

Summary Note of the Annual Branch Network Meeting between the Irish Tax Institute and Revenue's High Wealth & Financial Services Division (HW&FSD)

15 July 2024

Revenue Offices, Bishop's Square, Redmond's Hill, Dublin 2.

1. Update on High Wealth & Financial Services Division (HW&FSD)

Revenue's three Financial Services (FS) Branches have been transferred from Large Corporates Division (LCD) to the newly named High Wealth & Financial Services Division (HW&FSD), formerly Large Cases-High Wealth Individuals Division (LC-HWID).

It is business as usual in terms of the operation of the FS Branches i.e. it is only the name of the Division and Assistant Secretary in charge of the branches that has changed.

Overall, the aim of HW&FSD over the year ahead is to move to conducting more real-time compliance interventions and to manage interventions in a timely manner.

2. Divisional Office

The Divisional Office supports the Branches within HW&FSD. There are 188 staff in 9 locations and 10 Principal Officer (PO) led Branches in the Division. Revenue provided a list of contacts. If an adviser is unsure who to contact in any Branch within the Division in respect of a taxpayer, they should contact the Divisional Office PO to progress the query.

3. Pensions Branch

This Branch consists of three Assistant Principal (AP) led teams with 20 staff evenly split between compliance and service.

IORP II has changed the nature of the work for the service team. The number of applications in respect of approval of occupational pension schemes has now decreased from c.120 per day to approximately 9 applications per day. The Branch will answer technical queries relating to pensions provided the queries are not hypothetical and the specific details of the case are supplied. The Form RTS 1A should be used for technical queries. The Branch encourages early engagement and well in advance, if administrators intend to apply for approval of new products being brought to the market.

If advisers experience a delay in obtaining a response to a query and an issue is urgent, the query can be escalated to the PO of the Pensions Branch by sending her the unique Enquiry ID.

Areas of focus for compliance include property transactions e.g. selling the property to a pension and vice versa especially connected party transactions; property transfers in and out of an Approved Retirement Fund (ARF) and the tax treatment on the death of the ARF owner.

In relation to the ongoing AEOI (automatic exchange of information) project conducted by the Branch, Revenue noted that pensions related accounts meet the criteria of an

Excluded Account under the common reporting standard ('CRS') and are deemed Excluded Accounts for CRS purposes. However, Revenue are required to provide assurance that the accounts are not used for avoidance or evasion.

The Branch is conducting a project on the application of BIK to employer contributions to PRSAs prior to the introduction of legislative amendments in Finance Act 2022. Instances have been identified where BIK was not operated correctly under the old rules.

Revenue noted the reports in the media of large employer contributions to PRSAs following the removal of the BIK charge on employer contributions in Finance Act 2022. As outlined by the Revenue Chairman before the Public Accounts Committee, Revenue has been actively monitoring trends and data in relation to employer contributions to PRSAs as part of ongoing work to monitor and review compliance across all matters related to the taxation of pensions. While Chapter 2A of the Taxes Consolidation Act (TCA) 1997 does not impose a cap on employer contributions to a PRSA, the provision must be considered in light of the TCA as a whole in determining the appropriate treatment.

Revenue has identified evidence of instances of salary sacrifice from an analysis of PMOD data and will also be examining corporation tax returns (Form CT1) when filed.

When reviewing the data, Revenue acknowledged the importance of distinguishing between a natural increase in funds in PRSAs, following the ending of one-member arrangements and the increase in investment in personal pensions, and behaviour Revenue consider to be abuse of the tax legislation.

The Branch will begin a compliance project in relation to Exempt Unit Trusts in conjunction with the Financial Services (Financing & Investment Funds) Branch from August. The Pensions Branch will also open a project on overseas pensions in Q4.

4. Financial Services (Banking) Branch

There has been no change to the structure of the Banking Branch since its transfer to this Division. The Branch has 16 staff, including 6 APs and 1 PO. The case-base of the Branch consists of banks, stockbrokers, card providers, custodial services, market makers and treasury companies (that do not have associated companies nor are part of a group in Ireland).

The Cooperative Compliance Framework (CCF) is very important in the Branch with a large number of participants. Currently 16 groups in the Branch participate in CCF.

Compliance projects relating to corporation tax are a key focus for the Branch, with an increasing focus on non-CCF cases. Areas of focus include Section 21B, bond washing and stock lending. The Branch works with the eAudit team to analyse data, given the scale of the data to review in interventions.

The Branch is conducting a small project on DIRT. This will be instigated as a Level 2 intervention for non-CCF cases, while CCF cases will be invited to self-review.

The Branch is also conducting compliance interventions in relation to Stamp Duty on cards. The imposition of the duty was automated last January making it easier to conduct compliance interventions. The Branch has identified non-filers which are predominantly

foreign banks. A stamp duty liability arises if the holder of a foreign bank card is resident in Ireland.

The Branch is also undertaking a VAT compliance project on custodial services in respect of non-CCF cases.

Regarding PREM compliance, the Branch has focused on remuneration of executives in both CCF and non-CCF cases. Full PREM Audits have been conducted on some non-CCF cases. These are generally carried out by Revenue's PREM team, rather than by the Branch itself.

The Branch is currently analysing the impact of Pillar Two on its case-base.

The Branch is open to applications to join the CCF and issued letters last year to invite more groups in its case-base to enter the CCF. Revenue reminded that if a Level 2 intervention has been launched, an application to the CCF will not be accepted at that point.

The Branch is fully risk-based in instigating compliance interventions. In terms of periods under review, the Branch focuses on the most recent period, for example, the current quarter for DIRT returns, and the last year filed in respect of corporation tax. Revenue is moving to a more real-time approach to interventions in respect of PMod and VAT, i.e. examining the most current return. The Branch aims to initiate more focused interventions which can be managed in a timely manner.

5. Financial Services (Financing & Investment Funds) Branch

The case-base of this Branch includes fund managers, investment funds, aircraft leasing, section 110s, IREFs and non-regulated financial services entities. This Branch, which consists of 30 staff, is mainly based in Galway, but it also has a small presence in Castlebar and Sligo.

It was noted that the Department of Finance is conducting a Funds Review. Separately, Revenue is also undertaking its own compliance review of IREFs, to satisfy itself as to the accuracy or otherwise of IREF returns filed by IREF's. Revenue advised that taxpayers may wish to undertake a self-review and make a disclosure, where appropriate.

Revenue noted its obligation to implement the sanctions imposed by the EU on Russia and Belarus over the war in Ukraine. The sanctions also affect companies not included on the EU list which are owned or controlled by listed persons. The freezing of funds required by the sanctions also includes freezing of tax refunds. Revenue will write to the taxpayer where Revenue freezes a repayment so that the taxpayer has the opportunity to rebut the presumption that sanctions apply, if appropriate.

The Branch is conducting a compliance programme on Exempt Unit Trust (EUT) returns.

The Tax and Duty Manual on the VAT treatment of depositary services and global custody services provided in respect of an Irish special investment fund was updated. It also has application where these services are received cross border and there is an obligation to self-account for the VAT. The manual also applies to section 110 companies.

Regarding VAT returns in respect of aircraft leasing, Revenue recommends that taxpayers and agents make greater use of the 'unusual expenditure' box on the ROS VAT return to reduce follow up queries and interventions where the explanation provided accords with industry norms.

Revenue reminded agents to submit 'self-corrections' and qualifying disclosures under the correct Tax Reference Number (TRN), as instances have arisen where submissions were made under the TRN for another group company. In addition, inclusion of the original CT computation together with the amended CT computation would help to reduce follow up queries from Revenue.

Revenue asked agents to ensure the ROS profile details are up-to-date. This would help to ensure a Level 1 intervention is received and acted upon in a timely manner. In the absence of a response, an intervention may be escalated to a Level 2 intervention where a sufficient level of risk exists.

6. Financial Services (Insurance) Branch

It total, there are 19 staff in the Insurance Branch which is based in Dublin and led by 1 PO and 6 APs. The Branch deals with all insurance entities regardless of size. Currently 18 of the 33 groups in the Branch participate in the CCF.

Ongoing projects include Tax Relief at Source (TRS) on medical expenses focused on ineligible expenditure, for example, a 'wellness element' in policies does not qualify for tax relief.

CCF annual risk reviews are ongoing with some meetings held every 18 months rather than annually.

All interventions are risk-based with a focus generally on the most recent tax return.

Regarding VAT Compliance Checks, Revenue will always ask for the VAT recovery methodology.

The Branch will conduct a DAC6 compliance project by the end of 2024 to review filings.

7. Engaging with the three FS Branches

Practitioners raised the volume of data requested by Revenue, in particular, in the Banking sector. These requests can be problematic given the short timeframe provided in correspondence to respond, when it can take months to extract a large volume of data from different accounting systems and submit the data in the format required. An extension to the timeframe to respond is therefore needed and practitioners asked that Revenue adopt a reasonable approach, even if the request seeks a number of months to reply.

Revenue noted that the Division adopts a pragmatic approach to requests for additional time to respond. If a request is denied by the case manager, the request can be escalated to the PO.

Practitioners noted that it is helpful to understand that Revenue is increasing its focus on non-CCF cases, which will be subject to Level 2 compliance interventions. There can be a perception by companies that involvement in the CCF results in a greater number of

queries and interactions from Revenue, than if they had remained outside of the CCF. It is useful to dispel the perception that non-CCF cases are subject to less focus from Revenue.

Revenue confirmed that the focus of the FS Branches is to have an increasing emphasis on non-CCF cases.

Practitioners welcomed that there have been no changes to the personnel or the handling of cases, following the move of the Branches to the Division. Practitioners also noted the importance of understanding the potential sensitivity in communications from Revenue with corporates in the regulated environment. For example, an ordinary issue raised in Ireland could be mistakenly perceived as evidence of a control issue that could give rise to a reporting requirement to a regulatory entity in another jurisdiction.

Practitioners queried the interaction of the FS Branches with Pillar Two and the specialist Pillar Two team based in LCD. Revenue confirmed that LCD is currently developing dedicated Pillar Two Branches, which are likely to operate in a similar manner to the existing Transfer Pricing Branches in LCD. These Branches also provide support to Divisions outside of LCD. The FS Branches continue to engage closely with LCD, and this will continue in relation to Pillar Two.

8. HWI Branches

There are three HWI Branches with 70 staff based in Dublin (Castle View and Tallaght offices), Athlone, Kilkenny, Limerick and Waterford. The Branches mainly conduct compliance interventions remotely. However, they are open to holding in-person meetings with taxpayers/agents if requested to help progress matters.

The criteria for inclusion in the HWI case-base remains unchanged with broadly the same number of cases as in 2023. There are approximately 4,200 HWI cases, consisting of 1,600 primary cases and 2,600 secondary cases.

Compliance interventions are based on a review of tax risks. The Branches have not launched any new projects since the last Branch Network meeting in November 2023.

Areas of focus include:

- Domicile Levy
- Large transactions across all tax heads and especially connected party transactions
- Capital losses
- HWI non-filers for income tax, CGT and CAT which are referred to the Collector General's Division for follow up
- Property-related e.g. LPT compliance, including valuation

The Division appraises cases and will focus on a case-specific tax risk in a compliance intervention. In examining a case, Revenue commonly considers the commercial purpose, how the transaction was executed and whether specific anti-avoidance provisions apply i.e., sections 817, section 604A TCA 1997. The Branches generally focus on the most recently filed years i.e. 2020, 2021 and 2022. However, if an issue is identified in a current intervention which warrants the opening of earlier years, Revenue will open earlier years (or years where there are outstanding tax returns).

Real-time engagement is encouraged by including a full computation pack at the time the return is filed. This engagement can ensure any queries or issues are addressed at an early stage and reduces the risk of an intervention at a later date. The HWI Branches are willing to discuss matters in advance of a transaction taking place.

9. Capital Taxes Unit

The Capital Taxes Unit is an internal unit with 2 POs and 2 APs. The work of the unit is intended to ensure a consistency of approach by Revenue in relation to CGT and CAT. The unit has a national focus and develops training for Revenue staff on tax risk identification.

The Unit is also responsible for compliance policy as regards capital taxes (but not legislative policy). The Branch is conducting preliminary work on the modernisation of capital taxes administration. For example, examining the rationale for certain differences between capital taxes e.g. event and filing dates, the rationale for these differences and feasibility to consider changes.

CAT non-filers are also an area of focus. Revenue is cognisant of the sensitivities in engaging with taxpayers who are bereaved and want to ensure any communication from Revenue is issued only in cases where it is appropriate to do so.

10. National Anti-Avoidance Branches

There are two National Anti-Avoidance Branches consisting of 20 staff, based in Dublin, Waterford and Kilkenny.

National Anti-Avoidance Branch 2 focuses on legacy appeal cases i.e. pre-2018 cases. Some taxpayers have decided to continue their appeals even though Revenue has decisions in its favour in similar cases at the Tax Appeals Commission (TAC) and in the High Court. In some such cases, Revenue has also been awarded their legal costs. Revenue has drawn appellants attention to the decisions and the costs for the taxpayers, including interest, in pursuing appeals in such circumstances and urged advisers to do the same.

- 'Liberty Bell' - A Court of Appeal judgment was delivered in December 2023. In January 2024, Revenue wrote to all taxpayers involved and 30 cases were settled and closed, most have been published. On 21 May 2024, the Court of Appeal perfected its judgment, and the case has not been appealed to the Supreme Court. Further taxpayers have since settled.
- Section 811 artificial CGT losses (Hanrahan case) – In May 2024, the High Court ruled in favour of Revenue and Revenue also won its costs. The judgment was perfected in June and the taxpayer is appealing to the Supreme Court. The TAC has placed related appeals on hold until the case is heard by the Supreme Court.

National Anti-Avoidance Branch 1 (NAAB 1) does not have a case-base. It is a national Branch selecting cases for examination across Revenue's case-base and initiating interventions. It also provides support to the Divisions in respect of open cases, where necessary.

Revenue provided an update on older projects discussed at the previous meeting.

- Transborder Workers Relief: All project cases have now concluded.

- A loss-making scheme: Two lead cases did not proceed at TAC and associated and linked cases have settled.
- Financial trading losses: This related to a small number of connected cases where a TAC Determination has issued. Cases will be worked to a conclusion.

Revenue clarified that the names of the projects originate from the review of the particular relief that gave rise to the project, rather than being reflective of a challenge to a particular relief. For example, the reference to the Entrepreneur Relief (ER) project does not necessarily reflect that the claims for ER were challenged in these cases ultimately. In addition, the fact that a specific project has concluded does not mean that individual cases will not be opened in future. Some projects are thereby fluid by their nature.

More recent NAAB 1 projects relate to:

- Disposal of unquoted shares: 75% of the project cases are complete at this point. This is a fluid and ongoing project.
- Capital losses: This relates to cases with large current year chargeable gains and large current year losses. The project is now 70% complete. Further cases may be opened in future.
- Section 604A TCA 1997: Approximately a third of cases are concluded. Some cases have closed but additional cases have opened since last year. Valuation issues can delay conclusion of cases.
- Share for share exchange (section 586) i.e., examining whether the 'main purpose' test has been met. Section 586 can also feature in other projects.
- Transfer of assets abroad: Focused on the 'main purpose' test (section 586) and mitigation or sheltering of CGT and income tax. The majority of cases opened to date are closed but this is a fluid project.
- Entrepreneur Relief cases: Like other projects issues identified are not necessarily confined to the eligibility of the relief in question and examples of encountered issues were cited as:
 - Trade Benefit Test on share redemptions
 - Undervalue of assets
 - Goodwill valuation
 - Validity of wages paid to family members
 - Debt forgiveness
 - Sections 817 and 135A TCA 1997
- A specific section 817 project: This is ongoing and fluid.
- A disguised remuneration scheme involving annuities targeted at the self-employed was outlined at last year's Branch Network meeting. Interventions are being opened on the promoter and participants. Revenue noted the erroneous marketing of the scheme as 'Revenue approved' in communications by promoters.

Revenue reminded practitioners of the Protective Notification and Mandatory Disclosure regimes. Revenue also highlighted the Qualifying Avoidance Disclosure (QAD) regime, as there appears to be a lack of understanding and awareness of this facility. A valid QAD provides an opportunity for a taxpayer to mitigate a tax avoidance surcharge and avoid publication, if they decide to settle with Revenue when challenged under anti-avoidance legislation.

11. Engaging with the Capital Taxes Unit, HWI Branches and NAA Branches

Practitioners queried the apparent large number of interventions instigated by the Division and the difficulties in responding when intervention letters, especially Level 2 intervention letters, are issued in peak compliance season. Revenue advised there is no difference in the level of interventions as the figures are on par with the previous two years. Interventions are predominantly instigated in the early months of the year rather than the latter part.

The Division agreed to include text in intervention letters issuing in September, October, and November referencing the normal response time but recognising that requests may be made for additional time and will be considered. The Division's policy is to agree to extensions if they are required to supply the information requested. Provided that a request is realistic, it will be considered by the Division. Early contact with the Division is advised. In addition, Revenue wants the extension to be agreed at the outset i.e. multiple requests for rolling 30-day extensions are not acceptable. Where significant additional time to respond is sought, Revenue requested that the agent/taxpayer supply some of the information sought upfront. For example, supplying a number of the items from the list of Revenue's requests including the relevant computation would be helpful.

Practitioners queried whether there is scope for Revenue's valuers to engage with external valuers, for example, where there is disagreement on the valuation of shares in private companies. Revenue advised that meetings can and do occur; there is no barrier to holding a meeting. Revenue may wish to attend the meeting on a case-by-case basis. Obviously, the valuer's focus will be on the methodology around the valuation they cannot address the tax and settlement.

Practitioners noted Revenue's focus on section 817(7) key 'bona fide' test and the subjective nature of the test. Revenue considered that there are a number of questions to consider, starting with whether a transaction falls within section 817. Cases require detailed analysis and depend on the facts and circumstances.

Practitioners queried whether the Division monitors and publishes the yields on different projects instigated. Revenue confirmed that project yields are monitored internally as part of standard project management.

Practitioners queried whether the reference to 'Revenue approved' in a promoter's marketing communication about a scheme, as noted by NAAB 1, was a one-off. It would appear an unusual practice to include such a reference and professional tax advisers would be very sceptical of such statements. Revenue considered it was a one-off occurrence contained to the particular scheme.

Practitioners queried the expected timeline for CAT Modernisation developments, considering VAT Modernisation appeared to be the next core topic of focus for Revenue. Revenue advised that preliminary work on CAT Modernisation has begun in reviewing the rationale for change and background work. Considerable research is required. The overall aim is to move to a more real-time compliance environment. However, considerable work is needed before recommendations on legislative and operational changes could be made.