Summary Note of Meeting between the Irish Tax Institute and Revenue's Medium Enterprises Division (MED)

1 March 2021
Via Skype

Key points from the meeting

1. Overview of MED

Revenue noted the significant disruption to tax administration activities since the last Branch Network meeting with the Division in November 2019, due to the onset of the COVID-19 pandemic. MED has taken on an integral role in the operation of the Employment Wage Subsidy Scheme (EWSS). In addition, Revenue staff have undertaken new work and adjusted to a remote working environment. Assistant Secretary, Orla Fitzpatrick, commended her team for their remarkable efforts in managing to sustain the delivery of essential services, while rolling-out key Government supports.

Revenue staff continue to work remotely. However, staff have occasional access to the Revenue offices to allow them to access files. The Institute acknowledged the positive engagement with Revenue in supporting businesses that are operating in challenging circumstances.

Changes to the interactions between taxpayers and Revenue during the pandemic and insights gained from the Wage Subsidy Schemes about taxpayer behaviour and their attitude to compliance, will influence the Division's approach to compliance and service models as tax administration returns to normal. The Division cannot be definitive on their business plans for 2021, as yet. Plans will be reset as the environment becomes clearer in the months ahead.

The Divisional Office is responsible for managing the Service for Compliance activities for the Division. Revenue will review the learnings from service delivery in 2020. Following from the experience of direct interactions with employers over the last year, MED is examining the scope for closer direct engagement with some taxpayers and developing a framework for engagement, similar to the Cooperative Compliance Framework (CCF) operated by Revenue's Large Corporates Division (LCD).

Such a framework would be focused initially on engagement with the public administration sector. Revenue confirmed that the interaction between Revenue and the tax agent would continue to be important and would not be displaced by this model of direct engagement. Revenue has formed a panel of employers to gather feedback on their expectations of service and other interactions with Revenue, to help inform the development of a suitable framework of engagement.

The MED case-base is very diverse, covering cases with annual turnover from €3 million up to €190 million. 48% of the case base (circa 40,000 cases) generate an annual turnover of between €3 and €10 million and rely on tax agents. The involvement of a tax agent provides effective engagement with Revenue for this cohort. A framework involving direct engagement with taxpayers would involve the higher end of the MED case-base. The framework for this direct engagement model will be designed in 2021 with the intention of rolling it out in 2022.

The Institute asked whether the feedback Revenue has received from employers could be shared with the Institute. The Institute would also welcome the opportunity to provide input and engage on the proposed service reform. Revenue noted that this would be useful as plans evolve in the second half of 2021 and the Division would clarify with the Accountant General's and Strategic Planning Division whether anonymised employer feedback could be shared.

Revenue also noted the improvement in the MyEnquiries service delivery, in circumstances where the Business Taxes phoneline now operates a "mornings-only" service.

The Institute sought an organisational chart of MED which could identify the allocation of responsibilities to Assistant Principal (AP) level in the Division. This would be helpful in identifying officers managing discrete sections in such a diverse case-base. Due to expanded responsibilities in the current environment, Revenue consider it may not be possible to provide a precise identification of all responsibilities at AP level but agreed to consider what further level of detail could be provided.

2. Branch Plans

Revenue had noted at the 2019 Branch Network meeting with MED that the Division would be adopting a group-based approach to assessing risk and interventions. The changed environment has impacted on the development of such an approach. However, MED is conducting risk appraisals at a group level and will be adopting this approach on a phased basis.

Revenue is reviewing the entry threshold for companies dealt with by MED with a view to increasing the turnover threshold from €3 million to circa €8.5 million for a single entity or on a group basis in aggregate (where the company is part of a corporate group). The precise entry threshold amount has yet to be finalised and may take account of the turnover threshold for the iXBRL filing requirement (i.e., €8.8 million annual turnover). This transition will happen on a phased basis, with cases moving out of the Division where the businesses' turnover is less than the entry threshold for MED.

MED had previously dealt with all R&D Tax Credit claims (for businesses with turnover less than €190 million). From October 2020, R&D Tax Credit Claims are now dealt with by Business Division for businesses with annual turnover of less than €3 million.

The MED Branches outlined their priority areas of focus for the year ahead, which include:

Agriculture, Health & Tourism Branch

- Wage Subsidy Schemes and compliance with the terms of the schemes
- Closing open interventions
- Peculiarities specific to the case base (e.g., hotels now serving as emergency accommodation or vaccine centres)

Construction Branch

- Wage Subsidy Schemes
- Reinstatement of core compliance work driven by taxpayer behaviour and using data analytics e.g., eRCT, PREM, VAT real-time interventions.

Practitioners queried Revenue's interactions with the construction sector and the sector's participation in the EWSS, as compared to the Temporary Wage Subsidy Scheme (TWSS). Revenue acknowledged the significant increase of construction sector businesses participating in EWSS in comparison to the TWSS, given the scope of the recent public health restrictions. Real-time checks are conducted to identify and engage on any risks identified on EWSS. Revenue's focus will develop as the economy reopens. MED has a deep knowledge of the sector in particular regarding large civil engineering projects and commercial construction.

Revenue is cognisant of the current challenges presented by the pandemic for the construction sector. However, Revenue's activities are risk-based and informed by taxpayer behaviour.

IT, Science and Finance Branch

- This Branch is responsible for circa 1,900 companies and 1,500 proprietary directors and will be focusing on the COVID Support Schemes, TWSS reconciliation and PREM risks.

Manufacturing Branch

- Activities related to the COVID Support Schemes, in particular, on TWSS and EWSS compliance.
- Some general activity relating to e.g., R&D Tax Credit claims, KDB claims, controlled companies, cash extraction, non-vouched expenses/wages.

Motor Transport and Utilities Branch

- COVID Supports Schemes - circa 50% of the Branch's case-base are availing of wages subsidies.
- Closing out open interventions, with any new interventions based on identified risks.
- The Branch includes Control Officers for Customs, and AEO – significant activity in this area as 2021 progresses because of Brexit.

Non-resident Online Business Branch

The Branch's case-base is not limited to businesses which satisfy the MED criteria (i.e., it has a national brief, covering the Mini One Stop Shop (MOSS), non-resident distance sellers and remote book makers. The Branch works in conjunction with EU trends and developments.

- Compliance activities are primarily directed at unregistered traders.
- Activities arising from Brexit, and the expansion of the One Stop Shop (OSS) to distance sales of goods and other B2C supplies of services from 1 July 2021.

Public Administration Branch

- Considerable ongoing engagement with the health sector in the current climate.
- A number of the departments are moving to a shared services model and dealing with direct queries from public bodies in the case-base.
- Other areas of focus include Brexit, progressing open interventions, major capital projects, PREM interventions and examining a pilot model similar to CCF for public administration bodies.

Wholesale and Retail Branch

- TWSS related activities, including the TWSS reconciliation - in excess of 23% of the TWSS claims in MED relate to the Branch's case-base.

- Progressing open interventions and issues identified from an increase in revenue generation by some businesses as a result of the pandemic.

TWSS Compliance Checks

Practitioners highlighted instances, which suggested inconsistencies in MED's approach to TWSS Compliance Checks and sought clarification on the Division's approach to these checks. Revenue noted that the starting point is the legislation. A business is required to assess the decline in business performance as a result of the pandemic, with reference to business performance pre-COVID 19.

Revenue considers they have adopted a pragmatic approach and seek evidence that the business had reasonable grounds for entering into the scheme. If a business initially expected the pandemic to have a considerable impact on their turnover/customer orders, but the trade subsequently improved and improved at a sustainable level, the business was required to voluntarily exit the scheme. Revenue considers they have adopted a consistent treatment to cases.

Practitioners queried circumstances where Revenue appeared to adopt a rigid approach to the evidence sought that a business was significantly impacted by the pandemic. In particular, Revenue requires the business to demonstrate at least a 25% reduction in turnover or customer orders by reference to a prior period and would not consider another reasonable basis used by a business in assessing whether they qualified for the scheme.

Revenue noted that if a business is capable of applying the turnover test it cannot use another basis in determining whether it qualified for the scheme. Practitioners also pointed to the genuine belief a business may have had at the onset of the pandemic, on the likely impact on their business at a point in time and the subsequent developments to the guidance as it evolved. Revenue noted that for some businesses, the outlook at the outset may have been bleak, where performance improved and improved on a sustained basis, as identified through a businesses' rolling monthly reviews of performance, the business was required to exit the scheme.

Practitioners highlighted an experience where two lines of businesses carried on the same activities in different geographical locations but were treated in a different manner by Revenue when determining whether a separate trade was operated by each business line. Revenue consider differences can arise depending on the case. However, the specific case examples referred to, where practitioners considered issues arose in Revenue's approach, can be submitted to the Divisional office for examination.

EWSS

Practitioners queried how Revenue approach the question of whether a separate trade exists in circumstances where more than one trade is carried on by the company. Revenue noted that it would need to establish that it is managed as a very distinct line of operation, with dedicated staff attributable to and responsible for that distinct line and that this management structure was in place pre-COVID-19.

Revenue will consider what resources are directly attributable to that line of business and whether that line of business suffered the requisite reduction in turnover/customers to meet the EWSS criteria. Revenue acknowledged that such separate management lines could be more difficult to prove in a smaller business.

3. Compliance activity

The Division's core compliance work has been disrupted due to the pandemic, but it has still continued. Circa 50% of MED's case-base of employers did not receive any wage subsidies and Revenue will be refocusing their attention on this cohort.

As regards EWSS and the Covid Restrictions Support Scheme (CRSS), Revenue do not expect to conduct blanket checks of all participants after the scheme ends - checks will be risk-based. Revenue is cognisant of the pressures on businesses, even as reopening may be possible in the months ahead and will be returning to compliance activities gradually.

Circa 47,000 employers are availing of the EWSS. Revenue is conducting EWSS compliance interventions in real-time. Use of data analytics allows them to assess, for example, whether it could be reasonable to expect that the business is meeting the eligibility criteria. In cases where Revenue suspect abuse of the scheme, they are actively intervening in real-time and will suspend access to the scheme until they have completed their review. The EWSS was recently extended by the Government until 30 June 2021 and the Minister for Finance has noted that there will be no "cliff-edge" to the scheme.

Revenue has expedited R&D payable credits to assist businesses. Revenue noted instances where errors are being made on the Form CT1 returns, whereby R&D expenditure has been incorrectly entered in the credit field. Revenue takes a risk-based approach to R&D Tax Credit Claims, focusing on the accounting test. Revenue engage R&D experts when examining whether the science test has been met. Revenue is carrying out compliance checks on the majority of KDB claims.

4. Engaging with the Division

Revenue's concerted efforts to improve the MyEnquiries service and development to the query tracker service terms were noted.

Revenue provided an update on the Revenue Technical Service (RTS) which is managed in the Division. RTS deals with complex technical queries for the case-base of MED, Business Division and Personal Division. The Branch is made up of a Branch Manager, six tax managers, an administration manager and three administration staff.

RTS has a very strict system of governance for sign-off on responses. In 2020, RTS received circa 600 queries and issued 250 opinions. Approximately 50 requests were abandoned by the applicant. Revenue rejected 300 requests but tried to provide some assistance to direct the applicant to the relevant Tax and Duty Manual (TDM) in 150 of these cases. Some cases may not be accepted at the outset but can subsequently be accepted, where the quality of information provided on the RTS1A query form is improved.

Revenue's default position is to accept a query. However, over 50% of queries are rejected for a number of reasons, for example:

- The RTS1A is not completed properly, for example, incomplete facts, the applicant does not include their interpretation of the position, the applicant does not specify the doubt/uncertainty on which the applicant is seeking reassurance.
- Contracts or agreements referred to in the submission are not provided.

- Correct route of transmission - Some applicants are choosing an incorrect query pathway when trying to direct queries to RTS in MyEnquiries. The RTS TDM outlines the appropriate pathway.

If the applicant receives a response from Revenue and consider that Revenue is incorrect on the technical position, Revenue can re-examine the matter if the applicant gives a detailed analysis of where they believe the RTS may have erred. Revenue has reversed their opinion in a small number of cases where further information or technical analysis is provided. RTS also submits suggestions for updates to TDM reflective of common queries.

Revenue emphasised the importance of fully completing the form and being as precise as possible on the query. RTS has ceased applying the internal "completed" marker on queries as this internal system IC record was visible to applicants and caused some confusion about the status of the query when a reply had not been sent to the applicant.

Practitioners queried whether RTS personnel are willing to meet with applicants in complex cases, as outlined in the RTS TDM and whether such meetings have been held. Revenue has had meetings in some cases and are also engaging with applicants where insufficient facts have been provided to improve the quality of the reply, as the facts will underpin the decision.

Practitioners asked whether Revenue provide a reasoned basis for their answer with their response in all cases. Revenue confirmed they will give an explanation with the reply.

Practitioners highlighted a taxpayer's need for certainty when entering a life decision. They often wish to know Revenue's view on the matter if there is a substantial amount of tax in question. The tax agent may be very confident of their interpretation of the position, but it can be challenging for practitioners to address a client's need for certainty without undermining their interpretation of the position by outlining a doubt or uncertainty in their position in the query submitted to Revenue. Revenue acknowledged the concern. However, Revenue cannot step into the role of the tax agent nor provide "letters of comfort", a doubt must be identified. The doubt in question could include that the matter has not been addressed in a TDM.

5. Agreeing settlements

Practitioners asked about the process and thresholds for agreeing settlements and noted that at times, it appeared to the taxpayer and agent that a settlement was agreed but was subsequently rejected when further reviewed internally by Revenue.

Revenue noted that taxpayers should be advised where they are in the process when engaging with Revenue on a settlement. The authorisation thresholds have recently been amended; a Principal Officer can authorise settlements up to €50,000, settlements between €50,000 and €250,000 require authorisation at Assistant Secretary level, with settlements more than €250,000 authorised by the Revenue Board.

Revenue is keen to progress cases as quickly as they can. While staff are working remotely, they have access to Revenue offices to access files and progress matters. Taxpayers should understand the stage of progression of their intervention. Issues arising in individual cases can be brought to Revenue's attention.

6. Brexit-related activities

As regards customs activity, Revenue acknowledged the IT difficulties experienced recently and noted that the AIS is now stable, with issues largely resolved. Some issues continue to arise with incorrect details included on customs declarations. Revenue noted the importance of correctly completing the customs declarations. While VAT registered business are automatically entitled to VAT postponed accounting, if the customs declaration is not completed correctly, the business cannot avail of postponed accounting at the point of import. Revenue would welcome scope to provide further information or presentations to ensure members and businesses are clear on the requirement. The Institute will engage subsequently with Revenue on this area. Revenue noted the impact of the current circumstances on the VAT margin scheme for cars. Supplies from Great Britain to Northern Ireland and subsequently to Ireland do not qualify for the scheme and Revenue will be looking at these supplies. The vehicles will not be registered in Ireland until the customs is paid and import declaration is completed.

Revenue also reminded that supplies that are not of UK origin do not qualify for zero rating. Revenue noted that the VAT issues following Brexit may become more common over the months ahead. Businesses which have not restructured their business models in advance of Brexit, may be subject to VAT at import and VAT on a supply in the UK. Such businesses, procedures and structures need to be reviewed.

Revenue welcomed the useful engagement in a difficult environment and as observed earlier, noted some priorities and plans may reset over the coming months. Revenue noted that they are cognisant of the impact of the pandemic, its pronounced effect on certain sectors and they will be mindful of this in their approach to recommencing normal activities over the months ahead.