Irish Tax Institute/Large Corporates Division (LCD) Branch Network Meeting

7 October 2024

Irish Tax Institute Offices, Longboat Quay, Dublin 2

1. Overview of LCD

Structure and Staffing

There have been some significant changes in LCD since the last Branch Network Meeting. LCD has been restructured, resulting in the transfer of the three Financial Services Branches from LCD to a newly formed High Wealth & Financial Services Division (HW&FSD) in April.

Two Pillar Two Branches have also been established. Pillar Two Branch 1 is focused on the required system developments while the Pillar Two Branch 2 is focused on Pillar Two implementation. The Division is increasing its internal resources and expertise on Pillar Two.

Changes in management personnel in LCD also include new Principal Officer (PO) appointments to Transfer Pricing Branch 1 and the Natural Resources, Food and Leisure Branch. Revenue provided an updated organisation chart for LCD. The Dublin LCD office has relocated to Revenue's offices - Castle View on South Great George's Street.

LCD carries out both a service and compliance function in relation to its case-base. There are 417 groups in the Division which consists of approximately 5,000 entities with live tax registrations. LCD operates across 8 locations including two new locations in Waterford and Navan. There are 255 (FTE) officers in the Division. LCD is increasing its resources to support the introduction of Pillar Two.

LCD operates 'anchor days' in the office for teams, which are dependent on business needs. The Division considers its hybrid working model is operating well.

LCD Activities and Priorities

The cases in LCD accounted for approximately €51 billion in Exchequer tax receipts, including €20.4 billion in corporation tax in 2023. 85% of all of the net corporation tax collected is attributable to the LCD case-base. PREM is the second largest tax head for the Division, followed by VAT.

Tax appeals have been a significant area of focus for the Division with a downward trend in open appeals. In 2022, 144 appeals were open in LCD with tax in dispute of €1.1 billion. In 2023, there were 66 open appeals relating to €528 million of tax in dispute. The 2024 year-to-date figure indicates there are 59 open appeals relating to €154 million. Active working of appeal cases and efficiencies in the Tax Appeals Commission have contributed to the reduction in open tax appeals.

Of the 417 groups managed by LCD, 331 groups are eligible for the Cooperative Compliance Framework (CCF). 88 groups participate in the CCF. 329 groups are non-CCF cases. The reduction in the number of CCF participants in LCD compared to last year is a result of the transfer of CCF cases managed by the three Financial Services Branches to HW&FSD and not a reduction in CCF participants overall.

The Division makes considerable use of third-party data and reporting under exchange of information arrangements (e.g. iXBRL, ERR and the DAC) to inform its approach to compliance.

2. LCD Branches

<u>Transfer Pricing Branches</u>

There are two Transfer Pricing (TP) Branches in the Division. Areas of focus for the branches include valuation of IP post 1 January 2020 and financial transactions. Closing audits is also a priority and ensuring qualifying adjustments are made as soon as the risk area is identified.

Intellectual Property (IP) and financial services transactions are often interlinked (e.g. IP onshoring which is debt financed). Section 291A is an area of focus where there is a material risk involving an Irish-based Multinational Enterprise (MNE). From 2015 – 2023, 58 TP audits were open with 33 finalised by 2023 resulting in a yield of €748 million. TP audits have also resulted in significant restrictions on losses, for example, where the outcome identified circumstances where the individual economic party to the transaction could not sustain the loss and €950 million in losses were restricted.

Revenue drew attention to its Tax and Duty Manual (TDM) Part 35A-01-05 which outlines the Irish TP documentation requirements. The TP Branches have issued Level 1 compliance contacts seeking copies of the TP documentation but have found the responses to be inconsistent. For example, intercompany agreements are not supplied. While the TP guidance recognises that no written agreement may be in place in some circumstances, the arrangement needs to be substantiated and where an agreement is available, it must be submitted, as requested in the Level 1 letter. Revenue's review of the documentation is a fundamental element to appraising TP risk.

Revenue pointed to the new rules in place since 1 January 2020 which are more prescriptive on the requirements in the Master and Local files. In addition, taxpayers are required to provide their TP documentation to Revenue within 30 days of a written request made by a Revenue officer, in accordance with section 835G(5)(b) TCA 1997. A fixed penalty of €25,000 for non-compliance with such requests, plus €100 for each day on which the failure continues can apply. Revenue will consider its approach to compliance if issues obtaining TP documentation continue, and cooperation and engagement with Revenue is important to obtain penalty mitigation for cooperation, under the *Code of Practice for Revenue Compliance Interventions.*

In recent years DAC7 has strengthened the powers of tax authorities to request information. Provision for joint audits was transposed into Irish legislation with effect for accounting periods beginning on or after 1 January 2024.

Currently, Revenue cooperates with the tax authorities in other Member States through its participation in simultaneous controls in relation to TP. These activities are not joint audits, but rather compliance interventions conducted in parallel and in each tax authority's own territory, in respect of taxpayers of common or related interest to each tax administration.

The aim of these simultaneous controls is to exchange information obtained. This is a different structure to joint audits but facilitates access to information of interest. This activity is still at a relatively low level currently and may by conducted in Ireland by way of Risk Review or Profile Interview.

Revenue has also been further enhancing its analytic skills in examining financial transactions and this is an ongoing area of focus in TP. Revenue can more readily identify where debt involves risk from examining the Balance Sheet and Income Statement. For example, Revenue conducts ratio analysis of operating profit which becomes a loss before tax and can conduct an analysis over multiple years to identify patterns. Functional characterisation is always a focus in TP audits where activities may be described as routine by the taxpayer when they are not.

Correlative relief is managed by the sectoral branches but the TP branches support the other Branches with operational technical queries, referred by case workers. The TP Branches are not involved with policy related matters, which are dealt with by Revenue's International Tax Division.

<u>Pillar Two Branches: Update on resourcing and implementation plans</u>

As mentioned above, two Pillar Two Branches have been established in LCD which are currently staffed by 3 POs and 10 Assistant Principals. LCD is increasing its resources on Pillar Two and recruiting both internally and externally with many expressions of interest in joining the branches. Work is underway with Revenue's ICTL on the system developments that are required. It is intended to open the registration process before December 2025.

The Management Advisory Committee (MAC) will discuss Revenue's communication strategy in relation to Pillar Two at the end of October. Revenue is gearing up its capability and systems. One of the challenges presented in setting up the systems is that the registration process will be different to that for other tax heads. For example, it will involve group rather than individual tax registrations.

In addition to system developments, this will require training and upskilling of staff together with information for in-scope companies and their tax advisers. Revenue is considering recording a webinar to outline a step-by-step approach to the registration process once developed. More generally, Revenue may develop a Pillar Two information hub on the Revenue website as a one-stop-shop for information. Revenue is scoping out the development of a hub for information and troubleshooting.

There will also be phased training for staff on Pillar Two. There will also be a test environment in advance of first filings under Pillar Two. While work is ongoing in the background, many decisions have to be made which will be discussed at the MAC as the high-level communications strategy is fine-tuned. Revenue will table Pillar Two for the Main TALC agenda once the important decisions have been made and substantive issues can be discussed with representative bodies. Revenue also intends to leverage engagement at the TALC BEPS Sub-committee.

In response to queries from practitioners on resourcing for Pillar Two, Revenue is confident about its resourcing and noted the recruitment of additional resources.

Motor, Oil and Transport Branch

The Branch gave an update on the treatment of new alternative fuels/biofuels, such as hydrogenated vegetable oil (HVO) known as ‘renewable diesel’ and engaging with Revenue Legislation Services (RLS) on the treatment of fuels. ICTL is also assisting with analysis work.

The Branch is responsible for the administration of the Temporary Solidarity Contribution (TSC) which applies to surplus profits of energy companies with activities in the extraction, mining, refining of petroleum, natural gas or coal or the manufacture of coke products. The Branch is focused on open interventions in relation to last year’s TSC returns.

The Branch is also working to conclude interventions on other issues, such as mobile employees in the sector and VAT and corporation tax compliance.

ICT Branches 1&2

Regarding CCF cases, Revenue has been examining compliance with the anti-hybrid rules and the Interest Limitation Rule (ILR) and testing the Tax Control Framework in CCF participating companies. Potential for misclassification of employees is also an area of focus.

Regarding non-CCF cases, the majority of interventions are in the form of a Level 2 Intervention i.e. Audit or Risk Review.

Other areas of focus include the allocation of R&D staff costs and how the work undertaken is tracked to the R&D Tax Credit claim. R&D is always an area of focus given the nature of the sector and preponderance and size of claims.

In relation to VAT, the VAT One Stop Shop (OSS) and the Import One Stop Shop (IOSS) are areas of focus, for example, the internal controls and procedures in place within an organisation for preparation of the OSS and IOSS return.

Corporation Tax and PREM remain high priority areas of focus for the ICT Branches. Work relating to section 291A claims is continuing. The Branches are examining the application of CFC, ILR, Hybrid and anti-Hybrid rules. The Branch initially focused on the examination of such risk areas as part of the CCF Framework. However, it is also examining the application of such provisions in the conduct of Level 2 interventions.

Another discrete area of focus is the filing of the Form 46G. Revenue has noted a poor compliance rate with the Form 46G filing requirement. Of the 56 groups in ICT2; 33 groups had instances of non-compliance with the Form 46G filing requirement. 82 companies had outstanding 46G forms for the years 2009 to 2022 and, of these, 27 companies still have outstanding forms.

The Branch is moving to review iXBRL compliance as it has noted a trend of poor compliance with the iXBRL filing requirements.

Regarding PREM, areas of focus include share schemes and international assignee issues. In non-CCF cases, interventions may involve a full PREM audit and an examination of matters from the operation of PAYE on payroll filings, staff entertainment, business entertainment and the operation of share-based remuneration.

eAudit/PREM Branch

Revenue is examining its broader data strategy and considering various options as a replacement for the IDEA eAudit software, currently used.

PREM interventions are conducted by the Branch on a referral basis. Activity is primarily conducted in the form of Level 2 compliance interventions which generally focus on the current year. Other PMod compliance exercises may involve Profile Interviews or other Level 1 compliance contacts. The Division has not identified any general systemic issues from its eAudit activity.

eAudit is also used for Customs audits and compliance checks in respect of the LCD case-base. Issues under examination for 2025 include claims for preferential origin and return goods relief.

Update on the Enhanced Reporting Requirement (ERR)

Revenue noted the extension of the service to support compliance period to the end of 2024, to support businesses that are endeavoring to comply with ERR. Employers that make ERR submissions after 1 July are expected to make submissions backdated to 1 July 2024. Engagement by the LCD case-base with ERR has been good with 72% of the case-base submitting ERR reports already. There are no current plans for a specific outreach project on ERR to the LCD case-base.

Overall, employers who employ 90% of the employees in Ireland are making ERR submissions according to Revenue's latest statistics.

The Division received some contact from groups that experienced difficulties drawing down information from their systems for inclusion in the .XML file upload for ERR.

Practitioners noted the particular challenges for larger businesses in complying with ERR, given the volume and frequency of reportable payments and cited similar feedback on challenges drawing down the reportable information from internal systems. Practitioners noted that complete adherence with ERR remains challenging, despite the additional time provided to adapt to the regime. The Institute will discuss Revenue's approach to compliance and penalties for 2025 at the TALC Audit Sub-committee in the new year.

Practitioners were hopeful that the number of benefits that can be provided under the Small Benefit Exemption will be increased in Finance Bill 2024. While this would add to the reporting requirements for business, it could address the current trepidation among employers in providing gifts of any kind to employees, including to mark life events, due to anxiety about its impact on the tax treatment of a subsequent gift voucher.

Alcohol Tobacco & Multiples Branch

This Branch conducts detailed risk assessments, with interventions initiated at Level 1 for CCF cases, and, generally Level 2 for non-CCF cases.

Areas of focus include excise duty on alcohol; VAT rates; payroll taxes; globally mobile employees; capital allowances; VAT on property; the Sugar Sweetened Drinks Tax; the plastic bag levy, and other taxes specific to the sectors in the case-base.

The Branch also noted an issue with regard to non-compliance with the iXBRL filing requirements. Revenue cited instances of the filing of draft Financial Statements in iXBRL format without following the required procedure set out in the TDM; the omission of Detailed Profit and Loss (DPL) Accounts; the submission of final Financial Statements in iXBRL format a considerable time after draft accounts are filed and following contact from Revenue. Revenue noted the issues observed are not unique to this LCD Branch.

Revenue outlined some of the consequences of non-compliance with the iXBRL filing requirements. These include surcharges, loss restrictions, delays to the closure of interventions, delays to refunds of corporation tax and Revenue will not action requests for offsets against preliminary tax or against other tax liabilities in the group where the iXBRL Financial Statements remain outstanding.

Practitioners queried the significance, if any, of the recent alteration to the iXBRL-related text on the Extract from Accounts panel on Form CT1 2023 to remove the reference to LCD. Revenue confirmed that the iXBRL filing requirement remains unchanged. The alteration to the text was made considering the move of the three Financial Services Branches to HW&FSD. Revenue confirmed the iXBRL TDM will be updated shortly.[1]

Property, Construction and General Manufacturing Branch

This Branch has the lowest rate of participation in the CCF, with approximately 8% of the groups in the case-base participating in the CCF.

In conducting interventions, the Branch is increasing its instigation of Level 2 interventions. Areas of focus include corporation tax, VAT, PREM, RCT (PCGM Branch accounts for between 65%-70% of LCD's RCT activity).

There are a considerable number of high cost/high value publicly funded construction projects underway. Considering the projects involve the use of Exchequer funds, they will be an area of focus for Revenue. Site visits are conducted in collaboration with Revenue's Medium Enterprises Division (MED).

Issues identified from site-visits include misclassification of employment, non-reporting or delayed reporting of RCT. Revenue will also examine onsite business controls around suppliers and subcontractors. 'Country money' will be an area of considerable focus in 2025.

Life Sciences Branch

Participation in the CCF is at the LCD average with nearly 25% of the case-base in the CCF. The larger groups have a greater tendency to join the CCF. Level 1 interventions are initiated in CCF cases and Revenue has had good cooperation and engagement in response to these interventions. The Branch will often seek to visit the plant to understand the industry and audits will generally involve on-site visits.

There is a considerable amount of merger and acquisition (M&A) activity in the sector. Revenue noted its preference to be informed directly of significant changes to a group rather than obtaining the information through public announcements. Section 291A claims remain an area of focus with Revenue examining complex and emerging issues.

In relation to non-CCF cases, interventions may be conducted by way of a Risk Review. Having carried out a review of CCF cases, Revenue is applying the learnings from that exercise in framing Risk Reviews for non-CCF cases.

[1] An updated iXBRL TDM was released with eBrief No. 255/24 on 14 October 2024.

Tax on the disposal of IP, especially in the context of section 291A is important. The CGT calculations are quite complex and Revenue will examine these on a case by case basis.

When examining M&A activity, Revenue may conduct a review across all the tax heads. Regarding PREM, typically small errors are identified which are giving rise to settlements. Revenue commenced Risk Reviews on non-CCF cases in 2023 to examine the tax treatment of professional subscriptions and are currently in the process of finalising these reviews.

Natural Resources, Food and Leisure Branch

A new PO has been appointed to lead the Branch, which is a 'catch all' for other large entities within the LCD case-base. The Branch includes the large food plcs, dairy cooperatives, food production, media, the energy sector, the betting industry (which includes a significant non-resident component). It accounts for over 100,000 in PREM employments.

The team in LCD Branch is highly experienced and there is an increasing focus on profiling cases using Revenue's data and smarter case selection. This means that Level 2 interventions are targeted. The data can help Revenue identify specific risks, such as, in relation to VAT in the hospitality sector, VAT and exempt supplies, RCT (in the food processing sector), double tax relief issues in corporation tax.

The energy sector can involve large scale construction projects and renewable energy, including wind farms. The Branch has responsibilities also in relation to excise and warehousing with a focus on checks of controls on warehouses.

Customer Service and Divisional Branch

This Branch is responsible for workforce planning and training and data management. Skills development include a focus on technical, soft and data analytic skills. LCD is increasing its focus on adopting a smarter approach to risk and on developing knowledge hubs within the Division.

The Branch also deals with letters of residence, e-PSWT refunds, Excise Orders, VAT group registrations and processing of refunds. There is an alert on the Revenue system to make the Branch aware if queries or refunds are outstanding in excess of 20 working days (25 working days at peak periods). It is currently a peak period considering the refund processing required following the peak Form CT1 filing deadline.

In 2023, 82.3% of queries were dealt with by LCD within the 20-day Customer Service Standard with 52,000 queries closed. LCD has closed 37,000 queries in the year to date. Revenue requested that practitioners do not add a new enquiry on to a closed query in MyEnquiries. This affects Revenue's statistics on closed queries. Revenue emphasised the importance of supplying the full information required upfront to help expedite refunds. LCD does not operate a divisional phone line service. Groups that participate in the CCF will have contact details for their Case Manager. Otherwise, work is allocated across the Division.

230 interim ePSWT and 600 interim ePSWT refunds were processed in 2023 and 2024 (to date), respectively. 880 corporation tax refunds were processed in 2023 and 223 corporation tax refunds have been processed to date in 2024.

Refunds in excess of €500,000 for non-CCF cases are subject to additional verification, so there is generally a longer approval time. In relation to VAT, 337 refunds have been processed in CCF cases and 273 in non-CCF cases. Queries that are flagged for additional scrutiny will be sent to the relevant operational branch.

In response to a query about processing of Certificates of Tax Residence for companies and funds, LCD noted that the majority of this function has now been transferred to Revenue's HW&FSD. It was noted by practitioners that Certificates of Tax Residence can be downloaded but delays of 25 days or more can cause consternation.

LCD reminded that an invitation from Revenue is not a necessary precursor to joining the CCF. Groups that meet the criteria may apply. Revenue writes to non-CCF cases to make them aware of the CCF should they wish to join.

3. Issue of opinions

Practitioners queried the Division's approach to requests for tax opinions. LCD confirmed it responds to requests for opinions. Depending on the nature of the opinion sought, the request may need to be sent to RLS personnel which can add to the timeframe to receive a response.

Revenue has endeavoured to improve technical guidance in TDMs to address common sources of queries. For example, the 'Trade Benefit Test' regarding share buybacks was a topic on which Revenue received a considerable number of queries a number of years ago. The relevant TDM was updated as a result.

In the context of reorganisations, opinions sought can involve multiple tax heads, may be complex and specific to the circumstances of the case. There are no particular current trends in the requests for opinions. Revenue noted that its policy is clear regarding the need to seek a renewal of an opinion should the taxpayer wish to continue to rely on a historic opinion after its 5-year life has expired. There are no plans to change the Division's approach to providing opinions.

4. Update on automatic information exchange

The Division uses the data it receives under the automatic information exchange to inform its compliance activities. The Transfer Pricing Branches review DAC3, DAC4 and DAC6 filings exchanged by other Members States to examine if there is an Irish TP risk. The CCF affords an opportunity for the taxpayer to conduct a self-review.

5. AOB

ROS downtime

Practitioners raised the published notice on the Revenue website about scheduled downtime on the evening of 23 September considering it was the CT1 filing deadline for companies with a 31 December 2023 year end. While the downtime was rescheduled, the notice caused significant anxiety and distress to practitioners.

Practitioners requested that Revenue do not ever schedule ROS downtime on such a key filing deadline. Revenue acknowledged that the downtime should not have been scheduled for the key CT1 annual filing deadline. The downtime was rescheduled as soon as Revenue was made aware of the error.

Interaction between payments of corporation tax and Pillar Two QDTT

Practitioners queried Revenue's position on whether a no loss of revenue approach may be taken in the context of payments of corporation tax vis-à-vis payments of the Qualified Top-up Tax (QDTT) under Pillar Two. For example, an entity in-scope of Pillar Two could underpay its corporation tax liability in Ireland which will be topped-up to 15% in Ireland meaning it has met its Irish tax liability in overall terms and vice versa. Revenue confirmed that it would need to consider this issue. The Division noted it anticipates a range of operational queries will come to light around Pillar Two which will need to be addressed.