Aidan Lucey
Partner, Tax Risk & Controversy, PwC Ireland
Mark Barrett
Chartered Tax Adviser, RDJ

Revenue's Code of Practice for Compliance Interventions

Introduction

The Revenue's new Code of Practice for Revenue Compliance Interventions ("the Code") came into effect on 1 May 2022. This Code superseded the previous Code of Practice for Revenue Audit and Other Compliance Interventions, which was drafted in 2015 (hereafter referred to as "the previous Code").

The Code was redrafted to reflect the introduction of Revenue's new Compliance Intervention Framework, which also came into force on 1 May 2022. The Code provides a set of guidelines on the components of, and principles underpinning, the new framework.

The most fundamental changes to the Code relate to Revenue's revised classification of compliance interventions under the new framework and taxpayers' ability to make a qualifying disclosure upon notification of same. Revenue also took the opportunity to refine and streamline the broader aspects of the Code. Although many of the key provisions remain unchanged, there are a number of important amendments that taxpayers and practitioners should be aware of.

In this article we explore the core components of the Code and the new framework. While the new framework is still very much in its

infancy, we also assess some of the early trends to emerge.

Rationale for the Change

> “We will continue to encourage self-review and correction by taxpayers. We will implement a revised framework of compliance interventions that supports early and effective engagement to address non-compliance, based on the level of risk and taxpayer behaviour.”

This statement, included in Revenue’s “Statement of Strategy 2021 to 2023”, which was published in January 2021, was a clear indication that changes were coming. In some ways, it should have been no surprise. Revenue is continually evolving its structure and refining its approach in an effort to confront non-compliance. For example, in recent years we have seen enhancements to its data analytics capabilities, a shift to e-audits and a realignment of its operating structure.

That said, the key components of Revenue’s Compliance Intervention Framework had been in place since 2010 without much formal modification. The landscape has changed a lot since then:

- **Scope of non-audit interventions**: The nature and application of non-audit interventions have evolved. For example, “aspect queries” were originally designed to focus on a specific aspect of a tax return. More recently, it was not uncommon for aspect queries to span multiple tax heads and lead to multiple information requests, in many ways morphing into quasi-audits.
- **Risk profiling and data analytics**: Revenue now has access to vast quantities of data relating to the taxpayers’ affairs, and this has evolved significantly in recent years. Although a large proportion of this data is provided by taxpayers themselves in respect of their own affairs, Revenue is deriving increasing amounts of information on its case base from third-party sources such as foreign tax authorities, financial institutions and third-party returns. Revenue has invested significantly in its analytics resources to optimise the use of this data in risk profiling taxpayers. This means that Revenue is now far better equipped to identify the higher-risk taxpayers in its case base.
- **Real-time reporting**: The introduction of real-time reporting, and more recently the administration of Covid-19 supports, has given Revenue access to a huge volume of taxpayer data that is being used to generate real-time insights into taxpayer behaviour and risks. This has resulted in the upstreaming of interventions.
- **Co-operative Compliance Framework (CCF)**: CCF was relaunched in 2017 to facilitate the development of a relationship between Revenue and large corporates based on trust and transparency from both parties. Voluntary tax compliance is at its core. CCF has reshaped the way participating companies manage their compliance risk and how Revenue interacts with them.

The above are just some examples of the types of measures that Revenue has introduced to confront non-compliance. In light of these developments, it was important that Revenue’s suite of compliance interventions and the principles underpinning them were fit for purpose in the current landscape.

Overview of New Compliance Intervention Framework

The framework reflects Revenue’s graduated response to risk and non-compliance, while providing taxpayers with a mechanism to regularise any tax underpayments. It places an increased onus on taxpayers to proactively self-review their tax filings and voluntarily disclose errors to Revenue.

The framework applies to all taxes and duties but specifically excludes customs, with customs interventions instead dealt with under the EU Customs Code and EU legislation.

The framework comprises three graduated levels: Level 1, Level 2 and Level 3. Each level is

considered below in the context of its objective, the types of interventions falling within that level and taxpayers' ability to make a qualifying disclosure.

Level 1

Objective

Level 1 interventions are designed to support compliance by reminding taxpayers of their obligations and providing them with the opportunity to correct errors without initiating a more in-depth intervention. These interventions are typically reserved for cases where Revenue has not engaged in any detailed examination of a taxpayer's affairs.

Intervention types

Level 1 interventions include non-filer reminder notifications, real-time prompts to taxpayers during the making of returns, requests to self-review on specific issues and engagement under the CCF. In the authors' experience since the introduction of the new code , examples of the types of requests categorised as Level 1 are:

- standard VAT repayment checks;
- requests for tax computations;
- general queries on reporting anomalies in returns (e.g. monthly payroll submissions, completion of PA1 (postponed accounting) field on VAT returns);
- requests for back-up to support relief claims (e.g. R&D tax credit, stamp duty reliefs); and
- requests for companies to carry out a review of returns eligible for debt warehousing (as part of Revenue's general debt warehouse compliance programme).

It should also be noted that "profile interviews" are considered a Level 1 intervention. Under the previous framework, profile interviews were used by Revenue to appraise a set of taxpayer risks and to determine whether a Revenue audit was warranted.

However, the definition of a profile interview has changed in the Code, and they will serve a different purpose under the new framework. A profile interview will now be used by Revenue to familiarise itself with a taxpayer rather than to appraise any particular risks. Where Revenue identifies a compliance risk during a profile interview, it may initiate a Level 2 or Level 3 intervention (discussed below), so it is important that taxpayers treat these meetings seriously and are adequately prepared.

Notification

Although Revenue may write directly to a taxpayer to notify them that they are subject to a Level 1 intervention, it has also suggested that it could use the media or other public fora to advise a group of taxpayers of particular areas that should be reviewed.

Disclosure position

Where a taxpayer is notified of a Level 1 intervention, they will still have the opportunity to make an "unprompted qualifying disclosure". Taxpayers can also avail of the "self-correction without penalty" mechanism if tax returns are amended within the required timeframe.

Level 2

Objective

Level 2 interventions are used by Revenue to confront compliance risks based on the circumstances and behaviour of the taxpayers concerned. They could range from an examination of a single issue in a return to comprehensive tax audits.

Intervention types

Level 2 comprises two types of interventions:

- audits and
- risk reviews.

Readers will be very familiar with the concept of Revenue audits. The audit process and underlying protocols remain largely unchanged under the new Code (apart from some helpful changes to timelines, which we discuss below).

A **"risk review"** is a new type of intervention. It represents the most significant change in

the new framework and one that will require a mindset shift for taxpayers and advisers alike.

A risk review is primarily a desk-based intervention that is focused on a particular issue(s) in a tax return or a risk identified from Revenue's Risk Evaluation, Analysis and Profiling System (REAP). The risk review notification will set out the issue(s) and period for review, together with any additional information requested by Revenue.

In many ways, a risk review replaces an aspect query, which no longer exists under the new framework. There is, however, one fundamental difference. When a taxpayer was notified of an aspect query, they could still make an unprompted qualifying disclosure in respect of tax underpayments. This option to make an unprompted qualifying disclosure is not available upon notification of a risk review.

In the authors' experience since the introduction of the new Code the majority of risk review notifications are targeted at specific risks within a tax head. In some cases the notifications helpfully set out why exactly Revenue perceives that there is a risk. This is typically driven by an inconsistency between tax returns and other data sources available to Revenue, such as financial statements, information received from another tax authority, returns filed by other taxpayers or property registers.

A risk review will commence 28 days after the date of notification. A taxpayer can still make a **prompted qualifying disclosure** in respect of tax underpayments up until the commencement of the risk review. It is important to note that the disclosure must include all underpayments in respect of that particular tax head for the period in scope (and not just the particular issue that is the subject of the risk review). Failure to disclose any such underpayments at this point will likely give rise to higher penalties and could increase the risk of publication in Revenue's Tax Defaulters' List.

So although Revenue sees a risk review as a targeted intervention designed to focus on a very specific risk, it actually requires a very wide-ranging review from a taxpayer. This is best illustrated by way of an example.

Example

On 1 February 2023 Company A is notified of an employment tax risk review in respect of the tax treatment of termination payments in its 2022 returns. From that date, Company A no longer has the opportunity to make an unprompted disclosure on employment tax for 2022. Company A can still make a prompted qualifying disclosure but has only 28 days in which to do so unless an extension is sought.

To make sure that any qualifying disclosure is correct and complete, Company A must ensure that all employment tax underpayments relating to 2022 are disclosed. This means that it will not be sufficient to review only the treatment of termination payments; rather, the company will have to review other risk areas, including expense reimbursements, staff benefits, contractors, company cars and share rewards.

Notification

Revenue will write directly to a taxpayer (and any linked tax adviser) to notify them that they have been selected for a Level 2 intervention.

The notification letter will clearly indicate that it is a Level 2 compliance intervention and will set out the type intervention, i.e. risk review or audit. The letter will set out the issue(s)/tax head(s) and period(s) within the scope of the intervention.

Disclosure position

Where a taxpayer is notified of a Level 2 intervention, they will no longer have the ability to make an unprompted qualifying disclosure. A taxpayer can still make a **prompted qualifying disclosure** in respect of tax underpayments up until the commencement of the intervention.

A taxpayer can request an additional 60 days to prepare the prompted qualifying disclosure but must do so within 21 days from the date of notification of the intervention. This can be done through the submission of a Notice of Intention.

Level 3

Objective

Level 3 interventions are focused on tackling what Revenue perceives as high-risk practices and cases displaying risks of suspected fraud and tax evasion.

Intervention types

Level 3 interventions are in the form of "Revenue investigations". The investigation process and underlying protocols remain largely unchanged under the new Code.

Notification

Revenue will write directly to a taxpayer (and any linked tax adviser) to notify them that they have been selected for a Revenue investigation. The letter should include the wording "Notification of a Level 3 Compliance Intervention – Revenue Investigation".

In some cases an investigation may commence with an unannounced visit to the business

premises. In such cases a notification letter will be provided to the taxpayer.

Disclosure position

In line with the current framework, a taxpayer will not have the ability to make any form of qualifying disclosure once notified of an investigation.

Escalation of Interventions

The tiered intervention levels in the framework reflect Revenue's graduated response to confronting non-compliance. However, Revenue has been clear that its interactions with taxpayers will not be in the form of a sequential escalation starting at Level 1.

The type of intervention initiated by Revenue will be determined by the nature and scale of the risks identified. For example, if Revenue has identified a broad base of risks across a range of a taxpayer's returns, this could result in the immediate initiation of a Level 2 intervention.

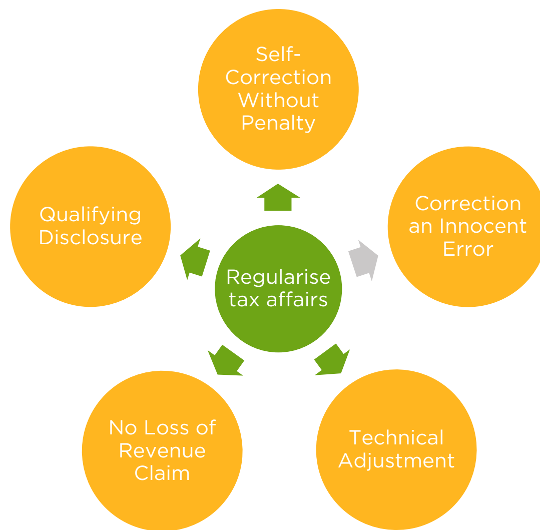
That said, Revenue has noted that, in some instances, interventions can be escalated to a higher level. This could occur, for example, where a taxpayer that is subject to a Level 1 intervention does not engage with the process or rectify any anomalies (as perceived by Revenue) in their tax return. In this scenario, Revenue may decide to escalate the case to a Level 2 intervention, in which case the taxpayer would no longer have the opportunity to make an unprompted disclosure.

Similarly, where Revenue is dissatisfied with a taxpayer's engagement in dealing with a risk review or wants to examine a qualifying disclosure made, the case could be escalated to an audit. Although a risk review and an audit are both Level 2 interventions (and therefore come with the same disclosure entitlements), it is important to remember that an audit is typically a far more invasive and time-intensive process. So it is advisable for taxpayers and advisers to carefully manage the risk review process to mitigate the risk of escalation.

Regularising Tax Defaults

Chapter 2 of the Code sets out the range of opportunities for taxpayers to self-review, self-correct and make unprompted qualifying disclosures. Taxpayers may regularise their tax affairs in a number of ways, each of which requires the taxpayer to satisfy various qualifying criteria to be in a position to avail of them:[1]

1 Diagram replicated from chapter 2.1 of the Code.



These opportunities were contained in chapter 3 of the previous Code, and the conditions to be complied with remain largely unchanged.

The features of these opportunities include:

- **Self-correction without penalty**: This applies where the taxpayer notifies Revenue within the applicable time limit and provides a computation of the correct tax and statutory interest. The benefit of self-correction without penalty will not be available where Revenue has notified a taxpayer of a Level 2 or Level 3 compliance intervention for the particular period.
- **Correcting an innocent error**: Where a tax default is not deliberate and is not attributable to a taxpayer's failure to take reasonable care in complying with his or her tax obligations, a correction can be made without penalty. Statutory interest will apply.
- **Technical adjustment**: A default of liability to tax or duty may arise in circumstances where the taxpayer did not act either carelessly or with deliberate intent (e.g. differences in legislative interpretation). In such cases, a tax-geared penalty should not apply. Interest will, however, apply for the period of the underpayment.
- **No loss of revenue claim**: In circumstances where Revenue is satisfied that no loss of revenue has occurred due to a failure to operate the tax system correctly, it will not seek to collect the tax amounts in question, where certain conditions can be satisfied. Liability to a penalty may still apply. Statutory interest may be sought, but this will be limited to any period during which there was a temporary loss of revenue.

Perhaps the most material difference in this part of the Code, as already outlined, is that an unprompted qualifying disclosure will be accepted only where Revenue is satisfied that it has been voluntarily furnished before Revenue has issued a notification of intention to commence any Level 2 or Level 3 compliance interventions in relation to any matter included in the disclosure. This includes Level 2 risk reviews, which will inevitably restrict a taxpayer's capacity to make an unprompted qualifying disclosure in interventions that may previously have been dealt with by way of an aspect query.

Risk Review and Revenue Audit

Chapter 3 of the Code provides an overview of the procedures involved in conducting Level 2 interventions. The procedures for the conduct of a Revenue audit are largely similar to those in the previous Code. An audit is usually carried out at the taxpayer's principal place of business and in the presence of the taxpayer and their agent, where relevant. However, it is acknowledged that during the Covid-19 pandemic compliance interventions were by and large conducted remotely. Section 3.2.1 of the Code states that:

> "In cases where data can be provided electronically, audits may continue to be carried out remotely using video conferencing facilities. The concept of an audit is the same regardless of whether it is carried out in person on site or remotely using video conferencing facilities."

In the authors' experience, "on-site" audits have yet to recommence at anywhere near pre-pandemic levels, and it is not clear when this is likely to change.

The procedures for pre-audit meetings are set out in section 3.2.3.3 of the Code and, helpfully, it is clarified that they are carried out before the audit has commenced and therefore do not affect a taxpayer's entitlement to make a prompted qualifying disclosure. Although these meetings are generally arranged by Revenue to facilitate access to, and provide an understanding of, a client's software systems, they might also afford an opportunity to engage with Revenue to clarify issues such as the focus of the audit and potentially tease out technical issues.

The Code states that most risk reviews will be desk-based and the majority will be carried out by way of correspondence. Visits will be scheduled only where necessary to conclude the risk review effectively. The notification is broadly similar to the audit letter and will set out the scope and period involved. As already mentioned, risk reviews will commence 28 days after the date of the notification.

Finance Act 2021 Changes

Finance Act 2021 contained a number of legislative changes that have been reflected in the Code. These were outlined in detail in *Irish Tax Review*, Issue 1 of 2022,[2] but in summary the main provisions are:

- Penalties will not be charged for technical adjustments, for innocent errors and in cases where total tax defaults are less than €6,000 and are in the careless rather than deliberate behaviour category of default.
- The prohibition on (1) mitigation of penalties and (2) a taxpayer's capacity to make a qualifying disclosure in offshore cases has been removed.
- A settlement will not be published when the tax underpayment made or refund incorrectly claimed is less than €50,000. Previously, any settlement where the combined tax, interest and penalty exceeded €35,000 was publishable.

Practical Tips for Practitioners

Practitioners assisting clients with the preparation of qualifying disclosures should bear the following in mind when advising clients in connection with Revenue interventions:

- The first, and perhaps most important, step is to be aware of the various methods by which a disclosure can be made and to be familiar with the timelines and procedures involved. When a client receives notification of an intervention, the "Level" should be clearly stated on the correspondence, whether that is delivered by letter, a message via MyEnquiries etc. An informed decision should then be made in conjunction with the client to determine the appropriate course of action.
- Cooperation with a compliance intervention remains critically important in mitigating potential penalties in any tax settlement. Section 2.17 of the Code contains a list of factors indicating full cooperation and of factors demonstrating lack of cooperation. Prompt payment of the intervention settlement liability (including by way of an agreed phased payment arrangement) is an indicator of cooperation. However, inability to pay is not listed as an indicator of failure to cooperate, and a taxpayer should never suffer an additional penalty or sanction by virtue of not having sufficient funds to discharge a liability fully.
- If at all possible, practitioners should avoid situations where a perceived lack of cooperation results in Revenue's writing to a taxpayer and their agent, where relevant, advising that the behaviour in question does not constitute full cooperation. This could potentially put a practitioner in a difficult position if a client feels that they have incurred an unnecessary additional penalty

2 Mark Barrett, "Finance Act 2021 and the Code of Practice for Revenue Compliance Interventions", *Irish Tax Review*, Issue 1 of 2022.

due to the actions of their agent and for reasons outside of their control.

- Revenue may accept a disclosure as a qualifying disclosure where it is signed "by or on behalf of the taxpayer". Under no circumstances should an agent ever sign a disclosure on behalf of a client: it is the client's disclosure, not the agent's, and an agent can therefore never be certain that they are in possession of all relevant facts.
- There may be situations where absolute certainty cannot be achieved on the extent of a taxpayer's liability to be included in a disclosure. This might be the case where, for example, records have not been retained for GDPR compliance reasons or a substantial number of years are involved, making access to information difficult. This should not necessarily mean, however, that a taxpayer is precluded from making a qualifying disclosure in such circumstances.
- An appropriate letter of engagement should be in place to capture the obligations of both the taxpayer and the practitioner. If an existing letter of engagement does not sufficiently cover the relevant areas, a bespoke letter should be put in place before providing any advice to the client on the conduct of the intervention.

Reassessing the Merits of the Cooperative Compliance Framework

As mentioned above, all interactions between Revenue and companies participating in CCF should fall into Level 1. This safeguards a company's ability to self-correct or make an unprompted qualifying disclosure.

For those companies whose tax affairs are dealt with by Revenue's Large Corporates Division or who have the option of participating in Medium Enterprises Division's new pilot CCF programme, the new framework could increase the attractiveness of CCF.

The merits of joining CCF need to be considered by each company in the context of its own profile. It is also important to recognise that CCF brings with it certain obligations for companies, such as an annual risk review meeting, conducting self-reviews and having a tax control framework in place.

In considering their position, it would be beneficial for companies to read the findings of Revenue's review of CCF,[3] which was published recently. The review provides insights into the operation of CCF, the profile of participating groups and the practical experience of participants. Overall, Revenue has concluded that participating groups are generally satisfied with CCF.

Conclusion

Failing to avail of an opportunity to make an unprompted or prompted qualifying disclosure can have significant implications for both a taxpayer and their adviser. All practitioners should therefore take time to familiarise themselves with the workings of the new Code. In particular, a practitioner should be aware that the Compliance Intervention Framework is now part of the fabric of the Code and know what this means in terms of the process and timelines for making a qualifying disclosure.

The inability to make an unprompted qualifying disclosure once a taxpayer has been notified of a risk review is a "game changer" and represents a major departure from the opportunity previously available for aspect queries.

The Representations team in the Irish Tax Institute will continue to keep members apprised of how the new Code is evolving in practice.

3 See https://www.revenue.ie/en/companies-and-charities/documents/co-operative-compliance-framework-review-report-2021.pdf.