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New Code of Practice for Revenue Compliance Interventions

Effective 1 May 2022

INTRODUCTION

A new Code of Practice for Revenue Compliance Interventions was recently published. From 1 May 2022, the Code of Practice will significantly change interactions between Revenue and taxpayers. “Aspect queries” are no longer part of the compliance intervention framework and have been replaced and modified by the new concept of a “risk review”. This is significant as it impacts a taxpayer’s ability to make an “unprompted” voluntary disclosure. In certain cases, this will increase the level of penalties applicable to an undeclared tax liability.

The Code of Practice confirms that Revenue continues to take a more targeted approach to risk and tax non-compliance. Given the changes, taxpayers should carry out a self-review and consider if it is necessary to make an “unprompted” qualifying disclosure before the new code is operational on 1 May 2022.

This briefing examines some of the key changes and new concepts under the updated Revenue Code of Practice for Revenue Compliance Interventions.

NEW CODE OF PRACTICE FOR REVENUE COMPLIANCE INTERVENTIONS – EFFECTIVE 1 MAY 2022

Revenue recently published its new Code of Practice for Revenue Compliance Interventions (Code) which will come into effect on 1 May 2022. The Code sets out how Revenue will conduct their interventions, what taxpayers can expect when Revenue conduct interventions, and the benefits of disclosing a tax default at the earliest opportunity.

The Code will apply to interventions commenced on or after 1 May 2022. The existing Code of Practice (first introduced in 2010) will continue to apply to current Revenue interventions and those commenced before 1 May 2022.

Whilst much of the existing Code of Practice and its concepts remain unaffected, this briefing sets out some principal changes that taxpayers should be aware of. Given the changes, taxpayers should self-review their tax compliance positions and consider if it is necessary to make an “unprompted” voluntary disclosure of any issues identified before the Code becomes operational on 1 May 2022.

QUALIFYING DISCLOSURES

To fully appreciate the changes introduced, it is important to understand the concept of a qualifying disclosure. In broad terms, this is a written disclosure to Revenue of a tax or duty liability or other errors made on a tax return accompanied by:

- I. a declaration that all matters in the disclosure are correct and complete, and
- II. payment of the tax and interest arising.

In the case of underpaid tax, both interest and penalties can apply. However, the rate of penalty can be mitigated by making a qualifying disclosure and co-operating with the Revenue intervention. Furthermore, a qualifying disclosure will secure the benefit of non-publication on Revenue's quarterly List of Tax Defaulters. Finally, Revenue will not initiate an investigation with a view to prosecution of the taxpayer concerning the matter disclosed.

Qualifying disclosures can be classified as "unprompted" or "prompted", depending on the timing of the intervention. This will impact the level of penalty mitigation available. An "unprompted" qualifying disclosure is made prior to Revenue notifying the taxpayer that it is initiating certain Revenue interventions (as explained below, under the existing Code of Practice the relevant intervention is a tax audit, however, from 1 May 2022, both tax audits and the new concept of a risk review will be included). A "prompted" qualifying disclosure is made following receipt of the notification of the relevant Revenue intervention but before the actual commencement of the intervention.

Notably, the Code reiterates the Finance Act 2021's reinstatement of a taxpayer's ability to make a qualifying disclosure in respect of "offshore matters", which had previously been restricted.

NEW GRADUATED RESPONSE TO RISK

The Code sets out a Compliance Intervention Framework intended to provide a consistent graduated response to tax risk. The interventions range from Revenue reminding and encouraging taxpayers to fulfil their tax compliance obligations, to criminal investigations for serious cases of fraud or evasion.

There are now three risk-based intervention levels. Revenue may initiate an intervention at any level in response to a perceived tax risk. An intervention may also be escalated to a higher level during an existing Revenue intervention.

LEVEL 1 INTERVENTIONS

Level 1 interventions are designed to support tax compliance and include:

- Reminder Notification of Outstanding Tax Returns.
- Request to self-review a tax return.
- Profile Interview i.e., a meeting with a taxpayer to understand the business and its tax affairs.
- Engagement with businesses under the Cooperative Compliance Framework (CCF) (this involves Revenue and the taxpayer agreeing actions to ensure compliance).

Under a Level 1 intervention, taxpayers retain the ability to make an “unprompted” qualifying disclosure in respect of a tax default.

LEVEL 2 INTERVENTIONS

Level 2 interventions concern risk-based reviews of the data provided in tax returns including:

- Risk Reviews (this is a new concept detailed below).
- Tax Audits.

A “Notification of a Revenue Level 2 Compliance Intervention” should issue to the taxpayer giving 28 days notice of the risk review or audit. The 28 days notice provided under the Code increases taxpayers’ time to prepare for a tax audit; the existing notice period for a tax audit is 21 days.

Following receipt of the Level 2 intervention notification and prior to the commencement of the risk review or audit, the taxpayer will only be able to make a “prompted” voluntary disclosure to address any default or non-compliance.

Taxpayers can also secure an agreed period to prepare a qualifying disclosure (up to 60 days). Taxpayers must submit a “notice of intention” to make a qualifying disclosure to obtain this additional time. In the case of “unprompted” qualifying disclosures, the “notice of intention” must be submitted within 21 days of the notification of the Level 2 intervention (increased for audits from 14 to 21 days).

RISK REVIEW

A risk review is a new concept under the Code and is defined as “a focused intervention to examine a risk or small number of risks on a return”. It is narrower in scale than an audit. It essentially replaces the “aspect query” procedure, which is not included in the Code; but there are some key differences.

Currently, a taxpayer who receives an aspect query retains the opportunity to make an “unprompted” qualifying disclosure. From 1 May 2022, a taxpayer who receives a notification of a risk review can only make a “prompted” disclosure before the commencement of the Revenue review. This change will impact the level of penalty mitigation available to that taxpayer. Revenue indicated that the rationale for this change, is because in the case of a level 2 intervention, it has actively identified the tax risk in question and has invited the taxpayer to quantify any liability arising.

LEVEL 3 INTERVENTIONS

Level 3 interventions tackle suspected fraud and tax evasion and comprise a Revenue investigation procedure.

A taxpayer under investigation cannot make an “unprompted” or “prompted” qualifying disclosure. They can make a disclosure or settlement with Revenue. However, this will not secure the benefits of a qualifying disclosure in terms of penalty mitigation, non-publication on Revenue’s quarterly List of Tax Defaulters, or assurance that the matter will not be referred to the DPP for criminal prosecution.

It is notable that under the Code, the tax threshold for publication on Revenue’s quarterly List of Tax Defaulters will increase from €35,000 to €50,000, with effect from 1 May 2022.

SUMMARY TABLE EXPLAINING LEVEL 1, 2 AND 3 INTERVENTIONS

	Level 1	Level 2	Level 3
Objective	Support Compliance	Challenge Non-Compliance	Tackle High-Risk Cases/Practices
Activity	Self-Reviews Profile Interviews Non-filer reminder CCF Engagements	Risk Review Audit	Investigation
Disclosure Position	Unprompted Disclosure Available	Prompted Disclosure Available	No Qualifying Disclosure

FINAL REMARKS

The Code confirms that Revenue continues to take a more targeted approach to tax risk and tax non-compliance. This highlights how important it is for taxpayers to complete their own tax risk assessments on an ongoing basis to identify any issues that may require remediation.

It is also important to obtain professional advice as soon as Revenue initiate any form of intervention to ensure that the appropriate steps are taken, and the intervention is not escalated.

There are many ways for taxpayers to regularise their tax affairs prior to commencement of a Revenue intervention e.g., qualifying disclosures, technical adjustments, self-correction, or “no loss of revenue” claims. William Fry Tax Advisors can assist taxpayers in carrying out second reviews of their tax affairs, regularising their tax affairs and advising on the options available in dealing with any tax controversy matters.

CONTACT US

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