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Mr Brian Boyle
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By email: brboyle@revenue.ie

17 May 2021

Dear Brian

Re: Qualifying disclosures and exchanges of information with the ODCE

I refer to recent correspondence with my colleague, Anne Gunnell, in relation to Revenue's policy on reporting information to the Office of the Director of Corporate Enforcement (ODCE), where that information has been the subject of a Qualifying Disclosure for tax purposes.

Your recent clarification confirms that Revenue may, in certain circumstances, initiate a disclosure of information to the ODCE regarding breaches of company law in cases where a Qualifying Disclosure has been made to Revenue. This differs from what has been our understanding of the prevailing policy, whereby Revenue provides information obtained from a Qualifying Disclosure to the ODCE, but only at the request of the ODCE.

Having reviewed the published guidance on this topic and discussed the matter in detail with our TALC Audit Representatives, we are concerned that our members do not have clear information on Revenue's policy which they require to be able to accurately advise their clients when making Qualifying Disclosures.

The Qualifying Disclosure regime plays a central role in assisting and encouraging taxpayers to voluntarily regularise their tax affairs and correct errors, in advance of a Revenue Audit, during other compliance interventions or where issues are identified following a self-review of their tax affairs. It facilitates resolution of compliance issues on an efficient and effective basis.

As the Qualifying Disclosure mechanism is such an intrinsic part of the tax system, tax advisers providing professional advice need to be able to correctly advise their clients on what a Qualifying Disclosure entails, and the protections afforded by voluntarily disclosing to Revenue full details of any tax issues identified and addressing any resulting liabilities.

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Up to now, it was generally understood that a taxpayer who made a Qualifying Disclosure would not be investigated with a view to a prosecution in relation to the matter disclosed, as reflected in the *Code of Practice for Revenue Audit and other Compliance Interventions* (“the Code of Practice”)¹. Whilst it is recognised that Revenue cannot provide specific assurances regarding actions that another State body may deem appropriate in certain cases, Institute members would have considered the clarifications provided in the Code of Practice and in other material published by Revenue when formulating advice to their clients on making a Qualifying Disclosure.

These include, the 2017 Revenue Manual² which sets out guidelines on the Memorandum of Understanding (MOU) on Revenue’s exchange of information with the ODCE and the clarification provided at Main TALC in 2005³. This guidance indicates that while Revenue will comply with a request for information from the ODCE regarding a matter that has been the subject of a Qualifying Disclosure for tax purposes, Revenue will make the ODCE aware that the matter has been the subject of such a disclosure. In addition, the Manual reflects the MOU agreement that the ODCE will have regard to the fact that a Qualifying Disclosure has been made when considering the appropriate action to be taken in the case.⁴ The Main TALC Minutes also further state that Revenue will not initiate a disclosure to the ODCE where the matter has been the subject of a Qualifying Disclosure.

Since 2018, the contents of the Revenue Manual outlining the basis for information exchange between Revenue and ODCE have been fully redacted. Therefore, our members are reliant on the assurances provided by the Code of Practice, the 2017 Manual, and the 2005 Main TALC Minutes when providing advice on Qualifying Disclosures. However, it would now appear that there has been a change in practice with Revenue proactively raising cases with the ODCE without any communicated change in guidance. The existing reference materials do not clarify the circumstances when Revenue will proactively disclose information to the ODCE based on the contents of a Qualifying Disclosure, what might trigger such an action, the rationale for the change in practice and when this new policy was adopted.

If Revenue has adopted a new policy, it is important that this policy is clearly outlined in Revenue guidance to ensure that tax advisers can provide fully informed professional advice to clients when considering making a Qualifying Disclosure. Otherwise, members could risk exposing themselves to potential litigation for not fully informing their clients of the possible outcomes.

Therefore, the advice may now need to be modified to ensure that taxpayers are aware of the risk of self-incrimination should a prosecution be sought by the ODCE or another agency of the State, based on information provided in their Qualifying Disclosure. Taxpayers will also need to be informed that a Qualifying Disclosure and a final settlement with Revenue may not, in fact, be a conclusion of the matter disclosed but the taxpayer may have to further engage with other State bodies.

¹ Paragraph 3.6, Code of Practice for Revenue Audit and other Compliance Interventions

² Revenue Collection Manual: Guidelines for the Exchange of Information between the Office of the Director of Corporate Enforcement (ODCE) and the Revenue Commissioners in accordance with the Companies Act, 2014, Reviewed July 2017

³ Minutes of Main TALC meeting from 3 March 2005.

⁴ Paragraph 6.5, Revenue Collection Manual: Guidelines for the Exchange of Information between the Office of the Director of Corporate Enforcement (ODCE) and the Revenue Commissioners in accordance with the Companies Act, 2014, July 2017 update.

We note your clarification that where Revenue has information indicating serious breaches of company law, it is considered appropriate for Revenue to disclose this and that Revenue will continue the practice of advising the ODCE that the matter was subject to a Qualifying Disclosure. However, there is no published guidance outlining the circumstances in which a disclosure could be initiated, nor on Revenue's process for deciding that such a step is appropriate. Details of the policy and its practical implementation should be included in published guidance on Revenue's exchange of information with the ODCE, and in the Code of Practice, perhaps as part of its planned update this year.

The Institute is keen to make sure that our members are in a position to provide full and informed professional advice to clients making Qualifying Disclosures. Therefore, I would welcome your consideration of the issues outlined above and how the current information deficit might be addressed.

Yours sincerely

A handwritten signature in black ink that reads "Martin Lambe". The signature is written in a cursive, slightly slanted style.

Martin Lambe
Chief Executive