



**Irish Tax  
Institute**

*Leaders in Tax*

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**Draft Operational Instruction (OI)**  
**Revenue Referrals to Professional Bodies**

I refer to the draft Operational Instruction (OI) circulated by your colleague Enda Murphy on 2 August and our President's correspondence to the Chairman on 23 December 2014 (copy attached).

We have had a number of discussions over the past 18 months on the issue of referring members to professional bodies, at meetings with Revenue directly and through TALC. On each occasion we have confirmed the Institute's absolute commitment to upholding the professional standards of our members. We have a rigorous and independent Investigations and Disciplinary framework and are keen to be informed about any alleged instance of professional misconduct by our members.

Notwithstanding this commitment to the highest professional standards and our support for the reporting of professional misconduct, the Institute is clear that the "Code of Practice for Revenue Audit and Other Compliance Interventions" is not an appropriate place to include an Instruction such as this.

Andrew Gallagher – *President*, Mark Barrett, Marie Bradley, Dermot Byrne, Colm Browne, Sandra Clarke, Ciaran Desmond, David Fennell, Karen Frawley, Ronan Furlong, Lorraine Griffin, Johnny Hanna, Mary Honohan, Jim Kelly, Aoife Lavan, Jackie Masterson, Tom McCarthy, Frank Mitchell, Martin Lambe (*Chief Executive*), Kieran Twomey. *Immediate Past President* – Helen O' Sullivan.

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Our concern is that, by including the instruction in the Code, it may be used by auditors as leverage to force through unjust settlements. It is sufficient for your purposes that our members are aware of the legislative basis whereby Revenue can report our members, and there is therefore no obvious need for it to be specified in the Code which is the manual on how audits are to be conducted.

Section 851A Taxes Consolidation Act 1997 provides for a Revenue officer to disclose taxpayer information to the “Irish Taxation Institute” (as well as other named bodies) if they are satisfied that the work of the agent does not meet our professional standards as set out in our Code of Professional Conduct ([link](#)).

As noted above, we fully endorse this position and wish to be informed about unprofessional behaviour wherever this arises. We do not believe it should be limited to or indeed linked to audits and interventions.

However, we welcome the fact that procedures for making a complaint have now been codified and that some key concerns we raised have been reflected in this Instruction; in particular:

- That only serious cases will be referred by Revenue;
- That the report will only be made after the intervention is finalised and closed. Section 4 of the OI provides that:  
*“In all situations, the compliance intervention ...must be finalised first before referring details of the unprofessional behaviour ...to their professional body”.*
- That Revenue’s intention to make the report will not be raised or discussed with the agent. We would like to see this extended in that no reference will be made to the provision by auditors during the course of the audit. We would also like to see this condition tightened so that it is not discussed or raised with any other party to the intervention i.e. the agent, the taxpayer or anyone else involved; and
- That any referral must be approved by the relevant Assistant Secretary and issued by Planning Division.

However, there are several other important matters relating to the draft OI that we wish to draw to your attention:

1. Membership of the Irish Tax Institute is based on individual membership – we do not operate membership by firms. Therefore, any report of professional misconduct can only be made in relation to a named individual member and not a firm.

2. As outlined previously, the initial investigation of any complaints made to the Institute is carried out by the Tax Disciplinary Board <http://www.tax-board.org.uk/>, which is an independent body based in the UK that runs the complaints and disciplinary scheme for a number of taxation bodies. It is not clear to us that the current definitions in Section 851A TCA 1997 would permit the disclosure of confidential taxpayer information to this body. We would therefore be grateful if you would confirm that you have received legal advice confirming that the Institute and the Taxation Disciplinary Board (UK) will be entitled to communicate with the taxpayer and to provide copies of the taxpayer's information to the taxpayer and the relevant member.
3. In order for a complaint about a member to be fairly and fully investigated, it is very likely that the Revenue officer(s) involved in the actual case will be required to attend any hearings on the matter. The hearings are a formal process, and members often retain lawyers and barristers to represent them and to question those giving evidence. The requirement for attendance may be something that needs to be highlighted to your staff in the OI; along with the potential legal ramifications of any statements they may make at the hearings.
4. The Designatory Letters for Institute Members are FITI and AITI Chartered Tax Adviser (CTA).

### **Failure to Co-operate Fully with a Revenue Compliance Intervention**

This Operational Instruction on referrals to Professional Bodies refers to Operational Instruction (OI) 063 of 2015, dealing with non co-operation or failure to co-operate fully for the purposes of determining taxpayer penalties. OI 063 was published by Revenue without consultation, while the issue of non-cooperation was still under discussion at TALC and the Institute has a number of underlying concerns with that Instruction. I have written to you under separate cover with further detail on our concerns about OI 063. They can be summarised as follows:

1. The wide-ranging and subjective nature of the factors that can constitute "non-cooperation".
2. The lack of recognition of the mutual obligation on Revenue to engage with taxpayers and practitioners in a timely and reasonable manner.
3. The lack of redress for a taxpayer/practitioner, outside of the Court process, where Revenue considers that a penalty for non-cooperation applies.
4. The interaction of OI 063 with the Audit Code and its implications for Qualifying Disclosures.
5. The reference to the possibility of an investigation being commenced where a Revenue request is not complied with.

Clearly we are concerned about many aspects of Revenue's interpretation of non-cooperation and its one-sided approach. In our view, there is very little link between this interpretation by Revenue of non-cooperation and what actually constitutes professional misconduct in the eyes of most professional bodies, including our own. As we informed you at previous meetings on this matter the scenarios you outlined to us at those meetings in relation to your interpretation of non-cooperation are very unlikely to constitute professional misconduct.

### **Members of the legal profession**

Section 851A TCA 1997 does not currently apply to members of the legal profession. We note in your Operational Instruction that further information on this matter will be provided in due course and we look forward to clarification on that issue.

### **Practitioners who are not members of any professional body**

There are "tax advisers" operating in Ireland who have had no training in tax and are not members of any professional body. Although this Instruction relates to reporting to Professional Bodies, there is a very important message to be conveyed about the standards of agents who are members of no professional body and presumably therefore of much higher risk to Revenue. This category of advisers is dealt with very briefly at present and at the end of the Instruction in paragraph 11. We would like to see much more prominence given in Revenue's instructions to staff about dealing with such individuals.

We look forward to discussing the issues above at the next TALC Audit meeting on 29 September 2015. In the meantime I am happy to provide any further information needed before then.

Yours truly



Cora O' Brien  
Director