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Mr Brian Boyle.
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Revenue Commissioners
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20 September 2021

Re: Draft of the new Code of Practice for Compliance Interventions

Dear Brian

I refer to the ongoing engagement at the TALC Audit (Compliance Interventions) Sub-committee on the confidential draft of Chapters 1 to 4 of the new *Code of Practice for Compliance Interventions* (the Code).

Following the most recent meeting of the TALC Audit Sub-committee on 10 September, the Institute and its TALC Audit Representatives have reflected further on the implementation of the new Code and the significant impact it will have on members providing tax advice to clients in relation to compliance interventions. Given the substantial scale of the changes currently being proposed for the Code because of the introduction of the new Compliance Intervention Framework (the Framework), we are concerned there will not be enough time to inform and educate members who will be required to operate the new Code and be in the position to provide fully informed professional advice to clients from the intended implementation date of 1 February 2022.

The new Code and Framework will introduce very significant changes to Revenue's long-standing approach to compliance interventions and the qualifying disclosure regime. The current demarcation of compliance interventions as: a "Non-audit" intervention, a Revenue Audit or Revenue Investigation and the consequential implications for the opportunity to make a qualifying disclosure (whether prompted or unprompted) is well understood by the tax profession.

However, the new Code will introduce substantial changes to this process, for example, by reclassifying many of the typical non-audit interventions as "Level 2 - Risk Reviews", which are at an equivalent level to Revenue Audits, with only the opportunity to make a prompted (rather than unprompted) qualifying disclosure and within very tight time-limits. Considering the significant protections a qualifying disclosure provides to a taxpayer regarding publication on the List of Tax Defaulters and prosecution, professional tax advisers will need to fully understand the nature of the

correspondence issued by Revenue and its implications as regards the opportunity to make a qualifying disclosure.

Crucially, tax advisers need to be very clear on the disclosure options available to the taxpayer to ensure that their clients are not disadvantaged, and the protections provided by the qualifying disclosure regime are not at risk. The involvement of professional tax advisers requires a significant level of care to protect clients and ensure that they avail of the opportunity to make a qualifying disclosure on a fully informed basis. The substantial changes proposed to the Code pose a significant challenge for our members in ensuring they can advise clients comprehensively. Therefore, they will need to be given clear notice and adequate time to understand the new Code's provisions and to respond appropriately to compliance interventions which issue, before the timeframe to make a qualifying disclosure expires, especially as a "Risk Review" is now equivalent to a Revenue Audit as regards disclosure opportunities.

As it stands, the new Code is still under development and the full draft document has not yet been made available for review and discussion. Furthermore, it will be necessary for Revenue officers involved in compliance work to undergo essential Revenue training to ensure they will implement and operate the Code consistently and in the manner intended by Revenue's Strategic Planning Division, in particular, where the wording of the Code is open to interpretation.

Considering these factors, we are concerned that the proposed timeline is too short to ensure that the new Code can be operational on 1 February 2022 and that our members will be able to provide fully informed professional advice on its contents from that date.

Apart from our concerns about the proposed timeline for implementation, we also have a number of other overarching concerns regarding some practical aspects in implementing the new Code. These are outlined below, together with some suggested solutions for your consideration.

1. Revenue's expectations in response to a Level 2 – Risk Review Notification

According to the draft new Code, a "Level 2 - Notification of Compliance Intervention - Risk Review" is intended to be a focused intervention, which examines a risk or a small number of risks on a return where a full audit of the return is not warranted,[1] with the subject matter and period Revenue seeks to be reviewed by the taxpayer, outlined in the notification. However, the receipt of a Risk Review Notification presents the taxpayer with a final opportunity to make a (prompted) qualifying disclosure for the tax head/period specified in the Risk Review Notification (within 21 days of the issue of the notification).[2]

Therefore, a diligent tax adviser cannot simply review the risk identified in Revenue's notification in isolation and respond. Instead, a diligent tax adviser would be expected to carry out a full review of the tax head for the period with their client, to determine whether a prompted qualifying disclosure for that tax head and period is required and, if so, submit a notification of an intention

[1] Paragraph 1.3.3.1 Risk Review, Chapters 1 – 4 Confidential Draft of Code of Practice for Compliance Interventions – 3 September 2021 version
[2] Paragraph 2.8 Qualifying Disclosure, Chapters 1 – 4 Confidential Draft of Code of Practice for Compliance Interventions – 3 September 2021 version

to make such a disclosure within 14 days to avail of the additional time to prepare the disclosure. In the absence of carrying out such a review on receipt of Revenue's notification, the opportunity to make a valid and complete qualifying disclosure is missed, and there are no protections for the taxpayer from publication and possible prosecution.

The scope of the review that a Risk Review Notification triggers has significant implications for taxpayers and for professional tax advisers in terms of compliance costs, risk and professional indemnity when responding to Risk Review Notifications. The scope of the exercise required also has implications for the quality of the review and disclosure (if one is necessary) that a professional tax adviser can prepare in the time provided.

While Revenue has described Risk Reviews as narrow, focussed interventions to which an early reply is encouraged, the scale of the actual task involved for the tax adviser and taxpayer is significantly broader and will make a prompt reply difficult. Furthermore, taxpayers will not be able to absorb the additional compliance costs involved, especially as many businesses are now only beginning to recover from the impact of the pandemic on their cashflow. Given the nature of certain tax heads, such as VAT and PAYE, the costs of reviewing the tax head for the period could be substantial.

Revenue has outlined from the outset of discussions on the Framework and reflected in the Code that each intervention is intended to be in a form that is most efficient in terms of time and resources, and which imposes the least cost on the taxpayer and Revenue, whilst properly addressing the perceived risk. However, we have concerns as to whether the mechanics of the proposed Risk Review process are consistent with this principle, given the scale of the task to be performed by the taxpayer and their adviser on receipt of such a notification.

We understand that one of the reasons Revenue is treating Risk Reviews as Level 2 Interventions is because of situations where Revenue has already conducted considerable research and analysis and identified a specific risk in a taxpayer's affairs which is notified to the taxpayer and Revenue considers it inappropriate to label a subsequent disclosure by the taxpayer on the issue as "unprompted".

Under the new Risk Review process, given the work undertaken by Revenue to identify the particular risk outlined to the taxpayer, we understand Revenue considers that the enquiry into that matter has begun before the notification issues. Consequently, a disclosure received in response to a Risk Review is labelled a "prompted" qualifying disclosure. However, the current wording of the Code (in particular, the definition of qualifying disclosure), means that underpayments on all other matters under the same tax-head for the period would be treated as "prompted" despite the fact that these other matters have not been queried by Revenue.

We would request that Revenue examines the wording in the Code on the disclosure available in response to a Risk Review Notification, to ensure that it meets Revenue's understood objective i.e., that the taxpayer can only make a prompted qualifying disclosure in relation to the particular subject matter raised in the Risk Review Notification. In the absence of such a solution, we consider it would be necessary to exclude certain types of interventions from Level 2 Risk Reviews or apply a graduated approach with interventions escalating from Level 1 to Level 2.

2. Communication with taxpayers about Level 1 Compliance Interventions

Taxpayers in receipt of a "Level 1 – Notification of a Compliance Intervention" may not be aware that Revenue's approach to compliance has changed significantly. Furthermore, taxpayers may not appreciate the importance of dealing with Revenue's request promptly or that they have now entered a compliance process with escalating consequences, including possible publication of their details on Revenue's List of Tax Defaulters. This may particularly be the case for some of the proposed Level 1 Interventions, for example, Reminder Notifications of Outstanding Tax Returns, where a return is outstanding for whatever reason and a computer-generated notification is issued.

Recipients of Level 1 Notifications will include unrepresented taxpayers. Therefore, it is crucial that the notification issued, clearly informs the taxpayer of the consequences of not addressing Revenue's request promptly and the consequential escalation process if the issue is not addressed. Otherwise, taxpayers could inadvertently find themselves published as tax defaulters due to a lack of understanding of the new Framework and the relatively low threshold for publication of €35,000 (including tax, interest and penalties).

The Institute remains concerned about the reference to communication of a Level 1 Compliance Intervention by press release or similar public notification, advising of an area of concern that relevant taxpayers should review.[3] We believe taxpayers should be notified in writing of any compliance intervention, as a taxpayer may not see, or read an isolated press release or may fail to understand Revenue's message and its relevance to their own circumstances.

Should Revenue wish to encourage compliance in a particular area of concern, via the media, this should be through high profile media campaigns across a number of communication channels to ensure a broad reach. It should also be supported by written notifications to taxpayers who Revenue consider may have an issue to address in their tax returns.

3. Conclusion of compliance interventions on the COVID-19 Support Schemes in advance of implementation of the new Code

We understand that compliance checks on the Temporary Wage Support Scheme (TWSS) are largely concluded. Checks on the Employment Wage Subsidy Scheme (EWSS) are primarily conducted in real-time, with some interventions potentially generated in response to the EWSS Eligibility Review Form process. We understand real-time checks were the primary approach for the Covid Restrictions Support Scheme (CRSS) and that a similar practice will apply to the recently launched Business Resumption Support Scheme (BRSS).

We believe it would be essential to conclude any outstanding compliance checks on the COVID-19 Support Schemes in advance of the implementation of the new Code (excluding those that are occurring in real-time for schemes that remain in operation). Otherwise, this could result in considerable additional work in analysing historical information for taxpayers and the costs associated with such an exercise would be very challenging for businesses emerging from the

[3] Paragraph 1.2.1 Level 1 Compliance Interventions, Chapters 1 – 4 Confidential Draft of Code of Practice for Compliance Interventions- 3 September 2021 version

pandemic.

4. The issue of Revenue Investigation Notifications on a broader basis

The instigation of a Revenue Investigation under the terms of the Code has always been reserved for cases where Revenue believes that serious tax or duty evasion has occurred, or a Revenue offence has been committed. Due to the serious nature of the suspected default, the taxpayer is precluded from the opportunity to make a qualifying disclosure and excluded from the protections it affords, including potential criminal prosecution. The suggestion in the draft new Code that a "Notification of a Level 3 Compliance Intervention – Investigation" could be issued on a broader basis, causes the Institute serious concern as regards the apparent conflation of tax avoidance and tax evasion that we infer from the text. I note this issue is due to be discussed at a TALC Audit Sub-committee meeting in October when the updated draft chapter of the Code on "Tax Avoidance" is expected to be available for review.

The Institute wants to ensure its members clearly understand the operation and implications of the new Code and Compliance Intervention Framework so they can provide fully informed professional advice to clients making qualifying disclosures.

The Institute will continue to engage with Revenue constructively at the TALC Audit Sub-committee on the operational details of the Code. However, we would urge that the overarching concerns and suggestions outlined above are fully considered by Revenue.

Yours sincerely

Martin Lambe
Chief Executive

cc. Ms. Sarah Waters, Revenue Commissioners