in 2019,
- 210 interventions in 2020,
- 260 interventions in 2021,
- 240 interventions in 2022, and
- 200 interventions to date in 2023.

Revenue noted that the number of interventions for 2023 by the end of the year should be similar to 2022. Revenue highlighted that the number of interventions in 2019 was lower because the HWI Branches were newly established and transitioning post-realignment of Revenue's operational divisions.

Revenue aims to only open interventions which can be managed by available resources. If querying an entry on a tax return, these will generally be Level 1 interventions, which may consist of a request for the taxpayer to consider a self-review. If the HWI Branches are looking for supporting documentation, this may indicate a risk has been identified resulting in a Level 2 intervention.

Practitioners outlined the difficulties in dealing with compliance interventions during the peak tax compliance season, noting the timing of interventions can often be unworkable at certain times of the year e.g. September to November. Revenue confirmed that some cases are time sensitive which necessitate the opening of an intervention. Otherwise, Revenue aims to be fair and give extensions to taxpayers where needed. LC-HWID consider that practitioners should seek additional time if there is a problem in responding within the timeframe provided, due to the tax filing deadlines etc.

LC-HWID is not aware of any cases where an extension was refused by the Division but highlighted that a line must be drawn where there are requests for multiple repeated extensions on a case. Revenue noted its preference for agents to be upfront about the length of time needed to deal with the intervention, as Revenue will ensure the necessary resources are available to deal with the case, once the information is provided.

Revenue highlighted there is an expectation that a disclosure will be made if a request for a 60-day period to prepare a disclosure is received. Revenue confirmed requesting an informal extension for a period (due to staff shortages because of holidays, ill-health, filing deadlines etc.) to consider whether a disclosure needs to be made is preferable to a request for the statutory 60-day period to prepare a disclosure. Once an extension is agreed, the intervention will begin from the new agreed date. The three POs in charge of the HWI Branches are open to contact from agents about extensions where these are genuine and made in good faith.

In response to queries regarding Revenue response times, LC-HWID noted the aim is to ensure there are no long delays but acknowledged there can be cases that are delayed for various reasons including delayed responses from agents.

4. National Anti-Avoidance Branches (NAAB)

The two Anti-Avoidance Branches in LC-HWID have a national remit. NAAB 1 deals with new avoidance cases while NAAB 2 deals with legacy cases.

The activity of NAA Branches is project-based and they have no specific case-base. Most of the work of the branches relates to cases outside of the LC-HWID case base. The branches work with other divisions on open interventions, where necessary, but also on a standalone basis. The team uses data analysis to inform case selection.

Areas of focus include:

- **Transborder Workers' Relief:** This project is approaching its conclusion with most cases at appeal stage and should be concluded by the end of 2024.
- **Loss-making schemes:** Appeals relating to two lead cases from the schemes will be heard in March 2024.
- **Finance trade losses scheme** with less than 5 participants awaiting a determination from the Tax Appeals Commission.
- **Disposal of unquoted shares**, where the chargeable gain is not as expected. Revenue also cross-references to the CAT returns where relevant. This project is 50% complete.
- **Capital losses** where there is high current year gain and a high current year loss. This project started in 2022 with 50% of the cases still open which are the more complex cases.
- **Section 604A TCA 1997**: Issues reviewed include evidence of ownership especially for acquisitions between connected parties towards the end of the holding period. This is an active project which is one-third complete. Revenue has identified claims where the claimant is trading and therefore, the badges of trade must be considered.
- **Share exchanges** mainly with a non-Irish entity in the context of meeting the bona fide commercial reasons test.
- **Section 597AA Entrepreneur Relief** especially where it is linked to cash extraction. Revenue expects more interventions next year.
- **Section 817 TCA 1997:** Revenue consider this section in the context of all its cases.
- **Disguised Remuneration**: Revenue noted cases where a specific annuity scheme was marketed to self-employed individuals by a promoter, with the self-employed individuals becoming "employees" of the promoter who confirmed a significant portion of their salary, as much as 70%, was not taxable as it formed part of an annuity. Revenue do not accept this is a valid scheme and noted that the schemes had been labelled as "Revenue approved" when this is not the case.
- **Valuations and connected party transactions**.
- **Trade benefit test for share redemptions**: Revenue has noted in a handful of cases an element of concern around the conditions of the test. Taxpayers and agents need to be more diligent of the conditions to meet the trade benefit test.

The use of data analysis by NAAB 1 enables Revenue to be more specific in its requests when issuing letters to taxpayers. The development of the Data Analysis Unit in NAAB 1 continues to facilitate more efficient identification of risks.

Practitioners asked what Revenue has learned from its project on the disposal of unquoted shares. Revenue confirmed that this has been the broadest project undertaken. They have mainly identified issues with cash extraction.

In respect of the project on Section 604A, Revenue confirmed it has reviewed section 604A claims for all years and ranked them by value. As noted above, some cases are valid while others have raised concerns. For example, trading scenarios involving developers, using an option or other structure to make the claim. Also, some values have been understated between connected parties to meet the 75% rule and overvalued in other cases. Revenue has also focused on whether the asset was acquired in the window for the relief (i.e. 7 December 2011 to 31 December 2014).

Practitioners queried Revenue's focus on valuations. Practitioners noted cases where taxpayers had obtained third-party valuations and Revenue had sought the taxpayers to validate these third-party valuations. Revenue was not aware of cases where requests for more than one valuation was made. In connected party cases, Revenue will review the third-party valuation in the first instance or request a valuation if one has not already been undertaken to demonstrate the value of the property or shares.

All Revenue valuations of property are currently undertaken by the State Property Valuation Service. For other valuation such as of shares, Revenue operates a panel of valuers, which is an open procurement process and reviewed and updated every few years based on the availability and experience of the valuer.

Practitioners noted a perception of an increased number of interventions by the Division on foot of reviews of valuations as opposed to any technical issues arising. Revenue noted that its caseworkers are always mindful of transactions with connected parties. Revenue advised that valuers should apply the facts as they would have been at the time of the transaction and not use the benefit of hindsight.

NAAB 1 confirmed the following approx. interventions by year:

- 25 interventions in 2020
- 50 interventions in 2021
- 140 interventions in 2022, due to the commencement of new projects
- 60 interventions to date in 2023

NAAB 1 expects 50 – 60 interventions to be opened each year depending on resources and closures. NAAB 1 is proactive in meeting with practitioners to progress interventions. Due to its data analysis work to identify risks, 80-90% of the interventions opened by the NAAB 1 are Level 2 interventions.

NAAB 2 is focused on legacy avoidance appeal cases. This includes any cases commenced before 2018. Considerable work is involved in preparing for appeals and complying with the requirements of the Tax Appeals Commission. NAAB 2 is focused on two big projects where cases are at the Court of Appeal. These are the "Liberty Bell" cases and section 811 capital loss claims. In 2022, the High Court issued its judgment in favour of Revenue in the lead "Liberty Bell" case. A judgment from the Court of Appeal is expected at the end of January 2024. In relation to the section 811 appeals, a judgment from the Court of Appeal is also awaited while the other related cases are on hold at the request of the Tax Appeals Commission and with the agreement of the taxpayers.

5. Practitioner experiences when engaging with the division

It was agreed that many of the issues tabled by practitioners had been discussed earlier in the meeting. In response to practitioners' queries on the Common Reporting Standard (CRS) reporting, Revenue confirmed that CRS analysis has been an ongoing part of the Division's profiling, including regularly reviewing information obtained under the Directive on Administrative Cooperation (DAC). This information is available to the Data Analysis Unit in NAAB 1. Revenue noted that the accuracy of the data received from other Member States has significantly improved.

Revenue advised that it writes to taxpayers to disclose the information it holds on them from the automatic exchange of information (AEOI) including CRS. The CRS data relevant to the taxpayer is included in the Appendix to the letter, which the taxpayer can then verify.

In response to queries raised about the changes to retirement relief in Finance (No.2) Bill 2023, LC-HWID noted the changes were policy driven and appear to be based partly on recommendations made by the Commission on Taxation and Welfare. Practitioners stated that the Finance Bill changes are likely to result in reduced stamp duty collection and a deferral of CAT because business and farm assets are more likely now to pass on death rather than via intergenerational transfer given the imposition of a new lifetime limit of €10 million.

LC-HWID confirmed it has set up a new Capital Taxes Compliance Policy Modernisation Unit. LC-HWID is responsible for capital taxes compliance policy and technical analysis, while Personal Division is responsible for service. The Capital Taxes administration modernisation project will continue in 2024 - it is a multi-year project. Practitioners welcomed engagement on the modernisation of capital taxes administration.