

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

**Revenue offices, Ballaugh House, 73/79 Lower Mount Street, Dublin 2**

**19 October 2022**

### **Key points from the meeting**

#### **1. Update on LC-HWID**

The structure of LC-HWID remains unchanged since the Annual Branch Network meeting in September 2021. It consists of a Divisional Office Branch, three High Wealth Individuals (HWI) Branches, a Pensions Branch and two National Anti-Avoidance Branches (which have a national role).

The number of staff in LC-HWID varies between 120 to 140 with limited staff turnover in 2022. 12 new Assistant Principals joined the division since the last meeting and there have also been internal promotions.

LC-HWID is continuously developing its operational approach and will be exploring the merits of introducing a Cooperative Compliance Framework (CCF) for HWIs.

Similar to many other organisations, Revenue staff can avail of hybrid working arrangements. Revenue is adopting a flexible approach to requests for hybrid working, with permission granted by the Branch Managers and dependent on business needs. Therefore, office presence varies across the branches. New Revenue staff attend the office more frequently to aid their learning and integration into the division. The business needs of the branch is the overriding consideration when reviewing staff requests for remote working. Hybrid working arrangements have been in operation for a number of months and no issues have been identified to date. Divisional staff have until the end of October to formally submit final applications for approval.

In response to practitioners' queries about scope for in-person meetings to progress interventions or open cases, LC-HWID considered that in-person meetings would be facilitated if both Revenue and practitioners consider that a meeting would be beneficial to progress a case.

Practitioners noted Revenue's reference at the 2020 Branch Network meeting to plans to meet with individuals within the HWI case-base. Revenue advised that it would not be proceeding with such a plan at this point and would not envisage meetings in every case. However, meetings with the taxpayer may form part of a CCF approach which LC-HWID is currently exploring.

## **2. Divisional Office Update**

The Divisional Office deals with customer service queries (more complex queries are directed to the relevant case manager). It also acts as a contact point for new HWI taxpayers coming into the division before they are allocated a case manager. Contact information for the Principal Officer (PO) of the Divisional Office, Noreen Peoples, is included in the letters issued to HWIs who are new to the division.

In addition, if practitioners are uncertain who is the case manager for a particular HWI case, the Divisional Office PO can be contacted (using the “for the attention of” facility in MyEnquiries to direct the query to the PO). The Divisional Office also conducts some projects, for example, it ran a project in respect of Temporary Wage Subsidy Scheme (TWSS) claims by the LC-HWID case-base.

## **3. Pensions Branch Update**

The PO of Pensions Branch manages two Assistant Principal (AP)-led teams, with one team focused on customer service and the other team focused on compliance. The bulk of the work of Pensions Branch relates to occupational pension schemes and one-member arrangements. As a result of the transposition of IORP II, life offices are withdrawing from one-member pension schemes and developing new products but applications for approval and alterations of the current schemes continue to be received. Revenue is also receiving applications in respect of master trusts. Revenue is processing applications in the order that they are received and requests to prioritise an application will, in general, be denied.

Pensions Branch receives queries from a range of stakeholders including the public and life offices. Many of the questions relate to scheme amendments and Revenue has been recategorising queries received to streamline query handling. Revenue reminded attendees that it will not answer hypothetical queries. Questions relating to technical interpretation of legislation can be submitted using the Form RTS1A.

As the number of schemes decrease, Revenue expects to apply greater resources to compliance work. Issues that Revenue examine in respect of pensions include connected party transactions in one-member schemes, issues identified from Stamp Duty data on transactions, overseas transfers and risks in relation to the Pension Fund Threshold.

## **4. HWI Branches**

There are now approximately 1,500 primary cases and 2,000 secondary cases in the LC-HWID case-base. Large trading companies connected with HWIs remain dealt with by LCD and Medium Enterprises Division (MED).

LC-HWID has decided to include the children of HWIs in the division as they are identified, and practitioners welcomed this approach in the interests of efficiently managing queries that can

arise due to transactions between HWI parents and their children. Revenue will continue to conduct an annual review of tax returns and third-party information to identify cases within the remit of the division.

#### Areas and years of focus for queries and interventions

Interventions focus on current years i.e., 2018, 2019, 2020 predominantly but also 2017 in some cases, where considered necessary. Areas of focus include connected party transactions e.g., gifts, restriction of losses, valuation, a loss for CGT arising from a connected party disposal.

Revenue advised that valuations should be supported by independent third-party valuations. The division sees a variety of supporting documentation provided for valuations even for similar transactions. While a valuation report does not need to be lengthy, Revenue must be able to establish how the individual arrived at the conclusion regarding an asset's value. For example, in the context of a substantial shareholding in a private company, Revenue wants a detailed document outlining the valuation methods considered and used and support provided for any minority rights discount.

If an asset is of substantive value, Revenue will seek an independent valuation from an external valuer. The valuer will often seek detailed information on property assets, for example, seeking rent rolls, information on short/long term leases, floor plans etc. Revenue would expect a valuation provided by the taxpayer to consider the same level of detail sought by a professional valuer.

Revenue recognised that challenges can arise in valuations and that there can be genuine disputes over the correct valuation. The *Code of Practice for Revenue Compliance Interventions* outlines the circumstances in which a penalty will not apply and where a technical adjustment may be appropriate.

LC-HWID continues to examine capital losses for CGT purposes. A recent appeal case was noted which was settled on the basis of Revenue's view of the position. In relation to negligible value claims, Revenue noted that the Inspector must be satisfied that the value of an asset has become negligible before a loss is allowed under section 538 TCA 1997. Therefore, a taxpayer cannot treat an asset as having negligible value without the Inspector being satisfied on the loss. Practitioners made the point that in a self-assessment era, the concept of the Inspector being satisfied on a loss claim was not consistent with a self-assessment system.

The division recognises that there may be cases where an asset has fallen in value, but its value may not be negligible. Practitioners noted that negligible value claims cannot be made through a particular field on the tax return, unlike most claims in the TCA which are made on the tax return. Practitioners considered that a field should be included on the tax return for negligible value claims in preference to submitting separate claims.

Following the pandemic and given an expected increase in liquidations, such claims are likely to become more common. Inclusion of a field on the tax return could still be reviewed by Revenue

personnel.

Practitioners also raised the need for guidance on what is meant by negligible for the purposes of claiming the relief and considered the context as key. What is considered negligible would depend on the value of the asset e.g., the value of the asset may be negligible when considered as a percentage of the investment made but may not be a negligible sum. Revenue agreed to consider the issues raised on negligible value claims and revert to practitioners.

Other areas of focus include:

- A change of tax residence where there has been a large transaction. For example, where there has been a transaction in the year of departure and no CGT or only a small amount of CGT has been paid.
- Corporate restructuring cases.
- The Trade Benefit Test, in the context of the bona fide test in legislation
- Continuation of the Domicile Levy project into 2023. Revenue advised that this may require the provision of a detailed list of Irish assets by the taxpayer.
- Share options will continue to be an area of focus for 2022 and into 2023 e.g., checking tax is paid at the right date and reviewing cases where there has been a change in tax residence.
- Avoidance cases which are worked often jointly by the home Division in conjunction with the National Anti-Avoidance Branches and utilise data analytics.

Interventions are generally carried out through a mixture of Level 1 “Compliance Contacts” and Level 2 “Risk Reviews” under the Compliance Intervention Framework. Whether a Level 1 or Level 2 intervention is selected depends on the case, for example, if the CGT entry on the tax return contains a high value, Revenue may review the return and any risk identified will be tested via a Risk Review.

#### *Practitioners’ feedback on compliance interventions*

Practitioners outlined the difficulties in dealing with compliance interventions during the peak tax compliance season and queried whether interventions could generally be deferred. LC-HWID considered that practitioners could seek additional time if there is a problem in responding within the timeframe provided, due to the tax filing deadlines. The intervention would then not begin until the new agreed date.

Practitioners queried whether extending the date the intervention begins would compromise the opportunity to make a qualifying disclosure, as the taxpayer has 21 days from receipt of the notification of the intervention to notify Revenue of an intention to make a qualifying disclosure.

Practitioners would be hesitant to submit a notice of intention to make a qualifying disclosure if unsure whether a disclosure would be required. However, it is not clear whether the 21-day period would be extended if the date to begin the Risk Review/Audit is extended. LC-HWID considered that it would be pragmatic and regard the 21-day time limit as not starting until the agreed date for submission of the information, and the division subsequently confirmed this. It

may be prudent to notify Revenue of an intention to make a qualifying disclosure to preserve the 60-day period to prepare a disclosure, if required.

Practitioners raised the absence of a single point of contact on a case where both LC-HWID and another division are involved in an intervention. Practitioners cited instances where information already provided to one division is sought by the other division working on the case. LC-HWID confirmed that there is no intention to seek the same information twice from a taxpayer. If LC-HWID is aware that another division is involved in the case, they liaise with the division to minimise duplicated requests for information and may hold a joint meeting with the taxpayer/practitioner.

Requests for information that Revenue has already received should be brought to the attention of LC-HWID. In some cases, Revenue may not be aware that the information has been supplied e.g., if extensive documentation has been provided. Providing a list to Revenue of the information that has been supplied may be helpful.

Practitioners raised the issue of incremental requests for information during an intervention and that it would be preferable if the information required is sought upfront. In cases where there is ongoing written correspondence and multiple requests for information, it should be possible to seek a meeting to agree what is required to help progress and conclude the case. The PO should be contacted in such cases.

Following discussions at the last Branch Meeting, the division changed its approach regarding information requests, however, in some cases detailed information will be required, for example, in relation to assets when conducting interventions in relation to the Domicile Levy.

In response to queries, Revenue confirmed that the spouses and children of primary cases will be brought within LC-HWID (even if they do not have wealth in their own right). Letters issue to these secondary cases in batches. Revenue agreed to notify the Institute when the batches of these letters will issue, so that practitioners can manage queries that could arise on the issue of such letters.

## **5. 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 NAAB 1 is project-based and has no specific case-base. Most of the work of the branch is outside of LC-HWID. The branch works with other divisions on open interventions, where necessary, but also on a stand-alone basis. The team uses data analytics to inform case selection.

Areas of focus include:

- Transborder Workers' Relief. This project is approaching its conclusion with most cases at appeal stage.
- A loss-making scheme with some 20 participants, with most cases at appeal stage.
- Finance trade losses.
- Disposal of unquoted shares, where the chargeable gain is not as expected. Revenue also cross-references to the CAT returns where relevant. Several cases are closed on the basis the issue arose due to a miscategorisation of entries on the tax return.
- Capital losses e.g., the focus being on cases with a current year gain and a current year loss but no losses forward. This is a new project which started in 2022 with 95% of cases still open.
- Section 604A, with issues reviewed including evidence of ownership, disposals towards the end of the holding period and refreshing of previously owned properties.
- Share exchanges with a non-Irish entity in the context of meeting the bona fide test.
- Section 597AA Entrepreneur's Relief especially where linked to cash extraction.

The use of data analytics by NAAB enables Revenue to be more specific in its requests when issuing letters to taxpayers.

NAAB 2 is focused on legacy avoidance appeal cases. This includes any cases at appeal in 2018 or in prior years. Considerable work is involved in preparing for appeals and complying with the requirements of the Tax Appeals Commission (TAC). A number of cases are in the Courts, for example, "Liberty Bell". In 2022, the High Court issued its judgment in favour of Revenue. Revenue is awaiting on the High Court to perfect this order and its order in relation to costs. Revenue can be approached regarding settlements.

NAAB 2 is busy up to the end of the year in dealing with the volume of cases at various stages in the appeals and courts process and complying with TAC requirements regarding availability in scheduling appeals and appointing new Counsel if those appointed are unavailable for the hearing date scheduled.

Revenue noted that it has adapted its approach to appeals with LC-HWID providing a letter of findings with the assessment and notifying the Revenue solicitor more quickly.

## **6. 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 delays in progressing some cases, Revenue pointed to the scope to contact the PO to escalate matters if long delays are experienced in individual cases.

In the context of issuing assessments close to when they become "out of time", Revenue clarified that fewer assessments should issue close to the 4-year limit as Revenue work on cases

at an earlier stage. However, it may be necessary to issue assessments in certain cases.

Practitioners queried the detailed information sought on assets held/utilised in a Level 2 intervention. Revenue advised that it is cognisant of the level of information sought. In some circumstances, detailed information may be needed, for example, in respect of the Domicile Levy or a connected party transaction. However, Revenue do not seek extensive information in requests as a matter of course.

If requests made for a statement of assets held/utilised are likely to be very detailed, LC-HWID will inform the practitioner/taxpayer as to the reason for the request. If it is considered that the requests are overly onerous and unreasonable, the practitioner can engage with the PO. In some situations, Revenue will use its powers under section 900 to obtain the information it requires but will explain why the information is required.

Practitioners noted the reference in the contact details to divisional personnel involvement in a Capital Tax Compliance and Modernisation Unit and highlighted the taxation of offshore funds as an area meriting simplification. Practitioners raised its overly complex nature and the compliance burden on taxpayers.

It was noted the Commission on Taxation and Welfare Report acknowledged this as an area for simplification. The Report also supported proposals in Revenue's submission to the Commission on Taxation and Welfare to simplify tax administration and continue the work underpinned by the OECD Tax Administration 3.0. Practitioners would welcome simplification of offshore funds, while recognising that this is a policy matter. LC-HWID advised this is not within their remit.

A list of the senior management team in LC-HWID is available [here](#).